

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81903; File No. SR-ISE-2017-91)

October 19, 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"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 5, 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: (i) delete fees and descriptions thereof for connectivity no longer used by the Exchange; and (ii) add new fees for co-location services, direct circuit connections to the Exchange, direct circuit connections to third party services, point of presence ("POP") connectivity, and connectivity to the Exchange's Test Facility (the "Test Facility").

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to amend its Fee Schedule to eliminate certain fees associated with legacy options for connecting to ISE and to replace them with fees associated with new options for connecting to the Exchange that are similar to those that ISE's sister exchanges presently offer.

ISE is engaged in an initiative to migrate the Exchange's trading system to the Nasdaq INET architecture. As part of that initiative, ISE proposes to retire certain obsolete connectivity associated with the Exchange's legacy trading system and the fees associated with such connectivity.

Specifically, the Exchange proposes to discontinue offering Ethernet connectivity to the Exchange and also eliminate the fees it charges for such connectivity in Section VI.B of its Fee Schedule, entitled "Network Fees." The Exchange currently offers four Ethernet connection options: a 1 Gb connection at a cost of \$1,000 per month, a 10 Gb connection at a cost of \$4,500 per month, a 10 Gb low latency connection at a cost of \$8,000 per month, and a 40 Gb low latency connection at a cost of \$15,000 per month.

Additionally, the Exchange proposes to stop offering customers the ability to connect to the Exchange via an Application Programming Interface ("API") session or a Financial Information eXchange ("FIX") session, as these connection options are becoming obsolete with respect to the new trading system. The Exchange correspondingly proposes to eliminate entirely

Section V.C of its Fee Schedule, entitled “FIX Session/Session Fees.” The Exchange presently charges Market Makers monthly per API fees that depend upon the functionality of API and, if used for quoting, the amount of usage per day per user. The Exchange also charges Electronic Access Members monthly API and FIX fees based upon the number of sessions.

In lieu of the above, the Exchange proposes to offer customers various new options to connect to the Exchange and to assess fees for such connectivity. The connectivity options that the Exchange proposes to offer – colocation, direct circuit connectivity, connectivity to third party services, POP connectivity, and connectivity to the Exchange’s Test Facility – and the fees that the Exchange proposes to assess for such connectivity are similar to those that ISE’s affiliated Nasdaq, Inc. markets – including The NASDAQ Stock Market, LLC (“Nasdaq”), Nasdaq BX, Inc. (“BX”), and Nasdaq Phlx LLC (“Phlx”) – presently offer and assess to their customers under their respective rules. They are also the same as the connectivity options and fees that Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”) propose to offer and assess under their respective rules in tandem with this filing. This proposal, in other words, seeks to harmonize the Exchange’s connectivity offerings and fees with those of its sister exchanges.

The first new connectivity option that the Exchange proposes to offer its customers is colocation. Co-location is a suite of hardware, power, telecommunication, and other ancillary products and services that allow market participants and vendors to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange and other Nasdaq, Inc. markets. The Exchange provides co-location services and imposes fees through Nasdaq Technology Services LLC and pursuant to agreements with the owner/operator of its data center where both the Exchange’s quoting and trading facilities and

co-located customer equipment are housed. Users of colocation services include private extranet providers, data vendors, as well as Exchange members and non-members. The use of colocation services is entirely voluntary.

Like its sister exchanges, and as detailed in the proposed co-location fee schedule, the Exchange proposes to impose a uniform, non-discriminatory set of fees for various co-location services, including: fees for co-located connections to the Exchange and to third party services (described below) in various bandwidths; fees for cabinet space usage, or options for future space usage; installation and related power provision for hosted equipment; connectivity among multiple cabinets being used by the same customer as well as customer connectivity to the Exchange and telecommunications providers; and related maintenance and consulting services. Fees related to cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment, or the re-selling of cabinet space.

In addition to co-location services, the Exchange proposes to offer several other connectivity options for customers that are located outside of the Exchange's primary data center in Carteret, New Jersey.

First, the Exchange proposes to offer a "Direct Circuit Connectivity" service, whereby subscribers may connect their facilities directly to the Exchange's primary data center using a circuit they obtain from an external telecommunications provider. For this form of connectivity, the Exchange's proposal offers customers the choice of 1 GB, 1 GB Ultra, and 10 GB connections. The installation fee for all such connections will be \$1,500 and the monthly fee will be \$7,500 for 10 GB connections and \$2,500 for both 1 GB and 1 GB Ultra connections. The Exchange also proposes to charge a fee to customers that choose to install a cable router in

its data center and a monthly fee for customers that choose to install equipment in the Exchange's data center to support the connectivity. Specifically, the Exchange proposes an installation fee of \$925 per router, switch or modem, and a monthly fee of \$150 to rent cabinet space based on a unit height of approximately 1.75 inches (commonly called a "U" space) and a maximum power of 125 Watts per U space.

Next, the Exchange proposes to offer a "POP Connectivity" service, whereby subscribers may use external telecommunication circuits to connect directly to one or more of the Exchange's satellite data centers (each, a "POP") that are located in places other than Carteret. Each POP, in turn, has a fully redundant connection to the Exchange's primary data center, such that subscribers may connect to the primary data center through its connection to a POP. For POP Connectivity to the Exchange, the Exchange proposes to offer 1 GB Ultra and 10 GB connections. The installation fee for all such connections will be \$1,500 and the monthly fee will be \$7,500 for 10 GB connections and \$2,500 for 1 GB Ultra connections.³

Additionally, the Exchange proposes to offer connectivity to third party services. The Exchange is proposing to offer this service to both non-co-location customers (via a direct circuit connection) and co-location customers alike. This connectivity will enable customers to receive third party market data feeds, including Securities Information Processors ("SIPs")⁴ data, and

³ Clients will not be permitted to install routers in or rent cabinet space directly from the Exchange at the POPs. Accordingly, the fee schedule for POP connectivity will not include fees for these services.

⁴ The SIPs link the U.S. markets by processing and consolidating all protected bid/ask quotes and trades from every registered exchange trading venue and FINRA into a single data feed, and they disseminate and calculate critical regulatory information, including the National Best Bid and Offer, Limit Up Limit Down price bands, short sale restrictions and regulatory halts.

other non-exchange services.⁵ The Exchange will offer this service to customers in both 10 GB Ultra and 1 GB Ultra connections. The installation fee for both 10 GB Ultra and 1 GB Ultra connections will be \$1,500. Meanwhile, the monthly fee will be \$5,000 for 10 GB Ultra connections and \$2,000 for 1 GB Ultra connections. For 1 GB Ultra or 10 GB Ultra connections for UTP only, the installation fee and monthly fee will be waived for the first two connections and thereafter the installation fee will be \$100 and the monthly fee also will be \$100. As with Direct Circuit Connectivity, the Exchange proposes to charge a \$925 fee to customers that choose to install a cable router in its data center for purposes of receiving the third party services as well as a monthly fee of \$150 for customers that choose to install equipment in the Exchange's data center to support that connectivity.

Furthermore, the Exchange proposes to offer connectivity to its Test Facility. The Test Facility provides subscribers with a virtual system test environment that closely approximates the production environment and on which they may test their automated systems that integrate with the Exchange. For example, subscribers may test upcoming Exchange releases and product enhancements, as well as test software prior to implementation. The Exchange proposes to assess certain fees for use of the Test Facility. Specifically, the Exchange proposes that subscribers to the Test Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Test Facility. The hand-off fee will include [sic]

⁵ Third Party Services includes not only SIP data feeds, but also data feeds from other exchanges and markets. For example, Third Party Connectivity will support connectivity to the FINRA/Nasdaq Trade Reporting Facility, BATS Depth Feeds, and NYSE Feeds. A customer must separately subscribe to the third party services to which it connects with a Third Party Connectivity subscription. The Exchange notes that customers that do not wish to subscribe to Direct Circuit Connectivity to Third Party Services may alternatively connect through an extranet provider or a market data redistributor.

either a 1 GB or 10 GB switch port and a cross connect to the Test Facility. Subscribers will also pay a one-time installation fee of \$1,000 per handoff.

Finally, for each of the connectivity options discussed above, the Exchange proposes to include language in the fee schedule which states that connectivity to the Exchange also applies to connectivity to all of the other Nasdaq, Inc. markets, including Nasdaq, BX, Phlx, MRX, and GEMX. This purpose of this proposal is to specify that a client can use the connections it establishes and maintains to connect, not only to the Exchange, but also to any or all of its sister exchanges, and in doing so, it will be billed only once.

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 Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that it is reasonable to eliminate its existing Ethernet, FIX, and API connectivity offerings and their associated fees as the Exchange is migrating to a new platform that will offer new connectivity options. The Exchange notes that its customers have had ample prior notice of this transition.

The Exchange believes that proposed new connectivity fees are reasonable as a means of covering its costs associated with providing new connectivity options. Moreover, these new fees are reasonable because they are similar to or the same as the connectivity fees that the Exchange's sister exchanges, including Nasdaq, BX, and Phlx, charge under their respective

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

rules.⁸ They are also the same as those connectivity fees that GEMX and MRX are proposing to assess in filings being submitted to the Commission concurrently with this one. The Exchange also believes that it is reasonable and in the interest of the public and investors to harmonize all of the Exchange's connectivity options and connectivity fees now that all of the Nasdaq, Inc. exchanges are on a common platform.

The Exchange believes that the proposed new fees are an equitable allocation and are not unfairly discriminatory because the Exchange will apply the same fees to all subscribers to the same connectivity options.

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. In terms of inter-market competition, the Exchange notes that it 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 with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may connect to third parties instead of directly connecting to the Exchange, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

⁸ See Nasdaq Rule 7030, BX Rule 7030, and Nasdaq Phlx LLC Pricing Schedule Section VII.E (Test Facility); Nasdaq Rule 7034(b), BX Rule 7034(b), and Nasdaq Phlx LLC Pricing Schedule Section X (co-location); Nasdaq Rule 7051, BX Rule 7051, and Nasdaq Phlx LLC Pricing Schedule Section XI (direct connectivity).

In this instance, the proposed changes to the charges assessed for connectivity to the Exchange are consistent with the fees assessed by other exchanges for the same or similar connectivity. Moreover, the Exchange must assess fees to cover the costs incurred in providing connectivity and members had been assessed fees for Exchange connectivity prior to the sunset of the old Exchange architecture. As a consequence, competition will not be burdened by the proposed fees. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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 foregoing 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)(iii) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

¹¹ 17 CFR 240.19b-4(f)(6).

operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to 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 immediately upon filing. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest because it will eliminate obsolete connectivity services and replace them with services that customers will need to connect to the Exchange via its new trading platform. The Exchange further states that such connectivity services will be similar, or the same, as those that are currently offered by other Nasdaq, Inc. exchanges. Moreover, the Exchange states that the fees for such connectivity that are similar to, or the same, as fees charged by the other Nasdaq, Inc. exchanges.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal harmonizes the Exchange's co-location offerings and fees with those of the other Nasdaq, Inc. exchanges. Furthermore, waiver of the 30-day operative delay will eliminate the confusion that could occur if different co-location offerings were available on each of Nasdaq, Inc.'s affiliated exchanges. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹³

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

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 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).

(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-2017-91 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2017-91. 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-2017-91 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).