

All submissions should refer to File Number SR–NASDAQ–2017–107. This file number should be included on the subject line if email 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 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 Web site 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. 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–NASDAQ–2017–107 and should be submitted on or before November 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81934; File No. SR–MRX–2017–22]

### Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 723 To Remove Obsolete Rule Text

October 24, 2017.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup>

notice is hereby given that on October 17, 2017, Nasdaq MRX, LLC ("MRX" 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 Rule 723 (Price Improvement Mechanism for Crossing Transactions) to remove obsolete rule text.

The text of the proposed rule change is available on the Exchange's Web site 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 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) to remove obsolete rule text.

Rule 723 sets forth the requirements for the PIM, which was adopted as part of the Exchange's application to be registered as a national securities 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 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, the Exchange 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.

The Exchange adopted a member conduct standard to implement this requirement during the time pursuant to which ISE Mercury symbols were migrating from the ISE Mercury platform to the Nasdaq INET platform. At the time it proposed the member conduct standard, the Exchange anticipated that the migration to the Nasdaq platform would be complete on or before September 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 September 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 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 MRX order book on the same side of 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

<sup>4</sup> See Securities Exchange Act Release No. 79539 (December 13, 2016), 81 FR 91982 (December 19, 2016) (SR–ISEMercury–2016–25). The Exchange notes that, on April 3, 2017, ISE Mercury, LLC was renamed Nasdaq MRX, 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. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017) (SR–ISEMercury–2017–05).

<sup>5</sup> See Securities Exchange Act Release No. 79841 (January 18, 2017), 82 FR 8452 (January 25, 2017) (SR–ISEMercury–2016–25).

<sup>20</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>3</sup> See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (File No. 10–221).

a broker dealer or any other person or entity that is not a Public Customer.<sup>6</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 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 Nasdaq MRX order book on the same side of the Agency Order.

By September 15, 2017, the Exchange 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. Accordingly, the Exchange is now proposing to delete the rule text in Rule 723 that implements the member conduct standard.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the

<sup>6</sup> Nasdaq ISE, LLC ("ISE") filed a proposed rule change at the same time as the Exchange to adopt the same price improvement requirement. To enforce this requirement, ISE also amended its 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. The Exchange incorporated this provision by reference. See MRX Chapter 16 (Discipline).

Contemporaneous with this proposal, ISE is now submitting a filing to remove the member conduct standard for its price improvement rule and the corresponding provision in Rule 1614 for violations of that standard. As such, MRX will no longer incorporate this provision of Rule 1614 by reference.

<sup>7</sup> 15 U.S.C. 78f(b).

objectives of section 6(b)(5) of the Act,<sup>8</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. As noted above, this standard 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 that requirement, which was previously approved by the Commission.<sup>9</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 differences 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 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 Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See *supra* note 5.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 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

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> 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 the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay will allow the Exchange to remove the obsolete rule text immediately, minimizing potential investor confusion. 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.<sup>14</sup>

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:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2017-22 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.

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.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 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).

All submissions should refer to File Number SR-MRX-2017-22. This file number should be included on the subject line if email 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 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 Web site 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 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-MRX-2017-22, and should be submitted on or before November 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81937; File No. SR-BatsEDGX-2017-40]

### Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Technical Corrections to Its Second Amended and Restated Certificate of Incorporation

October 24, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 13, 2017, Bats EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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 seeks to amend its Second Amended and Restated Certificate of Incorporation. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

\* \* \* \* \*

Second Amended and Restated Certificate of Incorporation of Bats EDGX Exchange, Inc.

The name of the corporation is Bats EDGX Exchange, Inc. The corporation filed its original Certificate of Incorporation with the Secretary of State of the State of Delaware on March 9, 2009 *under the name EDGX Exchange, Inc.* This Second Amended and Restated Certificate of Incorporation of the corporation, which restates and integrates and also further amends the provisions of the corporation's *Restated Certificate of Incorporation*, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the written consent of its sole stockholder in accordance with Section 228 of the General Corporation Law of the State of Delaware. The [Second Amended and] Restated Certificate of Incorporation of the corporation is hereby amended, integrated and restated to read in its entirety as follows:

\* \* \* \* \*

The text of the proposed rule change is available at the Exchange's Web site at [www.bats.com](http://www.bats.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 Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

EDGX recently amended its Restated Certificate of Incorporation in connection with a corporate transaction (the “Transaction”) involving, among other things, the recent acquisition of EDGX, along with Bats BYX Exchange, Inc. (“Bats BYX”), Bats BZX Exchange, Inc. (“Bats BZX”), and Bats EDGA Exchange, Inc. (“Bats EDGA”) and, together with Bats EDGX, Bats BYX, and Bats BZX, the “Bats Exchanges”) by CBOE Holdings, Inc. (“CBOE Holdings”). CBOE Holdings is also the parent of Chicago Board Options Exchange, Incorporated (“CBOE”) and C2 Options Exchange, Incorporated (“C2”). Particularly, the filing proposed, among other things, to amend and restate the certificate of incorporation of the Exchange based on certificates of incorporation of CBOE and C2.<sup>3</sup> The Exchange notes that in conforming the Exchange's Certificate to the certificates of CBOE and C2, it inadvertently (1) did not comply with a provision of Delaware law and (ii) referred to an inaccurate version of the Certificate in the introductory paragraph. The Exchange seeks to correct those errors.

Particularly, Section 245(c) of the Delaware General Corporation Law (DGCL) requires that a restated certificate of incorporation “shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the secretary of state.” The Exchange notes that the conformed Certificate did not reference the name under which the corporation was originally incorporated (*i.e.*, “EDGX Exchange, Inc.”). In order to comply with Section 245(c) of the DGCL, the Exchange proposes to amend its Certificate to add a reference to its original name.

<sup>3</sup> See Securities Exchange Act Release No. 81503 (August 30, 2017), 82 FR 42153 (September 6, 2017) (SR-BatsEDGX-2017-35).

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

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

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