

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83830; File No. SR-ISE-2018-66)

August 13, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Schedule of Fees Relating to Crossing Orders and Responses to Crossing Orders in Index Options on the Nasdaq 100 Reduced Value Index

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 August 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 amend the Exchange's Schedule of Fees to provide further explanation on how the Exchange charges Crossing Orders and Responses to Crossing Orders in index options on the Nasdaq 100 Reduced Value Index ("NQX").

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 recently adopted transaction fees and rebates for adding or removing liquidity from ISE (i.e., maker/taker fees and rebates) in NQX options, which apply to executions in both the regular and complex order book, according to the following schedule:³

Market Participant	Maker Fee / Rebate	Taker Fee / Rebate
Market Maker	(\$0.25)	\$0.00
Market Maker (for orders sent by Electronic Access Members)	(\$0.25)	\$0.00
Non-Nasdaq ISE Market Maker (FarMM)	\$0.25	\$0.25
Firm Proprietary / Broker-Dealer	\$0.25	\$0.25
Professional Customer	\$0.25	\$0.25
Priority Customer	\$0.00	\$0.00

In SR-ISE-2018-61, the Exchange stated that the above pricing would apply to all executions in NQX, including Non-Priority Customer⁴ Crossing Orders⁵ in NQX. The Exchange now proposes to clarify that the taker fee applies to Crossing Orders (i.e., both the originating and contra side of the order) in NQX as well as responses to such orders by noting the following

³ See Securities Exchange Act Release No. 83639 (July 16, 2018) (SR-ISE-2018-61).

⁴ “Non-Priority Customers” include Market Makers, Non-Nasdaq ISE Market Makers, Firm Proprietary / Broker-Dealers, and Professional Customers.

⁵ 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 order. For purposes of the fee schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

in Section III.B: “Fee will also apply to the originating and contra side of Crossing Orders, and to Responses to Crossing Orders.”⁶

The Exchange does not seek to amend the manner in which Crossing Orders in NQX and responses thereto are currently charged, rather the Exchange seeks to more clearly state in its Schedule of Fees that taker pricing applies for such orders. While the Exchange is not aware of any member confusion with respect to this fee, the Exchange believes this specificity will help preclude any potential confusion in how its fees will apply.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 language relating to the application of taker fees to Crossing Orders and Responses to Crossing Orders in NQX is reasonable because the proposed rule text will bring greater transparency to the manner in which the Exchange charges NQX orders submitted in ISE’s various crossing mechanisms. As discussed above, the Exchange charges members the applicable taker fee to both the originating and contra side of Crossing Orders in NQX as well charging the NQX taker pricing for Responses to Crossing Orders. The Exchange believes it is reasonable and appropriate to charge taker and not maker

⁶ “Responses to Crossing Order” is any contra-side interest submitted after the commencement of an auction in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

pricing for these orders because the Exchange seeks to encourage market making activity in NQX by providing the \$0.25 per contract maker rebate to Market Maker orders that post liquidity in the Exchange's new proprietary product during the initial months of trading. Furthermore, the manner in which the Exchange applies the NQX taker fees in Section III.B is not changing with this proposal, and the proposed changes are intended to bring greater clarity to ISE's Schedule of Fees, to the benefit of all market participants.

The Exchange's proposal to add the clarifying language is also equitable and not unfairly discriminatory because the Exchange will continue to apply the taker fees for Crossing Orders and Responses to Crossing Orders in NQX in a uniform manner for all similarly situated participants. The Exchange also believes that it is equitable and not unfairly discriminatory to assess no taker fees to Market Maker Crossing Orders and Responses to Crossing Orders in NQX as compared to other Non-Priority Customers, who are currently assessed the \$0.25 per contract taker fee for such orders. Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess no transaction fees to Priority Customer⁹ Crossing Orders and Responses to Crossing Orders in NQX because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Priority Customer liquidity provides more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

⁹ 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 Nasdaq ISE Rule 100(a)(37A).

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. As discussed above, the proposal is intended to eliminate ambiguity from the Schedule of Fees by further explaining how ISE charges the originating and contra side of Crossing Orders in NQX as well as Responses to Crossing Orders in NQX. The proposal does not amend the current manner in which the Exchange assesses fees for Crossing Orders and Responses to Crossing Orders in NQX, and the Exchange will continue to assess the applicable taker fees in Section III.B for such NQX orders in a uniform manner to all market participants. For the foregoing reasons, the Exchange believes that the proposed changes do not impose an undue 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 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. Please include File Number SR-ISE-2018-66 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-2018-66. 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-2018-66 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.¹²

Robert W. Errett
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).