

CBOE's ability to surveil for potential manipulation in EAFE and EM options or adversely affect market participants. The Commission further believes that approval of this proposal on an accelerated basis should benefit investors by creating, without undue delay, additional competition in the market for these and similar products. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> to approve the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-CBOE-2016-016) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77323; File No. 4-443]

### Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options To Add ISE Mercury, LLC as a Plan Sponsor

March 8, 2016.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on February 11, 2016, ISE Mercury, LLC ("ISE Mercury" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options ("OLPP").<sup>3</sup> The

amendment adds ISE Mercury as a Sponsor<sup>4</sup> of the OLPP. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

## I. Description and Purpose of the Amendment

The OLPP establishes procedures designed to facilitate the listing and trading of standardized options contracts on the options exchanges. The amendment to the OLPP adds ISE Mercury as a Sponsor. The other OLPP Sponsors are Amex, BATS, BOX, BX, CBOE, C2, EDGX, ISE, MIAX, Nasdaq, NYSE Arca, OCC, Phlx, and Topaz. ISE Mercury has submitted an executed copy of the OLPP to the Commission in accordance with the procedures set forth in the OLPP regarding new Sponsors. Section 7 of the OLPP provides for the entry of new Sponsors to the OLPP. Specifically, Section 7 of the OLPP provides that an Eligible Exchange<sup>5</sup> may become a Sponsor of the OLPP by: (i) Executing a copy of the OLPP, as then in effect; (ii) providing each current Sponsor with a copy of such executed OLPP; and (iii) effecting

"NYSE Arca"). See Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). See also Securities Exchange Act Release Nos. 49199 (February 5, 2004), 69 FR 7030 (February 12, 2004) (adding Boston Stock Exchange, Inc. as a Sponsor to the OLPP); 57546 (March 21, 2008), 73 FR 16393 (March 27, 2008) (adding Nasdaq Stock Market, LLC ("Nasdaq") as a Sponsor to the OLPP); 61528 (February 17, 2010), 75 FR 8415 (February 24, 2010) (adding BATS Exchange, Inc. ("BATS") as a Sponsor to the OLPP); 63162 (October 22, 2010), 75 FR 66401 (October 28, 2010) (adding C2 Options Exchange Incorporated ("C2") as a sponsor to the OLPP); 66952 (May 9, 2012), 77 FR 28641 (May 15, 2012) (adding BOX Options Exchange LLC ("BOX") as a Sponsor to the OLPP); 67327 (June 29, 2012), 77 FR 40125 (July 6, 2012) (adding Nasdaq OMX BX, Inc. ("BX") as a Sponsor to the OLPP); 70765 (October 28, 2013), 78 FR 65739 (November 1, 2013) (adding Topaz Exchange, LLC as a Sponsor to the OLPP ("Topaz")); 70764 (October 28, 2013), 78 FR 65733 (November 1, 2013) (adding Miami International Securities Exchange, LLC ("MIAX") as a Sponsor to the OLPP); and 76822 (January 1, 2016), 81 FR 1251 (January 11, 2016) (adding EDGX Exchange, Inc. ("EDGX") as a Sponsor to the OLPP).

<sup>4</sup> A "Sponsor" is an Eligible Exchange whose participation in the OLPP has become effective pursuant to Section 7 of the Plan.

<sup>5</sup> The OLPP defines an "Eligible Exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Exchange Act, 15 U.S.C. 78f(a), that (1) has effective rules for the trading of options contracts issued and cleared by the OCC approved in accordance with the provisions of the Exchange Act and the rules and regulations thereunder and (2) is a party to the Plan for Reporting Consolidated Options Last Sale Reports and Quotation Information (the "OPRA Plan"). ISE Mercury has represented that it has met both the requirements for being considered an Eligible Exchange. See letter from Michael Simon, Secretary, ISE, to Brent J. Fields, Secretary, Commission, dated February 9, 2016.

an amendment to the OLPP, as specified in Section 7(ii) of the OLPP.

Section 7(ii) of the OLPP sets forth the process by which an Eligible Exchange may effect an amendment to the OLPP. Specifically, an Eligible Exchange must: (a) Execute a copy of the OLPP with the only change being the addition of the new Sponsor's name in Section 8 of the OLPP;<sup>6</sup> and (b) submit the executed OLPP to the Commission. The OLPP then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

## II. Effectiveness of the OLPP Amendment

The foregoing OLPP amendment has become effective pursuant to Rule 608(b)(3)(iii)<sup>7</sup> because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,<sup>8</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amendment 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 4-443 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 4-443. This file number should be included on the subject line if email is used. To help the Commission

<sup>6</sup> The Commission notes that the list of Sponsors is set forth in Section 9 of the OLPP.

<sup>7</sup> 17 CFR 242.608(b)(3)(iii).

<sup>8</sup> 17 CFR 242.608(a)(1).

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

<sup>1</sup> 15 U.S.C. 78k-1(a)(3).

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> On July 6, 2001, the Commission approved the OLPP, which was proposed by the American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange LLC ("ISE"), Options Clearing Corporation ("OCC"), Philadelphia Stock Exchange, Inc. ("Phlx"), and Pacific Exchange, Inc. (n/k/a

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 ISE Mercury's principal office. 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 No. 4-443 and should be submitted on or before April 4, 2016.

By the Commission.

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77321; File No. 4-697]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and ISE Mercury, LLC

March 8, 2016.

On February 9, 2016, ISE Mercury, LLC ("ISE Mercury") and the Financial Industry Regulatory Authority, Inc. ("FINRA") (together with ISE Mercury, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC") a plan for the allocation of regulatory responsibilities, dated February 8, 2016 ("17d-2 Plan" or the "Plan"). The Plan was published for

comment on February 19, 2016.<sup>1</sup> The Commission received no comments on the Plan. This order approves and declares effective the Plan.

#### I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.<sup>3</sup> Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act<sup>4</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>5</sup> With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>6</sup> Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.<sup>7</sup> When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with

the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.<sup>8</sup> Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

#### II. Proposed Plan

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are common members of both ISE Mercury and FINRA.<sup>9</sup> Pursuant to the proposed 17d-2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the "ISE Mercury Certification of Common Rules," referred to herein as the "Certification") that lists every ISE Mercury rule, and select federal securities laws, rules, and regulations, for which FINRA would bear

<sup>1</sup> See Securities Exchange Act Release No. 77122 (February 11, 2016), 81 FR 8566.

<sup>2</sup> 15 U.S.C. 78s(g)(1).

<sup>3</sup> 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

<sup>4</sup> 15 U.S.C. 78q(d)(1).

<sup>5</sup> See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

<sup>6</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

<sup>7</sup> See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

<sup>8</sup> See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

<sup>9</sup> The proposed 17d-2 Plan refers to these common members as "Dual Members." See Paragraph 1(c) of the proposed 17d-2 Plan. On January 29, 2016, the Commission approved ISE Mercury's application for registration as a national securities exchange. See Securities Exchange Act Release No. 76998, 81 FR 6066 (February 4, 2016).