

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81882; File No. SR-ISE-2017-87)

October 16, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Assess Fees for Specialized Quote Feed and SQF Purge Ports

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 (“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 proposal to amend its 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is proposing to amend its Schedule of Fees to assess fees for Specialized Quote Feed (“SQF”)³ and SQF Purge⁴ Ports that Market Makers⁵ utilize to connect to the Exchange. The Exchange recently completed the migration of the Exchange’s T7 trading system to the Nasdaq INET architecture.⁶ This technology re-platform included the adoption of new connectivity options, including SQF and SQF Purge Ports,⁷ which are the same as the connectivity options currently used to connect to the Exchange’s affiliates, including Nasdaq GEMX (“GEMX”), Nasdaq Options Market

³ 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).

⁴ SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the market maker.

⁵ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

⁶ See Securities Exchange Act Release No. 80432 (April 11, 2017), 82 FR 18191 (April 17, 2017) (SR-ISE-2017-03).

⁷ When the Exchange adopted these new ports, it initially did not assess any fees so that members would not be double charged for connectivity to the old Exchange architecture and the new Nasdaq INET architecture. See Securities Exchange Act Release No. 81095 (July 7, 2017), 82 FR 32409 (July 13, 2017) (SR-ISE-2017-62).

(“NOM”), Nasdaq BX (“BX”), and Nasdaq Phlx (“Phlx”).⁸ During the migration period, Market Makers had to use both old application programming interface (“API”) sessions (“old API Ports”) and new SQF Ports to connect to the Exchange.⁹ To help its members transition through the migration period, the Exchange filed a fee proposal regarding the old API Ports and the new SQF Ports.¹⁰ As part of that filing, the Exchange added the following language in Section V of the Schedule of Fees in order to avoid double charging Market Makers who were using both the old and new connectivity options to access the Exchange while also allowing the Exchange to recoup the costs of supporting its architecture (“migration accommodation language”):

1) In Section V.D of the Schedule of Fees, it is currently noted for the monthly \$1,000 SQF Port Fee that: “A Market Maker who was not subject to the API Session Fee in Section V.C.1 prior to July 3, 2017 will be assessed the above SQF Port Fee from July 3, 2017 through September 29, 2017. This SQF Port Fee will not apply to Market Makers that are subject to the Fixed Fee in Section V.E.”

2) Section V.E of the Schedule of Fees presently reads: “Market Makers that are subject to the API Session Fee in Section V.C.1 as of July 3, 2017 will be subject a monthly fixed fee that reflects the average of API Session Fees assessed to that Market Maker for the months of March, April, and May 2017 (“Fixed

⁸ See GEMX Schedule of Fees, IV. Access Services, Port Fees, 3. 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.

⁹ The Exchange migrated on a symbol by symbol basis thereby requiring the use of both the old API Ports on T7 and the new SQF Ports on INET for a period of time.

¹⁰ See Securities Exchange Act Release No. 81213 (July 26, 2017), 82 FR 35855 (August 1, 2017) (SR-ISE-2017-73) (hereinafter “Prior SQF Filing”).

Fee”) in lieu of the API Session Fee. This Fixed Fee will be assessed to these Market Makers from July 3, 2017 through September 29, 2017, and applies both to API sessions and SQF ports used to connect to Nasdaq ISE. The Fixed Fee will be charged for all of the API sessions and SQF ports used in a given month during this time period, not per port.”

As discussed above, the Exchange completed its migration to INET, and the old API Ports have accordingly been eliminated and only the new SQF Ports are being utilized. As such, these instances of the migration accommodation language are no longer needed and are therefore being deleted.

The Exchange also seeks to amend Section V.D of the Schedule of Fees to increase the monthly \$1,000 SQF Port Fee to \$1,100 per SQF Port and to begin assessing a monthly \$1,100 SQF Purge Port Fee per SQF Purge Port. The proposed SQF and SQF Purge Port Fees will apply to all Market Makers. The Exchange believes that its pricing remains competitive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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.

As discussed above, the Exchange added the migration accommodation language and the associated Fixed Fee and \$1,000 SQF Port Fee in Section V of the Schedule of

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

Fees in order to avoid double charging members while also allowing the Exchange to recoup the costs of supporting its architecture. At the time these fees were put into place, the Exchange recognized that there may not be a one-to-one relationship between the number of the old API Ports and the new SQF Ports needed to connect to the Exchange due to the different infrastructure of the two trading systems.¹³ The Exchange expected, however, that the quoting needs and other trading activity of Market Makers would remain relatively constant throughout the migration and across the two platforms.¹⁴ As such, the Exchange stated that it would use the time period between July 3, 2017 and September 29, 2017 to monitor the manner in which all Market Makers connect to the new INET trading system, and would reassess whether the related fees assessed to Market Makers were adequate and reasonable.¹⁵ During this three-month time frame, the Exchange has looked at the manner in which all Market Makers connect to INET to determine the proposed \$1,100 SQF and SQF Purge Port Fees, and believes that these fees are adequate and reasonable in light of how all Market Makers use these ports to access the Exchange. Furthermore, the Exchange believes that assessing all Market Makers the proposed fees is reasonable because members no longer have connectivity to the old Exchange architecture (and therefore no longer need to maintain two sets of ports), and are using only the new SQF Ports to connect to the Exchange.

In addition, the Exchange believes that the proposed SQF and SQF Purge Port Fees of \$1,100 per port, per month are reasonable because they are in line with the fees assessed by other exchanges. For example, GEMX assesses a fee of \$1,250 per port, per

¹³ See Prior SQF Filing at 35856.

¹⁴ Id.

¹⁵ Id. at 35858.

month for SQF and SQF Purge Ports today.¹⁶ The Exchange also notes that Bats BZX Exchange, Inc. (“Bats BZX”) assesses a \$1,500 fee to its market makers for Ports with Bulk Quoting Capabilities.¹⁷

The Exchange also believes that the proposed fees are an equitable allocation and not unfairly discriminatory because the Exchange will apply these fees uniformly to all similarly situated members.

The Exchange believes that deleting the migration accommodation language from Section V of the Schedule of Fees is reasonable, equitable and not unfairly discriminatory because the migration is now completed and the migration accommodation language is therefore no longer needed. Deleting outdated rule text will bring greater clarity to the Exchange’s Schedule of Fees.

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. As explained above, the proposed SQF and SQF Purge Port Fees are assessed uniformly to all Market Makers at a rate that is representative of their typical usage of the new ports. Moreover, the proposed fees are in line with the fees assessed by other exchanges for the same or similar connectivity.

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

¹⁶ See GEMX Schedule of Fees, IV. Access Services, Port Fees, 3. Ports.

¹⁷ See Bats BZX Fee Schedule at: https://www.bats.com/us/options/membership/fee_schedule/bzx/.

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 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. 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 fee 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸ 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.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-87 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-2017-87. 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-2017-87 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.¹⁹

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).