

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83644; File No. SR-ISE-2018-62)

July 16, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE Rule 723

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 July 5, 2018, 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 amend ISE Rule 723, entitled “Price Improvement Mechanism for Crossing Transactions.”

The text of the proposed rule change is available on the Exchange’s Website at <http://ise.cchwallstreet.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

ISE proposes to amend ISE Rule 723, entitled “Price Improvement Mechanism for Crossing Transactions.” Specifically, the Exchange proposes to amend Rule 723(c)(2) to expand the types of Improvement Orders³ that may be entered into the Price Improvement Mechanism or “PIM.” The Exchange also proposes to amend Rule 723(d)(1)-(3) to more specifically clarify terms such as “orders” and “responses” in that section.

Background

ISE received approval to establish its PIM in 2004 that would allow an ISE Electronic Access Member (“EAM”) to enter matched trades (“Crossing Transactions”).⁴ A Crossing Transaction would be comprised of an order that the EAM represents as agent (“Agency Order”) and an order that is executable against the Agency Order for the full size of the Agency Order (the “Counter-Side Order”).⁵ ISE Rule 723(c)(2) provided that Improvement Orders may be for

³ Rule 723(c)(1) defines an Improvement Order. The Exchange will designate via circular a time of no less than 100 milliseconds and no more than 1 second for Members to indicate the size and price at which they want to participate in the execution of the Agency Order (“Improvement Orders”).

⁴ See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06) (Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 Thereto by the International Securities Exchange, Inc. To Establish Rules Implementing a Price Improvement Mechanism) (“Adopting Filing”).

⁵ The Counter-Side Order may represent interest for the EAM’s own account, or interest the EAM has solicited from one or more other parties, or a combination of both.

the account of a Public Customer or for the Member's own account.⁶ The ISE noted it would broadcast Crossing Orders to all Members.⁷ During a three second auction, all ISE Members could enter "Improvement Orders," in penny increments, to improve the price of the Agency Order.⁸ Improvement Orders may be for the account of a Public Customer or for the Member's own account.⁹ During the exposure period, the aggregate size of the best prices, including the Counter-Side Order, Improvement Orders, and any change to either, would continually be updated and broadcast to all Members.¹⁰

Rule 723(c)(2)

With respect to the current limitation of Improvement Orders for the account of a Public Customer or for the Member's own account, ISE noted in its Adopting Filing that "all ISE Members would be permitted to participate in a PIM. . . . unrelated orders could compete in standard increments to trade with the Agency Order in the PIM. Such unrelated orders could include agency orders on behalf of Public Customers, market makers on other exchanges, and non-ISE member broker-dealers, as well as non-Improvement orders submitted by ISE members."

⁶ Id.

⁷ The broadcast message would include the series, price, and size of the Agency Order and whether it is to buy or sell.

⁸ The ISE would broadcast Improvement Orders to all Members. Crossing Transactions and Improvement Orders would not be displayed in the ISE BBO and would not be disseminated to the Options Price Reporting Authority.

⁹ ISE Rule 723(c)(2).

¹⁰ ISE Rule 723(c)(4).

At this time, the Exchange proposes to permit any ISE Member to enter an Improvement Order marked as a response to a PIM auction similar to Nasdaq PHLX LLC (“Phlx”)¹¹ and Nasdaq BX, Inc. (“BX”)¹² rules. The Exchange no longer desires to limit Members who may enter Improvement Orders into PIM to simply those orders for the account of a Public Customer or for the Member’s own account. The Exchange desires to expand the types of orders that may be entered as Improvement Orders similar to Phlx and BX. The Exchange is therefore removing this limitation in Rule 723(c)(2) so that the proposed rule text would read: “Improvement Orders may be entered by all Members in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and for any size up to the size of the Agency Order.”

Rule 723(d)(1) - (3)

The Exchange proposes to amend Rule 723(d)(1) - (3), which explains the manner in which a PIM Order shall be allocated to conform this text to the change which is proposed in Rule 723(c)(2). Rule 723(d)(1) currently provides, “At a given price, Priority Customer interest is executed in full before Professional Orders¹³ and any other interest of Members (i.e., proprietary interest from Electronic Access Members and Exchange market makers).” The Exchange proposes to expand upon the term interest by adopting the defined terms “Priority Customer Interest” for Priority Customer Orders and Improvement Orders from Priority Customers, and “Professional Interest” for Professional Orders, Improvement Orders from non-

¹¹ Phlx Rule 1087 permits any member to submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”).

¹² BX Rules at Chapter VI, Section 9 provides that “A Participant may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker dealer, or any other entity (“PRISM Order”).

¹³ ISE Rule 100(a)(51) provides the term “Professional Order” means an order that is for the account of a person or entity that is not a Priority Customer.

Priority Customers, and Market Maker quotes. The Exchange believes that adding these defined terms would clarify what is meant by interest. As proposed, Professional Interest identifies all orders (including Improvement Orders) that are not for the account of a Priority Customer as well as Market Maker quotes, thereby incorporating the current reference to “Professional Orders” within its terms and eliminating the necessity to include the current rule text which provides, “any other interest of Members (i.e., proprietary interest from Electronic Access Members and Exchange market makers).”

The Exchange proposes to amend Rule 723(d)(2) which currently provides, “After Priority Customer interest at a given price, Professional Orders and Members’ interest will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the Members’ interest.” The Exchange proposes to replace the reference to “Priority Customer interest” with the defined term “Priority Customer Interest” proposed to be added in Rule 723(d)(1), as described above. The Exchange also proposes to change “Professional Orders” to “Professional Interest” which will be defined in Rule 723(d)(1) to include Professional Orders as well as Improvement Orders from non-Priority Customers and Market Maker quotes. Since Professional Interest is defined in this manner, the Exchange also proposes to remove the language referring to “Members’ interest” from the sentence because Professional Interest would include all orders from non-Priority Customers and Market Maker quotes.

The Exchange proposes to amend Rule 723(d)(3) to again remove the rule text relating to “Members’ interest” and instead utilize the defined “Professional Interest” term consistent with proposed changes to Rule 723(d)(1) and (2). The Exchange also proposes to make similar changes to add the term “Professional Interest” to the sentence in Rule 723(d)(3) that currently

reads: “Thereafter, all other orders, Responses, and quotes at the price point will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the order, Response or quote.” In particular, the language related to “other orders, Responses, and quotes” in this sentence will be replaced with “Professional Interest” since this term includes all orders from non-Priority Customers and Market Maker quotes, as described above. The Exchange notes that the references in this sentence to “Responses,” currently an undefined term, should instead refer to the defined term “Improvement Orders,” and the proposed changes should therefore clarify how Rule 723(d)(3) will apply. Finally, the Exchange proposes to replace the word “Priority Customer Orders” with “Priority Customer Interest” as defined in proposed Rule 723(d)(1) to clarify that those orders as well as responses (i.e., Improvement Orders from Priority Customers) are applicable. The proposed amendments add more specificity to the exact order/quotes and responses which apply in this section.

The amendments to Rule 723(d)(1) - (3) conform to the proposed amendment to Rule 723(c)(2) and other proposed amendments as described above which do not change the manner in which PIM operates today, rather the other word changes seek to bring specificity to the manner in which order, quotes and responses are treated.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ 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

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

investors and the public interest.

The Exchange's proposal to amend Rule 723(c)(2) seeks to broaden the types of orders that may be submitted as Improvement Orders into PIM. As ISE previously noted, all Members are able to participate in a PIM today as an unrelated order that rests on the Order Book.

Unrelated orders that rest on the Order Book can participate in PIM and trade with the Agency Order in the PIM. The Exchange proposes to allow all Members to submit Improvement Orders directly into PIM to provide an even greater number of ISE Members to more directly participate in PIM and provide price improvement. The Exchange's proposal is consistent with the Act because allowing a greater number of Members to directly respond with an Improvement Order in a PIM will increase the likelihood of price improvement in that auction thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. This approach will enable greater participation in PIM auctions.

The Exchange's proposal to amend Rule 723(d) conforms the text with changes made with respect to the proposal to amend Rule 723(c)(2) for consistency. The proposed changes to remove the more generic "Members' interest" and instead substitute very specific terms to define interest and add quotes provide more specificity as to the manner in which interest entered into PIM will be allocated. The Exchange's proposed amendments to Rule 723(d)(1)-(3) are consistent with the Act because the amendments seek to conform the rule text to the proposed Rule 723(c)(2) amendment and describe in greater detail how interest will be allocated by defining terms and eligible interest and this transparency benefits investors and the public interest.

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 to amend Rule 723(c)(2) to broaden the types of orders that may be submitted as Improvement Orders into PIM does not unduly burden competition because all Members will be permitted to submit Improvement Orders directly into PIM to provide an even greater number of ISE Members to more directly participate in PIM. The amendments to Rule 723(d) will conform the rule text and bring clarity to the allocation method for PIM.

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 Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁸ normally does

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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.

¹⁸ 17 CFR 240.19b-4(f)(6).

not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁹ 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 it may allow all Members to submit Improvement Orders directly into PIM to provide an even greater number of ISE Members an opportunity to more directly participate in PIM and provide price improvement. The Exchange states that it will issue an Options Trader Alert to notify Members of the date within which this functionality will be implemented. 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.²⁰

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:

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ 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).

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-2018-62 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-2018-62. 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-ISE-2018-62, 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.²¹

Eduardo A. Aleman
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).