

2020, will prevent unnecessary impediments to FINRA's operations and FINRA's investor protection goals that would otherwise result if the temporary amendments were to expire on July 31, 2020. FINRA does not believe that the proposed rule change will have any material negative effect on members and will not impose any new costs.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As FINRA requested in connection with its May 8 Filing and June 10 Filing, FINRA has also asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. As in both its May 8 Filing and June 10 Filing, FINRA has reiterated that the requested relief in this proposed rule change will help minimize the impact of the COVID-19 outbreak on FINRA's operations, allowing FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.<sup>11</sup> We also note that this proposal, like FINRA's May 8 Filing and June 10 Filing,

provides only temporary relief from, as FINRA states, the timing, method of service and other procedural requirements, described more fully in FINRA's May 8 Filing, during the period in which FINRA's operations are impacted by COVID-19. As proposed, these changes would be in place through a date to be specified in a public notice issued by FINRA, which date will be at least two weeks from the date of the notice, and no later than December 31, 2020.<sup>12</sup> For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>13</sup>

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 necessary or appropriate in the public interest, for the protection of investors, or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2020-022 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>12</sup> As noted above, *see supra* note 6, FINRA states that if the temporary relief from the rule requirements identified in the May 8 Filing is necessary beyond December 31, 2020, FINRA will submit a separate rule filing to extend the expiration date of the temporary relief under those rules. In addition, if conditions improve such that the temporary relief is no longer necessary prior to December 31, 2020, the proposed rule change would allow FINRA to set an earlier expiration date for the temporary relief.

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2020-022. This file number should be included on the subject line if email 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, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2020-022 and should be submitted on or before August 25, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-16875 Filed 8-3-20; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-89421; File No. SR-ISE-2020-30]

**Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Sections 1, 3, and 6**

July 29, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

<sup>11</sup> *See* May 8 Filing, 85 FR at 31833.

(“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on July 20, 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 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 Options 7, Section 6, Other Options Fees and Rebates. The Exchange also proposes an amendment to Options 7, Section 1, General Provisions, and Options 7, Section 3, Regular Order Fees and Rebates.

The Exchange originally filed the proposed pricing change on July 9, 2020 (SR–ISE–2020–29). On July 20, 2020, the Exchange withdrew that filing and submitted this filing.

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.

### **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 Exchange proposes to amend Options 7, Section 6, Other Options Fees and Rebates. Specifically, the Exchange proposes to eliminate a discount in Options 7, Section 6H related to the Crossing Fee Cap. The Exchange also proposes an amendment to Options 7, Section 1, General Provisions, and Options 7, Section 3,

Regular Order Fees and Rebates. Each change will be described below.

##### **Options 7, Section 6**

Today, the Exchange offers a Crossing Fee Cap of \$90,000 per month, per Member on all Firm Proprietary<sup>3</sup> transactions that are part of the originating or contra-side of a Crossing Order<sup>4</sup> within Options 7, Section 6H. Members that elect, prior to the start of the month, to pay \$65,000 per month, per Member are entitled to have their crossing fees capped at that level instead.

By way of background regarding the Crossing Fee Cap, today, fees charged by the Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options are set forth in Options 7, Section 5 and are not included in the calculation of the monthly fee cap. A service fee of \$0.00 per side will apply to all order types that are eligible for the fee cap.<sup>5</sup> Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap the Exchange will attribute eligible volume to the ISE Member on whose behalf the Crossing Order was executed.

At this time, the Exchange is proposing to eliminate the opportunity for Members to elect, prior to the start of the month, to pay \$65,000 per month, per Member to have their crossing fees capped at that level, instead of the current cap of \$90,000 per month, per Member. The Exchange has offered this reduced cap since 2015, provided Members pay prior to the start of the month. While some Members did elect this option in prior years, and continued to elect this option through 2020, no new Member initially elected this option in 2020. The Exchange does not believe this discount incentivizes Members to bring Crossing Order flow to the Exchange as originally intended. With this proposal, the Exchange would

not accept elections from Members to have their crossing fees capped at \$65,000 for the month of July 2020 and moving forward. Finally, the Exchange notes that all Members remain eligible to have their fees capped at \$90,000 per month, per Member.

The Exchange proposes several technical amendments to Options 7, Section 6H including: (1) Adding punctuation; (2) capitalizing the term “member” in several places; and (3) updating a citation from “Section III” to “Section 5.”

##### **Options 7, Section 1**

The Exchange proposes an amendment to Options 7, Section 1, General Provisions. The Exchange proposes to amend the description of Penny Symbols to replace the term “Penny Pilot Program” with “Penny Interval Program.” On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the “OLPP Program”).<sup>6</sup> The Exchange recently filed a proposal to amend ISE Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the “OLPP”).<sup>7</sup> The Exchange’s proposal amended ISE Options 3, Section 3 to refer to a Penny Interval Program instead of a Penny Pilot Program. This proposed change to Options 7, Section 1 conforms the name of the program.

##### **Options 7, Section 3**

The Exchange proposes to update an incorrect reference within Options 7, Section 3 to the Crossing Fee Cap to change the reference from “Section IV.H” to “Options 7, Section 6.H.”

##### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</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 Commission and the courts have repeatedly expressed their preference for competition over regulatory

<sup>3</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See Options 7, Section 1.

<sup>4</sup> Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or Qualified Contingent Cross order. All eligible volume from affiliated Members is aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member’s Form BD, Schedule A.

<sup>5</sup> The service fee shall apply once a member reaches the fee cap level and shall apply to every contract side above the fee cap. A member who does not reach the monthly fee cap will not be charged the service fee.

<sup>6</sup> See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4–443) (“Approval Order”).

<sup>7</sup> See SR–ISE–2020–24 (not yet published).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

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

<sup>2</sup> 17 CFR 240.19b–4.

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.”<sup>10</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>11</sup> (“*NetCoalition*”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>12</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>13</sup>

Further, “[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’ . . . .”<sup>14</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

#### Options 7, Section 6

The Exchange believes that it is reasonable to amend Options 7, Section 6H to eliminate the opportunity for Members to elect, prior to the start of the month, to pay \$65,000 per month, per Member to have their crossing fees capped at that level instead of at \$90,000 per month, per Member. This discount was intended to incentivize members to bring Crossing Order flow to the Exchange. While some Members did

elect this option in prior years, and continued to elect this option through 2020, no new Member initially elected this option in 2020. The Exchange notes that only a small percentage of ISE Members elected this discount and, therefore, would no longer receive the discount going forward. The Exchange does not believe this discount incentivizes Members to bring Crossing Order flow to the Exchange as originally intended and, therefore, proposes to eliminate this discount. The Exchange was unable to incentivize any new Member to elect the discount in 2020 and, therefore, attract additional Crossing Order flow. The Exchange would continue to cap all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order at \$90,000 per month, per Member.

The Exchange believes that it is equitable and not unreasonably discriminatory to amend Options 7, Section 6H to eliminate the opportunity for Members to elect, prior to the start of the month, to pay \$65,000 per month, per Member to have their crossing fees capped at that level instead of at \$90,000 per month, per Member. The Exchange would not accept elections from any Member to have their crossing fees capped at \$65,000 per month, per Member for the month of July 2020 and moving forward. Also, all Members remain eligible to have their fees capped at \$90,000 per month, per Member. Specifically, with respect to the small percentage of ISE Members, who elected this discount and would no longer receive the discount, the Exchange notes that those Members would continue to be offered the opportunity to cap their crossing fees at \$90,000. Also, the Exchange notes that it offers Members discounts and rebates to attract order flow to ISE. Depending on the amount of order flow attracted to the Exchange, certain discounts or rebates may be discontinued in favor of other discounts or rebates. For example, as of July 1, 2020, the Exchange began offering a Facilitation and Solicitation Break-up Rebate for Non-Select Symbols to encourage increased originating regular and complex Non-Nasdaq ISE Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer, and Priority Customer order flow to the Facilitation and Solicited Order Mechanisms, thereby potentially increasing the initiation of and volume executed through such auctions. Additional auction order flow provides market participants with additional trading

opportunities at potentially improved prices.<sup>15</sup>

The Exchange’s proposed technical amendments to Options 7, Section 6H are reasonable, equitable and not unfairly discriminatory. These amendments are non-substantive and clarify the current rule text.

#### Options 7, Section 1

The Exchange’s proposal to amend Options 7, Section 1 to replace the term “Penny Pilot Program” with “Penny Interval Program” is reasonable, equitable and not unfairly discriminatory. This amendment seeks to conform the name of the program, which governs the listing of certain standardized options.

#### Options 7, Section 3

The Exchange’s proposal to update an incorrect reference within Options 7, Section 3 to the Crossing Fee Cap is reasonable, equitable and not unfairly discriminatory. This change will bring clarity to the Pricing Schedule.

#### 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.

#### Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

<sup>10</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“*Regulation NMS Adopting Release*”).

<sup>11</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>12</sup> See *NetCoalition*, at 534–535.

<sup>13</sup> *Id.* at 537.

<sup>14</sup> *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>15</sup> See Securities Exchange Act Release No. 89321 (July 15, 2020) (SR–ISE–2020–26).

### Intramarket Competition

The proposed amendments do not impose an undue burden on intramarket competition.

### Options 7, Section 6

The Exchange believes that it does not impose an undue burden on competition to amend Options 7, Section 6H to eliminate the opportunity for Members to elect, prior to the start of the month, to pay \$65,000 per month, per Member to have their crossing fees capped at that level instead of at \$90,000 per month, per Member. The Exchange has offered this opportunity to all Members. While some Members did elect this option in prior years, and continued to elect this option through 2020, no new Member initially elected this option in 2020. Therefore, the Exchange believes that eliminating the opportunity for Members to elect, prior to the start of the month, to pay the discounted fee does not impose an undue burden on competition, as there was no new interest from Members, who had not previously elected this opportunity, in 2020 to pay the lower fee. The Exchange would not accept elections from any Member to have their crossing fees capped at \$65,000 per month, per Member for the month of July 2020 and moving forward. Also, all Members remain eligible to have their fees capped at \$90,000 per month, per Member.

The Exchange's proposed technical amendments to Options 7, Section 6H are non-substantive and do not impose a burden on competition.

### Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1 to replace the term "Penny Pilot Program" with "Penny Interval Program" does not impose an undue burden on competition. This amendment seeks to conform the name of the program, which governs the listing of certain standardized options.

### Options 7, Section 3

The Exchange's proposal to update an incorrect reference within Options 7, Section 3 to the Crossing Fee Cap does not impose an undue burden on competition. This change will bring clarity to the Pricing Schedule.

### 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 of Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>16</sup> and Rule 19b-4(f)(2)<sup>17</sup> thereunder. 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2020-30 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-2020-30. This file number should be included on the subject line if email 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-2020-30 and should be submitted on or before August 25, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-16873 Filed 8-3-20; 8:45 am]

BILLING CODE 8011-01-P

### SMALL BUSINESS ADMINISTRATION

#### Disaster Declaration #16532; California Disaster Number CA-00321 Declaration of Economic Injury Administrative Declaration Amendment of an Economic Injury Disaster for the State of California

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 07/07/2020.

*Incident:* Civil Unrest.

*Incident Period:* 05/26/2020 and continuing.

**DATES:** Issued on 07/27/2020.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/07/2021.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** The notice of an Economic Injury declaration for the State of California dated 07/07/2020, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* San Diego.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>18</sup> 17 CFR 200.30-3(a)(12).