

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83446; File No. SR-ISE-2018-52)

June 14, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase Certain Route-Out Fees Set Forth in Section IV.F of 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 June 1, 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 increase certain route-out fees set forth in Section IV.F of the Schedule of Fees, as described further below.

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 increase certain route-out fees set forth in Section IV.F of the Schedule of Fees. Today, the Exchange charges Non-Priority Customers (i.e., Market Maker,<sup>3</sup> Non-Nasdaq ISE Market Maker,<sup>4</sup> Firm Proprietary<sup>5</sup> / Broker-Dealer,<sup>6</sup> and Professional Customer<sup>7</sup>) route-out fees of \$0.95 per contract for orders in Non-Select Symbols<sup>8</sup> that are routed to away exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan (the “Plan”). The Exchange now proposes to increase this fee to \$1.09 per contract for all Non-Priority Customer orders in Non-Select Symbols that are routed to away exchanges in connection with the Plan. The Exchange believes that the proposed increase will help offset the costs associated with routing orders through the Plan, such as paying the transaction fees for such executions at other exchanges.

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<sup>3</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Rule 100(a)(28).

<sup>4</sup> A “Non-Nasdaq 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.

<sup>5</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

<sup>6</sup> A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>7</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

<sup>8</sup> “Non-Select Symbols” are options overlying all symbols that are not in the Penny Pilot Program.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</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 proposed increase in the Non-Priority Customer route-out fees from \$0.95 to \$1.09 per contract for orders in Non-Select Symbols is reasonable because it is designed to help recoup costs associated with routing orders to away exchanges in connection with the Plan, such as paying the transaction fees for such executions at other exchanges. Furthermore, the Exchange notes that the proposed fees remain competitive with the fees of other options exchanges which, in addition to a fixed routing fee, assess the actual transaction fees.<sup>11</sup>

The Exchange believes that proposed increase in the Non-Priority Customer route-out fees is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. The Exchange believes it is equitable and not unfairly discriminatory to increase the route-out fees for all market participants other than Priority Customers<sup>12</sup> because the Exchange seeks to encourage Priority Customer order flow and

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

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> For example, CBOE C2 Exchange, Inc. (“C2”) charges \$1.63 per routed contract for non-public customer, non-C2 market-maker orders in non-penny classes. See C2 Fees Schedule, Section 1.A (Transaction Fees) and Section 2 (Linkage Routing).

<sup>12</sup> 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

the liquidity that such order flow brings to the marketplace, which in turn benefits all market participants.

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. In particular, the proposed increase to the route-out fees will apply equally to all Non-Priority Customer orders that are routed to away exchanges in connection with the Plan, and will help offset costs associated with routing orders via the Plan. Furthermore as noted above, the Exchange believes that its proposed fees remain competitive with another options exchange.

The Exchange notes that it 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 with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. 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. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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calendar month for its own beneficial account(s), as defined in Nasdaq ISE Rule 100(a)(37A).

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>13</sup> and Rule 19b-4(f)(2)<sup>14</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.

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-2018-52 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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-ISE-2018-52. 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-2018-52 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>15</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).