

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82446; File No. SR-ISE-2017-112)

January 5, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Non-Transaction Fees in 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 December 22, 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 certain non-transaction fees in the Exchange's Schedule of Fees.

The text of the proposed rule change is available on the Exchange's Website at <http://ise.cchwallstreet.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

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

<sup>2</sup> 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 certain non-transaction fees in the Exchange’s Schedule of Fees. ISE currently charges its members various non-transaction fees to trade on the Exchange and use its facilities, including a monthly access fee and an annual regulatory fee. Such fees are designed to help defray the technical, regulatory, and administrative costs associated with a member’s use of the Exchange. Specifically, the Exchange currently assesses a monthly access fee to all its members that is \$500 per month per Electronic Access Member (“EAM”) membership, \$4,000 per month per Primary Market Maker (“PMM”) membership, and \$2,000 per month per Competitive Market Maker (“CMM”) membership.<sup>3</sup> Payment of the monthly access fee entitles members to trade on ISE as a PMM, CMM, or EAM based on their membership type. In addition, Exchange currently charges a tiered annual regulatory fee to all its members that is: (i) for PMMs, a fee of \$7,500 for the first PMM membership, \$1,500 for each additional PMM membership, and \$1,000 for each CMM membership; (ii) for CMMs, (who are not also PMMs), a fee of \$5,000 per membership for the

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<sup>3</sup> See ISE Schedule of Fees, Section VI.A Access Fees. In the event where a single member firm has multiple ISE memberships, the monthly access fee is charged for each membership. For example, if a single member firm is both an EAM and a CMM, or owns multiple CMM memberships, the firm is subject to the monthly access fee for each of those memberships.

first CMM membership<sup>4</sup> and \$1,000 for each additional CMM membership; and (iii) for EAMs, a fee of \$5,000 for each EAM membership.<sup>5</sup>

In order to keep pace with rising overhead, the Exchange now proposes to increase the monthly access fee for Market Makers (i.e., PMMs and CMMs) from \$4,000 to \$5,000 per PMM membership and from \$2,000 to \$2,500 per CMM membership. The monthly access fee of \$500 per membership for EAMs will remain unchanged under this proposal. In connection with the proposed increase in the monthly access fees for Market Makers, the Exchange also proposes to eliminate the annual regulatory fee for all its members.

As noted above, members are required to pay a variety of non-transaction fees, including the monthly access fee and annual regulatory fee, to be able to trade on the Exchange and use its facilities. By increasing the monthly access fee and eliminating the annual regulatory fee in the manner discussed above, the Exchange is essentially consolidating these fees rather than having members pay two separate charges for their use of the Exchange. With the proposed changes, Market Makers may be assessed at a higher rate overall to use the Exchange, while EAMs may be assessed at a lower rate because the Exchange is increasing the monthly access fee for Market Makers only, but eliminating the annual regulatory fee for all members.<sup>6</sup> The Exchange will absorb the cost of the eliminated annual regulatory fee for EAMs going forward.

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<sup>4</sup> This fee will only be charged for the first CMM membership within each group of affiliated companies. Affiliated CMMs will pay the incremental regulatory fee charged for additional CMM memberships.

<sup>5</sup> See ISE Schedule of Fees, Section VII.D Regulatory Fee.

<sup>6</sup> For example, a PMM currently pays a total of \$55,500 per year in access and regulatory fees (\$48,000 of annual access fees plus the \$7,500 annual regulatory fee) for one PMM membership while an EAM pays a total of \$11,000 per year (\$6,000 of annual access fees plus the \$5,000 annual regulatory fee) for one EAM membership. As proposed, the PMM would pay a total of \$60,000 per year in access fees for one PMM membership while the EAM would pay a total of \$6,000 per year for one EAM membership.

The access fee and regulatory fee were adopted in 2000 to help recover the costs of operating a trading market,<sup>7</sup> including the technical, regulatory, and administrative costs associated with a member's use of the Exchange. The monthly access fee amounts have not changed since this fee was adopted, while the annual regulatory fee was last amended in 2006.<sup>8</sup> Accordingly, the Exchange believes that the fee changes proposed herein should be a more accurate reflection of the costs associated with a member's use of the Exchange today.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</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 Exchange believes that the proposed increase in the monthly Market Maker access fees to \$5,000 per PMM membership and \$2,500 per CMM membership is reasonable and equitable. The proposed access fees will help the Exchange keep pace with rising overhead, and are within the range of similar fees charged by other options exchanges, including for example, C2 Options Exchange ("C2"), which charges its market makers a monthly access fee of \$5,000 per permit.<sup>11</sup>

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<sup>7</sup> See Securities Exchange Act Release No. 42370 (April 28, 2000), 65 FR 26256 (May 5, 2000) (SR-ISE-00-02).

<sup>8</sup> See Securities Exchange Act Release No. 53634 (April 12, 2006), 71 FR 20147 (April 19, 2006) (SR-ISE-2006-16).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> See C2 Fee Schedule, Section 3 Access Fees.

Furthermore, while the Exchange is increasing the monthly access fees for Market Makers, the Exchange believes that this is partially offset by the elimination of the annual regulatory fees for all members. As noted above, members are required to pay a variety of non-transaction fees, including the monthly access fee and annual regulatory fee, to be able to trade on the Exchange and use its facilities. By consolidating the annual regulatory fee with the access fee in the manner discussed above rather than having members pay two separate charges for their use of the Exchange, ISE is simplifying the Schedule of Fees to the benefit of its members. The Exchange also believes that the proposed changes are reasonable and equitable because the fees should be a more accurate representation of the costs associated with a member's use of the Exchange today for the reasons discussed above.

As noted above, some members will be impacted more than others with this proposal because the Exchange is increasing the monthly access fee for Market Makers only, but eliminating the annual regulatory fee for all members. The Exchange does not believe that this is unfairly discriminatory because the resources dedicated to the supporting and regulating a member vary on the type of membership. Generally, PMMs are subject to greater obligations than CMMs are and CMMs are subject to greater obligations than EAMs are. Furthermore, the technical, regulatory, and administrative costs associated with an EAM's use of the Exchange are not as high as those associated with Market Makers.

**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 discussed above, the proposed fee changes are designed to more accurately reflect the technical, regulatory, and administrative costs associated with a member's use of the Exchange, and the fees remain competitive with similar fees offered on other options exchanges. The Exchange 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. 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.

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>12</sup> and Rule 19b-4(f)(2)<sup>13</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:

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

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

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-2017-112 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-2017-112. 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-2017-112 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>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).