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

File No.* SR - 2016 - * 05
Amendment No. (req. for Amendments *)

Filing by ISE Mercury, LLC

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

Initial * ☑ Amendment * ☐ Withdrawal ☐

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

Rule

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

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

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

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

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

Section 3C(b)(2) * ☐

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

Description

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

Proposal to amend Schedule of Fees.

Contact Information

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

First Name * Michael Last Name * Sanocki

Title * Assistant General Counsel

E-mail * msanocki@ise.com

Telephone * (212) 897-8144 Fax

Signature

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

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

Date 03/10/2016

By Michael Simon

(Name *)

(Title *)

Secretary & General Counsel

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

Persona Not Validated - 1434392700842,

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

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

1. Text of the Proposed Rule Change

(a) ISE Mercury, LLC (the "Exchange" or "ISE Mercury") is proposing to amend its Schedule of Fees to adopt volume-based tiered rebates and fees. These tiers are determined by a member's average daily volume of Priority Customer orders traded on the Exchange. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

(a) Purpose – ISE Mercury is proposing to amend its Schedule of Fees to establish volume-based tiered rebates and fees (the "Member Volume Program" or "MVP"). The MVP tiers are determined by a member's average daily volume ("ADV") of Priority Customer[1] Regular Orders,[2] in Penny and Non-Penny Pilot Symbols,[3] traded on the Exchange. The Exchange will also aggregate the trading activity of affiliated members in determining this ADV.[4] ISE Mercury believes the proposed fee and rebate tiers will incentivize firms to increase Priority Customer order flow to the Exchange. The

[1] 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).

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

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

[4] Aggregation is necessary and appropriate because certain members conduct customer and market maker trading activity through separate but related broker-dealers.

Exchange is also proposing Penny and Non-Penny Symbol fees for both Crossing Orders and Responses to Crossing Orders. Finally, the Exchange proposes to offer Market Makers[5] a per contract discount when trading against Non-Priority Customer orders.

The Member Volume Program

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

The Exchange proposes to amend the above fees and rebates so that they will be based on a member's ADV of Priority Customer orders traded in a given month and the highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. This Priority Customer ADV includes all Priority Customer volume executed on the Exchange in all symbols and order types, including volume executed in the Price Improvement Mechanism ("PIM") and the Facilitation and Qualified Contingent Cross mechanisms.

Further, the Exchange will aggregate the trading activity of separate members in calculating Priority Customer ADV provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. The Exchange believes that aggregating this volume across members that share at least 75% common ownership will allow members to continue to execute trades on the Exchange through separate broker-dealer entities for different types of volume, while receiving rebates based on the aggregate volume being executed across such entities.

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

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

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

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

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

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

The Exchange now proposes fees and rebates based on five volume tier levels as described in the table below. These fees and rebates will be based on the highest tier that a member reaches in a given month, and these tiered rates will apply retroactively to all eligible traded contracts for all client categories.

Qualifying Tier Thresholds	
Tier	**Total Affiliated Priority Customer ADV**
Tier 1	0 – 19,999
Tier 2	20,000 – 39,999
Tier 3	40,000 – 59,999
Tier 4	60,000 – 79,999
Tier 5	80,000+

Additionally, the Exchange proposes to amend the Schedule of Fees to include language related to excluding days from the ADV calculations used to determine applicable fee and rebate tiers. Specifically, the Exchange proposes to 1) exclude from its ADV calculations any trading day on which the Exchange is closed early for holiday observance; 2) exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market; and 3) permit days to be excluded from its ADV calculations where the Exchange is technically open for the entire trading day, but has instructed members to route away due to a systems or other error that ultimately does not impact trading on the Exchange. The Exchange also notes, however, that if it has a systems issue in the morning before the market opens, it may instruct members to route away to other markets. If the systems issue continues into trading hours, the Exchange is permitted to exclude the day for all members that would have a lower ADV with the day included. If, however, the systems issue is resolved prior to the opening of trading, the Exchange is not permitted to exclude the day from its ADV calculations. This is the case regardless of the fact that many members would have already made arrangements to route away in accordance with the Exchange's instructions. To prevent this undesirable result, and preserve the Exchange's intent behind adopting volume-based pricing, the Exchange proposes to allow days to be excluded from its ADV calculation whenever all members are instructed, in writing, to route their orders to other markets.

Because the days the Exchange proposes to exclude from its ADV calculation generally have artificially lower trading volume, the Exchange believes that it is reasonable and equitable to not include such days in determining fee and rebate tiers. If the Exchange did not have the ability to exclude aberrant low volume days when calculating ADV for the month, as a result of the decreased trading volume, the numerator for the calculation (e.g., trading volume) would be correspondingly lower, but the denominator for the threshold calculations (e.g., the number of trading days) would not be decreased. This could result in an unintended cost increase. Absent the authority to exclude days that the market is not open for the entire trading day, members will experience an effective decrease in rebates. The artificially low volumes of trading on such days could reduce the trading activity of members both daily and monthly. Accordingly, excluding such days from the monthly calculation will diminish the likelihood of an effective increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its members.

The Exchange notes that the fees charged to Non-ISE Mercury Market Maker, Firm Proprietary / Broker Dealer and Professional Customer in Penny and Non-Penny Symbols are the same as the current fees charged, regardless of the tier level reached. However, the tiered fees and rebates for both Priority Customers and Market Makers have changed. The proposed fees and rebates for each tier and participant type are as follows:

Penny Symbol Fees and Rebates (per contract)			
Tier	**Priority Customer**	**Market Maker**	**Firm Proprietary, B/D, FarMM & Professional Customer**
Tier 1	($0.05)	$0.25	$0.47
Tier 2	($0.10)	$0.22	$0.47
Tier 3	($0.15)	$0.18	$0.47
Tier 4	($0.21)	$0.15	$0.47
Tier 5	($0.24)	$0.10	$0.47

Non-Penny Symbol Fees and Rebates (per contract)			
Tier	**Priority Customer**	**Market Maker**	**Firm Proprietary, B/D, FarMM & Professional Customer**
Tier 1	($0.05)	$0.25	$0.90
Tier 2	($0.10)	$0.22	$0.90
Tier 3	($0.15)	$0.18	$0.90
Tier 4	($0.21)	$0.15	$0.90
Tier 5	($0.24)	$0.10	$0.90

Crossing Orders

The Exchange proposes Penny and Non-Penny Symbol fees for Crossing Orders. The Exchange currently charges a fee of $0.20 per contract for Crossing Orders[11] in all symbols traded on the Exchange for all market participants, except Priority Customers who are charged $0.00 per contract for Crossing Orders. A Crossing Order is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, PIM, or

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

submitted as a Qualified Contingent Cross order. Orders executed in the Block Order Mechanism are also considered Crossing Orders. The fees for Crossing Orders, except for PIM Orders of 500 or Fewer Contracts, in both Penny and Non-Penny Symbols have not changed from current levels.

As an exception to the fees charged for Crossing Orders, the Exchange charges a fee of $0.05 per contract for PIM Orders of 500 or Fewer Contracts in all symbols traded on the Exchange for all market participants, except that Priority Customer orders on the originating side of a PIM auction receive a rebate of ($0.13) per contract. Priority Customer orders on the contra-side of a PIM auction pay no fee and receive no rebate. PIM orders greater than 500 contracts pay the Crossing Order fee, described above. The Exchange now proposes to offer tiered fees and rebates based on Priority Customer volume, as described above, for PIM Orders of 500 or Fewer Contracts. The Exchange notes that the fees for Non-Priority Customer orders have not changed from current levels, but the fees for Priority Customer orders have changed as described in the table, below.

All Symbols Fee/Rebate for PIM Orders of 500 or Fewer Contracts			
Tier	**Priority Customer**	**Market Maker**	**Firm Proprietary, B/D, FarMM & Professional Customer**
Tier 1	($0.11)	$0.05	$0.05
Tier 2	($0.11)	$0.05	$0.05
Tier 3	($0.13)	$0.05	$0.05
Tier 4	($0.13)	$0.05	$0.05
Tier 5	($0.13)	$0.05	$0.05

Responses to Crossing Orders

The Exchange proposes Penny and Non-Penny Symbol fees for Responses to Crossing Orders. A Response to a Crossing Order is any contra-side interest (i.e., orders and quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism, or PIM. Currently, the Exchange charges a fee of (1) $0.20 per contract for Market Maker orders and (2) $0.50 per contract for Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer, and Priority Customer orders in all symbols. For Responses to Crossing Orders in Penny Symbols, the Exchange proposes to charge Market Makers the corresponding tiered fees in the chart titled Penny Symbol Fees and Rebates, above. For Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer, and Priority Customer orders in Penny Symbols, the fees have not changed from current levels. For Responses to Crossing Orders in Non-Penny Symbols, the Exchange proposes to charge Market Makers the corresponding tiered fees in the chart titled Non-Penny Symbol Fees and Rebates, above. For Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer, and Priority Customer orders in Non-Penny Symbols, the Exchange proposes to charge a fee of $0.95 per contract.

With respect to the proposed MVP, described above, the Exchange notes that the fees and rebates currently being paid on ISE Mercury are in the range of fees and rebates in the new structure. During the initial rollout of symbols on ISE Mercury, the Exchange did not adopt the proposed tiered structure due to the difficulty of calculating appropriate ADV thresholds for each tier when symbols were being listed on the Exchange each week. The Exchange, therefore, opted to provide attractive introductory rates and Priority Customer order rebates in order to attract Priority Customer orders to the Exchange during the initial rollout phase. By adopting the proposed tiered structure now, the Exchange seeks to incentivize members to send additional order flow to the Exchange in order to qualify for lower fees and higher rebates.

Market Maker Discount

The Exchange is also proposing a $0.05 per contract discount to Market Maker fees when the Market Maker trades against Non-Priority Customer orders. We believe this will incentivize Market Makers to provide competitive markets. This discount does not apply to Crossing Orders.

(b) Basis – The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and Section 6(b)(4) of the Act,[13] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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

Member Volume Program

The Exchange believes the proposed fees and rebates in the MVP are reasonable and equitably allocated because ISE Mercury has already established fees for members trading on the Exchange, and is merely proposing to adopt volume-based tiers designed to incentivize members to send additional Priority Customer order flow to the Exchange. Further, the language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. For example, many firms that are members of the Exchange operate several different business lines within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance, or historical reasons. Those corporate affiliates, in turn,

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

are required to maintain separate memberships with the Exchange in order to access the Exchange. The Exchange believes that corporate affiliates should continue to be aggregated and is clarifying when members will be considered affiliated. The Exchange notes that the proposed definition of "affiliate" to be used to aggregate affiliated member ADV is consistent with definitions used by other options exchanges, including MIAX.[14]

The Exchange believes that it is equitable and reasonable to permit the Exchange to eliminate from the calculation days on which the market is not open the entire trading day, either due to a holiday or trading halt, because it preserves the Exchange's intent behind adopting volume-based pricing. The proposed change is non-discriminatory because it applies equally to all members and to all volume tiers. Additionally, the Exchange believes that it is reasonable and equitable to exclude a day from its ADV calculations when members are instructed to route their orders to other markets as this preserves the Exchange's intent behind adopting volume-based pricing, and avoids penalizing members that follow this instruction. Without this change, members that route away in accordance with the Exchange's instructions may be negatively impacted, resulting in an effective cost increase for those members. The Exchange further believes that the proposed rule change is not unfairly discriminatory because it applies equally to all members and ADV calculations. As is the Exchange's current practice, the Exchange will inform members of any day to be excluded from its ADV calculations by sending members a notice and posting such notice on the Exchange's website.

The Exchange further believes that its proposal to provide rebates for Priority Customer orders is reasonable and equitable because the proposed rebates are competitive with the rebates offered by other exchanges employing similar tiered rebate structures based on Priority Customer volume. For example, MIAX Options Exchange ("MIAX") and NASDAQ OMX PHLX ("PHLX") have Priority Customer, tiered rebate programs.[15] MIAX offers a per contract rebate of $0.00 for its base tier and a per contract rebate of $0.24 for its highest rebate tier in select symbols. Similarly, PHLX offers a per contract rebate of $0.00 for its base tier and a per contract rebate of $0.21 for its highest tier in customer simple orders.[16] As proposed, ISE Mercury's Priority Customer order rebates are not unfairly discriminatory because they would apply uniformly to all similarly situated market participants and they are competitive with the rebates offered by MIAX's and PHLX's Priority Customer rebate programs.

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[14] See MIAX Fee Schedule, 1) Transaction Fees, a) Exchange Fees, iii) Priority Customer Rebate Program at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_02012016B.pdf.

[15] See MIAX Fee Schedule, 1) Transaction Fees, a) Exchange Fees, iii) Priority Customer Rebate Program at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_03012016.pdf and PHLX Fee Schedule, B. Customer Rebate Program at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

[16] PHLX Fee Schedule, B. Customer Rebate Program, Category A at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

The Exchange believes that providing higher rebates for Priority Customer orders, and creating ADV thresholds specifically for members that send such orders to ISE Mercury, attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Further, the Exchange believes that it is equitable and not unfairly discriminatory to provide higher rebates to Priority Customer orders than to Professional Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Further, Professional Customers engage in trading activity similar to that conducted by Market Makers and proprietary traders.

The Exchange believes that its proposal to assess a per contract fee for Market Maker orders is reasonable and equitable because the proposed fees are within the range of fees assessed by other exchanges employing similar tiered rebate structures such as MIAX, which offers tiered fees for Market Makers. In Penny Symbols, MIAX generally charges Market Makers a per contract fee as high as $0.25 for its base tier and a per contract fee of $0.05 for its highest tier. [17] In Non-Penny Symbols, MIAX charges a per contract fee of $0.29 for its base tier and a per contract fee of $0.09 for its highest tier.[18] Thus, MIAX's tiered Market Maker fees are competitive with ISE Mercury's fees. The Exchange believes that the price differentiation between Market Makers and other Non-Priority Customers is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). The Exchange believes that it is equitable and not unfairly discriminatory to provide lower fees to Market Makers because they would apply uniformly to similarly situated market participants.

Crossing Orders

The Exchange believes the proposed rebates for PIM Orders of 500 or Fewer Contracts[19] are reasonable and equitably allocated because the proposed fees are within the range of fees assessed by other exchanges such as MIAX, which offers a rebate for PRIME Agency orders.[20] For example, MIAX offers a per contract rebate of $0.10 for

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[17] See MIAX Fee Schedule, 1) Transaction Fees, a) Exchange Fees, i) Market Maker Transaction Fees, Market Maker Sliding Scale at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_03012016.pdf.

[18] Id.

[19] The level is set at 500 or fewer contracts because Priority Customer orders are typically less than 500 contracts.

[20] See MIAX Fee Schedule, 1) Transaction Fees, a) Exchange Fees, iii) Priority Customer Rebate Program at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_03012016.pdf.

each Priority Customer order and also offers an additional per contract rebate of $0.02 for members that qualify for MIAX's Priority Customer Rebate Program's volume tiers 3 and 4.[21] While ISE Mercury's tiered rebate is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. As discussed above, Priority Customer orders on the Exchange are generally entitled to lower fees and higher rebates, and the Exchange believes that attracting more liquidity from Priority Customers will benefit all market participants that trade on ISE Mercury. Further, the Exchange believes that it is equitable and not unfairly discriminatory to provide lower fees to Priority Customers because they would apply uniformly to similarly situated market participants.

Responses to Crossing Orders

The Exchange's proposal to assess Penny and Non-Penny Symbol fees for Responses to Crossing Orders is reasonable and equitably allocated because they are within the range of fees assessed by other exchanges. Specifically, the Exchange proposes to keep fees for Responses to Crossing Orders in Penny Symbols the same and to increase fees for Responses to Crossing Orders in Non-Penny Symbols so that these fees are competitive with similar fees charged on other exchanges. For example, ISE Gemini's Fees for Responses to Crossing Orders[22] in both Penny and Non-Penny Symbols are competitive with those proposed by ISE Mercury. Further, the Exchange believes the proposed Fees for Responses to Crossing Orders are not unfairly discriminatory because they would uniformly apply to all similarly situated market participants.

With respect to the Responses to Crossing Orders' tiered fees for Market Maker orders, the Exchange believes that the proposed fees are fair, equitable, and not unfairly discriminatory because the proposed fees are consistent with the fees charged at other exchanges. For example, ISE Gemini charges Market Makers a Fee for Responses to Crossing Orders of $0.49 per contract in Penny Symbols and $0.89 per contract in Non-Penny Symbols. Similarly, ISE Mercury's proposal would charge per contract fees ranging from $0.50 (Tier 1 fee plus Marketing Fee) to $0.35 (Tier 5 fee plus Marketing Fee) in Penny Symbols and per contract fees ranging from $0.95 (Tier 1 fee plus Marketing Fee) to $0.80 (Tier 5 fee plus marketing fee) in Non-Penny Symbols. As discussed above, the Exchange believes that the price differentiation between Market Makers and the other market participants is appropriate and not unfairly discriminatory because they have requirements and obligations to the Exchange that the other market participants do not. Market Makers also incur Marketing Fees, which the other market participants do not. Thus, the Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to certain market participants that do not have such requirements and obligations that Exchange Market Makers do.

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[21] Id.

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

Market Maker Discount

The Exchange believes the proposed Market Maker discount is reasonable, equitable, and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not and they incur Marketing Fees. The Exchange notes that when trading against a Priority Customer the exchange pays a rebate for Priority Customer orders, but the Exchange charges a fee for executions of Non-Priority Customer orders. The Exchange believes that offering a discount on the fees charged to Market Makers will encourage Market Maker to make better markets and execute more trades. Furthermore, charging Market Makers lower fees for trading against a Non-Priority Customer order is not a new concept in the industry. For example, BOX Options Exchange, in Non-Penny Pilot Symbols, charges Market Makers a maker fee of $0.85 per contract for trading against a Priority Customer order and a maker fee of $0.00 for trading against a Professional Customer / Broker Dealer order.[23] Finally,

The Exchange notes that the proposed rule filing is intended to further establish ISE Mercury as an attractive venue for market participants to direct their order flow as the proposed fees and rebates are competitive with those established by other exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem rebates at a particular exchange to be too low. For the reasons noted above, the Exchange believes that the proposed rebates are fair, equitable and not unfairly discriminatory.

4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

In accordance with Section 6(b)(8) of the Act,[24] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The tiered rebate structure that the Exchange proposes to adopt is similar to those currently in effect on other options exchanges such as MIAX and PHLX, and will increase competition between ISE Mercury and these markets.

In establishing the MVP, the Exchange is not imposing any burden on competition. The established volume tiers are transparent and offer members a simple way to reach different levels of fees and rebates on the exchange, similar to levels and differentials these same participants are familiar with on several other exchanges. Volume tiers are not new to the options industry and generally reward members for submitting additional volume to the Exchange, with ISE Mercury now seeking to introduce a similar structure. The Exchange also notes that other exchanges have substantially similar requirements for aggregating affiliated member ADV in determining applicable tiered rebates.

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[23] <u>See</u> BOX Options Exchange Fee Schedule, Section I. Exchange Fees, A. Non-Auction Transactions at http://boxexchange.com/assets/BOX-Exchange-Fee-Schedule-as-of-February-26-2016.pdf

[24] 15 U.S.C. 78f(b)(8).

Finally, in establishing a Market Maker discount for Market Makers trading against Non-Priority Customer orders, the Exchange is not imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because other exchanges offer lower fees to Market Makers trading against Non-Priority Customers. Additionally, the Exchange notes that when trading against a Priority Customer the exchange pays a rebate for Priority Customer orders, but the Exchange charges a fee for executions of Non-Priority Customer orders. The Exchange believes that offering a discount on the fees charged to Market Makers will encourage Market Maker to make better markets and execute more trades.

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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

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

6. Extension of Time Period for Commission Action

Not Applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[25] the Exchange has designated this proposal as establishing or changing a due, fee or other charge imposed on any person, whether or not the person is a member of a self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

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

Not applicable.

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[25] 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

11. Exhibits

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

Exhibit 5 – Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-ISE Mercury-2016-05)

[Date]

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 10, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE Mercury proposes to amend its Schedule of Fees by adopting volume-based tiered rebates and fees. These tiers are determined by a member's average daily volume of Priority Customer orders traded on the Exchange. 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

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

[2] 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

ISE Mercury is proposing to amend its Schedule of Fees to establish volume-based tiered rebates and fees (the "Member Volume Program" or "MVP"). The MVP tiers are determined by a member's average daily volume ("ADV") of Priority Customer[3] Regular Orders,[4] in Penny and Non-Penny Pilot Symbols,[5] traded on the Exchange. The Exchange will also aggregate the trading activity of affiliated members in determining this ADV.[6] ISE Mercury believes the proposed fee and rebate tiers will incentivize firms to increase Priority Customer order flow to the Exchange. The Exchange is also

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[3] 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).

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

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

[6] Aggregation is necessary and appropriate because certain members conduct customer and market maker trading activity through separate but related broker-dealers.

proposing Penny and Non-Penny Symbol fees for both Crossing Orders and Responses to Crossing Orders. Finally, the Exchange proposes to offer Market Makers[7] a per contract discount when trading against Non-Priority Customer orders.

The Member Volume Program

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

The Exchange proposes to amend the above fees and rebates so that they will be based on a member's ADV of Priority Customer orders traded in a given month and the

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

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

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

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

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

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

highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. This Priority Customer ADV includes all Priority Customer volume executed on the Exchange in all symbols and order types, including volume executed in the Price Improvement Mechanism ("PIM") and the Facilitation and Qualified Contingent Cross mechanisms.

Further, the Exchange will aggregate the trading activity of separate members in calculating Priority Customer ADV provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. The Exchange believes that aggregating this volume across members that share at least 75% common ownership will allow members to continue to execute trades on the Exchange through separate broker-dealer entities for different types of volume, while receiving rebates based on the aggregate volume being executed across such entities.

The Exchange now proposes fees and rebates based on five volume tier levels as described in the table below. These fees and rebates will be based on the highest tier that a member reaches in a given month, and these tiered rates will apply retroactively to all eligible traded contracts for all client categories.

Qualifying Tier Thresholds	
Tier	**Total Affiliated Priority Customer ADV**
Tier 1	0 – 19,999
Tier 2	20,000 – 39,999
Tier 3	40,000 – 59,999
Tier 4	60,000 – 79,999
Tier 5	80,000+

Additionally, the Exchange proposes to amend the Schedule of Fees to include language related to excluding days from the ADV calculations used to determine applicable fee and rebate tiers. Specifically, the Exchange proposes to 1) exclude from its ADV calculations any trading day on which the Exchange is closed early for holiday observance; 2) exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market; and 3) permit days to be excluded from its ADV calculations where the Exchange is technically open for the entire trading day, but has instructed members to route away due to a systems or other error that ultimately does not impact trading on the Exchange. The Exchange also notes, however, that if it has a systems issue in the morning before the market opens, it may instruct members to route away to other markets. If the systems issue continues into trading hours, the Exchange is permitted to exclude the day for all members that would have a lower ADV with the day included. If, however, the systems issue is resolved prior to the opening of trading, the Exchange is not permitted to exclude the day from its ADV calculations. This is the case regardless of the fact that many members would have already made arrangements to route away in accordance with the Exchange's instructions. To prevent this undesirable result, and preserve the Exchange's intent behind adopting volume-based pricing, the Exchange proposes to allow days to be excluded from its ADV calculation whenever all members are instructed, in writing, to route their orders to other markets.

Because the days the Exchange proposes to exclude from its ADV calculation generally have artificially lower trading volume, the Exchange believes that it is reasonable and equitable to not include such days in determining fee and rebate tiers. If the Exchange did not have the ability to exclude aberrant low volume days when calculating ADV for the month, as a result of the decreased trading volume, the numerator for the calculation (e.g., trading volume) would be correspondingly lower, but the denominator for the threshold calculations (e.g., the number of trading days) would not be decreased. This could result in an unintended cost increase. Absent the authority to exclude days that the market is not open for the entire trading day, members will experience an effective decrease in rebates. The artificially low volumes of trading on such days could reduce the trading activity of members both daily and monthly. Accordingly, excluding such days from the monthly calculation will diminish the likelihood of an effective increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its members.

The Exchange notes that the fees charged to Non-ISE Mercury Market Maker, Firm Proprietary / Broker Dealer and Professional Customer in Penny and Non-Penny Symbols are the same as the current fees charged, regardless of the tier level reached. However, the tiered fees and rebates for both Priority Customers and Market Makers have changed. The proposed fees and rebates for each tier and participant type are as follows:

Penny Symbol Fees and Rebates (per contract)			
Tier	**Priority Customer**	**Market Maker**	**Firm Proprietary, B/D, FarMM & Professional Customer**
Tier 1	($0.05)	$0.25	$0.47
Tier 2	($0.10)	$0.22	$0.47
Tier 3	($0.15)	$0.18	$0.47
Tier 4	($0.21)	$0.15	$0.47
Tier 5	($0.24)	$0.10	$0.47

Non-Penny Symbol Fees and Rebates (per contract)			
Tier	**Priority Customer**	**Market Maker**	**Firm Proprietary, B/D, FarMM & Professional Customer**
Tier 1	($0.05)	$0.25	$0.90
Tier 2	($0.10)	$0.22	$0.90
Tier 3	($0.15)	$0.18	$0.90
Tier 4	($0.21)	$0.15	$0.90
Tier 5	($0.24)	$0.10	$0.90

Crossing Orders

The Exchange proposes Penny and Non-Penny Symbol fees for Crossing Orders. The Exchange currently charges a fee of $0.20 per contract for Crossing Orders[13] in all symbols traded on the Exchange for all market participants, except Priority Customers who are charged $0.00 per contract for Crossing Orders. A Crossing Order is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, PIM, or submitted as a Qualified Contingent Cross order. Orders executed in the Block Order Mechanism are also considered Crossing Orders. The fees for Crossing Orders, except for PIM Orders of 500 or Fewer Contracts, in both Penny and Non-Penny Symbols have not changed from current levels.

As an exception to the fees charged for Crossing Orders, the Exchange charges a fee of $0.05 per contract for PIM Orders of 500 or Fewer Contracts in all symbols traded on the Exchange for all market participants, except that Priority Customer orders on the originating side of a PIM auction receive a rebate of ($0.13) per contract. Priority Customer orders on the contra-side of a PIM auction pay no fee and receive no rebate. PIM orders greater than 500 contracts pay the Crossing Order fee, described above. The Exchange now proposes to offer tiered fees and rebates based on Priority Customer

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

volume, as described above, for PIM Orders of 500 or Fewer Contracts. The Exchange notes that the fees for Non-Priority Customer orders have not changed from current levels, but the fees for Priority Customer orders have changed as described in the table, below.

All Symbols Fee/Rebate for PIM Orders of 500 or Fewer Contracts			
Tier	**Priority Customer**	**Market Maker**	**Firm Proprietary, B/D, FarMM & Professional Customer**
Tier 1	($0.11)	$0.05	$0.05
Tier 2	($0.11)	$0.05	$0.05
Tier 3	($0.13)	$0.05	$0.05
Tier 4	($0.13)	$0.05	$0.05
Tier 5	($0.13)	$0.05	$0.05

Responses to Crossing Orders

The Exchange proposes Penny and Non-Penny Symbol fees for Responses to Crossing Orders. A Response to a Crossing Order is any contra-side interest (i.e., orders and quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism, or PIM. Currently, the Exchange charges a fee of (1) $0.20 per contract for Market Maker orders and (2) $0.50 per contract for Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer, and Priority Customer orders in all symbols. For Responses to Crossing Orders in Penny Symbols, the Exchange proposes to charge Market Makers the corresponding tiered fees in the chart titled Penny Symbol Fees and Rebates, above. For Non-ISE Mercury Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer, and Priority Customer orders in Penny Symbols, the fees have not changed from current levels. For Responses to Crossing Orders in Non-Penny Symbols, the Exchange proposes to charge Market Makers the corresponding tiered fees in the chart titled Non-Penny Symbol Fees and Rebates, above. For Non-ISE Mercury Market

Maker, Firm Proprietary / Broker-Dealer, Professional Customer, and Priority Customer orders in Non-Penny Symbols, the Exchange proposes to charge a fee of $0.95 per contract.

With respect to the proposed MVP, described above, the Exchange notes that the fees and rebates currently being paid on ISE Mercury are in the range of fees and rebates in the new structure. During the initial rollout of symbols on ISE Mercury, the Exchange did not adopt the proposed tiered structure due to the difficulty of calculating appropriate ADV thresholds for each tier when symbols were being listed on the Exchange each week. The Exchange, therefore, opted to provide attractive introductory rates and Priority Customer order rebates in order to attract Priority Customer orders to the Exchange during the initial rollout phase. By adopting the proposed tiered structure now, the Exchange seeks to incentivize members to send additional order flow to the Exchange in order to qualify for lower fees and higher rebates.

Market Maker Discount

The Exchange is also proposing a $0.05 per contract discount to Market Maker fees when the Market Maker trades against Non-Priority Customer orders. We believe this will incentivize Market Makers to provide competitive markets. This discount does not apply to Crossing Orders.

2. Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and Section 6(b)(4) of the Act,[15] in

[14] 15 U.S.C. 78f.

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

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

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

Member Volume Program

The Exchange believes the proposed fees and rebates in the MVP are reasonable and equitably allocated because ISE Mercury has already established fees for members trading on the Exchange, and is merely proposing to adopt volume-based tiers designed to incentivize members to send additional Priority Customer order flow to the Exchange. Further, the language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. For example, many firms that are members of the Exchange operate several different business lines within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance, or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access the Exchange. The Exchange believes that corporate affiliates should continue to be aggregated and is clarifying when members will be considered affiliated. The Exchange notes that the proposed definition of "affiliate" to be used to aggregate affiliated member ADV is consistent with definitions used by other options exchanges, including MIAX.[16]

The Exchange believes that it is equitable and reasonable to permit the Exchange to eliminate from the calculation days on which the market is not open the entire trading day, either due to a holiday or trading halt, because it preserves the Exchange's intent behind adopting volume-based pricing. The proposed change is non-discriminatory because it applies equally to all members and to all volume tiers. Additionally, the Exchange believes that it is reasonable and equitable to exclude a day from its ADV calculations when members are instructed to route their orders to other markets as this preserves the Exchange's intent behind adopting volume-based pricing, and avoids penalizing members that follow this instruction. Without this change, members that route away in accordance with the Exchange's instructions may be negatively impacted, resulting in an effective cost increase for those members. The Exchange further believes that the proposed rule change is not unfairly discriminatory because it applies equally to all members and ADV calculations. As is the Exchange's current practice, the Exchange will inform members of any day to be excluded from its ADV calculations by sending members a notice and posting such notice on the Exchange's website.

The Exchange further believes that its proposal to provide rebates for Priority Customer orders is reasonable and equitable because the proposed rebates are competitive with the rebates offered by other exchanges employing similar tiered rebate structures based on Priority Customer volume. For example, MIAX Options Exchange

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[16] See MIAX Fee Schedule, 1) Transaction Fees, a) Exchange Fees, iii) Priority Customer Rebate Program at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_02012016B.pdf.

("MIAX") and NASDAQ OMX PHLX ("PHLX") have Priority Customer, tiered rebate programs.[17] MIAX offers a per contract rebate of $0.00 for its base tier and a per contract rebate of $0.24 for its highest rebate tier in select symbols. Similarly, PHLX offers a per contract rebate of $0.00 for its base tier and a per contract rebate of $0.21 for its highest tier in customer simple orders.[18] As proposed, ISE Mercury's Priority Customer order rebates are not unfairly discriminatory because they would apply uniformly to all similarly situated market participants and they are competitive with the rebates offered by MIAX's and PHLX's Priority Customer rebate programs.

The Exchange believes that providing higher rebates for Priority Customer orders, and creating ADV thresholds specifically for members that send such orders to ISE Mercury, attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Further, the Exchange believes that it is equitable and not unfairly discriminatory to provide higher rebates to Priority Customer orders than to Professional Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not

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[17] See MIAX Fee Schedule, 1) Transaction Fees, a) Exchange Fees, iii) Priority Customer Rebate Program at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_03012016.pdf and PHLX Fee Schedule, B. Customer Rebate Program at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

[18] PHLX Fee Schedule, B. Customer Rebate Program, Category A at http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.

result in executions) than Priority Customers. Further, Professional Customers engage in trading activity similar to that conducted by Market Makers and proprietary traders.

The Exchange believes that its proposal to assess a per contract fee for Market Maker orders is reasonable and equitable because the proposed fees are within the range of fees assessed by other exchanges employing similar tiered rebate structures such as MIAX, which offers tiered fees for Market Makers. In Penny Symbols, MIAX generally charges Market Makers a per contract fee as high as $0.25 for its base tier and a per contract fee of $0.05 for its highest tier.[19] In Non-Penny Symbols, MIAX charges a per contract fee of $0.29 for its base tier and a per contract fee of $0.09 for its highest tier.[20] Thus, MIAX's tiered Market Maker fees are competitive with ISE Mercury's fees. The Exchange believes that the price differentiation between Market Makers and other Non-Priority Customers is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). The Exchange believes that it is equitable and not unfairly discriminatory to provide lower fees to Market Makers because they would apply uniformly to similarly situated market participants.

Crossing Orders

The Exchange believes the proposed rebates for PIM Orders of 500 or Fewer Contracts[21] are reasonable and equitably allocated because the proposed fees are within

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[19] See MIAX Fee Schedule, 1) Transaction Fees, a) Exchange Fees, i) Market Maker Transaction Fees, Market Maker Sliding Scale at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_03012016.pdf.

[20] Id.

[21] The level is set at 500 or fewer contracts because Priority Customer orders are typically less than 500 contracts.

the range of fees assessed by other exchanges such as MIAX, which offers a rebate for PRIME Agency orders.[22] For example, MIAX offers a per contract rebate of $0.10 for each Priority Customer order and also offers an additional per contract rebate of $0.02 for members that qualify for MIAX's Priority Customer Rebate Program's volume tiers 3 and 4.[23] While ISE Mercury's tiered rebate is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. As discussed above, Priority Customer orders on the Exchange are generally entitled to lower fees and higher rebates, and the Exchange believes that attracting more liquidity from Priority Customers will benefit all market participants that trade on ISE Mercury. Further, the Exchange believes that it is equitable and not unfairly discriminatory to provide lower fees to Priority Customers because they would apply uniformly to similarly situated market participants.

Responses to Crossing Orders

The Exchange's proposal to assess Penny and Non-Penny Symbol fees for Responses to Crossing Orders is reasonable and equitably allocated because they are within the range of fees assessed by other exchanges. Specifically, the Exchange proposes to keep fees for Responses to Crossing Orders in Penny Symbols the same and to increase fees for Responses to Crossing Orders in Non-Penny Symbols so that these fees are competitive with similar fees charged on other exchanges. For example, ISE

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[22] See MIAX Fee Schedule, 1) Transaction Fees, a) Exchange Fees, iii) Priority Customer Rebate Program at https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_03012016.pdf.

[23] Id.

Gemini's Fees for Responses to Crossing Orders[24] in both Penny and Non-Penny Symbols are competitive with those proposed by ISE Mercury. Further, the Exchange believes the proposed Fees for Responses to Crossing Orders are not unfairly discriminatory because they would uniformly apply to all similarly situated market participants.

With respect to the Responses to Crossing Orders' tiered fees for Market Maker orders, the Exchange believes that the proposed fees are fair, equitable, and not unfairly discriminatory because the proposed fees are consistent with the fees charged at other exchanges. For example, ISE Gemini charges Market Makers a Fee for Responses to Crossing Orders of $0.49 per contract in Penny Symbols and $0.89 per contract in Non-Penny Symbols. Similarly, ISE Mercury's proposal would charge per contract fees ranging from $0.50 (Tier 1 fee plus Marketing Fee) to $0.35 (Tier 5 fee plus Marketing Fee) in Penny Symbols and per contract fees ranging from $0.95 (Tier 1 fee plus Marketing Fee) to $0.80 (Tier 5 fee plus marketing fee) in Non-Penny Symbols. As discussed above, the Exchange believes that the price differentiation between Market Makers and the other market participants is appropriate and not unfairly discriminatory because they have requirements and obligations to the Exchange that the other market participants do not. Market Makers also incur Marketing Fees, which the other market participants do not. Thus, the Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to certain market participants that do not have such requirements and obligations that Exchange Market Makers do.

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

Market Maker Discount

The Exchange believes the proposed Market Maker discount is reasonable, equitable, and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not and they incur Marketing Fees. The Exchange notes that when trading against a Priority Customer the exchange pays a rebate for Priority Customer orders, but the Exchange charges a fee for executions of Non-Priority Customer orders. The Exchange believes that offering a discount on the fees charged to Market Makers will encourage Market Maker to make better markets and execute more trades. Furthermore, charging Market Makers lower fees for trading against a Non-Priority Customer order is not a new concept in the industry. For example, BOX Options Exchange, in Non-Penny Pilot Symbols, charges Market Makers a maker fee of $0.85 per contract for trading against a Priority Customer order and a maker fee of $0.00 for trading against a Professional Customer / Broker Dealer order.[25] Finally,

The Exchange notes that the proposed rule filing is intended to further establish ISE Mercury as an attractive venue for market participants to direct their order flow as the proposed fees and rebates are competitive with those established by other exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem rebates at a particular exchange to be too low. For the reasons noted above, the Exchange believes that the proposed rebates are fair, equitable and not unfairly discriminatory.

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[25] See BOX Options Exchange Fee Schedule, Section I. Exchange Fees, A. Non-Auction Transactions at http://boxexchange.com/assets/BOX-Exchange-Fee-Schedule-as-of-February-26-2016.pdf

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

In accordance with Section 6(b)(8) of the Act,[26] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The tiered rebate structure that the Exchange proposes to adopt is similar to those currently in effect on other options exchanges such as MIAX and PHLX, and will increase competition between ISE Mercury and these markets.

In establishing the MVP, the Exchange is not imposing any burden on competition. The established volume tiers are transparent and offer members a simple way to reach different levels of fees and rebates on the exchange, similar to levels and differentials these same participants are familiar with on several other exchanges. Volume tiers are not new to the options industry and generally reward members for submitting additional volume to the Exchange, with ISE Mercury now seeking to introduce a similar structure. The Exchange also notes that other exchanges have substantially similar requirements for aggregating affiliated member ADV in determining applicable tiered rebates.

Finally, in establishing a Market Maker discount for Market Makers trading against Non-Priority Customer orders, the Exchange is not imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because other exchanges offer lower fees to Market Makers trading against Non-Priority Customers. Additionally, the Exchange notes that when trading against a Priority Customer the exchange pays a rebate for Priority Customer orders, but the Exchange charges a fee for executions of Non-Priority Customer orders. The Exchange believes

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[26] 15 U.S.C. 78f(b)(8).

that offering a discount on the fees charged to Market Makers will encourage Market Maker to make better markets and execute more trades.

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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

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

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,[27] and subparagraph (f)(2) of Rule 19b-4 thereunder,[28] 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.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form http://www.sec.gov/rules/sro.shtml); or
- Send an E-mail to rule-comments@sec.gov. Please include File No. SR-ISE Mercury-2016-05 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE Mercury-2016-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE Mercury-2016-05 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.[29]

Secretary

[29] 17 CFR 200.30-3(a)(12).

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

Schedule of Fees

Last Updated [February 18, 2016] March 10, 2016

Table of Contents

PREFACE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Regular Order Fees and Rebates

Table 1

Penny Symbols					
Market Participant	**Fee/Rebate Tier 1**	**Fee/Rebate Tier 2**	**Fee/Rebate Tier 3**	**Fee/Rebate Tier 4**	**Fee/Rebate Tier 5**
Market Maker [1] [2]	$0.2[0]5	$0.22	$0.18	$0.15	$0.10
Non-ISE Mercury Market Maker (FarMM)	$0.47	$0.47	$0.47	$0.47	$0.47
Firm Proprietary / Broker-Dealer	$0.47	$0.47	$0.47	$0.47	$0.47
Professional Customer	$0.47	$0.47	$0.47	$0.47	$0.47
Priority Customer	($0.[18]05)	($0.10)	($0.15)	($0.21)	($0.24)

Non-Penny Symbols					
Market Participant	**Fee/Rebate Tier 1**	**Fee/Rebate Tier 2**	**Fee/Rebate Tier 3**	**Fee/Rebate Tier 4**	**Fee/Rebate Tier 5**
Market Maker [1] [2]	$0.2[0]5	$0.22	$0.18	$0.15	$0.10
Non-ISE Mercury Market Maker (FarMM)	$0.90	$0.90	$0.90	$0.90	$0.90
Firm Proprietary / Broker-Dealer	$0.90	$0.90	$0.90	$0.90	$0.90
Professional Customer	$0.90	$0.90	$0.90	$0.90	$0.90
Priority Customer	($0.[18]05)	($0.10)	($0.15)	($0.21)	($0.24)

1. This fee also applies to ISE Mercury Market Maker orders sent to the Exchange by Electronic Access Members.
2. Market Makers will receive a $0.05 per contract discount when trading against a non-Priority Customer.

Table 2

[All Symbols] Penny Symbols			
Market Participant	**Fee for Crossing Orders (Except PIM Orders of 500 or Fewer Contracts) (1)(2)**	**[Fee/Rebate for PIM Orders of 500 or Fewer Contracts (1)**	**Fee for Responses to Crossing Orders**
Market Maker (4)	$0.20	$0.05	$0.2[0]5 (5)
Non-ISE Mercury Market Maker (FarMM)	$0.20	$0.05	$0.50
Firm Proprietary / Broker-Dealer	$0.20	$0.05	$0.50
Professional Customer	$0.20	$0.05	$0.50
Priority Customer	$0.00	($0.13) (3)]	$0.50

Non-Penny Symbols			
Market Participant	**Fee for Crossing Orders (Except PIM Orders of 500 or Fewer Contracts) (1)(2)**		**Fee for Responses to Crossing Orders**
Market Maker (4)	$0.20		$0.25 (5)
Non-ISE Mercury Market Maker (FarMM)	$0.20		$0.95
Firm Proprietary / Broker-Dealer	$0.20		$0.95
Professional Customer	$0.20		$0.95
Priority Customer	$0.00		$0.95

Table 3

All Symbols Market Participant	Fee/Rebate for PIM Orders of 500 or Fewer Contracts Tier 1(1)	Fee/Rebate for PIM Orders of 500 or Fewer Contracts Tier 2(1)	Fee/Rebate for PIM Orders of 500 or Fewer Contracts Tier 3(1)	Fee/Rebate for PIM Orders of 500 or Fewer Contracts Tier 4(1)	Fee/Rebate for PIM Orders of 500 or Fewer Contracts Tier 5(1)
Market Maker (4)	$0.05	$0.05	$0.05	$0.05	$0.05
Non-ISE Mercury Market Maker (FarMM)	$0.05	$0.05	$0.05	$0.05	$0.05
Firm Proprietary / Broker-Dealer	$0.05	$0.05	$0.05	$0.05	$0.05
Professional Customer	$0.05	$0.05	$0.05	$0.05	$0.05
Priority Customer(3)	($0.11)	($0.11)	($0.13)	($0.13)	($0.13)

1. Fees apply to the originating and contra orders, except as noted in 3, below.
2. PIM orders of more than 500 contracts will pay the Fee for Crossing Orders.
3. Priority Customer orders on the contra-side of a PIM auction pay no fee and receive no rebate.
4. This fee also applies to ISE Mercury Market Maker orders sent to the Exchange by Electronic Access Members.
5. Market Makers that achieve Tier 2 or higher of the Qualifying Tier Thresholds in Table 4, below, will be charged the discounted fee applicable to the tier reached as described in Table 1, above.

Qualifying Tier Thresholds

Table 4

Tier	**Total Affiliated Priority Customer ADV**
Tier 1	0-19,999
Tier 2	20,000-39,999
Tier 3	40,000-59,999
Tier 4	60,000-79,999
Tier 5	80,000+

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

II. Other Options Fees and Rebates

A. Route-Out Fees[1]

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

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

B. Marketing Fee

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

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

III. Legal & Regulatory

A. FINRA Web CRD Fees

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

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

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

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

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