



8011-01
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79059; File No. SR-ISEMercury-2016-17)

October 6, 2016

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend a Current Billing Practice With Respect to Billing Disputes

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 22, 2016, ISE Mercury, LLC (“ISE Mercury” 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 amend a current billing practice with respect to billing disputes.

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 Exchange proposes to amend its Schedule of Fees to change the timeframe within which Members must dispute billing. Today, ISE Mercury Members must submit all disputes no later than ninety calendar days after receipt of an Exchange invoice. After ninety calendar days, all fees assessed by the Exchange are considered final. The Exchange is proposing to amend the policy from ninety to sixty days to submit a dispute. Today, the NASDAQ PHLX LLC (“Phlx”), NASDAQ BX, Inc. (“BX”) and The NASDAQ Options Market LLC (“NOM”) all have a sixty day timeframe within which to dispute option invoices.³

The Exchange provides Members with both daily and monthly fee reports and thus believes Members should be aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that Members dispute an invoice within this time period will encourage them to promptly review their invoices so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (e.g. applicable fees and order information) is still easily and readily available. This practice will avoid issues that may arise when Members do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes. The Exchange notes that this type of provision is common among many other exchanges, which require that Members dispute invoices within sixty days.

³ See Phlx’s Pricing Schedule. See also NOM and BX Rules at Chapter XV, Section 7.

Billing disputes must continue to be submitted to the Exchange in writing,⁴ and must be accompanied by supporting documentation. The Exchange believes that this requirement, which is also similar to requirements of other exchanges,⁵ will further streamline the billing dispute process.

The Exchange believes that this practice will conserve Exchange resources which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the transaction occurred. Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the untimely review of billing disputes which divert staff resources away from the Exchange's regulatory and business purposes.

The sixty days would first apply to invoices related to transactional billing in November 2016 and would apply thereafter.⁶ The Exchange proposes to apply the billing policy to all charges reflected in its Schedule of Fees.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ 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 providing a uniform practice for disputing fees.

⁴ The Exchange invoice specifies contact information for billing inquiries.

⁵ See note 3 above.

⁶ This proposal would not apply to invoices related to October 2016 billing.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

The Exchange believes the requirement that all billing disputes must be submitted in writing, and with supporting documentation, within sixty calendar days from receipt of the invoice is reasonable in the public interest because the Exchange provides ample tools to properly and swiftly monitor and account for various charges incurred in a given month. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to billing dispute language adopted by other exchanges.⁹ Also, the Exchange's administrative costs would be lowered as a result of this policy because staff resources would not be diverted to review untimely requests regarding billing.

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. The billing policy would apply uniformly to all ISE Mercury Members. The policy is similar to rules adopted by other options exchanges.¹⁰

Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the untimely review of billing disputes which divert staff resources away from the Exchange's regulatory and business purposes.

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.

⁹ See note 3 above.

¹⁰ Id.

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 Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

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 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-2016-17 on the subject line.

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 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.

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-2016-17. 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-2016-17 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.¹³

Brent J. Fields
Secretary

¹³ 17 CFR 200.30-3(a)(12).

[FR Doc. 2016-24696 Filed: 10/12/2016 8:45 am; Publication Date: 10/13/2016]