

The proposed change is to increase the monthly subscription fee for FilterView from \$500 to \$750 per month per subset of data. The proposal will not impose any burden on competition because it is simply a price change that will not alter the overall market structure. Because the proposed fees will become one aspect of the total cost of interacting with the Exchange, the Exchange will lose revenue if these total costs prove to be excessive. 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.

*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>37</sup>

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.

numerous alternative venues that compete for order flow, including SRO markets, internalizing BDs and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, IEX, and BATS/Direct Edge.

<sup>37</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-134 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-NASDAQ-2017-134. This file number should be included on the subject line if email 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-NASDAQ-2017-134 and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82472; File No. SR-ISE-2018-03]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Price Level Protection Rule

January 9, 2018.

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 January 2, 2018, 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 Rule 714(b)(4) (Price Level Protection) to clarify the operation of the Price Level Protection.

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 Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

<sup>38</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

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 Rule 714(b)(4) (Price Level Protection) to specify that the Price Level Protection: (1) Only applies when there is no away market best bid or offer ("ABBO"), (2) does not apply to quotes on the complex order book, which are not eligible to trade with bids and offers for the component legs, and (3) determines the maximum number of price levels by reference to the component leg(s) where the protection has been triggered. The proposed changes will increase transparency around the operation of the Exchange with respect to the Price Level Protection, and no changes to the Exchange's trading or other systems are being proposed.

Currently, Rule 714(b)(4), which applies to complex orders executed on the Exchange, provides that "[t]here is a limit on the number of price levels at which an incoming order or quote to sell (buy) will be executed automatically with the bids or offers of each component leg." Furthermore, as currently written, Rule 714(b)(4) also provides that "orders and quotes are executed at each successive price level until the maximum number of price levels is reached, and any balance is canceled." The number of price levels for the component leg, which may be between one (1) and ten (10), is determined by the Exchange from time-to-time on a class-by-class basis.<sup>3</sup>

Previously, this rule, which applied to both simple and complex orders executed on the Exchange, provided additionally that the protection applied "when there are no bids (offers) from other exchanges at any price for the options series." This language was inadvertently removed in SR-ISE-2017-03, when the Exchange adopted its Acceptable Trade Range ("ATR") protection for simple orders and retained the Price Level Protection for complex orders in connection with the migration of the Exchange's trading

system to Nasdaq INET.<sup>4</sup> The Exchange proposes to re-introduce this language to clarify that the trading system continues to apply this protection only when there is no ABBO available.

Furthermore, Rule 714(b)(4) also contains references to quotes that were not removed when the Exchange filed SR-ISE-2017-03 to apply the Price Level Protection solely to complex orders. Although the previous version of the Price Level Protection for simple orders applied to both orders and quotes, quotes have never been included in the Price Level Protection for complex orders. Specifically, quotes are excluded from the Price Level Protection for complex orders because quotes are not permitted to leg into the regular market to trade with bids and offers on the Exchange for the individual legs of the complex strategy.<sup>5</sup> Because quotes on the complex order book do not leg into the regular market, they are excluded from the Price Level Protection, which applies when a complex order is executed with bids and offers for the component legs of the complex strategy. The Exchange therefore proposes to amend Rule 714(b)(4) by removing outdated references to quotes. In addition, to further reinforce that the Price Level Protection applies to complex orders and not simple orders, the Exchange also proposes to add the word "complex" before references to orders contained in Rule 714(b)(4).

Finally, the Exchange proposes to add language to the rule that specifies that complex orders are executed at each successive price level until the maximum number of price levels is reached *on a component leg where the protection has been triggered*. For example, assume a member enters a complex order to buy 20 contracts of series A and 20 contracts of series B. If there is no ABBO at any price in series B and the complex order legs into the regular order book, the complex order would be able to trade up to five price levels in series B (e.g., \$1.00, \$1.05, \$1.10, \$1.15, and \$1.20 but not \$1.25 or greater).<sup>6</sup>

The complex order would also trade with the corresponding number of contracts of series A but there would be no restriction on the number of price levels that could be traded in series A if there is sufficient quantity available at the five price levels permitted to trade in series B and the executions in series

A are at or inside the ABBO for the series (e.g., if the ABBO in series A is \$1.30 and all 20 contracts can be traded at permitted prices in series B, the corresponding 20 contracts in series A could be executed at \$0.95, \$1.00, \$1.05, \$1.10, \$1.15, \$1.20, \$1.25, and \$1.30 without triggering the protection). Although currently implied by the rule, the Exchange believes that it is appropriate to explicitly reference that the number of price levels is determined based on a component leg where the protection has been triggered to avoid any potential member confusion. Although a complex order that legs into the regular market must trade with all component legs to satisfy the complex order, the Price Level Protection is applied solely on component legs that trigger the protection—i.e., where there is no away market as discussed earlier in this proposed rule change. As such, the maximum number of price levels discussed in Rule 714(b)(4) is computed by reference to component legs where the protection has been triggered.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is 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. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it will increase transparency around the operation of the Exchange and, in particular, the Price Level Protection for complex orders.

The Price Level Protection is designed to ensure that complex orders that leg into the regular order book and trade against bids and offers for the component legs are protected from trading at unreasonable prices when there is no away market. Thus, this protection only applies when there are no bids (offers) from other exchanges at any price for the options series, as stated in the previous version of the rule. The Exchange believes that applying this protection when there is no away market promotes just and equitable principles of trade as executions are prevented only when there is no ABBO to establish reasonable execution bounds. When there is an away market, the Exchange believes that this

<sup>3</sup> Currently, this limit is set to five price levels. The Exchange will provide at least a two week notice to members via an Options Trader Alert prior to changing the price level limit to allow members the opportunity to perform any system changes. Any change to the price level limit would be subject to consultations with members.

<sup>4</sup> See Securities Exchange Act Release No. 80432 (April 11, 2017), 82 FR 18191 (April 17, 2017) (SR-ISE-2017-03) (Approval Order).

<sup>5</sup> See Supplementary Material .03 to Rule 722.

<sup>6</sup> See footnote 3 supra.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

protection is not necessary, as executions on the regular order book, including the execution of complex orders that leg in to access liquidity on the bids and offers for the individual legs, must occur at or inside the ABBO. The Exchange believes that it is appropriate to re-introduce the proposed language described above so that members are properly apprised of when the Price Level Protection will prevent the execution of complex orders that leg into the regular order book.

The proposed rule change also clarifies that the Price Level Protection applies only to complex orders and not to quotes entered on the complex order book. The Exchange believes that this change is consistent with the protection of investors and the public interest because quotes are not permitted to leg into the regular market<sup>9</sup> and therefore are not eligible to trigger the Price Level Protection, which only affects complex orders that trade with bids and offers for the component legs. The Exchange therefore believes that this change better reflects functionality offered on the Exchange and will increase transparency for members.

Finally, the proposed rule change makes clear that the maximum number of price levels described in Rule 714(b)(4) is determined by reference to component leg(s) where the protection is triggered. Although all legs of a complex order must be executed in order for the complex order to be traded, the Price Level Protection is designed to prevent executions at unreasonable prices when there is no away market in one or more component legs. As such, the maximum number of price levels is determined by reference to the component leg(s) that trigger the protection by virtue of there being no away market prices to constrain executions in that particular options series. Once this limit has been exceeded on a component leg where the protection has been triggered, no further executions can take place, and any remaining balance of the complex order is cancelled. The Exchange believes that adding the proposed language will increase transparency and avoid potential confusion about when a complex order that legs into the regular market will trigger the Price Level Protection. The Exchange therefore believes that this change is consistent with the protection of investors and the public interest.

### *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 proposed rule change would increase transparency around the operation of the Exchange and, in particular, the Price Level Protection by re-introducing inadvertently deleted language about when the protection is triggered, eliminating outdated references to quotes, and reinforcing that the maximum number of price levels is determined by reference to the component leg(s) that trigger the protection. The Exchange therefore believes that the proposed rule change will have no 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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii) under the Act<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE has asked the Commission to waive the 30-day operative delay so that it may implement the proposed rule change immediately. In support of its request, ISE notes that the proposed rule

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

change would clarify the operation of the Exchange by re-introducing inadvertently deleted rule language indicating that the Price Level Protection only applies when there is no away market, eliminating outdated references to quotes, and reinforcing that the maximum number of price levels is determined by reference to the component leg(s) that trigger the protection. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. By re-introducing inadvertently deleted rule language indicating that the Price Level Protection applies only when there is no ABBO, eliminating references to quotes, which do not execute against the individual legs of a complex strategy, and indicating that the maximum number of price levels is determined by reference to the component leg(s) that trigger the protection, the proposal will correct errors and provide additional clarity to the rule, thereby helping to assure that ISE's rule clearly and accurately describes the operation of the Price Level Protection. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>14</sup>

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2018-03 on the subject line.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> See Supplementary Material .03 to Rule 722.

*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-2018-03. This file number should be included on the subject line if email 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-2018-03, and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82469; File No. SR-CboeEDGX-2017-006]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for the EDGX Depth Market Data Product

January 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 27, 2017, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 filed a proposal to amend the Market Data section of its fee schedule to introduce new fees for Non-Display Usage of EDGX Depth.

The text of the proposed rule change is available at the Exchange's website at [www.markets.cboe.com](http://www.markets.cboe.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 parts 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 proposes to amend the Market Data section of its fee schedule to introduce new fees for Non-Display Usage<sup>5</sup> of EDGX Depth. EDGX Depth is an uncompressed market data feed that provides depth-of-book quotations and execution information based on equity orders entered into the System.<sup>6</sup> The Exchange currently charges subscribers to EDGX Depth a fee of \$5,000 per month for Non-Display Usage of EDGX Depth by its Trading Platforms.<sup>7</sup> Non-Display Usage is defined as "any method of accessing a Market Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons."<sup>8</sup> Trading Platforms include registered National Securities Exchanges, Alternative Trading Systems ("ATs"), and Electronic Communications Networks ("ECNs") as those terms are defined in the Exchange Act and regulations and rules thereunder. Previously, subscribers of EDGX Depth that used the feed for Non-Display purposes but did not utilize the feed within a Trading Platform were charged the existing Distributors fees.

Forms of Non-Display Use include, but are not limited to, algorithmic or automated trading, order routing, surveillance, order management, risk management, clearance and settlement activities, and account maintenance.<sup>9</sup> Non-Display Usage does not include any use of EDGX Depth that relates solely to transportation, dissemination, and redistribution of EDGX Depth, or that results in the output of EDGX Depth solely for display. Non-display uses of data for non-trading purposes benefits data recipients by allowing users to automate functions, to achieve greater

<sup>5</sup> See the Exchange's fee schedule available at [http://markets.cboe.com/us/equities/membership/fee\\_schedule/edgx/](http://markets.cboe.com/us/equities/membership/fee_schedule/edgx/).

<sup>6</sup> See Exchange Rule 13.8(a).

<sup>7</sup> A Trading Platform is defined as "any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS)." See the Exchange's fee schedule available at [http://markets.cboe.com/us/equities/membership/fee\\_schedule/edgx/](http://markets.cboe.com/us/equities/membership/fee_schedule/edgx/).

<sup>8</sup> See the Exchange's fee schedule available at [http://markets.cboe.com/us/equities/membership/fee\\_schedule/edgx/](http://markets.cboe.com/us/equities/membership/fee_schedule/edgx/).

<sup>9</sup> See e.g., Nasdaq Rule IM-7023-1(c), U.S. Non-Display Information.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

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

<sup>15</sup> 17 CFR 200.30-3(a)(12) and (59).