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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-82749; File No. SR-ISE-2018-15]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Gateway Fees  
February 21, 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 February 12, 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 remove obsolete text and amend the current rule text to provide a more accurate description of the Gateway Fees which are currently offered on ISE.

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

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

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

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 Exchange proposes to amend ISE's current pricing related to Gateways at VI, C of the Schedule of Fees. The Exchange's current gateway offering was modified with the completion of the transition of ISE to INET technology in July 2017. First, as of July 2017, the Exchange no longer offered a Shared Gateway for its DTI<sup>3</sup> port to its Members. Second, the Exchange modified its offering of its Dedicated Gateway to remove the paired offering which allowed access to both ISE and Nasdaq GEMX, LLC ("GEMX"). Both of these changes are discussed in more detail below.

Shared Gateway

With the transition to INET, ISE no longer offered DTI ports as of July 2017. Prior to the replatform, ISE assessed Members a Shared Gateway fee of \$750 per gateway, per month for DTI ports. The offering provided connectivity to both ISE and GEMX. The Exchange no longer offers DTI ports and has not billed this fee since the decommissioning of the DTI ports in July 2017. No ISE Member will be offered a Shared Gateway for a DTI port. Today, the Exchange does not assess a Shared Gateway fee for ports. ISE Members are able to utilize various ports today, namely, SQF, OTTO, FIX and Precise. The Exchange is noting a Shared Gateway fee of \$0 on the Schedule of Fees for clarity. The Shared Gateway fee shall apply to all ports including

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<sup>3</sup> DTI was an order entry protocol offered on ISE that was utilized by all members. DTI ports are not offered today.

FIX, SQF, OTTO and Precise.

### Dedicated Gateway and Dedicated SQF

The Exchange filed a rule change to establish a Dedicated SQF Host in 2017 to discuss the transition of gateway services in connection with the INET migration.<sup>4</sup> In that rule change the Exchange noted it would offer Dedicated Gateways to facilitate member access to the Exchange.<sup>5</sup> The filing described a Dedicated SQF Host as an optional offering available to Market Makers -- *i.e.*, Primary Market Makers (“PMMs”) and Competitive Market Makers (“CMMs”)--only for their SQF Port & SQF Purge Port connectivity.<sup>6</sup> A Dedicated SQF Host provides the PMM or CMM with assurance that their SQF Port and SQF Purge Port connection to the Exchange resides on a host that is not shared with other PMMs and CMMs.

The Exchange’s Schedule of Fees currently provides for a Dedicated Gateway fee which is assessed at \$2,250 per gateway pair, per month. The Schedule of Fees notes that the gateway connectivity provides connectivity to both GEMX and ISE. Also, the Schedule of Fees notes a Dedicated SQF Host Fee of \$0 per host per month. The Exchange established the Dedicated SQF Host Fee at no cost because the Exchange did not desire to double bill ISE Market Makers for two sets of SQF connectivity – one to the old T7 legacy system and one to the new INET system.

The Exchange discontinued its paired Dedicated Gateways in July 2017. Since that time the Exchange has not billed Market Makers for use of Dedicated Gateways. The Exchange has offered the Dedicated SQF Host at no cost. At this time, the Exchange proposes to increase and

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<sup>4</sup> See Securities and Exchange Act Release No. 81095 (July 7, 2017), 82 FR 32409 (July 13, 2017)(SR-ISE-2017-62).

<sup>5</sup> Id.

<sup>6</sup> Id. See also ISE Rule 100(a)(25).

amend the dedicated offering. The Exchange proposes to eliminate the reference to a “Dedicated SQF Host Fee” and commence assessing a fee for the “Dedicated Gateway” offering. The Exchange proposes to continue to refer to the dedicated offering as the “Dedicated Gateway” and assess a fee of \$2,250 per SQF gateway, per month. Only Market Makers that utilize SQF ports have the option of utilizing this dedicated offering. Prior to the INET transition, all Members were able to utilize the dedicated offering for their DTI port. Today, only SQF ports, which are utilized by Market Makers, may be dedicated. All other ports, namely FIX, OTTO and Precise, can only be shared. An SQF port can be shared, at no cost, or dedicated. The current Dedicated SQF will not offer connectivity for GEMX and therefore the “pair” language is no longer relevant. The offering only grants access to ISE.

## 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 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.

### Shared Gateway

The Exchange believes that removing the obsolete pricing for the Shared Gateway for the DTI ports is reasonable because DTI ports are no longer available and the Exchange does not assess any other port a Shared Gateway fee. Also, the Exchange offers a Shared Gateway for any port, SQF, OTTO, FIX or Precise, at no cost.

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

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

The Exchange believes that removing the pricing for the Shared Gateway for DTI ports is equitable and not unfairly discriminatory because DTI ports are no longer available on ISE for any Member. Any Member may utilize a Shared Gateway at no cost.

#### Dedicated Gateway and Dedicated SQF

The Exchange believes that removing the current Dedicated Gateway paired pricing and the reference to the Dedicated SQF Host Fee, and increasing the fee for a dedicated offering, namely “Dedicated Gateway” fee from \$0<sup>9</sup> to \$2,250 per SQF gateway, per month is reasonable. The Exchange discontinued the paired connectivity through the legacy T7 in July 2017. The Exchange offered these dedicated servers at no cost since August 2017. Increasing the Dedicated Gateway fee at this time permits the Exchange to recuperate costs its bears to offer such dedicated services and permits ISE Market Makers to select between a Shared Gateway and a Dedicated Gateway for their SQF ports. The Exchange believes that assessing a fee of \$2,250 per host, per month to obtain a dedicated server is reasonable given the cost of this offering to the Exchange. ISE Market Makers have the option of selecting a Shared Gateway for their SQF ports at no cost.

The Exchange believes that removing the current Dedicated Gateway paired pricing and the reference to the Dedicated SQF Host Fee, and increasing the fee for a dedicated offering, namely “Dedicated Gateway” fee from \$0 to \$2,250 per SQF gateway, per month is equitable and not unfairly discriminatory. At this time, no ISE Member is being assessed the paired Dedicated Gateway fees. Today, no ISE Market Maker is being assessed a Dedicated SQF Host fee. Any ISE Market Maker may select a Dedicated SQF, as compared to a Shared Gateway for their SQF connectivity. The Exchange will uniformly assess any ISE Market Maker the

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<sup>9</sup> The Exchange is not currently assessing a fee for a dedicated offering.

proposed \$2,250 per host, per month fee. ISE Market Makers are likely to benefit from a dedicated as compared to a shared gateway as compared to other market participants. Dedicated SQF is designed to provide a more deterministic experience for ISE Market Makers when quoting on the Exchange by allowing them to better load balance their trading sessions, but does not provide any latency benefit when compared to using the shared gateways, which are built on identical hardware to the dedicated gateways. The Exchange therefore believes that ISE Market Makers are likely to benefit from the load balancing provided by the dedicated gateways, which will aid ISE Market Makers in their obligations to maintain tight markets--a benefit that ultimately accrues to the benefit of all market participants that trade on the Exchange. Based on the Exchange's experience, the Exchange does not believe that market participants using other protocols, namely FIX, OTTO and Precise, are likely to use dedicated gateways, and the Exchange is therefore not offering such Dedicated Gateways for any of ports other than SQF Ports.

The Exchange does not believe that it is unfairly discriminatory to offer Dedicated Gateways only for SQF ports, which are only available to ISE Market Makers. Other exchanges also have gateways that are restricted to market makers. The New York Stock Exchange, for example, offers DMM Gateways that are only available to their Designated Market Makers.<sup>10</sup> ISE Market Makers provide liquidity on the Exchange and have continuous quoting obligations<sup>11</sup> to the market that require the ability to quickly and efficiently interact with their quotes and orders. Finally, with respect to assessing the same fee while discontinuing access to GEMX, the

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<sup>10</sup> See Securities Exchange Act Release No. 79748 (January 6, 2017), 82 FR 3828 (January 12, 2017) (SR-NYSE-2016-93).

<sup>11</sup> See ISE Rule 804(e).

Exchange believes that is equitable and not unfairly discriminatory to no longer offer access to GEMX with this particular offering as other exchanges do not offer this option.<sup>12</sup>

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. In terms of inter-market competition, the Exchange notes other exchanges offer similar dedicated access to their servers.<sup>13</sup> The Exchange 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. 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.

In terms of intra-market competition, no ISE Member will be assessed for a Shared Gateway. The new proposed Dedicated Gateway fee will be uniformly assessed to ISE Market Makers, who provide liquidity on the Exchange and have continuous quoting obligations<sup>14</sup> to the market. These market participants require the ability to quickly and efficiently interact with their quotes and orders. Further with respect to a Dedicated Gateways, the Exchange believes that ISE Market Makers are likely to benefit from the load balancing, which will aid ISE Market Makers in their obligations to maintain tight markets--a benefit that ultimately accrues to the benefit of all market participants that trade on the Exchange. An ISE Market Maker may selected a Shared

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<sup>12</sup> Nasdaq MRX, LLC has never offered a dedicated gateway option today.

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

<sup>14</sup> See ISE Rule 804(e).

Gateway for their SQF ports at no cost. Further, the Exchange notes that no ISE Market Maker will be offered connectivity to GEMX in connection with this offering.

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>15</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2018-15 on the subject line.

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

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-2018-15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-ISE-2018-15 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Eduardo A. Aleman,  
Assistant Secretary.

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

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