

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Paper and electronic records are maintained in accordance with General Records Schedules 4.2 and 5.1, or for as long as needed for business use.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Paper records are maintained in offices and file cabinets. During duty hours, the records are under surveillance of personnel charged with their custody. After duty hours, the offices are accessible only using an office key or access card. Access to electronic records maintained on an OSHRC shared drive is restricted to personnel who require access to perform their official functions.

**RECORD ACCESS PROCEDURES:**

Individuals who wish to gain access to their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.6 (procedures for requesting records).

**CONTESTING RECORD PROCEDURES:**

Individuals who wish to contest their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on the specific procedures for contesting the contents of a record, refer to 29 CFR 2400.8 (Procedures for requesting amendment), and 29 CFR 2400.9 (Procedures for appealing).

**NOTIFICATION PROCEDURES:**

Individuals interested in inquiring about their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.5 (notification), and 29 CFR 2400.6 (procedures for requesting records).

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

April 14, 2006, 71 FR 19556; August 4, 2008, 73 FR 45256; October 5, 2015, 80 FR 60182; and September 28, 2017, 82 FR 45324.

Dated: October 24, 2018.

**Nadine N. Mancini,**

*General Counsel, Senior Agency Official for Privacy.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-84487; File No. SR-ISE-2018-87]

**Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchanges Schedule of Fees To Modify the Crossing Fee Cap**

October 25, 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 October 11, 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 Exchange’s Schedule of Fees to modify the Crossing Fee Cap, as described further below.

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 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 Exchange’s

Schedule of Fees to exclude Non-Nasdaq ISE Market Makers<sup>3</sup> from the Crossing Fee Cap in Section IV.H.

By way of background, Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, Price Improvement Mechanism (“PIM”), Block or QCC order. As set forth in Section IV.H of the Schedule of Fees, the Exchange currently caps Crossing Order fees at \$90,000 per month per member on all Firm Proprietary and Non-Nasdaq Market Maker transactions that are part of the originating or contra side of a Crossing Order.<sup>4</sup> The following fees are not included in the calculation of the monthly Crossing Fee cap: (1) Fees for Responses to Crossing Orders, (2) surcharge fees for licensed products and the fees for index options as set forth in Section III, and (3) service fee.<sup>5</sup> For purposes of the Crossing Fee Cap the Exchange attributes eligible volume to the ISE Member on whose behalf the Crossing Order was executed.<sup>6</sup> The Exchange now seeks to exclude Non-Nasdaq ISE Market Maker transactions from the Crossing Fee Cap, and make related changes to remove references to Non-Nasdaq ISE Market Maker contracts throughout its Schedule of Fees where the Crossing Fee Cap is described.

**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 Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</sup> in particular, in that it

<sup>3</sup> A “Non-Nasdaq ISE Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

<sup>4</sup> Members that elect prior to the start of the month to pay \$65,000 per month will have these crossing fees capped at that level instead. All eligible volume from affiliated Members will be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member’s Form BD, Schedule A.

<sup>5</sup> A service fee of \$0.00 per side applies to all order types that are eligible for the fee cap. The service fee does not apply once a Member reaches the fee cap level and does apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee applies to eligible Firm Proprietary and Non-Nasdaq ISE market Maker orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap.

<sup>6</sup> The Exchange’s fee cap is functionally similar to the Clearing Trading Permit Holder Fee Cap in place at Cboe Exchange (“CBOE”), and the Monthly Firm Fee Cap in place at Nasdaq PHLX (“Phlx”). See CBOE Fees Schedule, Equity Options Rate Table, Clearing Trading Permit Holder Fee Cap, footnote 11; and Phlx Pricing Schedule, Section II, Monthly Firm Fee Cap.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

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

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

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 Crossing Fee Cap was established to reward members for executing a high volume of Firm Proprietary and Non-Nasdaq ISE Market Maker Crossing Orders on the Exchange. However, the Exchange has determined that this program has not proven to be effective in encouraging Non-Nasdaq ISE Market Maker volume in Crossing Orders and therefore believes it is reasonable to eliminate the Crossing Fee Cap for these market participants. Furthermore, the Exchange believes that it is reasonable to no longer apply the Crossing Fee Cap to Non-Nasdaq ISE Market Maker transactions because other options exchanges offer similar fee caps that only apply to firm proprietary orders.<sup>9</sup>

The Exchange further believes that the proposed fee change is equitable and not unfairly discriminatory because it would apply uniformly to all members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange's decision to no longer apply the Crossing Fee Cap to Non-Nasdaq ISE Market Maker orders is not unfairly discriminatory because as noted above, the Exchange has determined that this program has not proven to be effective in encouraging Non-Nasdaq ISE Market Maker volume in Crossing Orders and as a matter of practice, members submitting Firm Proprietary orders are most likely to use or pre-pay the Crossing Fee Cap. As

<sup>9</sup> See CBOE Fees Schedule, Equity Options Rate Table, Clearing Trading Permit Holder Fee Cap, footnote 11 (providing in relevant part that the "... Clearing Trading Permit Holder Fee Cap in all products except Underlying Symbol List A (34) excluding binary options (the "Fee Cap") and Sector Indexes (47), the Cboe Options Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders (the "Proprietary Products Sliding Scale"), the Clearing Trading Permit Holder Proprietary VIX Sliding Scale (the "VIX Sliding Scale"), and the Supplemental VIX Total Firm Discount (the Supplemental VIX Discount") apply to (i) Clearing Trading Permit Holder proprietary orders ("F" origin code), and (ii) orders of Non-Trading Permit Holder Affiliates of a Clearing Trading Permit Holder. A "Non-Trading Permit Holder Affiliate" for this purpose is a 100% wholly owned affiliate or subsidiary of a Clearing Trading Permit Holder that is registered as a United States or foreign broker-dealer and that is not a Cboe Options Trading Permit Holder. Only proprietary orders of the Non-Trading Permit Holder Affiliate that clear through a Cboe Options-registered OCC clearing number(s) will be included in calculating the Fee Cap, Proprietary Products Sliding Scale, VIX Sliding Scale, and Supplemental VIX Discount."). In addition, Phlx's Monthly Firm Fee Cap is only offered to firm proprietary orders. See Phlx Pricing Schedule, Section II, Monthly Firm Fee Cap.

such, the Exchange believes there will be minimal impact on removing this fee cap for Non-Nasdaq ISE Market Maker orders. Moreover, the proposed variance between Firm Proprietary and Non-Nasdaq ISE Market Maker participants does not misalign pricing in that Firm Proprietary orders already benefit from certain pricing advantages that Non-Nasdaq ISE Market Makers do not also enjoy, such as a PIM and Facilitation rebate as well as a lower complex order maker fee.<sup>10</sup> Such differentiated pricing exists today on another options exchange.<sup>11</sup> The Exchange believes there is nothing impermissible about ISE offering the Crossing Fee Cap solely to Firm Proprietary transactions given that this practice is consistent with the above examples and the fee caps in place at other options exchanges.<sup>12</sup> Furthermore, to the extent the Crossing Fee Cap provides an incentive for Firm Proprietary orders to transact order flow on the Exchange, such order flow brings increased liquidity to the benefit of all market participants, including Non-Nasdaq ISE Market Makers.

#### *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. Although the Exchange is no longer including Non-Nasdaq ISE Market Maker transactions in the Crossing Fee Cap, as described above, the Exchange notes that other options exchanges offer similar fee caps that apply only to firm proprietary orders and the Exchange therefore seeks to modify its fee cap for competitive reasons.<sup>13</sup> The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its

<sup>10</sup> See Schedule of Fees, Section IV.B. See Schedule of Fees, Section II (assessing Non-Nasdaq ISE Market Maker orders a complex order maker fee of \$0.20 per contract in Select Symbols, while Firm Proprietary orders are assessed the lower \$0.10 per contract maker fee).

<sup>11</sup> CBOE assesses a reduced transaction fee to Clearing Trading Permit Holder Proprietary participants, which clear in the Firm range at The Options Clearing Corporation, of \$0.43 per contract for electronic Penny Classes and \$0.70 per contract for electronic Non-Penny Classes. In contrast, CBOE assesses Non-Trading Permit Holder Market Makers a \$0.47 per contract fee for electronic Penny Classes and a \$0.75 per contract fee for electronic Non-Penny Classes. See CBOE Fees Schedule.

<sup>12</sup> See note 9 above.

<sup>13</sup> See note 9 above.

fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. For the reasons discussed above, the Exchange believes that the proposed fee change reflects this competitive environment.

#### *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.<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-2018-87 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.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number *SR-ISE-2018-87*. 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-2018-87* and should be submitted on or before November 21, 2018.

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

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

[FR Doc. 2018-23732 Filed 10-30-18; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84486; File No. SR-NYSEArca-2018-75]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding Certain Investments of the PGIM Ultra Short Bond ETF

October 25, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 12, 2018, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 certain changes regarding investments of the PGIM Ultra Short Bond ETF (the “Fund”), a series of PGIM ETF Trust (the “Trust”), and shares of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600-E (“Managed Fund Shares”). The proposed change is available on the Exchange's website at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes certain changes, described below under “Application of Generic Listing Requirements,” regarding investments of the Fund. The shares (“Shares”) of the Fund are currently listed and traded on the Exchange under Commentary .01 to NYSE Arca Rule 8.600-E,<sup>4</sup> which provides generic criteria applicable to the listing and trading of Managed Fund

Shares.<sup>5</sup> The Commission has previously approved a proposed rule change regarding certain changes that would result in the portfolio for the Fund not meeting all of the “generic” listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E applicable to the listing of Managed Fund Shares.<sup>6</sup>

PGIM Investments LLC (the “Adviser”) is the investment adviser for the Fund. PGIM Fixed Income (the “Subadviser”), a unit of PGIM, Inc., is the subadviser to the Fund. The Adviser and the Subadviser are indirect wholly-owned subsidiaries of Prudential Financial, Inc.<sup>7</sup>

As stated in the Prior Releases, the Fund may invest in derivatives to (i) provide exposure to the “Principal Investment Instruments” (as defined in the Prior Releases), and (ii) enhance returns, manage portfolio duration, or manage the risk of securities price fluctuations. Derivatives that the Fund may enter into include only: Over-the-counter (“OTC”) deliverable and non-deliverable foreign exchange forward contracts; listed futures contracts on one

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the “1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2-E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>6</sup> See Amendment No. 1 to SR-NYSEArca-2018-15, available at <https://www.sec.gov/comments/sr-nysearca-2018-15/nysearca201815-3510337-162292.pdf> (“Prior Amendment”); Securities Exchange Act Release No. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR-NYSEArca-2018-15), (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600-E) (“Approval Order” and, together with the Prior Amendment, the “Prior Releases”). The Prior Releases stated that the Fund's portfolio would meet all requirements of Commentary .01 to NYSE Arca Rule 8.600-E except for those set forth in Commentary .01(a)(1), Commentary .01(b)(4) and Commentary .01(b)(5).

<sup>7</sup> The Trust is registered under the 1940 Act. On March 26, 2018, the Trust filed with the Commission Pre-Effective Amendment No. 1 to the Trust's registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the Fund (File Nos. 333-222469 and 811-23324) (“Registration Statement”). The Trust will file an amendment to the Registration Statement as necessary to conform to the representations in this filing. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 31095 (June 24, 2014) (File No. 812-14267).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Shares of the Fund commenced trading on the Exchange on April 10, 2018 pursuant to Commentary .01 to NYSE Arca Rule 8.600-E.

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

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