

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82396; File No. SR-ISE-2017-108]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Clarify the Market Maker Plus Program

December 22, 2017.

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 December 12, 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 the Schedule of Fees to clarify the Market Maker Plus program.

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 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 operates a Market Maker Plus program for regular orders

in Select Symbols<sup>3</sup> whereby Market Makers that contribute to market quality by maintaining tight markets are eligible for enhanced rebates. The purpose of the proposed rule change is to amend the Schedule of Fees to clarify how the Exchange provides Market Maker Plus rebates under the Schedule of Fees.

A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer (“NBBO”) a specified percentage of the time for series trading between \$0.03 and \$3.00 (for options whose underlying stock’s previous trading day’s last sale price was less than or equal to \$100) and between \$0.10 and \$3.00 (for options whose underlying stock’s previous trading day’s last sale price was greater than \$100) in premium in each of the front two expiration months.<sup>4</sup> Currently, the specified percentage for time at the NBBO for Select Symbols other than SPY and QQQ is 80% to less than 85% for Tier 1, 85% to less than 95% for Tier 2, and 95% or greater for Tier 3. For SPY and QQQ only, the specified percentage for time at the NBBO is 70% to less than 80% for Tier 1, 80% to less than 85% for Tier 2, 85% to less than 90% for Tier 3, and 90% or greater for Tier 4.

Due to how quoting infrastructure is designed on INET, when determining if the Market Maker meets the above specified percentages, Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker’s badge/suffix combinations.<sup>5</sup> If any badge/suffix combination meets the specified percentage for a tier, the rebates for that tier are applied to executions for all badge/suffix combinations used by the member to trade the product—*i.e.*, a member’s highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. The same logic applies for linked

rebates in SPY/QQQ, meaning that if a member achieves a higher tier of Market Maker Plus for any badge/suffix combination in one product (*e.g.*, SPY) but not for badge/suffix combinations in the other linked product (*e.g.*, QQQ), the member would receive the linked rebate in the other product for all badge/suffix combinations.

For example, assume Market Maker ABC is configured to trade SPY in the following badge/suffix combinations: 123A, 123B, and 321A, and is on the NBBO 97% of the time in 123A, 86% of the time in 123B, and 92% of the time in 321A. Based on these facts, Market Maker ABC would qualify for Tier 3 rebates in SPY for 123A based on a time at the NBBO of 95% or greater. In addition Market Maker ABC would qualify for the same Tier 3 rebates in SPY for 123B and 321A as the highest tier achieved is applied to all badge/suffix combinations. If Market Maker ABC also quotes QQQ in 321A, and is on the NBBO 80% of the time for that badge/suffix, it would similarly receive the Tier 3 Linked Rebate for QQQ in 321A based on quoting activity for SPY in 123A.

Based on the above, the Exchange proposes to amend footnote 5 under Section I. Regular Order Fees and Rebates to provide that: “Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers—*i.e.*, badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker’s badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol.” In addition, the Exchange proposes to amend the second sentence of footnote 9 under Section I. Regular Order Fees and Rebates to provide that: “Linked maker rebate applies to executions in SPY or QQQ if the Market Maker does not achieve the applicable tier in that symbol but achieves the tier (*i.e.*, any of Market Maker Plus Tiers 2–4) for any badge/suffix combination in the other symbol, in which case the higher tier achieved applies to both symbols.”

Furthermore, the Schedule of Fees provides that if a Market Maker achieves Market Maker Plus status, a \$0.10 per contract fee applies when trading against Priority Customer complex orders that leg into the regular order book, and there will be no fee charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book. The

<sup>3</sup> “Select Symbols” are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

<sup>4</sup> A Market Maker’s single best and single worst quoting days each month based on the front two expiration months, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate. Other than days where the Exchange closes early for holiday observance, any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the Market Maker Plus tier calculation; provided that the Exchange will only remove the day for members that would have a lower time at the NBBO for the specified series with the day included.

<sup>5</sup> Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers—*i.e.*, badge/suffix combinations.

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

<sup>2</sup> 17 CFR 240.19b-4.

\$0.10 per contract fee described above has always been applied instead of the tiered rebate that normally applies to Market Maker Plus executions.<sup>6</sup> To increase transparency to members, the Exchange proposes to explicitly state in the Schedule of Fees that no Market Maker Plus rebate is provided when a fee is charged. As proposed, the first line of footnote 10 under Section I. Regular Order Fees and Rebates will be amended to provide that: “A \$0.10 per contract fee applies *instead of the applicable Market Maker Plus rebate* when trading against Priority Customer complex orders that leg into the regular order book.” Although this change is consistent with current practice, the Exchange believes that it will eliminate any potential confusion around whether a rebate is provided in addition to the fee charged when trading against Priority Customer complex orders that leg into the regular order book.

## 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 the proposed rule change is reasonable and equitable as it identifies how Market Maker Plus rebates are provided on INET, which performs the Market Maker Plus calculation at the badge/suffix level and applies Market Maker Plus rebates to executions across all badge/suffix combinations that the member uses to trade in that symbol, or to trade in a linked symbol in the case of linked maker rebates for SPY/QQQ. The Exchange believes that it is appropriate to amend the Schedule of Fees so that members are appropriately apprised of how the Market Maker Plus program is implemented on INET. By including this detail in the Schedule of Fees, the proposed rule change will increase transparency around the Exchange’s billing to the benefit of its members, and in particular, Market Makers that participate in the Market Maker Plus Program.

The INET implementation being codified in this proposed rule change is different in one respect from the prior implementation on the legacy T7 trading system. Specifically, although the T7 billing system similarly applied the rebates to all of a Market Maker’s executions in a symbol where the member met the Market Maker Plus requirements, the calculation for time at the NBBO was based on all quotes submitted by the member. On the legacy system, Market Makers were assigned Business Unit designations for their quoting, with the majority of Market Makers being configured with only one Business Unit for all of the firm’s quoting activity across the suite of products listed by the Exchange.<sup>9</sup> On INET, by contrast, Market Makers are assigned one or more accounts and can associate different badge/suffix combinations with each of those accounts—for example, to manage quotes in a particular product. As currently implemented on INET, Market Makers that quote a product across multiple badge/suffix combinations have to qualify for a tier for one or more badge/suffix combinations in order to qualify for that tier of Market Maker Plus. Because of the different system architecture, which allows flexibility in setting up badge/suffix combinations associated with a Market Maker account(s), the INET billing system does not aggregate quoting activity across these separate badge/suffix combinations to determine eligibility. However, once a member qualifies for one badge/suffix combination, rebates are paid across all of the Market Maker’s badge/suffix combinations that trade the product, thereby ensuring that Market Makers receive this benefit across the entire firm when enhancing market quality.

The vast majority of Market Makers that choose to enter quotes for a product using a single badge/suffix combination on INET are unaffected by this change, which only impacts firms that decide to quote a product across multiple badge/suffix combinations. In conducting an analysis of Market Makers potentially impacted by this change because the member quotes a single symbol using more than one badge/suffix combination on INET, the Exchange found only one member that did so and only during one month in a total of three symbols. The Exchange therefore believes that members are unlikely to be negatively impacted in their ability to earn rebates for their market quality contribution under the INET implementation.

Furthermore, for Market Makers that do choose to enter quotes for a single product using multiple badge/suffix combinations, the Exchange believes that this implementation is appropriate as these members may be conducting separate business across these badge/suffix combinations and should therefore have their contribution to market quality measured at that level. Nevertheless, as mentioned above, the program benefits continue to accrue to all badge/suffix combinations once one badge/suffix combination qualifies for that tier of Market Maker Plus. Paying rebates across the entire firm based on the highest tier of Market Maker Plus achieved in a symbol adds an extra incentive for members to qualify for Market Maker Plus in one or more badge/suffix combinations by maintaining quality markets based on time at the NBBO.

The Exchange also believes that the proposed changes are not unfairly discriminatory as all Market Makers are free to configure their quoting activity across one or more badge/suffix combinations based on their business or other needs, and will be treated uniformly based on their quoting activity (*i.e.*, time at the NBBO) and configuration (*i.e.*, badge/suffix setup) in the manner described in this proposed rule change. As described above, this change is unlikely to have any significant effect on any Market Maker’s ability to earn rebates under the Market Maker Plus program because it is rare for Market Makers to quote a single product across multiple badge/suffix combinations, and any impact can be mitigated by the Market Maker determining to quote a product using only one badge/suffix combination. Moreover, to the extent that any Market Maker chooses to use multiple badge/suffix combinations to quote a particular symbol, the Exchange believes that such member may be conducting separate business across these badge/suffix combinations and it is therefore not unfairly discriminatory to have the firm’s contribution to market quality measured at that level. Furthermore, the proposed rule change will increase transparency around how Market Maker Plus rebates are applied, which is beneficial for all members.

Finally, the Exchange believes that the proposed clarification to the fee charged for trading against Priority Customer complex orders that leg into the regular order book is reasonable, equitable, and not unfairly discriminatory as it avoids potential member confusion about whether a rebate is provided when the fee is charged. Although prior filings were

<sup>6</sup> See Securities Exchange Act Release No. 72817 (August 12, 2014), 79 FR 48801 (August 18, 2014) (SR-ISE-2014-39).

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

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

<sup>9</sup> A number of users could be permissioned for each Business Unit.

more clear that a rebate is not provided when a fee is charged, the Exchange wishes to be explicit about this in the text of the Schedule of Fees. The Exchange believes that the proposed change will increase transparency around the Exchange's billing to the benefit of its members.

#### *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. The proposed rule change describes the INET implementation of the Market Maker Plus program. While certain elements of the program are changed from the prior T7 practice, for the reasons described in this proposed rule change the Exchange does not believe that any members will be significantly impacted by the changes. The Exchange therefore believes that the Market Maker Plus program will continue to encourage competition by incentivizing Market Makers to provide liquidity and maintain tight markets in Select Symbols. Furthermore, the proposed rule change explains that rebates are not provided when a fee is charged for trading against Priority Customer complex orders that leg into the regular order book. This language merely describes the Exchange's billing, which remains unchanged, and will increase transparency to members without any impact on competition. The Exchange 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. 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 of Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2017-108 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-2017-108. 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 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-2017-108 and should be submitted on or before January 18, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82372; File No. SR-NYSEArca-2017-140]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Perth Mint Physical Gold ETF Trust Under NYSE Arca Rule 8.201-E**

December 21, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 11, 2017, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 list and trade shares of the Perth Mint Physical Gold ETF Trust under NYSE Arca Rule 8.201-E. The proposed change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).