

Internet Web site (<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 Web site 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-CBOE-2017-060 and should be submitted on or before October 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81616; File Nos. SR-CHX-2017-11; SR-FINRA-2017-020]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Changes, as Modified by Amendments, To Adopt a Consolidated Audit Trail Fee Dispute Resolution Process

September 14, 2017.

I. Introduction

On June 5, 2017¹ and June 19, 2017,² Chicago Stock Exchange, Inc. ("CHX") and Financial Industry Regulatory Authority, Inc. ("FINRA") (each, "SRO" or "Participant;" collectively, the

"Participants")³ filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")⁴ and Rule 19b-4 thereunder,⁵ proposed rule changes to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members.⁶ The proposed rule change submitted by CHX was published for comment in the **Federal Register** on June 19, 2017.⁷ The proposed rule change submitted by FINRA was published for comment in the **Federal Register** on July 6, 2017.⁸ Pursuant to Section 19(b)(2) of the Act,⁹ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule changes.¹⁰

³ The Commission notes that Bats BYX Exchange, Inc. ("Bats BYX"), Bats BZX Exchange, Inc. ("Bats BZX"), Bats EDGA Exchange, Inc. ("Bats EDGA"), Bats EDGX Exchange, Inc. ("Bats EDGX"), BOX Options Exchange LLC ("BOX"), C2 Options Exchange, Inc., Chicago Board Options Exchange, Incorporated ("CBOE"), Investors Exchange LLC ("IEX"), Nasdaq ISE, LLC ("ISE"), Nasdaq MRX, LLC ("MRX"), Miami International Securities Exchange, LLC ("MIAX"), MIAX PEARL, LLC, The NASDAQ Stock Market LLC ("Nasdaq"), NASDAQ BX, Inc. ("BX"), Nasdaq GEMX, LLC ("GEMX"), NASDAQ PHLX LLC ("Phlx"), New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE MKT LLC ("NYSE MKT") and NYSE National, Inc. are also deemed "Participants" for purposes of this Order as they, like CHX and FINRA, are also Participants of the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan" or "Plan"). See *infra* note 17. The Commission also notes that CHX refers to Participants of the Plan as "Plan Participants" in its proposal.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ Bats BYX, Bats BZX, Bats EDGA, Bats EDGX, BOX, CBOE, IEX, ISE, MRX, MIAX, Nasdaq, BX, GEMX, Phlx, NYSE, NYSE Arca and NYSE MKT also submitted proposed rule changes to establish procedures for resolving potential disputes related to CAT Fees charged to Industry Members. See Securities Exchange Act Release Nos. 80780 (May 26, 2017), 82 FR 25382 (June 1, 2017); 80781 (May 26, 2017), 82 FR 25369 (June 1, 2017); 80782 (May 26, 2017), 82 FR 25379 (June 1, 2017); 80837 (June 1, 2017), 82 FR 26526 (June 7, 2017); 80836 (June 1, 2017), 82 FR 26539 (June 7, 2017); 80834 (June 1, 2017), 82 FR 26542 (June 7, 2017); 80835 (June 1, 2017), 82 FR 26549 (June 7, 2017); 80833 (June 1, 2017), 82 FR 26529 (June 7, 2017); 80831 (June 1, 2017), 82 FR 26536 (June 7, 2017); 80832 (June 1, 2017), 82 FR 26523 (June 7, 2017); 80936 (June 15, 2017), 82 FR 28153 (June 20, 2017); 80952 (June 16, 2017), 82 FR 28540 (June 22, 2017); 80967 (June 19, 2017), 82 FR 28719 (June 23, 2017); 80968 (June 19, 2017), 82 FR 28705 (June 23, 2017); 80970 (June 19, 2017), 82 FR 28708 (June 23, 2017); 80971 (June 19, 2017), 82 FR 28698 (June 23, 2017); and 80966 (June 19, 2017), 82 FR 28702 (June 23, 2017).

⁷ See Securities Exchange Act Release No. 80916 (June 13, 2017), 82 FR 27904 ("Notice").

⁸ See Securities Exchange Act Release No. 81053 (June 29, 2017), 82 FR 31366.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ See Securities Exchange Act Release No. 81163 (July 18, 2017), 82 FR 34343 (July 24, 2017); 81275 (August 1, 2017), 82 FR 36836 (August 7, 2017). See

The Commission received no comments in response to the proposed rule changes. On September 6, 2017, CHX filed Amendment No. 1 to its proposed rule change,¹¹ and on September 13, 2017, FINRA filed Amendment No. 2 to its proposed rule change.¹² This order approves the proposed rule changes, as modified by the Amendments.¹³

II. Description of the Proposed Rule Changes, as Modified by the Amendments¹⁴

The Participants filed with the Commission, pursuant to Section 11A of the Act¹⁵ and Rule 608 of Regulation

also Securities Exchange Act Release No. 81110 (July 10, 2017), 82 FR 32598 (July 14, 2017); 81112 (July 10, 2017), 82 FR 32592 (July 14, 2017); 81113 (July 10, 2017), 82 FR 32596 (July 14, 2017); 81156 (July 18, 2017), 82 FR 34337 (July 24, 2017); 81157 (July 18, 2017), 82 FR 34338 (July 24, 2017); 81158 (July 18, 2017), 82 FR 34339 (July 24, 2017); 81159 (July 18, 2017), 82 FR 34338 (July 24, 2017); 81161 (July 18, 2017), 82 FR 34337 (July 24, 2017); 81162 (July 18, 2017), 82 FR 34336 (July 24, 2017); 81164 (July 18, 2017), 82 FR 34346 (July 24, 2017); 81165 (July 18, 2017), 82 FR 34345 (July 24, 2017); 81166 (July 18, 2017), 82 FR 34345 (July 24, 2017); 81167 (July 18, 2017), 82 FR 34337 (July 24, 2017); 81178 (July 20, 2017), 82 FR 34715 (July 26, 2017); 81179 (July 20, 2017), 82 FR 34716 (July 26, 2017); 81180 (July 20, 2017), 82 FR 34728 (July 26, 2017); and 81181 (July 20, 2017), 82 FR 34727 (July 26, 2017).

¹¹ Amendment No. 1 is available on the Commission's Web site for CHX at: <https://www.sec.gov/comments/sr-chx-2017-11/chx201711-2433023-161039.pdf>.

¹² Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety. Amendment No. 2 is available on the Commission's Web site for FINRA at: <https://www.sec.gov/comments/sr-finra-2017-020/finra2017020-2442749-161061.pdf>.

¹³ The Amendments amended the original filings to make technical changes to the proposed rule changes. Specifically, each Participant amended the proposed rule text to remove references to proposed "Consolidated Audit Trail Funding Fees," as such fees are currently suspended, and replaced such term with the phrase "any fees contemplated by the CAT NMS Plan and imposed on Industry Members pursuant to [SRO] Rules." See *infra* note 18. Each Participant also removed references to "Consolidated Audit Trail Funding Fees" from paragraphs (a)(1), (b) and (c)(1) of the proposed rule text. The Amendments are not subject to notice and comment because they are technical amendments that do not materially alter the substance of the proposed rule changes or raise any novel regulatory issues. The Commission notes that on August 30, 2017, the Commission approved the proposed rule changes filed by the other Participants to the CAT NMS Plan to establish procedures for resolving potential disputes related to CAT Fees charged to Industry Members, as modified by such amendments. See Securities Exchange Act Release No. 81500 (August 30, 2017), 82 FR 42143 (September 6, 2017) (order approving proposed rule changes by Bats BYX, Bats BZX, Bats EDGA, Bats EDGX, BOX, CBOE, IEX, ISE, MRX, MIAX, Nasdaq, BX, GEMX, Phlx, NYSE, NYSE Arca and NYSE MKT to adopt a Consolidated Audit Trail Fee Dispute Resolution Process), at 42144 n.19. See *also supra* note 6.

¹⁴ The Commission notes that for purposes of this Order, unless otherwise specified, capitalized terms used in this Order are defined as set forth in the proposals, as modified by the Amendments, or in the CAT NMS Plan. See *supra* notes 11-12; see *also infra* note 17.

¹⁵ 15 U.S.C. 78k-1.

¹¹ 17 CFR 200.30-3(a)(12).

¹ Chicago Stock Exchange, Inc. filed its proposed rule change on June 5, 2017.

² Financial Industry Regulatory Authority, Inc. filed its proposed rule change on June 19, 2017.

NMS thereunder,¹⁶ the CAT NMS Plan.¹⁷ The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (“Company”), of which each Participant is a member, to operate the CAT.

Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has the discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants and Industry Members will pay (“CAT Fees”).¹⁸ Section 11.5 of the CAT NMS Plan requires the Participants to adopt rules requiring that disputes with respect to fees charged to Industry Members pursuant to the CAT NMS Plan be determined by the Operating Committee or a designated Subcommittee. Section 11.5 of the CAT NMS Plan also states that decisions by the Operating Committee or a

designated Subcommittee on such matters shall be binding on Industry Members, without prejudice to the right of any Industry Member to seek redress from the Commission pursuant to Rule 608¹⁹ or in any other appropriate forum. The Participants filed the proposed rule changes to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members.

Fee Dispute Resolution

The proposals state that disputes initiated by an Industry Member with respect to CAT Fees charged to such Industry Member, including disputes related to the designated tier and the fee calculated pursuant to such tier, shall be resolved by the Operating Committee, or a Subcommittee designated by the Operating Committee, pursuant to the Fee Dispute Resolution Procedures adopted by the Operating Committee pursuant to the CAT NMS Plan.²⁰ The proposals further indicate that decisions on such matters shall be binding on Industry Members, without prejudice to the rights of any such Industry Member to seek redress from the Commission or in any other appropriate forum.²¹

Under the Fee Dispute Resolution Procedures, an Industry Member that disputes CAT Fees charged to such Industry Member and that desires to have an opportunity to be heard with respect to such disputed CAT Fees must file a written application with the Company within 15 business days after being notified of such disputed CAT Fees.²² The application must identify the disputed CAT Fees, state the specific reasons why the applicant takes exception to such CAT Fees, and set forth the relief sought.²³ In addition, if the applicant intends to submit any additional documents, statements, arguments or other material in support of the application, the same should be so stated and identified under the Fee Dispute Resolution Procedures.²⁴

The Participants state that the Company will refer applications for hearing and review promptly to the Fee Review Subcommittee designated by the Operating Committee with responsibility for conducting the reviews of CAT Fee disputes pursuant

to these Fee Dispute Resolution Procedures.²⁵ The proposals note that the Fee Review Subcommittee will keep a record of the proceedings.²⁶

The proposals further specify that the Fee Review Subcommittee will hold hearings promptly and will set a hearing date.²⁷ Under the proposed rule changes, the parties to the hearing shall furnish the Fee Review Subcommittee with all materials relevant to the proceedings at least 72 hours prior to the hearing, and each party will have the right to inspect and copy the other party’s materials prior to the hearing.²⁸

The Participants state that the parties to the hearing will consist of the applicant and a representative of the Company who shall present the reasons for the action taken by the Company that allegedly aggrieved the applicant.²⁹ The applicant is entitled to be accompanied, represented and advised by counsel at all stages of the proceedings under the proposed rule changes.³⁰

The proposals further indicate that the Fee Review Subcommittee will determine all questions concerning the admissibility of evidence and will otherwise regulate the conduct of the hearing.³¹ Each of the parties will be permitted, under the proposed rule changes, to make an opening statement, present witnesses and documentary evidence, cross examine opposing witnesses and present closing arguments orally or in writing as determined by the Fee Review Subcommittee.³² In addition, the Fee Review Subcommittee will have the right to question all parties and witnesses to the proceeding.³³ The proposals require the Fee Review Subcommittee to keep a record of the hearing, to set forth its decision in writing, and to send the written decision to the parties to the proceeding.³⁴ Such decisions must contain the reasons supporting the conclusions of the Fee Review

²⁵ See, e.g., *id.* The Participants further indicate that the members of the Fee Review Subcommittee will be subject to the provisions of Section 4.3(d) of the CAT NMS Plan regarding recusal and Conflicts of Interest. See, e.g., *id.*

²⁶ See, e.g., *id.*

²⁷ See, e.g., *id.*

²⁸ See, e.g., *id.*

²⁹ See, e.g., *id.*

³⁰ See, e.g., *id.*

³¹ See, e.g., *id.* The proposed rule changes note, however, that the formal rules of evidence will not apply.

³² See, e.g., *id.*

³³ See, e.g., *id.*

³⁴ See, e.g., *id.*

¹⁶ 17 CFR 242.608.

¹⁷ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015. The Plan was published for comment in the *Federal Register* on May 17, 2016, and approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release Nos. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016); 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

¹⁸ Section 11.1(b) of the CAT NMS Plan. The Commission notes that the Participants filed proposed rule changes to adopt fees to be charged to Industry Members, including Industry Members that are Execution Venues. See Securities Exchange Act Release Nos. 80691 (May 16, 2017), 82 FR 23344 (May 22, 2017); 80710 (May 17, 2017), 82 FR 23639 (May 23, 2017). See also Securities Exchange Act Release Nos. 80675 (May 15, 2017), 82 FR 23100 (May 19, 2017); 80697 (May 16, 2017), 82 FR 23398 (May 22, 2017); 80692 (May 16, 2017), 82 FR 23325 (May 22, 2017); 80696 (May 16, 2017), 82 FR 23439 (May 22, 2017); 80693 (May 16, 2017), 82 FR 23363 (May 22, 2017); 80698 (May 16, 2017), 82 FR 23457 (May 22, 2017); 80694 (May 16, 2017), 82 FR 23416 (May 22, 2017); 80721 (May 18, 2017), 82 FR 23864 (May 24, 2017); 80713 (May 18, 2017), 82 FR 23956 (May 24, 2017); 80715 (May 18, 2017), 82 FR 23895 (May 24, 2017); 80726 (May 18, 2017), 82 FR 23915 (May 24, 2017); 80725 (May 18, 2017), 82 FR 23935 (May 24, 2017); 80785 (May 26, 2017), 82 FR 25404 (June 1, 2017); 80784 (May 26, 2017), 82 FR 25448 (June 1, 2017); 80809 (May 30, 2017), 82 FR 25837 (June 5, 2017); 80822 (May 31, 2017), 82 FR 26148 (June 6, 2017); and 80821 (May 31, 2017), 82 FR 26177 (June 6, 2017). On June 30, 2017, the Commission temporarily suspended the proposed rule changes and instituted proceedings to determine whether to approve or disapprove the proposed rule changes. See Securities Exchange Act Release No. 81067, 82 FR 31656 (July 7, 2017).

¹⁹ 17 CFR 242.608.

²⁰ See, e.g., Notice, *supra* note 7, at 27905. The Participants also represent that the Fee Dispute Resolution Procedures were modeled after the adverse action procedures adopted by various exchanges and that such Procedures will be posted on the CAT NMS Plan Web site (www.catnmsplan.com). See, e.g., *id.*

²¹ See, e.g., *id.*

²² See, e.g., *id.*

²³ See, e.g., *id.*

²⁴ See, e.g., *id.*

Subcommittee under the proposed rule changes.³⁵

The Participants state that the decision of the Fee Review Subcommittee will be subject to review by the Operating Committee either on its own motion within 20 business days after issuance of the decision or upon written request submitted by the applicant within 15 business days after issuance of the decision.³⁶ The applicant's petition for review must be in writing and must specify the findings and conclusions to which the applicant objects, together with the reasons for such objections.³⁷ According to the proposed rule changes, any objection to a decision not specified in writing will be considered to have been abandoned and may be disregarded.³⁸ The proposed rule changes allow parties to petition to submit a written argument to the Operating Committee and to request an opportunity to make an oral argument before the Operating Committee.³⁹ The Operating Committee will then have sole discretion to grant or deny either request.⁴⁰

Under the proposed rule changes, any review conducted by the Operating Committee will be made upon the record and will be made after such further proceedings, if any, as the Operating Committee may order.⁴¹ Based upon such record, the Operating Committee may affirm, reverse or modify, in whole or in part, the decision of the Fee Review Subcommittee.⁴² The Participants state that the decision of the Operating Committee will be in writing, will be sent to the parties to the proceeding, and will be final.⁴³

A final decision regarding the disputed CAT Fees by the Operating Committee, or the Fee Review Subcommittee (if there is no review by the Operating Committee), must be provided within 90 days of the date on which the Industry Member filed a written application regarding disputed CAT Fees with the Company.⁴⁴ The proposed rule changes indicate, however, that the Operating Committee may extend the 90-day time limit at its discretion.⁴⁵ The Fee Dispute Resolution Procedures also state that any time limits for the submission of answers, petitions or other materials

may be extended by permission of the Operating Committee.⁴⁶

Finally, the Participants state that an Industry Member that files a written application with the Company disputing CAT Fees in accordance with the Fee Dispute Resolution Procedures is not required to pay such CAT Fees until the dispute is resolved in accordance with the Procedures, including any review by the Commission or in any other appropriate forum.⁴⁷ The Participants state that, if it is determined that the Industry Member owes any of the disputed CAT Fees, then the Industry Member must pay such disputed CAT Fees that are owed as well as interest on such disputed CAT Fees from the original due date until such disputed CAT Fees are paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.⁴⁸

III. Discussion and Commission Findings

After carefully considering the proposed rule changes, the Commission finds that the proposals, as modified by the Amendments, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and national securities associations.⁴⁹ Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5)⁵⁰ and Section 15A(b)(6)⁵¹ of the Act, which require, among other things, that the rules of a national securities exchange or national securities association be designed to prevent fraudulent and manipulative acts and practices, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Commission finds that the proposed rule changes are consistent with Section 6(b)(8)⁵² and Section 15A(b)(9)⁵³ of the Act, which require that the rules of a national securities exchange or national securities association not impose any burden on competition that is not necessary or appropriate.

The Commission believes that the proposals are consistent with Section 6(b)⁵⁴ and Section 15A(b)⁵⁵ of the Act in general, and furthers the objectives of Section 6(b)(5)⁵⁶ and Section 15A(b)(6)⁵⁷ of the Act in particular, because they are 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, by providing a uniform mechanism by which Industry Members may dispute CAT Fees and receive a timely review of such disputes. The Commission notes that the Fee Dispute Resolution Procedures provide for a hearing before the Fee Review Subcommittee, and if the Industry Member is not satisfied with the decision of the Fee Review Subcommittee, it may request a review of the decision by the Operating Committee. Further, the proposals provide that, although the decisions of the Operating Committee or Fee Review Subcommittee are binding on an Industry Member, the Industry Member may seek redress from the Commission or in any other appropriate forum.

The Commission also notes that the proposals implement Section 11.5 of the CAT NMS Plan.⁵⁸ Specifically, Section 11.5 states that the Participants will adopt rules requiring that disputes with respect to fees charged to Industry Members pursuant to Article XI of the CAT NMS Plan be determined by the Operating Committee or a designated Subcommittee. Section 11.5 further provides that such fee disputes will be determined by the Operating Committee or a designated Subcommittee, and that decisions on such matters will be binding on Industry Members without prejudice to the rights of any Industry Member to seek redress from the

⁴⁶ See, e.g., *id.*

⁴⁷ See, e.g., *id.* The Participants clarify that the Industry Member may only withhold any invoiced CAT Fees that the Industry Member has disputed; under the proposed rule changes, the Industry Member must pay any invoiced CAT Fees that are not disputed when such fees are due, as set forth in the invoice. See, e.g., *id.*

⁴⁸ See, e.g., *id.*

⁴⁹ In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). The Commission notes that on August 30, 2017, the Commission approved the proposed rule changes filed by the other Participants to the CAT NMS Plan to establish procedures for resolving potential disputes related to CAT Fees charged to Industry Members, as modified by such amendments. See Securities Exchange Act Release No. 81500 (August 30, 2017), 82 FR 42143 (September 6, 2017).

⁵⁰ 15 U.S.C. 78f(b)(5).

⁵¹ 15 U.S.C. 78o-3(b)(6).

⁵² 15 U.S.C. 78f(b)(8).

⁵³ 15 U.S.C. 78o-3(b)(9).

⁵⁴ 15 U.S.C. 78f(b).

⁵⁵ 15 U.S.C. 78o-3(b).

⁵⁶ 15 U.S.C. 78f(b)(5).

⁵⁷ 15 U.S.C. 78o-3(b)(6).

⁵⁸ The Commission previously approved the CAT NMS Plan. See *supra* note 17.

³⁵ See, e.g., *id.*

³⁶ See, e.g., *id.* at 27905-27906.

³⁷ See, e.g., *id.* at 27906.

³⁸ See, e.g., *id.*

³⁹ See, e.g., *id.*

⁴⁰ See, e.g., *id.*

⁴¹ See, e.g., *id.*

⁴² See, e.g., *id.*

⁴³ See, e.g., *id.*

⁴⁴ See, e.g., *id.*

⁴⁵ See, e.g., *id.*

Commission pursuant to Rule 608 of Regulation NMS or in any other appropriate forum.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (SR-CHX-2017-11; SR-FINRA-2017-020), as modified by the Amendments, are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁹

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81610; File No. SR-ISE-2017-82]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Third Party Developer Fees From the Schedule of Fees

September 14, 2017.

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 September 1, 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 eliminate third party developer fees from the Schedule of Fees.

The text of the proposed rule change is available on the Exchange’s Web site 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 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 eliminate third party developer fees from the Schedule of Fees. Currently, the Schedule of Fees contains third party developer fees, which were previously charged for third party developer access to the ISE T7 test environment. Specifically, the Schedule of Fees includes the following fees for third party developers: (1) A \$1,000 per month one time set-up fee, and (2) a \$1,000 per month usage fee. With the migration of the Exchange to Nasdaq INET technology,³ which was completed on July 31, 2017, and the upcoming decommissioning of the T7 trading system, including the test environment, the Exchange no longer charges these third party developer fees. The Exchange therefore proposes to remove these fees from the Schedule of Fees. The Exchange believes that removing these fees from the Schedule of Fees will reduce member confusion about services offered by the Exchange, and the fees charged for those services, as with the migration to Nasdaq INET no services are currently offered that could incur these charges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ 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 fee change is reasonable, equitable, and not unfairly discriminatory as it eliminates third party developer fees that are no

longer charged with the migration of the Exchange’s trading system to Nasdaq INET technology. As explained above, the Exchange completed its migration to Nasdaq INET on July 31, 2017 and therefore does not provide access to the ISE T7 test facility that was the subject of this fee. Since the Exchange no longer provides this service, the Exchange believes that removing the associated fee from the Schedule of Fees will reduce member confusion about services offered by the Exchange, and the fees charged for those services.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is removing outdated third party developer fees from the Schedule of Fees as the related services will no longer be offered with the completed migration of the Exchange to Nasdaq INET. As such, the Exchange does not believe that the proposed rule change will have any significant impact on competition.

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,⁶ and Rule 19b-4(f)(2)⁷ 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.

³ See Securities Exchange Act Release No. 80432 (April 11, 2017), 82 FR 18191 (April 17, 2017) (SR-ISE-2017-03).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁵⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.