

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80477; File No. 4-707)

April 18, 2017

Self-Regulatory Organizations; ISE Mercury, LLC; Order Declaring Effective a Minor Rule Violation Plan

On March 9, 2017, ISE Mercury, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed minor rule violation plan ("MRVP" or "Plan") pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19d-1(c)(2) thereunder.² The proposed MRVP was published for public comment on March 21, 2017.³ The Commission received no comments on the proposal. This order declares the Exchange's proposed MRVP effective.

The Exchange's MRVP specifies the rule violations which will be included in the Plan and will have sanctions not exceeding \$2,500. Any violations which are resolved under the MRVP would not be subject to the provisions of Rule 19d-1(c)(1) of the Act,⁴ which requires that a self-regulatory organization ("SRO") promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.⁵ In accordance with Rule 19d-1(c)(2) under the Act,⁶ the

¹ 15 U.S.C. 78s(d)(1)

² 17 CFR 240.19d-1(c)(2).

³ See Securities Exchange Act Release No. 80259 (March 16, 2017), 82 FR 14556 ("Notice").

⁴ 17 CFR 240.19d-1(c)(1).

⁵ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission is not considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not

Exchange proposed to designate certain specified rule violations as minor rule violations, and requested that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.

The Exchange proposed to include in its MRVP the procedures and violations currently included in Exchange Rule 1614 (“Imposition of Fines for Minor Rule Violations”), which had been incorporated by reference from the International Securities Exchange’s rule book.⁷ According to the Exchange’s proposed MRVP, under Exchange Rule 1614, the Exchange may impose a fine (not to exceed \$2,500) on any Member, or person associated with or employed by a Member, for any rule listed in Rule 1614(d).⁸ The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person’s

exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

⁶ 17 CFR 240.19d-1(c)(2).

⁷ The Exchange received its grant of registration on January 29, 2016, which included approving the rules that govern the Exchange. See Securities Exchange Act Release No. 76998 (Jan. 29, 2016), 81 FR 6066 (Feb. 4, 2016).

⁸ Under the proposed MRVP, violations of the following rules would be appropriate for disposition under the MRVP: Rule 412 (Position Limits); Rule 1403 (Focus Reports); Rule 1404 (Requests for Trade Data); Rule 723 (Price Improvement Mechanism for Crossing Transactions); Rule 717 (Order Entry); Rule 803 (Quotation Parameters); Rule 805 (Execution of Orders in Appointed Options); Rule 419 (Mandatory Systems Testing); Rule 1100 (Exercise of Options Contracts); Rule 415 (Reports Related to Position Limits); and Rule 804(e) (Continuous Quotes). See Notice, supra note 3.

right to a disciplinary proceeding and any review of the matter under the Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written answer, at which point the matter shall become a disciplinary proceeding.

Once the Exchange's MRVP is effective, the Exchange will provide to the Commission a quarterly report for any actions taken on minor rule violations under the MRVP. The quarterly report will include: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation occurred, and the date of the disposition.⁹

The Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹⁰ because the MRVP will permit the Exchange to carry out its oversight and enforcement responsibilities as an SRO more efficiently in cases where full disciplinary proceedings are not necessary due to the minor nature of the particular violation.

In declaring the Exchange's MRVP effective, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Exchange Rule 1614. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Exchange Rule 1614 provides a reasonable means of addressing violations that do not rise

⁹ The Exchange attached a sample form of the quarterly report with its submission to the Commission.

¹⁰ 17 CFR 240.19d-1(c)(2).

to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

IT IS THEREFORE ORDERED, pursuant to Rule 19d-1(c)(2) under the Act,¹¹ that the proposed MRVP for ISE Mercury, LLC, File No. 4-707, be, and hereby is, declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Eduardo A. Aleman
Assistant Secretary

¹¹ Id.

¹² 17 CFR 200.30-3(a)(44).