

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85307; File No. SR-ISE-2019-03)

March 13, 2019

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Market Maker Plus Program

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 27, 2019, 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 Market Maker Plus program under Options 7, Section 3.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on March 1, 2019.

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 purpose of the proposed rule change is to provide a supplemental rebate in addition to the linked maker rebate for SPY, QQQ, and IWM, as described in detail below.

Background

Market Maker Plus

As set forth in Section 3 of the Pricing Schedule, the Exchange operates a Market Maker Plus program for regular orders in Select Symbols³ where Market Makers⁴ that contribute to market quality by maintaining tight markets are eligible for enhanced rebates. Market Makers are evaluated each trading day for the percentage of time spent on the National Best Bid or National Best Offer ("NBBO") for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above. Qualifying series are series trading between \$0.03 and \$3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to \$100) and between \$0.10 and \$3.00 (for options whose underlying stock's previous trading day's last sale price was

³ "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

⁴ The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See ISE Rule 100(a)(32).

greater than \$100) in premium. If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive periods described above, then the lower of the two Market Maker Plus tier rebates shall apply to all contracts.⁵ These general qualification requirements will remain unchanged with the amendments to the applicable Market Maker Plus rebates described in this proposed rule change.

Market Maker orders in Select Symbols are charged a maker fee of \$0.11 per contract;⁶ provided that 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 below, and will instead receive the below maker rebates based on the applicable tier for which they qualify.⁷

Select Symbols other than SPY, QQQ, and IWM	
Market Maker Plus Tier (Specified Percentage)	Maker Rebate
Tier 1 (80% to less than 85%)	(\$0.15)
Tier 2 (85% to less than 95%)	(\$0.18)
Tier 3 (95% or greater)	(\$0.22)

⁵ Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers – i.e., badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker’s badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. A Market Maker’s worst quoting day each month for each of the two successive periods described above, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this rebate.

⁶ This fee also applies to Market Maker orders sent to the Exchange by Electronic Access Members.

⁷ 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. There will be no fee charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book.

SPY, QQQ, and IWM

Market Maker Plus Tier (Specified Percentage)	Regular Maker Rebate	Linked Maker Rebate
Tier 1 (70% to less than 80%)	(\$0.00)	N/A
Tier 2 (80% to less than 85%)	(\$0.18)	(\$0.15)
Tier 3 (85% to less than 90%)	(\$0.22)	(\$0.19)
Tier 4 (90% or greater)	(\$0.26)	(\$0.23)

To encourage Market Makers to maintain quality markets in SPY, QQQ, and IWM in particular, members that maintain tight markets in those symbols are eligible for higher regular maker rebates and may also be eligible for linked maker rebates, as shown in the table above. Specifically, the following symbols are linked for purposes of the linked maker rebate: (1) SPY and QQQ, and (2) SPY and IWM. Market Makers that qualify for Market Maker Plus Tiers 2-4 above for executions in SPY, QQQ, and IWM may be eligible for a linked maker rebate in a linked symbol in addition to the regular maker rebate for the applicable tier. The linked maker rebate applies to executions in SPY, QQQ, and IWM if the Market Maker does not achieve the applicable tier in that symbol but achieves the tier (i.e., any of the Market Maker Plus Tiers 2-4) for any badge/suffix combination in the other linked symbol, in which case the higher tier achieved applies to both symbols. If a Market Maker would qualify for a linked maker rebate in SPY based on the tier achieved in QQQ and the tier achieved in IWM, then the higher of the two linked maker rebates will be applied to SPY. The regular maker rebate will be provided in the

symbol that qualifies the Market Maker for the higher tier based on percentage of time at the NBBO.⁸

Priority Customer Complex Order Rebates

The Exchange currently has a pricing structure in place that provides rebates to Priority Customer⁹ complex orders in order to encourage members to bring that order flow to the Exchange. The Exchange provides these rebates to members that achieve Priority Customer Complex Tiers¹⁰ in Select Symbols and Non-Select Symbols¹¹ (other than NDX, NQX or MNX).¹² All complex order volume executed on the Exchange, including volume executed by Affiliated Members,¹³ is included in the volume calculation, except for volume executed as

⁸ Thus, for example, if a Market Maker achieves Tier 1 in SPY, Tier 2 in QQQ, and Tier 3 in IWM, the Market Maker would receive the \$0.18 per contract Tier 2 regular maker rebate in QQQ, the \$0.22 per contract Tier 3 regular maker rebate in IWM, and the \$0.19 per contract Tier 3 linked maker rebate in SPY – i.e., based on the Market Maker achieving Tier 3 in IWM.

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 Rule 100(a)(37A).

¹⁰ The Priority Customer Complex Tiers are based on total Affiliated Member or Affiliated Entity complex order volume (excluding Crossing Orders and Responses to Crossing Orders), and are calculated as a percentage of Customer Total Consolidated Volume (hereinafter, “Complex Order Volume Percentage”). “Customer Total Consolidated Volume” means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

¹¹ “Non-Select Symbols” are options overlying all symbols excluding Select Symbols.

¹² Rebates are provided per contract per leg if the order trades with non-Priority Customer orders in the complex order book or trades with quotes and orders on the regular order book.

¹³ An “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A.

Crossing Orders¹⁴ and Responses to Crossing Orders.¹⁵ Affiliated Entities¹⁶ may also aggregate their complex order volume for purposes of qualifying Appointed OFPs for these Priority Customer rebates.¹⁷ As set forth in Section 4 of the Pricing Schedule, there are currently nine Priority Customer Complex Tiers as follows:

Priority Customer Complex Tier	Complex Order Volume Percentage	Rebate for Select Symbols	Rebate for Non-Select Symbols
Tier 1	0.000% - 0.200%	(\$0.25)	(\$0.40)
Tier 2	Above 0.200% - 0.400%	(\$0.30)	(\$0.55)
Tier 3	Above 0.400% - 0.600%	(\$0.35)	(\$0.70)
Tier 4	Above 0.600% - 0.750%	(\$0.40)	(\$0.75)
Tier 5	Above 0.750% - 1.000%	(\$0.45)	(\$0.80)
Tier 6	Above 1.000% - 1.500%	(\$0.46)	(\$0.80)
Tier 7	Above 1.500% - 2.000%	(\$0.48)	(\$0.80)
Tier 8	Above 2.000% - 3.250%	(\$0.50)	(\$0.85)
Tier 9	Above 3.250%	(\$0.50)	(\$0.85)

¹⁴ 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 this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

¹⁵ “Responses to Crossing Orders” are any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

¹⁶ An “Affiliated Entity” is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. An “Appointed Market Maker” is a Market Maker who has been appointed by an Order Flow Provider (“OFP”) for purposes of qualifying as an Affiliated Entity. An “Appointed OFP” is an OFP (i.e., a member, other than a Market Maker, that submits orders, as agent or principal, to the Exchange) who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity. Each member may qualify for only one Affiliated Entity relationship at any given time. Affiliated Members are not eligible to enter an Affiliated Entity relationship.

¹⁷ The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume.

Proposal

At this time, the Exchange proposes that to the extent Market Makers qualify for the foregoing Priority Customer complex order rebate in Tiers 7 - 9, they may also become eligible to earn a supplemental rebate in addition to the linked maker rebate tiers 2 – 4 in SPY, QQQ, and IWM provided to Market Makers that qualify for Market Maker Plus, as described above. Specifically, if Market Makers separately achieve Priority Customer complex tiers 7 -9, they will earn an additional \$0.01 per contract rebate on executions in SPY, QQQ, or IWM that qualify for the linked maker rebate program, in addition to the linked rebates tiers 2 -4. As proposed, Market Makers that qualify for Priority Customer complex tiers 7 - 9 will receive a linked maker rebate of \$0.16 per contract in tier 2, \$0.20 per contract in tier 3, and \$0.24 per contract in tier 4, provided that they also meet the qualifications of the applicable linked maker rebate tier.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ 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 the proposed changes to provide a supplementary \$0.01 per contract rebate in addition to the linked maker rebate tiers 2-4, provided the Market Maker achieves Priority Customer complex tiers 7-9 is reasonable because this incentive is intended to encourage Market Makers that maintain quality markets and qualify for Market Maker Plus to continue send more complex order flow to the Exchange to achieve Priority Customer complex

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

tiers 7-9 in order to earn the additional \$0.01 rebate. All market participants benefit from increased order interaction when more order flow is available on ISE. The Exchange also believes that the proposed changes will continue to encourage better market quality in SPY, QQQ, and IWM as Market Makers would be able to earn the supplemental rebate in addition to the linked maker rebates that they may qualify for today.

The Exchange believes that the proposed changes to provide the supplemental \$0.01 rebate to qualifying Market Makers are not unfairly discriminatory as the changes apply to all Market Makers orders based on achieving the required Priority Customer complex tier, and qualifying for the linked maker rebate program by way of achieving the required Market Maker Plus tier in SPY, QQQ, or IWM. Furthermore, the Exchange continues to believe that it is not unfairly discriminatory to offer these rebates only to Market Makers because Market Makers, and in particular, those Market Makers that achieve Market Maker Plus status, are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not.

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 believes that the proposed changes will encourage Market Makers that maintain quality markets and qualify for Market Maker Plus to continue send more complex order flow to the Exchange to achieve Priority Customer complex tiers 7-9 in order to earn the additional \$0.01 rebate. All market participants benefit from increased order interaction when more order flow is available on ISE.

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to 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. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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 and Rule 19b-4(f)(2)²¹ 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:

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

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-2019-03 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-2019-03. 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-2019-03 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.²²

Eduardo A. Aleman
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).