

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78342; File No. SR-ISEMercury-2016-13)

July 15, 2016

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Price Improvement Mechanism Pilot Program

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 July 14, 2016, ISE Mercury, LLC (the “Exchange” or “ISE Mercury”) filed with the Securities and Exchange Commission (“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 to extend two pilot programs related to its Price Improvement Mechanism (“PIM”). The text of the proposed rule change is available on the Exchange’s Web site 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 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 these statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item IV below. The self-regulatory organization 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 currently has two pilot programs related to its PIM (collectively, the "PIM Pilot Programs" or "Pilot Programs"). The current Pilot Period provided in paragraphs .03 and .05 of the Supplementary Material to Rule 723 is set to expire on July 18, 2016.³ Paragraph .03 provides that there is no minimum size requirement for orders to be eligible for the Price Improvement Mechanism. Paragraph .05 concerns the termination of the exposure period by unrelated orders. The Exchange has continually submitted certain data in support of extending the current Pilot Programs. The Exchange proposes to extend these Pilot Programs in their present form, through January 18, 2017, to give the Exchange and the Commission additional time to evaluate the effects of these Pilot Programs before the Exchange requests permanent approval of the rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁴ Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ because it is designed to

³ See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (Order Granting the Application of ISE Mercury, LLC for Registration as a National Securities Exchange).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the Pilot Programs are consistent with the Act because they provide opportunity for price improvement for all orders executed in the Exchange's Price Improvement Mechanism. The proposed extension would allow the Pilot Programs to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption to the pilot. Further, the Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the Pilot Programs for an additional six months. The Exchange further believes it is appropriate to extend the Pilot Programs to provide the Exchange and Commission more data upon which to evaluate the rules. With this data, the Commission can evaluate whether the new data shows there is meaningful competition for all size orders within the PIM, whether there is significant price improvement for all orders executed through the PIM, and whether there is an active and liquid market functioning on the Exchange outside of the PIM.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Programs, the proposed rule change will allow for further analysis of the PIM. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 Act and Rule 19b-4(f)(6) thereunder.⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁸ 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 requested that the Commission waive the 30-day operative delay period because the Pilot Programs are set to expire on July 18, 2016. The Exchange noted that such waiver will allow the Pilot Programs to continue uninterrupted.

The Commission believes that waiving the 30-day operative delay is consistent with the

⁶ 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.

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest, as it will allow the Pilot Programs to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the Pilot Programs. For this reason, the Commission designates the proposed rule change to be operative on July 18, 2016.⁹

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-ISEMercury-2016-13 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.

⁹ For purposes only of waiving the operative delay for this proposal, the Commission has 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-ISEMercury-2016-13. 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-ISEMercury-2016-13, 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.¹⁰

Robert W. Errett
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).