Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2023 - * 35
Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

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

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 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 *).

Amend Options 7

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 * Angela Last Name * Dunn
Title * Principal Associate General Counsel
E-mail * angela.dunn@nasdaq.com
Telephone * (215) 496-5692 Fax

Signature

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

Date 12/01/2023
By John Zecca
(Name *)

(Title *)
EVP and Chief Legal Officer

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: 2023.12.01 12:59:33 -05'00'

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-2023-35 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-2023-35 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-2023-35 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")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Exchange's Pricing Schedule at Options 7.

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:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
215-496-5692

or

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

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1 15 U.S.C. 78s(b)(1).

2 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 to: (i) decrease the Fees for Crossing Orders,[3] except Price Improvement Mechanism or "PIM" Orders,[4] in Sections 3 and 4, (ii) eliminate the Crossing Fee Cap in Section 6.H and reserve certain footnotes related to the cap, (iii) increase the Facilitation[5] and Solicitation[6] Break-Up Rebates in Sections 3 and 4, (iv) eliminate the Fees for Crossing Orders applicable to Professional Customers[7] for Qualified Contingent Cross or "QCC" Orders[8] and SOM Orders in Sections 3 and 4, (v)

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3 A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism ("SOM"), Price Improvement Mechanism ("PIM") or submitted as a Qualified Contingent Cross ("QCC") order. For purposes of the Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. See Options 7, Section 1(c).

4 The PIM is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. See Options 3, Section 13.

5 The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. See Options 3, Section 11(b). Complex Facilitation is described in Options 3, Section 11(c).

6 The Solicited Order Mechanism or "SOM" is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent (the "Agency Order") against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. See Options 3, Section 11(d). The Complex Solicited Order Mechanism is described in Options 3, Section 11(e).

7 A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7, Section 1(c).

8 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).

amend the Solicitation Rebate in Section 6.A, and (vi) amend the QCC Rebate Program in Section 6.B. Each change is discussed in detail below.

Fees for Crossing Orders, Except PIM Orders, and Crossing Fee Cap

Today, the Exchange assesses all Non-Priority Customers[9] a $0.20 per contract Regular Order[10] Fee for Crossing Orders, which fee does not apply to PIM Orders, in Select[11] and Non-Select[12] Symbols, excluding Index Options.[13] Priority Customers[14] are not assessed a Regular Order Fee for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols. The Regular Order Fees for Crossing Orders, except PIM Orders, apply to the originating and contra orders.[15] Today, Regular Order Firm Proprietary[16] contracts traded are subject to the Crossing Fee Cap, as provided in Options 7, Section 6.H.[17] With the Crossing Fee Cap, fees are capped at $200,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. Once a Member exceeds the fee cap level, the Member is subject to a

9 "Non-Priority Customers" include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers. See Options 7, Section 1(c).

10 A "Regular Order" is an order that consists of only a single option series and is not submitted with a stock leg. See Options 7, Section 1(c).

11 "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. See Options 7, Section 1(c).

12 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. See Options 7, Section 1(c).

13 For all executions in regular NDX, XND and NQX orders, the applicable index options fees in Section 5 will apply. See note 7 of Options 7, Section 3.

14 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). Unless otherwise noted, when used in this Pricing Schedule the term "Priority Customer" includes "Retail" as defined below. See Options 7, Section 1(c).

15 See note 2 of Options 7, Section 3.

16 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

17 See note 1 of Options 7, Section 3.

reduced transaction fee of $0.02 per capped contract, unless the Member also qualifies for free executions.

The Exchange proposes to decrease the Non-Priority Customer Regular Order Fee for Crossing Orders, except for PIM Orders, from $0.20 to $0.17 per contract in Select and Non-Select Symbols. Priority Customers will continue to not be assessed a Regular Order Fee for Crossing Orders, except for PIM Orders, in Select and Non-Select Symbols. The Exchange proposes to no longer offer the Crossing Fee Cap for Firm Proprietary contracts and would therefore reserve note 1 of Options 7, Section 3. The Exchange is also reserving the Regular Order Crossing Fee Cap in Options 7, Section 6.H for Select and Non-Select Symbols as the Crossing Fee Cap would not apply to pricing in Options 7, Section 4 as explained below. Despite the elimination of the Crossing Fee Cap, the Exchange believes that the decreased Regular Order Fees for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols will continue to attract certain Crossing Orders to the Exchange.

Similarly, today, the Exchange assesses Non-Priority Customers a $0.17 per contract Complex Order Fee for Crossing Orders, except PIM Orders, for Select and Non-Select Symbols. Priority Customers are assessed no Complex Order Fee for Crossing Orders, except PIM Orders, for Select and Non-Select Symbols. The Complex Order Fees for Crossing Orders, except PIM Orders, apply to the originating and contra orders.[18] Today, Complex Order Firm Proprietary contracts traded are subject to the Crossing Fee Cap, as provided in Options 7, Section 6.H.[19] Also, other than for Priority

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18 See note 11 of Options 7, Section 4.

19 See note 6 of Options 7, Section 4.

Customer orders, the Complex Order Fee for Crossing Orders is reduced to $0.05 per contract for orders executed by Members that execute an average daily volume ("ADV") of 7,500 or more contracts in the PIM in a given month.[20] Further, Members that execute an ADV of 12,500 or more contracts in the PIM will not be charged a fee.[21]

Similar to Regular Orders, the Exchange proposes to decrease the Non-Priority Customer Complex Order Fee for Crossing Orders, except PIM Orders, from $0.20 to $0.17 per contract for Select and Non-Select Symbols. Priority Customers will continue to not be assessed a Complex Order Fee for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols. Similar to Regular Orders, the Exchange proposes to no longer offer the Crossing Fee Cap for Firm Proprietary contracts and would therefore reserve note 6 of Options 7, Section 4. As mentioned herein, the Exchange is also reserving the Crossing Fee Cap in Options 7, Section 6.H. Despite the elimination of the Crossing Fee Cap, the Exchange believes that the decreased Complex Order Fees for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols will continue to attract Crossing Orders to the Exchange.

Facilitation and Solicitation Break-Up Rebates

Today, pursuant to Options 7, Section 3, the Exchange pays Non-Nasdaq ISE Market Makers (FarMM),[22] Firm Proprietary[23]/Broker Dealers,[24] Professionals and

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20 See note 10 of Options 7, Section 4. The discounted fees are applied retroactively to all eligible PIM volume in that month once the threshold has been reached.

21 Id.

22 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. See Options 7, Section 1(c).

23 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

Priority Customers a Regular Order Facilitation and Solicitation Break-up Rebate of $0.15 per contract in Select and Non-Select Symbols. Market Makers[25] are not paid a Regular Order Facilitation and Solicitation Break-up Rebate in Select and Non-Select Symbols. The Exchange proposes to increase the Regular Order Facilitation and Solicitation Break-up Rebate from $0.15 to $0.20 per contract in Select and Non-Select Symbols for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers. Market Makers would continue to not be paid a Regular Order Facilitation and Solicitation Break-up Rebate in Select and Non-Select Symbols. The Exchange believes that the increase to the Regular Order Facilitation and Solicitation Break-up Rebate will attract ISE Members to utilize the Facilitation and Solicitation Mechanisms.

Today, pursuant to Options 7, Section 4, the Exchange pays Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers a Complex Order Facilitation and Solicitation Break-up Rebate of $0.15 per contract in Select and Non-Select Symbols. Market Makers are not paid a Complex Order Facilitation and Solicitation Break-up Rebate in Select and Non-Select Symbols. The Exchange proposes to increase the Complex Order Facilitation and Solicitation Break-up Rebate from $0.15 to $0.20 per contract in Select and Non-Select Symbols for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers. Market Makers would continue to not be paid a

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24 A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

25 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

Complex Order Facilitation and Solicitation Break-up Rebate in Select and Non-Select Symbols. The Exchange believes that the increase to the Complex Order Facilitation and Solicitation Break-up Rebate will attract ISE Members to utilize the Facilitation and Solicitation Mechanisms.

Today, Facilitation and Solicitation Break-up Rebates for Regular Order and Comple Order Select and Non-Select Symbols are provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchanges order books.[26] The applicable fee is applied to any contracts for which a rebate is provided.[27] The Exchange proposes to amend this sentence in note 4 of Options 7, Section 3 and note 2 of Options 7, Section 4 to more specifically provide, “The applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided.” The Exchange believes that this proposed change to the wording of the sentence does not substantively amend the sentence, rather it conforms the reference to the Fee for Crossing Orders to the title of the fees in the tables of Options 7, Sections 3 and 4, which is the Fee for Responses to Crossing Orders for Regular Orders and Complex Orders in Select and Non-Select Symbols. This amendment adds clarity to the fee being referenced.

Professional Customer QCC and SOM Fees For Crossing Orders

As noted above, today, Professional Customers are assessed a $0.20 per contract Regular Order and Complex Order Fee for Crossing Orders, except PIM Orders, in Select

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26 See note 4 in Options 7, Section 3 and note 2 in Options 7, Section 4.

27 Id.

and Non-Select Symbols. Also, today, transaction fees applicable to Professional Customers for an order submitted as a QCC Order and orders executed in the Solicited Order Mechanism would be assessed a $0.10 per contract Regular Order and Complex Order Fee for Crossing Orders, except PIM Orders, instead of $0.20 per contract, in Select and Non-Select Symbols.[28]

At this time, the Exchange proposes to amend note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to provide, "Fees for Crossing Orders applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.00 per contract." The Exchange proposes to substitute the words "Transaction fees" with "Fees for Crossing Orders" to conform to the title of the fees in the tables in Options 7, Sections 3 and 4, thereby providing additional clarity. The Exchange also proposes to eliminate the Professional Customer Regular Order and Complex Order Fee for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols, when the order is submitted as a QCC Order or a SOM Order. The Exchange believes that reducing the Professional Customer Regular Order and Complex Order Fee for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols, when the order is submitted as a QCC Order or a SOM Order from $0.10 to $0.00 per contract will attract additional Professional Customer QCC and SOM Orders to the Exchange.

Solicitation Rebate

Background

Today, the Exchange offers a Solicitation Rebate program in Options 7, Section

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28 See note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4.

6.A whereby Members using QCC and/or other solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism receive rebates for solicited orders executed in the Solicited Order or Facilitation Mechanisms ("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 are aggregated in calculating the Solicitation Rebate volume tiers in Section 6.A, but Members that execute QCC volume receive the QCC Rebate in Section 6.B instead.

Once a Member reaches a certain volume threshold in combined QCC and Solicited Orders during a month, the Exchange provides rebates to that Member for all of its Solicited Order traded contracts for that month.[29] Today, Members receive the rebate for all Solicited Orders except for Solicited Orders between two Priority Customers. Solicited Orders between two Priority Customers do not receive any rebates under the Solicitation Rebate program. The volume threshold and corresponding rebates in Section 6.A are currently as follows:

	Originating Contract Sides	**Rebate**
Tier 1	0 to 99,999	$0.00
Tier 2	100,000 to 199,999	($0.05)
Tier 3	200,000 to 499,999	($0.07)
Tier 4	500,000 to 749,999	($0.09)
Tier 5	750,000 to 999,999	($0.10)
Tier 6	1,000,000+	($0.11)

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

29 All eligible volume from affiliated Members will be aggregated in determining the combined QCC and 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.

threshold of 1,000,000 or more originating contract sides (i.e., tier 6), the Exchange also currently provides an additional rebate of $0.01 per originating contract side on Solicited Orders that qualify for the Solicitation Rebate program if the Member achieves 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 (the "note * incentive").[30] In addition, the Exchange provides an additional rebate of $0.01 per originating contract side on Solicited Orders that qualify for the Solicitation Rebate program, which is applied to each 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 tier 2, $0.08 in tier 3, $0.10 in tier 4, $0.11 in tier 5, and $0.13 in tier 6 (i.e., the $0.11 base rebate, the $0.01 note * incentive, and the $0.01 note & incentive).

Proposal

The Exchange now proposes to amend the Solicitation Rebate program in a number of ways. First, the Exchange proposes to no longer provide any rebates under this program when both sides of the Solicited Order transaction are between two Professional Customers or between a Priority Customer and a Professional Customer. This will be in addition to the current restriction that Solicited Orders between two Priority Customers will not receive any rebate under the Solicitation Rebate program. As such, the Exchange will only provide the Solicitation Rebate when at least one side of the

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30 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.

Solicited Order is neither a Priority Customer nor Professional Customer (i.e., when at least one side is a Market Maker, Non-ISE Market Maker, or Firm Proprietary / Broker-Dealer). As amended, the language governing the Solicitation Rebate program in Section 6.A will provide:

> Members will receive the rebate for all Solicited Orders when at least one side of the Solicited Order is neither a Priority Customer nor Professional Customer. Solicited Orders between two Priority Customers, two Professional Customers, or a Priority Customer and a Professional Customer will not receive any rebate.

The Exchange is proposing to exclude Professional Customers from the Solicitation Rebate in the manner described above because it is also proposing to eliminate the fees applicable to Professional Customers for orders executed in the Solicited Order Mechanism (which are included as Solicited Orders for purposes of qualifying for and receiving the Solicitation Rebate).[31] As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer Solicited Orders to the Exchange without the added incentive of the Solicitation Rebate.

The Exchange also proposes to amend the volume thresholds and rebate amounts described above as follows:

Originating Contract Sides	**Rebate**
0 to 749,999	($0.10)
750,000 to 1,499,999	($0.11)
1,500,000+	($0.12)

As described above, the Exchange is proposing to condense the current Solicitation Rebate volume tiers 1 – 4 into one new base volume tier, and increase the

31 As discussed above, the Exchange is proposing to eliminate the fees applicable to Professional Customers for SOM Orders and for QCC Orders. See proposed note 16 of Options 7, Section 3 and proposed note 14 of Options 7, Section 4.

rebate to $0.10 for all qualifying Members.[32] The current Solicitation Rebate volume tier 5 will be amended as the second highest volume tier, and expanded to be capped at a higher level of volume (1,499,999 versus the current 999,999 originating contract sides). The Exchange is also increasing the rebate to $0.11 per contract for this tier.[33] As it relates to the highest volume tier under this proposal (i.e., 1,500,000+ originating contract sides), the Exchange is likewise increasing the rebate to $0.12 per contract.[34] As such, Members would generally receive higher rebates under this proposal for achieving the same amount of volume as they do today.[35]

Lastly, the Exchange proposes to apply the note & incentive to the new base volume tier such that qualifying Members may be eligible to receive an additional rebate of $0.01 per originating contract side in addition to the $0.10 rebate.[36] Today, Members in the current base Solicitation Rebate tier are not eligible to receive this additional rebate. With the proposed extension to the new base tier, the Exchange seeks to encourage Members to send more order flow, particularly Solicited Order and complex order flow, to ISE.

<u>QCC Rebate</u>

Background

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32 Today, the rebates in tiers 1 – 4 range from $0.00 to $0.09 per contract for qualifying Members.

33 Today, the tier 5 rebate is $0.10 per contract for qualifying Members.

34 Today, the highest tier 6 rebate is $0.11 per contract for qualifying Members.

35 The Exchange notes that if a Member reaches a volume threshold between 1,000,000 to 1,499,999 originating contract sides in a given month, they would continue to receive the same rebate amount (i.e., $0.11 per contract) under this proposal as they do currently.

36 As discussed above, Members may qualify for the note & incentive if they qualify for the Solicitation Rebate program and they also achieve Priority Customer Complex Tier 2 or higher in a given month.

Today, the Exchange offers a QCC Rebate program in Options 7, Section 6.B whereby Members that submit QCC Orders when at least one side of the QCC transaction is a Non-Priority Customer receive the QCC Rebates in Section 6.B. By implication, the QCC Rebates are not available when both sides of the QCC transaction are Priority Customers. QCC Rebates are paid to each originating 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, the Member would receive a $0.14 per contract rebate for each QCC Agency Side ("QCC Rebate 1")
- When both sides of the QCC transaction are Non-Priority Customers, the Member would receive a $0.22 per contract rebate for each QCC Agency Side today ("QCC Rebate 2").

In addition, the Exchange currently offers 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 additional incentive is applied to each QCC Rebate and is 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.

Proposal

The Exchange now proposes to no longer provide any rebates under this program when both sides of the QCC transaction are between two Professional Customers or between a Priority Customer and a Professional Customer. This will be in addition to the current restriction that QCC Orders between two Priority Customers would not receive any rebates. Specifically, Section 6.B will be amended to provide that Members that submit QCC Orders when at least one side of the QCC transaction is neither a Priority Customer nor Professional Customer will receive the QCC Rebates in Section 6.B. This is similar to the proposed changes in the Solicitation Rebate program where the Exchange is likewise proposing to exclude Professional Customers from the Solicitation Rebate in the manner described above. Similar to the Solicitation Rebate changes, the Exchange is proposing to exclude Professional Customers from the QCC Rebates because it is also proposing to eliminate the fees applicable to Professional Customers for QCC Orders.[37] As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer QCC Orders to the Exchange without the added incentive of the QCC Rebates.

The Exchange also proposes to amend QCC Rebate 1 and QCC Rebate 2 to similarly exclude Professional Customers and to increase the rebate amounts. Specifically, QCC Rebate 1 will be amended to provide that when only one side of the QCC transaction is neither a Priority Customer nor Professional Customer, the Member will receive a $0.15 per contract rebate for each QCC Agency Side. QCC Rebate 2 will be amended to provide that when both sides of the QCC transaction are not any combination of Priority Customers and/or Professional Customers, the Member will receive a $0.23 per contract rebate for each QCC Agency Side. The Exchange also proposes to specifically delineate the QCC Rebates into two separate sections titled "QCC Rebate 1" and "QCC Rebate 2."

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[37] As discussed above, the Exchange is proposing to eliminate the fees applicable to Professional Customers for QCC Orders and for SOM Orders. See proposed note 16 of Options 7, Section 3 and proposed note 14 of Options 7, Section 4.

Further, the Exchange proposes to amend the additional QCC incentive by decreasing the amount from $0.03 to $0.01 per contract as applied to QCC Rebate 1. The qualifications for this incentive will remain unchanged. Accordingly, the Exchange will add the following language in the QCC Rebate 1 section: "Members will receive an additional rebate of $0.01 per contract for each QCC Agency Side that qualifies for QCC Rebate 1 if they achieve Priority Customer Complex Tier 2 or higher in a given month."

The Exchange also proposes to amend additional incentive as applied to QCC Rebate 2 by increasing the amount from $0.03 to $0.04 per contract. As noted above, the incentive qualifications will remain unchanged. Accordingly, the Exchange will add the following language in the QCC Rebate 2 section: "Members will receive an additional rebate of $0.03 per contract for each QCC Agency Side that qualifies for QCC Rebate 2 if they achieve Priority Customer Complex Tier 2 or higher in a given month."

The additional incentives will continue to be cumulative of the QCC Rebates so that qualifying Members could receive up to $0.16 per contract for each QCC Agency Side when only one side of the QCC transaction is neither a Priority Customer nor Professional Customer, and up to $0.27 per contract for each QCC Agency Side when both sides of the QCC transaction are not any combination of Priority Customers and/or Professional Customers.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[38] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[39]

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[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(4) and (5).

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 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'…."[40]

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

40 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)).

broader forms that are most important to investors and listed companies."[41]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen 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.

Fees for Crossing Orders Except PIM Orders and Crossing Fee Cap

The Exchange's proposal to decrease the Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders, except for PIM Orders, from \$0.20 to \$0.17 per contract, in Select and Non-Select Symbols, is reasonable because the reduction in these fees should attract additional Crossing Orders to the Exchange. Priority Customers will continue to not be assessed a Regular Order or Complex Order Fee for Crossing Orders in Select and Non-Select Symbols.

The Exchange's proposal to decrease the Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders, except for PIM Orders, from \$0.20 to \$0.17 per contract, in Select and Non-Select Symbols, is equitable and not unfairly discriminatory as all Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders will be reduced in Select and Non-Select Symbols. The Exchange

41 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

believes that it is equitable and not unfairly discriminatory to not assess Priority Customers a Regular Order or Complex Order Fee for Crossing Orders in Select and Non-Select Symbols. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to no longer offer the Crossing Fee Cap for Firm Proprietary contracts is reasonable because the Exchange is lowering Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders, except for PIM Orders, from $0.20 to $0.17 per contract, in Select and Non-Select Symbols. Despite the elimination of the Crossing Fee Cap, the Exchange believes that the decreased Regular Order and Complex Order Fees for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols will continue to attract Crossing Orders to the Exchange.

The Exchange's proposal to no longer offer the Crossing Fee Cap for Firm Proprietary contracts is equitable and not unfairly discriminatory because no Member would be offered an opportunity to cap their Firm Proprietary transactions.

Facilitation and Solicitation Break-Up Rebates

The Exchange's proposal to increase the Regular Order and Complex Order Facilitation and Solicitation Break-up Rebates from $0.15 to $0.20 per contract, in Select and Non-Select Symbols, for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers is reasonable because the increase will attract ISE Members to utilize the Facilitation and Solicitation Mechanisms. Specifically, the Exchange believes that the increased Facilitation and

Solicitation Break-up Rebates will encourage increased originating Regular Order and Complex Order Non-Nasdaq ISE Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer, and Priority Customer order flow to the Facilitation and Solicited Order Mechanisms, thereby potentially increasing the initiation of and volume executed through such auctions. Additional auction order flow provides market participants with additional trading opportunities at potentially improved prices. Market Makers would continue to not be paid a Regular Order Facilitation and Solicitation Break-up Rebate in Select and Non-Select Symbols.

The Exchange's proposal to increase the Regular Order and Complex Order Facilitation and Solicitation Break-up Rebates from $0.15 to $0.20 per contract, in Select and Non-Select Symbols, for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers is equitable and not unfairly discriminatory because the increased Facilitation and Solicitation Break-up Rebates will apply equally to all non-Market Maker originating orders submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra orders (except when those originating contracts trade against pre-existing orders and quotes on the Exchange's order books). While Market Makers will continue to not receive Regular Order and Complex Order Facilitation and Solicitation Break-up Rebates for Select and Non-Select Symbols, the Exchange believes that the application of the rebate is equitable and not unfairly discriminatory because Market Makers are not eligible for Facilitation and Solicitation Break-up Rebates today. In addition, the Exchange currently offers Market Makers other rebate programs that do not apply to non-Market Makers, such as the Market Maker Plus Program.

The Exchange's proposal to amend note 4 of Options 7, Section 3 and note 2 of Options 7, Section 4 to more specifically provide, "The applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided" is reasonable, equitable and not unfairly discriminatory because the amendment conforms the reference to the Fees for Crossing Orders for Regular Orders and Complex Orders to the title of the fee in the tables of Options 7, Sections 3 and 4, which is the Fee for Responses to Crossing Orders. This amendment adds clarity to the fee being referenced.

Professional Customer QCC and SOM Fees For Crossing Orders

The Exchange's proposal to amend note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to provide, "Fees for Crossing Orders applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.00 per contract" is reasonable because reducing the Professional Customer Regular Order and Complex Order Fees for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols, when the order is submitted as a QCC Order or a SOM Order from $0.10 to $0.00 per contract will attract additional Professional Customer QCC and SOM Orders to the Exchange. The proposed fee is designed to be attractive to Professional Customers that trade on ISE, and the fee is lower than the Regular Order and Complex Order Fees for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols, except for Priority Customers. Additional auction order flow provides market participants with additional trading opportunities at potentially improved prices.

The Exchange's proposal to amend note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to provide, "Fees for Crossing Orders applicable to Professional

Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.00 per contract" is equitable and not unfairly discriminatory because providing Professional Customers a lower Fee for Crossing Orders in Regular Orders and Complex Orders in Select and Non-Select Symbols submitted as a QCC or SOM Order will allow other market participants the opportunity to interact with those orders in the applicable auctions. The Exchange does not believe that it is unfairly discriminatory to offer Professional Customers lower Fees for Crossing Orders for QCC and SOM Orders because differentiated pricing encourages 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. Professional Customer orders are presently charged a lower transaction fee for QCC and SOM Orders ($0.10 for Professional Customers versus $0.20 for all other non-Priority Customers). Additionally, Broker-Dealer and Firm Proprietary orders are incentivized in the Exchange's PIM and Facilitation Rebate program.[42] Market Makers are offered rebates through the Exchange's Market Maker Plus program.[43] The Exchange further believes there is nothing impermissible about offering Professional Customers lower transaction fee for QCC and SOM Orders given that this practice is consistent with lower Professional Fees for QCC on other options exchanges.[44] To the extent the amended lower transaction fee for QCC and SOM Orders offered to Professional Customers

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42 See Options 7, Sections 6.C.

43 See note 5 at Options 7, Sections 3.

44 See Nasdaq Phlx LLC ("Phlx") Options 7, Section 4. Phlx does not assess a QCC Transaction Fee to Customers and Professionals. See also BOX Exchange LLC's ("BOX") Fee Schedule at Section IV, D. BOX does not assess a QCC Transaction Fee to Customers and Professionals.

continues to encourage market participants to send additional QCC and SOM Orders to ISE, such increased order flow brings increased liquidity and additional opportunities for interaction with this order flow, which ultimately benefits all market participants.

Amending note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to specifically refer to "Fees for Crossing Orders" is reasonable, equitable and not unfairly discriminatory because it will conform the wording to the title of the fees in the tables in Options 7, Sections 3 and 4 for Regular Orders and Complex Orders, thereby adding clarity.

Solicitation Rebate

The Exchange believes that the proposed changes to the Solicitation Rebate program are reasonable for the reasons that follow. The Exchange believes it is reasonable to exclude Professional Customers from the Solicitation Rebate program in the manner described above because it is simultaneously proposing to eliminate the fees applicable to Professional Customers for SOM Orders (which are included as Solicited Orders for purposes of qualifying for and receiving the Solicitation Rebate). As such, the Exchange believes that Members will continue to be incentivized to send more Professional Customer Solicited Orders to the Exchange without the added incentive of the Solicitation Rebate.

The Exchange also believes that the proposed volume thresholds and rebate amounts for the Solicitation Rebate program are set at reasonable levels that would encourage additional Solicited Order flow to ISE. As described above, Members would generally receive higher rebates under this proposal for achieving the same amount of volume as they do today.[45] As such, more Members may seek to qualify for the proposed Solicitation Rebates by sending additional Solicited Order flow to ISE, which benefits all market participants through quality of order interaction and increased trading opportunities.

The Exchange further believes that its proposal to apply the note & incentive to the new base volume tier is reasonable as it is intended to encourage Members to send more Solicited Order and complex order flow to the Exchange. Today, Members in the current base volume tier are not eligible for the note & incentive. Under this proposal, Members may now be eligible to receive an additional rebate of $0.01 per originating contract side in addition to the $0.10 base rebate on their Solicited Orders that qualify for the Solicitation Rebate program if the Member also achieves Priority Customer Complex Tier 2 or higher in a given month. To the extent the proposal incentivizes Members to send more order flow (particularly Solicited Order and complex order flow) to ISE, all market participants will benefit from increased order interaction when more order flow is available on the Exchange.

The Exchange believes that the proposed changes to the Solicitation Rebate program in Options 7, Section 6.A are equitable and not unfairly discriminatory because all Members will be eligible for the proposed rebates by sending Solicited Order and complex order flow to the Exchange. Further, the Exchange believes that excluding Professional Customers from the Solicitation Rebate program in the manner described above and applying the proposed rebates only where at least one party to the Solicited

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45 As noted above, if a Member reaches a volume threshold between 1,000,000 to 1,499,999 originating contract sides in a given month, they would continue to receive the same rebate amount (i.e., $0.11 per contract) under this proposal as they do currently.

Order is neither a Priority Customer nor Professional Customer is equitable and not unfairly discriminatory because the Exchange is simultaneously eliminating the transaction fees for Professional Customer SAM Orders (which are included as Solicited Orders for purposes of qualifying for and receiving the Solicitation Rebate) under this proposal. As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer Solicited Orders to the Exchange without the added incentive of the proposed rebates. In addition, to the extent the proposed Solicitation Rebate program encourages Members to send more Solicited Order and complex order flow to ISE, all market participants will benefit from the resulting additional liquidity and trading opportunities on ISE.

QCC Rebate

The Exchange believes that the proposed changes to the QCC Rebate program are reasonable for the reasons that follow. The Exchange believes it is reasonable to exclude Professional Customers from the QCC Rebate program in the manner described above because it is simultaneously proposing to eliminate the fees applicable to Professional Customers for their QCC Orders. As such, the Exchange believes that Members will continue to be incentivized to send more Professional Customer QCC Orders to the Exchange without the added incentive of the QCC Rebates.

The Exchange also believes that the proposed changes to QCC Rebate 1 and QCC Rebate 2 are reasonable because the rebate amounts are increasing. As discussed above, QCC Rebate 1 will be amended to provide that when only one side of the QCC transaction is neither a Priority Customer nor Professional Customer, the Member will receive a $0.15 per contract rebate for each QCC Agency Side (increased from $0.14 per contract). QCC Rebate 2 will be amended to provide that when both sides of the QCC transaction are not any combination of Priority Customers and/or Professional Customers, the Member will receive a $0.23 per contract rebate for each QCC Agency Side (increased from $0.22 per contract). With the proposed changes, more Members may seek to qualify for proposed QCC Rebate 1 and proposed QCC Rebate 2 by sending additional QCC Order flow to ISE, which benefits all market participants through quality of order interaction and increased trading opportunities.

The Exchange further believes that the proposed changes to the additional QCC incentives are reasonable. As applied to QCC Rebate 1, the Exchange is proposing to lower the additional incentive amount from $0.03 to $0.01 per contract. As applied to QCC Rebate 2, the Exchange is proposing to increase the additional incentive amount from $0.03 to $0.04 per contract.[46] With the additional incentives, Members will be eligible to receive up to $0.16 per contract if they also qualify for QCC Rebate 1, and up to $0.27 per contract if they also qualify for QCC Rebate 2. The Exchange believes that the proposed additional incentives are structured at appropriate levels that would continue to encourage additional QCC and complex order flow to ISE, which benefits all market participants in the quality of order interaction and through increased trading opportunities.

The Exchange believes that the proposed changes to the QCC Rebate program in Options 7, Section 6.B are equitable and not unfairly discriminatory because all Members will be eligible for the proposed rebates by sending more QCC and complex order flow to

[46] As described above, Members are eligible to receive the additional incentives 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. These qualifications are not changing under this proposal.

the Exchange. The Exchange further believes that excluding Professional Customers from the QCC Rebate program in the manner described above and applying the proposed rebates only where at least one party to the QCC transaction is neither a Priority Customer nor Professional Customer is equitable and not unfairly discriminatory because the Exchange is simultaneously eliminating transaction fees for Professional Customer QCC Orders under this proposal. As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer QCC Orders to the Exchange without the added incentive of the proposed rebates. In addition, to the extent the proposed QCC Rebate program encourages Members to send more QCC Order and complex order flow to ISE, all market participants will benefit from the resulting additional liquidity and trading opportunities.

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.

Fees for Crossing Orders Except PIM Orders and Crossing Fee Cap

The Exchange's proposal to decrease the Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders, except for PIM Orders, from $0.20 to $0.17 per contract, in Select and Non-Select Symbols, does not impose an undue burden on competition because all Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders will be reduced in Select and Non-Select Symbols. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to no longer offer the Crossing Fee Cap for Firm Proprietary contracts does not impose an undue burden on competition because no Member would be offered an opportunity to cap their Firm Proprietary transactions.

Facilitation and Solicitation Break-Up Rebates

The Exchange's proposal to increase the Regular Order and Complex Order Facilitation and Solicitation Break-up Rebates from $0.15 to $0.20 per contract, in Select and Non-Select Symbols, for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers does not impose an undue burden on competition because the increased Facilitation and Solicitation Break-up Rebates will apply equally to all non-Market Maker originating orders submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra orders (except when those originating contracts trade against pre-existing orders and quotes on the Exchange's order books). Today, Market Makers are not eligible for Facilitation and Solicitation Break-up Rebates. Conversely, the Exchange currently offers Market Makers other rebate programs that do not apply to non-Market Makers, such as the Market Maker Plus Program.

The Exchange's proposal to amend note 4 of Options 7, Section 3 and note 2 of Options 7, Section 4 to more specifically provide, "The applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided" does not impose an undue burden on competition because the amendment conforms the reference to the Fees for Crossing Orders for Regular Orders and Complex Orders to the title of the fee in the tables of Options 7, Sections 3 and 4, which is the Fee for Responses to Crossing Orders. This amendment adds clarity to the fee being referenced.

Professional Customer QCC and SOM Fees For Crossing Orders

The Exchange's proposal to amend note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to provide, "Fees for Crossing Orders applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.00 per contract" does not impose an undue burden on competition because providing Professional Customers a lower Fee for Crossing Orders in Regular Orders and Complex Orders in Select and Non-Select Symbols submitted as a QCC or SOM Order will allow other market participants the opportunity to interact with those orders in the applicable auctions. The Exchange believes that offering Professional Customers lower Fees for Crossing Orders for QCC and SOM Orders does not impose an undue burden on competition because differentiated pricing encourages 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. Professional Customer orders are presently charged a lower transaction fee for QCC and SOM Orders ($0.10 for Professional Customers versus $0.20 for all other non-Priority Customers). Additionally, Broker-Dealer and Firm Proprietary orders are incentivized in the Exchange's PIM and Facilitation Rebate program.[47] Market

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47 See Options 7, Sections 6.C.

Makers are offered rebates through the Exchange's Market Maker Plus program.[48] The Exchange further believes there is nothing impermissible about offering Professional Customers lower transaction fee for QCC and SOM Orders given that this practice is consistent with lower Professional Fees for QCC on other options exchanges.[49] To the extent the amended lower transaction fee for QCC and SOM Orders offered to Professional Customers continues to encourage market participants to send additional QCC and SOM Orders to ISE, such increased order flow brings increased liquidity and additional opportunities for interaction with this order flow, which ultimately benefits all market participants.

Amending note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to specifically refer to "Fees for Crossing Orders" does not impose an undue burden on competition because it will conform the wording to the title of the fees in the tables in Options 7, Sections 3 and 4 for Regular Orders and Complex Orders, thereby adding clarity.

Solicitation Rebate

The Exchange believes that the proposed changes to the Solicitation Rebate program in Options 7, Section 6.A do not impose an undue burden on intra-market competition because all Members will be eligible for the proposed rebates by sending Solicited Order and complex order flow to the Exchange. As discussed above, the Exchange is proposing to exclude Professional Customers from the Solicitation Rebate

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48 See note 5 at Options 7, Sections 3.

49 See Nasdaq Phlx LLC ("Phlx") Options 7, Section 4. Phlx does not assess a QCC Transaction Fee to Customers and Professionals. See also BOX Exchange LLC's ("BOX") Fee Schedule at Section IV, D. BOX does not assess a QCC Transaction Fee to Customers and Professionals.

program in the manner described above and to apply the proposed rebates only where at least one party to the Solicited Order is neither a Priority Customer nor Professional Customer because the Exchange is simultaneously eliminating the transaction fees for Professional Customer SAM Orders (which are included as Solicited Orders for purposes of qualifying for and receiving the Solicitation Rebate) under this proposal. As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer Solicited Orders to the Exchange without the added incentive of the proposed rebates. In addition, to the extent the proposed Solicitation Rebate program encourages Members to send more Solicited Order and complex order flow to ISE, all market participants will benefit from the resulting additional liquidity and trading opportunities on ISE.

QCC Rebate

The Exchange believes that the proposed changes to the QCC Rebate program in Options 7, Section 6.B do not impose an undue burden on competition because all Members will be eligible for the proposed rebates by sending more QCC and complex order flow to the Exchange. The Exchange is proposing to exclude Professional Customers from the QCC Rebate program in the manner described above and to apply the proposed rebates only where at least one party to the QCC transaction is neither a Priority Customer nor Professional Customer because the Exchange is simultaneously eliminating transaction fees for Professional Customer QCC Orders under this proposal. As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer QCC Orders to the Exchange without the added incentive of the proposed rebates. In addition, to the extent the proposed QCC Rebate program encourages Members to send more QCC Order and complex order flow to ISE, all market participants will benefit from the resulting additional liquidity and trading opportunities.

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,[50] 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.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

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50 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-ISE-2023-35)

December__, 2023

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE Options 7

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4 thereunder,[2] notice is hereby given that on December 1, 2023, 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.

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 received on the proposed rule change. The text of these statements may be examined at

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 to: (i) decrease the Fees for Crossing Orders,[3] except Price Improvement Mechanism or "PIM" Orders,[4] in Sections 3 and 4, (ii) eliminate the Crossing Fee Cap in Section 6.H and reserve certain footnotes related to the cap, (iii) increase the Facilitation[5] and Solicitation[6] Break-Up Rebates in Sections 3 and 4, (iv) eliminate the Fees for Crossing Orders applicable to Professional Customers[7] for Qualified Contingent Cross or "QCC" Orders[8] and SOM Orders in Sections 3 and 4, (v)

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3 A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism ("SOM"), Price Improvement Mechanism ("PIM") or submitted as a Qualified Contingent Cross ("QCC") order. For purposes of the Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. See Options 7, Section 1(c).

4 The PIM is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. See Options 3, Section 13.

5 The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. See Options 3, Section 11(b). Complex Facilitation is described in Options 3, Section 11(c).

6 The Solicited Order Mechanism or "SOM" is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent (the "Agency Order") against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. See Options 3, Section 11(d). The Complex Solicited Order Mechanism is described in Options 3, Section 11(e).

7 A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7, Section 1(c).

8 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).

amend the Solicitation Rebate in Section 6.A, and (vi) amend the QCC Rebate Program in Section 6.B. Each change is discussed in detail below.

Fees for Crossing Orders, Except PIM Orders, and Crossing Fee Cap

Today, the Exchange assesses all Non-Priority Customers[9] a $0.20 per contract Regular Order[10] Fee for Crossing Orders, which fee does not apply to PIM Orders, in Select[11] and Non-Select[12] Symbols, excluding Index Options.[13] Priority Customers[14] are not assessed a Regular Order Fee for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols. The Regular Order Fees for Crossing Orders, except PIM Orders, apply to the originating and contra orders.[15] Today, Regular Order Firm Proprietary[16] contracts traded are subject to the Crossing Fee Cap, as provided in Options 7, Section 6.H.[17] With the Crossing Fee Cap, fees are capped at $200,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. Once a Member exceeds the fee cap level, the Member is subject to a

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9 "Non-Priority Customers" include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers. See Options 7, Section 1(c).

10 A "Regular Order" is an order that consists of only a single option series and is not submitted with a stock leg. See Options 7, Section 1(c).

11 "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. See Options 7, Section 1(c).

12 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. See Options 7, Section 1(c).

13 For all executions in regular NDX, XND and NQX orders, the applicable index options fees in Section 5 will apply. See note 7 of Options 7, Section 3.

14 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). Unless otherwise noted, when used in this Pricing Schedule the term "Priority Customer" includes "Retail" as defined below. See Options 7, Section 1(c).

15 See note 2 of Options 7, Section 3.

16 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

17 See note 1 of Options 7, Section 3.

reduced transaction fee of $0.02 per capped contract, unless the Member also qualifies for free executions.

The Exchange proposes to decrease the Non-Priority Customer Regular Order Fee for Crossing Orders, except for PIM Orders, from $0.20 to $0.17 per contract in Select and Non-Select Symbols. Priority Customers will continue to not be assessed a Regular Order Fee for Crossing Orders, except for PIM Orders, in Select and Non-Select Symbols. The Exchange proposes to no longer offer the Crossing Fee Cap for Firm Proprietary contracts and would therefore reserve note 1 of Options 7, Section 3. The Exchange is also reserving the Regular Order Crossing Fee Cap in Options 7, Section 6.H for Select and Non-Select Symbols as the Crossing Fee Cap would not apply to pricing in Options 7, Section 4 as explained below. Despite the elimination of the Crossing Fee Cap, the Exchange believes that the decreased Regular Order Fees for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols will continue to attract certain Crossing Orders to the Exchange.

Similarly, today, the Exchange assesses Non-Priority Customers a $0.17 per contract Complex Order Fee for Crossing Orders, except PIM Orders, for Select and Non-Select Symbols. Priority Customers are assessed no Complex Order Fee for Crossing Orders, except PIM Orders, for Select and Non-Select Symbols. The Complex Order Fees for Crossing Orders, except PIM Orders, apply to the originating and contra orders.[18] Today, Complex Order Firm Proprietary contracts traded are subject to the Crossing Fee Cap, as provided in Options 7, Section 6.H.[19] Also, other than for Priority Customer orders, the Complex Order Fee for Crossing Orders is reduced to $0.05 per

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18 See note 11 of Options 7, Section 4.

19 See note 6 of Options 7, Section 4.

contract for orders executed by Members that execute an average daily volume ("ADV") of 7,500 or more contracts in the PIM in a given month.[20] Further, Members that execute an ADV of 12,500 or more contracts in the PIM will not be charged a fee.[21]

Similar to Regular Orders, the Exchange proposes to decrease the Non-Priority Customer Complex Order Fee for Crossing Orders, except PIM Orders, from $0.20 to $0.17 per contract for Select and Non-Select Symbols. Priority Customers will continue to not be assessed a Complex Order Fee for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols. Similar to Regular Orders, the Exchange proposes to no longer offer the Crossing Fee Cap for Firm Proprietary contracts and would therefore reserve note 6 of Options 7, Section 4. As mentioned herein, the Exchange is also reserving the Crossing Fee Cap in Options 7, Section 6.H. Despite the elimination of the Crossing Fee Cap, the Exchange believes that the decreased Complex Order Fees for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols will continue to attract Crossing Orders to the Exchange.

Facilitation and Solicitation Break-Up Rebates

Today, pursuant to Options 7, Section 3, the Exchange pays Non-Nasdaq ISE Market Makers (FarMM),[22] Firm Proprietary[23]/Broker Dealers,[24] Professionals and Priority Customers a Regular Order Facilitation and Solicitation Break-up Rebate of

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20 See note 10 of Options 7, Section 4. The discounted fees are applied retroactively to all eligible PIM volume in that month once the threshold has been reached.

21 Id.

22 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. See Options 7, Section 1(c).

23 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

24 A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

$0.15 per contract in Select and Non-Select Symbols. Market Makers[25] are not paid a Regular Order Facilitation and Solicitation Break-up Rebate in Select and Non-Select Symbols. The Exchange proposes to increase the Regular Order Facilitation and Solicitation Break-up Rebate from $0.15 to $0.20 per contract in Select and Non-Select Symbols for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers. Market Makers would continue to not be paid a Regular Order Facilitation and Solicitation Break-up Rebate in Select and Non-Select Symbols. The Exchange believes that the increase to the Regular Order Facilitation and Solicitation Break-up Rebate will attract ISE Members to utilize the Facilitation and Solicitation Mechanisms.

Today, pursuant to Options 7, Section 4, the Exchange pays Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers a Complex Order Facilitation and Solicitation Break-up Rebate of $0.15 per contract in Select and Non-Select Symbols. Market Makers are not paid a Complex Order Facilitation and Solicitation Break-up Rebate in Select and Non-Select Symbols. The Exchange proposes to increase the Complex Order Facilitation and Solicitation Break-up Rebate from $0.15 to $0.20 per contract in Select and Non-Select Symbols for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers. Market Makers would continue to not be paid a Complex Order Facilitation and Solicitation Break-up Rebate in Select and Non-Select Symbols. The Exchange believes that the increase to the Complex Order Facilitation and

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25 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

Solicitation Break-up Rebate will attract ISE Members to utilize the Facilitation and Solicitation Mechanisms.

Today, Facilitation and Solicitation Break-up Rebates for Regular Order and Comple Order Select and Non-Select Symbols are provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchanges order books.[26] The applicable fee is applied to any contracts for which a rebate is provided.[27] The Exchange proposes to amend this sentence in note 4 of Options 7, Section 3 and note 2 of Options 7, Section 4 to more specifically provide, "The applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided." The Exchange believes that this proposed change to the wording of the sentence does not substantively amend the sentence, rather it conforms the reference to the Fee for Crossing Orders to the title of the fees in the tables of Options 7, Sections 3 and 4, which is the Fee for Responses to Crossing Orders for Regular Orders and Complex Orders in Select and Non-Select Symbols. This amendment adds clarity to the fee being referenced.

Professional Customer QCC and SOM Fees For Crossing Orders

As noted above, today, Professional Customers are assessed a $0.20 per contract Regular Order and Complex Order Fee for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols. Also, today, transaction fees applicable to Professional Customers for an order submitted as a QCC Order and orders executed in the Solicited Order Mechanism would be assessed a $0.10 per contract Regular Order and Complex

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26 See note 4 in Options 7, Section 3 and note 2 in Options 7, Section 4.

27 Id.

Order Fee for Crossing Orders, except PIM Orders, instead of $0.20 per contract, in Select and Non-Select Symbols.[28]

At this time, the Exchange proposes to amend note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to provide, "Fees for Crossing Orders applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.00 per contract." The Exchange proposes to substitute the words "Transaction fees" with "Fees for Crossing Orders" to conform to the title of the fees in the tables in Options 7, Sections 3 and 4, thereby providing additional clarity. The Exchange also proposes to eliminate the Professional Customer Regular Order and Complex Order Fee for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols, when the order is submitted as a QCC Order or a SOM Order. The Exchange believes that reducing the Professional Customer Regular Order and Complex Order Fee for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols, when the order is submitted as a QCC Order or a SOM Order from $0.10 to $0.00 per contract will attract additional Professional Customer QCC and SOM Orders to the Exchange.

Solicitation Rebate

Background

Today, the Exchange offers a Solicitation Rebate program in Options 7, Section 6.A whereby Members using QCC and/or other solicited orders executed in the Solicited Order Mechanism or Facilitation Mechanism receive rebates for solicited orders executed in the Solicited Order or Facilitation Mechanisms ("Solicited Orders") according to the

28 See note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4.

table in Section 6.A for each originating contract side in all symbols traded on the Exchange. Volume associated with QCC executions are aggregated in calculating the Solicitation Rebate volume tiers in Section 6.A, but Members that execute QCC volume receive the QCC Rebate in Section 6.B instead.

Once a Member reaches a certain volume threshold in combined QCC and Solicited Orders during a month, the Exchange provides rebates to that Member for all of its Solicited Order traded contracts for that month.[29] Today, Members receive the rebate for all Solicited Orders except for Solicited Orders between two Priority Customers. Solicited Orders between two Priority Customers do not receive any rebates under the Solicitation Rebate program. The volume threshold and corresponding rebates in Section 6.A are currently as follows:

	Originating Contract Sides	**Rebate**
Tier 1	0 to 99,999	$0.00
Tier 2	100,000 to 199,999	($0.05)
Tier 3	200,000 to 499,999	($0.07)
Tier 4	500,000 to 749,999	($0.09)
Tier 5	750,000 to 999,999	($0.10)
Tier 6	1,000,000+	($0.11)

Volume resulting from all QCC and Solicited Orders is aggregated in determining the applicable volume tier set forth above. For Members that achieve the highest volume threshold of 1,000,000 or more originating contract sides (i.e., tier 6), the Exchange also currently provides an additional rebate of $0.01 per originating contract side on Solicited Orders that qualify for the Solicitation Rebate program if the Member achieves in a given

29 All eligible volume from affiliated Members will be aggregated in determining the combined QCC and 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.

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 (the "note * incentive").[30] In addition, the Exchange provides an additional rebate of $0.01 per originating contract side on Solicited Orders that qualify for the Solicitation Rebate program, which is applied to each 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 tier 2, $0.08 in tier 3, $0.10 in tier 4, $0.11 in tier 5, and $0.13 in tier 6 (i.e., the $0.11 base rebate, the $0.01 note * incentive, and the $0.01 note & incentive).

Proposal

The Exchange now proposes to amend the Solicitation Rebate program in a number of ways. First, the Exchange proposes to no longer provide any rebates under this program when both sides of the Solicited Order transaction are between two Professional Customers or between a Priority Customer and a Professional Customer. This will be in addition to the current restriction that Solicited Orders between two Priority Customers will not receive any rebate under the Solicitation Rebate program. As such, the Exchange will only provide the Solicitation Rebate when at least one side of the Solicited Order is neither a Priority Customer nor Professional Customer (i.e., when at least one side is a Market Maker, Non-ISE Market Maker, or Firm Proprietary / Broker-

30 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.

Dealer). As amended, the language governing the Solicitation Rebate program in Section 6.A will provide:

> Members will receive the rebate for all Solicited Orders when at least one side of the Solicited Order is neither a Priority Customer nor Professional Customer. Solicited Orders between two Priority Customers, two Professional Customers, or a Priority Customer and a Professional Customer will not receive any rebate.

The Exchange is proposing to exclude Professional Customers from the Solicitation Rebate in the manner described above because it is also proposing to eliminate the fees applicable to Professional Customers for orders executed in the Solicited Order Mechanism (which are included as Solicited Orders for purposes of qualifying for and receiving the Solicitation Rebate).[31] As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer Solicited Orders to the Exchange without the added incentive of the Solicitation Rebate.

The Exchange also proposes to amend the volume thresholds and rebate amounts described above as follows:

Originating Contract Sides	**Rebate**
0 to 749,999	($0.10)
750,000 to 1,499,999	($0.11)
1,500,000+	($0.12)

As described above, the Exchange is proposing to condense the current Solicitation Rebate volume tiers 1 – 4 into one new base volume tier, and increase the rebate to $0.10 for all qualifying Members.[32] The current Solicitation Rebate volume tier 5 will be amended as the second highest volume tier, and expanded to be capped at a higher level of volume (1,499,999 versus the current 999,999 originating contract sides).

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31 As discussed above, the Exchange is proposing to eliminate the fees applicable to Professional Customers for SOM Orders and for QCC Orders. See proposed note 16 of Options 7, Section 3 and proposed note 14 of Options 7, Section 4.

32 Today, the rebates in tiers 1 – 4 range from $0.00 to $0.09 per contract for qualifying Members.

The Exchange is also increasing the rebate to $0.11 per contract for this tier.[33] As it relates to the highest volume tier under this proposal (i.e., 1,500,000+ originating contract sides), the Exchange is likewise increasing the rebate to $0.12 per contract.[34] As such, Members would generally receive higher rebates under this proposal for achieving the same amount of volume as they do today.[35]

Lastly, the Exchange proposes to apply the note & incentive to the new base volume tier such that qualifying Members may be eligible to receive an additional rebate of $0.01 per originating contract side in addition to the $0.10 rebate.[36] Today, Members in the current base Solicitation Rebate tier are not eligible to receive this additional rebate. With the proposed extension to the new base tier, the Exchange seeks to encourage Members to send more order flow, particularly Solicited Order and complex order flow, to ISE.

QCC Rebate

Background

Today, the Exchange offers a QCC Rebate program in Options 7, Section 6.B whereby Members that submit QCC Orders when at least one side of the QCC transaction is a Non-Priority Customer receive the QCC Rebates in Section 6.B. By implication, the QCC Rebates are not available when both sides of the QCC transaction are Priority

33 Today, the tier 5 rebate is $0.10 per contract for qualifying Members.

34 Today, the highest tier 6 rebate is $0.11 per contract for qualifying Members.

35 The Exchange notes that if a Member reaches a volume threshold between 1,000,000 to 1,499,999 originating contract sides in a given month, they would continue to receive the same rebate amount (i.e., $0.11 per contract) under this proposal as they do currently.

36 As discussed above, Members may qualify for the note & incentive if they qualify for the Solicitation Rebate program and they also achieve Priority Customer Complex Tier 2 or higher in a given month.

Customers. QCC Rebates are paid to each originating 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, the Member would receive a $0.14 per contract rebate for each QCC Agency Side ("QCC Rebate 1")
- When both sides of the QCC transaction are Non-Priority Customers, the Member would receive a $0.22 per contract rebate for each QCC Agency Side today ("QCC Rebate 2").

In addition, the Exchange currently offers 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 additional incentive is applied to each QCC Rebate and is 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.

Proposal

The Exchange now proposes to no longer provide any rebates under this program when both sides of the QCC transaction are between two Professional Customers or between a Priority Customer and a Professional Customer. This will be in addition to the current restriction that QCC Orders between two Priority Customers would not receive any rebates. Specifically, Section 6.B will be amended to provide that Members that submit QCC Orders when at least one side of the QCC transaction is neither a Priority Customer nor Professional Customer will receive the QCC Rebates in Section 6.B. This is similar to the proposed changes in the Solicitation Rebate program where the Exchange is likewise proposing to exclude Professional Customers from the Solicitation Rebate in the manner described above. Similar to the Solicitation Rebate changes, the Exchange is proposing to exclude Professional Customers from the QCC Rebates because it is also proposing to eliminate the fees applicable to Professional Customers for QCC Orders.[37] As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer QCC Orders to the Exchange without the added incentive of the QCC Rebates.

The Exchange also proposes to amend QCC Rebate 1 and QCC Rebate 2 to similarly exclude Professional Customers and to increase the rebate amounts. Specifically, QCC Rebate 1 will be amended to provide that when only one side of the QCC transaction is neither a Priority Customer nor Professional Customer, the Member will receive a $0.15 per contract rebate for each QCC Agency Side. QCC Rebate 2 will be amended to provide that when both sides of the QCC transaction are not any combination of Priority Customers and/or Professional Customers, the Member will receive a $0.23 per contract rebate for each QCC Agency Side. The Exchange also proposes to specifically delineate the QCC Rebates into two separate sections titled "QCC Rebate 1" and "QCC Rebate 2."

Further, the Exchange proposes to amend the additional QCC incentive by decreasing the amount from $0.03 to $0.01 per contract as applied to QCC Rebate 1. The qualifications for this incentive will remain unchanged. Accordingly, the Exchange will add the following language in the QCC Rebate 1 section: "Members will receive an additional rebate of $0.01 per contract for each QCC Agency Side that qualifies for QCC Rebate 1 if they achieve Priority Customer Complex Tier 2 or higher in a given month."

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[37] As discussed above, the Exchange is proposing to eliminate the fees applicable to Professional Customers for QCC Orders and for SOM Orders. <u>See</u> proposed note 16 of Options 7, Section 3 and proposed note 14 of Options 7, Section 4.

The Exchange also proposes to amend additional incentive as applied to QCC Rebate 2 by increasing the amount from $0.03 to $0.04 per contract. As noted above, the incentive qualifications will remain unchanged. Accordingly, the Exchange will add the following language in the QCC Rebate 2 section: "Members will receive an additional rebate of $0.03 per contract for each QCC Agency Side that qualifies for QCC Rebate 2 if they achieve Priority Customer Complex Tier 2 or higher in a given month."

The additional incentives will continue to be cumulative of the QCC Rebates so that qualifying Members could receive up to $0.16 per contract for each QCC Agency Side when only one side of the QCC transaction is neither a Priority Customer nor Professional Customer, and up to $0.27 per contract for each QCC Agency Side when both sides of the QCC transaction are not any combination of Priority Customers and/or Professional Customers.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[38] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[39] 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 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

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[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(4) and (5).

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'…."[40]

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."[41]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen 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

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40 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)).

41 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

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.

Fees for Crossing Orders Except PIM Orders and Crossing Fee Cap

The Exchange's proposal to decrease the Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders, except for PIM Orders, from $0.20 to $0.17 per contract, in Select and Non-Select Symbols, is reasonable because the reduction in these fees should attract additional Crossing Orders to the Exchange. Priority Customers will continue to not be assessed a Regular Order or Complex Order Fee for Crossing Orders in Select and Non-Select Symbols.

The Exchange's proposal to decrease the Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders, except for PIM Orders, from $0.20 to $0.17 per contract, in Select and Non-Select Symbols, is equitable and not unfairly discriminatory as all Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders will be reduced in Select and Non-Select Symbols. The Exchange believes that it is equitable and not unfairly discriminatory to not assess Priority Customers a Regular Order or Complex Order Fee for Crossing Orders in Select and Non-Select Symbols. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to no longer offer the Crossing Fee Cap for Firm Proprietary contracts is reasonable because the Exchange is lowering Non-Priority

Customer Regular Order and Complex Order Fees for Crossing Orders, except for PIM Orders, from $0.20 to $0.17 per contract, in Select and Non-Select Symbols. Despite the elimination of the Crossing Fee Cap, the Exchange believes that the decreased Regular Order and Complex Order Fees for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols will continue to attract Crossing Orders to the Exchange.

The Exchange's proposal to no longer offer the Crossing Fee Cap for Firm Proprietary contracts is equitable and not unfairly discriminatory because no Member would be offered an opportunity to cap their Firm Proprietary transactions.

Facilitation and Solicitation Break-Up Rebates

The Exchange's proposal to increase the Regular Order and Complex Order Facilitation and Solicitation Break-up Rebates from $0.15 to $0.20 per contract, in Select and Non-Select Symbols, for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers is reasonable because the increase will attract ISE Members to utilize the Facilitation and Solicitation Mechanisms. Specifically, the Exchange believes that the increased Facilitation and Solicitation Break-up Rebates will encourage increased originating Regular Order and Complex Order Non-Nasdaq ISE Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer, and Priority Customer order flow to the Facilitation and Solicited Order Mechanisms, thereby potentially increasing the initiation of and volume executed through such auctions. Additional auction order flow provides market participants with additional trading opportunities at potentially improved prices. Market Makers would continue to not be paid a Regular Order Facilitation and Solicitation Break-up Rebate in Select and Non-Select Symbols.

The Exchange's proposal to increase the Regular Order and Complex Order Facilitation and Solicitation Break-up Rebates from $0.15 to $0.20 per contract, in Select and Non-Select Symbols, for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers is equitable and not unfairly discriminatory because the increased Facilitation and Solicitation Break-up Rebates will apply equally to all non-Market Maker originating orders submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra orders (except when those originating contracts trade against pre-existing orders and quotes on the Exchange's order books). While Market Makers will continue to not receive Regular Order and Complex Order Facilitation and Solicitation Break-up Rebates for Select and Non-Select Symbols, the Exchange believes that the application of the rebate is equitable and not unfairly discriminatory because Market Makers are not eligible for Facilitation and Solicitation Break-up Rebates today. In addition, the Exchange currently offers Market Makers other rebate programs that do not apply to non-Market Makers, such as the Market Maker Plus Program.

The Exchange's proposal to amend note 4 of Options 7, Section 3 and note 2 of Options 7, Section 4 to more specifically provide, "The applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided" is reasonable, equitable and not unfairly discriminatory because the amendment conforms the reference to the Fees for Crossing Orders for Regular Orders and Complex Orders to the title of the fee in the tables of Options 7, Sections 3 and 4, which is the Fee for Responses to Crossing Orders. This amendment adds clarity to the fee being referenced.

<u>Professional Customer QCC and SOM Fees For Crossing Orders</u>

The Exchange's proposal to amend note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to provide, "Fees for Crossing Orders applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.00 per contract" is reasonable because reducing the Professional Customer Regular Order and Complex Order Fees for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols, when the order is submitted as a QCC Order or a SOM Order from $0.10 to $0.00 per contract will attract additional Professional Customer QCC and SOM Orders to the Exchange. The proposed fee is designed to be attractive to Professional Customers that trade on ISE, and the fee is lower than the Regular Order and Complex Order Fees for Crossing Orders, except PIM Orders, in Select and Non-Select Symbols, except for Priority Customers. Additional auction order flow provides market participants with additional trading opportunities at potentially improved prices.

The Exchange's proposal to amend note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to provide, "Fees for Crossing Orders applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.00 per contract" is equitable and not unfairly discriminatory because providing Professional Customers a lower Fee for Crossing Orders in Regular Orders and Complex Orders in Select and Non-Select Symbols submitted as a QCC or SOM Order will allow other market participants the opportunity to interact with those orders in the applicable auctions. The Exchange does not believe that it is unfairly discriminatory to offer Professional Customers lower

Fees for Crossing Orders for QCC and SOM Orders because differentiated pricing encourages 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. Professional Customer orders are presently charged a lower transaction fee for QCC and SOM Orders ($0.10 for Professional Customers versus $0.20 for all other non-Priority Customers). Additionally, Broker-Dealer and Firm Proprietary orders are incentivized in the Exchange's PIM and Facilitation Rebate program.[42] Market Makers are offered rebates through the Exchange's Market Maker Plus program.[43] The Exchange further believes there is nothing impermissible about offering Professional Customers lower transaction fee for QCC and SOM Orders given that this practice is consistent with lower Professional Fees for QCC on other options exchanges.[44] To the extent the amended lower transaction fee for QCC and SOM Orders offered to Professional Customers continues to encourage market participants to send additional QCC and SOM Orders to ISE, such increased order flow brings increased liquidity and additional opportunities for interaction with this order flow, which ultimately benefits all market participants.

Amending note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to specifically refer to "Fees for Crossing Orders" is reasonable, equitable and not unfairly discriminatory because it will conform the wording to the title of the fees in the tables in

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42 See Options 7, Sections 6.C.

43 See note 5 at Options 7, Sections 3.

44 See Nasdaq Phlx LLC ("Phlx") Options 7, Section 4. Phlx does not assess a QCC Transaction Fee to Customers and Professionals. See also BOX Exchange LLC's ("BOX") Fee Schedule at Section IV, D. BOX does not assess a QCC Transaction Fee to Customers and Professionals.

Options 7, Sections 3 and 4 for Regular Orders and Complex Orders, thereby adding clarity.

Solicitation Rebate

The Exchange believes that the proposed changes to the Solicitation Rebate program are reasonable for the reasons that follow. The Exchange believes it is reasonable to exclude Professional Customers from the Solicitation Rebate program in the manner described above because it is simultaneously proposing to eliminate the fees applicable to Professional Customers for SOM Orders (which are included as Solicited Orders for purposes of qualifying for and receiving the Solicitation Rebate). As such, the Exchange believes that Members will continue to be incentivized to send more Professional Customer Solicited Orders to the Exchange without the added incentive of the Solicitation Rebate.

The Exchange also believes that the proposed volume thresholds and rebate amounts for the Solicitation Rebate program are set at reasonable levels that would encourage additional Solicited Order flow to ISE. As described above, Members would generally receive higher rebates under this proposal for achieving the same amount of volume as they do today.[45] As such, more Members may seek to qualify for the proposed Solicitation Rebates by sending additional Solicited Order flow to ISE, which benefits all market participants through quality of order interaction and increased trading opportunities.

The Exchange further believes that its proposal to apply the note & incentive to the new base volume tier is reasonable as it is intended to encourage Members to send

[45] As noted above, if a Member reaches a volume threshold between 1,000,000 to 1,499,999 originating contract sides in a given month, they would continue to receive the same rebate amount (i.e., $0.11 per contract) under this proposal as they do currently.

more Solicited Order and complex order flow to the Exchange. Today, Members in the current base volume tier are not eligible for the note & incentive. Under this proposal, Members may now be eligible to receive an additional rebate of $0.01 per originating contract side in addition to the $0.10 base rebate on their Solicited Orders that qualify for the Solicitation Rebate program if the Member also achieves Priority Customer Complex Tier 2 or higher in a given month. To the extent the proposal incentivizes Members to send more order flow (particularly Solicited Order and complex order flow) to ISE, all market participants will benefit from increased order interaction when more order flow is available on the Exchange.

The Exchange believes that the proposed changes to the Solicitation Rebate program in Options 7, Section 6.A are equitable and not unfairly discriminatory because all Members will be eligible for the proposed rebates by sending Solicited Order and complex order flow to the Exchange. Further, the Exchange believes that excluding Professional Customers from the Solicitation Rebate program in the manner described above and applying the proposed rebates only where at least one party to the Solicited Order is neither a Priority Customer nor Professional Customer is equitable and not unfairly discriminatory because the Exchange is simultaneously eliminating the transaction fees for Professional Customer SAM Orders (which are included as Solicited Orders for purposes of qualifying for and receiving the Solicitation Rebate) under this proposal. As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer Solicited Orders to the Exchange without the added incentive of the proposed rebates. In addition, to the extent the proposed Solicitation Rebate program encourages Members to send more Solicited Order and complex order flow to ISE, all market participants will benefit from the resulting additional liquidity and trading opportunities on ISE.

QCC Rebate

The Exchange believes that the proposed changes to the QCC Rebate program are reasonable for the reasons that follow. The Exchange believes it is reasonable to exclude Professional Customers from the QCC Rebate program in the manner described above because it is simultaneously proposing to eliminate the fees applicable to Professional Customers for their QCC Orders. As such, the Exchange believes that Members will continue to be incentivized to send more Professional Customer QCC Orders to the Exchange without the added incentive of the QCC Rebates.

The Exchange also believes that the proposed changes to QCC Rebate 1 and QCC Rebate 2 are reasonable because the rebate amounts are increasing. As discussed above, QCC Rebate 1 will be amended to provide that when only one side of the QCC transaction is neither a Priority Customer nor Professional Customer, the Member will receive a $0.15 per contract rebate for each QCC Agency Side (increased from $0.14 per contract). QCC Rebate 2 will be amended to provide that when both sides of the QCC transaction are not any combination of Priority Customers and/or Professional Customers, the Member will receive a $0.23 per contract rebate for each QCC Agency Side (increased from $0.22 per contract). With the proposed changes, more Members may seek to qualify for proposed QCC Rebate 1 and proposed QCC Rebate 2 by sending additional QCC Order flow to ISE, which benefits all market participants through quality of order interaction and increased trading opportunities.

The Exchange further believes that the proposed changes to the additional QCC incentives are reasonable. As applied to QCC Rebate 1, the Exchange is proposing to lower the additional incentive amount from $0.03 to $0.01 per contract. As applied to QCC Rebate 2, the Exchange is proposing to increase the additional incentive amount from $0.03 to $0.04 per contract.[46] With the additional incentives, Members will be eligible to receive up to $0.16 per contract if they also qualify for QCC Rebate 1, and up to $0.27 per contract if they also qualify for QCC Rebate 2. The Exchange believes that the proposed additional incentives are structured at appropriate levels that would continue to encourage additional QCC and complex order flow to ISE, which benefits all market participants in the quality of order interaction and through increased trading opportunities.

The Exchange believes that the proposed changes to the QCC Rebate program in Options 7, Section 6.B are equitable and not unfairly discriminatory because all Members will be eligible for the proposed rebates by sending more QCC and complex order flow to the Exchange. The Exchange further believes that excluding Professional Customers from the QCC Rebate program in the manner described above and applying the proposed rebates only where at least one party to the QCC transaction is neither a Priority Customer nor Professional Customer is equitable and not unfairly discriminatory because the Exchange is simultaneously eliminating transaction fees for Professional Customer QCC Orders under this proposal. As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer QCC Orders to the Exchange

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[46] As described above, Members are eligible to receive the additional incentives 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. These qualifications are not changing under this proposal.

without the added incentive of the proposed rebates. In addition, to the extent the proposed QCC Rebate program encourages Members to send more QCC Order and complex order flow to ISE, all market participants will benefit from the resulting additional liquidity and trading opportunities.

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.

Fees for Crossing Orders Except PIM Orders and Crossing Fee Cap

The Exchange's proposal to decrease the Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders, except for PIM Orders, from $0.20 to $0.17 per contract, in Select and Non-Select Symbols, does not impose an undue burden on competition because all Non-Priority Customer Regular Order and Complex Order Fees for Crossing Orders will be reduced in Select and Non-Select Symbols. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to no longer offer the Crossing Fee Cap for Firm Proprietary contracts does not impose an undue burden on competition because no Member would be offered an opportunity to cap their Firm Proprietary transactions.

Facilitation and Solicitation Break-Up Rebates

The Exchange's proposal to increase the Regular Order and Complex Order Facilitation and Solicitation Break-up Rebates from $0.15 to $0.20 per contract, in Select and Non-Select Symbols, for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker Dealers, Professionals and Priority Customers does not impose an undue burden on competition because the increased Facilitation and Solicitation Break-up Rebates will apply equally to all non-Market Maker originating orders submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra orders (except when those originating contracts trade against pre-existing orders and quotes on the Exchange's order books). Today, Market Makers are not eligible for Facilitation and Solicitation Break-up Rebates. Conversely, the Exchange currently offers Market Makers other rebate programs that do not apply to non-Market Makers, such as the Market Maker Plus Program.

The Exchange's proposal to amend note 4 of Options 7, Section 3 and note 2 of Options 7, Section 4 to more specifically provide, "The applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided" does not impose an undue burden on competition because the amendment conforms the reference to the Fees for Crossing Orders for Regular Orders and Complex Orders to the title of the fee in the tables of Options 7, Sections 3 and 4, which is the Fee for Responses to Crossing Orders. This amendment adds clarity to the fee being referenced.

Professional Customer QCC and SOM Fees For Crossing Orders

The Exchange's proposal to amend note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to provide, "Fees for Crossing Orders applicable to Professional

Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.00 per contract" does not impose an undue burden on competition because providing Professional Customers a lower Fee for Crossing Orders in Regular Orders and Complex Orders in Select and Non-Select Symbols submitted as a QCC or SOM Order will allow other market participants the opportunity to interact with those orders in the applicable auctions. The Exchange believes that offering Professional Customers lower Fees for Crossing Orders for QCC and SOM Orders does not impose an undue burden on competition because differentiated pricing encourages 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. Professional Customer orders are presently charged a lower transaction fee for QCC and SOM Orders ($0.10 for Professional Customers versus $0.20 for all other non-Priority Customers). Additionally, Broker-Dealer and Firm Proprietary orders are incentivized in the Exchange's PIM and Facilitation Rebate program.[47] Market Makers are offered rebates through the Exchange's Market Maker Plus program.[48] The Exchange further believes there is nothing impermissible about offering Professional Customers lower transaction fee for QCC and SOM Orders given that this practice is consistent with lower Professional Fees for QCC on other options exchanges.[49] To the extent the amended lower transaction fee for QCC and SOM Orders offered to

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47 See Options 7, Sections 6.C.

48 See note 5 at Options 7, Sections 3.

49 See Nasdaq Phlx LLC ("Phlx") Options 7, Section 4. Phlx does not assess a QCC Transaction Fee to Customers and Professionals. See also BOX Exchange LLC's ("BOX") Fee Schedule at Section IV, D. BOX does not assess a QCC Transaction Fee to Customers and Professionals.

Professional Customers continues to encourage market participants to send additional QCC and SOM Orders to ISE, such increased order flow brings increased liquidity and additional opportunities for interaction with this order flow, which ultimately benefits all market participants.

Amending note 16 of Options 7, Section 3 and note 14 of Options 7, Section 4 to specifically refer to "Fees for Crossing Orders" does not impose an undue burden on competition because it will conform the wording to the title of the fees in the tables in Options 7, Sections 3 and 4 for Regular Orders and Complex Orders, thereby adding clarity.

Solicitation Rebate

The Exchange believes that the proposed changes to the Solicitation Rebate program in Options 7, Section 6.A do not impose an undue burden on intra-market competition because all Members will be eligible for the proposed rebates by sending Solicited Order and complex order flow to the Exchange. As discussed above, the Exchange is proposing to exclude Professional Customers from the Solicitation Rebate program in the manner described above and to apply the proposed rebates only where at least one party to the Solicited Order is neither a Priority Customer nor Professional Customer because the Exchange is simultaneously eliminating the transaction fees for Professional Customer SAM Orders (which are included as Solicited Orders for purposes of qualifying for and receiving the Solicitation Rebate) under this proposal. As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer Solicited Orders to the Exchange without the added incentive of the proposed rebates. In addition, to the extent the proposed Solicitation Rebate program encourages

Members to send more Solicited Order and complex order flow to ISE, all market participants will benefit from the resulting additional liquidity and trading opportunities on ISE.

QCC Rebate

The Exchange believes that the proposed changes to the QCC Rebate program in Options 7, Section 6.B do not impose an undue burden on competition because all Members will be eligible for the proposed rebates by sending more QCC and complex order flow to the Exchange. The Exchange is proposing to exclude Professional Customers from the QCC Rebate program in the manner described above and to apply the proposed rebates only where at least one party to the QCC transaction is neither a Priority Customer nor Professional Customer because the Exchange is simultaneously eliminating transaction fees for Professional Customer QCC Orders under this proposal. As such, the Exchange believes that Members will continue to be incentivized to send Professional Customer QCC Orders to the Exchange without the added incentive of the proposed rebates. In addition, to the extent the proposed QCC Rebate program encourages Members to send more QCC Order and complex order flow to ISE, all market participants will benefit from the resulting additional liquidity and trading opportunities.

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.[50] 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:

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[50] 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2023-35 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-2023-35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2023-35 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Sherry R. Haywood,

Assistant Secretary.

[51] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq ISE, LLC Rules

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Options 7 Pricing Schedule

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Section 3. Regular Order Fees and Rebates

Select Symbols

Market Participant	Maker Rebate / Fee(17)	Taker Fee(17)	Fee for Crossing Orders Except PIM Orders[(1)] (2)	Fee for PIM Orders [(1)] (2) (13)	Fee for Responses to Crossing Orders Except PIM Orders	Fee for Responses to PIM Orders	Facilitation and Solicitation Break-up Rebate(4)	PIM Break-up Rebate
Market Maker(8)	$0.18(5) (10) (11)	$0.45	$0.17[20]	$0.10	$0.50	$0.50	N/A	N/A
Non-Nasdaq ISE Market Maker (FarMM)	$0.18(11)	$0.46	$0.17[20]	$0.10	$0.50	$0.50	($0.20[15])	N/A
Firm Proprietary / Broker-Dealer	$0.18(11)	$0.46	$0.17[20]	$0.10	$0.50	$0.50	($0.20[15])	N/A
Professional Customer	$0.18(11)	$0.46	$0.17[20](16)	$0.10	$0.50	$0.50	($0.20[15])	N/A
Priority Customer	$0.00	$0.37	$0.00	$0.00	$0.50	$0.50	($0.20[15])	($0.00)19

Non-Select Symbols (Excluding Index Options) (7)

Market Participant	Maker Rebate /	Taker Fee(3)(17)	Fee for Crossing Orders Except	Fee for PIM	Fee for Responses to	Fee for Responses to	Facilitation and Solicitation	PIM Break-up

	Fee(17)		PIM Orders[(1)] (2)	Orders [(1)] (2) (13)	Crossing Orders Except PIM Orders	PIM Orders	Break-up Rebate(4)	Rebate
Market Maker(8)	$0.70(5)	$0.90	$0.17[20]	$0.10	$1.10	$1.10	N/A	N/A
Non-Nasdaq ISE Market Maker (FarMM)	$0.70	$0.90	$0.17[20]	$0.10	$1.10	$1.10	($0.20[15])	N/A
Firm Proprietary / Broker-Dealer	$0.70	$0.90	$0.17[20]	$0.10	$1.10	$1.10	($0.20[15])	N/A
Professional Customer	$0.70	$0.90	$0.17[20](16)	$0.10	$1.10	$1.10	($0.20[15])	N/A
Priority Customer	($1.00)(15) (18)	$0.00	$0.00	$0.00	$1.10	$1.10	($0.20[15])	($0.00)19

1. [Firm Proprietary contracts traded are subject to the Crossing Fee Cap, as provided in Options 7, Section 6.H]Reserved.

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4. Rebate provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's order books. The applicable [f]Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided.

* * * * *

16. [Transaction f]Fees for Crossing Orders applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.00[10] per contract.

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Section 4. Complex Order Fees and Rebates(5) (12) (15)

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Crossing Order Fees and Rebates

Market Participant	**Fee for Crossing Orders Except PIM Orders[(6)](10)(11)**	**Fee for PIM Orders[(6)](9)(11)**	**Fee for Responses to Crossing Orders Except PIM Orders for Select Symbols**	**Fee for Responses to Crossing Orders Except PIM Orders for non-Select Symbols**	**Fee for Responses to PIM Orders for Select Symbols**	**Fee for Responses to PIM Orders for Non-Select Symbols**	**Facilitation and Solicitation Breakup Rebate for Select Symbols(2)**	**Facilitation and Solicitation Break-up Rebate for Non-Select Symbols(2)**
Market Maker	$0.17[20]	$0.10	$0.50	$1.10	$0.50	$1.10	N/A	N/A
Non-Nasdaq ISE Market Maker (FarMM)	$0.17[20]	$0.10	$0.50	$1.10	$0.50	$1.10	($0.20[15])	($0.20[15])
Firm Proprietary / Broker-Dealer	$0.17[20]	$0.10	$0.50	$1.10	$0.50	$1.10	($0.20[15])	($0.20[15])
Professional Customer	$0.17[20](14)	$0.10	$0.50	$1.10	$0.50	$1.10	($0.20[15])	($0.20[15])
Priority Customer	$0.00	$0.00	$0.50	$1.10	$0.50	$1.10	($0.20[15])	($0.20[15])

* * * * *

2. Rebate provided per contract per leg for contracts that are submitted to Facilitation and Solicitation Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange’s order books. The applicable [f]Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided.

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6. [Firm Proprietary contracts traded are subject to the Crossing Fee Cap, as provided in Section 6.H]Reserved.

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14. [Transaction f]Fees for Crossing Orders applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange’s Solicited Order Mechanism will be $0.00[10] per contract.

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Section 6. Other Options Fees and Rebates

A. Solicitation Rebate

» Members using the Qualified Contingent Cross (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 or Facilitation Mechanisms (“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 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 when at least one side of the Solicited Order is neither a Priority Customer nor Professional Customer[except for Solicited Orders between two Priority

Customers]. Solicited Orders between two Priority Customers, two Professional Customers, or a Priority Customer and a Professional Customer 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.

Originating Contract Sides	**Rebate**
0 to [99]749,999	($0.10[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]1,499,999	($0.11[0])[&]
1,5[0]00,000+	($0.12[1])[*&]

* Members will receive an additional rebate of $0.01 per originating contract side on Solicited Orders that qualify for the 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 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 neither a [Non-]Priority Customer nor Professional Customer will receive the below QCC Rebates. QCC Rebates will be paid to each originating contract side ("QCC Agency Side") in all symbols traded on the Exchange.

QCC Rebate 1

When only one side of the QCC transaction is neither a [Non-]Priority Customer nor Professional Customer, the Member will receive a $0.15[4] per contract rebate for each QCC Agency Side.

Members will receive an additional rebate of $0.01 per contract for each QCC Agency Side that qualifies for QCC Rebate 1 if they achieve Priority Customer Complex Tier 2 or higher in a given month.

QCC Rebate 2

When both sides of the QCC transaction are not any combination of [Non-]Priority Customers and/or Professional Customers, the Member will receive a $0.23[2] per contract rebate for each QCC Agency Side.

Members will receive an additional rebate of $0.04[3] per contract for each QCC Agency Side that qualifies for [the] QCC Rebate 2 [program] if they achieve Priority Customer Complex Tier 2 or higher in a given month.

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H. Crossing Fee Cap

Reserved.

[Fees are capped at $200,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. Once a Member exceeds the fee cap level the Member will be subject to a reduced transaction fee of $0.02 per capped contract, unless the Member also qualifies for free executions.

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. 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.]

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