

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82229; File No. SR-ISE-2017-95)

December 7, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify the Application of 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 November 28, 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 Exchange’s Schedule of Fees to clarify the application of the Crossing Fee Cap.

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

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 provide greater clarity as to the manner in which the Exchange applies the Crossing Fee Cap.

By way of background, Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC Order. Crossing Order fees are capped at \$90,000 per month per member on all Firm Proprietary and Non-Nasdaq ISE Market Maker transactions that are part of the originating or contra side of a Crossing Order.³ The following fees are not included in the calculation of the monthly Crossing Fee Cap: (1) fees for Responses to Crossing Orders; (2) surcharge fees for licensed products and the fees for index options as set forth in Section I; and (3) service fee.⁴ The manner in which the Exchange calculates the Crossing Fee Cap is not changing.

The Exchange proposes to make clear how it attributes eligible volume for purposes of the Crossing Fee Cap. The Exchange proposes to add the following language to the rule text, "For purposes of the Crossing Fee Cap the Exchange will attribute eligible volume to the ISE

³ Members that elect prior to the start of the month to pay \$65,000 per month will have these crossing fees capped at that level instead. 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.

⁴ A service fee of \$0.00 per side applies to all order types that are eligible for the fee cap. The service fee does not apply once a Member reaches the fee cap level and does apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee applies to eligible Firm Proprietary and Non-Nasdaq ISE market Maker orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap.

Member on whose behalf the Crossing Order was executed.” Only ISE Members are subject to the Crossing Fee Cap. This is the manner in which the Exchange attributes eligible volume for purposes of the Crossing Fee Cap today. To provide greater transparency to the Schedule of Fees, the Exchange proposes to include this language in the rule text. While the Exchange is not aware of any confusion with respect to this fee with its Members, the Exchange believes this specificity will avoid any confusion.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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’s proposal to add the clarifying language regarding the Crossing Fee Cap to the Schedule of Fees is reasonable because the proposed rule text will bring greater clarity to the manner in which the Exchange attributes eligible volume for purposes of the Crossing Fee Cap today and applies the Crossing Fee Cap. The calculation and the application of the Crossing Fee Cap are not changing with this proposal. This rule text is intended to provide additional clarity to the current rule to describe who benefits from the volume for purposes of the application of the cap.

The Exchange’s proposal to add the clarifying language regarding the Crossing Fee Cap to the Schedule of Fees is equitable and not unfairly discriminatory because the Exchange will

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

continue to calculate and apply the Crossing Fee Cap in a uniform manner to all ISE Members that are eligible for this cap.

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. The proposal is intended to provide greater transparency to the Schedule of Fees and does not amend the current manner in which the Exchange calculates or applies the Crossing Fee Cap. The Exchange's proposal to add the clarifying language regarding the Crossing Fee Cap to the Schedule of Fees does not impose an undue burden on competition because the Exchange will continue to calculate and apply the Crossing Fee Cap in a uniform manner to all ISE Members that are eligible for this cap.

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,⁷ and Rule 19b-4(f)(2)⁸ 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.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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-2017-95 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-2017-95. 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-2017-95 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.⁹

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Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).