

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 17 SECURITIES AND EXCHANGE COMMISSION File No.* SR - 2016 - * 08
 WASHINGTON, D.C. 20549 Form 19b-4 Amendment No. (req. for Amendments *)

Filing by ISE Mercury, 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"/>
Pilot <input type="checkbox"/>			Rule		
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"/>
--	--

Description
 Provide a brief description of the action (limit 250 characters, required when Initial is checked *).
 Proposal to limit mandatory participation in scheduled functional and performance testing, under Reg. SCI, to those PMMs that contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly basis.

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.
 (Title *)
 Date 03/31/2016 Secretary & General Counsel
 By Michael Simon
 (Name *)
 NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.
 Persona Not Validated - 1436897254872,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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”), proposes to amend Rule 803, Obligations of Market Makers, to limit mandatory participation in scheduled functional and performance testing, under Regulation Systems Compliance and Integrity (“Regulation SCI”),¹ to those Primary Market Makers (“PMMs”) that contribute a meaningful percentage of the Exchange’s overall volume, measured on a quarterly or monthly basis. The Exchange proposes to also consider other factors in determining the PMMs that will be required to participate in scheduled functional and performance testing of the Exchange’s business continuity and disaster recovery plans (collectively “DR Plans”), including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or PMMs that collectively account for a certain percentage of market share on the Exchange or within a specific product. In addition, the Exchange proposes to publish the criteria to be used by the Exchange to determine which PMMs will be required to participate in such testing, and notify those PMMs that are required to participate based on such criteria.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on March 21, 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 –

On November 19, 2014, the Securities and Exchange Commission unanimously voted to adopt Regulation SCI, which is a set of rules designed to strengthen the technology infrastructure of the U.S. securities markets.² Specifically, the rules are designed to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the Commission’s oversight and enforcement of securities market technology infrastructure.³

¹ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (“SCI Adopting Release”).

² Id.

³ Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Regulation SCI at <https://www.sec.gov/divisions/marketreg/regulation-sci-faq.shtml>.

Regulation SCI applies to “SCI entities,” a term which includes SROs such as ISE Mercury. Regulation SCI requires SCI entities to, among other things, 1) establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability; 2) mandate participation by designated members in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities; 3) take corrective action with respect to “SCI events” (such as systems disruptions, systems compliance issues, and systems intrusions), and to notify the Commission of such events; 4) disseminate information about certain SCI events to affected members and, for certain “major” SCI events, to all members; and 5) review their systems by objective, qualified personnel at least annually, to submit quarterly reports regarding completed, ongoing, and planned material changes to their SCI systems to the Commission, and to maintain certain books and records.⁴

In accordance with Rule 1004 of Regulation SCI, the Exchange adopted Rules 803 and 1903 to designate all PMMs⁵ and Linkage Handlers,⁶ as the minimum necessary for the maintenance of a fair and orderly market should the Exchange’s DR Plans be activated.⁷ The Exchange also mandated participation by designated members in scheduled functional and performance testing of the operation of such DR Plans.⁸

The Exchange has reevaluated its designation of all PMMs as the minimum necessary for the maintenance of a fair and orderly market should the Exchange’s DR Plans be activated and now believes that designating all PMMs is more than the minimum necessary to maintain a fair and orderly market should its DR Plans be activated. The Exchange proposes to revise Rule 803 and limit mandatory participation in

⁴ Id.

⁵ A PMM posts two-sided continuous quotations in all of the options classes to which it is appointed and undertakes special responsibilities for maintaining fair and orderly markets. PMM memberships are represented by PMM Trading Rights. The options classes trading on ISE Mercury are divided into groups or “bins”, each with one PMM. One PMM member may, however, represent more than one bin.

⁶ A Linkage Handler is a broker that is unaffiliated with the Exchange with which the Exchange has contracted with to provide routing services, by routing certain orders, to other exchanges as agent in connection with the Options Order Protection and Locked/Crossed Market Plan. See .03 to Supplementary Material to Rule 1901.

⁷ On January 8, 2016, ISE Mercury submitted Amendment No. 2 to the Form 1 Application, which included an amended Rule 803 to comply with the requirements of Regulation SCI. ISE Mercury’s amended Rule 803 followed the rule filings by ISE Mercury’s affiliated exchanges, International Securities Exchange, LLC and ISE Gemini, LLC, which amended Rule 803 to comply with the requirements of Regulation SCI. See Exchange Act Release No. 76334 (November 3, 2015) 80 FR 69258 (November 9, 2015) (SR-ISE-2015-35) and Exchange Act Release No. 76332 (November 3, 2015), 80 FR 69266 (November 9, 2015) (SR-ISE Gemini-2015-23).

⁸ Id.

scheduled functional and performance testing, under Regulation SCI and ISE Mercury Rule 803, to those PMMs that contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis. The Exchange proposes to consider other factors in determining which PMMs will be required to participate in scheduled functional and performance testing, including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or PMMs that collectively account for a certain percentage of market share on the Exchange or within a specific product. The Exchange represents that it will publish the criteria⁹ to be used by the Exchange to determine which PMMs will be required to participate in such testing, and notify those PMMs that are required to participate based on such criteria.

The Exchange notes that it encourages all PMMs to connect to the Exchange's backup systems and to participate in testing of such systems. However, in revising the requirements in proposed Rule 803, the rule will subject only those PMMs to mandatory testing that the Exchange believes are, taken as a whole, the minimum necessary to maintain fair and orderly markets. The Exchange believes that designating PMMs to participate in mandatory testing because they, for example, account for a significant portion of the Exchange's overall volume or collectively account for a certain percentage of market share on the Exchange is a reasonable means to ensure the maintenance of a fair and orderly market on the Exchange should its DR Plans be activated.

(b) Basis – The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹⁰ In particular, the proposal is consistent with Section 6(b)(5) of the Act,¹¹ because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule revision is consistent with the Exchange Act because it complies with Regulation SCI's requirements. ISE Mercury's proposed rule designates only those PMMs it determines are necessary for the maintenance of a fair and orderly market if the Exchange's DR Plans are activated. Additionally, the proposal will ensure that the PMMs necessary to ensure the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, as proposed, the Exchange will adopt clear and objective criteria with respect to the designation of PMMs that are required to participate in the testing of the Exchange's DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to [business continuity and disaster recovery] testing) applicable to their members or participants that are designed to, among

⁹ This criteria will be published by the Exchange, in a regulatory information circular, no later than the effective date of this rule filing.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.”¹² The Exchange believes that this proposal is consistent with such authority and legal responsibility.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because ISE Mercury is implementing the requirements of Regulation SCI.

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

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) of the Act,¹³ and Rule 19b-4(f)(6)¹⁴ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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.

The Exchange believes that the proposed rule change will not impose any significant burden on competition, or significantly affect the protection of investors or the public interest, and therefore qualifies as “non-controversial” under Rule 19b-4(f)(6). ISE Mercury’s proposed rule designates only those PMMs it determines are necessary for the maintenance of a fair and orderly market if the Exchange’s DR Plans are activated. Additionally, the proposal will ensure that the PMMs necessary to ensure the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI

¹² See SCI Adopting Release, supra note 4 at 72350.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Furthermore, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

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

This proposed rule change is based on Regulation SCI as adopted by the Commission, Securities Exchange Act Release No. 76349 (November 4, 2015), 80 FR 69731 (November 10, 2015), SR-NYSEARCA-2015-97; Securities Exchange Act Release No. 77335 (March 9, 2016), 81 FR 13896 (March 15, 2016), SR-ISE-2016-06; and Securities Exchange Act Release No. 77334 (March 9, 2016), 81 FR 13864 (March 15, 2016), SR-ISE Gemini-2016-02.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

Exhibit 5 – Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-ISE Mercury-2016-08)

[Date]

Self-Regulatory Organizations; ISE Mercury; Notice of Filing of Proposed Rule Change to Limit Mandatory Participation in Scheduled Functional and Performance Testing Under Regulation SCI to Only Those Primary Market Makers That Meet Specified Criteria

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 31, 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

The Exchange proposes to amend Rule 803, Obligations of Market Makers, to limit mandatory participation in scheduled functional and performance testing, under Regulation Systems Compliance and Integrity ("Regulation SCI"),³ to those Primary Market Makers ("PMMs") that contribute a meaningful percentage of the Exchange's

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) ("SCI Adopting Release").

overall volume, measured on a quarterly or monthly basis. The Exchange proposes to also consider other factors in determining the PMMs that will be required to participate in scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans (collectively "DR Plans"), including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or PMMs that collectively account for a certain percentage of market share on the Exchange or within a specific product. In addition, the Exchange proposes to publish the criteria to be used by the Exchange to determine which PMMs will be required to participate in such testing, and notify those PMMs that are required to participate based on such criteria. The text of the proposed rule change is available on the Exchange's website at 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 –

On November 19, 2014, the Securities and Exchange Commission unanimously voted to adopt Regulation SCI, which is a set of rules designed to strengthen the

technology infrastructure of the U.S. securities markets.⁴ Specifically, the rules are designed to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the Commission’s oversight and enforcement of securities market technology infrastructure.⁵

Regulation SCI applies to “SCI entities,” a term which includes SROs such as ISE Mercury. Regulation SCI requires SCI entities to, among other things, 1) establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability; 2) mandate participation by designated members in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities; 3) take corrective action with respect to “SCI events” (such as systems disruptions, systems compliance issues, and systems intrusions), and to notify the Commission of such events; 4) disseminate information about certain SCI events to affected members and, for certain “major” SCI events, to all members; and 5) review their systems by objective, qualified personnel at least annually, to submit quarterly reports regarding completed, ongoing, and planned material changes to their SCI systems to the Commission, and to maintain certain books and records.⁶

⁴ Id.

⁵ Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Regulation SCI at <https://www.sec.gov/divisions/marketreg/regulation-sci-faq.shtml>.

⁶ Id.

In accordance with Rule 1004 of Regulation SCI, the Exchange adopted Rules 803 and 1903 to designate all PMMs⁷ and Linkage Handlers,⁸ as the minimum necessary for the maintenance of a fair and orderly market should the Exchange's DR Plans be activated.⁹ The Exchange also mandated participation by designated members in scheduled functional and performance testing of the operation of such DR Plans.¹⁰

The Exchange has reevaluated its designation of all PMMs as the minimum necessary for the maintenance of a fair and orderly market should the Exchange's DR Plans be activated and now believes that designating all PMMs is more than the minimum necessary to maintain a fair and orderly market should its DR Plans be activated. The Exchange proposes to revise Rule 803 and limit mandatory participation in scheduled functional and performance testing, under Regulation SCI and ISE Mercury Rule 803, to those PMMs that contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis. The Exchange proposes to consider other factors in determining which PMMs will be required to participate in

⁷ A PMM posts two-sided continuous quotations in all of the options classes to which it is appointed and undertakes special responsibilities for maintaining fair and orderly markets. PMM memberships are represented by PMM Trading Rights. The options classes trading on ISE Mercury are divided into groups or "bins", each with one PMM. One PMM member may, however, represent more than one bin.

⁸ A Linkage Handler is a broker that is unaffiliated with the Exchange with which the Exchange has contracted with to provide routing services, by routing certain orders, to other exchanges as agent in connection with the Options Order Protection and Locked/Crossed Market Plan. See .03 to Supplementary Material to Rule 1901.

⁹ On January 8, 2016, ISE Mercury submitted Amendment No. 2 to the Form 1 Application, which included an amended Rule 803 to comply with the requirements of Regulation SCI. ISE Mercury's amended Rule 803 followed the rule filings by ISE Mercury's affiliated exchanges, International Securities Exchange, LLC and ISE Gemini, LLC, which amended Rule 803 to comply with the requirements of Regulation SCI. See Exchange Act Release No. 76334 (November 3, 2015) 80 FR 69258 (November 9, 2015) (SR-ISE-2015-35) and Exchange Act Release No. 76332 (November 3, 2015), 80 FR 69266 (November 9, 2015) (SR-ISE Gemini-2015-23).

¹⁰ Id.

scheduled functional and performance testing, including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or PMMs that collectively account for a certain percentage of market share on the Exchange or within a specific product. The Exchange represents that it will publish the criteria¹¹ to be used by the Exchange to determine which PMMs will be required to participate in such testing, and notify those PMMs that are required to participate based on such criteria.

The Exchange notes that it encourages all PMMs to connect to the Exchange's backup systems and to participate in testing of such systems. However, in revising the requirements in proposed Rule 803, the rule will subject only those PMMs to mandatory testing that the Exchange believes are, taken as a whole, the minimum necessary to maintain fair and orderly markets. The Exchange believes that designating PMMs to participate in mandatory testing because they, for example, account for a significant portion of the Exchange's overall volume or collectively account for a certain percentage of market share on the Exchange is a reasonable means to ensure the maintenance of a fair and orderly market on the Exchange should its DR Plans be activated.

(b) Basis –

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹² In particular, the proposal is consistent with Section 6(b)(5) of the Act,¹³ because it is designed to promote just and equitable principles of trade, remove

¹¹ This criteria will be published by the Exchange, in a regulatory information circular, no later than the effective date of this rule filing.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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

The Exchange believes the proposed rule revision is consistent with the Exchange Act because it complies with Regulation SCI's requirements. ISE Mercury's proposed rule designates only those PMMs it determines are necessary for the maintenance of a fair and orderly market if the Exchange's DR Plans are activated. Additionally, the proposal will ensure that the PMMs necessary to ensure the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, as proposed, the Exchange will adopt clear and objective criteria with respect to the designation of PMMs that are required to participate in the testing of the Exchange's DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to [business continuity and disaster recovery] testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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."¹⁴ The Exchange believes that this proposal is consistent with such authority and legal responsibility.

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

¹⁴ See SCI Adopting Release, supra note 4 at 72350.

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because ISE Mercury is implementing the requirements of Regulation SCI.

C. 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.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ 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 the proposed rule change, or such shorter time as designated by the Commission, as required by Rule 19b-4(f)(6).

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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>; or
- Send an E-mail to rule-comments@sec.gov. Please include File No. SR-ISE Mercury-2016-08 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 Mercury-2016-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 the ISE. 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-2016-08 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.¹⁷

Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

Exhibit 5

Text of the Proposed Rule Change

Underlining indicates additions; [brackets] indicate deletions.

* * *

Rule 803. Obligations of Market Makers

* * *

Supplementary Material to Rule 803

* * *

.02 Rule 1004 of Regulation SCI under the Exchange Act requires the establishment of standards for the designation of those Members the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of a fair and orderly market should the Exchange's business continuity and disaster recovery plans be activated. Rule 1004 also requires the Exchange to designate Members pursuant to those standards and require participation by such Designated Members in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months. Therefore, in accordance with Rule 1004, Primary Market Makers that meet the factors established by the Exchange in accordance with subsection (a), below, have been designated by the Exchange as necessary for the maintenance of a fair and orderly market should the Exchange's business continuity and disaster recovery plans be activated. As the result of such designation, these Primary Market Makers are required to participate in scheduled functional and performance testing of such plans at least once every 12 months.

(a) Primary Market Makers that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis, will be required to participate in scheduled functional and performance testing. The Exchange may also consider other factors in determining the Primary Market Makers that will be required to participate in scheduled functional and performance testing, including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or Primary Market Makers who collectively account for a certain percentage of market share on the Exchange.

(b) At least three (3) months prior to a scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans, the Exchange will publish the criteria to be used by the Exchange to determine which Primary Market Makers will be required to participate in such testing, and notify those Primary Market Makers that are required to participate based on such criteria.