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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83841; File No. SR-ISE-2018-72]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees at Section II

August 14, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 30, 2018, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 Schedule of Fees at Section II entitled “Complex Orders Fees and Rebates.”

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on August 1, 2018.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 amend the Schedule of Fees at Section II entitled "Complex Orders Fees and Rebates." Specifically, the Exchange is proposing to lower the qualifying Complex Order Volume in Tiers 4-7, as explained in more detail below, to attract a greater amount of Priority Customer<sup>3</sup> Complex Order flow on ISE by paying the same rebates, but requiring less qualifying volume in those tiers.

Currently, the Exchange has a pricing structure in place for Complex Orders that provides rebates to Priority Customer Complex Orders in order to encourage Members to bring that order flow to the Exchange. Specifically, Priority Customer Complex Orders are provided rebates in Select Symbols<sup>4</sup> and Non-Select Symbols.<sup>5</sup> Rebates are provided per contract per leg if the order

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<sup>3</sup> A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Rule 100(a)(37A). Unless otherwise noted, when used in this Schedule of Fees the term "Priority Customer" includes "Retail" as defined below.

<sup>4</sup> "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

<sup>5</sup> "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. For Non-Select Symbols, no rebates will be paid for orders in NDX, NQX and MNX

trades with non-Priority Customer orders in the Complex Order Book or trades with quotes and orders on the regular order book. Customer Complex Order rebates are paid a rebate based on a percentage of industry volume. Priority Customer Complex Tiers are based on Total Affiliated Member Complex Order Volume (excluding Crossing Orders and Responses to Crossing Orders) and are 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.<sup>6</sup> Currently, there are nine Priority Customer Complex Order Tiers based on the percentage of industry volume calculation:

|        |                       |          |          |
|--------|-----------------------|----------|----------|
| Tier 1 | 0.000% - 0.200%       | (\$0.25) | (\$0.40) |
| Tier 2 | Above 0.200% - 0.400% | (\$0.30) | (\$0.55) |
| Tier 3 | Above 0.400% - 0.600% | (\$0.35) | (\$0.70) |
| Tier 4 | Above 0.600% - 0.800% | (\$0.40) | (\$0.75) |
| Tier 5 | Above 0.800% - 1.000% | (\$0.45) | (\$0.80) |
| Tier 6 | Above 1.000% - 1.600% | (\$0.46) | (\$0.80) |
| Tier 7 | Above 1.600% - 2.000% | (\$0.48) | (\$0.80) |
| Tier 8 | Above 2.000% - 3.250% | (\$0.50) | (\$0.85) |
| Tier 9 | Above 3.250%          | (\$0.50) | (\$0.85) |

At this time the Exchange proposes to amend the Total Affiliated Member Complex Order Volume, which excludes Crossing Orders and Responses to Crossing Orders, that are

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<sup>6</sup> An “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A. Furthermore, “Customer Total Consolidated Volume” means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

calculated as a percentage of Customer Total Consolidated Volume in Tiers 4-7. Today, Tier 4 requires Total Affiliated Member Complex Order Volume between 0.600% and 0.800%. The Exchange is amending Tier 4 to require Total Affiliated Member Complex Order Volume between 0.600% and 0.750%. Today, Tier 5 requires Total Affiliated Member Complex Order Volume between 0.800% and 1.000%. The Exchange is amending Tier 5 to require Total Affiliated Member Complex Order Volume between 0.750% and 1.000%. So, today a portion of Complex Order volume which qualified for Tier 4 volume would qualify as Tier 5 volume pursuant to this proposal. Today, Tier 6 requires Total Affiliated Member Complex Order Volume between 1.000% - 1.600%. The Exchange is amending Tier 6 to require Total Affiliated Member Complex Order Volume between 1.000% - 1.500%. So, today a portion of Complex Order volume which qualified as Tier 5 volume would qualify for Tier 6 volume pursuant to this proposal. Today, Tier 7 requires Total Affiliated Member Complex Order Volume between 1.600% - 2.000%. The Exchange is amending Tier 7 to require Total Affiliated Member Complex Order Volume between 1.500% - 2.000%. So, today a portion of Complex Order volume which qualified as Tier 6 volume would qualify as Tier 7 volume pursuant to this proposal. Members may earn greater rebates in Select and Non-Select Symbols simply by sending in certain of the same volume in Tiers 4-7 today, provided it would qualify for the higher tier pursuant to this proposal which lowers volume in Tier 4-7. No changes are proposed to Tier 1-3 or Tiers 8 and 9. No changes are proposed to any corresponding rebates in either Select or Non-Select Symbols.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</sup> 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 believes that the proposed changes to the Priority Customer Complex Order Tiers are reasonable as these changes are designed to incentivize Members to trade Complex Orders, and, in particular Priority Customer Complex Orders, on the Exchange. The Exchange's proposal, which lowers the qualifying Total Affiliated Member Complex Order Volume in Tiers 4-7, is intended to encourage Members to submit the same or a greater amount of Priority Customer Complex Order flow to obtain a higher rebate.

In addition, the Exchange believes that the proposed changes are equitable and not unfairly discriminatory as these changes are designed to encourage Members to transact more Complex Order flow, and in particular, Priority Customer Complex Orders, on ISE. The Exchange does not believe that it is unfairly discriminatory to provide rebates only to Priority Customer Complex Orders as this type of order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers. The Exchange believes that the proposed changes to the Priority Customer Complex Tiers will benefit all market participants that trade on ISE by increasing their opportunities to trade and earn rebates.

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

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. The Exchange believes that the proposed changes will enhance both inter-market and intra-market competition by increasing opportunities for Members to obtain rebates by transacting Priority Customer Complex Orders. The Exchange believes that the proposed fees and rebates remain competitive with those on other options markets, and will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants. Priority Customer Complex Order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers.

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. At any time within 60 days of the filing of the proposed

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2018-72 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2018-72. 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 website (<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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2018-72 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.<sup>11</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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<sup>11</sup> 17 CFR 200.30-3(a)(12).

