

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81144; File No. SR-ISE-2017-69)

July 14, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees in Connection with the ISE System Migration

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 July 3, 2017, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 Schedule of Fees to indicate the treatment of various symbols which are migrating to INET technology in July 2017.

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.

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 Schedule of Fees to: (1) exclude certain Select Symbols³ which will migrate to INET from July 3rd through July 30th 2017 from the Market Maker Plus⁴ Tiers for the month of July 2017; and (2) exclude certain activity for certain Select Symbols which will migrate to INET on July 31, 2017 from the Market Maker Plus Tiers for the month of July 2017. Each rule change will be described in greater detail below.

These rule changes are being made in connection with the migration of the Exchange's trading system to the Nasdaq INET technology, which began on June 12, 2017.⁵ On June 9, 2017, the Exchange filed a proposed rule change that eliminated fees and rebates for trades in FX

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

⁴ A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer a specified percentage of the time for 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 in each of the front two expiration months. The specified percentage is at least 80% but lower than 85% of the time for Tier 1, at least 85% but lower than 95% of the time for Tier 2, and at least 95% of the time for Tier 3. A Market Maker's single best and single worst quoting days each month based on the front two expiration months, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

⁵ See Securities Exchange Act Release No. 80432 (April 11, 2017), 82 FR 18191 (April 17, 2017) (SR-ISE-2017-03). See also Options Trader Alert 2017-51.

Options that began trading on INET with the launch of the re-platformed trading system.⁶ In addition, on June 27, 2017 the Exchange filed another proposed rule change that eliminated fees and rebates for trades in symbol KANG that began trading on INET on that date.⁷ The Exchange recently filed a proposed rule change that eliminated fees and rebates for trades executed on June 30, 2017 in the following symbols: ACN, ACOR, AEO, AFSI, AMJ, AOBC, BKD, BTE, BV, CBI, CCL, CLR, CME, CNQ, ADM, ADSK, AGNC, ASHR, BBT, BK, BSX, CIEN, and IBM.⁸ Additionally, that rule change also proposed that activity in the following Select Symbols will not be counted for purposes of determining Market Maker Plus tiers: ADM, ADSK, AGNC, ASHR, BBT, BK, BSX, CIEN, and IBM.⁹

Current Proposal – Number 1

The Exchange proposes that Select Symbols which will migrate to INET from July 3rd through July 30th 2017, as noticed by the Exchange in Options Trader Alert #2017-51¹⁰ (“Migrated Symbols”) will not be subject to Market Maker Plus Tiers 1-3 for the month of July 2017. These Migrated Symbols will be subject to Market Maker Plus Tiers 1-3 as of August 1, 2017 and thereafter.

During the transition symbols will migrate from the legacy T7 system to the INET system. The two systems utilize different billing systems. For ease of transition and to ensure that Members are not impacted by the transition to a new billing system, the Exchange is proposing to simply not apply the Market Maker Plus Tiers to the symbols which will be

⁶ See Securities Exchange Act Release No. 80999 (June 22, 2017) 82 FR 29354 (June 28, 2017) (SR-ISE-2017-59).

⁷ See SR-ISE-2017-63 (publication pending).

⁸ See SR-ISE-2017-66 (publication pending).

⁹ Id.

¹⁰ This alert contains a link to the specific symbols that migrate on each date.

transitioning from July 3rd through July 30th 2017 for the month of July 2017. In August 2017, the Migrated Symbols will all be subject to the INET billing system and therefore the Exchange would begin applying the Market Maker Plus Tiers at that time.

Current Proposal – Number 2

The Exchange proposes to exclude Select Symbols which will migrate to INET on July 31, 2017, as noticed by the Exchange at Options Trader Alert #2017-51 (“July 31 Migrated Symbols”) and only include activity from July 3, 2017 through July 30, 2017 for purposes of qualifying for the Market Maker Plus Tiers for the month of July 2017.

As noted above, since the July 31 Migrated Symbols will migrate from the legacy T7 system to the INET system and utilize two different billing systems the Exchange proposes this exclusion. The Exchange believes that the exclusion will provide ease of transition and ensure that Members are not impacted by the transition to a new billing system. In August 2017, the July 31 Migrated Symbols will be subject to the INET billing system and therefore the Exchange would begin applying the Market Maker Plus Tiers at that time for the entire month of August 2017.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and Section 6(b)(4) of the Act,¹² in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

Current Proposal – Number 1

The Exchange's proposal that Migrated Symbols will not be subject to Market Maker Plus Tiers 1-3 for the month of July 2017 is reasonable because the Exchange will utilize two billing systems with the migration from legacy T7 to INET. For ease of transition and to ensure that Members are not impacted by the transition to a new billing system, the Exchange believes it is reasonable to not apply the Market Maker Plus Tiers to the symbols which will be transitioning from July 3rd through July 30th 2017 for the month of July 2017. The new INET system would result in higher performance, scalability, and more robust architecture for ISE Members.

The Exchange's proposal that Migrated Symbols will not be subject to Market Maker Plus Tiers 1-3 for the month of July 2017 is equitable and not unfairly discriminatory as it will apply to all transactions in Migrated Symbols on INET.

Current Proposal – Number 2

The Exchange's proposal that July 31 Migrated Symbols will only include activity from July 3, 2017 through July 30, 2017 for purposes of qualifying for the Market Maker Plus Tiers for the month of July 2017 is reasonable because the Exchange will utilize two billing systems with the migration from legacy T7 to INET. For ease of transition and to ensure that Members are not impacted by the transition to a new billing system, the Exchange believes it is reasonable to exclude the July 31, 2017 trading activity from the Market Maker Plus Tiers for the July 31 Migrated Symbols and only apply activity from July 3rd through July 30th 2017 for purposes of qualifying for the Market Maker Plus Tiers for the month of July 2017. The new INET system would result in higher performance, scalability, and more robust architecture for ISE Members.

The Exchange's proposal to exclude activity for July 31, 2017 for the July 31 Migrated Symbols qualification for July 2017 and only include activity from July 3, 2017 through July 30, 2017 for purposes of qualifying for the Market Maker Plus Tiers for the month of July 2017 is equitable and not unfairly discriminatory as it will apply to all transactions in July 31 Migrated Symbols on INET.

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 changes 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 changes are intended to ease members' transition to the re-platformed INET trading system and is not designed to have any significant competitive impact. The proposed changes will apply to all transactions in both the Migrated Symbols and the July 31 Migrated Symbols. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. 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.

¹³ 15 U.S.C. 78f(b)(8).

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 and Rule 19b-4(f)(2)¹⁵ 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:

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-2017-69 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-2017-69. 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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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-2017-69 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.¹⁶

Jill M. Peterson
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).