

Required fields are shown with yellow backgrounds and asterisks.

Filing by ISE Gemini, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

Proposal to adopt a principles-based approach to prohibit the misuse of material, non-public information by Primary Market Makers and Competitive Market Makers.

**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 * <input type="text" value="Michael"/>	Last Name * <input type="text" value="Sanocki"/>
Title * <input type="text" value="Assistant General Counsel"/>	
E-mail * <input type="text" value="msanocki@ise.com"/>	
Telephone * <input type="text" value="(212) 897-8144"/>	Fax <input type="text"/>

**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.

(Title \*)

Date <input type="text" value="08/31/2015"/>	<input type="text" value="Secretary &amp; General Counsel"/>
By <input type="text" value="Michael Simon"/>	<input type="text"/>
(Name *)	

Persona Not Validated - 1434392700842,

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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

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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 \***

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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**

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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**

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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**

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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**

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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**

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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 Gemini, LLC (the “Exchange” or “ISE Gemini”) proposes to adopt a principles-based approach to prohibit the misuse of material, non-public information by Primary Market Makers (“PMMs”) and Competitive Market Makers (“CMMs”) (collectively “market makers”) by deleting Rule 810.

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of the Self-Regulatory Organization

The Exchange staff approved this proposed rule change on May 21, 2015. 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 Exchange proposes to adopt a principles-based approach to prohibit the misuse of material, non-public information by market makers by deleting Rule 810. In so doing, the Exchange would harmonize its rules amongst its Members<sup>1</sup> relating to protecting against the misuse of material, non-public information. The Exchange believes that Rule 810 is no longer necessary because all Members, including market makers, are subject to the Exchange’s general principles-based requirements governing the protection against the misuse of material, non-public information, pursuant to Exchange Rules, Chapter 4 – Business Conduct, Rule 408 (Prevention of the Misuse of Material Nonpublic Information), section (a) (“Rule 408(a)”), which obviates the need for separately-prescribed requirements for a subset of market participants on the Exchange.

### Background

The Exchange has two classes of registered market makers. Pursuant to Rule 800, a market maker is a Member with Designated Trading Representatives that is registered with the Exchange for the purpose of making transactions as a dealer-specialist. As the rule further provides, a market maker can be either a CMM or a PMM. All market makers are subject to the requirements of Rules 803 and 804, which set forth the obligations of market makers, particularly relating to quoting.

Rule 803 specifies the obligations of market makers, which include making markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange’s System in all series of options classes to which the market maker is

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<sup>1</sup> The term “Member” means an organization that has been approved to exercise trading rights associated with Exchange Rights. See Rule 100(a)(23).

appointed. The quoting obligations of market makers are set forth in Rule 804. That rule sets forth the main difference between PMMs and CMMs, namely that PMMs have a heightened quoting obligation as compared to CMMs.<sup>2</sup> In addition to a heightened quoting obligation pursuant to Rule 804, an Electronic Access Member may designate a Preferred Market Maker<sup>3</sup> on orders it enters into the System (“Preferred Orders”). These Preferred Market Makers, quoting at the NBBO at the time the Preferred Order is received, are eligible to receive a greater allocation of participation rights.<sup>4</sup>

Importantly, all market makers have access to the same information in the order book that is available to all other market participants. Moreover, none of the Exchange’s market makers have agency obligations to the Exchange’s order book. As such, the distinctions between PMMs and CMMs are the quoting requirements set forth in Rule 804.

Notwithstanding that market makers have access to the same Exchange trading information as all other market participants on the Exchange, the Exchange has specific rules governing how market makers may operate. Rule 810 allows market makers to engage in Other Business Activities<sup>5</sup> and to be affiliated with a broker-dealer that engages in Other Business Activities only if there is an Information Barrier between the marking making activities and the Other Business Activities. The Rule further provides that market makers must implement detailed Exchange-approved procedures to restrict the flow of material, non-public information. Rule 810(b) outlines the organizational structure of the Information Barrier, which a market maker must implement to meet the requirements of Rule 810(a). The Information Barrier is meant to ensure that a market maker will not have access to material, non-public information while engaging in Other Business Activities and that a market maker will not misuse material, non-public

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<sup>2</sup> Compare Rule 804(e)(1) (“Primary Market Makers. Primary Market Makers must enter continuous quotations and enter into any resulting transactions in all of the series listed on the Exchange of the options classes to which it is appointed on a daily basis.”) with 804(e)(2) (“Competitive Market Makers. (i) On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. (ii) A Competitive Market Maker may initiate quoting in options classes to which it is appointed intraday. (iii) Whenever a Competitive Market Maker enters a quote in an options class to which it is appointed, it must maintain continuous quotations in that class for 60% of the time the class is open for trading on the Exchange; provided, however, that a Competitive Market Maker shall be required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives Preferred Orders....”).

<sup>3</sup> A Preferred Market Maker may be the PMM appointed to the options class or any CMM appointed to the options class.

<sup>4</sup> .03 of Supplementary Material to Rule 713.

<sup>5</sup> Other Business Activities means “(1) conducting an investment or banking or public securities business; (2) making markets in the stocks underlying the options in which it makes markets; or (3) handling listed options orders as agent on behalf of Public Customers or broker-dealers; (4) conducting non-market making proprietary listed options trading activities.”

information obtained from an affiliated broker-dealer engaged in the Other Business Activities.

### Proposed Rule Change

The Exchange believes that the guidelines in Rule 810, for market makers, are no longer necessary and proposes to delete it. Rather, the Exchange believes that Rule 408(a) governing the misuse of material, non-public information provides for an appropriate, principles-based approach to prevent the market abuses Rule 810 is designed to address. Specifically Rule 408(a) requires every Exchange Member to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Member's business, to prevent the misuse of material, non-public information by such Member or associated person. For purposes of this requirement, the misuse of material, non-public information includes, but is not limited to, the following:

- (a) trading in any securities issued by a corporation, partnership, or Funds, as defined in Rule 502(h), or a trust or similar entities, or in any related securities or related options or other derivative securities, or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, while in possession of material nonpublic information concerning that corporation or those Funds or that trust or similar entities;
- (b) trading in an underlying security or related options or other derivative securities, or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, or any other derivatives based on such currency while in possession of material nonpublic information concerning imminent transactions in the above; and
- (c) disclosing to another person any material nonpublic information involving a corporation, partnership, or Funds or a trust or similar entities whose shares are publicly traded or an imminent transaction in an underlying security or related securities or in the underlying non-U.S. currency or any related non-U.S. currency options, futures or options on futures on such currency, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, or any other derivatives based on such currency for the purpose of facilitating the possible misuse of such material nonpublic information.

Because market makers are already subject to the requirements of Rule 408(a) and because market makers do not have any trading or information advantage over other Members, the Exchange does not believe that it is necessary to separately require specific limitations on dealings between market makers and their affiliates. Deleting Rule 810 would provide market makers and Members with the flexibility to adapt their policies and procedures as reasonably designed to reflect changes to their business model, business

activities, or the securities market in a manner similar to how Members on the Exchange currently operate and consistent with Rule 408(a). However, the Exchange notes that deleting Rule 810 does not obviate the need for reasonably designed information barriers in certain situations.

As noted above, PMMs and CMMs are distinguished under Exchange rules only to the extent that PMMs have heightened obligations and allocation guarantees. However, none of these heightened obligations provides different or greater access to non-public information than any other market participant on the Exchange.<sup>6</sup> Specifically, market makers on the Exchange do not have access to trading information provided by the Exchange, either at, or prior to, the point of execution, that is not made available to all other market participants on the Exchange in a similar manner. Further, as noted above, market makers on the Exchange do not have any agency responsibilities for orders on the order book. Accordingly, because market makers do not have any trading advantages at the Exchange due to their market role, the Exchange believes that they should be subject to the same rules as Members regarding the protection against the misuse of material, non-public information, which in this case, is existing Rule 408(a).

The Exchange notes that even with this proposed rule change, pursuant to Rule 408(a), a market maker would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules, including being reasonably designed to protect against the misuse of material, non-public information. While information barriers would not specifically be required under the proposal, Rule 408(a) already requires that a Member consider its business model or business activities in structuring its policies and procedures, which may dictate that an information barrier or a functional separation be part of the set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Exchange is not proposing to change what is considered to be material, non-public information and, thus does not expect there to be any changes to the types of information that an affiliated brokerage business of a market maker could share with such market maker. In that regard, the proposed rule change will not permit the EAM unit of a member to have access to any non-public order or quote information of the affiliated market maker, including hidden or undisplayed size or price information of such orders and quotes. Market makers are not allowed to post hidden or undisplayed orders and quotes on the Exchange. Members do not expect to receive any additional order or quote information as a result of this proposed rule change.

Further, the Exchange does not believe that there will be any material change to member information barriers as a result of removal of the Exchange's pre-approval requirements. In fact, the Exchange anticipates that eliminating the pre-approval requirement should facilitate implementation of changes to member information barriers as necessary to protect against the misuse of material, non-public information. The Exchange also suggests that the pre-approval requirement is unnecessary because market makers do not

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<sup>6</sup> See Rules 802(e) and 803.

have agency responsibilities to the book, or time and place information advantages because of their market role. However, as is the case today with market makers, information barriers of new entrants would be subject to review as part of a new firm application. Moreover, the policies and procedures of market makers, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

The Exchange further notes that under Rule 408(a), a Member would be able to structure its firm to provide for its options market makers, as applicable, to be structured with its equities and customer-facing businesses, provided that any such structuring would be done in a manner reasonably designed to protect against the misuse of material, non-public information. For example, pursuant to Rule 408(a) a market maker on the Exchange could be in the same independent trading unit, as defined in Rule 200(f) of Regulation SHO,<sup>7</sup> as an equities market maker and other trading desks within the firm, including options trading desks, so that the firm could share post-trade information to better manage its risk across related securities. The Exchange believes it is appropriate, and consistent with Rule 408(a) and Section 15(g) of the Act<sup>8</sup> for a firm to share options position and related hedging position information (e.g., equities, futures, and foreign currency) within a firm to better manage risk on a firm-wide basis. The Exchange notes, however, that if so structured, a firm would need to have policies and procedures, including information barriers as applicable, reasonably designed to protect against the misuse of material, non-public information, and specifically customer information, consistent with Rule 408(a).

The Exchange believes that the proposed reliance on the principles-based Rule 408(a) would ensure that a Member that operates a market maker would be required to protect against the misuse of any material, non-public information. As noted above, Rule 408(a) already requires that firms refrain from trading while in possession of material, non-public information concerning imminent transactions in the security or related product. The Exchange believes that moving to a principles-based approach rather than prescribing how and when to wall off a market maker from the rest of the firm would provide Members operating as market makers with appropriate tools to better manage risk across a firm, including integrating options positions with other positions of the firm or, as applicable, by the respective independent trading unit. Specifically, the Exchange believes that it is appropriate for risk management purposes for a member operating a market maker to be able to consider both options market makers traded positions for purposes of calculating net positions consistent with Rule 200 of Regulation SHO, calculating intra-day net capital positions, and managing risk both generally as well as in compliance with Rule 15c3-5 under the Act (the “Market Access Rule”).<sup>9</sup> The Exchange notes that any risk management operations would need to operate consistent with the requirement to protect against the misuse of material, non-public information.

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<sup>7</sup> 17 CFR Part 242.200(f).

<sup>8</sup> 15 U.S.C. 78o(g).

<sup>9</sup> 17 CFR Part 240.15c3-5.

The Exchange further notes that if market makers are integrated with other market making operations, they would be subject to existing rules that prohibit Members from disadvantaging their customers or other market participants by improperly capitalizing on a member organization's access to the receipt of material, non-public information. As such, a member organization that integrates its market maker operations together with equity market making would need to protect customer information consistent with existing obligations to protect such information. The Exchange has rules prohibiting Members from disadvantaging their customers or other market participants by improperly capitalizing on the Members' access to or receipt of material, nonpublic information. For example, Rule 609 requires members to establish, maintain, enforce, and keep current a system of compliance and supervisory controls, reasonably designed to achieve compliance with applicable securities laws and Exchange rules. Additionally, Rule 400 prevents a person associated with a Member, who has knowledge of all material terms and conditions of (i) an order and a solicited order, (ii) an order being facilitated, or (iii) orders being crossed; the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument unless certain circumstances are met.<sup>10</sup>

Additionally, the Exchange proposes to amend the text of Supplementary Material .06 to Rule 717 to match a recent change made by International Securities Exchange, LLC ("ISE").<sup>11</sup> The Exchange further notes that the changes proposed in this filing to Rule 717 have no substantive effect on the rule -- Members may still demonstrate that orders were entered without knowledge of a pre-existing order on the book represented by the same firm by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered. The rule requires that such information barriers be fully documented and provided to the Exchange upon request.

(b) Basis –

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by adopting a principles based approach to permit a Member operating a market maker to maintain and enforce policies and

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<sup>10</sup> .02 of Supplementary Material to Rule 400.

<sup>11</sup> See SR-ISE-2015-26 (notice pending publication in the Federal Register).

<sup>12</sup> 15 U.S.C. § 78f(b).

<sup>13</sup> 15 U.S.C. § 78f(b)(5).

procedures to, among other things, prohibit the misuse of material, non-public information and eliminate restrictions on how a Member structures its market making operations. The Exchange notes that the proposed rule change is based on an approved rule of the Exchange to which market makers are already subject – Rule 408(a) – and harmonizes the rules governing market makers and Members. Moreover, Members operating market makers would continue to be subject to federal and Exchange requirements for protecting material, non-public order information.<sup>14</sup> The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the Exchange’s approach to protecting against the misuse of material, non-public information and no longer subject market makers to additional requirements. The Exchange does not believe that the existing requirements applicable to market makers are narrowly tailored to their respective roles because neither market participant has access to Exchange trading information in a manner different from any other market participant on the Exchange and they do not have agency responsibilities to the order book. Additionally, concerning Rule 717, the Exchange believes that appropriate information barriers can be used to demonstrate that the execution of two orders within one second was inadvertent because the orders were entered without knowledge of each other, will clarify the intent and application of Supplementary Material .06 to Rule 717.

The Exchange further believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to market makers and Members the type of conduct that is prohibited by the Exchange. While the proposal eliminates requirements relating to the misuse of material, non-public information, market makers and Members would remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, non-public information.

The Exchange notes that the proposed rule change would still require that Members operating market makers maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules. Even though there would no longer be pre-approval of market maker information barriers, any market maker’s written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of prescribed restrictions should not reduce the effectiveness of the Exchange rules to protect against the misuse of material, non-public information. Rather, Members will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. Moreover, while specified information barriers may no longer be required, a Member’s business model or business activities may dictate that an information barrier or functional separation be part of the set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the

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<sup>14</sup> See 15 U.S.C. 78o(g) and Rule 408(a).

public interest that is currently applicable to market makers, while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect against the misuse of material non-public information.

Finally, the Exchange believes that proposed rule change to Rule 717 is consistent with Section 6(b)(5) of the Act,<sup>15</sup> which requires the rules of an exchange to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. In particular, by continuing to specify that the information barriers must be fully documented, members will be better prepared to properly respond to requests for information by the Exchange in the course of a regulatory investigation. Moreover, while members are generally required to provide information to the Exchange as requested, continuing to specify that members must provide written documentation regarding information barriers within the context of this rule will assure that all members adhere to the existing standard for demonstrating compliance with the rule.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will enhance competition by allowing market makers to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon market makers.

Moreover, the Exchange believes that the proposed rule change would eliminate a burden on competition for Members which currently exists as a result of disparate rule treatment between the options and equities markets regarding how to protect against the misuse of material, non-public information. For those Members that are also members of equity exchanges, their respective equity market maker operations are now subject to a principles-based approach to protecting against the misuse of material non-public information.<sup>16</sup> The Exchange believes it would remove a burden on competition to

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

<sup>16</sup> See Securities Exchange Act Release Nos. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR-NYSEArca-2009-78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) (“Arca Approval Order”); 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR-BATS-2010-003) (Order approving amendments to BATS Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, non-public information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) (“BATS Approval Order”); and 72534 (July 3, 2014), 79 FR 39440 (July 10, 2014), SR-NYSE-

enable Members to similarly apply a principles-based approach to protecting against the misuse of material, non-public information in the options space. To this end, the Exchange notes that Rule 408(a) still requires a Member that operates as a market maker on the Exchange to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material, non-public information. However, with this proposed rule change, a Member that trades equities and options could look at its firm more holistically to structure its operations in a manner that provides it with better tools to manage its risks across multiple security classes, while at the same time protecting against the misuse of material non-public information.

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

The Exchange has neither solicited nor received written 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

The Exchange does not consent to an extension of the time period for Commission action.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>17</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>18</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest; (2) will not impose any significant burden on competition; and (3) will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>19</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>20</sup>

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2014-12) (Order approving amendments to NYSE Rule 98 governing designated market makers to move to a principles-based approach to prohibit the misuse of material non-public information) (“NYSE Approval Order”).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>21</sup> because the proposed rule change would not significantly affect investors or the public interest. The proposed rule change does not impose any significant burden on competition for the reasons stated under Section 4 above. Other exchanges have already adopted substantially similar approaches to information barriers and therefore, this does not raise any new or novel issues.<sup>22</sup> Accordingly, with these changes, ISE Gemini's rules governing information barriers will now be consistent with NYSE MKT's and ISE's changes to their similar rules. Therefore, the proposed rule change presents no new novel issues.

For the foregoing reasons, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>23</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>24</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

The proposed rule change, which deletes Rule 810, is based on the rules of NYSE MKT, LLC, which has deleted similar specific information barrier requirements for their members.<sup>25</sup> The proposed rule change to Supplementary Material .06 to Rule 717 is based on Supplementary Material .07 to NYSE MKT Rule 935NY<sup>26</sup> and the text of Supplementary Material .06 to ISE Rule 717 in 2011.<sup>27</sup>

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

Not applicable.

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<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> See Securities and Exchange Act Release No. 75432 (July 12, 2015), FR 42597 (July 17, 2015), (SR-NYSEMKT-2015-23); See Securities Exchange Act Release No. 65893 (December 5, 2011), 76 FR 77030 (December 9, 2011) (SR-NYSE Amex-2011-92) and SR-ISE-2015-26 (notice pending publication in the Federal Register).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</sup> See Securities and Exchange Act Release No. 75432 (July 12, 2015), FR 42597 (July 17, 2015), (SR-NYSEMKT-2015-23);

<sup>26</sup> See Securities Exchange Act Release No. 65893 (December 5, 2011), 76 FR 77030 (December 9, 2011) (SR-NYSE Amex-2011-92).

<sup>27</sup> See Securities Exchange Act Release No. 65361 (September 20, 2011), 76 FR 59472 (September 26, 2011) (SR-ISE-2011-42).

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 Gemini-2015-14)

[Date]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting a Principles-Based Approach to Prohibit the Misuse of Material, Non-public Information by Market Makers by Deleting Rule 810

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 31, 2015, ISE Gemini, LLC (the "Exchange" or the "ISE Gemini") 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 Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 Gemini proposes to adopt a principles-based approach to prohibit the misuse of material, non-public information by market makers by deleting Rule 810. The text of

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

the proposed rule change is available on the Exchange's website at [www.ise.com](http://www.ise.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

(a) Purpose –

The Exchange proposes to adopt a principles-based approach to prohibit the misuse of material, non-public information by market makers by deleting Rule 810. In so doing, the Exchange would harmonize its rules amongst its Members<sup>5</sup> relating to protecting against the misuse of material, non-public information. The Exchange believes that Rule 810 is no longer necessary because all Members, including market makers, are subject to the Exchange's general principles-based requirements governing the protection against the misuse of material, non-public information, pursuant to Exchange Rules, Chapter 4 – Business Conduct, Rule 408 (Prevention of the Misuse of Material Nonpublic Information), section (a) (“Rule 408(a)”), which obviates the need

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<sup>5</sup> The term “Member” means an organization that has been approved to exercise trading rights associated with Exchange Rights. See Rule 100(a)(23).

for separately-prescribed requirements for a subset of market participants on the Exchange.

### Background

The Exchange has two classes of registered market makers. Pursuant to Rule 800, a market maker is a Member with Designated Trading Representatives that is registered with the Exchange for the purpose of making transactions as a dealer-specialist. As the rule further provides, a market maker can be either a CMM or a PMM. All market makers are subject to the requirements of Rules 803 and 804, which set forth the obligations of market makers, particularly relating to quoting.

Rule 803 specifies the obligations of market makers, which include making markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange's System in all series of options classes to which the market maker is appointed. The quoting obligations of market makers are set forth in Rule 804. That rule sets forth the main difference between PMMs and CMMs, namely that PMMs have a heightened quoting obligation as compared to CMMs.<sup>6</sup> In addition to a heightened quoting obligation pursuant to Rule 804, an Electronic Access Member may

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<sup>6</sup> Compare Rule 804(e)(1) ("Primary Market Makers. Primary Market Makers must enter continuous quotations and enter into any resulting transactions in all of the series listed on the Exchange of the options classes to which it is appointed on a daily basis.") with 804(e)(2) ("Competitive Market Makers. (i) On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. (ii) A Competitive Market Maker may initiate quoting in options classes to which it is appointed intraday. (iii) Whenever a Competitive Market Maker enters a quote in an options class to which it is appointed, it must maintain continuous quotations in that class for 60% of the time the class is open for trading on the Exchange; provided, however, that a Competitive Market Maker shall be required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives Preferred Orders....").

designate a Preferred Market Maker<sup>7</sup> on orders it enters into the System (“Preferred Orders”). These Preferred Market Makers, quoting at the NBBO at the time the Preferred Order is received, are eligible to receive a greater allocation of participation rights.<sup>8</sup>

Importantly, all market makers have access to the same information in the order book that is available to all other market participants. Moreover, none of the Exchange’s market makers have agency obligations to the Exchange’s order book. As such, the distinctions between PMMs and CMMs are the quoting requirements set forth in Rule 804.

Notwithstanding that market makers have access to the same Exchange trading information as all other market participants on the Exchange, the Exchange has specific rules governing how market makers may operate. Rule 810 allows market makers to engage in Other Business Activities<sup>9</sup> and to be affiliated with a broker-dealer that engages in Other Business Activities only if there is an Information Barrier between the market making activities and the Other Business Activities. The Rule further provides that market makers must implement detailed Exchange-approved procedures to restrict the flow of material, non-public information. Rule 810(b) outlines the organizational structure of the Information Barrier, which a market maker must implement to meet the requirements of Rule 810(a). The Information Barrier is meant to ensure that a market

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<sup>7</sup> A Preferred Market Maker may be the PMM appointed to the options class or any CMM appointed to the options class.

<sup>8</sup> .03 of Supplementary Material to Rule 713.

<sup>9</sup> Other Business Activities means “(1) conducting an investment or banking or public securities business; (2) making markets in the stocks underlying the options in which it makes markets; or (3) handling listed options orders as agent on behalf of Public Customers or broker-dealers; (4) conducting non-market making proprietary listed options trading activities.”

maker will not have access to material, non-public information while engaging in Other Business Activities and that a market maker will not misuse material, non-public information obtained from an affiliated broker-dealer engaged in the Other Business Activities.

#### Proposed Rule Change

The Exchange believes that the guidelines in Rule 810, for market makers, are no longer necessary and proposes to delete it. Rather, the Exchange believes that Rule 408(a) governing the misuse of material, non-public information provides for an appropriate, principles-based approach to prevent the market abuses Rule 810 is designed to address. Specifically Rule 408(a) requires every Exchange Member to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Member's business, to prevent the misuse of material, non-public information by such Member or associated person. For purposes of this requirement, the misuse of material, non-public information includes, but is not limited to, the following:

- (a) trading in any securities issued by a corporation, partnership, or Funds, as defined in Rule 502(h), or a trust or similar entities, or in any related securities or related options or other derivative securities, or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, while in possession of material nonpublic information concerning that corporation or those Funds or that trust or similar entities;

- (b) trading in an underlying security or related options or other derivative securities, or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, or any other derivatives based on such currency while in possession of material nonpublic information concerning imminent transactions in the above; and
- (c) disclosing to another person any material nonpublic information involving a corporation, partnership, or Funds or a trust or similar entities whose shares are publicly traded or an imminent transaction in an underlying security or related securities or in the underlying non-U.S. currency or any related non-U.S. currency options, futures or options on futures on such currency, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, or any other derivatives based on such currency for the purpose of facilitating the possible misuse of such material nonpublic information.

Because market makers are already subject to the requirements of Rule 408(a) and because market makers do not have any trading or information advantage over other Members, the Exchange does not believe that it is necessary to separately require specific limitations on dealings between market makers and their affiliates. Deleting Rule 810 would provide market makers and Members with the flexibility to adapt their policies and procedures as reasonably designed to reflect changes to their business model, business activities, or the securities market in a manner similar to how Members on the Exchange currently operate and consistent with Rule 408(a). However, the Exchange notes that

deleting Rule 810 does not obviate the need for reasonably designed information barriers in certain situations.

As noted above, PMMs and CMMs are distinguished under Exchange rules only to the extent that PMMs have heightened obligations and allocation guarantees. However, none of these heightened obligations provides different or greater access to non-public information than any other market participant on the Exchange.<sup>10</sup> Specifically, market makers on the Exchange do not have access to trading information provided by the Exchange, either at, or prior to, the point of execution, that is not made available to all other market participants on the Exchange in a similar manner. Further, as noted above, market makers on the Exchange do not have any agency responsibilities for orders on the order book. Accordingly, because market makers do not have any trading advantages at the Exchange due to their market role, the Exchange believes that they should be subject to the same rules as Members regarding the protection against the misuse of material, non-public information, which in this case, is existing Rule 408(a).

The Exchange notes that even with this proposed rule change, pursuant to Rule 408(a), a market maker would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules, including being reasonably designed to protect against the misuse of material, non-public information. While information barriers would not specifically be required under the proposal, Rule 408(a) already requires that a Member consider its business model or business activities in structuring its policies and procedures, which may dictate that an information barrier or a functional separation be part of the set of

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<sup>10</sup> See Rules 802(e) and 803.

policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Exchange is not proposing to change what is considered to be material, non-public information and, thus does not expect there to be any changes to the types of information that an affiliated brokerage business of a market maker could share with such market maker. In that regard, the proposed rule change will not permit the EAM unit of a member to have access to any non-public order or quote information of the affiliated market maker, including hidden or undisplayed size or price information of such orders and quotes. Market makers are not allowed to post hidden or undisplayed orders and quotes on the Exchange. Members do not expect to receive any additional order or quote information as a result of this proposed rule change.

Further, the Exchange does not believe that there will be any material change to member information barriers as a result of removal of the Exchange's pre-approval requirements. In fact, the Exchange anticipates that eliminating the pre-approval requirement should facilitate implementation of changes to member information barriers as necessary to protect against the misuse of material, non-public information. The Exchange also suggests that the pre-approval requirement is unnecessary because market makers do not have agency responsibilities to the book, or time and place information advantages because of their market role. However, as is the case today with market makers, information barriers of new entrants would be subject to review as part of a new firm application. Moreover, the policies and procedures of market makers, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

The Exchange further notes that under Rule 408(a), a Member would be able to structure its firm to provide for its options market makers, as applicable, to be structured with its equities and customer-facing businesses, provided that any such structuring would be done in a manner reasonably designed to protect against the misuse of material, non-public information. For example, pursuant to Rule 408(a) a market maker on the Exchange could be in the same independent trading unit, as defined in Rule 200(f) of Regulation SHO,<sup>11</sup> as an equities market maker and other trading desks within the firm, including options trading desks, so that the firm could share post-trade information to better manage its risk across related securities. The Exchange believes it is appropriate, and consistent with Rule 408(a) and Section 15(g) of the Act<sup>12</sup> for a firm to share options position and related hedging position information (e.g., equities, futures, and foreign currency) within a firm to better manage risk on a firm-wide basis. The Exchange notes, however, that if so structured, a firm would need to have policies and procedures, including information barriers as applicable, reasonably designed to protect against the misuse of material, non-public information, and specifically customer information, consistent with Rule 408(a).

The Exchange believes that the proposed reliance on the principles-based Rule 408(a) would ensure that a Member that operates a market maker would be required to protect against the misuse of any material, non-public information. As noted above, Rule 408(a) already requires that firms refrain from trading while in possession of material, non-public information concerning imminent transactions in the security or related product. The Exchange believes that moving to a principles-based approach rather than

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<sup>11</sup> 17 CFR Part 242.200(f).

<sup>12</sup> 15 U.S.C. 78o(g).

prescribing how and when to wall off a market maker from the rest of the firm would provide Members operating as market makers with appropriate tools to better manage risk across a firm, including integrating options positions with other positions of the firm or, as applicable, by the respective independent trading unit. Specifically, the Exchange believes that it is appropriate for risk management purposes for a member operating a market maker to be able to consider both options market makers traded positions for purposes of calculating net positions consistent with Rule 200 of Regulation SHO, calculating intra-day net capital positions, and managing risk both generally as well as in compliance with Rule 15c3-5 under the Act (the “Market Access Rule”).<sup>13</sup> The Exchange notes that any risk management operations would need to operate consistent with the requirement to protect against the misuse of material, non-public information.

The Exchange further notes that if market makers are integrated with other market making operations, they would be subject to existing rules that prohibit Members from disadvantaging their customers or other market participants by improperly capitalizing on a member organization’s access to the receipt of material, non-public information. As such, a member organization that integrates its market maker operations together with equity market making would need to protect customer information consistent with existing obligations to protect such information. The Exchange has rules prohibiting Members from disadvantaging their customers or other market participants by improperly capitalizing on the Members’ access to or receipt of material, nonpublic information. For example, Rule 609 requires members to establish, maintain, enforce, and keep current a system of compliance and supervisory controls, reasonably designed to achieve compliance with applicable securities laws and Exchange rules. Additionally, Rule 400

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<sup>13</sup> 17 CFR Part 240.15c3-5.

prevents a person associated with a Member, who has knowledge of all material terms and conditions of (i) an order and a solicited order, (ii) an order being facilitated, or (iii) orders being crossed; the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument unless certain circumstances are met.<sup>14</sup>

Additionally, the Exchange proposes to amend the text of Supplementary Material .06 to Rule 717 to match a recent change made by International Securities Exchange, LLC (“ISE”).<sup>15</sup> The Exchange further notes that the changes proposed in this filing to Rule 717 have no substantive effect on the rule -- Members may still demonstrate that orders were entered without knowledge of a pre-existing order on the book represented by the same firm by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered. The rule requires that such information barriers be fully documented and provided to the Exchange upon request.

(b) Basis –

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a

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<sup>14</sup> .02 of Supplementary Material to Rule 400.

<sup>15</sup> See SR-ISE-2015-26 (notice pending publication in the Federal Register).

<sup>16</sup> 15 U.S.C. § 78f(b).

<sup>17</sup> 15 U.S.C. § 78f(b)(5).

free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by adopting a principles based approach to permit a Member operating a market maker to maintain and enforce policies and procedures to, among other things, prohibit the misuse of material, non-public information and eliminate restrictions on how a Member structures its market making operations. The Exchange notes that the proposed rule change is based on an approved rule of the Exchange to which market makers are already subject – Rule 408(a) – and harmonizes the rules governing market makers and Members. Moreover, Members operating market makers would continue to be subject to federal and Exchange requirements for protecting material, non-public order information.<sup>18</sup> The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the Exchange’s approach to protecting against the misuse of material, non-public information and no longer subject market makers to additional requirements. The Exchange does not believe that the existing requirements applicable to market makers are narrowly tailored to their respective roles because neither market participant has access to Exchange trading information in a manner different from any other market participant on the Exchange and they do not have agency responsibilities to the order book. Additionally, concerning Rule 717, the Exchange believes that appropriate information barriers can be used to demonstrate that the execution of two orders within one second was inadvertent because

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<sup>18</sup> See 15 U.S.C. 78o(g) and Rule 408(a).

the orders were entered without knowledge of each other, will clarify the intent and application of Supplementary Material .06 to Rule 717.

The Exchange further believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to market makers and Members the type of conduct that is prohibited by the Exchange. While the proposal eliminates requirements relating to the misuse of material, non-public information, market makers and Members would remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, non-public information.

The Exchange notes that the proposed rule change would still require that Members operating market makers maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules. Even though there would no longer be pre-approval of market maker information barriers, any market maker's written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of prescribed restrictions should not reduce the effectiveness of the Exchange rules to protect against the misuse of material, non-public information. Rather, Members will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. Moreover, while specified information barriers may no longer be required, a Member's business model or business activities may dictate that an information barrier or functional separation be part of the set of policies and procedures

that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the public interest that is currently applicable to market makers, while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect against the misuse of material non-public information.

Finally, the Exchange believes that proposed rule change to Rule 717 is consistent with Section 6(b)(5) of the Act,<sup>19</sup> which requires the rules of an exchange to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. In particular, by continuing to specify that the information barriers must be fully documented, members will be better prepared to properly respond to requests for information by the Exchange in the course of a regulatory investigation. Moreover, while members are generally required to provide information to the Exchange as requested, continuing to specify that members must provide written documentation regarding information barriers within the context of this rule will assure that all members adhere to the existing standard for demonstrating compliance with the rule.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will enhance competition

by allowing market makers to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon market makers.

Moreover, the Exchange believes that the proposed rule change would eliminate a burden on competition for Members which currently exists as a result of disparate rule treatment between the options and equities markets regarding how to protect against the misuse of material, non-public information. For those Members that are also members of equity exchanges, their respective equity market maker operations are now subject to a principles-based approach to protecting against the misuse of material non-public information.<sup>20</sup> The Exchange believes it would remove a burden on competition to enable Members to similarly apply a principles-based approach to protecting against the misuse of material, non-public information in the options space. To this end, the Exchange notes that Rule 408(a) still requires a Member that operates as a market maker on the Exchange to evaluate its business to assure that its policies and procedures are

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<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See Securities Exchange Act Release Nos. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR-NYSEArca-2009-78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) (“Arca Approval Order”); 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR-BATS-2010-003) (Order approving amendments to BATS Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, non-public information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) (“BATS Approval Order”); and 72534 (July 3, 2014), 79 FR 39440 (July 10, 2014), SR-NYSE-2014-12) (Order approving amendments to NYSE Rule 98 governing designated market makers to move to a principles-based approach to prohibit the misuse of material non-public information) (“NYSE Approval Order”).

reasonably designed to protect against the misuse of material, non-public information. However, with this proposed rule change, a Member that trades equities and options could look at its firm more holistically to structure its operations in a manner that provides it with better tools to manage its risks across multiple security classes, while at the same time protecting against the misuse of material non-public information.

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 written comments from members or other interested parties.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>21</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>22</sup> The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 C.F.R. 240.19b-4.

five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.<sup>23</sup>

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: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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](mailto:rule-comments@sec.gov). Please include File No. SR-ISE Gemini-2015-14 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-ISE Gemini-2015-14. 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

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<sup>23</sup> The Exchange has fulfilled this requirement.

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 inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of ISE Gemini. 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 Gemini-2015-14 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.<sup>24</sup>

Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).

Exhibit 5  
Text of the Proposed Rule Change  
Underlining indicates additions; [brackets] indicate deletions.

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**Rule 717. Limitations on Orders**

(a) – (g) No change.

***Supplementary Material to Rule 717***

.01 - .05 No change.

.06 The exposure requirement of paragraph (d) and (e) of Rule 717 applies to the entry of orders with knowledge that there is a pre-existing unexecuted agency, proprietary, or solicited order on the Exchange[; provided, however, that a market maker's quotations and orders on the order book may be made available to persons performing the function of an Electronic Access Member or its affiliated persons, in accordance with Rule 810(b)(1) and (2)]. Members may demonstrate that orders were entered without knowledge by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered [or that order entry by such Member meets the requirements of Rule 810(b)(1) and (2)]. Such information barriers must be fully documented and provided to the Exchange upon request.

[In accordance with the requirements of Rule 810(b)(1) and (2), orders from the same member's Electronic Access Member unit and its affiliated Primary Market Maker and/or Competitive Market Maker unit(s) may interact within one second without being a violation of the order exposure requirement of paragraph (d) and (e) of Rule 717 when the firm can demonstrate that the customer order that it routed was marketable, the EAM was not handling the affiliated market maker quote/order and the affiliated market maker quote/order was in existence at the time the customer order(s) were entered into the ISE's system.]

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**[Rule 810. Limitations on Dealings**

(a) *General Rule.* A market maker on the Exchange may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is an Information Barrier between the market making activities and the Other Business Activities. “Other Business Activities” means:

(1) conducting an investment or banking or public securities business;

(2) making markets in the stocks underlying the options in which it makes markets; or

(3) handling listed options orders as agent on behalf of Public Customers or broker-dealers;

(4) conducting non-market making proprietary listed options trading activities.

(b) *Information Barrier.* For the purposes of this rule, an Information Barrier is an organizational structure in which:

(1) The market making functions are conducted in a physical location separate from the locations in which the Other Business Activities are conducted, in a manner that effectively impedes the free flow of communications between DTRs and persons conducting the Other Business Activities. However, upon request and not on his own initiative, a DTR performing the function of a market maker may furnish to a person performing the function of an Electronic Access Member or other persons at the same firm or an affiliated firm (“affiliated persons”), the same sort of market information that the DTR would make available in the normal course of its market making activity to any other person. The DTR must provide such information to affiliated persons in the same manner that he would make such information available to a non-affiliated person.

(2) There are procedures implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the barrier from influencing the conduct of persons on the other side of the barrier. These procedures, at a minimum, must provide that:

(i) the DTR performing the function of a market maker does not take advantage of knowledge of pending transactions, order flow information, corporate information or recommendations arising from the Other Business Activities; and

(ii) all information pertaining to the market maker's positions and trading activities is kept confidential and not made available to persons on the other side of the Information Barrier; provided, however, that a market maker's quotations and orders on the order book in option classes may be made available to persons performing the function of an Electronic Access Member or its affiliated persons that handle listed options orders as agent on behalf of Public Customers or broker-dealers.

(3) Persons on one side of the barrier may not exercise influence or control over persons on the other side of the barrier, provided that:

(i) the market making function and the Other Business Activities may be under common management as long as any general management oversight does not conflict with or compromise the market maker's responsibilities under the Rules of the Exchange; and

(ii) the same person or persons (the "Supervisor") may be responsible for the supervision of the market making and Electronic Access Member functions of the same firm or affiliated firms in order to monitor the overall risk exposure of the firm or affiliated firms. While the Supervisor may establish general trading parameters with respect to both market making and other proprietary trading other than on an order-specific basis, the Supervisor may not:

(A) actually perform the function either of market maker or Electronic Access Member;

(B) provide to any person performing the function of an Electronic Access Member any information relating to market making activity beyond the information that a DTR performing the function of a Primary Market Maker may provide under paragraph (b)(1) and (2), above; nor

(C) provide a DTR performing the function of market maker with specific information regarding the firm's pending transactions or order flow arising out of its Electronic Access Member activities.

(c) *Documenting and Reporting of Information Barrier Procedures.* A Member implementing an Information Barrier pursuant to this Rule shall submit to the Exchange a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b) of this Rule, and the compliance and audit procedures it

proposes to implement to ensure that the Information Barrier is maintained;

(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

(3) A commitment to provide the Exchange with such information and reports as the Exchange may request relating to its transactions;

(4) A commitment to take appropriate remedial action against any person violating this Rule or the Member's internal compliance and audit procedures adopted pursuant to paragraph (c)(1) of this Rule, and that it recognizes that the Exchange may take appropriate remedial action, including (without limitation) reallocation of securities in which it serves as a market maker, in the event of such a violation;

(5) Whether the Member or an affiliate intends to clear its proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the Member's Information Barrier, which procedures, at a minimum, must be the same as those used by the Member or the affiliate to clear for unaffiliated third parties; and

(6) That it recognizes that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of Rules 10b-5 and 14e-3 under the Exchange Act or one or more other provisions of the Exchange Act, the rules thereunder or the Rules of the Exchange, and that the Exchange intends to review carefully any such trading of which it becomes aware to determine whether a violation has occurred.

(b) *Exchange Approval of Information Barrier Procedures.* The written statement required by paragraph (c) of this Rule must detail the internal controls that the Member will implement to satisfy each of the conditions stated in that Rule, and the compliance and audit procedures proposed to implement and ensure that the controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the Member are acceptable under this Rule, the Exchange shall so inform the Member, in writing. Absent the Exchange finding a Member's Information Barrier procedures acceptable, a market maker may not conduct Other Business Activities.

(c) *Clearing Arrangements.* Paragraph (c)(5) permits a Member or an affiliate of the Member to clear the Member's market maker transactions if it

establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Information Barrier. In this regard:

(1) The procedures must provide that any information pertaining to market maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Rule to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity.

(2) Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any market maker to meet market making or other obligations under the Exchange's Rules.

(f) *Exceptions to the Information Barrier Requirement.*

(1) A market maker shall be exempt from paragraph (a)(3) of this Rule to the extent the market maker complies with the following conditions:

(A) such Member handles orders as agent only for the account of entities that are affiliated with the Member and solely in options classes to which the Member is not appointed as a market maker pursuant to Rule 802 or in which the Member is prohibited from acting as a market maker pursuant to regulatory requirements; or

(B) such market maker handles orders as agent solely with respect to a Directed Order Program, as defined in Supplementary Material .01 below.

(2) A market maker shall be exempt from paragraph (a)(4) of this Rule to the extent the Member, or a broker-dealer with which such Member is affiliated:

(A) engages solely in proprietary trading and does not, under any circumstances, maintain customer accounts or solicit or accept orders or funds from or on behalf of Public Customers or broker-dealers; and

(B) does not participate in any Directed Order Programs, as defined in Supplementary Material .01 below, or utilize any other order types which call for the participation of, or interaction with, Public Customers or broker-dealers.

***Supplemental Material to Rule 810***

.01 For purposes of paragraph (f)(1)(B) and (f)(2)(B) of Rule 810 only, a Directed Order Program means rules of an options exchange that (1) permit an options market maker to handle orders directed to it anonymously through an exchange system; (2) require the market maker to accept directed orders from all sources eligible to direct orders using such exchange system; and (3) require the options market maker to execute such directed orders on such exchange under specified order handling procedures. A Directed Order Program shall not include any rules of an exchange that permit a market maker to accept orders directly, without being routed through an exchange system, from customers or another broker-dealer, nor any rules or system that allows a market maker to handle orders on a disclosed or discretionary basis.] Reserved.

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