

shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>2</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund

<sup>2</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79731; File No. SR-ISEMercury-2016-21]

### Self-Regulatory Organizations; ISE Mercury, LLC; Order Approving a Proposed Rule Change To Modify the Response Times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism

January 4, 2017.

#### I. Introduction

On November 8, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend ISE Mercury Rules 716 (Block Trades) and 723 (Price Improvement Mechanism for Crossing

Transactions) to modify the response times in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism ("PIM") from 500 milliseconds to a time period designated by the Exchange of no less than 100 milliseconds and no more than 1 second. The proposed rule change was published for comment in the **Federal Register** on November 25, 2016.<sup>3</sup> No comment letters were received on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

ISE Mercury Rule 716 (Block Trades) contains the requirements applicable to the execution of orders using the Block Order Mechanism, Facilitation Mechanism, and Solicited Order Mechanism. The Block Order Mechanism allows ISE Mercury members to obtain liquidity for the execution of a block-size order.<sup>4</sup> The Facilitation and Solicited Order Mechanisms allow ISE Mercury members to enter cross transactions seeking price improvement.<sup>5</sup> ISE Mercury Rule 723 (Price Improvement Mechanism for Crossing Transactions) contains the requirements applicable to the execution of orders using the PIM. The PIM allows ISE Mercury members to enter cross transactions of any size. The Facilitation, Solicited Order Mechanisms, and PIM allow for ISE Mercury members to designate certain customer orders for price improvement and submit such orders into one of the mechanisms with a matching contra order. Once such an order is submitted, ISE Mercury commences an auction by broadcasting a message to all ISE Mercury members that includes the series, price, size, and side of the market.<sup>6</sup> Further, responses within the PIM (*i.e.*, Improvement Orders), are also broadcast to market participants during the auction.

Orders entered into the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM are currently exposed to all market participants for 500 milliseconds, giving them an opportunity to enter additional trading interest before the orders are

<sup>3</sup> See Securities Exchange Act Release No. 79354 (November 18, 2016), 81 FR 85295 ("Notice").

<sup>4</sup> Block-size orders are orders for 50 contracts or more. See ISE Mercury Rule 716(a).

<sup>5</sup> Only block-size orders can be entered into the Facilitation Mechanism, whereas only orders for 500 contracts or more can be entered into the Solicited Order Mechanism. See ISE Mercury Rule 716(d) and (e).

<sup>6</sup> ISE Mercury members may choose to hide the size, side, and price when entering orders into the Block Order Mechanism.

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

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

automatically executed. Under the proposal, ISE Mercury would determine an exposure period for each of the four mechanisms that is no less than 100 milliseconds and no more than 1 second.<sup>7</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,<sup>10</sup> which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of ISE Mercury, reducing each of the exposure periods from 500 milliseconds to no less than 100 milliseconds could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that its members could receive, process, and communicate a response back to ISE Mercury within 100 milliseconds, ISE Mercury stated that it surveyed all International

Securities Exchange, LLC ("ISE") and ISE Gemini, LLC ("ISE Gemini") members that responded to an auction in the period beginning July 1, 2015 and ending January 15, 2016.<sup>11</sup> Each of the twenty-one members surveyed indicated that they can currently receive, process, and communicate a response back to the exchange within 100 milliseconds.<sup>12</sup> To implement the reduced exposure periods and help ensure that ISE Mercury's and its members' systems are working properly given the faster response times, ISE Mercury will reduce the auction time over a period of weeks, ending at 100 milliseconds. Upon effectiveness of the proposal, and at least six weeks prior to implementation of the proposed rule change, ISE Mercury will issue a circular to its members, informing them of the implementation date of the reduction of the auction from 500 milliseconds to the auction time designated by ISE Mercury (100 milliseconds) to allow members the opportunity to perform systems changes. ISE Mercury also represented that it will issue a circular at least four weeks prior to any future changes, as permitted by its rules, to the auction time.<sup>13</sup> In addition, ISE Mercury reviewed all executions occurring in the mechanisms by ISE Mercury members from March 28, 2016 to April 25, 2016. This review of executions in the mechanisms indicated that approximately 98% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 500 milliseconds. Approximately 94% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 100 milliseconds, and 83% were submitted within 50 milliseconds of the initial order.<sup>14</sup> Furthermore, with regard to the impact of the proposal on system capacity, ISE Mercury has analyzed its capacity and represented that it has the necessary systems capacity to handle the potential additional traffic associated with the additional transactions that may occur

with the implementation of the reduction in the auction duration to no less than 100 milliseconds.<sup>15</sup>

Based on ISE Mercury's statements, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within an exposure period of no less than 100 milliseconds and no more than 1 second.<sup>16</sup> Accordingly, the Commission believes that it is consistent with the Act for the Exchange to modify the response times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM from 500 milliseconds to a time period designated by the Exchange of no less than 100 milliseconds and no more than 1 second.

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-ISEMercury-2016-21) be, and hereby is, approved.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79740; File No. SR-ISEMercury-2016-26]

### Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Rules to Extend a Pilot Program

January 4, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 23, 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 and II, below, which Items have been prepared by the Exchange. The

<sup>15</sup> See *id.*

<sup>16</sup> The Commission notes that the ability to designate such an exposure time period is consistent with the rules of other options exchanges. See *supra* note 7. See also NASDAQ Phlx Rule 1080(n)(ii)(A)(4) and NASDAQ BX Options Rules Chapter VI, Section 9(ii)(A)(3).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>7</sup> While the proposed rule change would allow ISE Mercury to increase the exposure period up to 1 second, ISE Mercury stated that it currently intends to decrease the time period allowed for responses to 100 milliseconds. See Notice, *supra* note 3, at 85297. ISE Mercury further noted that its proposal is consistent with exposure periods permitted in similar mechanisms on other options exchanges. See *id.* at 85296. See also Securities Exchange Act Release Nos. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) and 77557 (April 7, 2016), 81 FR 21935 (April 13, 2016) (SR-Phlx-2016-40).

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(8).

<sup>11</sup> ISE Mercury launched on February 16, 2016, after the survey had been completed. ISE and ISE Gemini are affiliates of ISE Mercury that also offer a Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM. See Notice, *supra* note 3, at 85297 n.12.

<sup>12</sup> ISE Mercury believes the survey results apply equally to ISE Mercury as all current ISE Mercury members are also members of ISE or ISE Gemini, which are affiliates of ISE Mercury, and the same functionality for auction responses offered on ISE Mercury is also offered on these affiliated exchanges. See Notice, *supra* note 3, at 85297. ISE Mercury further represents that its trading system has comparable latency to both ISE and ISE Gemini. See *id.*

<sup>13</sup> See *id.* at 85298.

<sup>14</sup> See *id.* at 85297.