

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82568; File No. SR-ISE-2018-07)

January 23, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Assess Fees for OTTO Port, CTI Port, FIX Port, FIX Drop Port and Disaster Recovery Port Connectivity

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 January 19, 2018, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“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 amend the Schedule of Fees to assess fees for OTTO Port, CTI Port, FIX Port, FIX Drop Port and Disaster Recovery Port connectivity. 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 Fees³ to assess fees for OTTO⁴ Port, CTI⁵ Port, FIX⁶ Port, FIX Drop⁷ Port and Disaster Recovery Port⁸ connectivity.

³ The Exchange initially filed the proposed pricing changes on January 2, 2018 (SR-ISE-2018-01). On January 16, 2018, the Exchange withdrew that filing and on January 19, 2018 submitted this filing, making certain clarifying changes. The Exchange represents that it has not added new subscriptions or canceled existing subscriptions to the ports described in this filing between the time it withdrew the original proposal and the submission of this filing.

⁴ OTTO is an interface that allows market participants to connect and send orders, auction orders and auction responses into ISE. Data includes the following: (1) Options Auction Notifications (e.g., 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); (5) Option Trading Action Messages (e.g., halts, resumes); (6) Execution Messages (7) Order Messages (order messages, risk protection triggers or purge notifications).

⁵ CTI is a real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or “CMTA” or The Options Clearing Corporation or “OCC” number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; and (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; (vi) capacity.

⁶ FIX is an interface that allows market participants to connect and send orders and auction orders into ISE. Data includes the following: (1) Options Symbol Directory Messages; (2) System Event Messages (e.g., start of messages, start of system hours, start of quoting, start of opening); (3) Option Trading Action Messages (e.g., halts, resumes); (4) Execution Messages (5) Order Messages (order messages, risk protection triggers or purge notifications).

⁷ FIX Drop is a real-time order and execution update is a message that is sent to a member after an order been received/modified or an execution has occurred and contains trade details. The information includes, among other things, the following: (1) Executions (2) cancellations (3) modifications to an existing order (4) busts or post-trade corrections.

The Exchange has completed the migration of the Exchange’s trading system to the Nasdaq INET architecture.⁹ This migration included the adoption of new connectivity, including OTTO, CTI, FIX, FIX Drop, and Disaster Recovery Ports, which are the same as connectivity options currently used to connect to the Exchange’s affiliate options markets, including The Nasdaq Stock Market (“Nasdaq”), Nasdaq BX (“BX”), Nasdaq GEMX (“GEMX”) and Nasdaq Phlx (“Phlx”).¹⁰ When the Exchange adopted these new ports it did not assess a fee for them so that members would not be double charged for connectivity to the old Exchange architecture and the new Nasdaq INET architecture.¹¹

The Exchange is proposing to amend the Nasdaq ISE Schedule of Fees Section V.D. to assess a fee of \$400 per month, per port, per mnemonic¹² for OTTO Ports, \$500 per port, per month, per account number¹³ for CTI Ports, \$300 per port per month, per mnemonic for FIX Ports, and \$500 per port per month per account number for FIX Drop Ports. The Exchange is

⁸ Disaster Recovery Ports provide connectivity to the Exchange’s disaster recovery data center in Chicago to be utilized in the event the exchange has to fail over during the trading day. Disaster Recovery Ports are available for SQF, SQF Purge, CTI, OTTO, FIX and FIX Drop.

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

¹⁰ See Nasdaq Option Rules, Chapter XV Options Pricing, Sec. 3 Nasdaq Options Market - Ports and other Services; BX Option Rules, Chapter XV Options Pricing, Sec. 3 BX Options Market - Ports and other Services; Nasdaq GEMX Schedule of Fees Section IV.E.3; and Phlx Pricing Schedule, VII. Other Member Fees, B. Port Fees.

¹¹ See Securities Exchange Release No. 81095 (July 7, 2017), 82 FR 32409 (July 13, 2017) (SR-ISE-2017-62).

¹² A mnemonic is a unique identifier assigned to a member consisting of a four character code. A member may be assigned multiple mnemonics, which are used to segregate a member’s order flow based on its business and regulatory needs. Every mnemonic must be affiliated with an account number held by the member. Account numbers are numeric codes used to identify members and the default clearing information through which all order flow affiliated with that account number will clear. A member may be assigned multiple account numbers.

¹³ An account number may have multiple mnemonics affiliated with it. See id.

proposing to assess a fee of \$50 per month, per port for Disaster Recovery Ports. The Exchange notes that it is adding “per account number” to the CTI and FIX Drop Port fees described above to clarify that billing for the ports is based on how many account numbers that a member associates with a port, which will allow the Exchange to determine a member’s use of a port more precisely. The Exchange notes that this is the method by which GEMX bills these fees.¹⁴ The Exchange is proposing to add “per mnemonic” to OTTO and FIX Port fees, which will allow the Exchange to more granularly identify use of such ports.¹⁵ The Exchange notes that this is how the Exchange’s sister exchanges (other than GEMX) bill these fees.¹⁶ In light of the addition of account numbers and mnemonics to the rules, the Exchange is also proposing to add clarifying text to the beginning of Nasdaq ISE Schedule of Fees Section V.D. to explain how the various fees thereunder are billed. Specifically, the text notes that the fees are billed to members and a member may subscribe¹⁷ to as many ports as it elects to under the rule. The text also explains that some of the fees under the rule are billed based on the number of ports subscribed, while others are billed based by the number of account numbers or mnemonics that a subscriber associates with a port. Last, the Exchange is proposing to add a new footnote to the rule that applies a monthly fee cap to OTTO Port subscriptions of \$4,000.¹⁸

¹⁴ See Nasdaq GEMX Schedule of Fees Section IV.E.3.

¹⁵ Supra note 12.

¹⁶ See, e.g., Nasdaq Options Rules, Chapter XV Options Pricing, Section 3(b) (billing per port, per month, per mnemonic).

¹⁷ The Exchange notes that service bureaus, some of which are not members of the Exchange, may subscribe to the connectivity under the rule on behalf of a member. The member retains responsibility for the port and is billed directly for the connectivity. All members that use a service bureau must first execute an agreement with the Exchange and the service bureau that establishes the relationship between the member, service bureau and Exchange.

¹⁸ GEMX applies a fee cap of \$7,500 per month applied to OTTO, CTI, FIX, FIX Drop, and Disaster Recovery Ports. See GEMX Schedule of Fees Section IV.E.3. BX applies a fee

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁰ 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 fees are reasonable because they are similar to the fees assessed by other exchanges. As noted above, Nasdaq, BX, GEMX and Phlx provide some or all of the same connectivity options as is provided by ISE. For example, GEMX assesses \$650 per port, per month, per account for CTI and FIX Drop Ports. GEMX also assesses a fee of \$50 per port, per month, per account for Disaster Recovery Ports.²¹ Thus, the proposed fees for CTI, FIX Drop and Disaster Recovery Ports are the same or less than those of GEMX. Nasdaq assesses a fee of \$750 per port, per month, per mnemonic for OTTO Ports, and both Nasdaq and BX assess \$650 per port, per month, per mnemonic for Order Entry Ports, all of which are greater than the fees proposed for comparable connectivity to ISE. The Nasdaq Stock Market (“Nasdaq”) also assesses a fee of \$25 per port, per month for equities Disaster Recovery Ports (OUCH, RASH, and DROP).²² Although the proposed Disaster Recovery Port fee is

cap of \$7,500 per month applied to all ports under its rule. See BX Option Rules, Chapter XV Options Pricing, Sec. 3 BX Options Market - Ports and other Services.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4) and (5).

²¹ The GEMX Disaster Recovery Ports fee may result in a higher charge per member than the proposed ISE Disaster Recovery Ports fee because it is assessed by account number. Thus, the greater number of accounts assigned to such a port would result in a greater overall fee, whereas it would have no effect on the fee assessed for such ports under the proposed ISE fee.

²² See Rule 7015(g)(2).

higher than the fee assessed by Nasdaq, the higher fee is reasonable because it reflects the ongoing costs in maintaining and supporting the ports, as well as the initial investment in such ports for the Exchange and the fewer subscribers among which it may spread fixed costs associated with offering the ports in comparison to Nasdaq. The Exchange believes that the proposed \$4,000 monthly fee cap applied to OTTO Port subscriptions is reasonable because it is similar to the proposed OTTO Port fee caps provided by other exchanges. For example, GEMX applies a \$7,500 per month fee cap, which includes OTTO Port subscription.²³ BX also applies a \$7,500 per month fee cap for its connectivity.²⁴ The proposed OTTO Port fee cap is lower than these other exchanges because it is reflective of the limited application of the fee cap (i.e., OTTO Ports). The Exchange notes that limiting the fee cap to OTTO Ports is reasonable because the Exchange's proposed fees are generally lower than those of the other exchanges noted above. As such, the Exchange believes that the proposed fees are similar to those of other exchanges and therefore reasonable. The Exchange believes that the proposed text added to the beginning of Section V.D. of the Schedule of Fees is reasonable because it is designed to provide greater specificity and clarity to the application of the new fees, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes that the proposed fees are an equitable allocation and are not unfairly discriminatory because the Exchange must ultimately assess fees to cover the costs associated with offering the connectivity. The Exchange notes that members have historically

²³ The fee cap also applies to CTI, FIX, FIX Drop and Disaster Recovery Ports. GEMX applies its \$7,500 monthly fee cap of to encourage increased participation on GEMX. See Securities Exchange Act Release No. 81136 (July 13, 2017), 82 FR 33168 (July 19, 2017) (SR-GEMX-2017-29).

²⁴ The Exchange notes that BX does not have OTTO Ports. See BX Option Rules, Chapter XV Options Pricing, Sec. 3 BX Options Market - Ports and other Services.

paid fees for Exchange connectivity and, in adopting the connectivity for which the Exchange is proposing to assess a fee, it noted that it was not adopting a fee at that time to avoid being double charged for connectivity to the old Exchange architecture and the new Nasdaq INET architecture. Now that members no longer have connectivity to the old Exchange architecture, and therefore are not assessed connectivity fees, the Exchange is now proposing to assess fees for connectivity to the new Nasdaq INET architecture of the Exchange. The Exchange notes that the proposed fees are equal to or less than the comparable fees assessed by Nasdaq, BX, Phlx, and GEMX. The Exchange believes that applying different measures (i.e., account number or mnemonic) for assessing fees is an equitable allocation and is not unfairly discriminatory because members choose how many account numbers and mnemonics they have and members subscribing to the ports covered by the rule may associate as many account numbers and mnemonics they choose. Thus, members have control over their fee liability. Moreover, the Exchange must make an independent assessment of what the appropriate measure is for assessing fees based on factors such as the number of members and the costs associated with offering connectivity. In this case, the Exchange has also considered the fees historically paid by its membership for connectivity in determining what the fees should be for new connectivity. The Exchange believes that the fees are reflective of these considerations because, by using different measures in assessing the port fees together with the proposed fee cap, the Exchange attempted to make the new fees as similar to the historical fees paid by subscribers as possible. As a consequence, the proposed change is the least impactful overall to members. For these reasons, the Exchange believes that the proposed fees are an equitable allocation and are not unfairly discriminatory.

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.

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. 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. The Exchange considered the historical fees paid by subscribers to the Exchange's connectivity and set the proposed fees at a level that it determined would be as similar to the historical fees paid by members for similar connectivity. 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 see a decrease in subscribership to ports and possibly 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁵ 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-2018-07 on the subject line.

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2018-07. 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-2018-07 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.²⁶

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Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).