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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77412; File No. SR-ISEMercury-2016-06]

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

March 21, 2016.

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 March 10, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission ("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 amend its Schedule of Fees to count 100% of eligible traded volume preferenced to a Market Maker towards that member's volume tiers. 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 received on the proposed rule change. The text of these statements may be examined at the places specified in

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

2 17 CFR 240.19b-4.

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

On March 10, 2016, ISE Mercury filed a proposed rule change to introduce fee and rebate tiers for Market Maker[3] and Priority Customer[4] orders based on the average daily volume ("ADV") that a member executes in Priority Customer orders.[5] Pursuant to that proposed rule change, the Exchange will assess fees and rebates for Market Maker and Priority Customer orders based on five tiers of Total Affiliated Priority Customer ADV:[6] 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").[7] 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 will also include volume

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3 The term Market Makers refers to "Competitive Market Makers" and "Primary Market Makers" collectively.

4 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).

5 See ISE Mercury-2016-05.

6 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.

7 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.

executed by affiliated members. In particular, the Exchange will aggregate 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 believes that it is important to give smaller firms the ability to compete for more favorable fees and rebates. The Exchange therefore proposes to adopt ADV tiers that are based on preferenced volume – i.e., volume directed to a specific Market Maker as provided in Supplementary Material .03 to Rule 713.[8] In particular, the Exchange proposes to give Market Makers volume credit for 100% of eligible traded volume preferenced to that member,[9] regardless of the actual allocation that the Market Maker receives. 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, and the Exchange believes that this will put smaller Market Makers on more equal footing with large firms that benefit from affiliated volume.

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8 An Electronic Access Member ("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.

9 "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." See note 6 supra.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and Section 6(b)(4) of the Act,[11] 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 that the proposed fee change is reasonable and equitable as it provides an additional way for members to increase volume used to qualify for lower fees and higher rebates. The Exchange has adopted volume based fees and rebates in another proposed rule change filed with the Commission. While volume based fees and rebates based on affiliated volume benefit Market Makers that have affiliated order routers, the Exchange believes that smaller Market Makers that attract order flow from non-affiliated firms should similarly be able to compete for more favorable fees and rebates. Preferred Market Makers attract order flow by establishing appropriate relationships with one or more EAMs that send Preferenced Orders to the Exchange. Although Preferred Market Makers may not be allocated the full volume orders preferenced to them, the Exchange believes that it is reasonable and equitable to give these Market Makers full credit for the volume of orders that they have attracted to ISE Mercury. This will put smaller Market Makers that are not affiliated with an order routing firm on more equal footing with large firms that benefit from affiliated volume today. In addition, the Exchange does not believe that it is unfairly discriminatory to provide this incentive specifically to Preferred Market Makers. As explained above, Preferred Market Makers attract order flow to the Exchange by establishing relationships with EAMs that direct Preferenced Orders to them. Moreover, all Market Makers are eligible to become Preferred Market Makers provided that they meet the quoting obligations expected of

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[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

such firms.[12]

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

In accordance with Section 6(b)(8) of the Act,[13] 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,[14] the Exchange also believes that Market Makers whose relationships attract Preference Orders should also receive similar benefits. As explained above, these Market Makers attract significant volume to the Exchange but currently only receive volume credit for a portion of that volume. 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.

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12 Preferred Competitive Market Makers have quoting obligations that mirror those for Primary Market Makers. See Supplementary Material .03(d) to Rule 713 and Rule 804(e)(2)(iii).

13 15 U.S.C. 78f(b)(8).

14 See note 5 supra.

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,[15] and subparagraph (f)(2) of Rule 19b-4 thereunder,[16] 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 Number SR-

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

16 17 CFR 240.19b-4(f)(2).

ISEMercury-2016-06 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISEMercury-2016-06. 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 Commission's Internet website (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, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISEMercury-2016-06, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,
Secretary.

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

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