

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84402; File No. SR-ISE-2018-83)

October 11, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Maker/Taker Fees in Section I of the Exchanges Schedule of Fees

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 October 1, 2018, Nasdaq ISE, LLC (“ISE” or “Exchange”) 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

The Exchange proposes to amend certain maker / taker fees in Section I of the Exchange’s Schedule of Fees, 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 proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Schedule of Fees to modify the Section I taker fee for Priority Customers³ to \$0.41, and the Section I maker fee for non-Priority Customers⁴ to \$0.11.

As provided in Section I of the Schedule of Fees, the Exchange currently charges Priority Customers a taker fee for regular orders in Select Symbols⁵ that is \$0.44 per contract, except in SPY, QQQ, IWM and VXX, where this fee is \$0.40 per contract. The Exchange now proposes to charge Priority Customers a uniform taker fee of \$0.41 per contract in all Select Symbols, and make a related change to delete the reference to the reduced taker fee for SPY, QQQ, IWM and VXX. As a result, while the reduced taker fee currently assessed for SPY, QQQ, IWM and VXX will be increased by \$0.01 per contract, the fee will be decreased by \$0.03 for all other Select Symbols.

³ 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).

⁴ Non-Priority Customers are Market Makers, Non-Nasdaq ISE Market Makers, Firm Proprietary / Broker-Dealers, and Professional Customers.

⁵ "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

As provided in Section I of the Schedule of Fees, the Exchange currently charges non-Priority Customers a maker fee in Select Symbols that is \$0.10 per contract.⁶ The Exchange now seeks to increase this fee to \$0.11 per contract.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to charge Priority Customers a uniform taker fee of \$0.41 per contract in all Select Symbols and no longer differentiate between the different products, as described above. While the reduced taker fee currently assessed for SPY, QQQ, IWM and VXX will be increased by \$0.01 per contract, this fee will be decreased by \$0.03 for all other Select Symbols. As such, the Exchange believes the modest increase in the taker fee for SPY, QQQ, IWM and VXX will be offset by the larger decrease for all other Select Symbols, and will also simplify Priority Customer taker pricing by assessing a uniform fee for Priority

⁶ As it relates solely to Market Makers, however: (i) Market Makers that qualify for Market Maker Plus will not pay this fee if they meet the applicable tier thresholds set forth in the table within Section I of the Schedule of Fees and will instead receive a rebate based on the applicable tier for which they qualify; (ii) no fee will be charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book; and (iii) a \$0.15 per contract fee applies instead of the applicable fee or rebate when trading against Priority Customer complex orders that leg into the regular order book. A \$0.15 per contract fee likewise applies to Non-Nasdaq ISE Market Makers instead of the applicable fee or rebate when trading against Priority Customer complex orders that leg into the regular order book. These fees and rebates are not changing under this proposal.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

Customer all Select Symbols instead of differentiating by product. Furthermore, the proposed taker fee of \$0.41 per contract continues to be competitive with another options exchange,⁹ and also remains lower than the fees charged to other market participants that remove Select Symbol liquidity on the Exchange.¹⁰

In addition, the Exchange believes that this proposal is equitable and not unfairly discriminatory because the Exchange will apply the same taker fee to all similarly situated members in a uniform manner. The Exchange does not believe that it is unfairly discriminatory to offer a lower taker fee to Priority Customers. Priority Customer interest brings valuable liquidity to the market, which liquidity benefits other market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that its proposal to increase the maker fee for all non-Priority Customer transactions in Select Symbols from \$0.10 to \$0.11 per contract is reasonable because it is a modest increase, and is in part to offset the proposed reduction in taker fees as described above. Furthermore, Market Makers that qualify for Market Maker Plus will not pay the maker fee if they meet the applicable tier thresholds set forth in the table within Section I of the Schedule of Fees and will instead receive a rebate based on the applicable tier for which they

⁹ For instance, Cboe C2 Options Exchange (“C2”) charges its public customers a \$0.43 per contract fee for removing liquidity in penny classes. See C2 Fees Schedule, Transaction Fees.

¹⁰ Specifically, this fee is currently \$0.45 per contract for Market Maker orders and \$0.46 per contract for Non-Nasdaq ISE Market Maker orders, Firm Proprietary / Broker-Dealer orders, and Professional Customer orders. See Schedule of Fees, Section I.

qualify.¹¹ The Exchange also notes that its maker pricing as proposed for non-Priority Customers herein remains competitive compared to another options exchange.¹² The Exchange further believes that its proposed maker pricing is equitable and not unfairly discriminatory because the Exchange will apply the same maker fee to 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. The Exchange's proposal to modify the Priority Customer taker fee and non-Priority Customer maker fee in Section I, each as described above, does not impose an undue burden on competition because the Exchange believes that its maker / taker pricing remains competitive compared to other options exchanges.¹³ Furthermore, the Exchange would uniformly assess the proposed maker / taker fees to all similarly situated market participants, as discussed above. 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

¹¹ See Schedule of Fees, Section I, note 5.

¹² For instance, Nasdaq PHLX ("Phlx") charges non-Customers the following Penny Pilot options transaction charges: \$0.22 per contract for Specialists and Market Makers (plus a \$0.25 per contract marketing fee in Penny Pilot options that is applied to those who elect to participate in the Marketing program for a total of \$0.47 per contract); and \$0.48 per contract for Broker-Dealers, Firms, and Professionals. See Phlx Pricing Schedule, Section II.

¹³ See notes 9 and 12 above.

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.

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.¹⁴ 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-2018-83 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

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

All submissions should refer to File Number SR-ISE-2018-83. 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-2018-83 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.¹⁵

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Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).