

The Exchange also describes the current derivative markets for bitcoin as “[n]ascent.”<sup>138</sup> The Exchange notes that certain types of options, futures contracts for differences, and other derivative instruments are available in certain jurisdictions, but that many of these are not available in the United States and that they generally are not regulated “to the degree that U.S. investors expect derivatives instruments to be regulated.”<sup>139</sup> The Exchange notes that the CFTC has approved the registration of TeraExchange LLC as a swap execution facility (“SEF”) and that, on October 9, 2014, TeraExchange announced that it had hosted the first executed bitcoin swap traded on a CFTC-regulated platform.<sup>140</sup> Further, the Exchange notes that the CFTC has temporarily registered another SEF that would trade swaps on bitcoin.<sup>141</sup>

The Commission acknowledges that TeraExchange, a market for swaps on bitcoin, has registered with the CFTC, but the Exchange’s description of trading activity on that market fails to note that the very activity it cites was the subject of an enforcement action by the CFTC. The CFTC found that TeraExchange had improperly arranged for participants to make prearranged, offsetting “wash” transactions of the same price, notional amount, and tenor and then issued a press release “to create the impression of actual trading in the Bitcoin swap.”<sup>142</sup> Neither the Exchange nor any commenter provides evidence of meaningful trading volume in bitcoin derivatives on any regulated marketplace. Thus, the Commission believes that the bitcoin derivatives markets are not significant, regulated markets related to bitcoin with which the Exchange can enter into a surveillance-sharing agreement.

One commenter, and the author of the paper submitted with respect to a similar rule filing, assert that the existence of bitcoin derivative markets is not a necessary condition for a bitcoin ETP.<sup>143</sup> The key requirement the Commission is applying here, however, is not that a futures or derivatives market is required for every ETP, but that—when the spot market is unregulated—there must be significant,

regulated derivatives markets related to the underlying asset with which the Exchange can enter into a surveillance-sharing agreement.

#### C. Basis for Disapproval

The Commission has, in past approvals of commodity-trust ETPs, emphasized the importance of surveillance-sharing agreements between the national securities exchange listing and trading the ETP, and significant markets relating to the underlying asset.<sup>144</sup> Such agreements, which are a necessary tool to enable the ETP-listing exchange to detect and deter manipulative conduct, enable the exchange to meet its obligation under Section 6(b)(5) of the Exchange Act to have rules that are designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.<sup>145</sup>

As described above, the Exchange has not entered into a surveillance-sharing agreement with a significant, regulated, bitcoin-related market. The Commission also does not believe, as discussed above, that the proposal supports a finding that the significant markets for bitcoin or derivatives on bitcoin are regulated markets with which the Exchange can enter into such an agreement. Therefore, as the Exchange has not entered into, and would currently be unable to enter into, the type of surveillance-sharing agreement that has been in place with respect to all previously approved commodity-trust ETPs, the Commission does not find the proposed rule change to be consistent with the Exchange Act and, accordingly, disapproves the proposed rule change.

The Commission notes that bitcoin is still in the relatively early stages of its development and that, over time, regulated bitcoin-related markets of significant size may develop.<sup>146</sup> Should such markets develop, the Commission could consider whether a bitcoin ETP would, based on the facts and circumstances then presented, be consistent with the requirements of the Exchange Act.

#### IV. Conclusion

For the reasons set forth above, the Commission does not find that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Exchange

Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR-BatsBZX-2016-30), as modified by Amendments No. 1 and 2, be, and it hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>147</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-05213 Filed 3-15-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80209; File No. SR-ISEGemini-2017-11]

### Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Liability Caps and Related Reimbursement Requirements

March 10, 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 February 27, 2017, ISE Gemini, LLC (“ISE Gemini” 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 705 (Limitation of Liability) to harmonize its liability caps and related reimbursement requirements with those of NASDAQ BX, Inc. (“BX”), NASDAQ PHLX LLC (“Phlx”) and NASDAQ Stock Market LLC (“NSM” and together with BX and Phlx, the “Nasdaq Exchanges”).

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.

<sup>147</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>138</sup> See Amendment No. 1, *supra* note 1, 81 FR at 76661.

<sup>139</sup> See *id.*

<sup>140</sup> See *id.* See also ARK Letter, *supra* note 19, at 6 (noting that TeraExchange offers bitcoin forwards).

<sup>141</sup> See Amendment No. 1, *supra* note 1, 81 FR at 76661.

<sup>142</sup> See TeraExchange Settlement Order, *supra* note 112.

<sup>143</sup> See Anonymous Letter III, *supra* note 19, at 2; Lewis Paper, *supra* note 42, at 8.

<sup>144</sup> See *supra* note 96 and accompanying text.

<sup>145</sup> 15 U.S.C. 78f(b)(5).

<sup>146</sup> The Exchange notes, for example, that the CME and the ICE recently announced bitcoin pricing indexes. See Amendment No. 1, *supra* note 1, 81 FR at 76666. In the future, regulated futures or derivative markets might begin to trade products based on these indexes.

## 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 this proposed rule change is to amend Rule 705 (Limitation of Liability) to harmonize the Exchange's existing liability caps and related reimbursement requirements for claims under Rule 705(d) with the caps and requirements set forth in the rules of the Nasdaq Exchanges.<sup>3</sup> The Exchange and its affiliates, International Securities Exchange, LLC and ISE Mercury, LLC (together, the "ISE Exchanges"), were recently acquired (the "Acquisition") by Nasdaq, Inc. ("HoldCo").<sup>4</sup> In the context of the Acquisition, the ISE Exchanges are working to align certain rules with rules of the Nasdaq Exchanges in order to provide consistent standards across the six exchanges operated by HoldCo (the "HoldCo Affiliated Exchanges"). As part of this effort, the proposal set forth below harmonizes the Exchange's liability caps and the related reimbursement requirements with those of the Nasdaq Exchanges in order to provide uniform standards and requirements for users of the HoldCo Affiliated Exchanges.<sup>5</sup>

Rule 705 in its current form generally states that the Exchange is not liable for any losses due to the Exchange's negligence or unintentional actions, but also provides in Rule 705(d) that notwithstanding this general limitation on liability, the Exchange may compensate its members for losses resulting directly from the malfunction

of the Exchange's physical equipment, devices and/or programming. Subsections (d)(1)–(d)(3) of Rule 705 contains express conditions governing the voluntary payments made by the Exchange under these limited circumstances. Specifically, the Exchange's payments for any and all system failures on a single trading day are capped at \$250,000 under subsection (d)(1). The rule text states that for the aggregate of all claims made by all market participants related to the use of the Exchange on a single trading day, the Exchange's payments shall not exceed \$250,000. Subsection (d)(2) further provides that if the cumulative claims exceed the \$250,000 cap, this amount would be proportionally allocated among all such claims. Finally, subsection (d)(3) specifies that in order for a member to be eligible to receive payment under this Rule, claims for payment must be made in writing and submitted no later than the opening of trading on the next business day after the loss. Once in receipt of a claim, the Exchange is required to verify that: (i) A valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure occurred during the execution or handling of that order. A system failure will be deemed to have occurred when there is a malfunction of the Exchange's physical systems, devices or software.

The Exchange now proposes to amend the existing rule text in Rule 705(d) to adopt the same liability caps and reimbursement requirements as the Nasdaq Exchanges.<sup>6</sup> Proposed Rule 705(d) would provide that the Exchange may, notwithstanding the general limitations on liability contained in Rule 705(a), compensate users of the Exchange for losses directly resulting from the actual failure of the System,<sup>7</sup> or any other Exchange quotation, transaction reporting, execution, order routing or other systems or facility to correctly process an order, quote, message, or other data, provided that the Exchange has acknowledged receipt of the order, quote, message, or data. This limited exception in proposed Rule 705(d) would be subject to certain conditions and requirements contained in proposed subsections (d)(1)–(3).

Subsection (d)(1) proposes that the aggregate payments for all compensation claims made by all market participants related to the use of the Exchange during a single calendar month would

not exceed the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.<sup>8</sup> Under this proposal, the Exchange will eliminate the existing \$250,000 daily cap on liability and consider all such claims on a monthly basis, subject to proposed \$500,000 monthly liability cap. Each Nasdaq Exchange currently analyzes total eligible liability claims on a per-month look-back basis. The Exchange's proposal to adopt an identical claims process, in effect, would allow ISE Gemini an increased capability to compensate a market participant up to the monthly cap of \$500,000 even though the losses occurred on a single day or were across multiple days for a single participant.

Proposed subsection (d)(2) specifies how the reimbursement funds would be allocated in the event all of the compensation claims submitted during a single calendar month exceed the \$500,000 monthly cap. Specifically, if all of the claims arising out of the use of the Exchange cannot be fully satisfied because in the aggregate they exceed the limitations provided for in the Rule (\$500,000), then the maximum permitted amount would be proportionally allocated among all such claims arising during a single calendar month.<sup>9</sup> This is substantially similar to the existing process where the maximum amount is proportionally allocated among all such claims, except it would be for all claims arising during a one-month period under the proposed rule change rather than during a single trading day under the existing Rule.

Finally, proposed subsection (d)(3) specifies the requirements and procedures applicable to the submission of reimbursement claims. Specifically, all claims for compensation must be submitted in writing no later than 12:00 p.m. ET on the next business day following the day on which the use of the Exchange gave rise to such claims.<sup>10</sup> As such, the Exchange is proposing to extend the deadline to submit compensation claims from the opening of trading on the next business day to 12:00 p.m. ET. The Exchange believes that the extension of time to make such compensation claims increases the ability of market participants to submit claims in a timely manner. Proposed

<sup>3</sup> See BX Rule 4626(b) and Phlx Rule 1015. See also NSM Rule 4626(b).

<sup>4</sup> See Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISE-2016-11; SR-ISEGemini-2016-05; SR-ISEMercury-2016-10).

<sup>5</sup> International Securities Exchange, LLC and ISE Mercury, LLC will each file a proposed rule change with the Commission to adopt similar requirements.

<sup>6</sup> See note 4 above.

<sup>7</sup> "System" means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. See the Constitution of ISE Gemini, Section 13.1(d(d)).

<sup>8</sup> See BX Rule 4626(b)(1), Phlx Rule 1015(1), and NSM Rule 4626(b)(1) for substantially similar provisions.

<sup>9</sup> See BX Rule 4626(b)(2), Phlx Rule 1015(2), and NSM Rule 4626(b)(5) for substantially similar provisions.

<sup>10</sup> See BX Rule 4626(b)(3) and Phlx Rule 1015(3) for substantially similar provisions. See also NSM Rule 4626(b)(6).

subsection (d)(3) also states that nothing in the Rule obligates the Exchange to seek recovery under any applicable insurance policy. If the Exchange does seek and receive an insurance recovery that is larger than \$500,000, the amount of that recovery would limit the reimbursement funds available for the incident supporting the recovery to the greater recovery amount.<sup>11</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</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 proposal supports this policy by establishing a fair and transparent process by which the Exchange can accommodate claims for reimbursement for the failure of specified systems in specified facilities and under specified conditions. The Exchange believes that its proposal to amend Rule 705(d) will continue to promote fairness in the marketplace in situations where one or more firm's claim results from a problem in a function performed by the Exchange's trading system that is solely the fault of the Exchange. As noted above, the proposal would allow the Exchange an increased capability to compensate a market participant up to the monthly cap of \$500,000 even though the losses occurred on a single day or were across multiple days for a single participant. Furthermore, the proposed expansion of time to make such compensation claims would increase the ability of market participants to submit claims in a timely manner.

Lastly, the proposed rule change is intended to align the liability caps and compensation claims requirements with the caps and requirements currently provided by the Nasdaq Exchanges in order to provide consistent rules across the six HoldCo Affiliated Exchanges.<sup>14</sup> Consistent rules, in turn, would simplify the regulatory requirements for

members of the Exchange that are also participants on the Nasdaq Exchanges. The Exchange believes that the proposed rule change would provide greater harmonization among similar rules of the HoldCo Affiliated Exchanges, resulting in greater uniformity and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

### 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 because all members would be subject to the same liability caps and reimbursement requirements. The proposed rule change is designed to provide greater harmonization among similar rules across the six HoldCo Affiliated Exchanges, resulting in more efficient regulatory compliance for common 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 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>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</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: (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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISEGemini-2017-11 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.

All submissions should refer to File Number SR-ISEGemini-2017-11. 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; 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-

<sup>11</sup> There are no other practical differences between the Exchange's existing reimbursement rule and this proposal than as described above. Specifically these differences are: The liability caps (*i.e.* the greater of \$500,000 or, if the Exchange opts to seek recovery, the recovery amount under any applicable insurance policy), the look-back analysis period of one month, and the later claims deadline of 12:00 p.m. ET.

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See note 4 above.

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

<sup>16</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 Exchange has satisfied this requirement.

ISEGemini–2017–11, and should be submitted on or before April 6, 2017.

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

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

[FR Doc. 2017–05216 Filed 3–15–17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80200; File No. SR–ISEGemini–2017–12]

### Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Decommission of the Tick-Worse Functionality

March 10, 2017.

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 February 28, 2017, ISE Gemini, LLC (“ISE Gemini” 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 (i) to describe the decommission of its “Tick-Worse” functionality and (ii) to amend Rule 713 (Priority of Quotes and Orders) relating to the priority of split price transactions.

The Exchange requests that the proposed rule change become operative on February 28, 2017.

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 (i) to describe the decommission of the “Tick-Worse” functionality and (ii) to amend Rule 713 (Priority of Quotes and Orders) as it relates to the priority of split price transactions. The proposed changes are discussed below.

##### “Tick-Worse” Functionality

The Exchange currently provides market makers<sup>3</sup> with Tick-Worse functionality, which allows market makers to pre-define the prices and sizes at which the system will automatically move their quotation following an execution that exhausts the size of their existing quotation.<sup>4</sup> As such, when a market maker’s quote is traded out, it can be automatically reinstated into the Exchange’s order book at the next best price.<sup>5</sup> This optional feature is intended to help market makers meet their continuous quoting obligations under the Exchange’s rules<sup>6</sup> when their displayed

<sup>3</sup> The term “market makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Rule 100(a)(25).

<sup>4</sup> Tick-Worse functionality is not currently memorialized in the Exchange’s rulebook. In addition, the Exchange will not offer Tick-Worse on the new Nasdaq INET system going forward. On September 30, 2004, International Securities Exchange, LLC (“ISE”) filed with the Commission a proposal to codify this functionality in its rulebook, but inadvertently deleted the rule as obsolete rule text in a subsequent proposal filed on December 21, 2012. See Securities Exchange Act Release No. 51050 (January 18, 2005), 70 FR 3758 (January 26, 2005) (SR–ISE–2004–31); Securities Exchange Act Release No. 68570 (January 3, 2013), 78 FR 1901 (January 9, 2013) (SR–ISE–2012–82). The Exchange imported Rule 713 from ISE’s rulebook when the Commission granted the Exchange’s application for registration as a national securities exchange, which was after the Tick-Worse functionality rule was inadvertently removed from ISE’s rules. See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (Order Granting Registration as a National Securities Exchange).

<sup>5</sup> Market makers may choose to set Tick-Worse parameters by specifying how many price ticks back, and for what size, the quote is to be reinstated.

<sup>6</sup> Specifically, Primary Market Makers (“PMMs”) are required under Rule 804(e)(1) to enter quotations in all of the series listed on the Exchange of the options classes to which they are appointed on a daily basis. Supplementary Material .01 to

quotations are exhausted. When a market maker’s quote is traded out and automatically reinstated into the Exchange’s order book using the Tick-Worse functionality, the reinstated quote will be given priority pursuant to the Exchange’s split price priority rule as discussed below.

Due to the lack of demand for the Tick-Worse feature, the Exchange decommissioned the use of this functionality on February 21, 2017 by asking its members to stop using Tick-Worse by February 21st.<sup>7</sup> The Exchange plans to turn off this functionality in the system when the last symbol migrates onto the new Nasdaq INET system on or around April 3, 2017<sup>8</sup> as part of its system migration to Nasdaq INET technology.<sup>9</sup> As discussed above, the Exchange offers the Tick-Worse feature as a voluntary tool for market makers to assist them in meeting their continuous quoting obligations under the Exchange’s rules. As such, market makers are not required to use the Exchange-provided functionality and can program their own systems to perform the same functions if they prefer. Here, the Exchange has found that almost all market makers use their own systems rather than the Exchange’s Tick-Worse feature to send refreshed quotations when their displayed quotations are exhausted, and therefore discontinued this functionality. Because the Tick-Worse functionality is currently not memorialized in the Exchange’s rules as noted above, there is no text of the proposed rule change. The Exchange provided advance notice to its members on January 31, 2017 through an informational circular that it would decommission the use of the Tick-Worse functionality on February 21, 2017. The Exchange believes that this gave market makers the opportunity to make any necessary changes to their

Rule 804 further requires PMMs to quote 90% of the time their assigned options class is open for trading on the Exchange. As provided in Rule 804(e)(2), Competitive Market Makers (“CMMs”) are not required to enter quotations in the options class to which they are appointed, but in the event a CMM does initiate quoting, such CMM is generally required to quote 60% of the time its assigned options class is open for trading on the Exchange.

<sup>7</sup> This functionality was only being used by one market maker on the Exchange.

<sup>8</sup> The detailed schedule of the symbol migration is available at: <http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2017-13>.

<sup>9</sup> See Securities Exchange Release No. 80011 (February 10, 2017), 82 FR 10927 (February 16, 2017) (SR–ISEGemini–2016–17) (Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend Various Rules in Connection With a System Migration to Nasdaq INET Technology).

<sup>17</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.