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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2016 - * 02
Amendment No. (req. for Amendments *)

Filing by ISE Mercury, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *	Section 806(e)(2) *
☐	☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
☐	☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to establish a Schedule of Fees.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Michael
Last Name *	Sanocki
Title *	Assistant General Counsel
E-mail *	msanocki@ise.com
Telephone *	(212) 897-8144
Fax	

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 02/18/2016

By Michael Simon
(Name *)

(Title *)
Secretary & General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1434392700842,

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) ISE Mercury , LLC (the "Exchange" or "Mercury") is proposing to establish a Schedule of Fees by adopting fees and rebates for all Regular Orders in standard options traded on ISE Mercury, and adopting route-out fees and marketing fees. The proposed fees and rebates will apply to transactions in symbols traded on the Exchange. The text of the rule amendment is attached as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on February 8, 2016. This action constitutes the requisite approval under the Exchange's Certificate of Formation, Operating Agreement, and Constitution.

3. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) Purpose – The purpose of the proposed rule filing is to establish a Schedule of Fees by adopting fees and rebates for Regular Orders[1] in standard options traded on ISE Mercury, and adopting route-out fees and marketing fees.

Regular Order Fees and Rebates

The Exchange proposes to assess per contract transaction fees and rebates in all option classes traded on the Exchange to market participants that trade on the Exchange. The fees and rebates depend on the category of market participant submitting orders to the Exchange and the type of orders submitted to the Exchange.

The proposed Schedule of Fees identifies the following categories of market participants: (1) Market Maker;[2] (2) Non-ISE Mercury Market Maker;[3] (3) Firm Proprietary[4] / Broker-Dealer;[5] (4) Professional Customer;[6] (5) Priority Customer;[7] and (6)

[1] A Regular Order is an order that consists of only a single option series and is not submitted with a stock leg.

[2] The term Market Makers refers to "Competitive Market Makers" and "Primary Market Makers" collectively. Market Maker orders sent to the Exchange by an Electronic Access Member are assessed fees at the same level as Market Maker orders.

[3] A Non-ISE Mercury Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

[4] A Firm Proprietary order is an order submitted by a member for its own proprietary account.

Retail.[8] The fees and rebates to be assessed for Regular Orders in standard options that are in the Penny Pilot[9] are: (1) $0.20 fee per contract for Market Maker orders,[10] (2) $0.47 fee per contract for Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders; and (3) ($0.18) rebate per contract for Priority Customer orders. The transaction fees and rebates to be assessed for Regular Orders in standard options that are not in the Penny Pilot are: (1) $0.20 fee per contract for Market Maker orders; (2) $0.90 fee per contract for Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders; and (3) ($0.18) rebate per contract for Priority Customer orders.

The fees and rebates noted above also apply to orders that are exposed at the National Best Bid or Offer (NBBO) by the Exchange ("Flash Order").[11] When ISE Mercury is not at the NBBO, certain orders are exposed to members to give them an opportunity to match the NBBO before those orders are sent for execution pursuant to intermarket linkage rules. For all Flash Orders, the Exchange will charge the applicable fee.

The Exchange proposes to adopt a fee of $0.20 per contract for Crossing Orders[12] in all symbols traded on the Exchange for all market participants, except Priority

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[5] A Broker-Dealer order is an order submitted by a member for a non-member broker-dealer account.

[6] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[7] A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] A Retail order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. On ISE Mercury, Retail orders will be charged the same fee and receive the same rebate as Priority Customer orders.

[9] Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock ("QQQ"), the SPDR S&P 500 Exchange Traded Fund ("SPY") and the iShares Russell 2000 Index Fund ("IWM"), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. The proposed fees and rebates for Penny Pilot symbols apply to all classes in the Penny Pilot, i.e., to series that are quoted at less than $3 that have a minimum price variation of $0.01 and to series that are quoted at $3 or more that have an minimum price variation of $0.05. QQQ, SPY, and IWM are quoted in $0.01 increments for all options series.

[10] This fee applies to ISE Mercury Market Maker orders sent to the Exchange by Electronic Access Members.

[11] See ISE Mercury Rule 1901, Supplementary Material .02.

[12] These fees apply to both originating and contra orders.

Customers who will be charged $0.00 per contract for Crossing Orders. A Crossing Order is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism ("PIM"), or submitted as a Qualified Contingent Cross order. Orders executed in the Block Order Mechanism are also considered Crossing Orders. As an exception to the fees for Crossing Orders, the Exchange proposes to adopt a fee of $0.05 per contract for PIM orders of 500 or fewer contracts in all symbols traded on the Exchange for all market participants, except that Priority Customer orders on the originating side of a PIM auction will receive a rebate of ($0.13) per contract. Priority Customer orders on the contra-side of a PIM auction will pay no fee and receive no rebate. PIM orders greater than 500 contracts will pay the Fee for Crossing Orders, described above.

The Exchange believes the proposed Fees for Crossing Orders are competitive with fees charged by other options exchanges that have functionality for crossing orders. For example, International Securities Exchange, LLC's ("ISE")[13] and ISE Gemini, LLC's ("ISE Gemini")[14] Fees for Crossing Orders in all symbols are almost identical to those charged by ISE Mercury in all symbols. Additionally, ISE Mercury's Fees for PIM Orders of 500 or Fewer Contracts are similar to ISE's Fee for PIM Orders of 100 or Fewer Contracts,[15] except that Priority Customers on ISE Mercury receive a rebate rather than not being charged. Rebates for orders of 500 contracts or fewer are designed to increase Priority Customer order flow to the Exchange.

The Exchange also proposes to adopt Fees for Responses to Crossing Orders. A Response to a Crossing Order is any contra-side interest (i.e., orders and quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism, or PIM. The Exchange proposes to adopt a fee of (1) $0.20 per contract for Market Maker orders and (2) $0.50 per contract for Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer, and Priority Customer orders.

The Exchange also believes the proposed fees for Responses to Crossing Orders are competitive with fees charged by other options exchanges that have functionality for crossing orders. ISE Mercury's Fees for Responses to Crossing Orders in all symbols are in line with those on ISE,[16] except that ISE Mercury offers a reduced fee to Market Makers because they have requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements). Market Makers are also

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[13] See ISE Fee Schedule, I. Regular Order Fees and Rebates, Fee for Crossing Orders at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

[14] See ISE Gemini Fee Schedule, I. Regular Order Fees and Rebates, Fee for Crossing Orders at http://www.ise.com/assets/gemini/documents/OptionsExchange/legal/fee/Gemini_Fee_Schedule.pdf.

[15] See ISE Fee Schedule, I. Regular Order Fees and Rebates, Fee for PIM Orders of 100 or Fewer Contracts at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

[16] See id. at I. Regular Order Fees and Rebates, Fee for Responses to Crossing Orders.

charged Marketing Fees, discussed below, which are not assessed to other market participants. The Exchange therefore believes it is appropriate to charge these fees for Responses to Crossing Orders.

Route-Out Fees

The Exchange proposes to adopt a Route-Out Fee of $0.55 per contract for executions of all market participant orders for standard options in symbols that are in the Penny Pilot that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. The Exchange further proposes to adopt a Route-Out Fee of $0.96 per contract for executions of all market participant orders for standard options in symbols that are not in the Penny Pilot that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. No additional transaction fees are added to the Route-Out Fees, unlike other exchanges, which, in addition to a fixed route-out fee, assess the actual transaction fees charged by the exchange the order is routed to.[17]

The Route-Out Fees offset costs incurred by the Exchange in connection with using unaffiliated broker-dealers to access other exchanges for linkage executions and are therefore appropriate because market participants that are submitting these orders can route them directly to away exchanges, if desired, and should not be able to forgo an away market fee by directing their orders to the Exchange. The Exchange therefore believes it is appropriate to charge these orders the proposed fee in order to recoup costs associated with routing out these orders.

Marketing Fees

The Exchange proposes Marketing Fees that help its Market Makers establish marketing fee arrangements with Electronic Access Members ("EAM") in exchange for EAMs routing some or all of their order flow to those Market Makers. This program is funded through a fee paid by Exchange Market Makers for each Priority Customer contract they execute against in the symbols that are subject to their respective Marketing Fees.[18] In particular, ISE Mercury proposes to charge Market Makers $0.25 per contract for options classes that are in the Penny Pilot and $0.70 per contract for options classes not in the Penny Pilot when trading against a Priority Customer order.[19] These fees are

[17] See MIAX Fee Schedule, 1) Transaction Fees, c) Fees and Rebates for Customer Orders Routed to Another Options Exchange at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_02012016B.pdf and PHLX Fee Schedule, V. Routing Fees, at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

[18] Marketing Fees apply to ISE Mercury Market Makers for each Regular Priority Customer contract executed. Marketing Fees are waived for Flash Order responses.

[19] These Marketing Fees will be rebated proportionately to the members that paid the fee such that on a monthly basis the marketing fee fund balance administered by a Primary Market Maker for a group of options established under Rule 802(b) does not exceed $100,000 and the marketing fee fund balance administered by a preferenced Competitive

the same as those charged by NASDAQ OMX PHLX ("PHLX"),[20] which calls these fees Payment for Order Flow Fees. The Exchange believes these fees are appropriate.

FINRA Web CRD Fees

The Exchange proposes to adopt regulatory fees related to Web CRD, which are collected by the Financial Industry Regulatory Authority ("FINRA") ("FINRA Web CRD Fees").[21] The proposed fees are collected and retained by FINRA via Web CRD for the registration of employees of ISE Mercury members that are not FINRA members ("Non-FINRA members"). The Exchange is merely listing these fees on its Schedule of Fees. The Exchange does not collect or retain these fees.

The FINRA Web CRD Fees listed on the ISE Mercury Schedule of Fees consists of General Registration Fees of $100 (for each initial Form U4 filed for the registration of a representative or principal), $110 (for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings), and $45 (annual system processing fee assessed only during renewals). The FINRA Web CRD Fees also consist of Fingerprint Processing Fees for the initial, second and third submissions. There is a separate fee for electronic submissions and paper submissions. The initial electronic and paper submission fees are $27.75 and $42.75, respectively. The second electronic and paper submission fees are $15.00 and $30.00, respectively. The third electronic and paper submission fees are $27.75 and $42.75, respectively. Finally, there is a $30 processing fee for fingerprint results submitted by self-regulatory organizations other than FINRA. The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.[22]

(b) Basis – The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[23] in general, and Section 6(b)(4) of the Act,[24]

Market Maker for such a Group does not exceed $100,000. A preferenced Competitive Market Maker that elects not to administer a fund will not be charged the marketing fee. The Exchange also assesses an administrative fee of .45% on the total amount of the fund collected each month.

[20] See PHLX Fee Schedule, II. Multiply Listed Options Fees, Payment For Order Flow Fees at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

[21] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[22] See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030) (the "FINRA Fee Filing").

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(4).

in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes the fees proposed for transactions on ISE Mercury are reasonable. ISE Mercury will operate within a highly competitive market in which market participants can readily send order flow to any of the thirteen other competing venues if they deem fees at a particular venue to be excessive. The proposed fee structure is intended to attract order flow to ISE Mercury by offering certain market participants incentives to submit their orders to ISE Mercury.

Regular Order Fees and Rebates

The Exchange believes that its proposal to assess a per contract fee or rebate for Market Maker, Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer, and Priority Customer orders is reasonable and equitable because the proposed fees are within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the fees in the Penny Pilot on ISE Mercury for all market participants, except Priority Customers, are similar to the non-Priority Customer fees charged on PHLX,[25] which range from $0.22 to $0.49[26] per contract. Further, the rebate provided for Priority Customer orders on ISE Mercury is competitive with the rebates offered by MIAX Options Exchange ("MIAX") in its Priority Customer Rebate Program. MIAX offers members a per contract rebate as high as ($0.24) in MIAX select symbols and ($0.21) in non-MIAX select symbols for Priority Customer orders when the member reaches MIAX's highest rebate tier.[27] Additionally, the fees for symbols not in the Penny Pilot for Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders are similar to those on ISE Gemini, which are $0.89 per contract.[28] The Exchange believes the proposed fees and rebates are not unfairly discriminatory because they would apply uniformly to similarly situated market participants and they are competitive with the fees charged by other exchanges.

The Exchange believes the proposed Fees for Crossing Orders are reasonable and equitably allocated because the proposed fees are also within the range of fees assessed

[25] See PHLX Fee Schedule, II. Multiply Listed Options Fees, at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

[26] See id. at I. Rebates and Fees for Adding and Removing Liquidity in SPY, Part A. Simple Order.

[27] See MIAX Fee Schedule, 1) Transaction Fees, a) Exchange Fees, iii) Priority Customer Rebate program at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_01012015C.pdf.

[28] See ISE Gemini Fee Schedule, I. Regular Order Fees and Rebates, Non-Penny Symbols, Taker Fee Tiers 1-4 at http://www.ise.com/assets/gemini/documents/OptionsExchange/legal/fee/Gemini_Fee_Schedule.pdf.

by other exchanges. For example, ISE's[29] and ISE Gemini's[30] Fees for Crossing Orders in all symbols are almost identical to those proposed by ISE Mercury. Further, the Exchange believes the proposed Fee for Crossing Orders is not unfairly discriminatory because it would uniformly apply to all market participants, except Priority Customers, who historically have paid lower fees than other market participants as an incentive to attract that order flow to the Exchange.

The Exchange believes the proposed Fees for PIM Orders of 500 or Fewer Contracts are reasonable and equitably allocated because the proposed fees are also within the range of fees assessed by other exchanges. ISE Mercury's Fee for PIM Orders of 500 or Fewer Contracts are the same as ISE's Fee for PIM Orders of 100 or Fewer Contracts,[31] except that Priority Customers orders on ISE Mercury receive a rebate while ISE does not charge a fee for Priority Customer orders. For example, in all symbols, ISE charges $0.05 for all non-Priority Customers orders and does not charge a fee for Priority Customer orders. While ISE Mercury's rebate is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Priority Customer orders on the Exchange are generally entitled to lower or no fees and the Exchange believes that attracting more liquidity from Priority Customers will benefit all market participants that trade on ISE Mercury.

The Exchange further believes it is reasonable and equitable to charge the proposed Fees for Responses to Crossing Orders because an execution resulting from a Response to a Crossing Order is akin to an execution and therefore its proposal to establish execution fees is reasonable and equitable. The Exchange believes that while the differential between the fees charged for Crossing Orders and the Fees for Responses to Crossing Orders is significant, the differential on ISE Mercury is similar to the differential that currently exists on other exchanges that offer a similar functionality. For example, as noted above, ISE's Fees for Crossing Orders, which are $0.20 per contract in all symbols for all market participants, except Market Makers in non-select symbols,[32] are identical to those proposed by ISE Mercury.[33] And, ISE's fees for Responses to Crossing Orders, which are $0.47 per contract for all market participants in all symbols, [34]

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[29] See ISE Fee Schedule, I. Regular Order Fees and Rebates, Fee for Crossing Orders at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

[30] See ISE Gemini Fee Schedule, I. Regular Order Fees and Rebates, Fee for Crossing Orders at http://www.ise.com/assets/gemini/documents/OptionsExchange/legal/fee/Gemini_Fee_Schedule.pdf.

[31] See ISE Fee Schedule, I. Regular Order Fees and Rebates, Fee for PIM Orders of 100 or Fewer Contracts at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

[32] These Market Maker fees are subject to tier discounts on ISE. See ISE Fee Schedule, IV. Other Options Fees and Rebates, C. ISE Market Maker Discount Tiers at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

[33] See id. at I. Regular Order Fees and Rebates, Fee for Crossing Orders.

[34] Id. at I. Regular Order Fees and Rebates, Fee for Responses to Crossing Orders.

are in line with those on ISE Mercury, except that ISE Mercury charges a lower fee to Market Makers. ISE Mercury charges a lower fee to Market Maker orders because Market Makers have requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements). Market Makers are also charged Marketing Fees, which are not assessed to other market participants. Therefore, the Exchange believes the proposed fees are reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes.

The Exchange is not introducing a novel pricing scheme for Crossing Orders or for Responses to Crossing Orders. This functionality is currently available on a number of exchanges, all of which have pricing differentials that promote internalizing customer orders. The Exchange believes these are not unfairly discriminatory because they would uniformly apply to all similarly situated market participants.

The Exchange further believes charging lower fees and providing higher rebates to Priority Customer orders attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Priority Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, Non-ISE Mercury Market Makers, and Firm Proprietary / Broker-Dealers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Further, Professional Customers engage in trading activity similar to that conducted by Market Makers and proprietary traders. Finally, the Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges, as discussed above, and are therefore reasonable and equitable.

Finally, the Exchange believes that the price differentiation between the other market participants is justified. With respect to fees for Market Maker orders, as noted above, the Exchange believes that the price differentiation between the other market participants is appropriate and not unfairly discriminatory because Market Makers have requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements). Market makers also incur Marketing Fees, which the other market participants do not. The Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to certain market participants that do not have such requirements and obligations that Exchange Market Makers do. The Exchange believes that the proposed fees are fair, equitable, and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges.[35]

Route-Out Fees

[35] See PHLX Fee Schedule, II. Multiply Listed Options Fees at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

The Exchange believes the proposed route-out fees are reasonable and equitable as they provide the Exchange the ability to recover costs associated with using unaffiliated broker-dealers to route orders to other exchanges for linkage executions. The Exchange also believes that the proposed fees are not unfairly discriminatory because these fees would be uniformly applied to all market participant orders. As fees to access liquidity for orders have risen at other exchanges, it has become necessary for the Exchange to adopt routing fees in order to recoup the costs associated with routing linkage orders. The Exchange notes that a number of other exchanges currently charge a variety of routing related fees associated with customer and non-customer orders that are subject to linkage handling. The Exchange also notes that the fees proposed herein are within the range of fees charged by other Exchanges.[36]

Marketing Fees

The Exchange believes the proposed Marketing Fees are reasonable and equitable because the proposed fees will allow the Exchange and its Market Makers to better compete for order flow since the Exchange will now collect the same amount of fees as PHLX in options classes that are subject to its Payment for Order Flow Fees.[37] The Exchange believes that with these proposed fees, Market Makers will have greater incentive to trade on ISE Mercury in the symbols that are subject to Marketing Fees and thus enhance competition.

FINRA Web CRD Fees

The Exchange believes that its proposal to adopt the FINRA Web CRD Fees is reasonable because the proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. In the FINRA Fee Filing, FINRA noted that it believed that its fees are reasonable based on the increased costs associated with operating and maintaining Web CRD, and listed a number of enhancements made to Web CRD in support of its fee change. These costs are borne by FINRA when a Non-FINRA member uses Web CRD. FINRA further noted its belief that the fees are reasonable because they help to ensure the integrity of the information in Web CRD, which is very important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use Web CRD to make licensing and registration decisions, among other things. The Exchange notes that the proposed rule change is reasonable because the amount of the fees are those provided by FINRA, and the Exchange does not collect or retain these fees. The proposed rule change is also equitable and not unfairly discriminatory because the

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[36] See ISE Fee Schedule, IV. Other Options Fees and Rebates, F. Route-Out Fees at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf and ISE Gemini Fee Schedule, II. Other Options Fees and Rebates, A. Route-Out Fees at http://www.ise.com/assets/gemini/documents/OptionsExchange/legal/fee/Gemini_Fee_Schedule.pdf.

[37] See PHLX Fee Schedule, II. Multiply Listed Options Fees, Payment for Order Flow Fees at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

Exchange will not be collecting or retaining these fees, therefore will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

The Exchange notes that all of the proposed fees and rebates, discussed above, are intended to establish ISE Mercury as an attractive venue for market participants to direct their order flow as the proposed fees and rebates are competitive with those established by other exchanges for similar trading activities. The Exchange will be operating in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fees at a particular exchange to be too high, or in the case of rebates, not high enough. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable, and not unfairly discriminatory.

4. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[38] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange notes that the difference between the Fees for Crossing Orders and the Fees for Responses to Crossing Orders are not unfairly discriminatory and do not impose an undue burden on competition. The Exchange believes the crossing mechanisms on ISE Mercury provide incentives for market participants to submit customer order flow to the Exchange and thus, creates a greater opportunity for customers to receive better executions. The crossing mechanisms on ISE Mercury provide an opportunity for market participants to compete for customer orders, and have no limitations regarding the number of and type of market participant that can participate and compete for such orders. ISE Mercury notes that its market model and fees are generally intended to attract a specific segment of the options industry and the Exchange is competing with other exchanges that currently attract that segment.

Unilateral action by ISE Mercury in establishing fees for services provided to its members and others using its facilities will not have any adverse impact on competition. As a new entrant in the already highly competitive environment for equity options trading, ISE Mercury does not have the market power necessary to set prices for services that are inequitably allocated, unreasonable or unfairly discriminatory in violation of the Act. ISE Mercury's proposed fees and rebates, as described herein, are comparable to fees charged and rebates provided by other options exchanges for the same or similar services. To the extent the proposed fees and rebates fail to attract order flow away from its competitors, ISE Mercury may have to adjust level of fees and rebates.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

[38] 15 U.S.C. 78f(b)(8).

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[39] the Exchange has designated this proposal as establishing or changing a due, fee or other charge imposed on any person, whether or not the person is a member of a self-regulatory organization, which renders the proposed rule change effective upon filing.

8. Proposed Rule change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

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[39] 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-ISE Mercury-2016-02)

[Date]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the Schedule of Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 18, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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

ISE Mercury proposes to establish a Schedule of Fees by adopting fees and rebates for all Regular Orders in standard options traded on ISE Mercury, and adopting route-out fees and marketing fees. The text of the proposed rule change is available on the Exchange's Internet website at 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

[1] 15 U.S.C. 78s(b)(1).

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 filing is to establish a Schedule of Fees by adopting fees and rebates for Regular Orders[3] in standard options traded on ISE Mercury, and adopting route-out fees and marketing fees.

Regular Order Fees and Rebates

The Exchange proposes to assess per contract transaction fees and rebates in all option classes traded on the Exchange to market participants that trade on the Exchange. The fees and rebates depend on the category of market participant submitting orders to the Exchange and the type of orders submitted to the Exchange.

The proposed Schedule of Fees identifies the following categories of market participants: (1) Market Maker;[4] (2) Non-ISE Mercury Market Maker;[5] (3) Firm

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[2] 17 CFR 240.19b-4.

[3] A Regular Order is an order that consists of only a single option series and is not submitted with a stock leg.

[4] The term Market Makers refers to “Competitive Market Makers” and “Primary Market Makers” collectively. Market Maker orders sent to the Exchange by an Electronic Access Member are assessed fees at the same level as Market Maker orders.

[5] A Non-ISE Mercury Market Maker, or Far Away Market Maker (“FARMM”), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), registered in the same options class on another options exchange.

Proprietary[6] / Broker-Dealer;[7] (4) Professional Customer;[8] (5) Priority Customer;[9] and (6) Retail.[10] The fees and rebates to be assessed for Regular Orders in standard options that are in the Penny Pilot[11] are: (1) $0.20 fee per contract for Market Maker orders,[12] (2) $0.47 fee per contract for Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders; and (3) ($0.18) rebate per contract for Priority Customer orders. The transaction fees and rebates to be assessed for Regular Orders in standard options that are not in the Penny Pilot are: (1) $0.20 fee per contract for Market Maker orders; (2) $0.90 fee per contract for Non-ISE Mercury Market Maker, Firm

[6] A Firm Proprietary order is an order submitted by a member for its own proprietary account.

[7] A Broker-Dealer order is an order submitted by a member for a non-member broker-dealer account.

[8] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[9] A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[10] A Retail order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. On ISE Mercury, Retail orders will be charged the same fee and receive the same rebate as Priority Customer orders.

[11] Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock ("QQQ"), the SPDR S&P 500 Exchange Traded Fund ("SPY") and the iShares Russell 2000 Index Fund ("IWM"), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. The proposed fees and rebates for Penny Pilot symbols apply to all classes in the Penny Pilot, i.e., to series that are quoted at less than $3 that have a minimum price variation of $0.01 and to series that are quoted at $3 or more that have an minimum price variation of $0.05. QQQ, SPY, and IWM are quoted in $0.01 increments for all options series.

[12] This fee applies to ISE Mercury Market Maker orders sent to the Exchange by Electronic Access Members.

Proprietary / Broker-Dealer, and Professional Customer orders; and (3) ($0.18) rebate per contract for Priority Customer orders.

The fees and rebates noted above also apply to orders that are exposed at the National Best Bid or Offer (NBBO) by the Exchange ("Flash Order").[13] When ISE Mercury is not at the NBBO, certain orders are exposed to members to give them an opportunity to match the NBBO before those orders are sent for execution pursuant to intermarket linkage rules. For all Flash Orders, the Exchange will charge the applicable fee.

The Exchange proposes to adopt a fee of $0.20 per contract for Crossing Orders[14] in all symbols traded on the Exchange for all market participants, except Priority Customers who will be charged $0.00 per contract for Crossing Orders. A Crossing Order is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism ("PIM"), or submitted as a Qualified Contingent Cross order. Orders executed in the Block Order Mechanism are also considered Crossing Orders. As an exception to the fees for Crossing Orders, the Exchange proposes to adopt a fee of $0.05 per contract for PIM orders of 500 or fewer contracts in all symbols traded on the Exchange for all market participants, except that Priority Customer orders on the originating side of a PIM auction will receive a rebate of ($0.13) per contract. Priority Customer orders on the contra-side of a PIM auction will pay no fee and receive no rebate. PIM orders greater than 500 contracts will pay the Fee for Crossing Orders, described above.

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[13] See ISE Mercury Rule 1901, Supplementary Material .02.

[14] These fees apply to both originating and contra orders.

The Exchange believes the proposed Fees for Crossing Orders are competitive with fees charged by other options exchanges that have functionality for crossing orders. For example, International Securities Exchange, LLC's ("ISE")[15] and ISE Gemini, LLC's ("ISE Gemini")[16] Fees for Crossing Orders in all symbols are almost identical to those charged by ISE Mercury in all symbols. Additionally, ISE Mercury's Fees for PIM Orders of 500 or Fewer Contracts are similar to ISE's Fee for PIM Orders of 100 or Fewer Contracts,[17] except that Priority Customers on ISE Mercury receive a rebate rather than not being charged. Rebates for orders of 500 contracts or fewer are designed to increase Priority Customer order flow to the Exchange.

The Exchange also proposes to adopt Fees for Responses to Crossing Orders. A Response to a Crossing Order is any contra-side interest (i.e., orders and quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism, or PIM. The Exchange proposes to adopt a fee of (1) $0.20 per contract for Market Maker orders and (2) $0.50 per contract for Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer, and Priority Customer orders.

The Exchange also believes the proposed fees for Responses to Crossing Orders are competitive with fees charged by other options exchanges that have functionality for

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[15] See ISE Fee Schedule, I. Regular Order Fees and Rebates, Fee for Crossing Orders at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

[16] See ISE Gemini Fee Schedule, I. Regular Order Fees and Rebates, Fee for Crossing Orders at http://www.ise.com/assets/gemini/documents/OptionsExchange/legal/fee/Gemini_Fee_Schedule.pdf.

[17] See ISE Fee Schedule, I. Regular Order Fees and Rebates, Fee for PIM Orders of 100 or Fewer Contracts at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

crossing orders. ISE Mercury's Fees for Responses to Crossing Orders in all symbols are in line with those on ISE,[18] except that ISE Mercury offers a reduced fee to Market Makers because they have requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements). Market Makers are also charged Marketing Fees, discussed below, which are not assessed to other market participants. The Exchange therefore believes it is appropriate to charge these fees for Responses to Crossing Orders.

Route-Out Fees

The Exchange proposes to adopt a Route-Out Fee of $0.55 per contract for executions of all market participant orders for standard options in symbols that are in the Penny Pilot that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. The Exchange further proposes to adopt a Route-Out Fee of $0.96 per contract for executions of all market participant orders for standard options in symbols that are not in the Penny Pilot that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. No additional transaction fees are added to the Route-Out Fees, unlike other exchanges, which, in addition to a fixed route-out fee, assess the actual transaction fees charged by the exchange the order is routed to.[19]

The Route-Out Fees offset costs incurred by the Exchange in connection with using unaffiliated broker-dealers to access other exchanges for linkage executions and are

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[18] See id. at I. Regular Order Fees and Rebates, Fee for Responses to Crossing Orders.

[19] See MIAX Fee Schedule, 1) Transaction Fees, c) Fees and Rebates for Customer Orders Routed to Another Options Exchange at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_02012016B.pdf and PHLX Fee Schedule, V. Routing Fees, at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

therefore appropriate because market participants that are submitting these orders can route them directly to away exchanges, if desired, and should not be able to forgo an away market fee by directing their orders to the Exchange. The Exchange therefore believes it is appropriate to charge these orders the proposed fee in order to recoup costs associated with routing out these orders.

Marketing Fees

The Exchange proposes Marketing Fees that help its Market Makers establish marketing fee arrangements with Electronic Access Members ("EAM") in exchange for EAMs routing some or all of their order flow to those Market Makers. This program is funded through a fee paid by Exchange Market Makers for each Priority Customer contract they execute against in the symbols that are subject to their respective Marketing Fees.[20] In particular, ISE Mercury proposes to charge Market Makers $0.25 per contract for options classes that are in the Penny Pilot and $0.70 per contract for options classes not in the Penny Pilot when trading against a Priority Customer order.[21] These fees are the same as those charged by NASDAQ OMX PHLX ("PHLX"),[22] which calls these fees Payment for Order Flow Fees. The Exchange believes these fees are appropriate.

[20] Marketing Fees apply to ISE Mercury Market Makers for each Regular Priority Customer contract executed. Marketing Fees are waived for Flash Order responses.

[21] These Marketing Fees will be rebated proportionately to the members that paid the fee such that on a monthly basis the marketing fee fund balance administered by a Primary Market Maker for a group of options established under Rule 802(b) does not exceed $100,000 and the marketing fee fund balance administered by a preferenced Competitive Market Maker for such a Group does not exceed $100,000. A preferenced Competitive Market Maker that elects not to administer a fund will not be charged the marketing fee. The Exchange also assesses an administrative fee of .45% on the total amount of the fund collected each month.

[22] See PHLX Fee Schedule, II. Multiply Listed Options Fees, Payment For Order Flow Fees at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

FINRA Web CRD Fees

The Exchange proposes to adopt regulatory fees related to Web CRD, which are collected by the Financial Industry Regulatory Authority ("FINRA") ("FINRA Web CRD Fees").[23] The proposed fees are collected and retained by FINRA via Web CRD for the registration of employees of ISE Mercury members that are not FINRA members ("Non-FINRA members"). The Exchange is merely listing these fees on its Schedule of Fees. The Exchange does not collect or retain these fees.

The FINRA Web CRD Fees listed on the ISE Mercury Schedule of Fees consists of General Registration Fees of $100 (for each initial Form U4 filed for the registration of a representative or principal), $110 (for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings), and $45 (annual system processing fee assessed only during renewals). The FINRA Web CRD Fees also consist of Fingerprint Processing Fees for the initial, second and third submissions. There is a separate fee for electronic submissions and paper submissions. The initial electronic and paper submission fees are $27.75 and $42.75, respectively. The second electronic and paper submission fees are $15.00 and $30.00, respectively. The third electronic and paper submission fees are $27.75 and $42.75, respectively. Finally, there is a $30 processing fee for fingerprint results submitted by self-regulatory organizations other than FINRA. The FINRA Web CRD Fees are user-based and there is no distinction in

[23] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.[24]

2. Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[25] in general, and Section 6(b)(4) of the Act,[26] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes the fees proposed for transactions on ISE Mercury are reasonable. ISE Mercury will operate within a highly competitive market in which market participants can readily send order flow to any of the thirteen other competing venues if they deem fees at a particular venue to be excessive. The proposed fee structure is intended to attract order flow to ISE Mercury by offering certain market participants incentives to submit their orders to ISE Mercury.

Regular Order Fees and Rebates

The Exchange believes that its proposal to assess a per contract fee or rebate for Market Maker, Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer, and Priority Customer orders is reasonable and equitable because the proposed fees are within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the fees in the Penny Pilot on ISE Mercury for all market participants, except Priority Customers, are similar to the non-Priority Customer

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[24] See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030) (the “FINRA Fee Filing”).

[25] 15 U.S.C. 78f.

[26] 15 U.S.C. 78f(b)(4).

fees charged on PHLX,[27] which range from $0.22 to $0.49[28] per contract. Further, the rebate provided for Priority Customer orders on ISE Mercury is competitive with the rebates offered by MIAX Options Exchange ("MIAX") in its Priority Customer Rebate Program. MIAX offers members a per contract rebate as high as ($0.24) in MIAX select symbols and ($0.21) in non-MIAX select symbols for Priority Customer orders when the member reaches MIAX's highest rebate tier.[29] Additionally, the fees for symbols not in the Penny Pilot for Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders are similar to those on ISE Gemini, which are $0.89 per contract.[30] The Exchange believes the proposed fees and rebates are not unfairly discriminatory because they would apply uniformly to similarly situated market participants and they are competitive with the fees charged by other exchanges.

The Exchange believes the proposed Fees for Crossing Orders are reasonable and equitably allocated because the proposed fees are also within the range of fees assessed by other exchanges. For example, ISE's[31] and ISE Gemini's[32] Fees for Crossing Orders

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[27] See PHLX Fee Schedule, II. Multiply Listed Options Fees, at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

[28] See id. at I. Rebates and Fees for Adding and Removing Liquidity in SPY, Part A. Simple Order.

[29] See MIAX Fee Schedule, 1) Transaction Fees, a) Exchange Fees, iii) Priority Customer Rebate program at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_01012015C.pdf.

[30] See ISE Gemini Fee Schedule, I. Regular Order Fees and Rebates, Non-Penny Symbols, Taker Fee Tiers 1-4 at http://www.ise.com/assets/gemini/documents/OptionsExchange/legal/fee/Gemini_Fee_Schedule.pdf.

[31] See ISE Fee Schedule, I. Regular Order Fees and Rebates, Fee for Crossing Orders at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

[32] See ISE Gemini Fee Schedule, I. Regular Order Fees and Rebates, Fee for Crossing Orders at

in all symbols are almost identical to those proposed by ISE Mercury. Further, the Exchange believes the proposed Fee for Crossing Orders is not unfairly discriminatory because it would uniformly apply to all market participants, except Priority Customers, who historically have paid lower fees than other market participants as an incentive to attract that order flow to the Exchange.

The Exchange believes the proposed Fees for PIM Orders of 500 or Fewer Contracts are reasonable and equitably allocated because the proposed fees are also within the range of fees assessed by other exchanges. ISE Mercury's Fee for PIM Orders of 500 or Fewer Contracts are the same as ISE's Fee for PIM Orders of 100 or Fewer Contracts,[33] except that Priority Customers orders on ISE Mercury receive a rebate while ISE does not charge a fee for Priority Customer orders. For example, in all symbols, ISE charges $0.05 for all non-Priority Customers orders and does not charge a fee for Priority Customer orders. While ISE Mercury's rebate is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Priority Customer orders on the Exchange are generally entitled to lower or no fees and the Exchange believes that attracting more liquidity from Priority Customers will benefit all market participants that trade on ISE Mercury.

The Exchange further believes it is reasonable and equitable to charge the proposed Fees for Responses to Crossing Orders because an execution resulting from a Response to a Crossing Order is akin to an execution and therefore its proposal to establish execution fees is reasonable and equitable. The Exchange believes that while

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http://www.ise.com/assets/gemini/documents/OptionsExchange/legal/fee/Gemini_Fee_Schedule.pdf.

the differential between the fees charged for Crossing Orders and the Fees for Responses to Crossing Orders is significant, the differential on ISE Mercury is similar to the differential that currently exists on other exchanges that offer a similar functionality. For example, as noted above, ISE's Fees for Crossing Orders, which are $0.20 per contract in all symbols for all market participants, except Market Makers in non-select symbols,[34] are identical to those proposed by ISE Mercury.[35] And, ISE's fees for Responses to Crossing Orders, which are $0.47 per contract for all market participants in all symbols, [36] are in line with those on ISE Mercury, except that ISE Mercury charges a lower fee to Market Makers. ISE Mercury charges a lower fee to Market Maker orders because Market Makers have requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements). Market Makers are also charged Marketing Fees, which are not assessed to other market participants. Therefore, the Exchange believes the proposed fees are reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes.

The Exchange is not introducing a novel pricing scheme for Crossing Orders or for Responses to Crossing Orders. This functionality is currently available on a number of exchanges, all of which have pricing differentials that promote internalizing customer

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[33] See ISE Fee Schedule, I. Regular Order Fees and Rebates, Fee for PIM Orders of 100 or Fewer Contracts at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

[34] These Market Maker fees are subject to tier discounts on ISE. See ISE Fee Schedule, IV. Other Options Fees and Rebates, C. ISE Market Maker Discount Tiers at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

[35] See id. at I. Regular Order Fees and Rebates, Fee for Crossing Orders.

[36] Id. at I. Regular Order Fees and Rebates, Fee for Responses to Crossing Orders.

orders. The Exchange believes these are not unfairly discriminatory because they would uniformly apply to all similarly situated market participants.

The Exchange further believes charging lower fees and providing higher rebates to Priority Customer orders attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Priority Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, Non-ISE Mercury Market Makers, and Firm Proprietary / Broker-Dealers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Further, Professional Customers engage in trading activity similar to that conducted by Market Makers and proprietary traders. Finally, the Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges, as discussed above, and are therefore reasonable and equitable.

Finally, the Exchange believes that the price differentiation between the other market participants is justified. With respect to fees for Market Maker orders, as noted above, the Exchange believes that the price differentiation between the other market participants is appropriate and not unfairly discriminatory because Market Makers have requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements). Market makers also incur Marketing Fees, which the other market participants do not. The Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to certain market participants that do not have such requirements and obligations that Exchange Market Makers do. The Exchange believes that the proposed fees are fair, equitable, and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges.[37]

Route-Out Fees

The Exchange believes the proposed route-out fees are reasonable and equitable as they provide the Exchange the ability to recover costs associated with using unaffiliated broker-dealers to route orders to other exchanges for linkage executions. The Exchange also believes that the proposed fees are not unfairly discriminatory because these fees would be uniformly applied to all market participant orders. As fees to access liquidity for orders have risen at other exchanges, it has become necessary for the Exchange to adopt routing fees in order to recoup the costs associated with routing linkage orders. The Exchange notes that a number of other exchanges currently charge a variety of routing related fees associated with customer and non-customer orders that are subject to linkage handling. The Exchange also notes that the fees proposed herein are within the range of fees charged by other Exchanges.[38]

Marketing Fees

The Exchange believes the proposed Marketing Fees are reasonable and equitable because the proposed fees will allow the Exchange and its Market Makers to better

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[37] See PHLX Fee Schedule, II. Multiply Listed Options Fees at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

[38] See ISE Fee Schedule, IV. Other Options Fees and Rebates, F. Route-Out Fees at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf and ISE Gemini Fee Schedule, II. Other Options Fees and Rebates, A. Route-Out Fees at

compete for order flow since the Exchange will now collect the same amount of fees as PHLX in options classes that are subject to its Payment for Order Flow Fees.[39] The Exchange believes that with these proposed fees, Market Makers will have greater incentive to trade on ISE Mercury in the symbols that are subject to Marketing Fees and thus enhance competition.

FINRA Web CRD Fees

The Exchange believes that its proposal to adopt the FINRA Web CRD Fees is reasonable because the proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. In the FINRA Fee Filing, FINRA noted that it believed that its fees are reasonable based on the increased costs associated with operating and maintaining Web CRD, and listed a number of enhancements made to Web CRD in support of its fee change. These costs are borne by FINRA when a Non-FINRA member uses Web CRD. FINRA further noted its belief that the fees are reasonable because they help to ensure the integrity of the information in Web CRD, which is very important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use Web CRD to make licensing and registration decisions, among other things. The Exchange notes that the proposed rule change is reasonable because the amount of the fees are those provided by FINRA, and the Exchange does not collect or retain these fees. The proposed rule change is also equitable and not unfairly discriminatory because the

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http://www.ise.com/assets/gemini/documents/OptionsExchange/legal/fee/Gemini_Fee_Schedule.pdf.

[39] See PHLX Fee Schedule, II. Multiply Listed Options Fees, Payment for Order Flow Fees at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

Exchange will not be collecting or retaining these fees, therefore will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

The Exchange notes that all of the proposed fees and rebates, discussed above, are intended to establish ISE Mercury as an attractive venue for market participants to direct their order flow as the proposed fees and rebates are competitive with those established by other exchanges for similar trading activities. The Exchange will be operating in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fees at a particular exchange to be too high, or in the case of rebates, not high enough. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[40] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange notes that the difference between the Fees for Crossing Orders and the Fees for Responses to Crossing Orders are not unfairly discriminatory and do not impose an undue burden on competition. The Exchange believes the crossing mechanisms on ISE Mercury provide incentives for market participants to submit customer order flow to the Exchange and thus, creates a greater opportunity for customers to receive better executions. The crossing mechanisms on ISE Mercury provide an opportunity for market participants to compete for customer orders, and have no limitations regarding the number of and type of market participant that can participate and compete for such orders. ISE Mercury notes that its market model and fees are

[40] 15 U.S.C. 78f(b)(8).

generally intended to attract a specific segment of the options industry and the Exchange is competing with other exchanges that currently attract that segment.

Unilateral action by ISE Mercury in establishing fees for services provided to its members and others using its facilities will not have any adverse impact on competition. As a new entrant in the already highly competitive environment for equity options trading, ISE Mercury does not have the market power necessary to set prices for services that are inequitably allocated, unreasonable or unfairly discriminatory in violation of the Act. ISE Mercury's proposed fees and rebates, as described herein, are comparable to fees charged and rebates provided by other options exchanges for the same or similar services. To the extent the proposed fees and rebates fail to attract order flow away from its competitors, ISE Mercury may have to adjust level of fees and rebates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[41] and subparagraph (f)(2) of Rule 19b-4 thereunder,[42] because it establishes a due, fee, or other charge imposed by ISE Mercury.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

[41] 15 U.S.C. 78s(b)(3)(A)(ii).

[42] 17 CFR 240.19b-4(f)(2).

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 E-mail to rule-comments@sec.gov. Please include File No. SR-ISE Mercury-2016-02 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 Mercury-2016-02. This file number should be included on the subject line if e-mail 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 Commissions 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 website viewing and printing in the Commission's Public Reference Room. 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-ISE Mercury-2016-02 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Secretary

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[43] 17 CFR 200.30-3(a)(12).

Exhibit 5 - Text of the Proposed Rule Change
<u>Underlining</u> indicates additions; [Brackets] indicate deletion

<u>Schedule of Fees</u>

<u>Last Updated February 18, 2016</u>

Table of Contents

PREFACE

All fee disputes concerning fees which are billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation. All fee disputes must be submitted no later than ninety (90) calendar days after receipt of a billing invoice.

For purposes of assessing fees, the following references should serve as guidance. Fees and rebates are listed per contract per leg unless otherwise noted.

A "**Priority Customer**" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Mercury Rule 100(a)(37A).

A "**Professional Customer**" is a person or entity that is not a broker/dealer and is not a Priority Customer.

A "**Non-ISE Mercury Market Maker**" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

A "**Firm Proprietary**" order is an order submitted by a member for its own proprietary account.

A "**Broker-Dealer**" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

A "**Retail**" order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

A "**Flash Order**" is an order that is exposed at the National Best Bid or Offer by the Exchange to all members for execution, as provided under Supplementary Material .02 to ISE Mercury Rule 1901.

A "**Regular Order**" is an order that consists of only a single option series and is not submitted with a stock leg.

A "**Crossing Order**" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism ("PIM") or submitted as a Qualified Contingent Cross order. For purposes of this Fee Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

"**Responses to Crossing Order**" is any contra-side interest (i.e., orders & quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or Price Improvement Mechanism.

"**Penny Symbols**" are options overlying all symbols listed on ISE Mercury that are in the Penny Pilot Program. The current list of ISE Mercury-listed Penny Pilot Program symbols is available at http://www.ise.com/assets/files/products/productstraded/options_product_equityDownload.csv

"Non- Penny Symbols" are options overlying all symbols excluding Penny Symbols.

I. Regular Order Fees and Rebates

Penny Symbols	
Market Participant	**Fee/Rebate**
Market Maker [(1)]	$0.20
Non-ISE Mercury Market Maker (FarMM)	$0.47
Firm Proprietary / Broker-Dealer	$0.47
Professional Customer	$0.47
Priority Customer	($0.18)

Non-Penny Symbols	
Market Participant	**Fee/Rebate**
Market Maker [(1)]	$0.20
Non-ISE Mercury Market Maker (FarMM)	$0.90
Firm Proprietary / Broker-Dealer	$0.90
Professional Customer	$0.90
Priority Customer	($0.18)

1. This fee also applies to ISE Mercury Market Maker orders sent to the Exchange by Electronic Access Members.

All Symbols			
Market Participant	Fee for Crossing Orders[(1)(2)]	Fee/Rebate for PIM Orders of 500 or Fewer Contracts [(1)]	Fee for Responses to Crossing Orders
Market Maker [(4)]	$0.20	$0.05	$0.20
Non-ISE Mercury Market Maker (FarMM)	$0.20	$0.05	$0.50
Firm Proprietary / Broker-Dealer	$0.20	$0.05	$0.50
Professional Customer	$0.20	$0.05	$0.50
Priority Customer	$0.00	($0.13) [(3)]	$0.50

1. Fees apply to the originating and contra orders, except as noted in 3, below.
2. PIM orders of more than 500 contracts will pay the Fee for Crossing Orders.
3. Priority Customer orders on the contra-side of a PIM auction pay no fee and receive no rebate.
4. This fee also applies to ISE Mercury Market Maker orders sent to the Exchange by Electronic Access Members.

II. Other Options Fees and Rebates

A. Route-Out Fees[1]

Market Participant	Penny Symbols	Non-Penny Symbols
All Market Participants	$0.55	$0.96

1. Fee applies to executions of orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan.

B. Marketing Fee

Market Participant	Penny Symbols	Non-Penny Symbols
Market Maker	$0.25	$0.70

- Marketing fees apply to ISE Mercury Market Makers for each Regular Priority Customer contract executed except as noted below.
- Marketing fees are waived for Flash Order responses.
- The marketing fee will be rebated proportionately to the members that paid the fee such that on a monthly basis the marketing fee fund balance administered by a Primary Market Maker for a Group of options established under Rule 802(b) does not exceed $100,000 and the marketing fee fund balance administered by a preferenced Competitive Market Maker for such a Group does not exceed $100,000. A preferenced Competitive Market Maker that elects not to administer a fund will not be charged the marketing fee. The Exchange assesses an administrative fee of .45% on the total amount of the funds collected each month.

III. Legal & Regulatory

A. FINRA Web CRD Fees

These fees are collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of member organizations of the Exchange that are not FINRA members.

General Registration Fees:
$100 – For each initial Form U4 filed for the registration of a representative or principal.

$110 – For the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings.

$45 – FINRA Annual System Processing Fee Assessed only during Renewals.

Fingerprint Processing Fees:
$27.75 – Initial Submission (Electronic)
$42.75 – Initial Submission (Paper)
$15.00 – Second Submission (Electronic)
$30.00 – Second Submission (Paper)
$27.75 – Third Submission (Electronic)
$42.75 – Third Submission (Paper)
$30.00 – FINRA Processing Fee for Fingerprint Results Submitted by Self-Regulatory Organizations other than FINRA.