

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79012; File No. SR-ISEMercury-2016-18)

September 30, 2016

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Rule 209

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 28, 2016, ISE Mercury, LLC (“ISE Mercury” or “Exchange”) 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 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 adopt a new Rule 209 entitled, “Collection of Exchange Fees and Other Claims” to require Members to provide a clearing account number at the National Securities Clearing Corporation (“NSCC”) for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to collect undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange through NSCC.³ This proposal will provide a cost savings to the Exchange in that it will alleviate administrative processes related to the collection of monies owed to the Exchange.⁴ Collection matters divert staff resources away from the Exchange's regulatory and business purposes. In addition, the debiting process will prevent Member accounts from becoming overdue. The Exchange notes that it has a billing dispute policy.

The Exchange proposes to adopt new Rule 209 and require Members, and all applicants for registration as such to provide a clearing account number for an account at NSCC for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or

³ The Exchange will not debit accounts for fees that are unusually large or for special circumstances, unless such debiting is requested by the Member.

⁴ Today, some fees are collected through The Options Clearing Corporation, but not all fees.

other monetary sanctions or monies due and owing to the Exchange or other charges related to Rules 205 and 206.⁵

The Exchange will send a monthly invoice⁶ to each Member on approximately the 4th – 6th business day of the following month.⁷ The Exchange will also send a file to NSCC each month on approximately the 23rd of the following month to initiate the debit of the appropriate amount stated on the Member’s invoice for the prior month. Because the Members will receive an invoice well before any monies are debited (normally within two weeks), the Members will have adequate time to contact the staff with any questions concerning their invoice. If a Member disputes an invoice, the Exchange will not include the disputed amount in the debit if the Member has disputed the amount in writing to the Exchange’s designated staff by the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least \$10,000 or greater.

Once NSCC receives the file from the Exchange, NSCC would proceed to debit the amounts indicated from the Clearing Members’ account. In the instance where the Member clears through an Exchange Clearing Member, the estimated transactions fees owed to the Exchange are reconciled daily by the Clearing Member to ensure adequate funds have been

⁵ See ISE Mercury Rules 205 (Participant Fees) and 206 (Liability for Payment of Fees).

⁶ The monthly invoice will indicate that the amount on the invoice will be debited from the designated NSCC account. Each month, the Exchange will send a file to the Member’s clearing firm which will indicate the amounts to be debited from each Member. If a Member is “self-clearing”, no such file would be sent as the Member would receive the invoice, as noted above, which would indicate the amount to be debited.

⁷ By way of example, October invoices would be sent on November 7th.

escrowed. The Exchange would debit any monies owed including undisputed or final fees,⁸ fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.⁹

The Exchange proposes this rule change become operative on October 1, 2016. On November 23, 2016, the Exchange will debit October 2016 billing pursuant to the process described in this rule change.¹⁰ The Exchange will notify Members of this rule change to provide its Members ample time to provide the Exchange with the information necessary for the direct debit and prepare for the change to the collection process.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 providing Members with an efficient process to pay

⁸ Exchange fees are noted on the Exchange Fee Schedule.

⁹ This includes, among other things, fines which result from the imposition of fines pursuant to Rules 1611, Judgment and Sanction; and 1614, Imposition of Fines for Minor Rules Violations. With respect to disciplinary sanctions that are imposed by either the Business Conduct Committee or a Hearing Panel, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly not take action to debit a Member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the Member's invoice prior to the actual NSCC debit.

¹⁰ The initial debit will include all outstanding fees through October 1, 2016.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

undisputed or final fees, fines, charges and/or monetary sanctions or monies dues and owing to the Exchange.

The Exchange believes that its proposal to debit NSCC accounts is reasonable because it would ease the Member's administrative burden in paying monthly invoices, avoid overdue balances and provide same day collection from all Members who owe monies to the Exchange. The Exchange has a billing dispute policy. The Member may dispute the invoice prior to the debit. This policy also lowers the Exchange's administrative costs because staff resources would not be diverted to review of untimely requests regarding billing.

The Exchange believes that its proposal to debit NSCC accounts is equitable and not unfairly discriminatory because it will apply to all Members in a uniform manner. Today, the debit process is applied at all Nasdaq exchanges.¹³

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. With this proposal, the proposed debit process would apply uniformly to all Members.

Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange. Collection matters divert staff resources away from the Exchange's regulatory and business purposes. In addition, the debiting process would prevent Member accounts from becoming overdue.

¹³ See NASDAQ Phlx LLC Rule 909, The NASDAQ Stock Market LLC Rule 7007, NASDAQ Options Market LLC Rules at Chapter XV, Section 1, NASDAQ BX, Inc. Rule 7011 and BX Option Rules at Chapter XV, Section 1 (collectively "Nasdaq exchanges").

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 Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of 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. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay. The Exchange proposes that the proposed rule change become operative on October 1, 2016. On November 23, 2016, the Exchange would debit October 2016 billing pursuant to the process set forth in the proposed rule change. The Exchange represents that waiver of the 30-day operative delay would allow it to conform its billing processes similar to the process in place at the various Nasdaq exchanges.¹⁷ The Exchange notes that all ISE Mercury Members have an NSCC account or have a clearing firm

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 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.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ See supra note 13.

with an NSCC account. Direct debit is an options industry standard. According to the Exchange, all members should be able to provide ISE Mercury with an NSCC account prior to the date of the November 23, 2016 debit. Further, the Exchange believes that this process will alleviate administrative processes related to the collection of monies owed to the Exchange. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁸

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-2016-18 on the subject line.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission also has 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 Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISEMercury-2016-18. 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, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-2016-18 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.¹⁹

Robert W. Errett
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).