

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 18		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2018 - * 87		Amendment No. (req. for Amendments *)	
Filing by Nasdaq ISE, LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934							
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>		Section 19(b)(2) * <input type="checkbox"/>	
						Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	
						Section 19(b)(3)(B) * <input type="checkbox"/>	
						Rule	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>		<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4)	
						<input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5)	
						<input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010				Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934			
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>		Section 3C(b)(2) * <input type="checkbox"/>			
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>					
Description							
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).							
<input type="text" value="Proposal to amend Exchanges Schedule of Fees to modify the Crossing Fee Cap"/>							
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 * <input type="text" value="Sun"/>		Last Name * <input type="text" value="Kim"/>					
Title * <input type="text" value="Associate General Counsel"/>							
E-mail * <input type="text" value="sun.kim@nasdaq.com"/>							
Telephone * <input type="text" value="(212) 231-5106"/>		Fax <input type="text"/>					
Signature							
Pursuant to the requirements of the Securities Exchange Act of 1934,							
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.							
(Title *)							
Date <input type="text" value="10/11/2018"/>		<input type="text" value="Global Chief Legal and Policy Officer"/>					
By <input type="text" value="Edward S. Knight"/>		<input type="text"/>					
(Name *)							
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.							
<input type="button" value="edward.knight@nasdaq.com"/>							

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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

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 Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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

Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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 4 - Marked Copies

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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

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 Schedule of Fees to modify the Crossing Fee Cap, as described further below.

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”) on September 19, 2017. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Sun Kim
Associate General Counsel
Nasdaq, Inc.
212-231-5106

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 Schedule of Fees to exclude Non-Nasdaq ISE Market Makers³ from the Crossing Fee Cap in Section IV.H.

By way of background, Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, Price Improvement Mechanism ("PIM"), Block or QCC order. As set forth in Section IV.H of the Schedule of Fees, the Exchange currently caps Crossing Order fees at \$90,000 per month per member on all Firm Proprietary and Non-Nasdaq Market Maker transactions that are part of the originating or contra side of a Crossing Order.⁴ The following fees are not included in the calculation of the monthly Crossing Fee cap: (1) Fees for Responses to Crossing Orders, (2) surcharge fees for licensed products and the fees for index options as set forth in Section III, and (3) service fee.⁵ For purposes of the Crossing Fee Cap the Exchange attributes eligible volume to

³ 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.

⁴ Members that elect prior to the start of the month to pay \$65,000 per month will have these crossing fees capped at that level instead. 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.

⁵ A service fee of \$0.00 per side applies to all order types that are eligible for the fee cap. The service fee does not apply once a Member reaches the fee cap level and does apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee applies to eligible Firm Proprietary and Non-Nasdaq ISE market Maker orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap.

the ISE Member on whose behalf the Crossing Order was executed.⁶ The Exchange now seeks to exclude Non-Nasdaq ISE Market Maker transactions from the Crossing Fee Cap, and make related changes to remove references to Non-Nasdaq ISE Market Maker contracts throughout its Schedule of Fees where the Crossing Fee Cap is described.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 Crossing Fee Cap was established to reward members for executing a high volume of Firm Proprietary and Non-Nasdaq ISE Market Maker Crossing Orders on the Exchange. However, the Exchange has determined that this program has not proven to be effective in encouraging Non-Nasdaq ISE Market Maker volume in Crossing Orders and therefore believes it is reasonable to eliminate the Crossing Fee Cap for these market participants. Furthermore, the Exchange believes that it is reasonable to no longer apply

⁶ The Exchange's fee cap is functionally similar to the Clearing Trading Permit Holder Fee Cap in place at Cboe Exchange ("CBOE"), and the Monthly Firm Fee Cap in place at Nasdaq PHLX ("Phlx"). See CBOE Fees Schedule, Equity Options Rate Table, Clearing Trading Permit Holder Fee Cap, footnote 11; and Phlx Pricing Schedule, Section II, Monthly Firm Fee Cap.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

the Crossing Fee Cap to Non-Nasdaq ISE Market Maker transactions because other options exchanges offer similar fee caps that only apply to firm proprietary orders.⁹

The Exchange further believes that the proposed fee change is equitable and not unfairly discriminatory because it would apply uniformly to all members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange's decision to no longer apply the Crossing Fee Cap to Non-Nasdaq ISE Market Maker orders is not unfairly discriminatory because as noted above, the Exchange has determined that this program has not proven to be effective in encouraging Non-Nasdaq ISE Market Maker volume in Crossing Orders and as a matter of practice, members submitting Firm Proprietary orders are most likely to use or pre-pay the Crossing Fee Cap. As such, the Exchange believes there will be minimal impact on removing this fee cap for Non-Nasdaq ISE Market Maker orders. Moreover, the proposed variance between Firm Proprietary and Non-Nasdaq ISE Market Maker participants does not misalign pricing in

⁹ See CBOE Fees Schedule, Equity Options Rate Table, Clearing Trading Permit Holder Fee Cap, footnote 11 (providing in relevant part that the "...Clearing Trading Permit Holder Fee Cap in all products except Underlying Symbol List A (34) excluding binary options (the "Fee Cap") and Sector Indexes (47), the Cboe Options Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders (the "Proprietary Products Sliding Scale"), the Clearing Trading Permit Holder Proprietary VIX Sliding Scale (the "VIX Sliding Scale"), and the Supplemental VIX Total Firm Discount (the Supplemental VIX Discount") apply to (i) Clearing Trading Permit Holder proprietary orders ("F" origin code), and (ii) orders of Non-Trading Permit Holder Affiliates of a Clearing Trading Permit Holder. A "Non-Trading Permit Holder Affiliate" for this purpose is a 100% wholly owned affiliate or subsidiary of a Clearing Trading Permit Holder that is registered as a United States or foreign broker-dealer and that is not a Cboe Options Trading Permit Holder. Only proprietary orders of the Non-Trading Permit Holder Affiliate that clear through a Cboe Options-registered OCC clearing number(s) will be included in calculating the Fee Cap, Proprietary Products Sliding Scale, VIX Sliding Scale, and Supplemental VIX Discount."). In addition, Phlx's Monthly Firm Fee Cap is only offered to firm proprietary orders. See Phlx Pricing Schedule, Section II, Monthly Firm Fee Cap.

that Firm Proprietary orders already benefit from certain pricing advantages that Non-Nasdaq ISE Market Makers do not also enjoy, such as a PIM and Facilitation rebate as well as a lower complex order maker fee.¹⁰ Such differentiated pricing exists today on another options exchange.¹¹ The Exchange believes there is nothing impermissible about ISE offering the Crossing Fee Cap solely to Firm Proprietary transactions given that this practice is consistent with the above examples and the fee caps in place at other options exchanges.¹² Furthermore, to the extent the Crossing Fee Cap provides an incentive for Firm Proprietary orders to transact order flow on the Exchange, such order flow brings increased liquidity to the benefit of all market participants, including Non-Nasdaq ISE Market Makers.

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. Although the Exchange is no longer including Non-Nasdaq ISE Market Maker transactions in the Crossing Fee Cap, as described above, the Exchange notes that other options exchanges offer similar fee caps that apply only to firm proprietary orders and the

¹⁰ See Schedule of Fees, Section IV.B. See Schedule of Fees, Section II (assessing Non-Nasdaq ISE Market Maker orders a complex order maker fee of \$0.20 per contract in Select Symbols, while Firm Proprietary orders are assessed the lower \$0.10 per contract maker fee).

¹¹ CBOE assesses a reduced transaction fee to Clearing Trading Permit Holder Proprietary participants, which clear in the Firm range at The Options Clearing Corporation, of \$0.43 per contract for electronic Penny Classes and \$0.70 per contract for electronic Non-Penny Classes. In contrast, CBOE assesses Non-Trading Permit Holder Market Makers a \$0.47 per contract fee for electronic Penny Classes and a \$0.75 per contract fee for electronic Non-Penny Classes. See CBOE Fees Schedule.

¹² See note 9 above.

Exchange therefore seeks to modify its fee cap for competitive reasons.¹³ 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 and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to 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. For the reasons discussed above, the Exchange believes that the proposed fee change reflects this competitive environment.

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,¹⁴ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

¹³ See note 9 above.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-ISE-2018-87)

October __, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchanges Schedule of Fees to Modify the Crossing Fee Cap

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 October 11, 2018, 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 Schedule of Fees to modify the Crossing Fee Cap, as described further below.

The text of the proposed rule change is available on the Exchange’s Website at <http://ise.cchwallstreet.com/>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Schedule of Fees to exclude Non-Nasdaq ISE Market Makers³ from the Crossing Fee Cap in Section IV.H.

By way of background, Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, Price Improvement Mechanism ("PIM"), Block or QCC order. As set forth in Section IV.H of the Schedule of Fees, the Exchange currently caps Crossing Order fees at \$90,000 per month per member on all Firm Proprietary and Non-Nasdaq Market Maker transactions that are part of the originating or contra side of a Crossing Order.⁴ The following fees are not included in the calculation of the monthly Crossing Fee cap: (1) Fees for Responses to Crossing Orders, (2) surcharge fees for licensed products and the fees for index options as set forth in Section III, and (3) service

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⁴ Members that elect prior to the start of the month to pay \$65,000 per month will have these crossing fees capped at that level instead. 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.

fee.⁵ For purposes of the Crossing Fee Cap the Exchange attributes eligible volume to the ISE Member on whose behalf the Crossing Order was executed.⁶ The Exchange now seeks to exclude Non-Nasdaq ISE Market Maker transactions from the Crossing Fee Cap, and make related changes to remove references to Non-Nasdaq ISE Market Maker contracts throughout its Schedule of Fees where the Crossing Fee Cap is described.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 Crossing Fee Cap was established to reward members for executing a high volume of Firm Proprietary and Non-Nasdaq ISE Market Maker Crossing Orders on the Exchange. However, the Exchange has determined that this program has not proven to

⁵ A service fee of \$0.00 per side applies to all order types that are eligible for the fee cap. The service fee does not apply once a Member reaches the fee cap level and does apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee applies to eligible Firm Proprietary and Non-Nasdaq ISE market Maker orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap.

⁶ The Exchange's fee cap is functionally similar to the Clearing Trading Permit Holder Fee Cap in place at Cboe Exchange ("CBOE"), and the Monthly Firm Fee Cap in place at Nasdaq PHLX ("Phlx"). See CBOE Fees Schedule, Equity Options Rate Table, Clearing Trading Permit Holder Fee Cap, footnote 11; and Phlx Pricing Schedule, Section II, Monthly Firm Fee Cap.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

be effective in encouraging Non-Nasdaq ISE Market Maker volume in Crossing Orders and therefore believes it is reasonable to eliminate the Crossing Fee Cap for these market participants. Furthermore, the Exchange believes that it is reasonable to no longer apply the Crossing Fee Cap to Non-Nasdaq ISE Market Maker transactions because other options exchanges offer similar fee caps that only apply to firm proprietary orders.⁹

The Exchange further believes that the proposed fee change is equitable and not unfairly discriminatory because it would apply uniformly to all members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange's decision to no longer apply the Crossing Fee Cap to Non-Nasdaq ISE Market Maker orders is not unfairly discriminatory because as noted above, the Exchange has determined that this program has not proven to be effective in encouraging Non-Nasdaq ISE Market Maker volume in Crossing Orders and as a matter of practice, members submitting Firm Proprietary orders are most likely to use or pre-pay the Crossing Fee Cap. As such, the

⁹ See CBOE Fees Schedule, Equity Options Rate Table, Clearing Trading Permit Holder Fee Cap, footnote 11 (providing in relevant part that the "...Clearing Trading Permit Holder Fee Cap in all products except Underlying Symbol List A (34) excluding binary options (the "Fee Cap") and Sector Indexes (47), the Cboe Options Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders (the "Proprietary Products Sliding Scale"), the Clearing Trading Permit Holder Proprietary VIX Sliding Scale (the "VIX Sliding Scale"), and the Supplemental VIX Total Firm Discount (the Supplemental VIX Discount") apply to (i) Clearing Trading Permit Holder proprietary orders ("F" origin code), and (ii) orders of Non-Trading Permit Holder Affiliates of a Clearing Trading Permit Holder. A "Non-Trading Permit Holder Affiliate" for this purpose is a 100% wholly owned affiliate or subsidiary of a Clearing Trading Permit Holder that is registered as a United States or foreign broker-dealer and that is not a Cboe Options Trading Permit Holder. Only proprietary orders of the Non-Trading Permit Holder Affiliate that clear through a Cboe Options-registered OCC clearing number(s) will be included in calculating the Fee Cap, Proprietary Products Sliding Scale, VIX Sliding Scale, and Supplemental VIX Discount."). In addition, Phlx's Monthly Firm Fee Cap is only offered to firm proprietary orders. See Phlx Pricing Schedule, Section II, Monthly Firm Fee Cap.

Exchange believes there will be minimal impact on removing this fee cap for Non-Nasdaq ISE Market Maker orders. Moreover, the proposed variance between Firm Proprietary and Non-Nasdaq ISE Market Maker participants does not misalign pricing in that Firm Proprietary orders already benefit from certain pricing advantages that Non-Nasdaq ISE Market Makers do not also enjoy, such as a PIM and Facilitation rebate as well as a lower complex order maker fee.¹⁰ Such differentiated pricing exists today on another options exchange.¹¹ The Exchange believes there is nothing impermissible about ISE offering the Crossing Fee Cap solely to Firm Proprietary transactions given that this practice is consistent with the above examples and the fee caps in place at other options exchanges.¹² Furthermore, to the extent the Crossing Fee Cap provides an incentive for Firm Proprietary orders to transact order flow on the Exchange, such order flow brings increased liquidity to the benefit of all market participants, including Non-Nasdaq ISE Market Makers.

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

¹⁰ See Schedule of Fees, Section IV.B. See Schedule of Fees, Section II (assessing Non-Nasdaq ISE Market Maker orders a complex order maker fee of \$0.20 per contract in Select Symbols, while Firm Proprietary orders are assessed the lower \$0.10 per contract maker fee).

¹¹ CBOE assesses a reduced transaction fee to Clearing Trading Permit Holder Proprietary participants, which clear in the Firm range at The Options Clearing Corporation, of \$0.43 per contract for electronic Penny Classes and \$0.70 per contract for electronic Non-Penny Classes. In contrast, CBOE assesses Non-Trading Permit Holder Market Makers a \$0.47 per contract fee for electronic Penny Classes and a \$0.75 per contract fee for electronic Non-Penny Classes. See CBOE Fees Schedule.

¹² See note 9 above.

Act. Although the Exchange is no longer including Non-Nasdaq ISE Market Maker transactions in the Crossing Fee Cap, as described above, the Exchange notes that other options exchanges offer similar fee caps that apply only to firm proprietary orders and the Exchange therefore seeks to modify its fee cap for competitive reasons.¹³ 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 and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to 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. For the reasons discussed above, the Exchange believes that the proposed fee change reflects this competitive environment.

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.¹⁴ At any time within 60 days of the filing of the proposed rule

¹³ See note 9 above.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2018-87 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-2018-87. This file number should be included on the subject line if e-mail 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 Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

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

All submissions should refer to File Number SR-ISE-2018-87 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq ISE Schedule of Fees

* * * * *

I. Regular Order Fees and Rebates

* * * * *

1. Firm Proprietary [and Non-Nasdaq ISE Market Maker] contracts traded are subject to the Crossing Fee Cap, as provided in Section IV.H.

* * * * *

II. Complex Order Fees and Rebates⁽⁵⁾ (12) (15)

* * * * *

6. Firm Proprietary [and Non-Nasdaq ISE Market Maker] contracts traded are subject to the Crossing Fee Cap, as provided in Section IV.H.

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IV. Other Options Fees and Rebates

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H. Crossing Fee Cap

Fees are capped at \$90,000 per month per member on all Firm Proprietary [and Non-Nasdaq ISE Market Maker] transactions that are part of the originating or contra side of a Crossing Order. Members that elect prior to the start of the month to pay \$65,000 per month will have these crossing fees capped at that level instead. 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 III are not included in the calculation of the monthly fee cap. A service fee of \$0.00 per side will apply to all order types that are eligible for the fee cap. The service fee shall apply once a member reaches the fee cap level and shall apply to every contract side above the fee cap. A member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary [and Non-Nasdaq ISE Market Maker] orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap the Exchange will attribute eligible volume to the ISE Member on whose behalf the Crossing Order was executed.

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