

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83144; File No. SR-ISE-2018-38)

May 1, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Pricing for P.M. Settled Options on Broad-Based Indexes with Nonstandard Expiration Dates

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 April 17, 2018, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange’s Schedule of Fees to add pricing for P.M. settled options on broad-based indexes with nonstandard expiration dates, as described further below.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 recently received approval to list P.M. settled options on broad-based indexes with nonstandard expiration dates on a twelve month pilot basis, beginning on February 1, 2018.³ This pilot permits both Weekly Expirations and End of Month expirations similar to those of A.M. settled broad-based index options, except that the exercise settlement value will be based on the index value derived from the closing prices of component stocks.⁴ The Exchange proposes to list these aforementioned options, commencing on April 19, 2018, with the symbol "NDXP."

The Exchange now proposes to adopt the index pricing applicable to NDX⁵ today to NDXP. Accordingly, the Exchange proposes to add the following definition in its Schedule of Fees: "NDX" will mean A.M. or P.M settled options on the full value of the Nasdaq 100[®] Index." Therefore, each reference to NDX pricing currently in the Schedule of Fees will likewise apply to NDXP under this proposal, as further discussed below. The Exchange initially filed the proposed pricing changes on April 9, 2018 (SR-ISE-2018-33). On April 17, 2018, the Exchange withdrew that filing and submitted this filing.

³ See Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (SR-ISE-2017-111).

⁴ Id.

⁵ NDX represents A.M. settled options on the full value of the Nasdaq 100[®] Index and is traded under the symbol NDX.

Section I: Transaction Fees for Index Options

Today, the Exchange charges a uniform transaction fee of \$0.75 per contract for Non-Priority Customer⁶ orders in NDX. These fees are assessed to all executions in NDX, including Non-Priority Customer Crossing Orders⁷ in NDX. No transaction fee is assessed to Priority Customer⁸ orders in NDX. The Exchange now proposes to apply these transaction fees to NDXP.

Section II: Priority Customer Complex Rebates

Today, the tiered Priority Customer Complex Rebates in Section II of the Schedule of Fees are not paid for NDX. As proposed, the Priority Customer Complex Rebates will likewise not be paid for NDXP.

Section IV.C: Non-Priority Customer License Surcharge

Today, the Exchange charges a \$0.25 per contract license surcharge for all Non-Priority Customer orders in NDX, which applies to all executions in NDX, including executions of NDX orders that are routed to away markets in connection with the Options Order Protection and Locked/Crossed Market Plan (the “Plan”).⁹ The Exchange currently assesses a \$0.25 per

⁶ Non-Priority Customer includes Market Maker, Non-Nasdaq ISE Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer.

⁷ A “Crossing Order” is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of the Fee Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

⁸ A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Rule 100(a)(37A).

⁹ The Exchange applies a route-out fee to executions of orders in all symbols that are routed to away markets in connection with the Plan. Specifically, Non-Priority Customer orders in Non-Select Symbols (i.e., options overlying all symbols that are not in the Penny Program) pay a route-out fee of \$0.95 per contract. NDX is a Non-Select Symbol.

contract license surcharge as well as a route-out fee of \$0.95 per contract for those Non-Priority Customer NDX orders that are executed on an away market in connection with the Plan. Under the Exchange’s proposal, the \$0.25 per contract Non-Priority Customer license surcharge for NDX will likewise apply to all executions in NDXP, including executions of NDXP orders that are routed to away markets in connection the Plan. For those NDXP orders that are routed away, the Exchange will also charge the \$0.95 per contract route-out fee in addition to the \$0.25 per contract license surcharge under this proposal.¹⁰

Section IV.E: Marketing Fee

By way of background, the Exchange administers a marketing fee program that helps Market Makers (i.e., Primary Market Makers and Competitive Market Makers) establish marketing fee arrangements with Electronic Access Members (“EAMs”) in exchange for those EAMs routing some or all of their order flow to the Market Maker. This program is funded through a fee of \$0.70 per contract, which is paid by Market Makers for each regular Priority Customer contract executed in Non-Select Symbols. This fee is currently waived for NDX orders. As proposed, the marketing fee will similarly be waived for NDXP orders.

Section IV.H: Crossing Fee Cap

Today, the Exchange caps Crossing Order fees at \$90,000 per month per member on all Firm Proprietary and Non-Nasdaq ISE Market Maker transactions that are part of the originating or contra side of a Crossing Order. Surcharge fees charged by the Exchange for licensed

See Schedule of Fees, Section IV.F. See also Securities Exchange Act Release No. 80249 (March 15, 2017), 82 FR 14586 (March 21, 2017) (SR-ISE-2017-23) (establishing the \$0.25 per contract Non-Priority Customer license surcharge for NDX, among other pricing changes); and Securities Exchange Act Release No. 81024 (June 26, 2017), 82 FR 29964 (June 30, 2017) (SR-ISE-2017-54) (applying the Non-Priority Customer license surcharge to orders in licensed products, including NDX, that are routed to away markets in connection with the Plan).

¹⁰ NDXP is a Non-Select Symbol.

products (e.g., the \$0.25 per contract license surcharge for NDX) and the fees for index options as set forth in Section I (e.g., the \$0.75 per contract fees for NDX) are currently excluded from the calculation of this monthly fee cap. As proposed, the license surcharge and fees for NDXP will likewise be excluded from the calculation of the monthly Crossing Fee Cap.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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. In general, the Exchange believes that its proposal is reasonable, equitable and not unfairly discriminatory because NDX and NDXP represent similar options on the same underlying Nasdaq 100[®] Index and the Exchange therefore desires to apply pricing for NDXP in a similar manner as NDX.

Section I: Transaction Fees for Index Options

The Exchange's proposal to assess the same transaction fees for NDXP as it currently assesses for NDX is reasonable as NDXP will be an exclusively listed product on Nasdaq, Inc.-owned exchanges only.¹³ Similar to NDX, the Exchange seeks to recoup the operational costs for listing proprietary products.¹⁴ Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ NDXP is also currently listed on ISE's affiliated exchange, Nasdaq PHLX LLC ("Phlx").

¹⁴ For example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

particular products. Other options exchanges price by symbol.¹⁵ Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute PowerShares QQQ Trust (“QQQ”) options.¹⁶ Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100[®] Index.¹⁷ When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

Furthermore, the Exchange believes that its proposal to assess a \$0.75 per contract transaction fee for Non-Priority Customer orders in NDXP and no fee for Priority Customer orders, in each case identical to NDX, is reasonable because the fees are in line with its affiliate, Phlx. Phlx assesses a \$0.75 per contract electronic options transaction charge for all non-customer orders in NDX and NDXP, and does not assess an electronic options transaction charge for customer orders in NDX and NDXP.¹⁸

The Exchange believes that the proposed transaction fees for Non-Priority Customer orders in NDXP are equitable and not unfairly discriminatory because the Exchange will uniformly assess the \$0.75 per contract fee to all such market participants. The Exchange also believes that it is equitable and not unfairly discriminatory to assess no transaction fees to

¹⁵ See pricing for Russell 2000 Index (“RUT”) on Chicago Board Options Exchange, Incorporated’s (“CBOE”) Fees Schedule and on CBOE C2 Exchange, Inc.’s (“C2”) Fees Schedule.

¹⁶ QQQ is an exchange-traded fund based on the Nasdaq 100[®] Index.

¹⁷ QQQ options overlie the same index as NDX, namely the Nasdaq 100[®] Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT and the iShares Russell 2000 Index (“IWM”), which is the ETF on RUT.

¹⁸ See Phlx’s Pricing Schedule, Section II.

Priority Customer orders in NDXP because Priority Customer orders bring valuable liquidity to the market, which in turn benefits other market participants.

Section II: Priority Customer Complex Rebates

The Exchange believes that its proposal to eliminate the Priority Customer Complex Rebates for NDXP, similar to NDX, is reasonable because even after the elimination of the rebate, Priority Customer complex orders in NDXP will not be assessed any complex order transaction fees. By contrast, public customer executions on C2 in RUT are subject to a \$0.15 per contract transaction fee.¹⁹

The Exchange's proposal to eliminate the Priority Customer Complex Rebates for NDXP is equitable and not unfairly discriminatory because the Exchange will eliminate the rebate for all similarly situated members.

Section IV.C: Non-Priority Customer License Surcharge

The Exchange believes that its proposal to charge a \$0.25 per contract Non-Priority Customer license surcharge for NDXP, similar to NDX, is reasonable because it is in line with the options surcharge of \$0.25 per contract for non-customer transactions in NDX and NDXP on Phlx,²⁰ and is lower than the \$0.45 per contract surcharge C2 applies to non-public customer transactions in RUT.²¹ The Exchange also believes that its proposal to apply the Non-Priority Customer license surcharge to all executions in NDXP orders, including those orders that are routed to away markets in connection with the Plan, is reasonable because it will offset the costs associated with executing orders on away markets as well as the operational costs associated with listing proprietary products.

¹⁹ See C2's Fees Schedule, Section 1.C.

²⁰ See Phlx's Pricing Schedule, Section II.

²¹ See C2's Fees Schedule, Section 1.D.

Further, the Exchange believes that its proposal to charge the Non-Priority Customer license surcharge for all executions in NDXP orders, including those orders that are executed on away markets in connection with the Plan is equitable and not unfairly discriminatory because the Exchange will apply the same surcharge for all similarly situated members in a similar manner. The Exchange also believes that it is equitable and not unfairly discriminatory to not assess the surcharge to Priority Customer orders in NDXP because Priority Customer orders bring valuable liquidity to the market, which in turn benefits other market participants.

Section IV.E: Marketing Fee

The Exchange believes that its proposal to exclude NDXP from the \$0.70 per contract marketing fee is reasonable because the purpose of the marketing fee is to attract order flow to the Exchange. Because NDXP will be an exclusively listed product, a marketing fee whose purpose is to attract order flow to the Exchange is no longer necessary for NDXP.

The Exchange's proposal to exclude NDXP from the marketing fee is equitable and not unfairly discriminatory because the Exchange will apply this exclusion to all similarly situated members.

Section IV.H: Crossing Fee Cap

The Exchange believes that its proposal to exclude the Non-Priority Customer license surcharge and transaction fees for NDXP from the calculation of the monthly Crossing Fee Cap is reasonable because NDXP will be an exclusively listed product. Similar to NDX, which is also excluded from the Crossing Fee Cap, the Exchange seeks to recoup the operational costs for listing proprietary products.

The Exchange further believes that the proposed exclusion of NDXP from the Crossing Fee Cap is equitable and not unfairly discriminatory because the Exchange will apply the exclusion all similarly situated members.

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. All of the proposed changes are to adopt the current pricing applicable to NDX to NDXP, and the Exchange believes that the pricing for its proprietary products remains competitive with other options exchanges, as discussed above. In addition, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute QQQ options. Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100[®] Index.²² Furthermore, the proposed pricing changes will apply uniformly to all similarly situated market participants, as discussed above. For the foregoing reasons, the Exchange does not believe that the proposed changes to apply the current pricing applicable to NDX to NDXP will impose an undue burden on competition.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems 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.

²² See note 17 above.

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,²³ and Rule 19b-4(f)(2)²⁴ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2018-38 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.

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁴ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-ISE-2018-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying

information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2018-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Eduardo A. Aleman
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).