

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81878; File No. SR-ISE-2017-88)

October 16, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees to Increase the Crossing Fee Cap

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 October 2, 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 increase the Crossing Fee Cap for members that do not commit in advance to paying the full Crossing Fee Cap at the end of each month.

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

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 purpose of the proposed rule change is to amend the Schedule of Fees to increase the Crossing Fee Cap for members that do not commit in advance to paying the full Crossing Fee Cap at the end of each month. Currently, the Exchange has a Crossing Fee Cap of \$75,000 per month per member on all Firm Proprietary³ and Non-Nasdaq ISE Market Maker⁴ transactions that are part of the originating or contra side of a Crossing Order.⁵ Members that elect prior to the start of the month to pay \$65,000 per month have these crossing fees capped at that level instead, regardless of actual trading volume. All eligible volume from affiliated Members is aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member’s Form BD, Schedule A. The Exchange now proposes to increase the Crossing Fee Cap to \$90,000 per month; provided, however, that members that commit in advance to paying the full Crossing Fee Cap at the end of each month will continue to have these fees capped at \$65,000 per month.

³ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

⁴ 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.

⁵ Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. Fees charged by the Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options are not included in the calculation of the monthly fee cap.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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 it is reasonable and equitable to increase the Crossing Fee Cap as the proposed Crossing Fee Cap is set at a level that the Exchange believes appropriately rewards members for executing a high volume of Crossing Orders on the Exchange. The proposed Crossing Fee Cap remains lower than similar fee caps available on other options exchanges, including NYSE American Options and NYSE Arca Options, which both have fee caps set at \$100,000 per month, subject to the potential for reduced caps based on a member's tier achieved.⁸ As proposed, members that do not elect to pay the discounted rate in full each month will be eligible to have their fees capped at the new rate of \$90,000 per month. At the same time, members that commit to their Crossing Order fees in advance will continue to receive a discounted rate of \$65,000 per month, which will encourage members to bring their Crossing Order flow to the Exchange. In particular, the Exchange believes that the proposed fee change may further incentivize members to commit to the discounted Crossing Fee Cap, and will bring more Crossing Order flow to the Exchange as a result. The Exchange believes that this will

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ See NYSE American Options Fee Schedule, Section I. Options Transaction Fees and Credits, I. Firm Monthly Fee Cap; NYSE Arca Options Fees and Charges, NYSE Arca Options: Trade-Related Charges for Standard Options, Firm and Broker Dealer Monthly Fee Cap.

benefit all members and investors that trade on the Exchange as it will provide additional opportunities for market participants to interact with this Crossing Order Flow, contributing to a robust and competitive market. Furthermore, the Exchange believes that the proposed fee change is not unfairly discriminatory because all members will have the option to make the required commitment in order to qualify for the discounted Crossing Fee Cap, or will be subject to the Crossing Fee Cap proposed here. The Crossing Fee Cap will be uniformly applied to members based on their election.

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. Although the Exchange is increasing the Crossing Fee Cap, the Exchange believes that the proposed cap is set at an appropriate level. Moreover, any member that wishes to lower their fees can continue to prepay the Crossing Fee Cap, and thereby qualify for a discounted fee. 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 Act⁹ and Rule 19b-4(f)(2)¹⁰ 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. Please include File Number SR-ISE-2017-88 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-2017-88. 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

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

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-2017-88 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.¹¹

Eduardo A. Aleman
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).