

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81863; File No. SR-ISE-2017-86)

October 12, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 723 and Rule 1614

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 October 2, 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 amend Rule 723 (Price Improvement Mechanism for Crossing Transactions) and Rule 1614 (Imposition of Fines for Minor Rule Violations) to remove obsolete rule text.

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 Exchange proposes to amend Rule 723 (Price Improvement Mechanism for Crossing Transactions) and Rule 1614 (Imposition of Fines for Minor Rule Violations) to remove obsolete rule text.

Rule 723 sets forth the requirements for the PIM, which was adopted in 2004 as a price-improvement mechanism on the Exchange.³ Certain aspects of PIM were adopted on a pilot basis (“Pilot”); specifically, the termination of the exposure period by unrelated orders, and no minimum size requirement of orders eligible for PIM. The Pilot expired on January 18, 2017.

On December 12, 2016, the Exchange filed with the Commission a proposed rule change to make the Pilot permanent, and also to change the requirements for providing price improvement for Agency Orders of less than 50 option contracts (other than auctions involving Complex Orders) where the National Best Bid and Offer (“NBBO”) is only \$0.01 wide.⁴ The

³ See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06).

⁴ See Securities Exchange Act Release No. 79530 (December 12, 2016), 81 FR 91221 (December 16, 2017) (SR-ISE-2016-29). The Exchange notes that, on April 3, 2017, International Securities Exchange, LLC was re-named Nasdaq ISE, LLC to reflect its new placement within the Nasdaq, Inc. corporate structure in connection with the March 9, 2016 acquisition by Nasdaq of the capital stock of U.S. Exchange Holdings, and the indirect acquisition all of the interests of the International Securities Exchange, LLC, ISE Gemini, LLC and ISE Mercury, LLC. See Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017) (SR-ISE-2017-25). ISE Gemini, LLC and ISE Mercury, LLC were also renamed Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”), respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017) (SR-ISEGemini-2017-13); Securities

Commission approved this proposal on January 18, 2017.⁵

In modifying the requirements for price improvement for Agency Orders of less than 50 contracts, ISE proposed to amend Rule 723(b) to require Electronic Access Members to provide at least \$0.01 price improvement for an Agency Order if that order is for less than 50 contracts and if the difference between the NBBO is \$0.01.

ISE adopted a member conduct standard to implement this requirement during the time pursuant to which ISE symbols were migrating from the ISE platform to the Nasdaq INET platform. At the time it proposed the member conduct standard, ISE anticipated that the migration to the Nasdaq platform would be complete on or before July 15, 2017. Accordingly, Rule 723(b) stated that, for the period beginning January 19, 2017 until a date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than July 15, 2017, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01, an Electronic Access Member shall not enter a Crossing Transaction unless such Crossing Transaction is entered at a price that is one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order, and better than any limit order on the limit order book on the same side of the market as the Agency Order. This requirement applied regardless of whether the Agency Order is for the account of a public customer, or where the Agency Order is for the account of a broker dealer or any other person or entity that is not a Public Customer.

To enforce this requirement, ISE also amended Rule 1614 (Imposition of Fines for Minor Rule Violations). Specifically, ISE added Rule 1614(d)(4), which provides that any Member

Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017) (SR-ISEMercury-2017-05).

⁵ See Securities Exchange Act Release No. 79829 (January 18, 2017), 82 FR 8469 (January 25, 2017) (SR-ISE-2016-29).

who enters an order into PIM for less than 50 contracts, while the National Best Bid or Offer spread is \$0.01, must provide price improvement of at least one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order, which increment may not be smaller than \$0.01. Failure to provide such price improvement will result in members being subject to the following fines: \$500 for the second offense, \$1,000 for the third offense, and \$2,500 for the fourth offense. Subsequent offenses will subject the member to formal disciplinary action. The Exchange will review violations on a monthly cycle to assess these violations. This provision was to be in effect for the period beginning January 19, 2017 until a date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than until September 15, 2017.⁶

In adopting the price improvement requirement for Agency Orders of less than 50 contracts, the Exchange also proposed to amend Rule 723(b) to adopt a systems-based mechanism to implement this requirement, which shall be effective following the migration of a symbol to the Nasdaq INET platform. Under this provision, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01, the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the

⁶ While ISE anticipated that the migration of ISE symbols to the Nasdaq INET platform would be complete by July 15, 2017, and its member conduct standard could be eliminated accordingly by that time, ISE Mercury, LLC (now Nasdaq MRX, LLC) also filed a rule change that adopted a similar member conduct standard for its price improvement rule, and that referenced proposed ISE Rule 1614(d)(4) as the means for enforcing its member conduct standard. See Securities Exchange Act Release No. 79841 (January 18, 2017), 82 FR 8452 (January 25, 2017) (order approving SR-ISEMercury-2016-25). The Nasdaq MRX re-platforming was scheduled to occur after the ISE re-platforming was complete. Accordingly, ISE proposed that the date for eliminating Rule 1614(d)(4) shall be specified by the Exchange in a Regulatory Information Circular, which date shall be no later than until September 15, 2017.

ISE order book on the same side of the Agency Order.

Subsequent to the approval of the rule change adopting the price improvement requirement and the member conduct standard, the Exchange determined that the migration of symbols to the Nasdaq INET platform would be complete on or before July 31, 2017.⁷ This new migration schedule was developed to enable the Exchange to conduct additional systems testing prior to symbol migration. Given the updated migration schedule, the Exchange proposed to extend the effective period of the member conduct standard accordingly until a date specific by the Exchange in a Regulatory Circular, which would be no later than August 15, 2017.⁸

By August 15, 2017, ISE had completed the migration of symbols to the Nasdaq INET platform, and adopted the corresponding systems-based mechanism for enforcing the price improvement requirement where the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01.⁹ Accordingly, ISE now proposes to delete the rule text in Rule 723 that implements the member conduct standard and the corresponding provision in Rule 1614 that imposes fines for violations of the member conduct standard.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

⁷ See Data Technical News #2017-14 (May 25, 2017).

⁸ See Securities Exchange Act Release No. 81212 (July 26, 2017), 82 FR 35864 (August 1, 2017) (SR-ISE-2017-75).

⁹ As of the date of filing, GEMX and MRX had also completed the process of migrating their symbols to the Nasdaq INET platform.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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 this proposal is consistent with the Act because it removes language that implements the member conduct standard where the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01, and the corresponding provision in Rule 1614 that imposes fines for violations of this member conduct standard. As noted above, these provisions have become obsolete, given the migration of all symbols on ISE, GEMX and MRX to the Nasdaq INET system and the corresponding adoption of the systems-based mechanism on each exchange for enforcing this price improvement requirement. The Exchange also notes that the systems-based mechanism for enforcing this price improvement requirement was previously approved by the Commission.¹²

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 the rule text to be removed has become obsolete with the migration of all symbols to the Nasdaq INET system and the corresponding adoption of the systems-based mechanism for enforcing the price improvement requirement where the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01.

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)

¹² See supra note 6.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁵ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁶ 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 proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay will allow the Exchange to remove the obsolete rule text immediately, minimizing potential investor confusion. 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.¹⁷

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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ 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).

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-2017-86 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.

All submissions should refer to File Number SR-ISE-2017-86. 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-2017-86, 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.¹⁸

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Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).