

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80362; File No. SR-ISEMercury-2017-06)

April 3, 2017

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to “Tick-Worse” Functionality

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 March 28, 2017, ISE Mercury, LLC (“ISE Mercury” or “Exchange”) filed with the Securities and Exchange Commission (“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 (i) request the decommission of “Tick-Worse” functionality and (ii) amend Rule 713 (Priority of Quotes and Orders) relating to the priority of split price transactions.

The text of the proposed rule change is available on the Exchange’s Website at [www.ise.com](http://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

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

<sup>2</sup> 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 proposed rule change is to (i) decommission the “Tick-Worse” functionality and (ii) amend Rule 713 (Priority of Quotes and Orders) as it relates to the priority of split price transactions. The proposed changes are discussed below.

**“Tick-Worse” Functionality**

The Exchange currently provides market makers<sup>3</sup> with Tick-Worse functionality, which allows market makers to pre-define the prices and sizes at which the system will automatically move their quotation following an execution that exhausts the size of their existing quotation.<sup>4</sup> As such, when a market maker’s quote is traded out, it can be automatically reinstated into the Exchange’s order book at the next best price.<sup>5</sup> This optional feature is intended to help market

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<sup>3</sup> The term “market makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Rule 100(a)(25).

<sup>4</sup> Tick-Worse functionality is not currently memorialized in the Exchange’s rulebook. In addition, the Exchange will not offer Tick-Worse on the new Nasdaq INET system going forward. On September 30, 2004, International Securities Exchange, LLC (“ISE”) filed with the Commission a proposal to codify this functionality in its rulebook, but inadvertently deleted the rule as obsolete rule text in a subsequent proposal filed on December 21, 2012. See Securities Exchange Act Release No. 51050 (January 18, 2005), 70 FR 3758 (January 26, 2005) (SR-ISE-2004-31); Securities Exchange Act Release No. 68570 (January 3, 2013), 78 FR 1901 (January 9, 2013) (SR-ISE-2012-82). The Exchange imported Rule 713 from ISE’s rulebook when the Commission granted the Exchange’s application for registration as a national securities exchange, which was after the Tick-Worse functionality rule was inadvertently removed from ISE’s rules. See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (Order Granting Registration as a National Securities Exchange).

<sup>5</sup> Market makers may choose to set Tick-Worse parameters by specifying how many price ticks back, and for what size, the quote is to be reinstated.

makers meet their continuous quoting obligations under the Exchange's rules<sup>6</sup> when their displayed quotations are exhausted. When a market maker's quote is traded out and automatically reinstated into the Exchange's order book using the Tick-Worse functionality, the reinstated quote will be given priority pursuant to the Exchange's split price priority rule as discussed below.

Due to the lack of demand for the Tick-Worse feature, the Exchange proposes to decommission the use of this functionality as it migrates symbols to INET no later than in 2017 Q3.<sup>7</sup> As discussed above, the Exchange offers the Tick-Worse feature as a voluntary tool for market makers to assist them in meeting their continuous quoting obligations under the Exchange's rules. As such, market makers are not required to use the Exchange-provided functionality and can program their own systems to perform the same functions if they prefer. The Exchange has found that almost all market makers use their own systems rather than the Exchange's Tick-Worse feature to send refreshed quotations when their displayed quotations are exhausted, and therefore members have discontinued use of this functionality. Because the Tick-Worse functionality is currently not memorialized in the Exchange's rules as noted above, there is no text of the proposed rule change. The Exchange will provide advance notice to its

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<sup>6</sup> Specifically, Primary Market Makers ("PMMs") are required under Rule 804(e)(1) to enter quotations in all of the series listed on the Exchange of the options classes to which they are appointed on a daily basis. Supplementary Material .01 to Rule 804 further requires PMMs to quote 90% of the time their assigned options class is open for trading on the Exchange. As provided in Rule 804(e)(2), Competitive Market Makers ("CMMs") are not required to enter quotations in the options class to which they are appointed, but in the event a CMM does initiate quoting, such CMM is generally required to quote 60% of the time its assigned options class is open for trading on the Exchange.

<sup>7</sup> Currently, this functionality is being used by one market maker on the Exchange.

Members through an Options Trader Alert of the intent to decommission the Tick-Worse functionality.<sup>8</sup>

### **Split Price Priority**

The Exchange is proposing to delete Rule 713(f), which relates to the priority of split price transactions, because this priority rule currently only applies in the context of the Tick-Worse functionality, as described above, which the Exchange proposes to decommission. The Exchange proposes to delete this rule no later than 2017 Q3, along with the decommissioning of the Tick-Worse functionality.

Rule 713(f) provides that if a Member purchases (sells) one (1) or more options contracts of a particular series at a particular price, it shall at the next lower (higher) price at which there are Professional Orders or market maker quotes, have priority over such Professional Orders and market maker quotes in purchasing (selling) up to the equivalent number of options contracts of the same series that it purchased (sold) at the higher (lower) price, but only if the purchase (sale) so effected represents the opposite side of a transaction with the same offer (bid) as the earlier purchase (sale). Although the language of Rule 713(f) is more general, the Exchange's intent was to apply split price priority solely to the Tick-Worse functionality.

### **Example:**

- Primary Market Maker has opted into tick worse functionality and selected to tick worse and post 10 contracts at a penny worse than their original quote.
- Primary Market Maker quote for 10 contracts bid at \$1.00 and 10 contracts offered at \$1.02

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<sup>8</sup> The Exchange notes that it similarly decommissioned Tick-Worse on ISE Gemini, LLC on February 21, 2017. See Market Information Circular 2017-10.

- Additionally, there is a Priority Customer order to buy 5 contracts at \$0.99, and a Competitive Market Maker quote for 10 contracts bid at \$0.99 and 10 contracts offered at \$1.02
- A member enters a sell order for 20 contracts at \$0.99
- This order will trade as follows:
  - 10 contracts trade at \$1.00 with the Primary Market Maker bid quote, and Primary Market Maker is ticked worse to 10 contracts bid at \$0.99
  - 5 contracts trade at \$0.99 with the Priority Customer order due to customer priority
  - 5 contracts trade at \$0.99 with the Primary Market Maker's ticked worse quote due to the split price priority rule; 0 contracts trade with the Competitive Market Maker bid quote

The Exchange represents that Tick-Worse has historically only ever applied in the context of the split price priority rule in Rule 713(f). Furthermore, the Exchange has historically only ever awarded priority pursuant to Rule 713(f) for split price transactions that occur in the Tick-Worse functionality, and the existing rule should have been clarified to more accurately reflect its current application. Nonetheless, the Exchange is now proposing to delete the rule text in its entirety along with decommissioning the Tick-Worse functionality, as proposed above.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

### **“Tick-Worse” Functionality**

As noted above, the Exchange originally offered Tick-Worse as an optional feature to help market makers meet their continuous quoting obligations under the Exchange’s rules. The Exchange believes that its proposal is consistent with the Act because it has found that the Tick-Worse feature is rarely used today<sup>11</sup> as almost all market makers use their own systems to send refreshed quotations when their displayed quotations are exhausted. The Exchange therefore believes that it is consistent with the Act to propose to discontinue use of this functionality prior to the migration to INET. Because one member continues to utilize the functionality, the Exchange believes that providing advance notice of the intent to decommission this functionality will serve to prepare Members as to the upcoming change with INET. As such, the Exchange believes that decommissioning Tick-Worse prior to the migration to INET and providing advance notice to its members is consistent with the Act because it eliminates any investor uncertainty related to the status of this functionality.

### **Split Price Priority**

The Exchange also believes that its proposal to delete the split price priority rule in Rule 713(f) protects investors and the public interest because it removes rule text that will become obsolete with the decommission of the Tick-Worse functionality. As described above, the split price priority rule only applies to the Tick-Worse functionality. Because the Rule is more general than its current, specific application, however, the Exchange believes that the continued presence of Rule 713(f) in its rules even after retiring the Tick-Worse functionality will be

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<sup>11</sup> It is only being used by one market maker.

confusing to its members and investors. By removing obsolete rule text that only applies in the context of Tick-Worse, the Exchange is eliminating any potential for confusion about how its systems operate.

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 proposed rule change is not designed to have any competitive impact but rather request the decommission of a rarely-used functionality on the Exchange and relatedly, to remove the rule text that this functionality supports from the Exchange's rulebook, thereby reducing investor confusion and making the Exchange's rules easier to understand and navigate.

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 Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 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.

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](mailto:rule-comments@sec.gov). Please include File Number SR-ISEMercury-2017-06 on the subject line.

##### 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-2017-06. 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 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-2017-06 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.<sup>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).