

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 09 Amendment No. (req. for Amendments *)
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Filing by Nasdaq ISE, LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
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 checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description

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

Proposal to amend the Pricing Schedule in Options 7 to (1) establish a per contract surcharge for Priority Customer complex orders in SPY that leg into the regular order book; and (2) amend its QCC and Solicitation Rebate program to provide an additional rebate per originating contract side to qualifying members.

Contact Information

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

First Name * Sun Last Name * Kim
 Title * Associate General Counsel
 E-mail * Sun.Kim@nasdaq.com
 Telephone * (212) 231-5106 Fax

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 04/01/2019 Global Chief Legal and Policy Officer
 By Edward S. Knight

(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.

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

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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

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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

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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

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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 its Pricing Schedule in 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”) on September 26, 2018. 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 Pricing Schedule in Options 7 to: (1) establish a \$0.05 per contract surcharge for Priority Customer³ complex orders in SPY that leg into the regular order book; and (2) amend its QCC and Solicitation Rebate program to provide an additional rebate of \$0.01 per originating contract side to qualifying members.

Priority Customer Complex Order Surcharge

The Exchange currently has a pricing structure in place that provides rebates to Priority Customer complex orders in order to encourage members to bring that order flow to the Exchange. The Exchange provides these rebates to members that achieve Priority Customer Complex Tiers⁴ in Select Symbols⁵ and Non-Select Symbols⁶ (other than NDX, NQX or MNX). All complex order volume executed on the Exchange, including

³ 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 Rule 100(a)(37A).

⁴ The Priority Customer Complex Tiers are based on total Affiliated Member or Affiliated Entity complex order volume (excluding Crossing Orders and Responses to Crossing Orders), and are calculated as a percentage of Customer Total Consolidated Volume (hereinafter, "Complex Order Volume Percentage"). "Customer Total Consolidated Volume" means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

⁵ "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program. SPY is a Select Symbol.

⁶ "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

volume executed by Affiliated Members,⁷ is included in the volume calculation, except for volume executed as Crossing Orders⁸ and Responses to Crossing Orders.⁹ Affiliated Entities¹⁰ may also aggregate their complex order volume for purposes of qualifying Appointed OFPs for these Priority Customer rebates.¹¹ Rebates are provided per contract per leg if the Priority Customer complex order trades with non-Priority Customer orders in the complex order book or trades with quotes and orders on the regular order book.¹²

⁷ An “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member’s Form BD, Schedule A.

⁸ A “Crossing Order” is an order executed in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

⁹ “Responses to Crossing Orders” are any contra-side interest submitted after the commencement of an auction in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

¹⁰ An “Affiliated Entity” is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. An “Appointed Market Maker” is a Market Maker who has been appointed by an Order Flow Provider (“OFP”) for purposes of qualifying as an Affiliated Entity. An “Appointed OFP” is an OFP (i.e., a member, other than a Market Maker, that submits orders, as agent or principal, to the Exchange) who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity. Each member may qualify for only one Affiliated Entity relationship at any given time. Affiliated Members are not eligible to enter an Affiliated Entity relationship.

¹¹ The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume.

¹² The rebate for the highest tier volume achieved is applied retroactively to all eligible Priority Customer complex volume once the threshold has been reached. Members will not receive rebates for net zero complex orders. For purposes of determining which complex orders qualify as “net zero” the Exchange will count all complex orders that leg into the regular order book and are executed at a net price per contract that is within a range of \$0.01 credit and \$0.01 debit.

As set forth in Section 4 of the Pricing Schedule, there are currently nine Priority Customer Complex Tiers as follows:

Priority Customer Complex Tier	Complex Order Volume Percentage	Rebate for Select Symbols	Rebate for Non-Select Symbols
Tier 1	0.000% - 0.200%	(\$0.25)	(\$0.40)
Tier 2	Above 0.200% - 0.400%	(\$0.30)	(\$0.55)
Tier 3	Above 0.400% - 0.600%	(\$0.35)	(\$0.70)
Tier 4	Above 0.600% - 0.750%	(\$0.40)	(\$0.75)
Tier 5	Above 0.750% - 1.000%	(\$0.45)	(\$0.80)
Tier 6	Above 1.000% - 1.500%	(\$0.46)	(\$0.80)
Tier 7	Above 1.500% - 2.000%	(\$0.48)	(\$0.80)
Tier 8	Above 2.000% - 3.250%	(\$0.50)	(\$0.85)
Tier 9	Above 3.250%	(\$0.50)	(\$0.85)

Going forward, the Exchange proposes to impose a \$0.05 per contract surcharge on Priority Customer complex orders in SPY that leg into the regular order book, which will be applied in addition to the applicable rebate.¹³ For example, if a member qualifies for Priority Customer Complex Tier 1, the member's Priority Customer complex orders in SPY that leg into the regular order book for non-net zero activity will earn \$0.20 per contract (i.e., \$0.25 per contract rebate for Select Symbols minus the \$0.05 per contract surcharge). If, however, the member's SPY Priority Customer complex orders execute against non-Priority Customer orders in the complex order book instead of legging into

¹³ As discussed above, the Exchange currently provides the Tiers 1-9 Priority Customer complex order rebates to non-net zero Priority Customer complex orders that leg into the regular order book. See supra note 12, with accompanying text.

the regular order book, those orders will earn the \$0.25 per contract rebate and not be assessed the \$0.05 surcharge.

The Exchange is proposing this surcharge to reduce the costs of such transactions. Not only does the Exchange provide the tiered rebates discussed above to Priority Customer complex orders, but the Exchange also does not charge any maker or taker fees for such orders.¹⁴

QCC and Solicitation Rebate

Currently, members using the Qualified Contingent Cross (“QCC”)¹⁵ and/or other solicited crossing orders, including solicited orders executed in the Solicitation,¹⁶ Facilitation¹⁷ or Price Improvement Mechanisms (“PIM”),¹⁸ receive rebates for each originating contract side in all symbols traded on the Exchange. Once a member reaches a certain volume threshold in QCC orders and/or solicited crossing orders during a

¹⁴ See Options 7, Section 4.

¹⁵ 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 Rule 715, coupled with a contra-side order or orders totaling an equal number of contracts. See Rule 715(j).

¹⁶ The Solicited Order Mechanism is a process by which an Electronic Access Member (“EAM”) can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. See Rule 716(e).

¹⁷ The Facilitation Mechanism is a process by which an EAM can execute a transaction wherein the EAM seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against a block-size order it represents as agent. See Rule 716(d).

¹⁸ PIM is a process by which an EAM can provide price improvement opportunities for a transaction wherein the EAM seeks to facilitate an order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against an order it represents as agent. See Rule 723.

month, the Exchange provides rebates to that member for all of its QCC and solicited crossing order traded contracts for that month.¹⁹ The applicable rebates are applied on QCC and solicited crossing order traded contracts once the volume threshold is met. Members receive the rebate for all QCC and/or other solicited crossing orders except for QCC and solicited orders between two Priority Customers, which do not receive any rebate. Today, the volume thresholds and corresponding rebates are as follows:

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

At this time, the Exchange proposes to provide an additional incentive for members that achieve high volumes of QCC and other solicited crossing activity well above the current highest volume threshold of more than 1,000,000 originating contract sides and also provide significant complex order volume in a given month. Specifically, members will receive an additional rebate of \$0.01 per originating contract side on QCC and/or other solicited crossing orders that qualify for the QCC and Solicitation Rebate program if they achieve in a given month: (i) combined QCC and other solicited crossing order volume of more than 1,750,000 originating contract sides and (ii) Priority Customer

¹⁹ All eligible volume from affiliated members will be aggregated in determining QCC and Solicitation volume totals, provided there is at least 75% common ownership between the members as reflected on each member's Form BD, Schedule A.

Complex Tiers 6 – 9, as described above. This additional rebate opportunity will be cumulative of the \$0.11 base rebate since qualifying members will have exceeded requisite volume threshold to receive the additional \$0.01 incentive for a total of \$0.12 per originating contract side on QCC and solicited crossing order traded contracts.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²¹ 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.

Priority Customer Complex Order Surcharge

The Exchange believes that it is reasonable to establish a \$0.05 per contract surcharge for Priority Customer complex orders in SPY that leg into the regular order book. As noted above, the Exchange is proposing this surcharge on Priority Customer complex orders in SPY, which is one of the most heavily traded symbols on ISE, to recoup the costs of such transactions. Not only does the Exchange provide the tiered rebates discussed above to Priority Customer complex orders, but the Exchange also does not charge any maker or taker fees for such orders. Despite the proposed change, the Exchange believes that the complex order pricing structure will continue to encourage members to bring Priority Customer complex order flow to ISE as the surcharge is minimal and only applies in limited circumstances (i.e., when SPY Priority Customer

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4) and (5).

complex orders leg into the regular order book). Finally, the Exchange notes that members will still net a rebate for each Priority Customer Complex Tier even after the surcharge is applied.

The Exchange believes that the proposed surcharge is equitable and not unfairly discriminatory because the Exchange will uniformly apply this fee to all similarly situated market participants. Even with this surcharge, SPY complex order pricing for Priority Customers will continue to be lower than for all other market participants. The Exchange does not believe that this pricing structure is unfairly discriminatory because Priority Customer orders bring valuable liquidity to the market, which in turn benefits other market participants by increasing their opportunities to trade.

QCC and Solicitation Rebate

The Exchange believes that its proposal to provide a supplementary \$0.01 rebate cumulative of the base \$0.11 rebate to members that achieve in a given month both combined QCC and other solicited crossing order volume of more than 1,750,000 originating contract sides and Priority Customer Complex Tiers 6-9 is reasonable because this incentive is intended to encourage members that achieve high volumes of QCC and other solicited crossing activity to continue to send more complex order flow to the Exchange to achieve Priority Customer Complex Tiers 6-9 to earn the additional \$0.01 rebate. All market participants benefit from increased order interaction when more order flow is available on ISE. The Exchange also believes that the proposed changes will continue to encourage members to submit greater numbers of QCC and other solicited crossing orders to ISE to receive the additional rebate. Furthermore, the Exchange notes that it currently has other incentive programs to promote and encourage growth in specific business areas to garnish greater order flow. For example, the Exchange offers

additional rebates to members that achieve high volumes of unsolicited PIM and Facilitation activity as well as complex activity.²²

The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory because any member may qualify for the proposed supplemental rebate by submitting QCC and other solicited crossing orders as well as complex orders. Finally, the Exchange will apply the proposed incentive uniformly to all members' orders that meet the requisite volume thresholds.

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. As it relates to the proposed surcharge for Priority Customer complex orders in SPY, the Exchange believes that its proposal will continue to encourage members to send more complex order flow to ISE given that the surcharge will apply in limited circumstances, and that Priority Customers will still earn a rebate in each Priority Customer Complex Tier even after the surcharge is applied. The Exchange further believes that the additional QCC and Solicitation Rebate proposed above will encourage members to submit more QCC and other solicited crossing orders as well as complex orders. Accordingly, the Exchange believes that the fees and rebates proposed above will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity. All market participants benefit from increased order interaction when more order flow is available on ISE.

²² See Options 7, Section 6.B (PIM and Facilitation Rebate).

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to 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. For the reasons described above, the Exchange believes that the proposed fee changes reflect 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,²³ 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.

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2019-09)

April __, 2019

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a Priority Customer Complex Order Surcharge and Provide an Additional Rebate per Originating Contract Side to Qualifying Members

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 April 1, 2019, 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 its Pricing Schedule in Options 7.

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 Pricing Schedule in Options 7 to: (1) establish a \$0.05 per contract surcharge for Priority Customer³ complex orders in SPY that leg into the regular order book; and (2) amend its QCC and Solicitation Rebate program to provide an additional rebate of \$0.01 per originating contract side to qualifying members.

Priority Customer Complex Order Surcharge

The Exchange currently has a pricing structure in place that provides rebates to Priority Customer complex orders in order to encourage members to bring that order flow to the Exchange. The Exchange provides these rebates to members that achieve Priority Customer Complex Tiers⁴ in Select Symbols⁵ and Non-Select Symbols⁶ (other than

³ 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 Rule 100(a)(37A).

⁴ The Priority Customer Complex Tiers are based on total Affiliated Member or Affiliated Entity complex order volume (excluding Crossing Orders and Responses to Crossing Orders), and are calculated as a percentage of Customer Total Consolidated Volume (hereinafter, "Complex Order Volume Percentage"). "Customer Total Consolidated Volume" means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

⁵ "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program. SPY is a Select Symbol.

NDX, NQX or MNX). All complex order volume executed on the Exchange, including volume executed by Affiliated Members,⁷ is included in the volume calculation, except for volume executed as Crossing Orders⁸ and Responses to Crossing Orders.⁹ Affiliated Entities¹⁰ may also aggregate their complex order volume for purposes of qualifying Appointed OFPs for these Priority Customer rebates.¹¹ Rebates are provided per contract per leg if the Priority Customer complex order trades with non-Priority Customer orders in the complex order book or trades with quotes and orders on the regular order book.¹²

⁶ “Non-Select Symbols” are options overlying all symbols excluding Select Symbols.

⁷ An “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A.

⁸ A “Crossing Order” is an order executed in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

⁹ “Responses to Crossing Orders” are any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

¹⁰ An “Affiliated Entity” is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. An “Appointed Market Maker” is a Market Maker who has been appointed by an Order Flow Provider (“OFP”) for purposes of qualifying as an Affiliated Entity. An “Appointed OFP” is an OFP (i.e., a member, other than a Market Maker, that submits orders, as agent or principal, to the Exchange) who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity. Each member may qualify for only one Affiliated Entity relationship at any given time. Affiliated Members are not eligible to enter an Affiliated Entity relationship.

¹¹ The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume.

¹² The rebate for the highest tier volume achieved is applied retroactively to all eligible Priority Customer complex volume once the threshold has been reached.

As set forth in Section 4 of the Pricing Schedule, there are currently nine Priority Customer Complex Tiers as follows:

Priority Customer Complex Tier	Complex Order Volume Percentage	Rebate for Select Symbols	Rebate for Non-Select Symbols
Tier 1	0.000% - 0.200%	(\$0.25)	(\$0.40)
Tier 2	Above 0.200% - 0.400%	(\$0.30)	(\$0.55)
Tier 3	Above 0.400% - 0.600%	(\$0.35)	(\$0.70)
Tier 4	Above 0.600% - 0.750%	(\$0.40)	(\$0.75)
Tier 5	Above 0.750% - 1.000%	(\$0.45)	(\$0.80)
Tier 6	Above 1.000% - 1.500%	(\$0.46)	(\$0.80)
Tier 7	Above 1.500% - 2.000%	(\$0.48)	(\$0.80)
Tier 8	Above 2.000% - 3.250%	(\$0.50)	(\$0.85)
Tier 9	Above 3.250%	(\$0.50)	(\$0.85)

Going forward, the Exchange proposes to impose a \$0.05 per contract surcharge on Priority Customer complex orders in SPY that leg into the regular order book, which will be applied in addition to the applicable rebate.¹³ For example, if a member qualifies for Priority Customer Complex Tier 1, the member's Priority Customer complex orders in SPY that leg into the regular order book for non-net zero activity will earn \$0.20 per contract (i.e., \$0.25 per contract rebate for Select Symbols minus the \$0.05 per contract

Members will not receive rebates for net zero complex orders. For purposes of determining which complex orders qualify as "net zero" the Exchange will count all complex orders that leg into the regular order book and are executed at a net price per contract that is within a range of \$0.01 credit and \$0.01 debit.

¹³ As discussed above, the Exchange currently provides the Tiers 1-9 Priority Customer complex order rebates to non-net zero Priority Customer complex orders that leg into the regular order book. See supra note 12, with accompanying text.

surcharge). If, however, the member's SPY Priority Customer complex orders execute against non-Priority Customer orders in the complex order book instead of legging into the regular order book, those orders will earn the \$0.25 per contract rebate and not be assessed the \$0.05 surcharge.

The Exchange is proposing this surcharge to reduce the costs of such transactions. Not only does the Exchange provide the tiered rebates discussed above to Priority Customer complex orders, but the Exchange also does not charge any maker or taker fees for such orders.¹⁴

QCC and Solicitation Rebate

Currently, members using the Qualified Contingent Cross ("QCC")¹⁵ and/or other solicited crossing orders, including solicited orders executed in the Solicitation,¹⁶ Facilitation¹⁷ or Price Improvement Mechanisms ("PIM"),¹⁸ receive rebates for each

¹⁴ See Options 7, Section 4.

¹⁵ 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 Rule 715, coupled with a contra-side order or orders totaling an equal number of contracts. See Rule 715(j).

¹⁶ The Solicited Order Mechanism is a process by which an Electronic Access Member ("EAM") can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. See Rule 716(e).

¹⁷ The Facilitation Mechanism is a process by which an EAM can execute a transaction wherein the EAM seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against a block-size order it represents as agent. See Rule 716(d).

¹⁸ PIM is a process by which an EAM can provide price improvement opportunities for a transaction wherein the EAM seeks to facilitate an order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against an order it represents as agent. See Rule 723.

originating contract side in all symbols traded on the Exchange. Once a member reaches a certain volume threshold in QCC orders and/or solicited crossing orders during a month, the Exchange provides rebates to that member for all of its QCC and solicited crossing order traded contracts for that month.¹⁹ The applicable rebates are applied on QCC and solicited crossing order traded contracts once the volume threshold is met. Members receive the rebate for all QCC and/or other solicited crossing orders except for QCC and solicited orders between two Priority Customers, which do not receive any rebate. Today, the volume thresholds and corresponding rebates are as follows:

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

At this time, the Exchange proposes to provide an additional incentive for members that achieve high volumes of QCC and other solicited crossing activity well above the current highest volume threshold of more than 1,000,000 originating contract sides and also provide significant complex order volume in a given month. Specifically, members will receive an additional rebate of \$0.01 per originating contract side on QCC and/or other solicited crossing orders that qualify for the QCC and Solicitation Rebate

¹⁹ All eligible volume from affiliated members will be aggregated in determining QCC and Solicitation volume totals, provided there is at least 75% common ownership between the members as reflected on each member's Form BD, Schedule A.

program if they achieve in a given month: (i) combined QCC and other solicited crossing order volume of more than 1,750,000 originating contract sides and (ii) Priority Customer Complex Tiers 6 – 9, as described above. This additional rebate opportunity will be cumulative of the \$0.11 base rebate since qualifying members will have exceeded requisite volume threshold to receive the additional \$0.01 incentive for a total of \$0.12 per originating contract side on QCC and solicited crossing order traded contracts.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²¹ 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.

Priority Customer Complex Order Surcharge

The Exchange believes that it is reasonable to establish a \$0.05 per contract surcharge for Priority Customer complex orders in SPY that leg into the regular order book. As noted above, the Exchange is proposing this surcharge on Priority Customer complex orders in SPY, which is one of the most heavily traded symbols on ISE, to recoup the costs of such transactions. Not only does the Exchange provide the tiered rebates discussed above to Priority Customer complex orders, but the Exchange also does not charge any maker or taker fees for such orders. Despite the proposed change, the Exchange believes that the complex order pricing structure will continue to encourage

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4) and (5).

members to bring Priority Customer complex order flow to ISE as the surcharge is minimal and only applies in limited circumstances (i.e., when SPY Priority Customer complex orders leg into the regular order book). Finally, the Exchange notes that members will still net a rebate for each Priority Customer Complex Tier even after the surcharge is applied.

The Exchange believes that the proposed surcharge is equitable and not unfairly discriminatory because the Exchange will uniformly apply this fee to all similarly situated market participants. Even with this surcharge, SPY complex order pricing for Priority Customers will continue to be lower than for all other market participants. The Exchange does not believe that this pricing structure is unfairly discriminatory because Priority Customer orders bring valuable liquidity to the market, which in turn benefits other market participants by increasing their opportunities to trade.

QCC and Solicitation Rebate

The Exchange believes that its proposal to provide a supplementary \$0.01 rebate cumulative of the base \$0.11 rebate to members that achieve in a given month both combined QCC and other solicited crossing order volume of more than 1,750,000 originating contract sides and Priority Customer Complex Tiers 6-9 is reasonable because this incentive is intended to encourage members that achieve high volumes of QCC and other solicited crossing activity to continue to send more complex order flow to the Exchange to achieve Priority Customer Complex Tiers 6-9 to earn the additional \$0.01 rebate. All market participants benefit from increased order interaction when more order flow is available on ISE. The Exchange also believes that the proposed changes will continue to encourage members to submit greater numbers of QCC and other solicited crossing orders to ISE to receive the additional rebate. Furthermore, the Exchange notes

that it currently has other incentive programs to promote and encourage growth in specific business areas to garnish greater order flow. For example, the Exchange offers additional rebates to members that achieve high volumes of unsolicited PIM and Facilitation activity as well as complex activity.²²

The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory because any member may qualify for the proposed supplemental rebate by submitting QCC and other solicited crossing orders as well as complex orders. Finally, the Exchange will apply the proposed incentive uniformly to all members' orders that meet the requisite volume thresholds.

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. As it relates to the proposed surcharge for Priority Customer complex orders in SPY, the Exchange believes that its proposal will continue to encourage members to send more complex order flow to ISE given that the surcharge will apply in limited circumstances, and that Priority Customers will still earn a rebate in each Priority Customer Complex Tier even after the surcharge is applied. The Exchange further believes that the additional QCC and Solicitation Rebate proposed above will encourage members to submit more QCC and other solicited crossing orders as well as complex orders. Accordingly, the Exchange believes that the fees and rebates proposed above will continue to attract order flow to the Exchange, thereby encouraging additional volume

²² See Options 7, Section 6.B (PIM and Facilitation Rebate).

and liquidity. All market participants benefit from increased order interaction when more order flow is available on ISE.

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to 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. For the reasons described above, the Exchange believes that the proposed fee changes reflect 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.²³ 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.

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2019-09 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-2019-09. 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-2019-09 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.²⁴

Eduardo A. Aleman
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq ISE Rules

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Options 7 Pricing Schedule

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Section 4. Complex Order Fees and Rebates^{(5) (12) (15)}**Priority Customer Rebates**

Priority Customer Complex Tier^{(7) (13) (16)}	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	Rebate for Select Symbols⁽¹⁾⁽¹⁷⁾	Rebate for Non-Select Symbols⁽¹⁾⁽⁴⁾
Tier 1	0.000% - 0.200%	(\$0.25)	(\$0.40)
Tier 2	Above 0.200% - 0.400%	(\$0.30)	(\$0.55)
Tier 3	Above 0.400% - 0.600%	(\$0.35)	(\$0.70)
Tier 4	Above 0.600% - 0.750%	(\$0.40)	(\$0.75)
Tier 5	Above 0.750% - 1.000%	(\$0.45)	(\$0.80)
Tier 6	Above 1.000% - 1.500%	(\$0.46)	(\$0.80)
Tier 7	Above 1.500% - 2.000%	(\$0.48)	(\$0.80)
Tier 8	Above 2.000% - 3.250%	(\$0.50)	(\$0.85)
Tier 9	Above 3.250%	(\$0.50)	(\$0.85)

* * * * *

17. Priority Customer Complex Orders in SPY that leg into the regular order book will be subject to a \$0.05 per contract surcharge in addition to the applicable rebate.

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

» Members using the Qualified Contingent Cross (QCC) and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms, will receive rebates according to the table below for each originating contract side in all symbols traded on the Exchange. Once a Member reaches

a certain volume threshold in QCC orders and/or solicited crossing orders during a month, the Exchange will provide rebates to that Member for all of its QCC and solicited crossing order traded contracts for that month. All eligible volume from affiliated Members will be aggregated in determining QCC and Solicitation volume totals, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. The applicable rebates will be applied on QCC and solicited crossing order traded contracts once the volume threshold is met. Members will receive the rebate for all QCC and/or other solicited crossing orders except for QCC and solicited orders between two Priority Customers. QCC and solicited orders between two Priority Customers will not receive any rebate. The volume threshold and corresponding rebates are as follows:

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

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

* Members will receive an additional rebate of \$0.01 per originating contract side on QCC and/or other solicited crossing orders that qualify for the QCC and Solicitation Rebate program if they achieve in a given month: (i) combined QCC and other solicited crossing order volume of more than 1,750,000 originating contract sides and (ii) Priority Customer Complex Tiers 6 – 9 in Section 4.

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