

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79563; File No. SR-ISE-2016-28]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove Direct Debit for Market Data Products

December 15, 2016.

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 December 1, 2016, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to remove direct debit for market data products, as described in more detail below.

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 purpose of the proposed rule change is to remove direct debit for market data products. Today, the

Exchange requires all of its members to provide a clearing account number at the National Securities Clearing Corporation (“NSCC”) for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.<sup>3</sup> Specifically, Rule 213 currently requires members, and all applicants for registration as such to provide a clearing account number for an account at NSCC for purposes of permitting the Exchange to debit any undisputed or final fees,<sup>4</sup> fines, charges and/or other monetary sanctions or monies due and owing to the Exchange<sup>5</sup> or other charges related to Rules 205, 206, 207, 208, 209, and 210.<sup>6</sup> The proposed amendment would exclude from Rule 213 the fees set forth in Chapter VIII (Market Data) of the Exchange’s Schedule of Fees<sup>7</sup> to harmonize the direct debit process across all Nasdaq Exchanges.<sup>8</sup>

The Exchange proposes that this rule change become operative on December 1, 2016. On November 23, 2016, the Exchange applied direct debit to its members for October 2016 billing<sup>9</sup> pursuant to the process currently in place. Under the proposed amendment and starting December 2016, the Exchange will bill the market data fees separately and will continue to direct debit its members for all of the other fees that are covered under Rule 213, in

<sup>3</sup> See Securities Exchange Act Release No. 79014 (September 30, 2016), 81 FR 69560 (October 6, 2016) (SR-ISE-2016-24).

<sup>4</sup> Exchange fees are noted on the Exchange Schedule of Fees, available at: <http://www.ise.com/fees>.

<sup>5</sup> This includes, among other things, fines which result from the imposition of fines pursuant to Rules 1611, Judgment and Sanction; and 1614, Imposition of Fines for Minor Rules Violations. With respect to disciplinary sanctions that are imposed by either the Business Conduct Committee or a Hearing Panel, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly not take action to debit a Member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the Member’s invoice prior to the actual NSCC debit.

<sup>6</sup> See ISE Rules 205 (Access Fees), 206 (Transaction Fees), 207 (Communication Fees), 208 (Regulatory Fees or Charges), 209 (Transfer Fees) and 210 (Liability for Payment of Fees).

<sup>7</sup> See note 4.

<sup>8</sup> The NASDAQ Stock Market LLC, The NASDAQ Options Market LLC, NASDAQ PHLX LLC, and NASDAQ BX, Inc. (the “Nasdaq Exchanges”) do not direct debit any fees for market data products.

<sup>9</sup> The debit for October 2016 billing included all outstanding fees, including the fees for market data, through October 1, 2016.

each case for the previous month’s billing.

###### 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 by providing members with a harmonized process to pay undisputed or final fees, fines, charges and/or monetary sanctions or monies due and owing to the Exchange.

The Exchange believes that its proposal to remove the fees for market data products from the direct debit process is reasonable because it will not place any administrative burden on its members who are already subject to the same billing process on all other Nasdaq exchanges.<sup>12</sup>

The Exchange believes that its proposal to remove the market data fees as described above from the direct debit process is equitable and not unfairly discriminatory because it will apply to all members in a uniform manner.

##### 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 that is not necessary or appropriate in furtherance of the purposes of the Act. With this proposal, the amended debit process would apply uniformly to all ISE members.

##### 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

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

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

<sup>12</sup> See NASDAQ Phlx LLC Rule 909, The NASDAQ Stock Market LLC Rule 7007, NASDAQ Options Market LLC Rules at Chapter XV, Section 1, NASDAQ BX, Inc. Rule 7011 and BX Option Rules at Chapter XV, Section 1.

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

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

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>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay. The Exchange proposes that the new billing process become operative on December 1, 2016. Starting December 1, 2016, the Exchange will bill the market data fees separately and will continue to direct debit its members for all of the other fees that are covered under Rule 213, in each case for the previous month's billing. The Exchange represents that waiver of the 30-day operative delay would allow it to conform its billing process similar to the process in place at the Nasdaq exchanges.<sup>16</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change operative upon filing.<sup>17</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.

<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 proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

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

<sup>16</sup> See NASDAQ Phlx LLC Rule 909, The NASDAQ Stock Market LLC Rule 7007, NASDAQ Options Market LLC Rules at Chapter XV, Section 1, NASDAQ BX, Inc. Rule 7011 and BX Option Rules at Chapter XV, Section 1.

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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-ISE-2016-28 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-2016-28. 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; 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-2016-28 and should be submitted on or before January 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-79586; File No. SR-NYSEArca-2013-107]**

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Liquidity Program Until June 30, 2017**

December 16, 2016.

On December 23, 2013, the Securities and Exchange Commission ("Commission") issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")<sup>1</sup> that granted NYSE Arca, Inc. ("Exchange") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program ("Program").<sup>2</sup> The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.<sup>3</sup> The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on December 31, 2016.<sup>4</sup>

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 17 CFR 242.612(c).

<sup>2</sup> See Securities Exchange Act Release No. 71176 (Dec. 23, 2013), 78 FR 79524 (Dec. 30, 2013) (SR-NYSEArca-2013-107) ("Order").

<sup>3</sup> See *id.*

<sup>4</sup> The pilot term of the Program was originally scheduled to end on April 14, 2015, but the Exchange initially extended the term through September 30, 2015, see Securities Exchange Act Release No. 74572 (Mar. 24, 2015), 80 FR 16705 (Mar. 30, 2015) (NYSEArca-2015-22), and then, through various extensions, through December 31, 2016. See Securities Exchange Act Release Nos. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR-NYSEArca-2015-84), 77236 (Feb. 25, 2016), 81 FR 10943 (Mar. 2, 2016) (SR-NYSEArca-2016-30), 77425 (Mar. 23, 2016), 81 FR 17523 (Mar. 29, 2016) (SR-NYSEArca-2016-47), and 78601 (Aug. 17, 2016), 81 FR 57632 (Aug. 23, 2016) (SR-NYSEArca-2016-113). Each time the pilot term of the Program was extended, the Commission also granted the Exchange's request to extend the Sub-Penny exemption. See Securities Exchange Act Release Nos. 74609 (Mar. 30, 2015), 80 FR 18272 (Apr. 3, 2015); 76021 (Sept. 29, 2015), 80 FR 60207 (Oct. 5, 2015); 77437 (Mar. 24, 2016), 81 FR 17752 (Mar. 30, 2016); and 78677 (Aug. 25, 2016), 81 FR 60037 (Aug. 31, 2016). The current exemption expires December 31, 2016.