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

File No.* SR - 2016 - * 11
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 amend the 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 05/02/2016

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 - 1436897254872,

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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") proposes to amend its Schedule of Fees to add the definitions of "Mercury Appointed Market Maker" and "Mercury Appointed Order Flow Provider" effective May 2, 2016, which would increase opportunities for Market Makers to qualify for the Exchange's Member Volume Program ("MVP").

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Exchange staff approved this proposed rule change pursuant to authority delegated to it by the Exchange's Board of Directors. 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 –

Mercury proposes to amend its Schedule of Fees to add the definitions of Mercury Appointed Market Maker and Mercury Appointed Order Flow Provider effective May 2, 2016, which would increase opportunities for members to qualify for the Exchange's MVP.[1]

Specifically, the Exchange proposes to allow a Mercury Appointed Order Flow Provider ("MOFP")[2] to designate a Mercury Appointed Market Maker ("MAMM")[3] for purposes of Section I, Table 4 of the Fee Schedule.[4] MOFPs and MAMMs would effectuate the designation by each sending an email to the Exchange by the 5th day of the month with their designations.[5] The Exchange would view the corresponding emails as acceptance of such an appointment and would only recognize one such designation for

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[1] The MVP tiers are determined by a member's average daily volume of Priority Customer Regular Orders, in Penny and Non-Penny Pilot Symbols traded on the Exchange.

[2] A "MOFP" is an Electronic Access Member who has been appointed by a Mercury Market Maker pursuant to Section I, Table 4 of the ISE Mercury Fee Schedule.

[3] A "MAMM" is a Mercury Market Maker who has been appointed by an Electronic Access Member pursuant to Section I, Table 4 of the ISE Mercury Fee Schedule.

[4] See proposed ISE Mercury Fee Schedule, Preface.

[5] See proposed ISE Mercury Fee Schedule, Section 1, Table 4. Members should direct their emails designating a MAMM / MOFP to bizdev@ise.com.

each party once every 6 months, which designation would remain in effect until the Exchange receives an email from either party indicating that the appointment has been terminated.[6] The proposed new concepts would be applicable to, and included in, Section I, Table 4 of the ISE Mercury Fee Schedule, as described below, and are designed to increase opportunities for firms to qualify for the Exchange's MVP.[7]

ISE Mercury introduced the MVP fee and rebate tiers for Market Maker and Priority Customer[8] orders based on the average daily volume ("ADV") that a member executes in Priority Customer orders.[9] The Exchange assesses fees and rebates for Market Maker and Priority Customer orders based on five tiers of Total Affiliated Priority Customer ADV, as described in Table 4 of the Fee Schedule:[10] 0 – 19,999 contracts ("Tier 1"), 20,000 – 39,999 contracts ("Tier 2"), 40,000 – 59,999 contracts ("Tier 3"), 60,000 – 79,999 contracts ("Tier 4"), and 80,000 or more contracts ("Tier 5").[11] As is the case on ISE Mercury's affiliated exchanges – the International Securities Exchange, LLC ("ISE") and ISE Gemini, LLC ("ISE Gemini") – the Exchange's ADV calculation includes volume executed by affiliated members. In particular, the Exchange aggregates all eligible volume from affiliated members in determining applicable tiers, provided that there is at least 75% common ownership between the members as reflected on the member's Form BD, Schedule A. While this method of aggregating volume is beneficial to large firms with multiple affiliated members, the Exchange believed that it was also important to give smaller firms the ability to compete for more favorable fees and rebates.

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[6] See id.

[7] See proposed ISE Mercury Fee Schedule, Section 1, Table 4.

[8] 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).

[9] See Exchange Act Release No. 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR-ISE Mercury-2016-05).

[10] The Total Affiliated Priority Customer ADV category includes all Priority Customer volume executed on the Exchange in all symbols and order types, including volume executed in the Price Improvement Mechanism, Facilitation, and Qualified Contingent Cross mechanisms.

[11] The highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

The Exchange then adopted ADV tiers that are based on preferenced volume[12] – i.e., volume directed to a specific Market Maker as provided in Supplementary Material .03 to Rule 713.[13] In particular, the Exchange gives Market Makers volume credit for 100% of eligible traded volume preferenced to that member,[14] regardless of the actual allocation that the Market Maker receives ("the Preferenced Volume Program."). For example, assume Market Maker ABC is quoting at the national best bid or offer ("NBBO") and receives a Preferenced Order for 10 contracts from an unaffiliated firm for the account of a Priority Customer. If there are other Market Makers quoting at the NBBO, Market Maker ABC may receive an allocation of 4 contracts – i.e., 40% of the order. Rather than counting only the 4 contracts executed towards the Market Maker's volume total, the Exchange now proposes to give that Market Maker credit for the full 10 contracts preferenced to it. This is the same credit the member would receive if the 10 contracts were sent to the exchange by an affiliated member. The Exchange notes that even though Market Maker ABC receives full credit for all 10 contracts when executing 4 contracts, Market Makers that execute the remaining 6 contracts will still receive credit for those 6 contracts.

The proposed rule would replace the Preferenced Volume Program, but all other aspects of the MVP, including its five tiers of Total Affiliated Priority Customer ADV, will remain in effect. The Exchange proposes to modify its Fee Schedule to include the newly introduced concepts of a MOFP and MAMM. The proposal would be available to all MOFPs and MAMMs as defined in the Fee Schedule. Specifically, the proposed changes would enable any MOFP to qualify its MAMM for credits under the MVP. In this regard, the proposed change would enable a MAMM to enter a relationship with a MOFP and receive volume credit from that MOFP.[15] Thus, the proposed changes would 1) enable members that are not currently eligible for the MVP to avail themselves of the MVP and 2) assist firms that are currently eligible for the MVP to potentially achieve a higher MVP tier, thus qualifying for lower fees or higher rebates.

The Exchange believes these proposed changes would incentivize firms to direct their order flow to the Exchange to the benefit of all market participants. As proposed, the Exchange would only process one designation of a MOFP and MAMM every 6 months, which designation would remain in effect unless or until either party informs the Exchange of its termination.[16] The Exchange believes that this requirement would impose

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[12] See Exchange Act release No. 77412 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR-ISE Mercury-2016-06).

[13] An EAM may designate a "Preferred Market Maker" on orders it enters into the System ("Preferenced Orders"). Supplementary Material .03 to Rule 713 describes the Exchange's rules concerning Preferenced Orders.

[14] "Eligible volume" refers to volume that would otherwise count towards to applicable volume tier. In the case of ADV thresholds based on Total Affiliated Priority Customer ADV, as currently implemented on ISE Mercury, all Priority Customer volume would be "eligible."

[15] The Market Maker (i.e. MAMM) would still receive volume credit from its affiliates.

[16] A MOFP may not have more than one MAMM selected at any given time.

a measure of exclusivity and would enable MAMMs to rely upon the MOFP's transaction volume executed on the Exchange, which is beneficial to all Exchange participants.

(b) Basis – The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[18] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposal is reasonable, equitable and not unfairly discriminatory for the following reasons. First, this rule filing is substantially similar NYSE MKT LLC's fee filing to modify NYSE Amex's Option Fee Schedule.[19] As such, the proposal would be available to all Electronic Access Members ("EAMs") and Market Makers. Additionally, the designations are completely voluntary and members may elect to accept this appointment or not. In addition, the proposed changes would enable firms that are not currently eligible for the MVP to avail themselves of the MVP as well as to assist firms that are currently eligible for the MVP to potentially achieve a higher MVP tier, thus qualifying for lower fees or higher rebates. The Exchange believes these proposed changes would incentivize firms to direct their order flow to the Exchange. Specifically, the proposed changes would enable any qualifying member (i.e. a MAMM) by virtue of designating a MOFP to aggregate its Priority Customer volume with that of the MOFP, which would enhance the MAMM's potential to qualify for lower fees or higher rebates under the MVP. The Exchange believes these proposed changes would incentivize MOFPs and MAMMs to direct their order flow to the Exchange, which would increase orders routed to the Exchange and benefit all market participants by expanding liquidity, providing more trading opportunities and tighter spreads, including those market participants that opt not to become a MAMM and therefore may be ineligible to earn the credits under the MVP.

The proposal is also reasonable, equitable and not unfairly discriminatory because the Exchange would only process one designation of a MOFP and MAMM every 6 months, which requirement would impose a measure of exclusivity while allowing MAMM's to rely upon, and potentially increase, the MOFP's transaction volume executed on the Exchange to the benefit of all Exchange participants.

Finally, the Exchange believes the proposal is reasonable, equitable and not unfairly discriminatory as it may encourage an increase in orders routed to the Exchange, which would expand liquidity and provide more trading opportunities and tighter spreads to the benefit of all market participants.

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[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] Exchange Act Release No. 77370 (March 15, 2016), 81 FR 15136 (March 21, 2016) (SR-NYSEMKT-2016-35).

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

In accordance with Section 6(b)(8) of the Act,[20] 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. To the contrary, the Exchange believes that the proposed rule change will increase competition by allowing smaller Market Makers to compete for more favorable fees and rebates. As currently implemented, Market Makers that are affiliated with an order router are advantaged relative to other firms in achieving volume based fees and rebates. Although the Exchange continues to believe that counting volume across affiliated members is appropriate, a Market Maker that has a similar relationship, without common ownership, should be able to compete for and receive similar benefits. The proposed rule change is designed to level the playing field between these members and their competitors that already benefit from affiliated volume. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. For the reasons described above, the Exchange believes that the proposed fee change reflects this competitive environment.

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.

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,[21] 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 based on Exchange Act Release No. 77370 (March 15, 2016), 81 FR 15136 (March 21, 2016) (SR-NYSEMKT-2016-35).

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[20] 15 U.S.C. 78f(b)(8).

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-ISE Mercury-2016-11)

[Date]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend 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 May 2, 2016, ISE Mercury, LLC (the "Exchange" or "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

Mercury proposes to amend its Schedule of Fees proposes to amend its Schedule of Fees to add the definitions of "Mercury Appointed Market Maker" and "Mercury Appointed Order Flow Provider" effective May 2, 2016, which would increase opportunities for Market Makers to qualify for the Exchange's Member Volume Program ("MVP"). 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.

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

[2] 17 CFR 240.19b-4.

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 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

Mercury proposes to amend its Schedule of Fees to add the definitions of Mercury Appointed Market Maker and Mercury Appointed Order Flow Provider effective May 2, 2016, which would increase opportunities for members to qualify for the Exchange's MVP.[3]

Specifically, the Exchange proposes to allow a Mercury Appointed Order Flow Provider ("MOFP")[4] to designate a Mercury Appointed Market Maker ("MAMM")[5] for purposes of Section I, Table 4 of the Fee Schedule.[6] MOFPs and MAMMs would effectuate the designation by each sending an email to the Exchange by the 5th day of the

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[3] The MVP tiers are determined by a member's average daily volume of Priority Customer Regular Orders, in Penny and Non-Penny Pilot Symbols traded on the Exchange.

[4] A "MOFP" is an Electronic Access Member who has been appointed by a Mercury Market Maker pursuant to Section I, Table 4 of the ISE Mercury Fee Schedule.

[5] A "MAMM" is a Mercury Market Maker who has been appointed by an Electronic Access Member pursuant to Section I, Table 4 of the ISE Mercury Fee Schedule.

[6] See proposed ISE Mercury Fee Schedule, Preface.

month with their designations.[7] The Exchange would view the corresponding emails as acceptance of such an appointment and would only recognize one such designation for each party once every 6 months, which designation would remain in effect until the Exchange receives an email from either party indicating that the appointment has been terminated.[8] The proposed new concepts would be applicable to, and included in, Section I, Table 4 of the ISE Mercury Fee Schedule, as described below, and are designed to increase opportunities for firms to qualify for the Exchange's MVP.[9]

ISE Mercury introduced the MVP fee and rebate tiers for Market Maker and Priority Customer[10] orders based on the average daily volume ("ADV") that a member executes in Priority Customer orders.[11] The Exchange assesses fees and rebates for Market Maker and Priority Customer orders based on five tiers of Total Affiliated Priority Customer ADV, as described in Table 4 of the Fee Schedule:[12] 0 – 19,999 contracts ("Tier 1"), 20,000 – 39,999 contracts ("Tier 2"), 40,000 – 59,999 contracts ("Tier 3"), 60,000 – 79,999 contracts ("Tier 4"), and 80,000 or more contracts ("Tier

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[7] See proposed ISE Mercury Fee Schedule, Section 1, Table 4. Members should direct their emails designating a MAMM / MOFP to bizdev@ise.com.

[8] See id.

[9] See proposed ISE Mercury Fee Schedule, Section 1, Table 4.

[10] 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).

[11] See Exchange Act Release No. 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR-ISE Mercury-2016-05).

[12] The Total Affiliated Priority Customer ADV category includes all Priority Customer volume executed on the Exchange in all symbols and order types, including volume executed in the Price Improvement Mechanism, Facilitation, and Qualified Contingent Cross mechanisms.

5").[13] As is the case on ISE Mercury's affiliated exchanges – the International Securities Exchange, LLC ("ISE") and ISE Gemini, LLC ("ISE Gemini") – the Exchange's ADV calculation includes volume executed by affiliated members. In particular, the Exchange aggregates all eligible volume from affiliated members in determining applicable tiers, provided that there is at least 75% common ownership between the members as reflected on the member's Form BD, Schedule A. While this method of aggregating volume is beneficial to large firms with multiple affiliated members, the Exchange believed that it was also important to give smaller firms the ability to compete for more favorable fees and rebates.

The Exchange then adopted ADV tiers that are based on preferenced volume[14] – i.e., volume directed to a specific Market Maker as provided in Supplementary Material .03 to Rule 713.[15] In particular, the Exchange gives Market Makers volume credit for 100% of eligible traded volume preferenced to that member,[16] regardless of the actual allocation that the Market Maker receives ("the Preferenced Volume Program."). For example, assume Market Maker ABC is quoting at the national best bid or offer

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[13] The highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

[14] See Exchange Act release No. 77412 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR-ISE Mercury-2016-06).

[15] An EAM may designate a "Preferred Market Maker" on orders it enters into the System ("Preferenced Orders"). Supplementary Material .03 to Rule 713 describes the Exchange's rules concerning Preferenced Orders.

[16] "Eligible volume" refers to volume that would otherwise count towards to applicable volume tier. In the case of ADV thresholds based on Total Affiliated Priority Customer

("NBBO") and receives a Preferenced Order for 10 contracts from an unaffiliated firm for the account of a Priority Customer. If there are other Market Makers quoting at the NBBO, Market Maker ABC may receive an allocation of 4 contracts – i.e., 40% of the order. Rather than counting only the 4 contracts executed towards the Market Maker's volume total, the Exchange now proposes to give that Market Maker credit for the full 10 contracts preferenced to it. This is the same credit the member would receive if the 10 contracts were sent to the exchange by an affiliated member. The Exchange notes that even though Market Maker ABC receives full credit for all 10 contracts when executing 4 contracts, Market Makers that execute the remaining 6 contracts will still receive credit for those 6 contracts.

The proposed rule would replace the Preferenced Volume Program, but all other aspects of the MVP, including its five tiers of Total Affiliated Priority Customer ADV, will remain in effect. The Exchange proposes to modify its Fee Schedule to include the newly introduced concepts of a MOFP and MAMM. The proposal would be available to all MOFPs and MAMMs as defined in the Fee Schedule. Specifically, the proposed changes would enable any MOFP to qualify its MAMM for credits under the MVP. In this regard, the proposed change would enable a MAMM to enter a relationship with a MOFP and receive volume credit from that MOFP.[17] Thus, the proposed changes would 1) enable members that are not currently eligible for the MVP to avail themselves of the MVP and 2) assist firms that are currently eligible for the MVP to potentially achieve a higher MVP tier, thus qualifying for lower fees or higher rebates.

ADV, as currently implemented on ISE Mercury, all Priority Customer volume would be "eligible."

[17] The Market Maker (i.e. MAMM) would still receive volume credit from its affiliates.

The Exchange believes these proposed changes would incentivize firms to direct their order flow to the Exchange to the benefit of all market participants. As proposed, the Exchange would only process one designation of a MOFP and MAMM every 6 months, which designation would remain in effect unless or until either party informs the Exchange of its termination.[18] The Exchange believes that this requirement would impose a measure of exclusivity and would enable MAMMs to rely upon the MOFP's transaction volume executed on the Exchange, which is beneficial to all Exchange participants.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[20] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposal is reasonable, equitable and not unfairly discriminatory for the following reasons. First, this rule filing is substantially similar NYSE MKT LLC's fee filing to modify NYSE Amex's Option Fee Schedule.[21] As such, the proposal would be available to all Electronic Access Members ("EAMs") and Market Makers. Additionally, the designations are completely voluntary and members may elect to accept this appointment or not. In addition, the proposed changes would enable firms that are not currently eligible for the MVP to avail themselves of the MVP as well as to assist firms

[18] A MOFP may not have more than one MAMM selected at any given time.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] Exchange Act Release No. 77370 (March 15, 2016), 81 FR 15136 (March 21, 2016) (SR-NYSEMKT-2016-35).

that are currently eligible for the MVP to potentially achieve a higher MVP tier, thus qualifying for lower fees or higher rebates. The Exchange believes these proposed changes would incentivize firms to direct their order flow to the Exchange. Specifically, the proposed changes would enable any qualifying member (i.e. a MAMM) by virtue of designating a MOFP to aggregate its Priority Customer volume with that of the MOFP, which would enhance the MAMM's potential to qualify for lower fees or higher rebates under the MVP. The Exchange believes these proposed changes would incentivize MOFPs and MAMMs to direct their order flow to the Exchange, which would increase orders routed to the Exchange and benefit all market participants by expanding liquidity, providing more trading opportunities and tighter spreads, including those market participants that opt not to become a MAMM and therefore may be ineligible to earn the credits under the MVP.

The proposal is also reasonable, equitable and not unfairly discriminatory because the Exchange would only process one designation of a MOFP and MAMM every 6 months, which requirement would impose a measure of exclusivity while allowing MAMM's to rely upon, and potentially increase, the MOFP's transaction volume executed on the Exchange to the benefit of all Exchange participants.

Finally, the Exchange believes the proposal is reasonable, equitable and not unfairly discriminatory as it may encourage an increase in orders routed to the Exchange, which would expand liquidity and provide more trading opportunities and tighter spreads to the benefit of all market participants.

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

In accordance with Section 6(b)(8) of the Act,[22] 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. To the contrary, the Exchange believes that the proposed rule change will increase competition by allowing smaller Market Makers to compete for more favorable fees and rebates. As currently implemented, Market Makers that are affiliated with an order router are advantaged relative to other firms in achieving volume based fees and rebates. Although the Exchange continues to believe that counting volume across affiliated members is appropriate, a Market Maker that has a similar relationship, without common ownership, should be able to compete for and receive similar benefits. The proposed rule change is designed to level the playing field between these members and their competitors that already benefit from affiliated volume. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. For the reasons described above, the Exchange believes that the proposed fee change reflects this competitive environment.

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.

[22] 15 U.S.C. 78f(b)(8).

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,[23] and subparagraph (f)(2) of Rule 19b-4 thereunder,[24] 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 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-2016-11 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.

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[23] 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-ISE Mercury-2016-11. 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-2016-11 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.[25]

Secretary

[24] 17 CFR 240.19b-4(f)(2).

[25] 17 CFR 200.30-3(a)(12).

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

* * *

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.

<u>A "**Mercury Appointed Market Maker**" is an ISE Mercury Market Maker who has been appointed by an Electronic Access Member pursuant to Section I, Table 4.</u>

<u>A "**Mercury Appointed Order Flow Provider**" is an Electronic Access Member who has been appointed by an ISE Mercury Market Maker pursuant to Section I, Table 4.</u>

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.

* * *

<u>Member Volume Program:</u> Qualifying Tier Thresholds

Table 4

Tier	**Total Affiliated <u>and/or Appointed</u> Priority Customer ADV**
Tier 1	0-19,999
Tier 2	20,000-39,999
Tier 3	40,000-59,999
Tier 4	60,000-79,999
Tier 5	80,000+

- Any day that the market is not open for the entire trading day or the Exchange instructs Members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.
- The highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.
- The Total Affiliated Priority Customer ADV category includes all Priority Customer volume executed on the Exchange in all symbols and order types, including volume executed in the PIM, Facilitation, and QCC mechanisms.
- All eligible volume from affiliated Members will be aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on the Member's Form BD, Schedule A.
- <u>All eligible volume from a Mercury Appointed Order Flow Provider will be aggregated with its designated Mercury Appointed Market Maker's eligible volume in determining the Mercury Appointed Market Maker's applicable tiers, provided the Mercury Appointed Market Maker is designated by the Mercury Appointed Order Flow Provider in accordance with the below instructions.</u>

- A Mercury Appointed Market Maker is eligible to receive and aggregate volume credit from both their affiliated Members and their Mercury Appointed Order Flow Provider. A Mercury Appointed Order Flow Provider will not receive volume credit from its Mercury Appointed Market Maker or the Mercury Appointed Market Maker's affiliates in determining its applicable tiers.
- [100% of eligible traded volume preferenced to a market maker pursuant to Supplementary Material .03 to Rule 713 will count towards the member's volume tier. Market Makers not preferenced on an order will receive credit for the volume the non-preferenced market maker executes.]
- Designating a Mercury Appointed Market Maker / Appointed Order Flow Provider: An ISE Mercury Market Maker appoints an Electronic Access Member as its Appointed Order Flow Provider and an Electronic Access Member appoints an ISE Mercury Market Maker as its Appointed Market Maker, for the purposes of the Fee Schedule, by each sending an email to bizdev@ise.com. These corresponding emails will be viewed as acceptance of the appointment.
- The Exchange will recognize one such designation for each party. A party may make a designation not more than once every 6 months, which designation shall remain in effect until the Exchange receives an email from either party indicating that the appointment has been terminated.

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