

required by Exchange Act Rule 17a-5(b).<sup>1</sup>

Commission staff anticipates that the national securities exchanges and registered national securities associations collectively will make 800 total filings annually pursuant to Rule 17a-19 and that each filing will take approximately 15 minutes. The total reporting burden is estimated to be approximately 200 total annual hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta.Ahmed@omb.eop.gov](mailto:Shagufta.Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: January 24, 2018.

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

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82575; File No. TP 18-08]

### Order Granting Limited Exemptions From Rules 101 and 102 of Regulation M in Connection With Distributions of AT1 Contingent Convertible Securities Pursuant to Rules 101(d) and 102(e) of Regulation M

January 23, 2018.

By letter dated January 23, 2018, counsel from Sullivan & Cromwell LLP and Davis Polk & Wardell LLP (collectively, the “Applicants”),<sup>1</sup> requested that the staff of the Division of Trading and Markets grant, on behalf

of certain European financial institutions (each, an “Issuer”), conditional class exemptive or no-action relief from Rules 101 and 102 of Regulation M under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to permit certain transactions in ordinary shares underlying the contingent convertible debt securities qualifying as additional tier 1 capital (“AT1 Contingent Convertible Securities”), including ordinary shares represented by American depository shares (collectively, “Shares”), by Issuers and affiliated purchasers, including those acting as distribution participants, during a distribution of such AT1 Contingent Convertible Securities.<sup>2</sup>

#### AT1 Contingent Convertible Securities

Over the last several years, a number of European financial institutions have issued various series of AT1 Contingent Convertible Securities that are designed to qualify as additional tier 1 capital (“AT1 Capital”) that can be counted by a financial institution towards the capital requirements mandated by European regulators.<sup>3</sup>

Applicants represent in the Request Letter that the AT1 Contingent Convertible Securities to be offered are fundamentally fixed-income debt securities that are priced and traded by investors as such.<sup>4</sup> Applicants also

<sup>2</sup>The requested relief is solely to permit transactions in Shares during a distribution of an Issuer’s AT1 Contingent Convertible Securities (*i.e.*, the Request Letter does not seek relief with respect to transactions in the AT1 Contingent Convertible Securities themselves). For purposes of this relief, the terms “affiliated purchasers” and “distribution participants” shall have the same meaning as defined in Rule 100(b) of Regulation M. *See* 17 CFR 242.100(b).

<sup>3</sup>Applicants represent in the Request Letter that the qualification requirements/features for AT1 Contingent Convertible Securities that qualify as AT1 Capital are set forth in the European Union’s Capital Requirements Directive IV and related Capital Requirements Regulation (collectively, the “CRD IV”), which were issued in response to the new global regulatory frameworks on bank capital adequacy and liquidity adopted by the Basel Committee on Banking Supervision in December 2010 (generally known as “*Basel III*”). Applicants represent that the purpose of AT1 Capital is to absorb future losses through conversion to common equity (or write-down) so as to allow a financial institution to maintain sufficient Common Equity Tier 1 Capital to continue as a going concern. In addition, the basic equity-related-structure of AT1 Contingent Convertible Securities that qualify as AT1 Capital under CRD IV is summarized in the Request Letter.

<sup>4</sup>Applicants also represent that Issuers have previously indicated that they expect AT1 Contingent Convertible Securities to price and trade more like traditional fixed-income debt instruments than conventional convertible instruments (*i.e.*, that investors in AT1 Contingent Convertible Securities are generally focused on receiving interest payments during the life of the AT1 Contingent Convertible Securities rather than any potential

represent in the Request Letter that, unlike traditional convertible debt instruments, the AT1 Contingent Convertible Securities to be offered automatically convert into Shares only upon the occurrence of a remote, capital adequacy-related trigger event that is set forth in the terms of the relevant AT1 Contingent Convertible Security.

Specifically, Applicants represent, among other things, the following:

- Relief is requested only with respect to AT1 Contingent Convertible Securities that automatically and mandatorily convert into Shares if the Issuer’s Common Equity Tier 1 Capital Ratio (as calculated in accordance with CRD IV) falls below a pre-determined trigger level of 7.0% or lower;<sup>5</sup>
- A Common Equity Tier 1 Capital Ratio below 7.0% is effectively a sign of distress, and conversion of AT1 Contingent Convertible Securities with a trigger level of 7.0% or lower is unlikely to occur as a result of actions within an Issuer’s control;
- Because of the perceived severity of the regulatory sanctions that would otherwise apply to an Issuer who allows its Common Equity Tier 1 Capital Ratio to fall below its Combined Buffer Requirement,<sup>6</sup> Issuers have a strong

equity upside in the unlikely event of a conversion into Shares), citing to prior requests for relief from Rules 101 and 102 of Regulation M in connection with offerings of AT1 Contingent Convertible Securities: Letter from Josephine J. Tao, Assistant Dir., Office of Derivatives Policy & Trading Practices, Div. of Trading & Mkts., SEC, to Mark J. Welshimer, Sullivan & Cromwell LLP (Apr. 7, 2015) (ING Groep N.V.); Letter from Josephine J. Tao, Assistant Dir., Office of Derivatives Policy & Trading Practices, Div. of Trading & Mkts., SEC, to John Banes, Davis Polk & Wardwell London LLP (Mar. 6, 2014) (Lloyds Banking Group); Letter from Josephine J. Tao, Assistant Dir., Office of Derivatives Policy & Trading Practices, Div. of Trading & Mkts., SEC, to George H. White, Sullivan & Cromwell LLP (Nov. 7, 2013) (Barclays PLC); Letter from Josephine J. Tao, Assistant Dir., Office of Derivatives Policy & Trading Practices, Div. of Trading & Mkts., SEC, to Michael J. Willis, Davis Polk & Wardwell Spain LLP (Nov. 3, 2017) (Banco Bilbao Vizcaya Argentaria, S.A.).

<sup>5</sup>Applicants represent that guidance from the UK Prudential Regulation Authority will generally result in a 7.0% trigger level for AT1 Contingent Convertible Securities issued by UK financial institutions, which is intended to ensure that only instruments that will reliably absorb losses while a firm is still a going concern can count towards the leverage ratio under CRD IV. Applicants represent that the applicable 7.0% threshold is equivalent to the sum of the basic 4.5% minimum for Common Equity Tier 1 Capital under CRD IV and the additional 2.5% capital conservation buffer that is also required to be satisfied with Common Equity Tier 1 Capital under CRD IV.

<sup>6</sup>In addition to the basic 4.5% minimum Common Equity Tier 1 Capital Ratio under CRD IV, there is a Combined Buffer Requirement applicable to any institution that is incremental to the minimum requirement and is composed of (1) in all cases, an additional 2.5% capital conservation buffer (with the consequence that the sum of the

Continued

<sup>1</sup> 17 CFR 240.17a-5(b).

<sup>1</sup> Letter from John O’Connor, Sullivan & Cromwell LLP, and John Banes, Davis Polk & Wardell LLP, to Josephine J. Tao, Assistant Dir., Office of Derivatives Policy & Trading Practices, Div. of Trading & Mkts., SEC (Jan. 23, 2018) (the “Request Letter”).

incentive to maintain capital levels, and investors expect such Issuers to maintain capital levels, well in excess of the pre-determined trigger level;<sup>7</sup>

- Because the risk of regulatory capital falling below the pre-determined trigger level is considered remote at the time of the issuance, the price of the Shares is not expected to have a significant impact on pricing or market demand for AT1 Contingent Convertible Securities at the time of issuance;

- Because AT1 Contingent Convertible Securities would convert only if Common Equity Tier 1 Capital fell below the pre-determined trigger level of at least 7.0%, which would, effectively, indicate distress of the Issuer, investors do not purchase AT1 Contingent Convertible Securities in the initial distribution of AT1 Contingent Convertible Securities to have the possibility of acquiring Shares in a conversion or to increase their exposure to the Issuer's common equity (*i.e.*, investors, instead, are focused primarily on receiving interest payments during the life of the AT1 Contingent Convertible Securities);

- Accordingly, trading activity in the Shares at or around the time of distribution is unlikely to influence the pricing or trading of the AT1 Contingent Convertible Securities that would be in distribution.

### I. Rules 101 and 102 of Regulation M

Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any "distribution participant" (*i.e.*, underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities) and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase, any security that is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the Rule. Rule 102 of Regulation M includes the same prohibitions but applies to issuers,

<sup>7</sup> basic minimum and the Combined Buffer Requirement is never less than 7.0%), and (2) at least three other potential buffers—namely, (i) an institution-specific counter-cyclical capital buffer (which may be disapplied by member states to small and medium-sized institutions), (ii) a member state-specific systemic risk buffer, and (iii) any applicable systemically important institution buffers.

<sup>7</sup> Applicants represent that the CRD IV regulatory sanctions include automatic limitations on distributions (such as the ability to pay dividends) and compensation that create significant disincentives for an Issuer to allow its Common Equity Tier 1 Capital Ratio to fall below the applicable Combined Buffer Requirement.

selling security holders, and any of their affiliated purchasers.

Regulation M applies to activities in both the securities in distribution (*i.e.*, activities in the "subject securities") and any "reference securities," such as common stock underlying an exercisable, exchangeable, or convertible security that is being distributed.<sup>8</sup> Accordingly, the Issuer's Shares may be deemed to be "reference securities" in relation to the AT1 Contingent Convertible Securities. Thus, Regulation M would prohibit Issuers and any affiliated purchasers from making any bids for, purchases of, or attempts to induce any other person to bid for or purchase the Shares during an applicable restricted period in connection with a distribution of the Issuer's AT1 Contingent Convertible Securities.

### Discussion

Based on the representations and facts presented in the Request Letter—particularly, that a distribution of AT1 Contingent Convertible Securities that satisfies the conditions set forth in the Request Letter, as well as below, does not raise the concerns at which Regulation M is directed and that any bids for, purchases of, or attempts to induce any other person to bid for or purchase of the Shares by Issuers or affiliated purchasers during an applicable restricted period in connection with a distribution of the Issuer's AT1 Contingent Convertible Securities would be unlikely, except in unusual circumstances, to affect the pricing or trading of the AT1 Contingent Convertible Securities<sup>9</sup>—the U.S. Securities and Exchange Commission (the "Commission") finds that it is appropriate in the public interest and consistent with the protection of investors to grant class exemptive relief from the requirements of Rule 101 and Rule 102, under paragraph (d) of Rule 101 and paragraph (e) of Rule 102 of Regulation M, respectively, in connection with distributions of AT1 Contingent Convertible Securities that satisfy the conditions set forth below to permit transactions involving Shares by

<sup>8</sup> See Anti-Manipulation Rules Concerning Securities Offerings, Exchange Act Rel. No. 38067 (Dec. 20, 1996), 62 FR 520 (Jan. 3, 1997) (stating that transactions in "reference securities" can have a direct and substantial effect on the pricing and terms of the security in distribution).

<sup>9</sup> In particular, that AT1 Contingent Convertible Securities do not convert to equity unless the Issuer's regulatory capital falls below a pre-determined trigger level, and that the price of and trading activity in Shares at or around the time of a distribution is not expected to influence or have a significant impact on pricing or market demand for the AT1 Contingent Convertible Securities at the time of issuance.

an Issuer and its affiliated purchasers (including those acting as distribution participants) during a distribution of such AT1 Contingent Convertible Securities.<sup>10</sup>

Consistent with the limited scope of relief sought in the Request Letter, this relief is limited to distributions of AT1 Contingent Convertible Securities by or on behalf of a "foreign private issuer" (within the meaning of Rule 3b-4 under the Exchange Act) and where the "principal market" (as such term is defined in Rule 100 of Regulation M) of the underlying Shares is outside of the United States. This condition narrowly tailors the relief's application to Issuers who engage in distributions of the AT1 Contingent Convertible Securities that are the subject of this relief and ensures that the Issuers of such securities are subject to the information reporting requirements of the Exchange Act. Limiting the scope of the relief in this way should help to reduce the potential risk of transactions in Shares that could adversely affect U.S. markets during a distribution of a non-U.S. Issuer's AT1 Contingent Convertible Securities.

This relief is also limited to distributions of AT1 Contingent Convertible Securities that automatically and mandatorily convert into Shares if an Issuer's Common Equity Tier 1 Capital Ratio (as calculated in accordance with CRD IV) falls below a predetermined trigger level of 7.0% or lower. Applicants represent in the Request Letter that a Common Equity Tier 1 Capital Ratio below 7.0% is considered, under guidance from the UK Prudential Regulation Authority, to be effectively a sign of distress, and conversion of AT1 Contingent Convertible Securities with a trigger level of 7.0% or lower is unlikely to occur as a result of actions within an Issuer's control. As such, this condition is intended to further ensure the remoteness of any possibility of conversion of the AT1 Contingent Convertible Securities, thus also decreasing the likelihood of any trading activity in Shares during such distributions affecting the pricing or demand for the AT1 Contingent Convertible Securities being distributed.

This relief also requires that, as of the date of the most recent calculation required to be reported to the relevant

<sup>10</sup> Consistent with the limited scope of relief sought in the Request Letter, the relief granted herein, however, does not extend to transactions in the AT1 Contingent Convertible Securities themselves. Transactions in the AT1 Contingent Convertible Securities that are being distributed would need to comply with the requirements of Regulation M and/or qualify for one of the exceptions provided under Regulation M.

supervising authority under applicable regulatory capital rules prior to the distribution of the AT1 Contingent Convertible Securities, the Issuer's Common Equity Tier 1 Capital Ratio must exceed the applicable Combined Buffer Requirement.<sup>11</sup> This condition, which conforms to applicable regulatory capital rules, is intended to ensure that the Issuer maintains capital levels that are sufficiently above the pre-determined trigger level at the time of distribution of the AT1 Contingent Convertible Securities.<sup>12</sup> Accordingly, this condition helps to ensure the remoteness of any possibility of conversion of the AT1 Contingent Convertible Securities and, thus, to decrease the likelihood of any trading activity in Shares during such distributions affecting the pricing or demand for the AT1 Contingent Convertible Securities being distributed.

In addition, this relief applies only to AT1 Contingent Convertible Securities in distribution that do not include any right of the Issuer or holders to convert the AT1 Contingent Convertible Securities into Shares at their option. This condition is intended to help to ensure the remoteness of any possibility of conversion of the AT1 Contingent Convertible Securities and, thus, to decrease the likelihood of trading activity in Shares affecting the pricing or demand for the AT1 Contingent Convertible Securities in distribution.

This relief also requires that any transactions in Shares by an Issuer or any of its affiliated purchasers must be effected in the ordinary course of business and not to facilitate the distribution of the AT1 Contingent Convertible Securities. This condition should help to ensure that transactions in Shares are more customer-driven rather than driven by market activities that could potentially be used to artificially facilitate the distribution of the AT1 Contingent Convertible Securities or unduly impact the pricing of or demand for the AT1 Contingent Convertible Securities in distribution.

To ensure adequate transparency to potential U.S. investors in the offering, this relief also requires that any prospectus or other offering document that is distributed to U.S. investors in connection with the offering of the AT1 Contingent Convertible Securities must disclose the possibility of, or the

intention to engage in, transactions in Shares by an Issuer or its affiliated purchasers.

This relief is also limited to Shares that qualify for the actively-traded securities exception under Rule 101(c)(1) of Regulation M because such securities are viewed by the Commission to be less susceptible to manipulation. This limitation should also help to reduce the impact of any attempt to artificially influence the price of the AT1 Contingent Convertible Securities that are being distributed by engaging in transactions in the Shares at or around the time of a distribution.

## II. Conclusion

*It is hereby ordered*, pursuant to Rule 101(d) and Rule 102(e) of Regulation M, that, based on the representations and facts presented in the Request Letter, class exemptive relief from the requirements of Rules 101 and Rule 102, respectively, is granted in connection with distributions of AT1 Contingent Convertible Securities that satisfy the conditions set forth below to permit transactions involving Shares by an Issuer and its affiliated purchasers (including affiliated purchasers who may be deemed to be participating in a distribution of such Issuer's AT1 Contingent Convertible Securities) during a distribution of such AT1 Contingent Convertible Securities, as described in the Request Letter and herein, subject to the following conditions:

(1) The Issuer of the AT1 Contingent Convertible Securities must be a foreign private issuer (within the meaning of Rule 3b-4 under the Exchange Act);

(2) The principal market (within the meaning of Rule 100 of Regulation M) of Shares must be outside of the United States;

(3) The AT1 Contingent Convertible Securities in distribution must only automatically and mandatorily convert into the Issuer's Shares if the Issuer's Common Equity Tier 1 Capital Ratio (as calculated in accordance with CRD IV) falls below a pre-determined trigger level of 7.0% or lower;

(4) As of the date of the most recent calculation that is required to be reported to the relevant supervising authority under applicable regulatory capital rules prior to the distribution of the AT1 Contingent Convertible Securities, the Issuer's Common Equity Tier 1 Capital Ratio must exceed the applicable Combined Buffer Requirement;

(5) The AT1 Contingent Convertible Securities in distribution must not include any right of the Issuer or holders to convert the AT1 Contingent

Convertible Securities into Shares at their option;

(6) Any transactions in Shares by the Issuer or any of its affiliated purchasers must be effected in the ordinary course of business and not for the purpose of facilitating the distribution of the AT1 Contingent Convertible Securities;

(7) Any prospectus or other offering document that is distributed to U.S. investors in connection with the offering of the AT1 Contingent Convertible Securities must disclose the possibility of, or the intention to engage in, transactions in Shares by the Issuer or its affiliated purchasers;

(8) Shares must have an ADTV (within the meaning of Rule 100 of Regulation M) value of at least \$1 million during the two full calendar months immediately preceding, or any consecutive 60 calendar days ending within the 10 calendar days preceding, the determination of the offering price, and Shares must be issued by an Issuer whose common equity securities have a public float value (within the meaning of Rule 100 of Regulation M) of at least \$150 million; and

(9) Except as otherwise exempted herein, the issuance of the AT1 Contingent Convertible Securities shall remain subject to the provisions of Regulation M.

In the event that any material change occurs in the facts or representations in the Request Letter, the Applicants shall promptly present for consideration the facts to staff in the Division of Trading and Markets. This exemption is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this limited exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption.

This Order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

<sup>11</sup> See *supra* note 6.

<sup>12</sup> As mentioned above, because of the perceived severity of regulatory sanctions that would apply to an Issuer that allows its Common Equity Tier 1 Capital Ratio to decline below the applicable Combined Buffer Requirement, it is expected that Issuers will maintain capital levels well in excess of the predetermined trigger level.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Brent J. Fields,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82568; File No. SR-ISE-2018-07]

### 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

January 23, 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 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](http://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 amend the Schedule of Fees<sup>3</sup> to assess fees for OTTO<sup>4</sup> Port, CTI<sup>5</sup> Port, FIX<sup>6</sup> Port, FIX Drop<sup>7</sup> Port and Disaster Recovery Port<sup>8</sup> connectivity. The Exchange has completed the migration of the Exchange’s trading system to the Nasdaq

<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> 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.

INET architecture.<sup>9</sup> 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”).<sup>10</sup> 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.<sup>11</sup>

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 mnemonic<sup>12</sup> for OTTO Ports, \$500 per port, per month, per account number<sup>13</sup> 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 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.<sup>14</sup> 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.<sup>15</sup> The Exchange notes that this is how the

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

<sup>10</sup> 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.

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

<sup>12</sup> 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.

<sup>13</sup> An account number may have multiple mnemonics affiliated with it. See *id.*

<sup>14</sup> See Nasdaq GEMX Schedule of Fees Section IV.E.3.

<sup>15</sup> *Supra* note 12.

<sup>13</sup> 17 CFR 200.30-3(a)(6) and (9).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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