

execution of orders using the PIM. The PIM allows ISE members to enter cross transactions of any size. The Facilitation, Solicited Order Mechanisms, and PIM allow for ISE members to designate certain customer orders for price improvement and submit such orders into one of the mechanisms with a matching contra order. Once such an order is submitted, ISE commences an auction by broadcasting a message to all ISE members that includes the series, price, size, and side of the market.⁶ Further, responses within the PIM (*i.e.*, Improvement Orders), are also broadcast to market participants during the auction.

Orders entered into the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM are currently exposed to all market participants for 500 milliseconds, giving them an opportunity to enter additional trading interest before the orders are automatically executed. Under the proposal, ISE would determine an exposure period for each of the four mechanisms that is no less than 100 milliseconds and no more than 1 second.⁷

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open

⁶ ISE members may choose to hide the size, side, and price when entering orders into the Block Order Mechanism.

⁷ While the proposed rule change would allow ISE to increase the exposure period up to 1 second, ISE stated that it currently intends to decrease the time period allowed for responses to 100 milliseconds. *See* Notice, *supra* note 3, at 85278. ISE further noted that its proposal is consistent with exposure periods permitted in similar mechanisms on other options exchanges. *See id.* at 85278. *See also* Securities Exchange Act Release Nos. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) and 77557 (April 7, 2016), 81 FR 21935 (April 13, 2016) (SR-Phlx-2016-40).

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,¹⁰ which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of ISE, reducing each of the exposure periods from 500 milliseconds to no less than 100 milliseconds could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that its members could receive, process, and communicate a response back to ISE within 100 milliseconds, ISE stated that it surveyed all ISE members that responded to an auction in the period beginning July 1, 2015 and ending January 15, 2016. Each of the twenty-one members surveyed indicated that they can currently receive, process, and communicate a response back to ISE within 100 milliseconds. To implement the reduced exposure periods and help ensure that ISE's and its members' systems are working properly given the faster response times, ISE will reduce the auction time over a period of weeks, ending at 100 milliseconds. Upon effectiveness of the proposal, and at least six weeks prior to implementation of the proposed rule change, ISE will issue a circular to its members, informing them of the implementation date of the reduction of the auction from 500 milliseconds to the auction time designated by ISE (100 milliseconds) to allow members the opportunity to perform systems changes. ISE also represented that it will issue a circular at least four weeks prior to any future changes, as permitted by its rules, to the auction time.¹¹ In addition, ISE reviewed all executions occurring in the mechanisms by ISE members from March 28, 2016 to April 25, 2016. This review of executions in the mechanisms indicated that approximately 98% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 500 milliseconds. Approximately 94% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 100 milliseconds, and 83% were submitted

¹⁰ 15 U.S.C. 78f(b)(8).

¹¹ *See* Notice, *supra* note 3, at 85279.

within 50 milliseconds of the initial order.¹² Furthermore, with regard to the impact of the proposal on system capacity, ISE has analyzed its capacity and represented that it has the necessary systems capacity to handle the potential additional traffic associated with the additional transactions that may occur with the implementation of the reduction in the auction duration to no less than 100 milliseconds.¹³

Based on ISE's statements, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within an exposure period of no less than 100 milliseconds and no more than 1 second.¹⁴ Accordingly, the Commission believes that it is consistent with the Act for the Exchange to modify the response times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM from 500 milliseconds to a time period designated by the Exchange of no less than 100 milliseconds and no more than 1 second.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-ISE-2016-26) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32413; 812-13828-01]

Hartford Funds Exchange-Traded Trust, et al.; Notice of Application]

January 4, 2017.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the

¹² *See id.*

¹³ *See id.*

¹⁴ The Commission notes that the ability to designate such an exposure time period is consistent with the rules of other options exchanges. *See supra* note 7. *See also* NASDAQ Phlx Rule 1080(n)(ii)(A)(4) and NASDAQ BX Options Rules Chapter VI, Section 9(ii)(A)(3).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (“Funds”) to issue shares redeemable in large aggregations only (“Creation Units”); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (“NAV”); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (d) certain Funds (“Feeder Funds”) to operate and redeem Creation Units in kind in a master-feeder structure; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (“Funds of Funds”) to acquire shares of the Funds.

APPLICANTS: Hartford Funds Exchange-Traded Trust (the “Trust”), a Delaware statutory trust, which will register under the Act as an open-end management investment company with multiple series, Hartford Funds Management Company, LLC (the “Initial Adviser”), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, and Hartford Funds Distributors, LLC, a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 (“Exchange Act”).

FILING DATES: The application was filed on September 23, 2010 and amended on March 25, 2011, April 8, 2016, September 19, 2016 and December 16, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 26, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the

Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: c/o Alice A. Pellegrino, Esq., Hartford Funds, 5 Radnor Corporate Center, 100 Matsonford Road, Suite 300, Radnor, PA 19087.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551-3038, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (“ETFs”).¹ All orders to purchase Creation Units and all redemption requests will be placed by or through an “Authorized Participant”, which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (“Portfolio Instruments”). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments that will form the basis for the Fund’s calculation of NAV at the end of the day.

¹ Applicants request that the order apply to the initial Fund, as well as to future series of the Trust and any future open-end management investment companies or series thereof (each, included in the term “Fund”), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an “Adviser”) and (b) comply with the terms and conditions of the application.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (“Deposit Instruments”), and shareholders redeeming their shares will receive specified instruments (“Redemption Instruments”). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund’s portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund’s prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund

shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.² The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund

² The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79731; File No. SR-ISEMercury-2016-21]

Self-Regulatory Organizations; ISE Mercury, LLC; Order Approving a Proposed Rule Change To Modify the Response Times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism

January 4, 2017.

I. Introduction

On November 8, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend ISE Mercury Rules 716 (Block Trades) and 723 (Price Improvement Mechanism for Crossing

Transactions) to modify the response times in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism ("PIM") from 500 milliseconds to a time period designated by the Exchange of no less than 100 milliseconds and no more than 1 second. The proposed rule change was published for comment in the **Federal Register** on November 25, 2016.³ No comment letters were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

ISE Mercury Rule 716 (Block Trades) contains the requirements applicable to the execution of orders using the Block Order Mechanism, Facilitation Mechanism, and Solicited Order Mechanism. The Block Order Mechanism allows ISE Mercury members to obtain liquidity for the execution of a block-size order.⁴ The Facilitation and Solicited Order Mechanisms allow ISE Mercury members to enter cross transactions seeking price improvement.⁵ ISE Mercury Rule 723 (Price Improvement Mechanism for Crossing Transactions) contains the requirements applicable to the execution of orders using the PIM. The PIM allows ISE Mercury members to enter cross transactions of any size. The Facilitation, Solicited Order Mechanisms, and PIM allow for ISE Mercury members to designate certain customer orders for price improvement and submit such orders into one of the mechanisms with a matching contra order. Once such an order is submitted, ISE Mercury commences an auction by broadcasting a message to all ISE Mercury members that includes the series, price, size, and side of the market.⁶ Further, responses within the PIM (*i.e.*, Improvement Orders), are also broadcast to market participants during the auction.

Orders entered into the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM are currently exposed to all market participants for 500 milliseconds, giving them an opportunity to enter additional trading interest before the orders are

³ See Securities Exchange Act Release No. 79354 (November 18, 2016), 81 FR 85295 ("Notice").

⁴ Block-size orders are orders for 50 contracts or more. See ISE Mercury Rule 716(a).

⁵ Only block-size orders can be entered into the Facilitation Mechanism, whereas only orders for 500 contracts or more can be entered into the Solicited Order Mechanism. See ISE Mercury Rule 716(d) and (e).

⁶ ISE Mercury members may choose to hide the size, side, and price when entering orders into the Block Order Mechanism.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.