

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81555; File No. SR-ISE-2017-80)

September 8, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay Implementation of SR-ISE-2017-32

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 August 28, 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, II, and III 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 delay the implementation of SR-ISE-2017-32, and to make non-substantive, technical amendments to the new By-Laws filed as part of that rule change proposal.

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 proposal is to delay the implementation of SR-ISE-2017-32 (hereinafter, “Governance Proposal”) and to make non-substantive, technical amendments to the new By-Laws filed as part of that rule change. The changes are described in detail below.

The Exchange received approval of its Governance Proposal on July 31, 2017.³ Within that rule change, the Exchange proposed to implement the Governance Proposal no later than by the end of the third quarter of 2017 (i.e., by September 30, 2017).⁴ The Exchange notes that its affiliates, Nasdaq GEMX, LLC and Nasdaq MRX, LLC have submitted or will submit nearly identical proposed rule changes, but stated or will state in their proposals that they intend to implement the proposed rule changes no later than by the end of the fourth quarter of 2017 (i.e., by December 31, 2017).⁵ As such, the Exchange proposes to delay the implementation of the Governance Proposal from a date no later than September 30, 2017 to a date no later than December 31, 2017 in order to align the implementation of the Governance Proposal with its affiliates. The Exchange will announce the specific date in advance through a Regulatory Alert.

The Exchange also proposes to make minor clarifications to the proposed By-Laws that were filed as part of the Governance Proposal. First, the Exchange proposes to amend the last

³ See Securities Exchange Act Release No. 81263 (July 31, 2017), 82 FR 36497 (August 4, 2017) (SR-ISE-2017-32) (hereinafter, “Governance Approval Order”).

⁴ Id.

⁵ See Securities Exchange Act Release No. 81422 (August 17, 2017), 82 FR 40026 (August 23, 2017) (SR-GEMX-2017-37) (Notice of Filing of Proposed Rule Change to Adopt New Corporate Governance).

sentence in proposed By-Law Article III, Section 5(c) by changing the current reference therein to Rule 4200 of the Rules of the NASDAQ Stock Market LLC to Rule 5605. The definition of “independent director” is set forth in Rule 5605 of the NASDAQ Stock Market LLC, and not Rule 4200, so the Exchange seeks to correct this reference in its proposed By-Laws. The Exchange also proposes to correct certain typos in the same sentence to indicate that the portion therein that starts with “the Regulatory Oversight Committee shall consist of three members...” is a separate, new sentence.

In addition, the Exchange proposes to replace the first sentence in proposed By-Law Article VIII, Section 1 with the following: “These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, by a resolution adopted by the Board at any regular or special meeting of the Board or a written agreement executed and delivered by the Company Member.” By-Law Article VIII, Section 1, which contains By-Law amendment provisions, is intended to authorize amendments to the By-Laws by either the Company Member (i.e., International Securities Exchange Holdings, Inc.) **or** the majority of the Exchange’s Board of Directors.⁶ For one, Section 1’s title itself states “By the Company Member **or** Board” to indicate that either the Company Member or the Board is authorized to amend the proposed By-Laws in the manner set forth in Section 1. Furthermore, the Exchange has always intended to allow amendments to the By-Laws by either the Company Member or the Board, as evidenced by the discussions of this provision in both the Governance Approval Order and Notice of

⁶ See Governance Approval Order at 36504 and accompanying footnote 113. See also Securities Exchange Act Release No. 80530 (April 26, 2017), 82 FR 20508 (May 2, 2017) (SR-ISE-2017-32) (hereinafter, “Notice of Filing”) at 20521. The Exchange states in both the Governance Approval Order and Notice of Filing that amendments to the proposed By-Laws may be enacted by “either the Sole LLC Member or the vote of a majority of the whole Board.”

Filing.⁷ The existing language in Section 1 itself, however, provides that the By-Laws may be amended by the Company Member **and** by the majority of the Exchange's Board of Directors, so the Exchange is now seeking to make the non-substantive change from "and" to "or" in Section 1 to reflect the rule's original intent.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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, by permitting the Exchange to align the implementation date of its Governance Proposal with its affiliates Nasdaq GEMX, LLC and Nasdaq MRX, LLC, and to make non-substantive corrections to the proposed By-Laws. The Exchange's proposal does not significantly affect the protection of investors or the public interest because this proposal does not make any substantive changes to the Governance Proposal itself; the only changes are to extend the implementation date and to make non-substantive corrections to the proposed By-Laws, as discussed above. As noted above, the Exchange will provide advance notice to members with respect to the specific implementation date through a Regulatory Alert. In addition, the Exchange believes that the non-substantive amendments to the By-Laws proposed herein will alleviate potential confusion as to the applicability of the Exchange's rules, which will protect investors and the public interest.

⁷ Id.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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 Exchange's proposal does not impose any significant burden on competition because the Governance Proposal and the proposed non-substantive changes to the By-Laws will apply to all market participants in a uniform manner once 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 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)(iii) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

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-2017-80 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-2017-80. 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-2017-80, 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.¹²

Eduardo A. Aleman
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).