Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2021 - * 21
Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
✓	☐	☐	☐	✓	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
✓ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

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

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

Proposed Rule Change to Amend the Exchanges Pricing Schedule at Options 7, Section 6.A to modify the QCC and Solicitation Rebate Program

Contact Information

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

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

Signature

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

Date 09/30/2021

By John Zecca (Name *)

(Title *) EVP and Chief Legal Counsel

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

Date: 2021.09.30 12:57:03 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-ISE-2021-21 19b-4.doc

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

Exhibit 1 - Notice of Proposed Rule Change *

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SR-ISE-2021-21 Exhibit 1.doc

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

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

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

☐ Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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SR-ISE-2021-21 Exhibit 5.doc

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

Partial Amendment

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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 the Exchange's Pricing Schedule at Options 7, Section 6.A to modify its Qualified Contingent Cross ("QCC") and Solicitation rebate program, as described further below.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the "Board") on November 5, 2020. 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

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

2 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to modify the Exchange's QCC[3] and Solicitation Rebate program in Options 7, Section 6.A by: (i) providing a new additional rebate of $0.01 per originating contract side to qualifying Members, and (ii) amending the qualifications for the existing $0.01 additional rebate. The Exchange also proposes a technical amendment in Options 7, Section 4. Each change is discussed in detail below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 1, 2021.

Background

Today, Members using QCC and/or other solicited orders executed in the Solicitation[4] or Facilitation[5] Mechanisms (together with QCC, collectively, "Solicited Orders") receive rebates for each originating contract side in all symbols traded on the Exchange. Once a Member reaches a certain volume threshold in Solicited Orders during a month, the Exchange provides rebates to that Member for all of its eligible Solicited

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[3] 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).

[4] The Solicitation or Solicited Order Mechanism is a process by which an Electronic Access Member ("EAM") can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. See Options 3, Section 11(d).

[5] 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).

Order traded contracts for that month.[6] Rebates will be applied to Solicited Order traded contracts once the volume threshold is met. Members will receive the rebate for all Solicited Orders except for Solicited Orders between two Priority Customers.[7] Solicited Orders between two Priority Customers will not receive any rebate. The volume threshold and corresponding rebates are as follows:[8]

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)

For Members that achieve the highest volume threshold of 1,000,000 or more originating contract sides, the Exchange also currently provides an additional rebate of $0.01 per originating contract side on Solicited Orders that qualify for the QCC and Solicitation Rebate program if the Member achieves in a given month: (i) combined Solicited Order volume of more than 1,750,000 originating contract sides and (ii) Priority

6 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.

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

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

Customer Complex Tiers 6 - 9 in Section 4 (the “note * incentive”).[9] The purpose of this incentive is to encourage Members to provide high volumes of Solicited Order activity well above the highest QCC and Solicitation Rebate volume tier of 1,000,000 or more originating contract sides, and also provide significant complex order volume.

New QCC and Solicitation Incentive

To further encourage Solicited Order and complex order flow, the Exchange now proposes to provide a new additional incentive that will be structured similarly to the existing note * incentive, except the proposed incentive will also be applied to the lower QCC and Solicitation Rebate volume tiers (in addition to the highest volume tier). Furthermore, Members will be able to qualify for the proposed incentive by achieving less stringent Priority Customer Complex Tiers in Section 4. Specifically, the Exchange proposes that Members will receive an additional rebate of $0.01 per originating contract side on Solicited Orders that qualify for the QCC and Solicitation Rebate program if they achieve Priority Customer Complex Tier 2 or higher in a given month (the “note & incentive”).

The note & incentive will be applied to all of the QCC and Solicitation Rebate volume tiers except for the lowest tier (for which the Exchange does not currently provide a QCC and Solicitation Rebate). This additional rebate opportunity will be cumulative of the base rebates so that qualifying Members could receive up to $0.06 in the second QCC and Solicitation Rebate volume tier, $0.08 in the third tier, $0.10 in the

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

fourth tier, $0.11 in the fifth tier, and $0.13 in the sixth and highest tier (i.e., the $0.11 base rebate, the $0.01 note * incentive, and the $0.01 note & incentive).

While structured similarly to the existing note * incentive, the proposed incentive will be less stringent in that it will require Members to send a lower amount of Solicited Order and complex order volume in order to qualify for the incentive. As such, the proposed note & incentive may be more readily accessible to Members. If more Members find this rebate is accessible to them, then more will seek to qualify for it by sending Solicited Order and complex order flow to the Exchange.

Existing QCC and Solicitation Incentive

As described above, the Exchange currently offers the $0.01 note * incentive to qualifying Members if they achieve in a given month: (i) combined Solicited Order volume of more than 1,750,000 originating contract sides and (ii) Priority Customer Complex Tiers 6 – 9 in Section 4. When the Exchange adopted the note * incentive in 2019, there were only nine Priority Customer Complex Tiers in Section 4.[10] The Exchange has since amended its Pricing Schedule to adopt Priority Customer Complex Tier 10, and now proposes to update the existing Priority Customer Complex Tier qualification in the note * incentive accordingly.[11] As amended, the qualification will require Members to achieve Priority Customer Complex Tier 6 **or higher**. The amended qualification will therefore include Priority Customer Complex Tier 10 while also giving the Exchange flexibility to accommodate any similar changes to its Priority Customer

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10 See Securities Exchange Act Release No. 85647 (April 15, 2019), 84 FR 16300 (April 18, 2019) (SR-ISE-2019-09) (the "2019 Filing").

11 See Securities Exchange Act Release No. 90501 (November 24, 2020), 85 FR 77328 (December 1, 2020) (SR-ISE-2020-39) (the "2020 Filing").

Complex Tiers going forward. The Exchange notes that no Member is currently achieving both Priority Customer Complex Tier 10 and combined Solicited Order volume of more than 1,750,000 originating contract sides to receive the $0.01 additional incentive, so expects that the proposed changes will have minimal impact.

Technical Amendment

The Exchange proposes a minor, technical amendment in note 16 of Options 7, Section 4, which currently describes the Priority Customer Complex Tiers, to add a reference to Affiliated Entity[12] within the note's first sentence. The proposed change will simply align the note's language with corresponding language presently in the header of the Priority Customer complex rebates table.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14]

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12 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 Schedule of Fees. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Schedule of Fees. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will terminate after a one (1) year period, unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually by each party sending an email to the Exchange. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(4) and (5).

in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[15]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its

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

broader forms that are most important to investors and listed companies."[16]

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.

New QCC and Solicitation Incentive

The Exchange believes that its proposal to provide Members with an additional incentive of $0.01 per originating contract side on Solicited Orders that qualify for the QCC and Solicitation Rebate program if they achieve Priority Customer Complex Tier 2 or higher in a given month is reasonable because this incentive is intended to encourage Members to send more Solicited Order and complex order flow to the Exchange. As discussed above, the proposed note & incentive is similar to the existing note * incentive, except the proposed incentive will be less stringent in that it will require Members to send a lower amount of Solicited Order and complex order volume in order to qualify for the incentive. As such, the proposed note & incentive may be more readily accessible to Members. If more Members find this rebate is accessible to them, then more will seek to qualify for it by sending Solicited Order and complex order flow to the Exchange. All

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

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

The Exchange further believes that the proposed note & incentive is equitable and not unfairly discriminatory because any Member may qualify for the proposed incentive by submitting the requisite volume of Solicited Orders and complex orders. Furthermore, the Exchange will uniformly apply the proposed incentive to all qualifying Members.

Existing QCC and Solicitation Incentive

The Exchange believes that the proposed changes to amend the existing qualification in the note * incentive is reasonable for the following reasons. First, the proposed changes would more closely align to the Exchange's original intent in the 2019 Filing to provide the note * incentive to qualifying Members that achieved anything above 1.000% of 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 (i.e., Priority Customer Complex Tiers 6 – 9 at the time of the 2019 Filing).[17] The 2020 Filing amended, among other changes, the Priority Customer Complex Tiers by adding a new Tier 10 as the highest tier and adjusting the volume percentages in Tiers 8 and 9 accordingly.[18] The volume percentages in Tier 6, however, remained the same with the 2020 Filing, so even with the addition of Tier 10, corresponding changes should have been made to the note * incentive qualifications to include Tier 10 to align with the original intent of this incentive. Second, as noted above, the proposed changes to include Tier 10 in the incentive

17 See 2019 Filing.

18 See 2020 Filing.

qualifications are expected to have minimal impact as no Member is currently achieving both Priority Customer Complex Tier 10 and combined Solicited Order volume of more than 1,750,000 originating contract sides to receive the $0.01 additional rebate.

Lastly, the Exchange believes that the proposed changes to the existing qualification are equitable and not unfairly discriminatory because any Member may qualify for the note * incentive by submitting the requisite volume of Solicited Orders and complex orders. The Exchange will apply the amended qualification to all qualifying Members uniformly.

Technical Amendment

The Exchange's proposal to amend note 16 in Options 7, Section 4 is reasonable, equitable, and not unfairly discriminatory. As discussed above, the Exchange is simply aligning the note's language corresponding language currently in the header of the Priority Customer complex rebates table. The Exchange believes that the proposed changes will bring clarity and transparency to the Exchange's Pricing Schedule.

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 market participant at a competitive disadvantage. As discussed above, any Member may qualify for the QCC and Solicitation Rebates, including the note * incentive and the proposed note & incentive. The proposed changes are primarily aimed at attracting greater Solicited Order and complex order flow to the Exchange. To the extent the Exchange's proposal incentivizes Members to bring more order flow to ISE, the Exchange believes that the resulting additional volume and liquidity will benefit 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. 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 exchanges 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,[19] 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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19 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-ISE-2021-21)

September__, 2021

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, Section 6.A to modify the QCC and Solicitation Rebate Program

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 September 30, 2021, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 6.A to modify its Qualified Contingent Cross ("QCC") and Solicitation rebate program, as described further below.

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

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

2 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at 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 modify the Exchange's QCC[3] and Solicitation Rebate program in Options 7, Section 6.A by: (i) providing a new additional rebate of $0.01 per originating contract side to qualifying Members, and (ii) amending the qualifications for the existing $0.01 additional rebate. The Exchange also proposes a technical amendment in Options 7, Section 4. Each change is discussed in detail below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 1, 2021.

Background

Today, Members using QCC and/or other solicited orders executed in the Solicitation[4] or Facilitation[5] Mechanisms (together with QCC, collectively, "Solicited

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3 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).

4 The Solicitation or Solicited Order Mechanism is a process by which an Electronic Access Member ("EAM") can attempt to execute orders of 500 or

Orders") receive rebates for each originating contract side in all symbols traded on the Exchange. Once a Member reaches a certain volume threshold in Solicited Orders during a month, the Exchange provides rebates to that Member for all of its eligible Solicited Order traded contracts for that month.[6] Rebates will be applied to Solicited Order traded contracts once the volume threshold is met. Members will receive the rebate for all Solicited Orders except for Solicited Orders between two Priority Customers.[7] Solicited Orders between two Priority Customers will not receive any rebate. The volume threshold and corresponding rebates are as follows:[8]

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)

more contracts it represents as agent against contra orders that it solicited. See Options 3, Section 11(d).

5 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).

6 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.

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

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

For Members that achieve the highest volume threshold of 1,000,000 or more originating contract sides, the Exchange also currently provides an additional rebate of $0.01 per originating contract side on Solicited Orders that qualify for the QCC and Solicitation Rebate program if the Member achieves in a given month: (i) combined Solicited Order volume of more than 1,750,000 originating contract sides and (ii) Priority Customer Complex Tiers 6 - 9 in Section 4 (the "note * incentive").[9] The purpose of this incentive is to encourage Members to provide high volumes of Solicited Order activity well above the highest QCC and Solicitation Rebate volume tier of 1,000,000 or more originating contract sides, and also provide significant complex order volume.

New QCC and Solicitation Incentive

To further encourage Solicited Order and complex order flow, the Exchange now proposes to provide a new additional incentive that will be structured similarly to the existing note * incentive, except the proposed incentive will also be applied to the lower QCC and Solicitation Rebate volume tiers (in addition to the highest volume tier). Furthermore, Members will be able to qualify for the proposed incentive by achieving less stringent Priority Customer Complex Tiers in Section 4. Specifically, the Exchange proposes that Members will receive an additional rebate of $0.01 per originating contract side on Solicited Orders that qualify for the QCC and Solicitation Rebate program if they achieve Priority Customer Complex Tier 2 or higher in a given month (the "note & incentive").

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

The note & incentive will be applied to all of the QCC and Solicitation Rebate volume tiers except for the lowest tier (for which the Exchange does not currently provide a QCC and Solicitation Rebate). This additional rebate opportunity will be cumulative of the base rebates so that qualifying Members could receive up to \$0.06 in the second QCC and Solicitation Rebate volume tier, \$0.08 in the third tier, \$0.10 in the fourth tier, \$0.11 in the fifth tier, and \$0.13 in the sixth and highest tier (i.e., the \$0.11 base rebate, the \$0.01 note * incentive, and the \$0.01 note & incentive).

While structured similarly to the existing note * incentive, the proposed incentive will be less stringent in that it will require Members to send a lower amount of Solicited Order and complex order volume in order to qualify for the incentive. As such, the proposed note & incentive may be more readily accessible to Members. If more Members find this rebate is accessible to them, then more will seek to qualify for it by sending Solicited Order and complex order flow to the Exchange.

<u>Existing QCC and Solicitation Incentive</u>

As described above, the Exchange currently offers the \$0.01 note * incentive to qualifying Members if they achieve in a given month: (i) combined Solicited Order volume of more than 1,750,000 originating contract sides and (ii) Priority Customer Complex Tiers 6 – 9 in Section 4. When the Exchange adopted the note * incentive in 2019, there were only nine Priority Customer Complex Tiers in Section 4.[10] The Exchange has since amended its Pricing Schedule to adopt Priority Customer Complex Tier 10, and now proposes to update the existing Priority Customer Complex Tier

[10] <u>See</u> Securities Exchange Act Release No. 85647 (April 15, 2019), 84 FR 16300 (April 18, 2019) (SR-ISE-2019-09) (the "2019 Filing").

qualification in the note * incentive accordingly.[11] As amended, the qualification will require Members to achieve Priority Customer Complex Tier 6 **or higher**. The amended qualification will therefore include Priority Customer Complex Tier 10 while also giving the Exchange flexibility to accommodate any similar changes to its Priority Customer Complex Tiers going forward. The Exchange notes that no Member is currently achieving both Priority Customer Complex Tier 10 and combined Solicited Order volume of more than 1,750,000 originating contract sides to receive the $0.01 additional incentive, so expects that the proposed changes will have minimal impact.

Technical Amendment

The Exchange proposes a minor, technical amendment in note 16 of Options 7, Section 4, which currently describes the Priority Customer Complex Tiers, to add a reference to Affiliated Entity[12] within the note's first sentence. The proposed change will simply align the note's language with corresponding language presently in the header of the Priority Customer complex rebates table.

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11 See Securities Exchange Act Release No. 90501 (November 24, 2020), 85 FR 77328 (December 1, 2020) (SR-ISE-2020-39) (the "2020 Filing").

12 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 Schedule of Fees. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Schedule of Fees. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will terminate after a one (1) year period, unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually by each party sending an email to the Exchange. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] 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'…."[15]

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13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(4) and (5).

15 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)).

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[16]

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.

<u>New QCC and Solicitation Incentive</u>

The Exchange believes that its proposal to provide Members with an additional incentive of $0.01 per originating contract side on Solicited Orders that qualify for the QCC and Solicitation Rebate program if they achieve Priority Customer Complex Tier 2 or higher in a given month is reasonable because this incentive is intended to encourage Members to send more Solicited Order and complex order flow to the Exchange. As discussed above, the proposed note & incentive is similar to the existing note * incentive,

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

except the proposed incentive will be less stringent in that it will require Members to send a lower amount of Solicited Order and complex order volume in order to qualify for the incentive. As such, the proposed note & incentive may be more readily accessible to Members. If more Members find this rebate is accessible to them, then more will seek to qualify for it by sending Solicited Order and complex order flow to the Exchange. All market participants benefit from increased order interaction when more order flow is available on ISE.

The Exchange further believes that the proposed note & incentive is equitable and not unfairly discriminatory because any Member may qualify for the proposed incentive by submitting the requisite volume of Solicited Orders and complex orders. Furthermore, the Exchange will uniformly apply the proposed incentive to all qualifying Members.

Existing QCC and Solicitation Incentive

The Exchange believes that the proposed changes to amend the existing qualification in the note * incentive is reasonable for the following reasons. First, the proposed changes would more closely align to the Exchange's original intent in the 2019 Filing to provide the note * incentive to qualifying Members that achieved anything above 1.000% of 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 (i.e., Priority Customer Complex Tiers 6 – 9 at the time of the 2019 Filing).[17] The 2020 Filing amended, among other changes, the Priority Customer Complex Tiers by adding a new Tier 10 as the highest tier

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[17] See 2019 Filing.

and adjusting the volume percentages in Tiers 8 and 9 accordingly.[18] The volume percentages in Tier 6, however, remained the same with the 2020 Filing, so even with the addition of Tier 10, corresponding changes should have been made to the note * incentive qualifications to include Tier 10 to align with the original intent of this incentive. Second, as noted above, the proposed changes to include Tier 10 in the incentive qualifications are expected to have minimal impact as no Member is currently achieving both Priority Customer Complex Tier 10 and combined Solicited Order volume of more than 1,750,000 originating contract sides to receive the $0.01 additional rebate.

Lastly, the Exchange believes that the proposed changes to the existing qualification are equitable and not unfairly discriminatory because any Member may qualify for the note * incentive by submitting the requisite volume of Solicited Orders and complex orders. The Exchange will apply the amended qualification to all qualifying Members uniformly.

Technical Amendment

The Exchange's proposal to amend note 16 in Options 7, Section 4 is reasonable, equitable, and not unfairly discriminatory. As discussed above, the Exchange is simply aligning the note's language corresponding language currently in the header of the Priority Customer complex rebates table. The Exchange believes that the proposed changes will bring clarity and transparency to the Exchange's Pricing Schedule.

18 See 2020 Filing.

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 market participant at a competitive disadvantage. As discussed above, any Member may qualify for the QCC and Solicitation Rebates, including the note * incentive and the proposed note & incentive. The proposed changes are primarily aimed at attracting greater Solicited Order and complex order flow to the Exchange. To the extent the Exchange's proposal incentivizes Members to bring more order flow to ISE, the Exchange believes that the resulting additional volume and liquidity will benefit 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. 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 exchanges 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.[19] 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-2021-21 on the subject line.

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2021-21 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-2021-21 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.[20]

J. Matthew DeLesDernier
Assistant Secretary

[20] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq ISE, LLC Rules

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Options 7 Pricing Schedule

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Section 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)	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% - 0.450%	($0.35)	($0.70)
Tier 4	Above 0.450% - 0.750%	($0.40)	($0.75)
Tier 5	Above 0.750% - 1.000%	($0.45)	($0.80)
Tier 6	Above 1.000% - 1.350%	($0.47)	($0.80)
Tier 7	Above 1.350% -	($0.48)	($0.80)

	2.000%		
Tier 8	Above 2.000% - 2.750%	($0.52)	($0.85)
Tier 9	Above 2.750% - 4.500%	($0.52)	($0.86)
Tier 10	Above 4.500%	($0.53)	($0.88)

* * * * *

16. Priority Customer Complex Tiers are based on Total Affiliated Member <u>or Affiliated Entity</u> Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. All Complex Order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may aggregate their Complex Order volume for purposes of calculating Priority Customer Rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume.

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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 orders executed in the Solicitation or Facilitation 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 Solicited Orders during a month, the Exchange will provide rebates to that Member for all of its Solicited Order traded contracts for that month. All eligible volume from affiliated Members will be aggregated in determining 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 Solicited Order traded contracts once the volume threshold is met. Members will receive the rebate for all Solicited Orders except for Solicited Orders between two Priority Customers. Solicited Orders between two Priority Customers will not receive any rebate. The volume threshold and corresponding rebates are as follows:

» Volume resulting from all 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 Solicited Orders that qualify for the QCC and Solicitation Rebate program if they achieve in a given month: (i) combined Solicited Order volume of more than 1,750,000 originating contract sides and (ii) Priority Customer Complex Tier[s] 6 [- 9]or higher in Section 4.

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

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