

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81213; File No. SR-ISE-2017-73)

July 26, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Schedule of Fees

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 13, 2017, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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, as described further below.

The text of the proposed rule change is available on the Exchange's Website 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.

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

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

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees<sup>3</sup> regarding certain connectivity fees for Market Makers.<sup>4</sup> Today, the Exchange charges Market Makers an application programming interface (“API”) fee for connecting to ISE. Each Market Maker session enabled for quoting, order entry, and listening is billed at a rate of \$1,000 per month, and allows the Market Maker to submit an average of up to 1.5 million quotes per day.<sup>5</sup> Market Makers must pay for a minimum of two of these sessions, and incremental usage above 1.5 million quotes per day results in the Market Maker being charged for an additional session. Market Makers that achieve Market Maker Plus<sup>6</sup> in 200 or more symbols (other than SPY) have their API fees capped at 200 quoting sessions per month. Market Makers that achieve Market Maker Plus in SPY receive credit for five quoting sessions. Market Makers that quote in all FX option

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<sup>3</sup> The Exchange filed the proposed fee change on July 3, 2017 (SR-ISE-2017-70). On July 13, 2017, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

<sup>5</sup> Quoting sessions also support order entry and listening. The Exchange separately offers Market Maker API sessions for listening only (\$175 per month per API), and for order entry and listening (\$750 per month per API).

<sup>6</sup> A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer 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. The specified percentage is at least 80% but lower than 85% of the time for Tier 1, at least 85% but lower than 95% of the time for Tier 2, and at least 95% of the time for Tier 3. 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 Market Maker Plus, if doing so will qualify a Market Maker for Market Maker Plus.

products<sup>7</sup> do not have their FX option quotes counted towards the 1.5 million quote threshold, and receive additional credit for twelve quoting sessions. All credited sessions are applied after the 200 API session cap. Each Market Maker API session that is enabled for order entry and listening is billed at a rate of \$750 per month, and each Market Maker API session that is enabled for listening only is billed at a rate of \$175 per month.<sup>8</sup>

The Exchange is currently undergoing a migration of the Exchange's trading system to the Nasdaq INET architecture.<sup>9</sup> This migration included the adoption of new connectivity options, including Specialized Quote Feed ("SQF")<sup>10</sup> port connectivity, which are the same as the connectivity options currently used to connect to the Exchange's affiliates, including Nasdaq GEMX, LLC ("GEMX"), The Nasdaq Options Market LLC ("NOM"), Nasdaq BX ("BX") and Nasdaq Phlx LLC ("Phlx").<sup>11</sup> When the Exchange adopted the new SQF port, it did not assess a

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<sup>7</sup> The complete set of FX option products offered is: NZD, PZO, SKA, BRB, AUX, BPX, CDD, EUI, YUK, SFC, AUM, GBP, EUU, and NDO.

<sup>8</sup> A listener may engage in any activity except submit orders and quote, alter orders and cancel orders.

<sup>9</sup> See Securities Exchange Act Release No. 80432 (April 11, 2017), 82 FR 18191 (April 17, 2017) (SR-ISE-2017-03).

<sup>10</sup> SQF is an interface that allows market makers to connect and send quotes, sweeps and auction responses into the Exchange. Data includes the following: (1) Options Auction Notifications (e.g., opening imbalance, Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (e.g., start of messages, start of system hours, start of quoting, start of opening); (4) Option Trading Action Messages (e.g., halts, resumes); (5) Execution Messages; (6) Quote Messages (quote/sweep messages, risk protection triggers or purge notifications).

<sup>11</sup> See GEMX Schedule of Fees, IV. Access Services, Port Fees, 4. Ports; NOM Rules, Chapter XV Options Pricing, Sec. 3 NOM - Ports and other Services; BX Rules, Chapter XV Options Pricing, Sec. 3 BX - Ports and other Services; and Phlx Pricing Schedule, VII. Other Member Fees, B. Port Fees.

fee so that Market Makers would not be double charged for connectivity to the old Exchange architecture and the new Nasdaq INET architecture.<sup>12</sup>

The Exchange is providing Market Makers with new SQF ports so that they may access the new Nasdaq INET trading system during the migration period.<sup>13</sup> For purposes of this filing, the Market Maker API sessions on the current T7 trading system will be referred to as “current API ports” and the SQF ports on the new INET trading system will be referred to as “new SQF ports.” Current API ports will be eliminated after the migration is complete and only new SQF ports will be utilized thereafter. Due to the different infrastructure of the two trading systems, there may not be a one-to-one relationship between the number of the current API and new SQF ports needed to connect to the Exchange. The Exchange expects, however, that the quoting needs and other trading activity of Market Makers will remain relatively constant throughout the migration and across the two platforms. At this time, the Exchange does not have enough experience with the new SQF ports to determine whether Market Makers will need the same number of ports after the migration to conduct their activities on the Exchange, which the Exchange believes will remain relatively consistent as discussed above.

In light of this transition process, the Exchange proposes to assess Market Makers, who are currently subject to the API fees set forth in Section V.C.1 of the Schedule of Fees because they are using the current API ports today (“Current Market Makers”), a fixed monthly fee (“Fixed Fee”) in lieu of charging them the API fees in Section V.C.1, as more fully described below. The Fixed Fee will reflect the average of API fees assessed to each Current Market

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<sup>12</sup> See Securities Exchange Release No. 81095 (July 7, 2017), 82 FR 32409 (July 13, 2017) (SR-ISE-2017-62).

<sup>13</sup> The Exchange will migrate on a symbol by symbol basis thereby requiring the use of both the current Market Maker API sessions and the new SQF ports for a period of time.

Maker for the months of March, April and May 2017.<sup>14</sup> The Fixed Fee will be assessed on a monthly basis to Current Market Makers from July 3, 2017 through September 29, 2017, and will apply both to API sessions and SQF ports used to connect to the Exchange.<sup>15</sup> Furthermore, the Exchange will charge Current Market Makers the Fixed Fee for all of the current API and new SQF ports they use in a given month, not per port. No additional fees will be assessed to Current Market Makers for using the current API or new SQF ports from July 3, 2017 through September 29, 2017 beyond the Fixed Fee.

A Market Maker that was not subject to any API fees in Section V.C.1 prior to July 3, 2017, because it did not utilize current API ports (i.e., a “New Market Maker”), will be assessed a SQF Port Fee of \$1,000 per month per port from July 3, 2017 to September 29, 2017 instead of the Fixed Fee.<sup>16</sup>

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<sup>14</sup> All Current Market Makers have been utilizing the current API ports to connect to the Exchange’s trading system during this three month look back period. The Exchange did not include June 2017 as part of the look back period because a number of symbols had already migrated onto the new INET trading system at that time, thereby requiring Current Market Makers to use both the current Market Maker API sessions and the new SQF ports. As such, June 2017 would not be an accurate representation of the number of API sessions typically enabled by a Current Market Maker.

<sup>15</sup> The Exchange will notify each Current Market Maker impacted by this proposal in writing, either via email or letter, of the amount of their Fixed Fee.

<sup>16</sup> The Exchange does not anticipate any New Market Makers seeking to use the current API ports to connect to the existing T7 trading system for the time period between July 3, 2017 and September 29, 2017 given the cost of technology and development resources required to connect to an exchange. Furthermore, the Exchange also does not anticipate any new Market Makers seeking to use the new SQF ports to connect to the INET trading system during this three month period.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>18</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 concept of a fixed fee is not novel. A fixed monthly fee was previously adopted on Phlx in connection with active SQF port fees for specialists and market makers.<sup>19</sup>

The Exchange believes that the proposed Fixed Fee assessed to Current Market Makers is reasonable and equitable for a number of reasons. As noted above, Current Market Makers will need to connect to the Exchange using both current API and new SQF ports for a period of time because the Exchange will migrate to the new INET system on a symbol by symbol basis. The Exchange does not intend to charge duplicative fees to Current Market Makers for connecting to both trading systems. To address this, Current Market Makers will be charged the Fixed Fee in

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>19</sup> See Securities Exchange Release No. 73687 (November 25, 2014), 79 FR 71485 (December 2, 2014) (SR-Phlx-2014-73). As part of a technology refresh of the Phlx trading system, this proposal allowed specialists and market makers on Phlx (i.e., the existing specialists and market makers) to pay a fixed monthly fee for both their new and old SQF ports from December 1, 2014 to March 31, 2015 in lieu of the existing port fees they otherwise would have been charged by Phlx for their old SQF ports. The fixed monthly fee was calculated by taking the average of fees assessed to the Phlx specialists and market makers for the months of August, September and October 2014. In order to qualify for the option of paying the fixed fee, the specialist or market maker must have been using the old SQF ports to connect to Phlx's trading system prior to December 1, 2014. For specialists or market makers who were not using the old SQF ports prior to December 1, 2014 but who sought to use the new SQF ports (i.e., new specialists and market makers), Phlx charged a separate fee per new SQF port they used per month instead of the fixed fee.

lieu of the API fees set forth in Section V.C.1 of the Schedule of Fees. This Fixed Fee will apply to both the current API ports and the new SQF ports used to connect to the Exchange, and will be assessed for all of the current API ports and new SQF ports Current Market Makers use in a given month, not per port. As discussed above, Current Market Makers that are being assessed the Fixed Fee will not be subject to any additional fees through September 29, 2017 beyond the Fixed Fee for utilizing any new SQF ports. The Exchange believes that applying the Fixed Fee in this manner will ease the transition and would help ensure that these members will not be charged duplicative fees for using both connectivity options.

Furthermore, the Exchange believes that averaging the months of March, April and May 2017 for the Fixed Fee that will be assessed from July 3, 2017 through September 29, 2017 is reasonable because the Exchange desires to offer Current Market Makers who are using the current API ports today some certainty with respect to their costs through transition period. The Exchange believes that utilizing the months of March, April and May 2017 to determine the Fixed Fee is reasonable because it should be an accurate representation of the number of API sessions typically enabled by that particular Market Maker. The three month window reflects the typical pattern of usage for the Market Maker.

Additionally, the Exchange believes that the proposed Fixed Fee is equitable and not unfairly discriminatory for a number of reasons. First, the Fixed Fee will be applied in the same manner to all Current Market Makers by averaging the API fees assessed to them for the months of March, April and May 2017. It should be noted that while the API fee amounts underlying the Fixed Fee generally may be higher or lower for a member based on a Current Market Maker's quoting needs and other trading activity (which in turn affects the Fixed Fee amounts for that Current Market Maker), same API fee amount applies equally to all similarly situated market

participants based on their quoting needs and other trading activity.<sup>20</sup> For example, each current API port used by a Current Market Maker for quoting, order entry and listening is billed at a rate of \$1,000 per month on the Exchange today. While the number of such API ports a Current Market Maker uses may differ each month, the same \$1,000 fee would be applied for each usage of the API port. As such, the Exchange believes that it is still fair and equitable to charge different fee amounts for the Fixed Fee because this fee will still treat similarly situated members in the same manner by assessing the same fees based on what the Exchange believes is a typical representation of their quoting or other trading needs. As noted above, the Exchange recognizes that Current Market Makers may not need the same number of ports post-migration due to the different architecture of the two trading systems. The Exchange expects, however, that the quoting needs and other trading activity of Market Makers will relatively remain constant throughout the migration and across the two platforms. As such, even though the proposed Fixed Fee amounts may differ among the Current Market Makers, the Exchange will still treat similarly situated members in the same manner by assessing the Fixed Fee based on the same criteria.

The Exchange believes that assessing New Market Makers the proposed SQF Port Fee as of July 3, 2017 is reasonable because New Market Makers would not need to maintain two sets of ports during the migration period, unlike existing Market Makers who are currently

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<sup>20</sup> As discussed above, the Exchange believes that the proposed three month look back period for the months of March, April and May 2017 reveals a typical pattern of usage for a particular Current Market Maker. The Exchange anticipates that the three month period between July 3, 2017 and September 29, 2017 would likewise be an accurate representation of the quoting needs and trading activity of such Current Market Maker.

transitioning from T7 to INET.<sup>21</sup> The Exchange also believes that it is reasonable to charge these new Market Makers the monthly \$1,000 SQF port fee as of July 3, 2017 because it is equal to the monthly \$1,000 API fee the Exchange charges Market Makers for the current API ports today. The Exchange also notes that the proposed SQF port fee is less than the \$1,500 port fee Bats BZX Exchange, Inc. (“BATS BZX”) assesses to its market makers for Ports with Bulk Quoting Capabilities.<sup>22</sup>

The Exchange believes that assessing New Market Makers the proposed \$1,000 SQF Port Fee if they do not use current API ports today is equitable and not unfairly discriminatory because the Exchange will apply the proposed fee uniformly to all similarly situated market participants. The Exchange also believes that it is equitable and not unfairly discriminatory to assess New Market Makers a different fee than the Current Market Makers because New Market Makers were not utilizing the current API ports during the months of March, April and May 2017. As such, it will not be possible to calculate the Fixed Fee for new Market Makers given they do not have a three month look-back period to base a Fixed Fee on. Furthermore, the proposed SQF Port Fee amount is equivalent to the monthly \$1,000 API fee the Exchange currently charges for each Market Maker API session enabled for quoting, order entry and listening on T7. As discussed above, the Exchange recognizes that Market Makers may not need the same level of connectivity after the migration for conducting largely the same quoting and trading activities due to the different architecture of the two platforms. As such, the Exchange

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<sup>21</sup> As noted above, the Exchange does not anticipate any New Market Makers seeking to use the new SQF ports to connect to the INET trading system during this three month period.

<sup>22</sup> See BATS BZX’s Fee Schedule at: [https://www.bats.com/us/options/membership/fee\\_schedule/bzx/](https://www.bats.com/us/options/membership/fee_schedule/bzx/).

represents that it will reassess the proposed SQF Port Fee in the event a New Market Maker seeks to use new SQF ports during the three month period ending September 29, 2017.

Lastly, the Exchange believes it is reasonable to assess the proposed Fixed Fee to Current Market Makers, as well as the proposed SQF Port Fee to New Market Makers, from July 3, 2017 through September 29, 2017. The Exchange will use this time period to monitor the manner in which all Market Makers connect to the new INET trading system, and will reassess whether the proposed fees are adequate and reasonable.

The Exchange further believes that the proposed three month duration for both the proposed Fixed Fee and the proposed SQF Port Fee is equitable and not unfairly discriminatory because this duration will apply uniformly for all Market Makers.

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

In accordance with Section 6(b)(8) of the Act,<sup>23</sup> 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. As explained above, the Exchange is establishing fees for connecting to the Exchange in order to aid in the migration to INET architecture. Current Market Makers that are transitioning from the current API ports to the new SQF ports will be assessed a Fixed Fee that is representative of their typical usage, and will not be subject to additional fees for utilizing any new SQF ports. In addition, new Market Makers will be assessed the proposed \$1,000 SQF Port Fee as of July 3, 2017 if they do not use the current API ports today. For the reasons described above, the Exchange does not believe that assessing the proposed fees will have any competitive impact.

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<sup>23</sup> 15 U.S.C. 78f(b)(8).

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>24</sup> and Rule 19b-4(f)(2)<sup>25</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-2017-73 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.

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<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>25</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-ISE-2017-73. 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; 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-2017-73 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.<sup>26</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).