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–NYSEArca–2019–81 and should be submitted by March 12, 2020. Rebuttal comments should be submitted by March 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03319 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88217; File No. SR–ISE–2020–02]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule in Options 7 at Section 3

February 14, 2020.

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 February 3, 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 its Pricing Schedule in Options 7 at Section 3, titled ''Regular Order Fees and Rebates'' and Section 4, titled ''Complex Order Fees and Rebates.''

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its Pricing Schedule at Options 7, Section 3, titled, ''Regular Order Fees and Rebates,'' to amend note 11. Specifically, the Exchange proposes to increase the current applicable Select Symbol Maker Fee when trading against Priority Customer Complex Orders that leg into the regular order book. In addition the Exchange proposes to add an incentive for Market Makers that qualify for Market Maker Plus in Select Symbols. The Exchange also proposes to amend Options 7, Section 4, titled ''Complex Order Fees and Rebates'' to amend note 1. Specifically, the Exchange proposes to limit a rebate applicable to Non-Select Symbols. Each change will be described below.

Options 7, Section 3 Regular Order Fees and Rebates

Today, the Exchange assesses a Maker Fee of $0.11 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. Further, pursuant to Options 7, Section 3 at note 11, a $0.15 per contract fee applies, instead of the applicable fee or rebate, when trading against Priority Customer Complex Orders [10] that leg into the regular [11] order book for Market Maker and Non-Nasdaq ISE Market Maker (FarMM) orders.[12] Today, no Select Symbol Maker Fee is charged or rebate provided for Market Maker orders when trading against non-Priority Customer Complex Orders that leg into the regular order book.[13]

The Exchange proposes to increase the Select Symbol Maker Fee for trading against Priority Customer Complex Orders that leg into the regular order book. Specifically, the Exchange proposes to increase this fee from $0.15 to $0.25 per contract for Market Maker Orders and Non-Nasdaq ISE Market Maker (FarMM) orders and from $0.11 to $0.25 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders. With this proposal, all Non-Priority Customers will be assessed the same $0.25 per contract fee instead of the applicable fee trading against Priority Customer Complex Orders that leg into the regular

[35] 17 CFR 200.30–3(a)(12) & 17 CFR 200.30–3(a)(57).

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

[2] 17 CFR 240.19b–4.

[3] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot 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. Market Makers will instead receive the rebates in Options 7, Section 3 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.

[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 Nasdaq 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.

[12] *See* note 11 of Options 7, Section 3.

[13] *See* note 10 within Options 7, Section 3.

order book, except for Market Makers that qualify for Market Maker Plus, which is explained below. Priority Customer orders will continue to not be assessed a Select Symbol Maker Fee.

The Exchange also proposes to add new rule text 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 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 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 of 50 contracts or more in Select Symbols that leg into the regular order book. The Market Maker Plus program is designed to incentivize Market Makers to submit quotations into ISE at the National Nest Bid or National Best Offer (''NBBO''). The Exchange believes that these quotations at the NBBO will encourage Members to submit Priority Customer orders, including Priority Customer Complex Orders, into ISE in order to earn rebates. Further, all market participants may interact with the Priority Customer volume that is submitted to the Exchange.

The Exchange also proposes to make a non-substantive amendment to capitalize the term ''Complex Order'' in current note 11.

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 [14] (other than NDX and MNX) based on Priority Customer average daily volume (''ADV'').[15] Options 7, Section 4 at note 1 currently states, ''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 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 if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more.''

The Exchange proposes to amend the second and third sentences in note 1 of Options 7, Section 4 to state, ''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.'' With this proposal, Select Symbols rebates are not being amended. The proposed amendments to the second and third sentences of note 1 of Options 7, Section 4, limit those statements to Select Symbols and thereby make them inapplicable to Non-Select Symbols.

The Exchange proposes to add a new sentence to the end of note 1 of Options 7, Section 4 with respect to Non-Select Symbols which states, ''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.'' With this proposal, Non-Select Symbols will continue to receive a rebate if the order trades with non-Priority Customer orders in the Complex Order book, however, no rebate will be paid if the order legs into the regular order book, regardless of size.

The Exchange also proposes to make a non-substantive amendment to capitalize the terms ''Complex Order'' in current note 1.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[17] 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 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 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'. . ..'' [18]

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.'' [19]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of options venues to which market participants may direct their order flow. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon Members achieving certain volume thresholds.

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 increase the Select Symbol Maker Fee for trading against Priority Customer Complex Orders that leg into the regular order

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

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

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

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] *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)).

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

book from $0.15 to $0.25 per contract for Market Maker orders and Non-Nasdaq ISE Market Maker (FarMM) orders and from $0.11 to $0.25 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders is reasonable. With this proposal, all Non-Priority Customers will be assessed the same Select Symbol Maker Fee of $0.25 per contract, instead of the applicable fee when trading against Priority Customer Complex Orders that leg into the regular order book, except for Market Makers that qualify for Market Maker Plus. The Exchange believes that increasing this fee $0.15 to $0.25 per contract for Market Maker orders and Non-Nasdaq ISE Market Maker (FarMM) orders is reasonable because the Exchange pays high rebates to Priority Customer Complex Orders, including when those Complex Orders are less than 50 contracts in Select Symbols that leg into the regular order book. The Exchange believes that it is reasonable to increase the fees charged for all Market Maker and Non-Nasdaq ISE Market Maker (FarMM) orders that provide liquidity to Priority Customer Complex Orders that leg into the regular market as this will help offset potentially significant rebates paid on the other side of these trades for orders in Select Symbols of less than 50 contracts that leg into the regular order book. The Exchange also believes that it is reasonable to increase the fee from $0.11 to $0.25 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders and thereby create a uniform fee for all Non-Priority Customer Select Symbol orders that trade against Priority Customer Complex Orders that leg into the regular order book. The Exchange notes that Priority Customers will continue to pay no Select Symbol Maker Fee.

The Exchange's proposal to increase the Select Symbol Maker Fee for trading against Priority Customer Complex Orders that leg into the regular order book from $0.15 to $0.25 per contract for Market Maker Orders and Non-Nasdaq ISE Market Maker (FarMM) orders and from $0.11 to $0.25 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders is equitable and not unfairly discriminatory. With this proposal, all Non-Priority Customer will be assessed the same Select Symbol Maker Fee of $0.25 per contract, instead of the applicable Select Symbol Maker Fee when trading against Priority Customer Complex Orders that leg into the regular order book, except for Market Makers that qualify for Market Maker Plus. Today Priority Customers pay no Select Symbol Maker Fee. 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's proposal to add new rule text, 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 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, and further will not pay the $0.25 per contract fee nor receive any rebate in 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 is reasonable. The proposed reduction in fees for Market Makers that qualify for the Market Maker Plus program is designed to incentivize Market Makers to submit quotations into ISE at the NBBO. The Exchange believes that these quotations at the NBBO will encourage Members to submit Priority Customer orders, including Priority Customer Complex Orders, into ISE in order to earn rebates. All market participants benefit in that they may interact with the Priority Customer volume that is submitted to the Exchange.

The Exchange's proposal to add new rule text 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 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, and further will not pay the $0.25 per contract fee nor receive any rebate in 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 is equitable and not unfairly discriminatory. Unlike other market participants, Market Makers have an obligation to maintain quotes[20] and provide liquidity in the regular market. Further, Market Makers that qualify for the Market Maker Plus program take on a heightened requirement to submit quotations at the NBBO. The Exchange is providing Market Makers the opportunity to reduce their Market Maker Select Symbol Maker Fee to incentivize these market participants to continue to provide liquidity on ISE.

Options 7, Section 4, Complex Order Fees and Rebates

The Exchange's proposal to amend the second and third sentences in note 1[21] of Options 7, Section 4 to apply those sentences to Select Symbols is reasonable in that it does not amend the current pricing for Select Symbols with respect to the Priority Customer Rebates. The Exchange will continue to pay a Select Symbol rebate where the largest leg of the complex order is under fifty (50) contracts and trades with quotes and orders on the regular order book. Also, the Exchange will continue to not provide a Priority Customer Complex Order rebate if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more.

The Exchange's proposal to amend the second and third sentences in note 1 of Options 7, Section 4 to apply those sentences to Select Symbols is equitable and not unfairly discriminatory because the Exchange will continue to pay Select Symbol Priority Customer rebates to all market participants that qualify for those rebates, in a uniform manner.

The Exchange's proposal to amend Non-Select Symbols to 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, is reasonable. With this proposal, Non-Select Symbols will continue to receive a rebate if the order trades with non-Priority Customer orders in the Complex Order book, however no rebate will be paid if the order legs into the regular order book, regardless of size. The Exchange notes that while it is not proposing to pay a rebate for Non-Select Symbols if the order legs into the regular order book, regardless of size, it believes that ISE's pricing to leg orders into the regular order book remains competitive.

The Exchange's proposal to amend Non-Select Symbols to 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, is equitable and not unfairly discriminatory. The Exchange will not pay a Non-Select Symbol Priority Customer Complex Order rebate to any market participant

[20] *See* ISE, Options 2, Section 5.

[21] The Exchange's proposal would amend the second and third sentences of note 1 to provide, "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."

if the order legs into the regular order book, regardless of size.

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.

Intramarket Competition

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

Options 7, Section 3 Regular Order Fees and Rebates

The Exchange's proposal to increase the Select Symbol Maker Fee for trading against Priority Customer Complex Orders that leg into the regular order book from $0.15 to $0.25 per contract for Market Maker Orders and Non-Nasdaq ISE Market Maker (FarMM) orders and from $0.11 to $0.25 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders does not impose an undue burden on competition. With this proposal, all Non-Priority Customer will be assessed the same $0.25 per contract fee, instead of the applicable Select Symbol Maker Fee, when trading against Priority Customer Complex Orders that leg into the regular order book, except for Market Makers that qualify for Market Maker Plus. Today Priority Customers pay no Select Symbol Maker Fee. 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's proposal to add new rule text 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 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, and further will not pay the $0.25 per contract fee nor receive any rebate in 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 does not impose an undue burden on competition. Unlike other market participants, Market Makers have an obligation to maintain quotes [22] and provide liquidity in the regular market. Further, Market Makers that qualify for the Market Maker Plus program take on a heightened requirement to submit quotations at the NBBO. The Exchange is providing Market Makers the opportunity to reduce their Market Maker Select Symbol Maker Fee to incentivize these market participants to continue to provide liquidity on ISE.

Options 7, Section 4, Complex Order Fees and Rebates

The Exchange's proposal to amend the second and third sentences in note 1 [23] of Options 7, Section 4 to apply those sentences to Select Symbols does not impose an undue burden on competition because the Exchange will continue to pay Select Symbol Priority Customer rebates to all market participants that qualify in a uniform manner.

The Exchange's proposal to amend Non-Select Symbols to 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, does not impose an undue burden on competition. The Exchange will not pay a Non-Select Symbol Priority Customer Complex Order rebate to any market participant if any leg of the order trades with interest 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,[24] and Rule 19b–4(f)(2)[25] 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.* Please include File Number SR–ISE–2020–02 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–2020–02. 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

[22] *See* ISE, Options 2, Section 5.

[23] The Exchange's proposal would amend the second and third sentences of note 1 to provide, "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."

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 240.19b–4(f)(2).

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–2020–02 and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03415 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88221; File No. SR–CboeBYX–2020–007]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Small Retail Broker Distribution Program

February 14, 2020.

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 February 4, 2020, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''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

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to introduce a Small Retail Broker Distribution Program. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, 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 purpose of the proposed rule change is to introduce a pricing program that would allow small retail brokers that purchase top of book market data from the Exchange to benefit from discounted fees for access to such market data. The Small Retail Broker Distribution Program (the ''Program'') would reduce the distribution and consolidation fees paid by small broker-dealers that operate a retail business. In turn, the Program may increase retail investor access to real-time U.S. equity quote and trade information, and allow the Exchange to better compete for this business with competitors that offer similar optional products.

The Exchange initially filed to introduce the Program on August 1, 2019 (''Initial Proposal'') to further ensure that retail investors served by smaller firms have cost effective access to its market data products, and as part of its ongoing efforts to improve the retail investor experience in the public markets. The Initial Proposal was published in the **Federal Register** on August 20, 2019,[3] and the Commission received no comment letters on the Initial Proposal. The Program remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Initial Suspension Order'').[4] The Initial Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.[5] On October 1, 2019, the Exchange re-filed its proposed rule change with additional information about the basis for the proposed fee change (''Second Proposal''). The Second Proposal was published in the **Federal Register** on October 15, 2019,[6] and the Commission received no comment letters on the Second Proposal. The Program again remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'').[7] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposal.[8] On November 27, 2019, the Exchange re-filed its proposed rule change a third time with one revision to the requirements for participating in the Program and additional information about the basis for the proposed fee change (''Third Proposal''). The Third Proposal was published in the **Federal Register** on December 16, 2019.[9] Today, the Exchange is withdrawing the Third Proposal, and replacing it with this proposed fee change as part of its ongoing efforts to continue to facilitate retail investor access to reasonably priced market data.

Current Fees

Today, the Exchange offers two top of book data feeds that provide real-time U.S. equity quote and trade information to investors. First, the Exchange offers the BYX Top Feed, which is an uncompressed data feed that offers top of book quotations and execution information based on equity orders entered into the System. The fee for

[26] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR–CboeBYX–2019–012).

[4] *See* Securities Exchange Act Release No. 87166 (September 30, 2019), 84 FR 53197 (October 4, 2019) (SR–CboeBYX–2019–012).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 87305 (October 15, 2019), 84 FR 56210 (October 21, 2019) (SR–CboeBYX–2019–015).

[7] *See* Securities Exchange Act Release No. 87631 (November 26, 2019), 84 FR 66259 (December 3, 2019) (SR–CboeBYX–2019–015).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 87713 (December 10, 2019), 84 FR 68530 (December 16, 2019) (SR–CboeBYX–2019–023).