



8011-01  
SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-83660; File No. SR-ISE-2018-63]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Schedule of Fees to Waive Fees and Rebates for Trades in NQX Options

July 18, 2018

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 July 6, 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, as further described 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 received approval to list index options on the Nasdaq 100 Reduced Value Index ("NQX") on a pilot basis.<sup>3</sup> The NQX options contract will be the same in all respects as the current Nasdaq-100 Index ("NDX") options contract listed on the Exchange, except that it will be based on 1/5 of the value of the Nasdaq 100 Index, and will be P.M. settled with an exercise settlement value based on the closing index value of the Nasdaq 100 on the day of expiration.<sup>4</sup> The Exchange will begin to list NQX on June 26, 2018.<sup>5</sup>

The Exchange now proposes to amend its Schedule of Fees to provide that there will be no fees or rebates for trades in NQX options executed from June 26 - 29, 2018. Volume executed in NQX options during this period will continue to be counted toward a member's tier for June activity. As such, NQX executions from June 26 - 29, 2018 will be included in the applicable volume tier calculations for a member's June activity, including those volume calculations specific to Non-Select Symbols (i.e., options overlying all symbols that are not in

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<sup>3</sup> See Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR-ISE-2017-106).

<sup>4</sup> Id. The Exchange notes that similar features are available with other index options contracts listed on the Exchange and other options exchanges, including P.M. settled options on the full value of the Nasdaq-100 Index ("NDXP").

<sup>5</sup> The Exchange initially filed the proposed pricing changes on June 26, 2018 (SR-ISE-2018-58). On July 6, 2018, the Exchange withdrew that filing and submitted this filing.

the Penny Pilot Program).<sup>6</sup> The Exchange plans to adopt pricing for NQX as of July 2, 2018, and will do so through the SEC rulemaking process. The proposed changes would simplify the Exchange's billing by allowing the Exchange to bill for NQX activity traded as of July 2<sup>nd</sup>, and is an inducement for members to trade NQX options during the first week of listing as there would be no transaction fees for doing so.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</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 it is reasonable and equitable to assess no fees or rebates for executions in NQX from June 26 - 29, 2018 because it will simplify the Exchange's billing and promote members to trade in NQX during the first week of listing, as further discussed above. For the same foregoing reasons, the Exchange also believes that it is reasonable and equitable to provide that volume executed in NQX during this time period will continue to be counted toward a member's tier for June activity. The Exchange also believes that it is reasonable to include NQX volume in this manner because it would be more burdensome to make changes to the

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<sup>6</sup> For example, the Exchange provides Market Makers discounted fees for regular orders in Non-Select Symbols if the Market Maker executes a monthly volume of 250,000 contracts or more. See Schedule of Fees, Section IV.D. As proposed, the Market Maker's executions in NQX between June 26 - 29, 2018 would not be entitled to any discounted fees given that no fees or rebates would be provided during the proposed period, but such executions would still be counted toward the monthly volume calculation (i.e., to reach the 250,000 contract threshold). NQX is a Non-Select Symbol.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

Exchange's billing system in the middle of the month rather than the start to exclude a new symbol from the applicable volume tier calculations, as described above. The Exchange further believes that its proposal is not unfairly discriminatory as it will apply to trades in NQX that are executed by 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. As discussed above, the proposed change to not assess any fees or rebates for executions of NQX orders from June 26 - 29, 2018 is merely intended to simplify the Exchange's billing, and promote members to trade in NQX during the first week of listing. Furthermore, the proposal will apply uniformly to all similarly situated market participants, as discussed above. For the foregoing reasons, the Exchange does not believe that its proposal will impose an undue burden on competition.

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.

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>9</sup> and Rule 19b-4(f)(2)<sup>10</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-2018-63 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-2018-63. 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

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 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. 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-2018-63 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Eduardo A. Aleman,  
Assistant Secretary.

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<sup>11</sup> 17 CFR 200.30-3(a)(12).

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