

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81212; File No. SR-ISE-2017-75)

July 26, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Implementation Date in Rule 723(b)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 18, 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 extend the implementation date set forth in Rule 723(b) from July 15, 2017 to August 15, 2017 for the systems-based requirement to provide price improvement through the Price Improvement Mechanism for Agency Orders under 50 contracts where the difference between the NBBO is \$0.01.<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s Website at [www.ise.com](http://www.ise.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

<sup>3</sup> The Commission notes that this proposed rule change is effective and operative as of July 18, 2017, the date of its filing. See text accompanying infra note 17 (granting waiver of the 30-day operative delay).

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 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 is proposing to extend the implementation date set forth in Rule 723(b) from July 15, 2017 to August 15, 2017 for the systems-based requirement to provide price improvement through the Price Improvement Mechanism ("PIM") for Agency Orders under 50 contracts where the difference between the NBBO is \$0.01.

Rule 723 sets forth the requirements for the PIM, which was adopted in 2004 as a price-improvement mechanism on the Exchange.<sup>4</sup> 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

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<sup>4</sup> See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06).

Complex Orders) where the National Best Bid and Offer (“NBBO”) is only \$0.01 wide.<sup>5</sup> The Commission approved this proposal on January 18, 2017.<sup>6</sup>

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

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<sup>5</sup> 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 and Nasdaq MRX, LLC, respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017) (SR-ISEGemini-2017-13); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017) (SR-ISEMercury-2017-05).

<sup>6</sup> See Securities Exchange Act Release No. 79829 (January 18, 2017), 82 FR 8469 (January 25, 2017) (SR-ISE-2016-29).

any limit order on the limit order book on the same side of the market as the Agency Order. This requirement will apply 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 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 is 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.<sup>7</sup>

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<sup>7</sup> 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 is scheduled to occur after the ISE re-platforming is 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. Given that the Nasdaq MRX re-platforming is scheduled to occur after the ISE re-platforming is complete, and that the

In adopting a member conduct standard, the Exchange represented that it would conduct electronic surveillance of PIM to ensure that members comply with the proposed price improvement requirements for option orders of less than 50 contracts. Specifically, using an electronic surveillance system that produces alerts of potentially unlawful PIM orders, the Exchange will perform a frequent review of member firm activity to identify instances of apparent violations. Upon discovery of an apparent violation, the Exchange will attempt to contact the appropriate member firm to communicate the specifics of the apparent violation with the intent to assist the member firm in preventing submission of subsequent problematic orders. The Exchange will review the alerts monthly and determine the applicability of the MRVP and appropriate penalty. The Exchange is not limited to the application of the MRVP, and may at its discretion, choose to escalate a matter for processing through the Exchange's disciplinary program.<sup>8</sup>

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 National Best Bid and National Best Offer ("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 ISE order book on the same side of the Agency Order.

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Nasdaq MRX member conduct references the Exchange's Rule 1614(d)(4), the date for eliminating Rule 1614(d)(4) remains unchanged by this proposal.

<sup>8</sup> See Securities Exchange Act Release No. 79530 (December 12, 2016), 81 FR 91221 (December 16, 2017) (SR-ISE-2016-29).

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.<sup>9</sup> 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 proposes to extend the effective period of the member conduct standard accordingly. The Exchange therefore proposes that the member conduct standard will be in effect until a date specific by the Exchange in a Regulatory Circular, which shall be no later than August 15, 2017.<sup>10</sup>

The Exchange notes that the migration of ISE symbols commenced on June 12, 2017, and that symbols that have already migrated to the Nasdaq INET platform are already subject to the systems-based mechanism. As such, this extension will affect only those symbols that have not yet migrated to the Nasdaq INET platform.

Once all symbols have migrated to the Nasdaq INET platform and the member conduct rule is no longer necessary, the Exchange will file a proposed rule change deleting the relevant portion of Rule 723(b).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

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<sup>9</sup> See Data Technical News #2017-14 (May 25, 2017).

<sup>10</sup> While the Exchange anticipates that the re-platforming will be complete by July 31, 2017, it proposes to extend the implementation date of the systems-based requirement to August 15, 2017 in the unlikely event of a roll-back of one or multiple symbols to the current ISE platform.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 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 member conduct standard and its proposed duration were approved by the Commission and were adopted to reflect the migration of ISE symbols to the Nasdaq INET platform and its accompanying timetable. The symbol migration, which was initially anticipated to be complete by July 15, 2017, is now scheduled to be complete by July 31, 2017 to enable additional systems testing. The Exchange is therefore extending the duration of the member conduct standard accordingly, to August 15, 2017. As noted above, symbols that have already migrated to the Nasdaq INET platform are subject to the systems-based requirement. For the symbols that remain subject to the member conduct standard, the Exchange continues to surveil members, as described above, to ensure compliance with the requirements of the Rule. The substantive requirements of the price improvement requirement are the same under the member-conduct standard and the systems-based functionality; the only difference between the member-conduct standard and the systems-based functionality is the manner in which the price improvement requirement is implemented.

**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. The proposed extension of the member conduct standard reflects the revised timetable for migrating symbols to the Nasdaq INET platform. In extending the duration of the member conduct standard to August 15, 2017, the proposed change will apply equally to all members that trade in symbols that have not yet migrated to the Nasdaq INET platform. Moreover, the substantive requirements of the price improvement requirement are the same under the member-conduct standard and the

systems-based functionality; the only difference between the member-conduct standard and the systems-based functionality is the manner in which the price improvement requirement is implemented.

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 Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>15</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>16</sup> 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 believes that waiving the operative delay as of the date of filing will facilitate an orderly continued migration of symbols to the Nasdaq INET system and the

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 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.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

corresponding implementation of the systems-based requirement for ensuring price improvement for Agency Orders of less than 50 contracts where the difference between the NBBO is \$0.01.

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.<sup>17</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 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2017-75 on the subject line.

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<sup>17</sup> 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).

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-2017-75. 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-2017-75, 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>18</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).