

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92394; File No. SR-ISE-2021-15)

July 13, 2021

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 2, Section 5, Market Maker Quotations

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, 2021, 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 Options 2, Section 5, Market Maker Quotations.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, 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

¹ 15 U.S.C. 78s(b)(1).

² 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 proposes to amend ISE Rules at Options 2, Section 5, Market Maker Quotations. Currently, the Exchange requires Competitive Market Makers³ and Primary Market Makers⁴ to enter bids and offers for the options to which they are registered, except in an assigned options series listed intra-day on the Exchange.⁵ Quotations must meet the legal quote width requirements specified in Options 2, Section 4(b)(4).⁶ On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member,⁷ is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading.⁸ Notwithstanding the foregoing, a Competitive Market Maker shall not be required to

³ The term “Competitive Market Maker” means a Member that is approved to exercise trading privileges associated with CMM Rights. See Options 1, Section 1(a)(12).

⁴ The term “Primary Market Maker” means a Member that is approved to exercise trading privileges associated with PMM Rights. See Options 1, Section 1(a)(36).

⁵ Options 2, Section 5(e).

⁶ Options 2, Section 4(b)(4) describes bid/ask differentials.

⁷ The term “Member” means an organization that has been approved to exercise trading rights associated with Exchange Rights. See General 1, Section 1(a)(13).

⁸ Options 2, Section 5(e)(1).

make two-sided markets pursuant to Options 2, Section 5(e)(1) in any Quarterly Options Series, any adjusted options series, and any option series with an expiration of nine months or greater for options on equities and exchange-traded funds (“ETFs”) or with an expiration of twelve months or greater for index options. Competitive Market Makers may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation.⁹ Primary Market Makers, associated with the same Member are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading. Primary Market Makers are required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.¹⁰

A Member is required to meet each market making obligation separately.¹¹ Currently, Options 2, Section 5(e) states, “A Competitive Market Maker who is also the Primary Market Maker will be held to the Primary Market Maker obligations in the options series in which the Primary Market Maker is assigned and will be held to Competitive Market Maker obligations in all other options series where assigned. A Competitive Market Maker who receives a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10 will be held

⁹ Options 2, Section 5(e)(1).

¹⁰ Options 2, Section 5(e)(2).

¹¹ See Options 2, Section 5(e). Today, the Exchange aggregates all quotes submitted through the Specialized Quote Feed interface from the Member, regardless of whether the quote was submitted by the Member in its capacity as Primary Market Maker or Competitive Market Maker.

to the standard of a Preferred CMM in the options series of any options class in which it receives the Preferred Order.”¹²

Today, the Exchange calculates whether a Member that is assigned in an options series as both a Primary Market Maker and a Competitive Market Maker has met its quoting obligations as Primary Market Maker and Competitive Market Maker, respectively, by aggregating all quotes submitted through the Specialized Quote Feed¹³ interface from the Member, whether the quote was submitted by the Member in its capacity as Primary Market Maker or Competitive Market Maker.

The Exchange proposes to amend its calculation to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges¹⁴ and options series¹⁵ assigned to a Primary Market Maker when calculating whether a Member acting as a Primary Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number

¹² Preferred Competitive Market Makers are subject to enhanced quoting requirements as provided in Options 2, Section 5(e)(3). See Options 3, Section 10 at Supplementary Material .01.

¹³ “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying and complex instruments); (2) System event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7 at Supplementary Material .03(c).

¹⁴ A “badge” shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. See Options 1, Section 1(a)(5).

¹⁵ ISE currently utilizes a badge with an associated options series to designate a Primary Market Maker assigned in an options series and a badge with an associated options series to designate a Competitive Market Maker assigned in an option series.

of seconds, or such higher percentage as ISE may announce for which that Member's assigned options class is open for trading. Similarly, the Exchange proposes to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and options series assigned to a Competitive Market Maker when calculating whether a Member acting as a Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as ISE may announce for which that Member's assigned options class is open for trading, provided the Competitive Market Maker initiated quoting in an options class for which that Member's assigned options class is open for trading. With this proposed change, a Member that is a Competitive Market Maker in an options series where the Member is also assigned as the Primary Market Maker in an options series will be held to both the Primary Market Maker and Competitive Market Maker obligations, pursuant to Options 2, Section 5(e), separately, in that options series. The Exchange will consider whether a Member, acting as both Primary Market Maker and Competitive Market Maker in an assigned options series, has complied with each requirement by only considering quotes in the respective badges.

By way of example,

Current Quoting obligation methodology:

Primary Market Maker firm 123 is assigned five badges: 123A, 123B, 123C, 123D and 123E.

Badge 123A is designated the Primary Market Maker badge and badge 123B-E are designated as Competitive Market Maker badges.

Today, all quoting activity from all 5 badges is aggregated in determining if Firm 123 complied with the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that Member's assigned options series are open for trading. The higher of the two obligations is required today.

Proposed Quoting obligation methodology:

Primary Market Maker firm 123 is assigned five badges: 123A, 123B, 123C, 123D and 123E.

Badge 123A is designated the Primary Market Maker badge and badge 123B-E are designated as Competitive Market Maker badges.

As proposed only quoting activity from badge 123A (and excluding badges 123 B-E) would be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that Member's assigned options series are open for trading.

All other badges (123 B-E), excluding badge 123A, would be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds for which that Member's assigned options series are open for trading.

A Member may have only one Primary Market Maker badge per option series.

The below example explains how the Exchange aggregates quotes from Primary Market Makers, in their assigned options series, to determine compliance with quoting requirements, which will not be changing pursuant to this proposal. The same calculation applies to quotes from Competitive Market Makers in their assigned options series.

Under the proposal, and as is the case today, by way of example, assume Primary Market Maker Firm ABC assigned in five symbols across 2 different badges:

Badge 123A and B is assigned in symbols QQQ and SPY, respectively.

Badge 124A, B and C is assigned in symbols IBM, GM, and MSFT, respectively

Quotes submitted through the Specialized Quote Feed interface from the Firm ABC's

Primary Market Maker badges from all 5 symbols will be counted in determining

compliance with Firm ABC's requirement to provide two-sided quotations in 90% of the

cumulative number of seconds for which Firm ABC's assigned options series are open

for trading.

If Firm ABC Primary Market Maker badge 123A quotes symbol QQQ at 95% and badge

123B quotes symbol SPY at 90% and Firm ABC Primary Market Maker badge 124A

quotes IBM at 85%, badge 124B quotes GM at 95%, and badge 124C quotes MSFT at

90% then Firm ABC will have met requirement to provide two-sided quotations in 90%

of the cumulative number of seconds for which Firm ABC's assigned options series are

open for trading because the percentage across the 5 symbols is 91%.

Implementation

The Exchange proposes to implement this rule change on August 2, 2021. The Exchange has issued an Options Regulatory Alert notifying Members of this change.¹⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public

¹⁶ See Options Regulatory Alert 2021-36.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

interest by requiring Primary Market Makers and Competitive Market Makers to separately meet quoting requirements as both a Primary Market Maker and Competitive Market Maker, respectively, when the Member is assigned in both roles in an options series.

The Exchange's proposal to separately calculate Competitive Market Maker and Primary Market Maker quoting obligations where the Member is assigned as both Primary Market Maker and Competitive Market Maker in an options series is consistent with the Act. Specifically, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and options series assigned to a Primary Market Maker when calculating whether a Member acting as a Primary Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as ISE may announce for which that Member's assigned options series are open for trading. Similarly, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and option series assigned to a Competitive Market Maker when calculating whether a Member acting as a Competitive Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as ISE may announce for which that Member's assigned options series are open for trading.

The proposed change for calculating the Primary Market Maker requirement separate from the Competitive Market Maker requirement, where a Member is assigned in both roles in an options series, would ensure that the Member quotes the requisite number of seconds in an assigned options series, when acting as both Primary Market Maker and Competitive Market Maker. This would ensure that a Member adds the requisite amount of liquidity in that assigned options series in exchange for certain benefits offered by the Exchange to the Member, such as

enhanced Primary Market Maker allocation¹⁹ and favorable pricing,²⁰ in addition to the Member fulfilling other market making obligations specified in Options 2, Section 4(a) and (b).²¹

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. Rather, the proposal would ensure that Members that are assigned in an options series as both the Primary Market Maker and Competitive Market Maker, respectively, are meeting the same quoting obligations as other Members who are assigned solely as either the Primary Market Maker or Competitive Market Maker in an option series. Also, this proposal would ensure that a Member quotes the requisite number of seconds in an assigned options series, when acting as both Primary Market Maker and Competitive Market Maker, respectively, thereby adding the requisite amount of liquidity in exchange for certain benefits provided by the Exchange such as

¹⁹ See Options 3, Section 10(c)(1)(B).

²⁰ See Options 7, Pricing Schedule.

²¹ *General.* Transactions of a Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such a course of dealings. *Appointment.* With respect to each options class to which a Market Maker is appointed under Options 2, Section 3, the Market Maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular options contract, or a temporary distortion of the price relationships between options contracts of the same class. Without limiting the foregoing, a Market Maker is expected to perform the following activities in the course of maintaining a fair and orderly market: (1) To compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed. (2) To make markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange's System in all series of options classes to which the Market Maker is appointed. (3) To update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.

enhanced Primary Market Maker allocation²² and favorable pricing,²³ in addition to fulfilling its other market making obligations specified in Options 2, Section 4(a) and (b).²⁴

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶

A proposed rule change filed under Rule 19b-4(f)(6)²⁷ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Waiving the operative

²² See note 19 above.

²³ See note 20 above.

²⁴ See note 21 above.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁷ 17 CFR 240.19b-4(f)(6).

²⁸ 17 CFR 240.19b-4(f)(6)(iii).

delay will allow the Exchange to amend, without delay, its rules regarding Market Maker quoting obligations to ensure that Members assigned in an options series as both the Primary Market Maker and Competitive Market Maker would have the same quoting obligations as Members who are assigned solely as either Primary Market Maker or Competitive Market Maker in an option series. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposed rule change to be operative upon filing.²⁹

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2021-15 on the subject line.

²⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2021-15. 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-2021-15 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.³⁰

J. Matthew DeLesDernier
Assistant Secretary

³⁰ 17 CFR 200.30-3(a)(12).