

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81598; File No. SR-ISE-2017-83)

September 13, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Non-Substantive, Clarifying Changes to ISE's Rulebook and Schedule of Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 1, 2017, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 make non-substantive, clarifying changes to ISE's Rulebook and Schedule of Fees.

The text of the proposed rule change is available on the Exchange's Website at www.ise.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 make non-substantive, clarifying changes to the ISE Rulebook and Schedule of Fees to avoid confusion in the Exchange's rules. Each change is discussed below.

1. ISE Rulebook

The Exchange proposes to remove text from ISE Rule 721, entitled "Crossing Orders." Specifically, the Exchange proposes to remove the following rule text, "ISE will migrate symbols to the INET platform pursuant to a symbol migration commencing in the second quarter of 2017. For symbols that have migrated to the INET platform, the functionality provided under ISE Rule 721(c) and the Supplementary Material thereto, permitting QCC with Stock Orders, will be temporarily suspended. The Exchange will specify the symbol migration schedule in an Options Trader Alert to be issued by the Exchange. The Exchange will recommence offering QCC with Stock Orders by announcing a date of implementation in a separate Options Trader Alert which will be issued prior to August 1, 2017. For symbols that have migrated to INET, QCC with Stock Orders will be rejected until the Exchange has recommenced this offering." This rule text was added at the time the Exchange proposed to delay this functionality.³ The Exchange recommenced the QCC with Stock Orders functionality on June 27, 2017.⁴ The text is no longer applicable.

³ See Securities Exchange Act Release No. 80718 (May 18, 2017), 82 FR 23932 (May 24, 2017) (SR-ISE-2017-44).

⁴ See Options Trader Alert # 2017-48.

The Exchange also proposes to remove text from ISE Rule 1901, entitled “Order Protection.”⁵ Specifically, the Exchange proposes to remove the following rule text, “The amended rule text will be implemented on a symbol by symbol basis for Nasdaq GEMX, LLC in Q1 2017, for Nasdaq ISE in Q2 2017 and for Nasdaq MRX, LLC in Q3 2017, the specific dates will be announced in a separate notice.” This rule text was added at the time the Exchange proposed to delay implementation of the changes to Rule 1901 in connection with a system migration to Nasdaq INET technology.⁶ Each of ISE, GEMX and MRX completed its symbol migration to INET.⁷ Accordingly, the Exchange seeks to remove the outdated rule text in Rule 1901 as described above in order to alleviate potential confusion regarding the operation of the rule.

2. Schedule of Fees

The Exchange further proposes to remove the following outdated sentences or footnotes, including any references thereto, in the Preface and in Sections I and III of the Schedule of Fees:

- There will be no fees or rebates for trades in symbol KANG executed on the INET trading system from June 27 – 30, 2017. Volume executed in KANG during this period will not be counted towards a member’s tier for June activity.⁸
- There will be no fees or rebates for trades executed on the INET trading system on

⁵ The Exchange notes that Chapter 19 of the ISE Rulebook, including Rule 1901, is incorporated by referenced into the rulebooks of Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”). As such, the amendments to ISE Rule 1901 will also impact GEMX and MRX rules.

⁶ See Securities Exchange Act Release No. 80009 (February 10, 2017), 82 FR 10927 (February 16, 2017) (SR-ISE-2016-31).

⁷ See Options Trader Alerts #2017-19 (GEMX symbol migration schedule), #2017-61 (ISE symbol migration schedule) and #2017-66 (MRX symbol migration schedule).

⁸ This rule text was added to the Schedule of Fees in connection with a pricing change. See Securities Exchange Act Release No. 81106 (July 10, 2017), 82 FR 32597 (July 14, 2017) (SR-ISE-2017-63).

June 30, 2017 in the following symbols: ACN, ACOR, AEO, AFSI, AMJ, AOBC, BKD, BTE, BV, CBI, CCL, CLR, CME, CNQ, ADM, ADSK, AGNC, ASHR, BBT, BK, BSX, CIEN, and IBM . Volume executed in these symbols on this date will not be counted towards a member's tier for June activity. In addition, June 30, 2017 will not be counted for purposes of determining Market Maker Plus tiers for the following symbols: ADM, ADSK, AGNC, ASHR, BBT, BK, BSX, CIEN, and IBM.⁹

- Select Symbols which will migrate to INET from July 3rd through July 30th 2017 as noticed by Nasdaq ISE in Options Trader Alert #2017-51 (“Migrated Symbols”) will not be subject to Market Maker Plus Tiers 1-3 for the month of July 2017. These Migrated Symbols will be subject to Market Maker Plus Tiers 1-3 as of August 1, 2017 and thereafter. Additionally, Select Symbols which will migrate to INET on July 31, 2017 as noticed by Nasdaq ISE at Options Trader Alert #2017-51 (“July 31 Migrated Symbols”) will only use activity from July 3rd through July 30th 2017 for purposes of qualifying for Market Maker Plus Tiers 1-3 for the month of July 2017.¹⁰
- There will be no fees or rebates for trades in FX Options executed on the INET trading system from June 12 – 30, 2017. Volume executed in FX Options during this period will not be counted towards a member's tier for June activity.¹¹

The operative dates for the pricing noted above have expired. The Exchange therefore

⁹ This rule text was added to the Schedule of Fees in connection with a pricing change. See Securities Exchange Act Release No. 81128 (July 12, 2017), 82 FR 32893 (July 18, 2017) (SR-ISE-2017-66).

¹⁰ This footnote (and references thereto) was added to the Schedule of Fees in connection with a pricing change. See Securities Exchange Act Release No. 81144 (July 14, 2017), 82 FR 33527 (July 20, 2017) (SR-ISE-2017-69).

¹¹ This rule text was added to the Schedule of Fees in connection with a pricing change. See Securities Exchange Act Release No. 80999 (June 22, 2017), 82 FR 29354 (June 28, 2017) (SR-ISE-2017-59).

desires to remove the outdated text from its Schedule of Fees to avoid confusion.

Finally, the Exchange proposes to make certain clarifying changes in Section II of the Schedule of Fees entitled, “Complex Order Fees and Rebates” (hereinafter, “Complex Fee Schedule”). In particular, the Exchange proposes to add references to footnotes 11 and 12 in the Complex Fee Schedule, both of which presently do not refer to any particular complex order fee or activity. Footnote 11 currently states that fees apply to the originating and contra order, but the footnote itself does not refer to any particular fees under the Complex Fee Schedule. The Exchange notes that when it adopted footnote 11 in the Complex Fee Schedule, it had appended references to the footnote to the fees for Crossing Orders and for orders executed in the Price Improvement Mechanism (“PIM”),¹² but inadvertently did not reflect the changes appending these references to the two fees in the Schedule of Fees itself. The Exchange therefore proposes to append footnote 11 to the fees for Crossing Orders and PIM orders to clarify that these fees apply to both the originating and contra order for complex orders.

In addition, the Exchange proposes to clarify the application of footnote 12,¹³ which also does not refer to anything under the Complex Fee Schedule today. The Exchange adopted footnote 12 when it introduced the stock handling fee¹⁴ for stock-option orders,¹⁵ and now

¹² See Securities Exchange Release No. 71914 (April 9, 2014), 79 FR 21321 (April 15, 2014) (SR-ISE-2014-20).

¹³ Footnote 12 currently states that the Exchange will charge a stock handling fee of \$0.0010 per share (capped at \$50 per trade) for the stock leg of stock-option orders executed against other stock-option orders in the complex order book.

¹⁴ See Securities Exchange Release No. 74117 (January 22, 2015), 80 FR 4600 (January 28, 2015) (SR-ISE-2015-03) (hereinafter, “Stock Handling Fee Notice”).

¹⁵ A stock-option order is an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta

proposes to insert a reference to this footnote at the top of the Complex Fee Schedule (i.e., at Section II) to clarify that this fee applies to all orders that have a stock component as described in footnote 12.¹⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ 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.

As discussed above, the Exchange seeks to make non-substantive, clarifying amendments to its Rulebook and Schedule of Fees by removing outdated text and by appending references to footnotes 11 and 12 at particular places in the Complex Fee Schedule. The Exchange believes that the proposed changes herein will add further clarification to the Rulebook and Schedule of Fees, and will also alleviate potential confusion as to the applicability of the Exchange's rules, all of which will protect 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. As discussed

neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. See ISE Rule 722(a)(2).

¹⁶ The Exchange will continue to bill pass-through fees for the stock leg of stock-option orders that trade against liquidity on the stock venue, instead of being matched in the complex order book. See Stock Handling Fee Notice at 4601.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

above, the proposed changes are non-substantive, clarifying amendments to the Exchange's Rulebook and Schedule of Fees, and are merely intended to add further clarification to the Exchange's rules and alleviate potential confusion.

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 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) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may immediately make the proposed changes to its Rulebook and Schedule of Fees. The Exchange believes that removing the outdated or duplicative language and clarifying the application of footnotes 11 and 12 will

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of 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.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

provide its rules with greater clarity and will avoid confusion as to their applicability. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.²³

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 necessary or appropriate in the public interest, for the protection of investors, or 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. Please include File Number SR-ISE-2017-83 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

²³ 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).

All submissions should refer to File Number SR-ISE-2017-83. 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-ISE-2017-83, 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.²⁴

Eduardo A. Aleman
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).