

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

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed changes would encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange does not believe that the proposed change would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the incentive would be available to all similarly-situated participants, and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants and may, in fact, encourage competition.

The Exchange believes that the proposed enhanced credits for LMMs would not impose an unfair burden on competition because the LMMs have heightened obligations for issues in their allocation that do not apply to other market participants.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects 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 solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due,

fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change 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-NYSEArca-2017-35 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-NYSEArca-2017-35. 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-NYSEArca-2017-35, and should be submitted on or before May 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, April 20, 2017 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Acting Chairman Piowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims;
- Litigation matters; and
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

contact Brent J. Fields from the Office of the Secretary at (202) 551-5400.

Dated: April 13, 2017.

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80438; File No. SR-ISE-2017-31]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .03 to Rule 713 To Change the Allocation Entitlement for Preferred PMMs

April 12, 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 April 5, 2017, Nasdaq ISE, LLC (“ISE” or “Exchange”)<sup>3</sup> filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, 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 Supplementary Material .03 to Rule 713 to change the allocation entitlement for Preferred PMMs.

The text of the proposed rule change is available on the Exchange’s Web site at [www.ise.com](http://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

Supplementary Material .03 to Rule 713 allows an Electronic Access Member (“EAM”) to designate a “Preferred Market Maker” on orders it enters into the System (“Preferred Orders”). A Preferred Market Maker may be the Primary Market Maker (“PMM”) appointed to the options class or any Competitive Market Maker (“CMM”) appointed to the options class.<sup>4</sup> The purpose of the proposed rule change is to amend Supplementary Material .03 to Rule 713 to change the allocation entitlement for PMMs that receive Preferred Orders (*i.e.*, “Preferred PMMs”), consistent with allocation entitlements for PMM equivalents on another options exchange.

Currently, a Preferred Market Maker that is quoting at the national best bid of offer (“NBBO”) at the time the Preferred Order is received,<sup>5</sup> is entitled to participation rights equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price.<sup>6</sup> This allocation entitlement is in lieu of the regular allocation provided in Supplementary Material .01 to Rule 713, and applies regardless of whether the Preferred Market Maker is a PMM or CMM. In some instances where the Preferred Market Maker is the PMM appointed to the options class this results in a preferred allocation that is worse than the market maker’s regular allocation entitlement. Specifically, Supplementary Material .01(c) to Rule 713 provides a small order entitlement whereby orders of five contracts or fewer are executed first by the PMM. A PMM that normally receives an

allocation entitlement for orders of five contracts or fewer,<sup>7</sup> would not receive this allocation entitlement if it were designated as the Preferred Market Maker.

The Exchange now proposes to amend the participation rights of Preferred PMMs such that the PMM appointed in an option class will receive participation rights that are consistent with the higher allocation entitlement given to PMM equivalents on the MIAX Options Exchange (“MIAX”). In particular, the Exchange proposes to amend Supplementary Material .03(c) to Rule 713 to provide that, the Preferred Market Maker has participation rights equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote, (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price, or (iii) *the full size of a Preferred Order for five (5) contracts or fewer if the Primary Market Maker appointed to the options class is designated as the Preferred Market Maker—i.e., the small order allocation entitlement contained in Supplementary Material .01(c) to Rule 713.* Thus, the PMM appointed to an options class would receive an allocation entitlement for orders of five contracts or fewer, regardless of whether that order is submitted as a Preferred Order. The Exchange believes that this is appropriate since the PMMs obligations to the market are the same regardless of whether an order happens to be submitted with a preference instruction. PMM equivalents on MIAX currently receive this participation right when preferred, in addition to the regular 60% or 40% preferred allocation currently provided in the rule.<sup>8</sup> Preferred CMMs will continue to receive the same allocation entitlement that they receive today.

Pursuant to Supplementary Material .01(c) to Rule 713 the Exchange evaluates on a quarterly basis what percentage of the volume executed on the Exchange is comprised of orders for five (5) contracts or fewer executed by PMMs. The Exchange represents that this review will extend to the small order entitlement for Preferred PMMs.

<sup>4</sup> See Supplementary Material .03(a) to Rule 713.

<sup>5</sup> If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferred Order is received, the Exchange’s regular allocation procedure applies to the execution of the Preferred Order. See Supplementary Material .03(b) to Rule 713.

<sup>6</sup> See Supplementary Material .03(c) to Rule 713.

<sup>7</sup> See Supplementary Material .01(c) to Rule 713.

<sup>8</sup> See MIAX Rule 514(g), (i). The proposed allocation entitlement is also the same as allocation entitlements recently adopted by the Exchange’s affiliate, ISE Gemini, LLC. See Securities Exchange Act Release No. 80239 (March 14, 2017), 82 FR 14413 (March 20, 2017) (SR-ISEGemini-2017-14).

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

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

<sup>3</sup> ISE was renamed Nasdaq ISE, LLC in a rule change that became operative on April 3, 2017. See Securities Exchange Act Release No. 80325 (March 29, 2017) (SR-ISE-2017-25).