

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83105; File No. SR-ISE-2018-36)

April 25, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Market Maker Plus Program Under the Schedule of Fees

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 April 11, 2018, 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 the Schedule of Fees.

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 Exchange operates a Market Maker Plus program for regular orders in Select Symbols<sup>3</sup> whereby Market Makers<sup>4</sup> that contribute to market quality by maintaining tight markets are eligible for enhanced rebates. The purpose of the proposed rule change is to amend the linked maker rebate for SPY and QQQ, and adopt a similar rebate structure for IWM, as described in more detail below. The Exchange believes that the proposed changes will encourage Market Makers to make quality markets in certain actively traded symbols, and thereby further the goals of the Market Maker Plus program.

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

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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)(28).

Maker Plus tier in each of the two successive periods described above, then the lower of the two Market Maker Plus tier rebates shall apply to all contracts.<sup>5</sup> 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 \$0.10 per contract<sup>6</sup>; 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 maker rebates described in the table based on the applicable tier for which they qualify.<sup>7</sup>

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<sup>5</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 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.

Other than days where the Exchange closes early for holiday observance, any day that the market 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 the Market Maker Plus tier calculation; 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.

<sup>6</sup> This fee also applies to Market Maker orders sent to the Exchange by Electronic Access Members.

<sup>7</sup> A \$0.10 per contract fee applies instead of the applicable Market Maker Plus 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.

**Select Symbols other than SPY and QQQ**

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

**SPY and QQQ**

<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)	(\$0.16)
Tier 3 (85% to less than 90%)	(\$0.22)	(\$0.20)
Tier 4 (90% or greater)	(\$0.26)	(\$0.24)

To encourage Market Makers to maintain quality markets in SPY and QQQ 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, Market Makers that qualify for Market Maker Plus Tiers 2-4 for executions in SPY or QQQ may be eligible for a linked maker rebate in addition to the regular maker rebate for the applicable tier. The linked maker rebate applies to executions in SPY or QQQ if the Market Maker does not achieve the applicable tier in that symbol but achieves the tier (i.e., any of Market Maker Plus Tiers 2-4) for any badge/suffix combination in the other symbol, in which case the higher tier achieved applies to both symbols. 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.

The Exchange now proposes two changes to the above rebates. First, the Exchange proposes to amend the linked maker rebate for SPY and QQQ. Specifically, the Exchange proposes to reduce each of the linked maker rebates for SPY and QQQ by one cent per contract such that the applicable maker rebate is: (1) \$0.15 per contract for Tier 2, (2) \$0.19 per contract for Tier 3, and (3) \$0.23 per contract for Tier 4.

Second, the Exchange proposes adopt this rebate structure for IWM by providing a higher maker rebate in this symbol along with the ability to earn linked maker rebates. With the proposed changes, Market Makers that meet the requirements of the Market Maker Plus program will receive an enhanced rebate in IWM that is equivalent to the rebate provided in SPY and QQQ today – i.e., (1) \$0.00 per contract (i.e., no fee or rebate) for Tier 1, (2) \$0.18 per contract for Tier 2, (3) \$0.22 per contract for Tier 3, and (3) \$0.26 per contract for Tier 4.

In addition, the Exchange proposes to adopt the same linked maker structure for SPY and IWM as is currently in place for SPY and QQQ. As such, the Schedule of Fees would provide that the following symbols are linked for purposes of the linked maker rebate: (1) SPY and QQQ (i.e., as is the case today), and (2) SPY and IWM (i.e., the proposed linked maker rebates for SPY and IWM). Linked maker rebates for SPY and IWM would be the same as those provided for SPY and QQQ – i.e., no linked maker rebate for Tier 1, and a linked maker rebate of \$0.15 per contract for Tier 2, \$0.19 per contract for Tier 3, and \$0.23 per contract for Tier 4 – and would be paid based on the same qualification criteria described above for SPY and QQQ.

Because SPY would be separately linked to both QQQ and IWM, the Schedule of Fees would also provide that 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. Thus, for example, if a Market Maker achieves Tier 1 in

SPY, Tier 2 in QQQ, and Tier 3 in IWM, the Market Maker would receive the Tier 2 regular maker rebate of \$0.18 per contract in QQQ, the Tier 3 regular maker rebate of \$0.22 per contract in IWM, and the Tier 3 linked maker rebate of \$0.19 per contract in SPY – i.e., based on achieving Tier 3 in IWM.

Furthermore, the Exchange proposes to amend other language concerning the Market Maker Plus Program to reinforce the enhanced rebate structure for SPY, QQQ, and IWM. This includes changing the associated table headings to reference (1) Select Symbols other than SPY, QQQ, and IWM, and (2) SPY, QQQ, and IWM. It also includes referencing IWM in the footnote that describes the linked maker rebates, and adding language that references linked symbols – i.e., SPY/QQQ and SPY/IWM.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</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 proposed changes to the Market Maker Plus program in SPY and QQQ are reasonable and equitable as the proposed linked maker rebate is only slightly lower than the current linked maker rebate, and is set at a level that the Exchange believes will continue to encourage Market Makers to make tight markets in these symbols. Furthermore, the Exchange believes that the effect of lower rebate is more than offset by the ability to achieve

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

higher rebates based on the proposed structure for IWM, which would provide for the first time an enhanced rebate for Market Makers that achieve Market Maker Plus in IWM, as well as an additional avenue for Market Makers to benefit from a linked maker rebate for SPY and IWM.

In addition, the Exchange believes that the proposed changes to the Market Maker Plus program for IWM are reasonable and equitable as these changes would increase rebates for Market Makers that qualify for Market Maker Plus in IWM, including linked maker rebates that will now be provided between SPY and IWM in addition to SPY and QQQ. The Exchange has selected IWM to benefit from increased rebates – including increased linked maker rebates that are tied to SPY – as IWM is among the most actively traded symbols traded on ISE, similar to SPY and QQQ, which benefit from a similar treatment today. Because SPY is the most single most actively traded product on the Exchange overall, it will be linked to both QQQ and IWM, which the Exchange believes will serve as an important incentive for Market Makers that support the Exchange by making quality markets. The rule also provides that in the event a Market Maker is eligible for linked maker rebates 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, thereby ensuring that the Market Maker will always benefit from the higher incentive.

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. The Exchange believes the proposed rule change will further encourage Market Makers to maintain quality markets in the most actively traded symbols on ISE, to the benefit of all market participants that trade on the Exchange. Specifically, the proposed changes may encourage better market quality in IWM as Market Makers are incentivized by higher rebates and the ability to earn linked maker rebates in SPY. Similarly, the Exchange believes that

the proposed changes may encourage better market quality in SPY as Market Makers would be able to earn linked maker rebates in IWM in addition to the other rebates that they may qualify for today. Furthermore, the proposed rebates and rebate structure for IWM would be identical to that in place for SPY and QQQ, which the Exchange believes has successfully encouraged Market Makers to make quality markets on ISE. The Exchange therefore believes that expanding this program has the potential to further benefit market quality on ISE, creating a more active and liquid market for options traded on the Exchange.

The Exchange also believes that the proposed changes are not unfairly discriminatory as all Market Makers can qualify for Market Maker Plus by meeting program requirements that are designed to incentivize Market Markets to maintain quality markets. With the proposed changes, SPY, QQQ, and IWM will each be subject to enhanced rebates that are designed to incentivize Market Makers to make quality markets in these highly active symbols. Market Makers that show commitment to market quality by maintaining quotes that qualify them for a higher tier in these symbols will earn higher rebates, including the possibility to earn linked maker rebates. Furthermore, the Exchange continues to believe that it is not unfairly discriminatory to offer these rebates only to Market Makers as 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to the Market Maker Plus program are designed to increase competition by encouraging Market Makers to provide liquidity and maintain tight markets in some of the most

actively traded symbols on the Exchange. 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 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>10</sup> and Rule 19b-4(f)(2)<sup>11</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>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</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-2018-36 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-2018-36. 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-2018-36 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>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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