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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 31

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

File No.* SR - 2020 - * 20
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) * ☐

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)

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

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 *).

A proposal to amend the Exchanges Pricing Schedule at 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 * Sun Last Name * Kim
Title * Associate General Counsel
E-mail * sun.kim@nasdaq.com
Telephone * (646) 420-7816 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 05/11/2020
By John Zecca
(Name *)

(Title *)
EVP and Chief Legal Counsel

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.

john.zecca@nasdaq.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

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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

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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 Pricing Schedule at Options 7, as described further below.

The Exchange has designated the proposed pricing changes to be operative on May 1, 2020.

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 25, 2019. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

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 Exchange proposes to amend its Pricing Schedule at Options 7 to: (i) adjust the Market Maker Plus regular maker rebate for SPY, QQQ, and IWM, and (ii) modify its QCC and Solicitation Rebate program. The Exchange has designated the proposed pricing changes to be operative on May 1, 2020. Each change is described below.

ISE initially filed the proposed rule change on April 30, 2020 (SR-ISE-2020-19). On May 11, 2020, ISE withdrew that filing and submitted this this filing.

Market Maker Plus

The Exchange currently operates a Market Maker Plus program for regular orders in Select[3] and Non-Select Symbols,[4] which provides tiered incentives to Market Makers[5] based on the percentage of time spent quoting at the national best bid or offer ("NBBO").[6] Market Makers that qualify for this program will not pay the maker fee of $0.11 per contract (in Select Symbols) or $0.70 (in Non-Select Symbols), and will instead receive incentives based on the applicable Market Maker Plus Tier for which they qualify. Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day

3 "Select Symbols" are options overlying all symbols listed on the Exchange that are in the Penny Pilot Program.

4 "Non-Select Symbols" are options overlying all symbols except Select Symbols.

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

6 See Options 7, Section 3, note 5.

periods beginning on that trading day.[7] A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above. If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive periods described above, then the lower of the two Market Maker Plus tier fees or rebates would apply to all contracts.[8] A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this incentive.[9] These general qualification requirements will remain unchanged with the modifications to the applicable Market Maker Plus incentives described herein.

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[7] Qualifying series are series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium.

[8] Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers - i.e., badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only badge/suffix combinations quoting a minimum of ten trading days within the month is used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

[9] A Market Maker who qualifies for Market Maker Plus Tiers 2 or higher in at least four of the previous six months will be eligible to receive a reduced Tier 2 incentive in a given month where the Market Maker does not qualify for any Market Maker Plus tiers. For Select Symbols, this rebate is the applicable Tier 2 rebate reduced by $0.08 per contract. For Non-Select Symbols, this fee is the Tier 2 fee increased by $0.08 per contract.

For SPY, QQQ, and IWM, the Exchange currently provides the below maker rebates based on the applicable Market Maker Plus tier for which the Market Maker qualifies.

SPY, QQQ, and IWM

Market Maker Plus Tier (Specified Percentage)	Regular Maker Rebate	Linked Maker Rebate
Tier 1 (70% to less than 80%)	($0.00)	N/A
Tier 2 (80% to less than 85%)	($0.18)	($0.15)
Tier 3 (85% to less than 90%)	($0.22)	($0.19)
Tier 4 (90% or greater)	($0.26)	($0.23)

The Exchange now proposes to replace Market Maker Plus Tier 1 with new Tier 1a and Tier 1b. As proposed, the Market Maker Plus Tier qualification requirements and associated incentive will be as follows: (1) 50% to less than 65% to qualify for the $0.00 per contract Tier 1a regular maker rebate (i.e., free executions instead of paying the $0.11 per contract maker fee), and (2) 65% to less than 80% to qualify for the $0.05 per contract Tier 1b regular maker rebate. Current Market Maker Plus Tiers 2 – 4 as set forth above and the associated maker rebates will remain unchanged under this proposal. In addition, the Exchange will not offer any linked maker rebates for proposed Tiers 1a and 1b.

The proposed changes are intended to fortify Market Maker participation in the Exchange's Market Maker Plus program for SPY, QQQ, and IWM. By lowering the percentage of time required to be spent quoting at the NBBO that is necessary to qualify for the $0.00 and $0.05 per contract regular maker rebates in Tier 1a and Tier 1b, respectively, the Exchange seeks to make it easier for Market Makers to qualify as Market Maker Plus in SPY, QQQ, and IWM, and to better enable existing Market Maker Plus participants to maintain their qualifications as such. By fortifying participation in this program, the Exchange believes that the proposed changes will continue to encourage Market Makers to post quality markets in SPY, QQQ, and IWM, thereby improving trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market.

QCC and Solicitation Rebate

Currently, Members using the Qualified Contingent Cross ("QCC")[10] and/or other solicited crossing orders, including solicited orders executed in the Solicitation,[11] Facilitation[12] or Price Improvement Mechanisms ("PIM"),[13] receive rebates for each

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10 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).

11 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 Options 3, Section 11(d).

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

13 The 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 Options 3, Section 13.

originating contract side in all symbols traded on the Exchange.[14] Once a Member reaches a certain volume threshold in QCC orders and/or other 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. 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,[15] which do not receive any rebate.

At this time, the Exchange proposes to no longer provide the QCC and Solicitation Rebate to solicited orders executed in PIM. The Exchange has observed that few members have received this rebate, with little associated volume.[16] To effect this change, the Exchange proposes to remove the reference to PIM in Section 6.A. In addition, the Exchange proposes to add a new defined term "Solicited Orders," which will encompass QCC orders and/or other solicited orders executed in the Solicitation and Facilitation Mechanisms, and use this defined term throughout Section 6.A to make clear what types of solicited crossing orders will qualify the Member for the QCC and Solicitation Rebate. The volume thresholds and applicable rebates will remain unchanged under this proposal.

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14 See Options 7, Section 6.A.

15 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 Options 1, Section 1(a)(37).

16 For example, of the contract sides that qualified for the QCC and Solicitation Rebate in March 2020, less than 1% of that volume represented solicited PIM orders.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] 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'…."[19]

The Commission and the courts have repeatedly expressed their preference for

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17 15 U.S.C. 78f(b).

18 15 U.S.C. 78f(b)(4) and (5).

19 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)).

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."[20]

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

Market Maker Plus

The Exchange believes that the proposed changes to its Market Maker Plus program for SPY, QQQ, and IWM are reasonable and equitable for several reasons. As noted above, the Exchange's proposal is intended to fortify participation in this program and improve market quality on ISE. The Exchange's proposal to lower the required percentage of time spent at the NBBO to qualify for Market Maker Plus Tiers 1a and 1b will improve the overall incentive to Market Makers to participate in this program by making it easier for Market Makers to qualify for Market Maker Plus in SPY, QQQ, and

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

IWM. By broadening the Market Maker Plus in this manner, the Exchange will encourage new participants in the program and help ensure that existing Market Maker Plus participants continue to qualify as such.

The Exchange will apply the proposed changes to SPY, QQQ, and IWM as they are three of the most actively traded symbols on ISE, and the Exchange therefore believes that incentivizing liquidity in these three names will have a significant and beneficial impact on market quality on the Exchange. Further, the Exchange believes that the proposed Tier 1a and Tier 1b qualifications for SPY, QQQ, and IWM will continue to require Market Makers to quote at the NBBO for a significant percentage of time in order to glean the benefits of the associated incentives.[21] For the foregoing reasons, the Exchange believes that its proposal will further encourage Market Makers to maintain tight markets in SPY, QQQ, and IWM, thereby increasing liquidity and attracting additional order flow to the Exchange, which will benefit all market participants in the quality of order interaction.

The Exchange also believes that the proposed changes to the Market Maker Plus program for SPY, QQQ, and IWM are not unfairly discriminatory as all Market Makers can qualify for this program by meeting the requirements that are designed to incentivize Market Makers to maintain quality markets. In addition, the Exchange continues to believe that it is not unfairly discriminatory to offer rebates under this program to only Market Makers. Market Makers, and in particular, those Market Makers that participate in the Market Maker Plus program and achieve Market Maker Plus status, add value

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21 As proposed, a Market Maker would need to be on the NBBO 50% to less than 65% of the time to qualify for the Tier 1a rebate of $0.00, and 65% to less than 80% of the time for the Tier 1b rebate of $0.05.

through continuous quoting and are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not.

QCC and Solicitation Rebate

The Exchange believes that it is reasonable to no longer provide the QCC and Solicitation Rebate to solicited orders executed in PIM. As noted above, few Members have received this rebate for solicited PIM orders, and related volume is low.[22] As such, the Exchange believes that the proposed elimination will have minimal impact on Members. Furthermore, the Exchange notes that it already offers competitive pricing for PIM orders. For instance, the Exchange currently assesses a fee of $0.10 per contract for regular and complex PIM orders to all market participants (other than Priority Customers for which the Exchange currently charges no fee), which is significantly lower than the Exchange's other transaction fees, including the fees assessed to other Crossing Orders.[23] Furthermore, this $0.10 per contract fee may be further reduced if the non-Priority Customer executes a certain ADV threshold in PIM in a given month.[24] Accordingly, the Exchange believes that its pricing structure for PIM, with the proposed changes, will continue to encourage market participant PIM activity, including solicited PIM activity,

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22 See supra note 16.

23 A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, PIM or submitted as a QCC order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. Today, the Exchange charges all non-Priority Customers a $0.20 per contract fee for regular and complex Crossing Orders except PIM orders. Priority Customers are not charged Crossing Order fees. See Options 7, Section 3 and Section 4.

24 See Options 7, Section 3, note 13 (setting forth discounted PIM fees for regular orders) and Section 4, note 9 (setting forth discounted PIM fees for complex orders).

and will streamline its PIM incentive structure.

The Exchange also believes that its proposal is equitable and not unfairly discriminatory because with the proposed changes, no market participant will receive the rebate for solicited PIM orders. Accordingly, the Exchange's proposal will apply uniformly to all market participants.

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

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

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of Exchange market participant at a competitive disadvantage. The proposed changes to the Market Maker Plus program for SPY, QQQ, and IWM are intended to improve market quality by fortifying and encouraging participation in this program. As discussed above, the Exchange believes that its proposal will encourage all Market Makers to improve market quality by providing significant quoting at the NBBO in SPY, QQQ, and IWM, which in turn improves trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market, thereby attracting additional order flow to the Exchange. As it relates to the proposed elimination of the rebate for solicited PIM orders, the Exchange believes that its proposal will continue to encourage market participant activity in PIM given the Exchange's competitive PIM pricing structure, as discussed above. Accordingly, the Exchange believes that the proposed changes will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options 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.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. 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,[25] 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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[25] 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-ISE-2020-20)

May__, 2020

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule at 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 May 11, 2020, 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, 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 Exchange proposes to amend its Pricing Schedule at Options 7 to: (i) adjust the Market Maker Plus regular maker rebate for SPY, QQQ, and IWM, and (ii) modify its QCC and Solicitation Rebate program. The Exchange has designated the proposed pricing changes to be operative on May 1, 2020. Each change is described below.

ISE initially filed the proposed rule change on April 30, 2020 (SR-ISE-2020-19). On May 11, 2020, ISE withdrew that filing and submitted this this filing.

Market Maker Plus

The Exchange currently operates a Market Maker Plus program for regular orders in Select[3] and Non-Select Symbols,[4] which provides tiered incentives to Market Makers[5] based on the percentage of time spent quoting at the national best bid or offer ("NBBO").[6] Market Makers that qualify for this program will not pay the maker fee of $0.11 per contract (in Select Symbols) or $0.70 (in Non-Select Symbols), and will instead receive incentives based on the applicable Market Maker Plus Tier for which they

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3 "Select Symbols" are options overlying all symbols listed on the Exchange that are in the Penny Pilot Program.

4 "Non-Select Symbols" are options overlying all symbols except Select Symbols.

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

6 See Options 7, Section 3, note 5.

qualify. Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day.[7] A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above. If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive periods described above, then the lower of the two Market Maker Plus tier fees or rebates would apply to all contracts.[8] A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this incentive.[9] These general qualification requirements will remain unchanged with the modifications to the applicable Market Maker Plus incentives described herein.

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7 Qualifying series are series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium.

8 Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers - i.e., badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only badge/suffix combinations quoting a minimum of ten trading days within the month is used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

9 A Market Maker who qualifies for Market Maker Plus Tiers 2 or higher in at least four of the previous six months will be eligible to receive a reduced Tier 2 incentive in a given month where the Market Maker does not qualify for any Market Maker Plus tiers. For Select Symbols, this rebate is the applicable Tier 2 rebate reduced by $0.08 per contract. For Non-Select Symbols, this fee is the Tier 2 fee increased by $0.08 per contract.

For SPY, QQQ, and IWM, the Exchange currently provides the below maker rebates based on the applicable Market Maker Plus tier for which the Market Maker qualifies.

SPY, QQQ, and IWM

Market Maker Plus Tier (Specified Percentage)	**Regular Maker Rebate**	**Linked Maker Rebate**
Tier 1 (70% to less than 80%)	($0.00)	N/A
Tier 2 (80% to less than 85%)	($0.18)	($0.15)
Tier 3 (85% to less than 90%)	($0.22)	($0.19)
Tier 4 (90% or greater)	($0.26)	($0.23)

The Exchange now proposes to replace Market Maker Plus Tier 1 with new Tier 1a and Tier 1b. As proposed, the Market Maker Plus Tier qualification requirements and associated incentive will be as follows: (1) 50% to less than 65% to qualify for the $0.00 per contract Tier 1a regular maker rebate (i.e., free executions instead of paying the $0.11 per contract maker fee), and (2) 65% to less than 80% to qualify for the $0.05 per contract Tier 1b regular maker rebate. Current Market Maker Plus Tiers 2 – 4 as set forth above and the associated maker rebates will remain unchanged under this proposal. In addition, the Exchange will not offer any linked maker rebates for proposed Tiers 1a and 1b.

The proposed changes are intended to fortify Market Maker participation in the Exchange's Market Maker Plus program for SPY, QQQ, and IWM. By lowering the percentage of time required to be spent quoting at the NBBO that is necessary to qualify for the $0.00 and $0.05 per contract regular maker rebates in Tier 1a and Tier 1b, respectively, the Exchange seeks to make it easier for Market Makers to qualify as Market Maker Plus in SPY, QQQ, and IWM, and to better enable existing Market Maker Plus participants to maintain their qualifications as such. By fortifying participation in this program, the Exchange believes that the proposed changes will continue to encourage Market Makers to post quality markets in SPY, QQQ, and IWM, thereby improving trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market.

QCC and Solicitation Rebate

Currently, Members using the Qualified Contingent Cross ("QCC")[10] and/or other solicited crossing orders, including solicited orders executed in the Solicitation,[11] Facilitation[12] or Price Improvement Mechanisms ("PIM"),[13] receive rebates for each

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[10] 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).

[11] 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 Options 3, Section 11(d).

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

[13] The 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 Options 3, Section 13.

originating contract side in all symbols traded on the Exchange.[14] Once a Member reaches a certain volume threshold in QCC orders and/or other 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. 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,[15] which do not receive any rebate.

At this time, the Exchange proposes to no longer provide the QCC and Solicitation Rebate to solicited orders executed in PIM. The Exchange has observed that few members have received this rebate, with little associated volume.[16] To effect this change, the Exchange proposes to remove the reference to PIM in Section 6.A. In addition, the Exchange proposes to add a new defined term "Solicited Orders," which will encompass QCC orders and/or other solicited orders executed in the Solicitation and Facilitation Mechanisms, and use this defined term throughout Section 6.A to make clear what types of solicited crossing orders will qualify the Member for the QCC and Solicitation Rebate. The volume thresholds and applicable rebates will remain unchanged under this proposal.

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14 See Options 7, Section 6.A.

15 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 Options 1, Section 1(a)(37).

16 For example, of the contract sides that qualified for the QCC and Solicitation Rebate in March 2020, less than 1% of that volume represented solicited PIM orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] 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'…."[19]

The Commission and the courts have repeatedly expressed their preference for

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17 15 U.S.C. 78f(b).

18 15 U.S.C. 78f(b)(4) and (5).

19 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)).

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."[20]

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

Market Maker Plus

The Exchange believes that the proposed changes to its Market Maker Plus program for SPY, QQQ, and IWM are reasonable and equitable for several reasons. As noted above, the Exchange's proposal is intended to fortify participation in this program and improve market quality on ISE. The Exchange's proposal to lower the required percentage of time spent at the NBBO to qualify for Market Maker Plus Tiers 1a and 1b will improve the overall incentive to Market Makers to participate in this program by making it easier for Market Makers to qualify for Market Maker Plus in SPY, QQQ, and

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

IWM. By broadening the Market Maker Plus in this manner, the Exchange will encourage new participants in the program and help ensure that existing Market Maker Plus participants continue to qualify as such.

The Exchange will apply the proposed changes to SPY, QQQ, and IWM as they are three of the most actively traded symbols on ISE, and the Exchange therefore believes that incentivizing liquidity in these three names will have a significant and beneficial impact on market quality on the Exchange. Further, the Exchange believes that the proposed Tier 1a and Tier 1b qualifications for SPY, QQQ, and IWM will continue to require Market Makers to quote at the NBBO for a significant percentage of time in order to glean the benefits of the associated incentives.[21] For the foregoing reasons, the Exchange believes that its proposal will further encourage Market Makers to maintain tight markets in SPY, QQQ, and IWM, thereby increasing liquidity and attracting additional order flow to the Exchange, which will benefit all market participants in the quality of order interaction.

The Exchange also believes that the proposed changes to the Market Maker Plus program for SPY, QQQ, and IWM are not unfairly discriminatory as all Market Makers can qualify for this program by meeting the requirements that are designed to incentivize Market Makers to maintain quality markets. In addition, the Exchange continues to believe that it is not unfairly discriminatory to offer rebates under this program to only Market Makers. Market Makers, and in particular, those Market Makers that participate in the Market Maker Plus program and achieve Market Maker Plus status, add value

21 As proposed, a Market Maker would need to be on the NBBO 50% to less than 65% of the time to qualify for the Tier 1a rebate of $0.00, and 65% to less than 80% of the time for the Tier 1b rebate of $0.05.

through continuous quoting and are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not.

QCC and Solicitation Rebate

The Exchange believes that it is reasonable to no longer provide the QCC and Solicitation Rebate to solicited orders executed in PIM. As noted above, few Members have received this rebate for solicited PIM orders, and related volume is low.[22] As such, the Exchange believes that the proposed elimination will have minimal impact on Members. Furthermore, the Exchange notes that it already offers competitive pricing for PIM orders. For instance, the Exchange currently assesses a fee of $0.10 per contract for regular and complex PIM orders to all market participants (other than Priority Customers for which the Exchange currently charges no fee), which is significantly lower than the Exchange's other transaction fees, including the fees assessed to other Crossing Orders.[23] Furthermore, this $0.10 per contract fee may be further reduced if the non-Priority Customer executes a certain ADV threshold in PIM in a given month.[24] Accordingly, the Exchange believes that its pricing structure for PIM, with the proposed changes, will continue to encourage market participant PIM activity, including solicited PIM activity,

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22 See supra note 16.

23 A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, PIM or submitted as a QCC order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. Today, the Exchange charges all non-Priority Customers a $0.20 per contract fee for regular and complex Crossing Orders except PIM orders. Priority Customers are not charged Crossing Order fees. See Options 7, Section 3 and Section 4.

24 See Options 7, Section 3, note 13 (setting forth discounted PIM fees for regular orders) and Section 4, note 9 (setting forth discounted PIM fees for complex orders).

and will streamline its PIM incentive structure.

The Exchange also believes that its proposal is equitable and not unfairly discriminatory because with the proposed changes, no market participant will receive the rebate for solicited PIM orders. Accordingly, the Exchange's proposal will apply uniformly to all market participants.

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

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

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of Exchange market participant at a competitive disadvantage. The proposed changes to the Market Maker Plus program for SPY, QQQ, and IWM are intended to improve market quality by fortifying and encouraging participation in this program. As discussed above, the Exchange believes that its proposal will encourage all Market Makers to improve market quality by providing significant quoting at the NBBO in SPY, QQQ, and IWM, which in turn improves trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market, thereby attracting additional order flow to the Exchange. As it relates to the proposed elimination of the rebate for solicited PIM orders, the Exchange believes that its proposal will continue to encourage market participant activity in PIM given the Exchange's competitive PIM pricing structure, as discussed above. Accordingly, the Exchange believes that the proposed changes will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options 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.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. 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.[25] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2020-20 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-2020-20. This file number should be included on the subject line if e-mail is used. To help the Commission process

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25 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

All submissions should refer to File Number SR-ISE-2020-20 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.[26]

J. Matthew DeLesDernier
Assistant Secretary

26 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 3. Regular Order Fees and Rebates

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5. Market Makers that qualify for Market Maker Plus will not pay this fee if they meet the applicable tier thresholds set forth in the table below, and will instead be assessed the below fees or rebates based on the applicable tier for which they qualify.

* * * * *

SPY, QQQ, and IWM		
Market Maker Plus Tier (Specified Percentage)	**Regular Maker Rebate**	**Linked Maker Rebate** (9) (12)
Tier 1a ([7]50% to less than [80]65%)	($0.00)	N/A
Tier 1b (65% to less than 80%)	($0.05)	N/A
Tier 2 (80% to less than 85%)	($0.18)	($0.15)
Tier 3 (85% to less than 90%)	($0.22)	($0.19)
Tier 4 (90% or greater)	($0.26)	($0.23)

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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[,] or Facilitation [or Price Improvement] Mechanisms (together with QCC, collectively, "Solicited Orders"), 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 s]Solicited [crossing o]Orders during a month, the Exchange will provide rebates to that Member for all of its [QCC and s]Solicited [crossing o]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 s]Solicited [crossing o]Order traded contracts once the volume threshold is met. Members will receive the rebate for all [QCC and/or other s]Solicited [crossing o]Orders except for [QCC and] [s]Solicited [o]Orders between two Priority Customers. [QCC and s]Solicited [o]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 s]Solicited [o]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 s]Solicited [crossing o]Orders that qualify for the QCC and Solicitation Rebate program if they achieve in a given month: (i) combined [QCC and other s]Solicited [crossing o]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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