IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act and Rules 17Ad–22(e)(2)(i) and (v) and 17Ad–22(e)(6)(iv) thereunder.[17]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[18] that the proposed rule change (SR–ICC–2021–013), be, and hereby is, approved.[19]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–13102 Filed 6–22–21; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 240.17Ad–22(e)(6)(iv).

[18] 15 U.S.C. 78s(b)(2).

[19] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92190; File No. SR–ISE–2021–13]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE's Pricing Schedule at Options 7, Section 3, "Regular Order Fees and Rebates" and Section 4, "Complex Order Fees and Rebates"

June 16, 2021.

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 June 8, 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 ISE's Pricing Schedule at Options 7, Section 3, ''Regular Order Fees and Rebates'' and Section 4, ''Complex Order Fees and Rebates.''

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

[2] 17 CFR 240.19b–4.

The Exchange originally filed the proposed pricing change on June 1, 2021 (SR–ISE–2021–12). On June 8, 2021, 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 ISE's Pricing Schedule at Options 7, Section 3, ''Regular Order Fees and Rebates'' and Section 4, ''Complex Order Fees and Rebates.'' Each change is described below.

Options 7, Section 3 Regular Order Fees and Rebates

Today, the Exchange assesses a Maker Fee of $0.18 per contract in Select Symbols[3] for Market Maker,[4] Non-Nasdaq ISE Market Maker (FarMM),[5] Firm Proprietary[6]/Broker-Dealer,[7] and Professional Customer[8] orders. Priority Customer[9] orders are not assessed a Select Symbol Maker Fee.

[3] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. *See* Options 7, Section 1.

[4] This fee applies to Market Maker orders sent to the Exchange by Electronic Access Members. Market Makers that qualify for Market Maker Plus will not pay this fee if they meet the applicable tier thresholds set forth in Options 7, Section 3. Market Makers will instead be assessed fees or rebates based on the applicable tier for which they qualify. *See* notes 5 and 8 within Options 7, Section 3. Market Maker Plus for Select Symbols is not being amended. The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[5] A ''Non-Nasdaq ISE Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. *See* Options 7, Section 1.

Further, today, pursuant to Options 7, Section 3, note 10, a Market Maker is not charged a fee or paid a rebate when trading against non-Priority Customer Complex Orders[10] that leg into the regular[11] order book. Also, today, pursuant to Options 7, Section 3, note 11, a Market Maker, FarMM, Firm Proprietary/Broker Dealer, and Professional Customer are assessed a $0.25 per contract fee, instead of the applicable fee or rebate, when trading against Priority Customer Complex Orders that leg into the regular order book. Today, Market Makers that qualify for Market Maker Plus in Select Symbols pay a $0.15 per contract fee in the symbols for which they qualify for Market Maker Plus when trading against Priority Customer Complex Orders of less than 50 contracts in Select Symbols that leg into the regular order book. Further, Market Makers that qualify for Market Maker Plus in Select Symbols do not pay any fee nor receive any rebate in the symbols for which they qualify for Market Maker Plus when trading against Priority Customer Complex Orders of 50 contracts or more in Select Symbols that leg into the regular order book.

The Exchange proposes to remove rule text from Options 7, Section 3, note 11, which provides that Market Makers that qualify for Market Maker Plus in Select Symbols will pay a $0.15 per contract fee in symbols for which they

[6] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account. *See* Options 7, Section 1.

[7] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. *See* Options 7, Section 1.

[8] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* Options 7, Section 1.

[9] 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 ISE Options 1, Section 1(a)(37). Unless otherwise noted, when used in the Pricing Schedule the term ''Priority Customer'' includes ''Retail.'' A ''Retail'' order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Options 7, Section 1.

[10] A ''Complex Order'' is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, as provided in Nasdaq ISE Options 3, Section 14, as well as Stock-Option Orders. *See* Options 7, Section 1.

[11] A ''Regular Order'' is an order that consists of only a single option series and is not submitted with a stock leg. *See* Options 7, Section 1.

qualify for Market Maker Plus when trading against Priority Customer Complex Orders of less than 50 contracts in Select Symbols that leg into the regular order book. Additionally, the Exchange proposes to modify the remainder of note 11 to provide, ''Market Makers that qualify for Market Maker Plus in Select Symbols will not pay this fee nor receive any rebate in symbols for which they qualify for Market Maker Plus when trading against Priority Customer Complex Orders leg into the regular order book.''

With the proposed amendments to note 11 of Options 7, Section 3, a Market Maker that qualifies for Market Maker Plus when trading against Priority Customer Complex Orders leg into the regular order book would no longer pay a $0.15 per contract fee, rather, the Market Maker would pay no fee, nor receive any rebate similar to the manner in which Market Makers are priced today for orders of 50 contracts or more in Select Symbols, when those Market Makers qualify for Market Maker Plus and trade against Priority Customer Complex Orders leg into the regular order book. This proposal would align pricing for Market Makers that qualify for Market Maker Plus when trading against Priority Customer Complex Orders leg into the regular order book, irrespective of the size of the order. Market Makers that do not qualify for Market Maker Plus would continue to pay a $0.25 per contract fee when trading against Priority Customer Complex Orders that leg into the regular order book similar to other market participants.

The Exchange believes this pricing will continue to incentivize Market Makers to qualify for Market Maker Plus in order to earn the associated rebates for Market Maker Plus and also pay no fees when trading against Priority Customer Complex Orders leg into the regular order book in Select Symbols.

The Exchange also proposes to make a non-substantive amendment to capitalize the term ''Complex Order'' in current note 10 of Options 7, Section 3.

Options 7, Section 4, Complex Order Fees and Rebates

Currently, Options 7, Section 4 provides a fee structure 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 and Non-Select Symbols [12] (other than NDX, NQX, and MNX as noted within note 4 of Options 7, Section 4) based on Priority Customer average daily volume (''ADV'').[13]

Today, Options 7, Section 4, note 1 provides, ''Rebate provided per contract per leg if the order trades with non-Priority Customer orders in the Complex Order Book. Rebate provided per contract leg in Select Symbols where the largest leg of the Complex Order is under fifty (50) contracts and trades with quotes and orders on the regular order book. No Priority Customer Complex Order rebates will be provided in Select Symbols if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more. No Priority Customer Complex Order rebates will be provided in Non-Select Symbols if any leg of the order trades with interest on the regular order book, irrespective of order size.''

The Exchange proposes to amend the second sentence in note 1 of Options 7, Section 4 to state, ''This rebate will be reduced by $0.15 per contract in Select Symbols where the largest leg of the complex order is under fifty (50) contracts and trades with quotes and orders on the regular order book.'' The proposed amendment to the second sentence of note 1 of Options 7, Section 4, would reduce the current rebate paid in Select Symbols, per contract, when the largest leg of the Complex Order is under fifty contracts and trades with quotes and orders on the regular order book. Today, the Exchange pays no Priority Customer Complex Order rebates in Select Symbols if any leg of the order that trades with interest on the regular order book is fifty contracts or more, nor does the Exchange pay a Priority Customer Complex Order rebate in Non-Select Symbols if any leg of the order trades with interest on the regular order book, irrespective of order size. The Exchange has observed in the past that several market participants have entered larger sized Priority Customer Complex Orders with a leg of fifty or more contracts to earn a rebate. When these Complex Orders do not find a counterparty in the Complex Order Book, the orders may leg into the regular order book where they are typically executed by Market Makers on the individual legs who pay a fee to trade with this order flow.[14] As a result, the Market Maker's ability to provide liquidity on the Exchange is adversely affected as they are charged to trade against these larger complex orders when they leg into the regular market and execute against their quotes. For this reason, the Exchange continues to not pay Priority Customer Complex Order rebates in Select Symbols if any leg of the order that trades with interest on the regular order book is fifty contracts or more, including for Select Symbols which do not pay a Priority Customer Complex Order rebate if any leg of the order trades with interest on the regular order book, irrespective of order size.

The Exchange's proposal to reduce the Select Symbol rebate when the largest leg of the Complex Order is under fifty contracts and trades with quotes and orders on the regular order book, by $0.15 per contract, is intended to continue to incentivize Members to send order flow to the Exchange despite the reduction. Also, the Exchange will continue to pay Priority Customer rebates for Priority Customer Complex Orders of any size which trades with non-Priority Customer orders in the Complex Order Book, based on the Priority Customer Complex Tier achieved, thereby continuing to incentivize Members to bring Complex Order flow to the Exchange to earn the rebate on their Priority Customer Complex Order volume.

Further, the proposal would close the pricing gap as between Members who receive a Priority Customer rebate, which is being reduced by this proposal, in Select Symbols where the largest leg of the Complex Order is under fifty (50) contracts and trades with quotes and orders on the regular order book as compared to both Members that do not receive a Priority Customer rebate in non-Select Symbols if any leg of the order trades with interest on the regular order book, irrespective of order size, and Members that do not receive a Priority Customer rebate in Select Symbols where the largest leg of the Complex Order is fifty contracts or more and trades with quotes and orders on the regular order book.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[16] in particular, in that it

[12] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols. *See* Options 7, Section 1.

[13] *See* tiered rebates within Options 7, Section 4.

[14] For example, a Market Maker providing liquidity on the individual leg would typically pay a maker fee of only $0.18 per contract for trading with orders originating from the regular order book, or in the case of Market Makers that achieve Market Maker Plus status, would earn certain maker rebates instead of paying the $0.18 per contract maker fee. *See* Options 7, Section 3, note 5.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

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 proposed changes to the 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'. . . .''[17]

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.''[18]

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.

Options 7, Section 3 Regular Order Fees and Rebates

The Exchange's proposal to remove certain rule text from Options 7, Section 3, note 11, and amend the remaining rule text is reasonable as a Market Maker that qualifies for Market Maker Plus when trading against Priority Customer Complex Orders that leg into the regular order book would no longer pay a $0.15 per contract fee, rather, the Market Maker would pay no fee, nor receive any rebate. This proposal would align the pricing to the manner in which Market Makers are priced today for orders of 50 contracts or more in Select Symbols, when those Market Makers qualify for Market Maker Plus and trade against Priority Customer Complex Orders leg into the regular order book. Specifically, Market Makers that qualify for Market Maker Plus when trading against Priority Customer Complex Orders that leg into the regular order book, would pay no fee, nor receive any rebate, irrespective of the size of the order. The Exchange believes this pricing will continue to incentivize Market Makers to qualify for Market Maker Plus in order to earn the associated rebates for Market Maker Plus and also pay no fees when trading against Priority Customer Complex Orders leg into the regular order book in Select Symbols. Market Makers that do not qualify for Market Maker Plus would continue to pay a $0.25 per contract fee when trading against Priority Customer Complex Orders that leg into the regular order book similar to other market participants.

The Exchange's proposal to remove certain rule text from Options 7, Section 3, note 11, and amend the remaining rule text is equitable and not unfairly discriminatory. Market Makers that qualifies for Market Maker Plus when trading against Priority Customer Complex Orders leg into the regular order book would uniformly pay no fee, nor receive any rebate, irrespective of the size of the order. The Exchange will continue to assess a $0.25 per contract fee to all other non-Priority Customer market participants, including Market Makers that do not qualify for Market Maker Plus, when trading against Priority Customer Complex Orders that leg into the regular order book. The Exchange believes that it is not unfairly discriminatory to not assess Market Makers a fee if they qualify for Market Maker Plus because those Market Makers are paid rebates within the Market Maker Plus Program for adding value for quoting at the NBBO for a significant percentage of time. Further, all Market Makers are subject to the same qualification criteria for Market Maker Plus.

The Exchange's proposal to capitalize the term ''Complex Order'' in current note 10 of Options 7, Section 3 is non-substantive.

Options 7, Section 4, Complex Order Fees and Rebates

The Exchange's proposal to amend the second sentence in note 1 of Options 7, Section 4 to state, ''This rebate will be reduced by $0.15 per contract in Select Symbols where the largest leg of the complex order is under fifty (50) contracts and trades with quotes and orders on the regular order book,'' is reasonable. The proposed amendment to note 1 of Options 7, Section 4, would reduce the current rebate paid in Select Symbols, per contract, when the largest leg of the Complex Order is under fifty contracts and trades with quotes and orders on the regular order book. Overall, the Exchange believes that the Priority Customer Complex Order rebate program, as modified, is reasonable because the program is optional and all Members can choose to participate or not. The Exchange's proposal to reduce the Select Symbol rebate when the largest leg of the Complex Order is under fifty contracts and trades with quotes and orders on the regular order book, by $0.15 per contract, is intended to continue to incentivize Members to send order flow to the Exchange despite the reduction. Also, the Exchange will continue to pay Priority Customer rebates for Priority Customer Complex Orders of any size which trades with non-Priority Customer orders in the Complex Order Book, based on the Priority Customer Complex Tier achieved, thereby continuing to incentivize Members to bring Complex Order flow to the Exchange to earn the rebate on their Priority Customer Complex Order volume. Further, the proposal would close the pricing gap as between Members who receive a Priority Customer rebate, which is being reduced by this proposal, in Select Symbols where the largest leg of the Complex Order is under fifty (50) contracts and trades with quotes and orders on the regular order book as compared to both Members that do not receive a Priority Customer rebate in non-Select Symbols if any leg of the order trades with interest on the regular order book, irrespective of order size, and Members that do not receive a Priority Customer rebate in Select Symbols where the largest leg of the

[17] *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)).

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

Complex Order is fifty contracts or more and trades with quotes and orders on the regular order book. This fee remains competitive with other options markets.[19]

The Exchange's proposal to amend the second sentence in note 1 of Options 7, Section 4 to state, ''This rebate will be reduced by $0.15 per contract in Select Symbols where the largest leg of the complex order is under fifty (50) contracts and trades with quotes and orders on the regular order book,'' is equitable and not unfairly discriminatory. The Exchange will continue to uniformly pay rebates to Priority Customer Complex Orders trading with non-Priority Customer orders in the Complex Order Book, regardless of size, based on the Priority Customer Complex Tier achieved. Further, the Exchange would uniformly pay a reduced rebate (reduced by $0.15 per contract) in Select Symbols where the largest leg of the complex order is under fifty contracts and trades with quotes and orders on the regular order book.

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.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market 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.

Options 7, Section 3 Regular Order Fees and Rebates

The Exchange's proposal to remove certain rule text from Options 7, Section 3, note 11, and amend the remaining rule text does not impose an undue burden on competition. Market Makers that qualifies for Market Maker Plus when trading against Priority Customer Complex Orders leg into the regular order book would uniformly pay no fee, nor receive any rebate, irrespective of the size of the order. The Exchange will continue to assess a $0.25 per contract fee to all other non-Priority Customer market participants, including Market Makers that do not qualify for Market Maker Plus, when trading against Priority Customer Complex Orders that leg into the regular order book. Today, Market Makers that qualify for Market Maker Plus are paid rebates based on their tier qualification for adding value for quoting at the NBBO for a significant percentage of time. All Market Makers are subject to the same qualification criteria for Market Maker Plus.

The Exchange's proposal to capitalize the term ''Complex Order'' in current note 10 of Options 7, Section 3 is non-substantive.

Options 7, Section 4, Complex Order Fees and Rebates

The Exchange's proposal to amend the second sentence in note 1 of Options 7, Section 4 to state, ''This rebate will be reduced by $0.15 per contract in Select Symbols where the largest leg of the complex order is under fifty (50) contracts and trades with quotes and orders on the regular order book,'' does not impose an undue burden on competition. The Exchange uniformly pay rebates to Priority Customer Complex Orders trading with non-Priority Customer orders in the Complex Order Book, regardless of size, based on the Priority Customer Complex Tier achieved and will continue to pay rebates. Further, the Exchange would uniformly pay a reduced rebate (reduced by $0.15 per contract) in Select Symbols where the largest leg of the complex order is under fifty contracts and trades with quotes and orders on the regular order book.

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.[20] 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.* Please include File Number SR–ISE–2021–13 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–2021–13. 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,

[19] MIAX Emerald, LLC's (''Emerald'') Pricing Schedule provides that Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated for Penny and Non-Penny Classes. Priority Customer Complex Orders that leg into the Simple book are neither charged nor rebated. *See* Emerald's Pricing Schedule.

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2021–13 and should be submitted on or before July 14, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–13098 Filed 6–22–21; 8:45 am]

BILLING CODE 8011–01–P

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92193; File No. SR–NYSE–2020–105]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Revise Rules 46 and 46A To Permit the Appointment of Trading Officials

June 16, 2021.

I. Introduction

On December 15, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rules 46 and 46A, and other related rules, to provide for the appointment of Trading Officials. The proposed rule change was published for comment in the **Federal Register** on December 30, 2020.[3]

On February 9, 2020, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, extending the date for Commission action until March 30, 2021.[4] On March 25, 2021, the Exchange submitted Amendment No. 1 to the proposed rule change.[5]

On March 30, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[6] The Commission has received one comment on the proposed rule change.[7] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange proposes to eliminate NYSE member [8] and non-member employee Floor Officials [9] and transition the related duties to the newly created position of Trading Official, which would be filled by Exchange employees appointed by the NYSE CEO or his or her designee. In order to effectuate this proposed rule change, the Exchange would: (1) Delete current NYSE Rules 46 and 46A, (2) replace those rules with new NYSE Rule 46, which would define Trading Officials and provide for their appointment, and (3) make conforming changes to other Exchange rules related to the duties and responsibilities of Trading Officials. As a result of this proposal, the various seniority-based gradations of Floor Official would be eliminated,[10] and the Floor-related functions that are currently delegated by Exchange Rules to member Floor Officials and Staff Governors would be performed only by Trading Officials. Only Exchange employees, not active Exchange members, would be eligible to serve as Trading Officials.

The Exchange anticipates that the current Staff Governors, who are Exchange employees, would be appointed as Trading Officials. According to the Exchange, Trading Officials, like current Staff Governors, would be appointed based on experience and necessary business and rule knowledge that would enable them to participate in and supervise various trading situations on the Trading Floor,[11] and the Exchange would train and supervise them.[12] In addition, Trading Officials, like the current Staff Governors, would report to the Head of Equities. The Exchange states that this reporting structure is appropriate because Trading Officials, like Staff Governors, will supervise trading on the Exchange and will not have any regulatory role or responsibility.[13]

The Exchange is also proposing certain technical and conforming changes to NYSE Rules 7.35A, 7.35B, 18(d), 37, 47, 75, 91.50, 93(b), 103.10, 103A, 103B(G), 104, 112(a)(i), 124(e), 128B.10, 308(g), and 903(d)(ii), which relate to the duties of Trading Officials and Floor supervision. Additionally, the Exchange proposes to amend NYSE Listed Company Manual Section 202.04.

- NYSE Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) sets forth the responsibility of designated market makers (''DMMs'') to ensure that registered securities open as close to the beginning of Core Trading Hours as possible or reopen at the end of the halt or pause.
  - Subsection (a)(4) provides for Floor Official participation in the opening and reopening process to provide an impartial professional assessment of unusual situations, as well as to provide guidance with respect to pricing when a significant disparity in supply and demand exists. The rule also contemplates DMM consultations with Floor Officials under certain specific circumstances. References to Floor Official in NYSE Rule 7.35A(a)(4) and

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90776 (Dec. 22, 2020), 85 FR 86625 (Dec. 30, 2020) (''Notice'').

[4] *See* Securities Exchange Act Release No. 91084 (Feb. 9, 2020), 86 FR 9545 (Feb. 16, 2021).

[5] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nyse-2020-105/srnyse2020105-8545367-230641.pdf*.

[6] *See* Securities Exchange Act Release No. 91442 (Mar. 30, 2021), 86 FR 17658 (Apr. 5, 2021) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings (''OIP'')).

[7] *See* Letter from David De Gregorio, Associate General Counsel, New York Stock Exchange to Vanessa Countryman, Secretary, Office of the Secretary, Commission (May 10, 2021) (''OIP Response Letter'').

[8] NYSE Rule 2(a) states that the term ''member,'' when referring to a natural person, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the Exchange Trading Floor or any facility thereof.

[9] NYSE Rule 46 (Floor Officials—Appointment) and NYSE Rule 46A (Executive Floor Governors) currently set forth the process for the Exchange to appoint active NYSE members as Floor Officials. In addition, Rule 46 permits the Exchange to appoint qualified employees to as act as Floor Governors.

[10] The title ''Floor Official'' includes a broad category of titles that include, in order of increasing seniority, Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors, and Executive Floor Governors. *See* NYSE Rules 46 and 46A (defining Floor Official, Floor Governor, Executive Floor Official, Senior Floor Official, and Executive Floor Governor).

[11] The term ''Trading Floor'' is defined in Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the ''Main Room'' and the ''Buttonwood Room.''

[12] Currently, Floor Officials are appointed by the Board annually and must complete a mandatory education program and pass a qualifications exam. *See* NYSE Rules 46 and 46A.

[13] Regulatory employees are not permitted to be Staff Governors. *See* NYSE Rule 46.10.