

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85923; File No. SR-ISE-2019-15)

May 23, 2019

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Market Maker Plus Program Under Options 7, Section 3

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 10, 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 Exchange's 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 qualifications for Market Makers to achieving Market Maker Plus status.

The Exchange initially filed the proposed pricing changes on May 1, 2019 (SR-ISE-2019-13). On May 10, 2019, the Exchange withdrew that filing and submitted this filing.

As set forth in note 5 under Section 3 of the Pricing Schedule, the Exchange operates a Market Maker Plus program for regular orders in Select Symbols<sup>3</sup> that provides the below tiered rebates to Market Makers<sup>4</sup> based on time spent quoting at the National Best Bid or National Best Offer (“NBBO”).<sup>5</sup> This program is designed to reward Market Makers that contribute to market quality by maintaining tight markets in Select Symbols.

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**Select Symbols other than SPY, QQQ, IWM, AMZN, FB, and NVDA**

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**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)

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<sup>3</sup> “Select Symbols” are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

<sup>4</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(32).

<sup>5</sup> If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive 30 calendar day periods, then the lower of the two Market Maker Plus tier rebates shall apply to all contracts. The Market Maker Plus tiered rebate amounts and the specified percentage thresholds outlined in this filing will remain unchanged under this proposal.

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Tier 3 (95% or greater)	(\$0.22)
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**SPY, QQQ, and IWM**

<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Regular Maker Rebate</b>	<b>Linked Maker Rebate</b>
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)

**AMZN, FB, and NVDA**

<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Maker Rebate</b>
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)

Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day.<sup>6</sup> 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.<sup>7</sup>

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

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<sup>6</sup> 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.

<sup>7</sup> Thus, for example, on May 1 the periods referenced above would include all expirations: (1) from May 1-May 30 and (2) from May 31-June 29.

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. Thus, as currently implemented in the Exchange's billing system, the rebates are applied across the entire firm based on the highest Market Maker Plus tier achieved by one of the firm's badge/suffix combination in a particular symbol within a particular billing month.<sup>8</sup>

Furthermore, a Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this rebate.<sup>9</sup>

While the Exchange believes that the Market Maker Plus program has been successful overall in encouraging better market quality in Select Symbols, and that the language selecting the highest badge/suffix combination of a firm seeks to reward the Market Maker for consistent quoting, the Exchange has also identified certain instances where allowing the program benefits to accrue to all badge/suffix combinations once a single badge/suffix combination qualifies for a Market Maker Plus tier would not necessarily improve market quality, particularly in instances where a Market Maker shuts down one of its badge/suffix combinations mid-month.

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<sup>8</sup> For example, assume Market Maker A is configured to trade in AAPL in the following badge/suffix combinations: 123A, 123B, and 123C, and is on the NBBO 95% of the time in 123A, 85% of the time in 123B, and 10% of the time in 123C. Based on these facts, Market Maker A would qualify for the Tier 3 rebate of \$0.22 per contract in AAPL for 123A based on a time at the NBBO of 95% or greater. In addition, Market Maker A would qualify for the same Tier 3 rebate in AAPL for 123B and 123C as the highest tier achieved is applied to all badge/suffix combinations.

<sup>9</sup> In addition, the Exchange may exclude from any member's monthly Market Maker Plus tier calculation any Unanticipated Event; provided that the Exchange will only remove the day for members that would have a lower time at the NBBO for the specified series with the day included. See Options 7, Section 1(a)(2) for the definition of "Unanticipated Event."

For example, assume Market Maker A is configured to trade AAPL in the following badge/suffix combinations: 123A, 123B, and 123C. Assume further that Market Maker A's performance for the following trading days in May for both successive 30 calendar day periods are as follows:

- May 1: Market Maker A is at the NBBO for 95% of the time in 123A, and 50% of the time in 123B and 123C. As of May 1, Market Maker A would qualify for Market Maker Plus Tier 3 based on the tier achieved by 123A.
- May 2: Market Maker A is at the NBBO for 10% of the time in 123A, 123B, and 123C.
- May 3: Market Maker A decides to shut down 123A, and quotes at the NBBO for 50% of the time in 123B and 123C.
- Market Maker A is at the NBBO for 50% of the time in 123B and 123C for the rest of May.

The Exchange currently rebates the above example based on the Market Maker Plus language which states that the Exchange will apply the rebate for the highest tier achieved for any badge/suffix combination quoting that symbol across all badge/suffix combinations that the member uses to trade in that symbol. The language also provides that a Market Maker's worst quoting day each month will be thrown out. As a result, Market Maker A would receive the \$0.22 per contract Tier 3 rebate for May because the Exchange's billing system picked up 123A as the highest achieving badge/suffix combination within that month (which is then applied across all badge/suffix combinations – i.e., 123B and 123C), and also struck May 2 as its worst quoting day. In this case, the market has not necessarily improved in this symbol because Market Maker A was quoting on 123A for only two days. This is further compounded by the

fact that one of those days was thrown out under the current rule, such that Market Maker A only needed to quote above the Tier 3 threshold for one day in order to receive the rebate.

The Exchange therefore proposes to change its Market Maker Plus qualifications to ensure that Market Makers make quality markets for a significant number of days within a month. In particular, the Exchange proposes to add the following language in Section 3, note 5: “Only badge/suffix combinations quoting a minimum of ten trading days within the month will be used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker’s performance for that month.” Thus under the proposal, Market Makers would need to quote in a badge/suffix combination for at least 10 trading days within a given month as a prerequisite to qualifying for Market Maker Plus, and the Market Maker’s quoting activity on such badge/suffix combination would be used to determine which Market Maker Plus tier (if any) applies to that Market Maker for that month.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</sup> 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 Market Maker Plus specification that the highest badge/suffix combination will be used for calculation honors the Market Maker Plus participants in their best efforts to improve the quality of the markets. The Exchange, in light of the above example and similar situations, would like to ensure that the participants of the Market Maker

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

Plus program are making quality markets for an appreciable number of days in order to qualify for the enhanced rebate. The Exchange believes that the proposed changes to impose a minimum number of trading days for quoting on a single badge/suffix combination to include that badge/suffix combination into the calculation of Market Maker Plus status are reasonable and equitable as these changes are designed to encourage Market Makers to make quality markets in Select Symbols and thereby further the goal of the Market Maker Plus program. The Exchange believes that the proposed minimum of ten trading days is reasonable and equitable because it requires a Market Maker to quote using a badge/suffix combination for a significant amount of days within a month in order to receive the enhanced rebates. The Exchange believes its proposal is appropriate in light of how the current program is implemented on the billing system, and avoids situations where members can glean program benefits without particularly improving market quality.

The Exchange believes that the proposed changes to the qualifications to Market Maker Plus are not unfairly discriminatory as all Market Makers will be subject to the same qualification criteria for Market Maker Plus. The Exchange also continues to believe that it is not unfairly discriminatory to offer rebates under this program to only Market Makers since Market Makers and, in particular, those Market Makers that participate in the Market Maker Plus Program and achieve Market Maker Plus status, are subject to additional requirements and obligations (such as quoting obligations) 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 are designed to ensure that the goals of the Exchange's Market Maker Plus program are furthered by ensuring that Market Makers make quality markets in Select Symbols for a

significant amount of days within the month. The Exchange 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 and rebates to remain competitive. 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.

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,<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> 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.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).



#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2019-15 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-2019-15. 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-2019-15 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.<sup>14</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).