

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80438; File No. SR-ISE-2017-31)

April 12, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Supplementary Material .03 to Rule 713 to Change the Allocation Entitlement for Preferred PMMs.

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 5, 2017, Nasdaq ISE, LLC (“ISE” or “Exchange”)³ filed with the Securities and Exchange Commission (“SEC” or “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 Supplementary Material .03 to Rule 713 to change the allocation entitlement for Preferred PMMs.

The text of the proposed rule change is available on the Exchange’s Website at www.ise.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ ISE was renamed Nasdaq ISE, LLC in a rule change that became operative on April 3, 2017. See Securities Exchange Act Release No. 80325 (March 29, 2017) (SR-ISE-2017-25).

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 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

Supplementary Material .03 to Rule 713 allows an Electronic Access Member (“EAM”) to designate a “Preferred Market Maker” on orders it enters into the System (“Preferred Orders”). A Preferred Market Maker may be the Primary Market Maker (“PMM”) appointed to the options class or any Competitive Market Maker (“CMM”) appointed to the options class.⁴ The purpose of the proposed rule change is to amend Supplementary Material .03 to Rule 713 to change the allocation entitlement for PMMs that receive Preferred Orders (i.e., “Preferred PMMs”), consistent with allocation entitlements for PMM equivalents on another options exchange.

Currently, a Preferred Market Maker that is quoting at the national best bid of offer (“NBBO”) at the time the Preferred Order is received,⁵ is entitled to participation rights equal to the greater of: (i) the proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other

⁴ See Supplementary Material .03(a) to Rule 713.

⁵ If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferred Order is received, the Exchange’s regular allocation procedure applies to the execution of the Preferred Order. See Supplementary Material .03(b) to Rule 713.

Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price.⁶ This allocation entitlement is in lieu of the regular allocation provided in Supplementary Material .01 to Rule 713, and applies regardless of whether the Preferred Market Maker is a PMM or CMM. In some instances where the Preferred Market Maker is the PMM appointed to the options class this results in a preferenced allocation that is worse than the market maker's regular allocation entitlement. Specifically, Supplementary Material .01(c) to Rule 713 provides a small order entitlement whereby orders of five contracts or fewer are executed first by the PMM. A PMM that normally receives an allocation entitlement for orders of five contracts or fewer,⁷ would not receive this allocation entitlement if it were designated as the Preferred Market Maker.

The Exchange now proposes to amend the participation rights of Preferred PMMs such that the PMM appointed in an option class will receive participation rights that are consistent with the higher allocation entitlement given to PMM equivalents on the MIAX Options Exchange ("MIAX"). In particular, the Exchange proposes to amend Supplementary Material .03(c) to Rule 713 to provide that, the Preferred Market Maker has participation rights equal to the greater of: (i) the proportion of the total size at the best price represented by the size of its quote, (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price, or (iii) the full size of a Preferenced Order for five (5) contracts or fewer if the Primary Market Maker appointed to the options class is designated as the Preferred Market Maker – i.e., the small order allocation entitlement contained in Supplementary Material .01(c) to Rule 713. Thus,

⁶ See Supplementary Material .03(c) to Rule 713.

⁷ See Supplementary Material .01(c) to Rule 713.

the PMM appointed to an options class would receive an allocation entitlement for orders of five contracts or fewer, regardless of whether that order is submitted as a Preferred Order. The Exchange believes that this is appropriate since the PMMs obligations to the market are the same regardless of whether an order happens to be submitted with a preference instruction. PMM equivalents on MIAX currently receive this participation right when preferenced, in addition to the regular 60% or 40% preferenced allocation currently provided in the rule.⁸ Preferred CMMs will continue to receive the same allocation entitlement that they receive today.

Pursuant to Supplementary Material .01(c) to Rule 713 the Exchange evaluates on a quarterly basis what percentage of the volume executed on the Exchange is comprised of orders for five (5) contracts or fewer executed by PMMs. The Exchange represents that this review will extend to the small order entitlement for Preferred PMMs. Thus, consistent with Supplementary Material .01(c) to Rule 713, the Exchange will reduce the size of the orders included in the small order entitlement if such percentage is over forty percent (40%).

Implementation

The proposed rule change will be implemented on the Exchange's new INET trading system, which is scheduled to launch in Q2 2017,⁹ provided that the Exchange will provide notice of this change in a circular to be distributed to members prior to implementing the new allocation entitlement on INET. The INET migration will take place on a symbol by symbol basis as specified by the Exchange in a notice to be provided to Members. The Exchange is proposing to implement this rule change on the INET platform as the symbols migrate to that

⁸ See MIAX Rule 514(g), (i). The proposed allocation entitlement is also the same as allocation entitlements recently adopted by the Exchange's affiliate, ISE Gemini, LLC. See Securities Exchange Act Release No. 80239 (March 14, 2017), 82 FR 14413 (March 20, 2017) (SR-ISEGemini-2017-14).

platform. As such, PMMs will begin receiving the small order entitlement in symbols as they migrate to the INET platform.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹⁰ In particular, the proposal is consistent with Section 6(b)(5) of the Act,¹¹ because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it will allow EAMs to send Preferred Orders to the PMM appointed in an options class without inadvertently disadvantaging the PMM compared to if the order was not preferred. The regular allocation entitlements for PMMs, including the small order entitlement, are designed to balance the obligations that the PMM has to the market with corresponding benefits. The Exchange believes that it is appropriate to provide the small order entitlement also when the PMM is designated as a Preferred Market Maker as the obligations that the PMM has to the market are not diminished when it receives a Preferred Order. MIAX similarly provides the small order entitlement to the PMM regardless of whether the order is

⁹ See Securities Exchange Act Release No. 80075 (February 21, 2017), 82 FR 11975 (February 27, 2017) (SR-ISE-2017-03).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

submitted as a Preferred Order.¹² At the same time, the proposed rule change does not amend the current participation rights for Preferred CMMs, which is also consistent with allocation rules of MIAX. While the Exchange believes that it is appropriate to grant PMMs an allocation entitlement for small sized orders preferenced to them in recognition of the obligations that PMMs have to maintain fair and orderly markets, the Exchange does not believe that it is appropriate at this time to extend this entitlement to CMMs, preferenced or otherwise.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹³ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to allow EAMs to send Preferred Orders to the PMM appointed in an options class without inadvertently disadvantaging the PMM by reducing its participation rights. The proposed allocation entitlements are equivalent to those currently in effect on another options exchange.¹⁴ The proposed rule change is therefore not designed to impose any significant burden on competition.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

¹² See supra note 7. [sic]

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ See supra note 7. [sic]

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

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-2017-31 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR-ISE-2017-31. 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; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2017-31 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.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).