

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="23"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2017"/> - * <input type="text" value="86"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by Nasdaq ISE, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend Rule 723 (Price Improvement Mechanism for Crossing Transactions) and Rule 1614 (Imposition of Fines for Minor Rule Violations) to remove obsolete rule text.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="Andrew"/>	Last Name * <input type="text" value="Madar"/>
Title * <input type="text" value="Senior Associate General Counsel"/>	
E-mail * <input type="text" value="Andrew.Madar@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8420"/>	Fax <input type="text"/>

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date <input type="text" value="10/02/2017"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(Name *)	

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC (“ISE” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Rule 723 (Price Improvement Mechanism for Crossing Transactions) and Rule 1614 (Imposition of Fines for Minor Rule Violations) to remove obsolete rule text.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>3</sup>

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Andrew Madar  
Senior Associate General Counsel  
Nasdaq, Inc.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6)(iii).

301-978-8420

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange proposes to amend Rule 723 (Price Improvement Mechanism for Crossing Transactions) and Rule 1614 (Imposition of Fines for Minor Rule Violations) to remove obsolete rule text.

Rule 723 sets forth the requirements for the PIM, which was adopted in 2004 as a price-improvement mechanism on the Exchange.<sup>4</sup> Certain aspects of PIM were adopted on a pilot basis ("Pilot"); specifically, the termination of the exposure period by unrelated orders, and no minimum size requirement of orders eligible for PIM. The Pilot expired on January 18, 2017.

On December 12, 2016, the Exchange filed with the Commission a proposed rule change to make the Pilot permanent, and also to change the requirements for providing price improvement for Agency Orders of less than 50 option contracts (other than auctions involving Complex Orders) where the National Best Bid and Offer ("NBBO") is only \$0.01 wide.<sup>5</sup> The Commission approved this proposal on January 18, 2017.<sup>6</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06).

<sup>5</sup> See Securities Exchange Act Release No. 79530 (December 12, 2016), 81 FR 91221 (December 16, 2017) (SR-ISE-2016-29).

The Exchange notes that, on April 3, 2017, International Securities Exchange, LLC was re-named Nasdaq ISE, LLC to reflect its new placement within the Nasdaq, Inc. corporate structure in connection with the March 9, 2016 acquisition by Nasdaq of the capital stock of U.S. Exchange Holdings, and the indirect acquisition all of the interests of the International Securities Exchange, LLC, ISE Gemini, LLC and ISE Mercury, LLC. See Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017) (SR-ISE-2017-25). ISE Gemini, LLC and ISE Mercury, LLC were also renamed Nasdaq GEMX, LLC

In modifying the requirements for price improvement for Agency Orders of less than 50 contracts, ISE proposed to amend Rule 723(b) to require Electronic Access Members to provide at least \$0.01 price improvement for an Agency Order if that order is for less than 50 contracts and if the difference between the NBBO is \$0.01.

ISE adopted a member conduct standard to implement this requirement during the time pursuant to which ISE symbols were migrating from the ISE platform to the Nasdaq INET platform. At the time it proposed the member conduct standard, ISE anticipated that the migration to the Nasdaq platform would be complete on or before July 15, 2017. Accordingly, Rule 723(b) stated that, for the period beginning January 19, 2017 until a date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than July 15, 2017, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01, an Electronic Access Member shall not enter a Crossing Transaction unless such Crossing Transaction is entered at a price that is one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order, and better than any limit order on the limit order book on the same side of the market as the Agency Order. This requirement applied regardless of whether the Agency Order is for the account of a public customer, or where the Agency Order is for the account of a broker dealer or any other person or entity that is not a Public Customer.

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(“GEMX”) and Nasdaq MRX, LLC (“MRX”), respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017) (SR-ISEGemini-2017-13); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017) (SR-ISEMercury-2017-05).

<sup>6</sup> See Securities Exchange Act Release No. 79829 (January 18, 2017), 82 FR 8469 (January 25, 2017) (SR-ISE-2016-29).

To enforce this requirement, ISE also amended Rule 1614 (Imposition of Fines for Minor Rule Violations). Specifically, ISE added Rule 1614(d)(4), which provides that any Member who enters an order into PIM for less than 50 contracts, while the National Best Bid or Offer spread is \$0.01, must provide price improvement of at least one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order, which increment may not be smaller than \$0.01. Failure to provide such price improvement will result in members being subject to the following fines: \$500 for the second offense, \$1,000 for the third offense, and \$2,500 for the fourth offense. Subsequent offenses will subject the member to formal disciplinary action. The Exchange will review violations on a monthly cycle to assess these violations. This provision was to be in effect for the period beginning January 19, 2017 until a date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than until September 15, 2017.<sup>7</sup>

In adopting the price improvement requirement for Agency Orders of less than 50 contracts, the Exchange also proposed to amend Rule 723(b) to adopt a systems-based mechanism to implement this requirement, which shall be effective following the migration of a symbol to the Nasdaq INET platform. Under this provision, if the Agency

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<sup>7</sup> While ISE anticipated that the migration of ISE symbols to the Nasdaq INET platform would be complete by July 15, 2017, and its member conduct standard could be eliminated accordingly by that time, ISE Mercury, LLC (now Nasdaq MRX, LLC) also filed a rule change that adopted a similar member conduct standard for its price improvement rule, and that referenced proposed ISE Rule 1614(d)(4) as the means for enforcing its member conduct standard. See Securities Exchange Act Release No. 79841 (January 18, 2017), 82 FR 8452 (January 25, 2017) (order approving SR-ISEMercury-2016-25). The Nasdaq MRX re-platforming was scheduled to occur after the ISE re-platforming was complete. Accordingly, ISE proposed that the date for eliminating Rule 1614(d)(4) shall be specified by the Exchange in a Regulatory Information Circular, which date shall be no later than until September 15, 2017.

Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01, the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the ISE order book on the same side of the Agency Order.

Subsequent to the approval of the rule change adopting the price improvement requirement and the member conduct standard, the Exchange determined that the migration of symbols to the Nasdaq INET platform would be complete on or before July 31, 2017.<sup>8</sup> This new migration schedule was developed to enable the Exchange to conduct additional systems testing prior to symbol migration. Given the updated migration schedule, the Exchange proposed to extend the effective period of the member conduct standard accordingly until a date specific by the Exchange in a Regulatory Circular, which would be no later than August 15, 2017.<sup>9</sup>

By August 15, 2017, ISE had completed the migration of symbols to the Nasdaq INET platform, and adopted the corresponding systems-based mechanism for enforcing the price improvement requirement where the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01.<sup>10</sup> Accordingly, ISE now proposes to delete the rule text in Rule 723 that implements the member conduct standard and the corresponding provision in Rule 1614 that imposes fines for violations of the member conduct standard.

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<sup>8</sup> See Data Technical News #2017-14 (May 25, 2017).

<sup>9</sup> See Securities Exchange Act Release No. 81212 (July 26, 2017), 82 FR 35864 (August 1, 2017) (SR-ISE-2017-75).

<sup>10</sup> As of the date of filing, GEMX and MRX had also completed the process of migrating their symbols to the Nasdaq INET platform.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> 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. The Exchange believes this proposal is consistent with the Act because it removes language that implements the member conduct standard where the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01, and the corresponding provision in Rule 1614 that imposes fines for violations of this member conduct standard. As noted above, these provisions have become obsolete, given the migration of all symbols on ISE, GEMX and MRX to the Nasdaq INET system and the corresponding adoption of the systems-based mechanism on each exchange for enforcing this price improvement requirement. The Exchange also notes that the systems-based mechanism for enforcing this price improvement requirement was previously approved by the Commission.<sup>13</sup>

4. 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, as the rule text to be removed has become obsolete with the migration of all symbols to the Nasdaq INET system and the corresponding adoption of the systems-based

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See supra note 6.

mechanism for enforcing the price improvement requirement where the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01.

5. 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.

6. Extension of Time Period for Commission Action

Not Applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>14</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>15</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposal does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. As noted above, the rule text to be removed has become obsolete with the migration of all symbols to the Nasdaq INET system and the corresponding adoption of the systems-based mechanism for enforcing the price improvement requirement where the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

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. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the proposal will become effective and operative upon filing. This will allow the Exchange to remove the obsolete rule text immediately, minimizing potential investor confusion.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-ISE-2017-86)

October \_\_, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 723 and Rule 1614

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 October 2, 2017, 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, 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 Rule 723 (Price Improvement Mechanism for Crossing Transactions) and Rule 1614 (Imposition of Fines for Minor Rule Violations) to remove obsolete rule text.

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.

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

<sup>2</sup> 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 Exchange proposes to amend Rule 723 (Price Improvement Mechanism for Crossing Transactions) and Rule 1614 (Imposition of Fines for Minor Rule Violations) to remove obsolete rule text.

Rule 723 sets forth the requirements for the PIM, which was adopted in 2004 as a price-improvement mechanism on the Exchange.<sup>3</sup> Certain aspects of PIM were adopted on a pilot basis ("Pilot"); specifically, the termination of the exposure period by unrelated orders, and no minimum size requirement of orders eligible for PIM. The Pilot expired on January 18, 2017.

On December 12, 2016, the Exchange filed with the Commission a proposed rule change to make the Pilot permanent, and also to change the requirements for providing price improvement for Agency Orders of less than 50 option contracts (other than

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<sup>3</sup> See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06).

auctions involving Complex Orders) where the National Best Bid and Offer (“NBBO”) is only \$0.01 wide.<sup>4</sup> The Commission approved this proposal on January 18, 2017.<sup>5</sup>

In modifying the requirements for price improvement for Agency Orders of less than 50 contracts, ISE proposed to amend Rule 723(b) to require Electronic Access Members to provide at least \$0.01 price improvement for an Agency Order if that order is for less than 50 contracts and if the difference between the NBBO is \$0.01.

ISE adopted a member conduct standard to implement this requirement during the time pursuant to which ISE symbols were migrating from the ISE platform to the Nasdaq INET platform. At the time it proposed the member conduct standard, ISE anticipated that the migration to the Nasdaq platform would be complete on or before July 15, 2017. Accordingly, Rule 723(b) stated that, for the period beginning January 19, 2017 until a date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than July 15, 2017, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01, an Electronic Access Member shall not enter

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<sup>4</sup> See Securities Exchange Act Release No. 79530 (December 12, 2016), 81 FR 91221 (December 16, 2017) (SR-ISE-2016-29).

The Exchange notes that, on April 3, 2017, International Securities Exchange, LLC was re-named Nasdaq ISE, LLC to reflect its new placement within the Nasdaq, Inc. corporate structure in connection with the March 9, 2016 acquisition by Nasdaq of the capital stock of U.S. Exchange Holdings, and the indirect acquisition all of the interests of the International Securities Exchange, LLC, ISE Gemini, LLC and ISE Mercury, LLC. See Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017) (SR-ISE-2017-25). ISE Gemini, LLC and ISE Mercury, LLC were also renamed Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”), respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017) (SR-ISEGemini-2017-13); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017) (SR-ISEMercury-2017-05).

<sup>5</sup> See Securities Exchange Act Release No. 79829 (January 18, 2017), 82 FR 8469 (January 25, 2017) (SR-ISE-2016-29).

a Crossing Transaction unless such Crossing Transaction is entered at a price that is one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order, and better than any limit order on the limit order book on the same side of the market as the Agency Order. This requirement applied regardless of whether the Agency Order is for the account of a public customer, or where the Agency Order is for the account of a broker dealer or any other person or entity that is not a Public Customer.

To enforce this requirement, ISE also amended Rule 1614 (Imposition of Fines for Minor Rule Violations). Specifically, ISE added Rule 1614(d)(4), which provides that any Member who enters an order into PIM for less than 50 contracts, while the National Best Bid or Offer spread is \$0.01, must provide price improvement of at least one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order, which increment may not be smaller than \$0.01. Failure to provide such price improvement will result in members being subject to the following fines: \$500 for the second offense, \$1,000 for the third offense, and \$2,500 for the fourth offense. Subsequent offenses will subject the member to formal disciplinary action. The Exchange will review violations on a monthly cycle to assess these violations. This provision was to be in effect for the period beginning January 19, 2017 until a date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than until September 15, 2017.<sup>6</sup>

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<sup>6</sup> While ISE anticipated that the migration of ISE symbols to the Nasdaq INET platform would be complete by July 15, 2017, and its member conduct standard could be eliminated accordingly by that time, ISE Mercury, LLC (now Nasdaq MRX, LLC) also filed a rule change that adopted a similar member conduct standard for its price improvement rule, and that referenced proposed ISE Rule

In adopting the price improvement requirement for Agency Orders of less than 50 contracts, the Exchange also proposed to amend Rule 723(b) to adopt a systems-based mechanism to implement this requirement, which shall be effective following the migration of a symbol to the Nasdaq INET platform. Under this provision, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01, the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the ISE order book on the same side of the Agency Order.

Subsequent to the approval of the rule change adopting the price improvement requirement and the member conduct standard, the Exchange determined that the migration of symbols to the Nasdaq INET platform would be complete on or before July 31, 2017.<sup>7</sup> This new migration schedule was developed to enable the Exchange to conduct additional systems testing prior to symbol migration. Given the updated migration schedule, the Exchange proposed to extend the effective period of the member conduct standard accordingly until a date specific by the Exchange in a Regulatory Circular, which would be no later than August 15, 2017.<sup>8</sup>

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1614(d)(4) as the means for enforcing its member conduct standard. See Securities Exchange Act Release No. 79841 (January 18, 2017), 82 FR 8452 (January 25, 2017) (order approving SR-ISEMercury-2016-25). The Nasdaq MRX re-platforming was scheduled to occur after the ISE re-platforming was complete. Accordingly, ISE proposed that the date for eliminating Rule 1614(d)(4) shall be specified by the Exchange in a Regulatory Information Circular, which date shall be no later than until September 15, 2017.

<sup>7</sup> See Data Technical News #2017-14 (May 25, 2017).

<sup>8</sup> See Securities Exchange Act Release No. 81212 (July 26, 2017), 82 FR 35864 (August 1, 2017) (SR-ISE-2017-75).

By August 15, 2017, ISE had completed the migration of symbols to the Nasdaq INET platform, and adopted the corresponding systems-based mechanism for enforcing the price improvement requirement where the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01.<sup>9</sup> Accordingly, ISE now proposes to delete the rule text in Rule 723 that implements the member conduct standard and the corresponding provision in Rule 1614 that imposes fines for violations of the member conduct standard.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> 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. The Exchange believes this proposal is consistent with the Act because it removes language that implements the member conduct standard where the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01, and the corresponding provision in Rule 1614 that imposes fines for violations of this member conduct standard. As noted above, these provisions have become obsolete, given the migration of all symbols on ISE, GEMX and MRX to the Nasdaq INET system and the corresponding adoption of the systems-based mechanism on each exchange for enforcing this price

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<sup>9</sup> As of the date of filing, GEMX and MRX had also completed the process of migrating their symbols to the Nasdaq INET platform.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

improvement requirement. The Exchange also notes that the systems-based mechanism for enforcing this price improvement requirement was previously approved by the Commission.<sup>12</sup>

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, as the rule text to be removed has become obsolete with the migration of all symbols to the Nasdaq INET system and the corresponding adoption of the systems-based mechanism for enforcing the price improvement requirement where the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is \$0.01.

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>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup>

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<sup>12</sup> See supra note 6.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</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

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-ISE-2017-86 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-ISE-2017-86. 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

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proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission will post all comments on the Commission's Internet Web site (<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-ISE-2017-86 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>15</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**Nasdaq ISE, LLC  
RULES**

\* \* \* \* \*

**Rule 723. Price Improvement Mechanism for Crossing Transactions**

(a) No Change.

(b) Crossing Transaction Entry. A Crossing Transaction is comprised of the order the Electronic Access Member represents as agent (the “Agency Order”) and a counter-side order for the full size of the Agency Order (the “Counter-Side Order”). The Counter-Side Order may represent interest for the Member’s own account, or interest the Member has solicited from one or more other parties, or a combination of both.

[For the period beginning January 19, 2017 until a date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than August 15, 2017, the following provisions shall be in effect:]

[(1) If the Agency Order is for less than 50 option contracts, and if the difference between the National Best Bid and National Best Offer (“NBBO”) is \$0.01, the Electronic Access Member shall not enter a Crossing Transaction unless such Crossing Transaction is entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the Nasdaq ISE order book on the same side of the Agency Order. Failure to provide such price improvement will subject the Electronic Access Member to the fines set forth in Rule 1614(d)(4).]

[(2) If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than \$0.01, a Crossing Transaction must be entered only at a price that is equal to or better than the NBBO and better than the limit order or quote on the Nasdaq ISE orderbook on the same side of the Agency Order.]

[(3) The Crossing Transaction may be priced in one-cent increments.]

[(4) The Crossing Transaction may not be canceled, but the price of the Counter-Side Order may be improved during the exposure period.]

[After the date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than August 15, 2017, the following provisions shall be in effect:]

(1) If the Agency Order is for less than 50 option contracts, and if the difference between the National Best Bid and National Best Offer (“NBBO”) is \$0.01, the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the Nasdaq ISE order book on the same side of the Agency Order.

(2) If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than \$0.01, a Crossing Transaction must be entered only at a price that is equal to or better than the national best bid or offer (“NBBO”) and better than the limit order or quote on the Nasdaq ISE order book on the same side of the Agency Order.

(3) The Crossing Transaction may be priced in one-cent increments.

(4) The Crossing Transaction may not be canceled, but the price of the Counter-Side Order may be improved during the exposure period.

(c) – (d) No Change.

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#### **Rule 1614. Imposition of Fines for Minor Rule Violations**

(a) – (c) No Change.

(d) *Violations Subject to Fines.* The following is a list of the rule violations subject to, and the applicable sanctions that may be imposed by the Exchange pursuant to, this Rule:

(1) – (3) No Change.

[(4) Violations of Rule 723 (Price Improvement Mechanism for Crossing Transactions).]

[For the period beginning January 19, 2017 until a date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than September 15, 2017, the following provision shall be in effect:]

[Any Member who enters an order into PIM for less than 50 contracts, while the National Best Bid or Offer spread is \$0.01, must provide price improvement of at least one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order, which increment may not be smaller than \$0.01. Failure to provide such price improvement will subject Members to the fines listed below.]

<b>[Offense]</b>	<b>[Sanction]</b>
[2 <sup>nd</sup> Offense]	[\$500]
[3 <sup>rd</sup> Offense]	[\$1,000]
[4 <sup>th</sup> Offense]	[\$2,500]
[Subsequent Offenses]	[Formal Disciplinary Action]

[The Exchange will review violations on a monthly cycle to assess these violations.]

(5) – (11) No Change.

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