

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82320; File No. SR-ISE-2017-103)

December 14, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Calculation of the Member Order Routing 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 November 29, 2017, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“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 its Schedule of Fees to amend the calculation of the Member Order Routing Program.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on December 1, 2017.

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 Exchange operates the Member Order Routing Program ("MORP"),³ which is a program that provides enhanced rebates to order routing firms that select the Exchange as the default routing destination for unsolicited Crossing Orders.⁴ This proposal seeks to exclude options overlying NDX⁵ from the calculation of MORP for purposes of rebates.

Eligible MORP Electronic Access Members (EAMS) that execute a monthly average daily volume (ADV) in unsolicited Crossing Orders of 30,000 originating contract sides or more on their MORP designated sessions are eligible for increased Facilitation and Solicitation break-up rebates in addition to enhanced rebates for Unsolicited Crossing Orders. Break-up rebates, which are shown in the table below, apply instead of rebates described in Sections I, II, and III of the Schedule of Fees, and will be provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts

³ See Securities Exchange Act Release No. 74706 (April 10, 2016), 80 FR 20522 (April 16, 2016) (SR-ISE-2015-11). A Member may designate one or more sessions to be eligible for MORP. A session is connection to the exchange over which a member submits orders. See Section V.C. of the Schedule of Fees. If a session is designated as eligible for MORP all requirements for the program must be met for that session.

⁴ 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 ("QCC") order. For purposes of the fee schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

⁵ NDX represents options on the Nasdaq 100 Index traded under the symbol NDX ("NDX").

trade against pre-existing orders and quotes on the Exchange's order books. The applicable fee for Crossing Orders is applied to any contracts for which a rebate is provided.

Facilitation and Solicitation Break-Up Rebates are as follows:

Market Participant	Regular Orders in Select Symbols	Complex Orders in Select Symbols	Regular Orders in Non-Select Symbols	Complex Orders in Non-Select Symbols	Regular Orders in FX Options	Complex Orders in FX Options
Market Maker	N/A	N/A	N/A	N/A	N/A	N/A
Non-Nasdaq ISE Market Maker (FarMM)	(\$0.35)	(\$0.35)	(\$0.15)	(\$0.80)	(\$0.15)	(\$0.15)
Firm Proprietary / Broker-Dealer	(\$0.35)	(\$0.35)	(\$0.15)	(\$0.80)	(\$0.15)	(\$0.15)
Professional Customer	(\$0.35)	(\$0.35)	(\$0.15)	(\$0.80)	(\$0.15)	(\$0.15)
Priority Customer	(\$0.35)	(\$0.35)	(\$0.15)	(\$0.80)	(\$0.15)	(\$0.15)

Currently, an EAM that is MORP eligible receives a rebate for all unsolicited Crossing Orders of \$0.05 per originating contract side, provided that the member executes a minimum ADV in unsolicited Crossing Orders of 30,000 to 99,999 originating contract sides though their MORP designated sessions. If the member executed greater than 100,000 originating contract sides, the rebate for all unsolicited Crossing Orders is \$0.07 per originating contract side.⁶ No

⁶ The rebate for the highest tier achieved is applied retroactively to all eligible contracts traded in a given month. For purposes of determining whether the member meets the above ADV thresholds, any day that the Exchange is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

rebate is paid for volume below 30,000 originating contract sides.

With respect to the Facilitation and Solicitation Break-Up Rebate, any EAM that qualifies for the MORP rebate by executing an ADV of 30,000 originating contract sides or more on their MORP designated sessions is also eligible for increased Facilitation and Solicitation break-up rebates⁷ for their Non-ISE Market Maker,⁸ Firm Proprietary,⁹ Broker-Dealer,¹⁰ Professional Customer,¹¹ and Priority Customer orders.¹² Currently, MORP eligible members that execute a qualifying ADV in unsolicited Crossing Orders of at least 30,000 originating contract sides, receive a Facilitation and Solicitation break-up rebate that is \$0.35 per contract for regular and complex orders in Select Symbols,¹³ \$0.15 per contract for regular orders in Non-Select Symbols,¹⁴ \$0.80 per contract for complex orders in Non-Select Symbols, and \$0.15 per contract for regular and complex orders in foreign exchange option classes (“FX Options”).

⁷ Break-up rebates are provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange’s orderbooks. The applicable fee for Crossing Orders is applied to any contracts for which a rebate is provided.

⁸ A “Non-ISE Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

⁹ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

¹⁰ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

¹¹ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

¹² 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 ISE Rule 100(a)(37A).

¹³ “Select Symbols” are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

¹⁴ “Non-Select Symbols” are options overlying all symbols excluding Select Symbols.

Proposal

This proposal would exclude options overlying NDX from the monthly ADV when calculating the originating contract side for unsolicited Crossing Orders executed by an eligible EAM on their MORP designated sessions. NDX would not be subject to unsolicited Crossing Orders rebates and Facilitation and Solicitation break-up rebates. NDX will continue to be subject to Section I Index Options pricing for simple orders and Non-Select pricing for complex orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ 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's proposal to exclude options overlying NDX from the monthly ADV when calculating unsolicited Crossing Orders rebates and also from Facilitation and Solicitation break-up rebates is reasonable because the MORP will continue to be attractive to members that participate in the program.¹⁷ Under MORP, which is a voluntary rebate program, the Exchange currently provides enhanced rebates to EAMs that connect directly to the Exchange and provide their clients with order routing functionality that includes all U.S. options exchanges, including ISE. Even with the exclusion of NDX from the MORP monthly ADV and rebates, the Exchange still believes that Members will continue to be incentivized to participate in the program. The

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁷ See note 3 above.

Exchange today prices Index Options separately from other multiply-listed options.¹⁸ This practice of pricing certain products separately is not novel.¹⁹

The Exchange's proposal to exclude options overlying NDX from the monthly ADV when calculating unsolicited Crossing Orders rebates and also from Facilitation and Solicitation break-up rebates is equitable and not unfairly discriminatory because no Member would be eligible to include NDX in monthly ADV and receive MORP rebates. The Exchange would uniformly calculate tiers and pay rebates associated with MORP.

Any EAM that participates in the program will be provided the rebates on an equal and non-discriminatory basis based on the order flow executed on the Exchange.

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

In accordance with Section 6(b)(8) of the Act,²⁰ 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. Order routing firms that participate in MORP and select the Exchange as the default routing destination for unsolicited Crossing Orders will continue to receive enhanced rebates. The exclusion from NDX from the monthly ADV when calculating unsolicited Crossing Orders rebates and also from Facilitation and Solicitation break-up rebates will apply uniformly to all ISE Members. Other exchanges price certain symbols differently.²¹

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

¹⁸ See Section I of the ISE Schedule of Fees.

¹⁹ See Nasdaq Phlx's Pricing Schedule at Section I which offers separate pricing for options overlying SPY.

²⁰ 15 U.S.C. 78f(b)(8).

²¹ See note 19 above.

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.

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.²² 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-2017-103 on the subject line.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-103. 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-2017-103 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.²³

Eduardo A. Aleman
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).