

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81112; File No. SR-NYSEMKT-2017-31]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt Rule 6900 To Establish the Procedures for Resolving Potential Disputes Related to CAT Fees Charged to Industry Members

July 10, 2017.

On May 16, 2017, NYSE MKT LLC. (“NYSE MKT” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt Rule 6900 (Consolidated Audit Trail—Fee Dispute Resolutions). The proposed rule change was published for comment in the **Federal Register** on June 1, 2017.³ The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. The proposed rule change would establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates August 30, 2017, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to

disapprove the proposed rule change (File Number SR-NYSEMKT-2017-31).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81108; File No. SR-ISE-2017-65]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Priority Customer Taker Fees for Regular Orders in Select Symbols

July 10, 2017.

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 June 30, 2017, 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 its Schedule of Fees, as described further below.

The text of the proposed rule change is available on the Exchange's Web site at www.ise.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 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 amend the Schedule of Fees to make changes to the Priority Customer³ taker fees for regular orders in Select Symbols,⁴ as described in more detail below.

Currently, the Exchange charges a taker fee for regular orders in Select Symbols that is \$0.44 per contract for Market Maker⁵ orders, \$0.45 per contract for Non-Nasdaq ISE Market Maker,⁶ Firm Proprietary,⁷ Broker-Dealer,⁸ and Professional Customer⁹ orders, and \$0.40 per contract for Priority Customer orders. In addition, the Exchange charges a reduced Priority Customer taker fee of \$0.35 per contract for regular orders in SPY, which is the most actively traded name on the Exchange.

The Exchange now proposes to further reduce the Priority Customer taker fee for regular orders in SPY from \$0.35 per contract to \$0.30 per contract. The Exchange also proposes to reduce the Priority Customer taker fee for QQQ, IWM and VXX from \$0.40 per contract to \$0.35 per contract. SPY, QQQ, IWM and VXX are some of the most actively traded names on the Exchange. As such, the Exchange believes that this reduction in fees will attract Priority Customer orders in those symbols to ISE. Finally, the Exchange proposes to increase the Priority Customer taker fee for regular orders in all other Select Symbols from \$0.40 per contract to \$0.44 per contract.

³ 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).

⁴ “Select Symbols” are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

⁵ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

⁶ 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.

⁷ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

⁸ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

⁹ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 80782 (May 26, 2017), 82 FR 25379 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

⁷ 15 U.S.C. 78s(b)(1).

⁸ 17 CFR 240.19b-4.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and Section 6(b)(4) of the Act,¹¹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable and equitable to reduce the Priority Customer taker fee for regular orders in SPY, QQQ, IWM and VXX as the proposed fees are more favorable than those currently offered on the Exchange. The Exchange is targeting SPY, QQQ, IWM and VXX for this change as these are some of the most actively traded symbols on ISE. With this change, the Exchange will charge lower taker fees for Priority Customer orders in SPY, QQQ, IWM and VXX, thereby attracting additional order flow in these symbols to the benefit of all members that trade on the Exchange. Furthermore, the Exchange believes that it is equitable and not unfairly discriminatory to only offer this reduced taker fee to Priority Customer orders. A Priority Customer is by definition not a broker or 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). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders than Priority Customers.

The Exchange believes that it is reasonable and equitable to increase the Priority Customer taker fee for regular orders in all other Select Symbols because the proposed fees will remain lower or be equal to other market participants that remove liquidity on the Exchange. In addition, the proposed increase will be offset by the lower taker fees proposed for Priority Customer orders in SPY, QQQ, IWM and VXX, which as noted above are some of the most actively traded names on ISE. The Exchange also notes that the increased fees proposed herein are still lower than the level of fees charged by one of the Exchange's competitors.¹² In addition, the Exchange believes that the proposed fee changes are equitable and not unfairly discriminatory because the increased Priority Customer taker fees

will apply equally to all similarly-situated market participants.

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

In accordance with Section 6(b)(8) of the Act,¹³ 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. The Exchange believes that the proposed fees remain competitive with those on other options markets, and will continue to attract order flow to the Exchange. 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 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,¹⁴ and Rule 19b-4(f)(2)¹⁵ 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 email to rule-comments@sec.gov. Please include File Number SR-ISE-2017-65 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-2017-65. This file number should be included on the subject line if email 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2017-65 and should be submitted on or before August 4, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Jill M. Peterson,

Assistant Secretary.

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¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

¹² See C2 Options Exchange, Inc.'s Fee Schedule, Section 1: <http://www.cboe.com/publish/C2FeeSchedule/C2FeeSchedule.pdf>.

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 17 CFR 200.30-3(a)(12).