

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 41

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2022 - \* 24

Amendment No. (req. for Amendments \*)

Filing by Nasdaq ISE, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
--	---	--	--	--	---

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend the Pricing Schedule at Options 7, Section 6

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.


First Name \* Sun Last Name \* Kim  
Title \* Associate General Counsel  
E-mail \* sun.kim@nasdaq.com  
Telephone \* (646) 420-7816 Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq ISE, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 10/24/2022 (Title \*)  
By John Zecca EVP and Chief Legal Officer  
(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2022.10.24 16:22:14 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

Add Remove View

SR-ISE-2022-24 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

SR-ISE-2022-24 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

Add Remove View

--

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

--

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

--

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

Add Remove View

--

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

SR-ISE-2022-24 Exhibit 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

Add Remove View

--

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC (“ISE” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s Pricing Schedule at Options 7, Section 6.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Sun Kim  
Associate General Counsel  
Nasdaq, Inc.  
646-420-7816

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to amend the Exchange’s Pricing Schedule at Options 7, Section 6 to: (1) adopt a new Qualified Contingent Cross (“QCC”)<sup>3</sup> rebate program, and (2) increase the Crossing Fee Cap.

The Exchange initially filed the proposed pricing changes on October 3, 2022 (SR-ISE-2022-21). On October 14, 2022, the Exchange withdrew that filing and submitted SR-ISE-2022-22. On October 24, 2022, the Exchange withdrew that filing and submitted this filing.

QCC Rebate

*Background*

Today, the Exchange offers a QCC and Solicitation Rebate program in Options 7, Section 6.A whereby Members using QCC and/or other solicited orders executed in the Solicitation<sup>4</sup> or Facilitation<sup>5</sup> Mechanisms (together with QCC, collectively, “Current

---

<sup>3</sup> A QCC Order is comprised of an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Supplementary Material .01 to Options 3, Section 7, coupled with a contra-side order or orders totaling an equal number of contracts. See Options 3, Section 7(j).

<sup>4</sup> The Solicitation or Solicited Order Mechanism is a process by which an Electronic Access Member (“EAM”) can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. See Options 3, Section 11(d). The Exchange will make a corrective change in Section 6.A to replace the reference to Solicitation Mechanism with Solicited Order Mechanism.

<sup>5</sup> The Facilitation Mechanism is a process by which an EAM can execute a transaction wherein the EAM seeks to facilitate a block-size order it represents as

Solicited Orders”) receive rebates for each originating contract side in all symbols traded on the Exchange. Once a Member reaches a certain volume threshold in Current Solicited Orders during a month, the Exchange provides rebates to that Member for all of its eligible Current Solicited Order traded contracts for that month.<sup>6</sup> Members receive the rebate for all Current Solicited Orders except for Current Solicited Orders between two Priority Customers.<sup>7</sup> Today, the volume threshold and corresponding QCC and Solicitation Rebates in Section 6.A are as follows:

<b>Originating Contract Sides</b>	<b>Rebate</b>
0 to 99,999	\$0.00
100,000 to 199,999	(\$0.05)
200,000 to 499,999	(\$0.07)
500,000 to 749,999	(\$0.09)
750,000 to 999,999	(\$0.10)
1,000,000+	(\$0.11)

Volume resulting from all Current Solicited Orders is aggregated in determining the applicable volume tier as set forth above. For Members that achieve the highest volume threshold of 1,000,000 or more originating contract sides, the Exchange also currently provides an additional rebate of \$0.01 per originating contract side on Current Solicited

---

agent, and/or a transaction wherein the EAM solicited interest to execute against a block-size order it represents as agent. See Options 3, Section 11(b).

<sup>6</sup> All eligible volume from affiliated Members is aggregated in determining QCC and Solicitation volume totals, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

<sup>7</sup> A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37).

Orders that qualify for the QCC and Solicitation Rebate program if the Member achieves in a given month: (i) combined Current Solicited Order volume of more than 1,750,000 originating contract sides and (ii) Priority Customer Complex Tiers 6 or higher in Section 4 (the “note \* incentive”).<sup>8</sup> In addition, the Exchange provides an additional rebate of \$0.01 per originating contract side that is applied to each QCC and Solicitation Rebate volume tier where the Member receives the rebate (i.e., tier 2 or higher) if the Member also achieves Priority Customer Complex Tier 2 or higher in a given month (the “note &” incentive). Thus, qualifying Members may receive up to \$0.06 in the second QCC and Solicitation Rebate volume tier, \$0.08 in the third tier, \$0.10 in the fourth tier, \$0.11 in the fifth tier, and \$0.13 in the sixth and highest tier (i.e., the \$0.11 base rebate, the \$0.01 note \* incentive, and the \$0.01 note & incentive).

*Proposal*

To further encourage QCC order flow, the Exchange now proposes to adopt a new QCC Rebate program in Section 6.B. As a result of this change, the Exchange will no longer provide the Section 6.A rebates, as described above, for QCC orders. With the proposed changes, the Exchange will continue to provide the Section 6.A rebates for solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism (“Amended Solicited Orders”). In addition, executed QCC volume will continue to be combined with executed Amended Solicited Order volume to count towards the Section 6.A rebate tiers described above; however, the Section 6.A rebates will only be provided

---

<sup>8</sup> As set forth in Options 7, Section 4, Priority Customer Complex Tiers are based on Total Affiliated Member or Affiliated Entity complex order volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume.

to the Amended Solicited Orders as the Exchange will pay the new QCC Rebates in Section 6.B to QCC orders under this proposal.

To effectuate the foregoing changes, the Exchange first proposes to update all references to the “QCC and Solicitation Rebate” in Section 6.A to the “Solicitation Rebate.” The Exchange also proposes to amend the first paragraph of Section 6.A to provide that Members using the QCC and/or other solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism will receive rebates for solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism (i.e., Amended Solicited Orders) according to the table in Section 6.A for each originating contract side in all symbols traded on the Exchange. Volume associated with QCC executions will be aggregated in calculating the Solicitation Rebate volume tiers in Section 6.A, but Members that execute QCC volume will receive the QCC Rebate in Section 6.B.

The Exchange also proposes to update each instance in Section 6.A where the current language refers to Amended Solicited Order volume to add a reference to QCC volume as well, and to make clear in the second paragraph of Section 6.A that the volume aggregation in Section 6.A would include *combined* QCC and Amended Solicited Order volume (as is the case today). The Exchange further proposes a corrective change in the second paragraph of Section 6.A to replace the reference to QCC and Solicitation volume totals with QCC and Amended Solicited Order volume totals to use correct terminology.

Next, the Exchange proposes to set forth the new QCC Rebate in Section 6.B, and relocate the PIM and Facilitation Rebate currently in Section 6.B into Section 6.C, which is currently reserved. As proposed, Section 6.B will provide that Members that submit

QCC orders when at least one side of the QCC transaction is a Non-Priority Customer will receive the below QCC Rebates. QCC Rebates will be paid to each agency contract side (“QCC Agency Side”) in all symbols traded on the Exchange. Specifically:

- When only one side of the QCC transaction is a Non-Priority Customer,<sup>9</sup> the Member will receive a \$0.14 per contract rebate for each QCC Agency Side.
- When both sides of the QCC transaction are Non-Priority Customers, the Member will receive a \$0.22 per contract rebate for each QCC Agency Side.

In addition, the Exchange proposes to provide an additional incentive of \$0.03 per contract for each QCC Agency Side that qualifies for the QCC Rebate program if they achieve Priority Customer Complex Tier 2 or higher in a given month. The proposed incentive will be structured similarly to the existing note & incentive within Section 6.A in that Members will need to achieve the same Priority Customer Complex Tier 2 or higher to be eligible for the incentive. The proposed incentive will also be applied to each QCC Rebate and will be cumulative of the QCC Rebates so that qualifying Members could receive up to \$0.17 per contract for each QCC Agency Side when only one side of the QCC transaction is a Non-Priority Customer, and up to \$0.25 per contract for each QCC Agency Side when both sides of the QCC transaction are Non-Priority Customers.

Lastly, the Exchange proposes to define Non-Priority Customers in Section 1 because this term is currently used throughout Options 7,<sup>10</sup> and will also be used in proposed Section 6.B. Today, Non-Priority Customers include every market participant capacity in the Exchange’s Pricing Schedule except for Priority Customers. This is also

---

<sup>9</sup> Non-Priority Customers include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers.

<sup>10</sup> See Section 3, Section 4, and Section 5.C.



how the Exchange will use this term in proposed Section 6.B. As such, the Exchange proposes to define Non-Priority Customers in Section 1 as including Market Makers,<sup>11</sup> Non-Nasdaq ISE Market Makers (FarMMs),<sup>12</sup> Firm Proprietary<sup>13</sup> / Broker-Dealers,<sup>14</sup> and Professional Customers.<sup>15</sup>

Overall, Members will be eligible to receive higher rebates on qualifying QCC orders under Section 6.B compared to the rebates they receive today under Section 6.A. As such, Members may be incentivized to send more QCC and complex order flow to the Exchange.

#### Crossing Fee Cap

As set forth in Options 7, Section 6.H, the Exchange presently offers a Crossing Fee Cap of \$90,000 per month, per Member, on all Firm Proprietary transactions that are part of the originating or contra-side of a Crossing Order.<sup>16</sup> Fees charged by the

---

<sup>11</sup> The term “Market Makers” refers to Competitive Market Makers and Primary Market Makers, collectively. See Options 1, Section 1(a)(21).

<sup>12</sup> A Non-Nasdaq ISE Market Maker is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

<sup>13</sup> A Firm Proprietary order is an order submitted by a member for its own proprietary account.

<sup>14</sup> A Broker-Dealer order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>15</sup> A Professional Customer is a person or entity that is not a broker/dealer and is not a Priority Customer. See also Options 1, Section 1(a)(40).

<sup>16</sup> Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. All eligible volume from affiliated Members is aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Section 5 are not included in the calculation of the monthly fee cap.<sup>17</sup> For purposes of the Crossing Fee Cap the Exchange attributes eligible volume to the ISE Member on whose behalf the Crossing Order was executed.

At this time, the Exchange proposes to increase the Crossing Fee Cap from \$90,000 to \$150,000. While the Crossing Fee Cap will increase under this proposal, the Exchange believes that Members will continue to be incentivized to bring Firm Proprietary Crossing Order flow to ISE.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant

---

<sup>17</sup> In addition, a service fee of \$0.00 per side applies to all order types that are eligible for the fee cap. The service fee would apply once a Member reaches the fee cap level and would apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap is not charged the service fee. Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>20</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>21</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security

---

<sup>20</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>21</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

#### QCC Rebate

The Exchange believes that the proposed QCC Rebate program is reasonable, equitable, and not unfairly discriminatory. The proposed changes are designed to incentivize market participants to direct more QCC and complex order flow to ISE, which the Exchange believes would enhance market quality to the benefit of all market participants. The Exchange believes the proposed QCC Rebate structure is reasonable because the proposed changes provide opportunities for Members to receive higher rebates for each QCC Agency Side than they currently receive under the QCC and Solicitation Rebate program in Options 7, Section 6.A, which may incentivize more QCC order flow to the Exchange. As discussed above, qualifying Members presently receive up to \$0.06 in the second QCC and Solicitation Rebate volume tier, \$0.08 in the third tier, \$0.10 in the fourth tier, \$0.11 in the fifth tier, and \$0.13 in the sixth and highest tier (i.e., the \$0.11 base rebate, the \$0.01 note \* incentive, and the \$0.01 note & incentive). With the proposed changes, qualifying Members would receive \$0.14 per contract (or \$0.17 per contract if they also achieve Priority Customer Complex Tier 2 or higher in a given month) for each QCC Agency Side when only one side of the QCC transaction is a Non-Priority Customer, and \$0.22 per contract (or \$0.25 per contract if they also achieve

Priority Customer Complex Tier 2 or higher in a given month) when both sides of the QCC transaction are Non-Priority Customers. The Exchange will continue to not provide any rebates under this proposal when both sides of the QCC transaction are Priority Customers, as is the case today. The Exchange believes that this is reasonable given that Priority Customers are already incentivized by having no transaction fees for Crossing Orders, including QCC orders.<sup>22</sup> The Exchange also notes that other competing exchanges offer alternative QCC rebates that depend on the capacity of the parties to the transaction.<sup>23</sup>

The Exchange also believes that the proposed additional \$0.03 incentive that will be provided to Members that achieve Priority Customer Complex Tier 2 or higher in a given month (in addition to qualifying for the QCC Rebate program) is reasonable because this incentive is intended to encourage Members to send more QCC order and complex order flow to the Exchange. As discussed above, the proposed incentive is similar to the existing & incentive in Options 7, Section 6.A in that Members will need to achieve the same Priority Customer Complex Tier 2 or higher to be eligible for the

---

<sup>22</sup> See Options 7, Sections 3 and 4.

<sup>23</sup> See BOX Exchange (“BOX”) Fee Schedule, Section IV.D.1. BOX offers tiered QCC rebates to Participants that entered the order into the BOX System when at least one party to the QCC transaction is a Broker-Dealer or Market Maker. When only one side of the QCC transaction is a Broker-Dealer or Market Maker, Rebate 1 will apply. When both parties to the QCC transaction are a Broker Dealer or Market Maker, Rebate 2 will apply. See also Cboe EDGX Options Exchange (“EDGX”) Fee Schedule, QCC Initiator/Solicitation Rebate Tiers. Like BOX, EDGX offers tiered rebates for QCC transactions when at least one side of the transaction is of Non-Customer, Non-Professional capacity. When only one side of the transaction is of Non-Customer, Non-Professional capacity, Rebate 1 will apply. When both sides of the transaction are of Non-Customer, Non-Professional capacity, Rebate 2 will apply.

incentive. Members, however, that qualify for the QCC Rebate Program will now receive a higher additional incentive under this proposal for each QCC Agency Side than they currently receive under the note & incentive in Section 6.A. As such, more Members may seek to qualify for the proposed incentive by sending additional QCC order and complex order flow to ISE. All market participants benefit from increased order interaction when more order flow is available on the Exchange.

The Exchange also believes that the proposed QCC Rebate program in Options 7, Section 6.B is equitable and not unfairly discriminatory because all Members will be eligible for the proposed rebates by sending QCC and complex order flow to the Exchange. Further, the Exchange believes that applying the proposed rebates where at least one party to the QCC transaction is a Non-Priority Customer is equitable and not unfairly discriminatory because Priority Customers do not receive any QCC incentives today under the QCC and Solicitation Rebate program in Options 7, Section 6.A when both sides of the QCC transaction are Priority Customers. As discussed above, Priority Customers are not assessed fees for QCC transactions today, and therefore do not need the added incentive of the proposed rebates. In addition, to the extent the proposed QCC Rebate program encourages Members to send more QCC and complex order flow to ISE, all market participants will benefit from the resulting additional liquidity and trading opportunities on ISE.

The Exchange believes that the proposed changes in Options 7, Section 6.A are reasonable, equitable, and not unfairly discriminatory because all of the changes are intended to make clear that the Exchange will continue to provide the Section 6.A rebates for solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism

(i.e., the Amended Solicited Orders) and that QCC orders will receive the proposed rebates in Section 6.B. In addition, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to continue aggregating executed QCC volume with executed Amended Solicited Order volume towards the Section 6.A rebate tiers described above while only providing the Section 6.A rebates to the Amended Solicited Orders, as the Exchange will pay the new QCC Rebates in Section 6.B to QCC orders under this proposal. The Exchange also believes that this proposal will further encourage Members to bring additional QCC order flow to ISE in order to receive the Section 6.A rebates on their Amended Solicited Orders and Section 6.B rebates on their QCC orders, which, in turn, brings increased liquidity and additional opportunities for interaction with this order flow to the benefit of all market participants.

Lastly, the Exchange believes that its proposal to add the definition of “Non-Priority Customers” in Options 7, Section 1 is reasonable, equitable, and not unfairly discriminatory because it will bring greater transparency to the Exchange’s Pricing Schedule by codifying how this term is used today throughout the Exchange’s Pricing Schedule, and how it will be used in the proposed QCC Rebate program.

#### Crossing Fee Cap

The Exchange believes that its proposal to increase the Crossing Fee Cap from \$90,000 to \$150,000 is reasonable. The Crossing Fee Cap was established to reward Members for executing a higher volume of Firm Proprietary Crossing Orders on the Exchange by capping the associated fees. The Exchange believes that the increased fee cap will be set at a level that continues to appropriately reward Members for executing high volumes of such Crossing Orders. Despite the proposed increase, the Exchange

believes that Members will continue to be incentivized to bring Firm Proprietary Crossing Order flow to ISE, as Members will still have the opportunity to pay no transaction fees for such orders beyond the \$150,000 cap.

The Exchange also believes that the proposed increase to the Crossing Fee Cap is equitable and not unfairly discriminatory because it will apply uniformly to all Members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange does not believe it is unfairly discriminatory to offer the Crossing Fee Cap to Firm Proprietary transactions as differentiated pricing already exists on the Exchange's Pricing Schedule to encourage different segments of order flow. For instance, the Exchange generally provides Priority Customer orders more favorable pricing through lower or no transaction fees, including Priority Customer Crossing Orders that are presently assessed no fees, and through rebate opportunities like the Priority Customer rebate currently provided for adding liquidity in Non-Select Symbols.<sup>24</sup> Professional Customer orders are presently charged a lower transaction fee for executed QCC orders and for orders executed in the Solicited Order Mechanism (\$0.10 for Professional Customers versus \$0.20 for all other Non-Priority Customers).<sup>25</sup> Broker-Dealer and Firm Proprietary orders are incentivized in the Exchange's PIM and Facilitation Rebate program.<sup>26</sup> Market Makers are offered rebates through the Exchange's Market Maker

---

<sup>24</sup> See Options 7, Sections 3 and 4. Non-Select Symbols are options overlying all symbols that are not included in the Penny Interval Program.

<sup>25</sup> See Options 7, Section 3 (note 16) and Section 4 (note 14).

<sup>26</sup> See Options 7, Section 6.B.



Plus program.<sup>27</sup> The Exchange further believes there is nothing impermissible about offering the Crossing Fee Cap solely to Firm Proprietary transactions given that this practice is consistent with firm fee caps in place on other options exchanges.<sup>28</sup> To the extent the amended Crossing Fee Cap continues to encourage additional Firm Proprietary Crossing Order flow to ISE, such order flow brings increased liquidity and additional opportunities for interaction with this order flow, which ultimately benefits all market participants.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that this proposal will place any category of market participant at a competitive disadvantage. As discussed above, any Member may qualify for the proposed QCC Rebate program (which will be higher than the current rebates being provided under Section 6.A) by sending QCC and complex order flow to the Exchange. While the Exchange will apply the proposed rebates to QCC transactions where at least one party is a Non-Priority Customer, Priority Customers are not assessed fees for QCC transactions today, and therefore do not need the added incentive of the proposed rebates. Further, to the extent the Exchange's proposal incentivizes Members to bring additional QCC and complex

---

<sup>27</sup> See Options 7, Section 3 (note 5).

<sup>28</sup> See e.g., Nasdaq GEMX Options 7, Section 4.C and Nasdaq Phlx Options 7, Section 4.

order flow to ISE, the Exchange believes that the resulting additional volume and liquidity will benefit all market participants. The Exchange also does not believe that increasing the Crossing Fee Cap will impose an undue burden on intra-market competition because it will apply uniformly to all Members engaged in Firm Proprietary trading in options classes traded on the Exchange. To the extent the amended Crossing Fee Cap continues to provide an incentive for Members to bring additional Firm Proprietary Crossing Order flow to the Exchange, such order flow brings increased liquidity to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>29</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

---

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-ISE-2022-24)

October \_\_, 2022

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Pricing Schedule at Options 7, Section 6

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 24, 2022, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s Pricing Schedule at Options 7, Section 6.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7, Section 6 to: (1) adopt a new Qualified Contingent Cross ("QCC")<sup>3</sup> rebate program, and (2) increase the Crossing Fee Cap.

The Exchange initially filed the proposed pricing changes on October 3, 2022 (SR-ISE-2022-21). On October 14, 2022, the Exchange withdrew that filing and submitted SR-ISE-2022-22. On October 24, 2022, the Exchange withdrew that filing and submitted this filing.

QCC Rebate

*Background*

Today, the Exchange offers a QCC and Solicitation Rebate program in Options 7, Section 6.A whereby Members using QCC and/or other solicited orders executed in the Solicitation<sup>4</sup> or Facilitation<sup>5</sup> Mechanisms (together with QCC, collectively, "Current

---

<sup>3</sup> A QCC Order is comprised of an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Supplementary Material .01 to Options 3, Section 7, coupled with a contra-side order or orders totaling an equal number of contracts. See Options 3, Section 7(j).

<sup>4</sup> The Solicitation or Solicited Order Mechanism is a process by which an Electronic Access Member ("EAM") can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. See Options 3, Section 11(d). The Exchange will make a corrective change in Section

Solicited Orders”) receive rebates for each originating contract side in all symbols traded on the Exchange. Once a Member reaches a certain volume threshold in Current Solicited Orders during a month, the Exchange provides rebates to that Member for all of its eligible Current Solicited Order traded contracts for that month.<sup>6</sup> Members receive the rebate for all Current Solicited Orders except for Current Solicited Orders between two Priority Customers.<sup>7</sup> Today, the volume threshold and corresponding QCC and Solicitation Rebates in Section 6.A are as follows:

<b>Originating Contract Sides</b>	<b>Rebate</b>
0 to 99,999	\$0.00
100,000 to 199,999	(\$0.05)
200,000 to 499,999	(\$0.07)
500,000 to 749,999	(\$0.09)
750,000 to 999,999	(\$0.10)
1,000,000+	(\$0.11)

Volume resulting from all Current Solicited Orders is aggregated in determining the applicable volume tier as set forth above. For Members that achieve the highest volume

---

6.A to replace the reference to Solicitation Mechanism with Solicited Order Mechanism.

<sup>5</sup> The Facilitation Mechanism is a process by which an EAM can execute a transaction wherein the EAM seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against a block-size order it represents as agent. See Options 3, Section 11(b).

<sup>6</sup> All eligible volume from affiliated Members is aggregated in determining QCC and Solicitation volume totals, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

<sup>7</sup> A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37).

threshold of 1,000,000 or more originating contract sides, the Exchange also currently provides an additional rebate of \$0.01 per originating contract side on Current Solicited Orders that qualify for the QCC and Solicitation Rebate program if the Member achieves in a given month: (i) combined Current Solicited Order volume of more than 1,750,000 originating contract sides and (ii) Priority Customer Complex Tiers 6 or higher in Section 4 (the “note \* incentive”).<sup>8</sup> In addition, the Exchange provides an additional rebate of \$0.01 per originating contract side that is applied to each QCC and Solicitation Rebate volume tier where the Member receives the rebate (i.e., tier 2 or higher) if the Member also achieves Priority Customer Complex Tier 2 or higher in a given month (the “note &” incentive). Thus, qualifying Members may receive up to \$0.06 in the second QCC and Solicitation Rebate volume tier, \$0.08 in the third tier, \$0.10 in the fourth tier, \$0.11 in the fifth tier, and \$0.13 in the sixth and highest tier (i.e., the \$0.11 base rebate, the \$0.01 note \* incentive, and the \$0.01 note & incentive).

### *Proposal*

To further encourage QCC order flow, the Exchange now proposes to adopt a new QCC Rebate program in Section 6.B. As a result of this change, the Exchange will no longer provide the Section 6.A rebates, as described above, for QCC orders. With the proposed changes, the Exchange will continue to provide the Section 6.A rebates for solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism (“Amended Solicited Orders”). In addition, executed QCC volume will continue to be combined with executed Amended Solicited Order volume to count towards the Section

---

<sup>8</sup> As set forth in Options 7, Section 4, Priority Customer Complex Tiers are based on Total Affiliated Member or Affiliated Entity complex order volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume.



6.A rebate tiers described above; however, the Section 6.A rebates will only be provided to the Amended Solicited Orders as the Exchange will pay the new QCC Rebates in Section 6.B to QCC orders under this proposal.

To effectuate the foregoing changes, the Exchange first proposes to update all references to the “QCC and Solicitation Rebate” in Section 6.A to the “Solicitation Rebate.” The Exchange also proposes to amend the first paragraph of Section 6.A to provide that Members using the QCC and/or other solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism will receive rebates for solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism (i.e., Amended Solicited Orders) according to the table in Section 6.A for each originating contract side in all symbols traded on the Exchange. Volume associated with QCC executions will be aggregated in calculating the Solicitation Rebate volume tiers in Section 6.A, but Members that execute QCC volume will receive the QCC Rebate in Section 6.B.

The Exchange also proposes to update each instance in Section 6.A where the current language refers to Amended Solicited Order volume to add a reference to QCC volume as well, and to make clear in the second paragraph of Section 6.A that the volume aggregation in Section 6.A would include *combined* QCC and Amended Solicited Order volume (as is the case today). The Exchange further proposes a corrective change in the second paragraph of Section 6.A to replace the reference to QCC and Solicitation volume totals with QCC and Amended Solicited Order volume totals to use correct terminology.

Next, the Exchange proposes to set forth the new QCC Rebate in Section 6.B, and relocate the PIM and Facilitation Rebate currently in Section 6.B into Section 6.C, which

is currently reserved. As proposed, Section 6.B will provide that Members that submit QCC orders when at least one side of the QCC transaction is a Non-Priority Customer will receive the below QCC Rebates. QCC Rebates will be paid to each agency contract side (“QCC Agency Side”) in all symbols traded on the Exchange. Specifically:

- When only one side of the QCC transaction is a Non-Priority Customer,<sup>9</sup> the Member will receive a \$0.14 per contract rebate for each QCC Agency Side.
- When both sides of the QCC transaction are Non-Priority Customers, the Member will receive a \$0.22 per contract rebate for each QCC Agency Side.

In addition, the Exchange proposes to provide an additional incentive of \$0.03 per contract for each QCC Agency Side that qualifies for the QCC Rebate program if they achieve Priority Customer Complex Tier 2 or higher in a given month. The proposed incentive will be structured similarly to the existing note & incentive within Section 6.A in that Members will need to achieve the same Priority Customer Complex Tier 2 or higher to be eligible for the incentive. The proposed incentive will also be applied to each QCC Rebate and will be cumulative of the QCC Rebates so that qualifying Members could receive up to \$0.17 per contract for each QCC Agency Side when only one side of the QCC transaction is a Non-Priority Customer, and up to \$0.25 per contract for each QCC Agency Side when both sides of the QCC transaction are Non-Priority Customers.

Lastly, the Exchange proposes to define Non-Priority Customers in Section 1 because this term is currently used throughout Options 7,<sup>10</sup> and will also be used in proposed Section 6.B. Today, Non-Priority Customers include every market participant

---

<sup>9</sup> Non-Priority Customers include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers.

<sup>10</sup> See Section 3, Section 4, and Section 5.C.

capacity in the Exchange's Pricing Schedule except for Priority Customers. This is also how the Exchange will use this term in proposed Section 6.B. As such, the Exchange proposes to define Non-Priority Customers in Section 1 as including Market Makers,<sup>11</sup> Non-Nasdaq ISE Market Makers (FarMMs),<sup>12</sup> Firm Proprietary<sup>13</sup> / Broker-Dealers,<sup>14</sup> and Professional Customers.<sup>15</sup>

Overall, Members will be eligible to receive higher rebates on qualifying QCC orders under Section 6.B compared to the rebates they receive today under Section 6.A. As such, Members may be incentivized to send more QCC and complex order flow to the Exchange.

#### Crossing Fee Cap

As set forth in Options 7, Section 6.H, the Exchange presently offers a Crossing Fee Cap of \$90,000 per month, per Member, on all Firm Proprietary transactions that are part of the originating or contra-side of a Crossing Order.<sup>16</sup> Fees charged by the

---

<sup>11</sup> The term "Market Makers" refers to Competitive Market Makers and Primary Market Makers, collectively. See Options 1, Section 1(a)(21).

<sup>12</sup> A Non-Nasdaq ISE Market Maker is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

<sup>13</sup> A Firm Proprietary order is an order submitted by a member for its own proprietary account.

<sup>14</sup> A Broker-Dealer order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>15</sup> A Professional Customer is a person or entity that is not a broker/dealer and is not a Priority Customer. See also Options 1, Section 1(a)(40).

<sup>16</sup> Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. All eligible volume from affiliated Members is aggregated for purposes of the Crossing Fee Cap, provided there is at

Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Section 5 are not included in the calculation of the monthly fee cap.<sup>17</sup> For purposes of the Crossing Fee Cap the Exchange attributes eligible volume to the ISE Member on whose behalf the Crossing Order was executed.

At this time, the Exchange proposes to increase the Crossing Fee Cap from \$90,000 to \$150,000. While the Crossing Fee Cap will increase under this proposal, the Exchange believes that Members will continue to be incentivized to bring Firm Proprietary Crossing Order flow to ISE.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

---

least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

<sup>17</sup> In addition, a service fee of \$0.00 per side applies to all order types that are eligible for the fee cap. The service fee would apply once a Member reaches the fee cap level and would apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap is not charged the service fee. Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>20</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>21</sup>

Numerous indicia demonstrate the competitive nature of this market. For

---

<sup>20</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>21</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

#### QCC Rebate

The Exchange believes that the proposed QCC Rebate program is reasonable, equitable, and not unfairly discriminatory. The proposed changes are designed to incentivize market participants to direct more QCC and complex order flow to ISE, which the Exchange believes would enhance market quality to the benefit of all market participants. The Exchange believes the proposed QCC Rebate structure is reasonable because the proposed changes provide opportunities for Members to receive higher rebates for each QCC Agency Side than they currently receive under the QCC and Solicitation Rebate program in Options 7, Section 6.A, which may incentivize more QCC order flow to the Exchange. As discussed above, qualifying Members presently receive up to \$0.06 in the second QCC and Solicitation Rebate volume tier, \$0.08 in the third tier, \$0.10 in the fourth tier, \$0.11 in the fifth tier, and \$0.13 in the sixth and highest tier (i.e., the \$0.11 base rebate, the \$0.01 note \* incentive, and the \$0.01 note & incentive). With the proposed changes, qualifying Members would receive \$0.14 per contract (or \$0.17 per contract if they also achieve Priority Customer Complex Tier 2 or higher in a given month) for each QCC Agency Side when only one side of the QCC transaction is a Non-

Priority Customer, and \$0.22 per contract (or \$0.25 per contract if they also achieve Priority Customer Complex Tier 2 or higher in a given month) when both sides of the QCC transaction are Non-Priority Customers. The Exchange will continue to not provide any rebates under this proposal when both sides of the QCC transaction are Priority Customers, as is the case today. The Exchange believes that this is reasonable given that Priority Customers are already incentivized by having no transaction fees for Crossing Orders, including QCC orders.<sup>22</sup> The Exchange also notes that other competing exchanges offer alternative QCC rebates that depend on the capacity of the parties to the transaction.<sup>23</sup>

The Exchange also believes that the proposed additional \$0.03 incentive that will be provided to Members that achieve Priority Customer Complex Tier 2 or higher in a given month (in addition to qualifying for the QCC Rebate program) is reasonable because this incentive is intended to encourage Members to send more QCC order and complex order flow to the Exchange. As discussed above, the proposed incentive is similar to the existing & incentive in Options 7, Section 6.A in that Members will need to achieve the same Priority Customer Complex Tier 2 or higher to be eligible for the

---

<sup>22</sup> See Options 7, Sections 3 and 4.

<sup>23</sup> See BOX Exchange (“BOX”) Fee Schedule, Section IV.D.1. BOX offers tiered QCC rebates to Participants that entered the order into the BOX System when at least one party to the QCC transaction is a Broker-Dealer or Market Maker. When only one side of the QCC transaction is a Broker-Dealer or Market Maker, Rebate 1 will apply. When both parties to the QCC transaction are a Broker Dealer or Market Maker, Rebate 2 will apply. See also Cboe EDGX Options Exchange (“EDGX”) Fee Schedule, QCC Initiator/Solicitation Rebate Tiers. Like BOX, EDGX offers tiered rebates for QCC transactions when at least one side of the transaction is of Non-Customer, Non-Professional capacity. When only one side of the transaction is of Non-Customer, Non-Professional capacity, Rebate 1 will apply. When both sides of the transaction are of Non-Customer, Non-Professional capacity, Rebate 2 will apply.

incentive. Members, however, that qualify for the QCC Rebate Program will now receive a higher additional incentive under this proposal for each QCC Agency Side than they currently receive under the note & incentive in Section 6.A. As such, more Members may seek to qualify for the proposed incentive by sending additional QCC order and complex order flow to ISE. All market participants benefit from increased order interaction when more order flow is available on the Exchange.

The Exchange also believes that the proposed QCC Rebate program in Options 7, Section 6.B is equitable and not unfairly discriminatory because all Members will be eligible for the proposed rebates by sending QCC and complex order flow to the Exchange. Further, the Exchange believes that applying the proposed rebates where at least one party to the QCC transaction is a Non-Priority Customer is equitable and not unfairly discriminatory because Priority Customers do not receive any QCC incentives today under the QCC and Solicitation Rebate program in Options 7, Section 6.A when both sides of the QCC transaction are Priority Customers. As discussed above, Priority Customers are not assessed fees for QCC transactions today, and therefore do not need the added incentive of the proposed rebates. In addition, to the extent the proposed QCC Rebate program encourages Members to send more QCC and complex order flow to ISE, all market participants will benefit from the resulting additional liquidity and trading opportunities on ISE.

The Exchange believes that the proposed changes in Options 7, Section 6.A are reasonable, equitable, and not unfairly discriminatory because all of the changes are intended to make clear that the Exchange will continue to provide the Section 6.A rebates for solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism



(i.e., the Amended Solicited Orders) and that QCC orders will receive the proposed rebates in Section 6.B. In addition, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to continue aggregating executed QCC volume with executed Amended Solicited Order volume towards the Section 6.A rebate tiers described above while only providing the Section 6.A rebates to the Amended Solicited Orders, as the Exchange will pay the new QCC Rebates in Section 6.B to QCC orders under this proposal. The Exchange also believes that this proposal will further encourage Members to bring additional QCC order flow to ISE in order to receive the Section 6.A rebates on their Amended Solicited Orders and Section 6.B rebates on their QCC orders, which, in turn, brings increased liquidity and additional opportunities for interaction with this order flow to the benefit of all market participants.

Lastly, the Exchange believes that its proposal to add the definition of “Non-Priority Customers” in Options 7, Section 1 is reasonable, equitable, and not unfairly discriminatory because it will bring greater transparency to the Exchange’s Pricing Schedule by codifying how this term is used today throughout the Exchange’s Pricing Schedule, and how it will be used in the proposed QCC Rebate program.

#### Crossing Fee Cap

The Exchange believes that its proposal to increase the Crossing Fee Cap from \$90,000 to \$150,000 is reasonable. The Crossing Fee Cap was established to reward Members for executing a higher volume of Firm Proprietary Crossing Orders on the Exchange by capping the associated fees. The Exchange believes that the increased fee cap will be set at a level that continues to appropriately reward Members for executing high volumes of such Crossing Orders. Despite the proposed increase, the Exchange

believes that Members will continue to be incentivized to bring Firm Proprietary Crossing Order flow to ISE, as Members will still have the opportunity to pay no transaction fees for such orders beyond the \$150,000 cap.

The Exchange also believes that the proposed increase to the Crossing Fee Cap is equitable and not unfairly discriminatory because it will apply uniformly to all Members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange does not believe it is unfairly discriminatory to offer the Crossing Fee Cap to Firm Proprietary transactions as differentiated pricing already exists on the Exchange's Pricing Schedule to encourage different segments of order flow. For instance, the Exchange generally provides Priority Customer orders more favorable pricing through lower or no transaction fees, including Priority Customer Crossing Orders that are presently assessed no fees, and through rebate opportunities like the Priority Customer rebate currently provided for adding liquidity in Non-Select Symbols.<sup>24</sup> Professional Customer orders are presently charged a lower transaction fee for executed QCC orders and for orders executed in the Solicited Order Mechanism (\$0.10 for Professional Customers versus \$0.20 for all other Non-Priority Customers).<sup>25</sup> Broker-Dealer and Firm Proprietary orders are incentivized in the Exchange's PIM and Facilitation Rebate program.<sup>26</sup> Market Makers are offered rebates through the Exchange's Market Maker Plus program.<sup>27</sup> The Exchange further believes there is nothing impermissible about

---

<sup>24</sup> See Options 7, Sections 3 and 4. Non-Select Symbols are options overlying all symbols that are not included in the Penny Interval Program.

<sup>25</sup> See Options 7, Section 3 (note 16) and Section 4 (note 14).

<sup>26</sup> See Options 7, Section 6.B.

<sup>27</sup> See Options 7, Section 3 (note 5).

offering the Crossing Fee Cap solely to Firm Proprietary transactions given that this practice is consistent with firm fee caps in place on other options exchanges.<sup>28</sup> To the extent the amended Crossing Fee Cap continues to encourage additional Firm Proprietary Crossing Order flow to ISE, such order flow brings increased liquidity and additional opportunities for interaction with this order flow, which ultimately benefits all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that this proposal will place any category of market participant at a competitive disadvantage. As discussed above, any Member may qualify for the proposed QCC Rebate program (which will be higher than the current rebates being provided under Section 6.A) by sending QCC and complex order flow to the Exchange. While the Exchange will apply the proposed rebates to QCC transactions where at least one party is a Non-Priority Customer, Priority Customers are not assessed fees for QCC transactions today, and therefore do not need the added incentive of the proposed rebates. Further, to the extent the Exchange's proposal incentivizes Members to bring additional QCC and complex order flow to ISE, the Exchange believes that the resulting additional volume and liquidity will benefit all market participants. The Exchange also does not believe that increasing the Crossing Fee Cap will impose an undue burden on intra-market

---

<sup>28</sup> See e.g., Nasdaq GEMX Options 7, Section 4.C and Nasdaq Phlx Options 7, Section 4.

competition because it will apply uniformly to all Members engaged in Firm Proprietary trading in options classes traded on the Exchange. To the extent the amended Crossing Fee Cap continues to provide an incentive for Members to bring additional Firm Proprietary Crossing Order flow to the Exchange, such order flow brings increased liquidity to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>29</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2022-24 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2022-24. This file number should be included on the subject line if e-mail is used. To help the Commission process

---

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-ISE-2022-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

J. Matthew DeLesDernier  
Assistant Secretary

---

<sup>30</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**Nasdaq ISE Rules**

\* \* \* \* \*

**OPTIONS 7 PRICING SCHEDULE****Section 1. General Provisions**

\* \* \* \* \*

A "**Non-Nasdaq ISE Market Maker**" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

"Non-Priority Customers" include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers.

**Non-Select Symbols**" are options overlying all symbols excluding Select Symbols.

\* \* \* \* \*

**Section 6. Other Options Fees and Rebates****A. [QCC and ]Solicitation Rebate**

» Members using the Qualified Contingent Cross (QCC) and/or other solicited orders executed in the [Solicitation]Solicited Order Mechanism or Facilitation Mechanism[s] [(together with QCC, collectively, "Solicited Orders"),] will receive rebates for solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism ("Solicited Orders") according to the table below for each originating contract side in all symbols traded on the Exchange. Volume associated with QCC executions will be aggregated in calculating the Solicitation Rebate volume tiers in this section, but Members that execute QCC volume will receive the QCC Rebate in Section 6.B below.

Once a Member reaches a certain volume threshold in combined QCC and Solicited Orders during a month, the Exchange will provide rebates to that Member for all of its Solicited Order traded contracts for that month. All eligible volume from affiliated Members will be aggregated in determining the combined QCC and [Solicitation]Solicited Order volume totals, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. The applicable rebates will be applied on Solicited Order traded contracts once the volume threshold is met. Members will receive the rebate for all Solicited Orders except for Solicited Orders between two Priority Customers. Solicited Orders between two

Priority Customers will not receive any rebate. The volume threshold and corresponding rebates are as follows:

» Volume resulting from all QCC and Solicited Orders will be aggregated in determining the applicable volume tier.

<b>Originating Contract Sides</b>	<b>Rebate</b>
0 to 99,999	\$0.00
100,000 to 199,999	(\$0.05) <sup>&amp;</sup>
200,000 to 499,999	(\$0.07) <sup>&amp;</sup>
500,000 to 749,999	(\$0.09) <sup>&amp;</sup>
750,000 to 999,999	(\$0.10) <sup>&amp;</sup>
1,000,000+	(\$0.11) <sup>*&amp;</sup>

\* Members will receive an additional rebate of \$0.01 per originating contract side on Solicited Orders that qualify for the [QCC and ]Solicitation Rebate program if they achieve in a given month: (i) combined QCC and Solicited Order volume of more than 1,750,000 originating contract sides and (ii) Priority Customer Complex Tier 6 or higher in Section 4.

& Members will receive an additional rebate of \$0.01 per originating contract side on Solicited Orders that qualify for the [QCC and ]Solicitation Rebate program if they achieve Priority Customer Complex Tier 2 or higher in a given month.

**B. QCC Rebate**

Members that submit QCC orders when at least one side of the QCC transaction is a Non-Priority Customer will receive the below QCC Rebates. QCC Rebates will be paid to each agency contract side (“QCC Agency Side”) in all symbols traded on the Exchange.

When only one side of the QCC transaction is a Non-Priority Customer, the Member will receive a \$0.14 per contract rebate for each QCC Agency Side.

When both sides of the QCC transaction are Non-Priority Customers, the Member will receive a \$0.22 per contract rebate for each QCC Agency Side.

Members will receive an additional rebate of \$0.03 per contract for each QCC Agency Side that qualifies for the QCC Rebate program if they achieve Priority Customer Complex Tier 2 or higher in a given month.

**C. PIM and Facilitation Rebate**

\* \* \* \* \*



[C. Reserved.]

\* \* \* \* \*

## H. Crossing Fee Cap

Fees are capped at \$[90,000]150,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. All eligible volume from affiliated Members will be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. Fees charged by the Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Section 5 are not included in the calculation of the monthly fee cap. A service fee of \$0.00 per side will apply to all order types that are eligible for the fee cap. The service fee shall apply once a Member reaches the fee cap level and shall apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap the Exchange will attribute eligible volume to the ISE Member on whose behalf the Crossing Order was executed.

\* \* \* \* \*