

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85396; File No. SR-ISE-2019-07)

March 22, 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 March 11, 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.

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 Market Maker Plus program, as described in detail below.

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 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

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).

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 Rebate⁸
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)

The Exchange now proposes to introduce a separate rebate program for Market Makers that achieve Market Maker Plus in options overlying symbols AMZN, FB, or NVDA in order to promote and encourage liquidity in those particular Select Symbols.⁹ Specifically, Market Makers that achieve Market Maker Plus Tiers 1-3 as proposed below for executions in AMZN, FB, or NVDA will receive the following maker rebates:

⁸ 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.

⁹ Qualifying Market Makers will continue to receive the maker rebates described above in products other than AMZN, FB, and NVDA.

Market Maker Plus Tier (Specified Percentage)	Maker Rebate
Tier 1 (70% to less than 85%)	(\$0.15)
Tier 2 (85% to less than 95%)	(\$0.18)
Tier 3 (95% or greater)	(\$0.22)

The proposed rebates for AMZN, FB, and NVDA are the same as the rebates currently provided for Select Symbols (other than SPY, QQQ, and IWM), except that the proposal lowers the minimum qualification in Tier 1 from 80% to 70% for AMZN, FB, and NVDA.

In addition, the Exchange proposes to “link” the benefits associated with the Market Maker’s performance in AMZN, FB, and NVDA such that the proposed Tiers 1-3 maker rebates will apply to executions in AMZN, FB, or NVDA if the Market Maker does not achieve the applicable tier in that symbol, but achieves the tier (i.e., proposed Tiers 1-3) for any badge/suffix combination in the other two symbols. Once the applicable tier – any of proposed Tiers 1, 2 or 3 – is achieved for two out of the three symbols AMZN, FB, or NVDA, the Market Maker will be eligible for a maker rebate in the third symbol, which will be provided in addition to the maker rebate for the applicable tier achieved in the other two symbols. If a Market Maker would qualify for different Market Maker Plus Tiers 1-3 in the two symbols, then the lower of the two maker rebates will be applied to the third symbol. Thus, for example, if a Market Maker achieves Tier 1 in AMZN and Tier 2 in FB, the Market Maker would receive the Tier 1 maker rebate in NVDA (\$0.15 per contract), Tier 1 maker rebate in AMZN (\$0.15 per contract), and Tier 2 maker rebate in FB (\$0.18 per contract). The Exchange notes that this rebate will be provided in the third symbol regardless of time at the NBBO (i.e., there is no minimum tier threshold to be met in the third symbol for the “linked” maker rebate). As such, if all three

symbols separately achieve any of Market Maker Plus Tiers 1-3, the symbol that achieves the tier with the lowest maker rebate will instead receive the same maker rebate as the symbol that achieved the next lowest tier. For example, if a Market Maker achieves Tier 1 in AMZN, Tier 2 in FB, and Tier 3 in NVDA, the Market Maker would receive the \$0.18 per contract “linked” Tier 2 maker rebate in AMZN based on their FB performance, the \$0.18 per contract Tier 2 maker rebate in FB, and the \$0.22 per contract Tier 3 maker rebate in NVDA.

Because the Exchange is introducing a separate rebate program for AMZN, FB, and NVDA, the associated rebate table heading for Select Symbols other than SPY, QQQ, and IWM will be expanded to include AMZN, FB, and NVDA under this proposal.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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 and equitable to offer special rebates for Market Makers that achieve Market Maker Plus in AMZN, FB or NVDA. As proposed, Market Makers would receive the same tiered rebates in those three symbols as the tiered rebates provided in Select Symbols other than SPY, QQQ, and IWM (i.e., \$0.15, \$0.18, and \$0.22 per contract). Furthermore, the proposal lowers the minimum qualification in Tier 1 for percentage of time spent quoting at the NBBO to 70% less than 85% for AMZN, FB, and NVDA (as opposed to 80% to less than 85% for Select Symbols other than SPY, QQQ, and IWM). The

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

proposed rule change will therefore allow Market Makers that would not qualify for Market Maker Plus in AMZN, FB, or NVDA today to qualify for the \$0.15 per contract maker rebate based on a time at the NBBO of at least 70% of the time pursuant to proposed Tier 1.

In addition, the proposal links the benefits associated with the Market Maker's performance in AMZN, FB, and NVDA so that the Market Maker would be able to receive a maker rebate in any of those symbols by meeting the requirements of Market Maker Plus Tiers 1-3 in the other two, as further described above. Accordingly, the Exchange believes that Market Makers would be incentivized by the ability to earn this linked rebate, in addition to the applicable tiered rebates provided in the other two symbols, to maintain quality markets in those three symbols on ISE.

The Market Maker Plus program is designed to attract liquidity from Market Makers and provide incentives for those Market Makers to maintain tight markets, measured by time spent quoting at the NBBO. For the reasons discussed above, the Exchange believes that the proposed rule change has the potential to further benefit market quality by encouraging Market Makers to maintain tight markets in AMZN, FB, and NVDA, which are highly active symbols within the industry, thereby creating a more active and liquid market for options traded on the Exchange. Furthermore, the Exchange believes that these three symbols have significant interest amongst retail options investors, as the underlying stocks themselves are high-priced with each currently priced above \$150 per share. The proposed pricing incentive for Market Makers is therefore meant to encourage more trading activity on the Exchange amongst all market participant types by encouraging Market Makers to maintain tight markets in these symbols.

The Exchange also believes that the proposed changes are not unfairly discriminatory as all Market Makers can qualify for the same rebates based on achieving the appropriate tier of

Market Maker Plus in AMZN, FB, and NVDA. 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 proposed changes to Market Maker Plus to introduce a separate rebate program for AMZN, FB, and NVDA are designed to increase competition by encouraging Market Makers to provide liquidity and maintain tight markets in these high volume symbols 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,¹² and Rule 19b-4(f)(2)¹³ thereunder. At any time within 60 days of the filing of the

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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-2019-07 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-2019-07. 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-2019-07 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.¹⁴

Eduardo A. Aleman
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).