

Required fields are shown with yellow backgrounds and asterisks.

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

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

Proposal to amend Rule 705 to harmonize Exchange liability caps and related reimbursement requirements with those of NASDAQ BX, Inc., NASDAQ PHLX LLC and The NASDAQ Stock Market LLC.

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 * Sun Last Name * Kim
 Title * Assistant General Counsel
 E-mail * SKim@ise.com
 Telephone * (212) 897-0238 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 *)
 Executive Vice President and General Counsel

Date 02/27/2017
 By Edward S. Knight
 (Name *)

edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) ISE Mercury, LLC (the “Exchange” or “ISE Mercury”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend Rule 705 (Limitation of Liability) to harmonize its liability caps and related reimbursement requirements with those of NASDAQ BX, Inc. (“BX”), NASDAQ PHLX LLC (“Phlx”) and NASDAQ Stock Market LLC (“NSM” and together with BX and Phlx, the “Nasdaq Exchanges”).

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

A notice of the proposed rule change for publication in the Federal Register is at Exhibit 1 and the text of the amended Exchange Rule is at Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

Sun Kim
Assistant General Counsel
Nasdaq, Inc.
212-897-0238

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

a. Purpose

The purpose of this proposed rule change is to amend Rule 705 (Limitation of Liability) to harmonize the Exchange's existing liability caps and related reimbursement requirements for claims under Rule 705(d) with the caps and requirements set forth in the rules of the Nasdaq Exchanges.⁴ The Exchange and its affiliates, International Securities Exchange, LLC and ISE Gemini, LLC (together, the "ISE Exchanges"), were recently acquired (the "Acquisition") by Nasdaq, Inc. ("HoldCo").⁵ In the context of the Acquisition, the ISE Exchanges are working to align certain rules with rules of the Nasdaq Exchanges in order to provide consistent standards across the six exchanges operated by HoldCo (the "HoldCo Affiliated Exchanges"). As part of this effort, the proposal set forth below harmonizes the Exchange's liability caps and the related reimbursement requirements with those of the Nasdaq Exchanges in order to provide uniform standards and requirements for users of the HoldCo Affiliated Exchanges.⁶

Rule 705 in its current form generally states that the Exchange is not liable for any losses due to the Exchange's negligence or unintentional actions, but also provides in

⁴ See BX Rule 4626(b) and Phlx Rule 1015. See also NSM Rule 4626(b).

⁵ See Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISE-2016-11; SR-ISEGemini-2016-05; SR-ISEMercury-2016-10).

⁶ International Securities Exchange, LLC and ISE Gemini, LLC will each file a proposed rule change with the Commission to adopt similar requirements.

Rule 705(d) that notwithstanding this general limitation on liability, the Exchange may compensate its members for losses resulting directly from the malfunction of the Exchange's physical equipment, devices and/or programming. Subsections (d)(1) – (d)(3) of Rule 705 contains express conditions governing the voluntary payments made by the Exchange under these limited circumstances. Specifically, the Exchange's payments for any and all system failures on a single trading day are capped at \$250,000 under subsection (d)(1). The rule text states that for the aggregate of all claims made by all market participants related to the use of the Exchange on a single trading day, the Exchange's payments shall not exceed \$250,000. Subsection (d)(2) further provides that if the cumulative claims exceed the \$250,000 cap, this amount would be proportionally allocated among all such claims. Finally, subsection (d)(3) specifies that in order for a member to be eligible to receive payment under this Rule, claims for payment must be made in writing and submitted no later than the opening of trading on the next business day after the loss. Once in receipt of a claim, the Exchange is required to verify that: (i) a valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure occurred during the execution or handling of that order. A system failure will be deemed to have occurred when there is a malfunction of the Exchange's physical systems, devices or software.

The Exchange now proposes to amend the existing rule text in Rule 705(d) to adopt the same liability caps and reimbursement requirements as the Nasdaq Exchanges.⁷ Proposed Rule 705(d) would provide that the Exchange may, notwithstanding the general limitations on liability contained in Rule 705(a), compensate users of the Exchange for

⁷ See note 4 above.

losses directly resulting from the actual failure of the System,⁸ or any other Exchange quotation, transaction reporting, execution, order routing or other systems or facility to correctly process an order, quote, message, or other data, provided that the Exchange has acknowledged receipt of the order, quote, message, or data. This limited exception in proposed Rule 705(d) would be subject to certain conditions and requirements contained in proposed subsections (d)(1) – (3).

Subsection (d)(1) proposes that the aggregate payments for all compensation claims made by all market participants related to the use of the Exchange during a single calendar month would not exceed the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.⁹ Under this proposal, the Exchange will eliminate the existing \$250,000 daily cap on liability and consider all such claims on a monthly basis, subject to proposed \$500,000 monthly liability cap. Each Nasdaq Exchange currently analyzes total eligible liability claims on a per-month look-back basis. The Exchange's proposal to adopt an identical claims process, in effect, would allow ISE Mercury an increased capability to compensate a market participant up to the monthly cap of \$500,000 even though the losses occurred on a single day or were across multiple days for a single participant.

Proposed subsection (d)(2) specifies how the reimbursement funds would be allocated in the event all of the compensation claims submitted during a single calendar month exceed the \$500,000 monthly cap. Specifically, if all of the claims arising out of

⁸ “System” means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. See the Constitution of ISE Mercury, Section 13.1(ee).

⁹ See BX Rule 4626(b)(1), Phlx Rule 1015(1), and NSM Rule 4626(b)(1) for substantially similar provisions.

the use of the Exchange cannot be fully satisfied because in the aggregate they exceed the limitations provided for in the Rule (\$500,000), then the maximum permitted amount would be proportionally allocated among all such claims arising during a single calendar month.¹⁰ This is substantially similar to the existing process where the maximum amount is proportionally allocated among all such claims, except it would be for all claims arising during a one-month period under the proposed rule change rather than during a single trading day under the existing Rule.

Finally, proposed subsection (d)(3) specifies the requirements and procedures applicable to the submission of reimbursement claims. Specifically, all claims for compensation must be submitted in writing no later than 12:00 P.M. ET on the next business day following the day on which the use of the Exchange gave rise to such claims.¹¹ As such, the Exchange is proposing to extend the deadline to submit compensation claims from the opening of trading on the next business day to 12:00 P.M. ET. The Exchange believes that the extension of time to make such compensation claims increases the ability of market participants to submit claims in a timely manner. Proposed subsection (d)(3) also states that nothing in the Rule obligates the Exchange to seek recovery under any applicable insurance policy. If the Exchange does seek and receive an insurance recovery that is larger than \$500,000, the amount of that recovery

¹⁰ See BX Rule 4626(b)(2), Phlx Rule 1015(2), and NSM Rule 4626(b)(5) for substantially similar provisions.

¹¹ See BX Rule 4626(b)(3) and Phlx Rule 1015(3) for substantially similar provisions. See also NSM Rule 4626(b)(6).

would limit the reimbursement funds available for the incident supporting the recovery to the greater recovery amount.¹²

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal supports this policy by establishing a fair and transparent process by which the Exchange can accommodate claims for reimbursement for the failure of specified systems in specified facilities and under specified conditions. The Exchange believes that its proposal to amend Rule 705(d) will continue to promote fairness in the marketplace in situations where one or more firm's claim results from a problem in a function performed by the Exchange's trading system that is solely the fault of the Exchange. As noted above, the proposal would allow the Exchange an increased capability to compensate a market participant up to the monthly cap of \$500,000 even though the losses occurred on a single day or were across multiple days for a single participant. Furthermore, the

¹² There are no other practical differences between the Exchange's existing reimbursement rule and this proposal than as described above. Specifically these differences are: the liability caps (i.e. the greater of \$500,000 or, if the Exchange opts to seek recovery, the recovery amount under any applicable insurance policy), the look-back analysis period of one month, and the later claims deadline of 12:00 PM ET.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

proposed expansion of time to make such compensation claims would increase the ability of market participants to submit claims in a timely manner.

Lastly, the proposed rule change is intended to align the liability caps and compensation claims requirements with the caps and requirements currently provided by the Nasdaq Exchanges in order to provide consistent rules across the six HoldCo Affiliated Exchanges.¹⁵ Consistent rules, in turn, would simplify the regulatory requirements for members of the Exchange that are also participants on the Nasdaq Exchanges. The Exchange believes that the proposed rule change would provide greater harmonization among similar rules of the HoldCo Affiliated Exchanges, resulting in greater uniformity and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because all members would be subject to the same liability caps and reimbursement requirements. The proposed rule change is designed to provide greater harmonization among similar rules across the six HoldCo Affiliated Exchanges, resulting in more efficient regulatory compliance for common members.

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

No written comments were either solicited or received.

¹⁵ See note 4 above.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁶ of the Act and Rule 19b-4(f)(6) thereunder¹⁷ in that it 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.

As discussed above, the Exchange notes that the proposed rule change is based on the rules of the Nasdaq Exchanges.¹⁸ The Exchange believes that under its proposal, market participants that are members on multiple exchanges owned by HoldCo will be provided greater uniformity with the establishment of consistent standards and requirements across the HoldCo Affiliated Exchanges, which is consistent with the protection of investors and the public interest. In addition, the proposal does not impact the operation of any Exchange systems or the execution or reporting of trades, and merely reflects a change in claims administration between the Exchange and its members. The Exchange also believes that the proposed rule change does not impose any significant burden on competition because, as noted above, all members would be subject to the same liability caps and reimbursement requirements.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ See note 4 above.

Furthermore, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the Exchange may, as soon as possible, amend its liability caps and related reimbursement requirements to conform to similar rules on the Nasdaq Exchanges. Waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to harmonize its rules across the HoldCo Affiliated Exchanges in a timely manner, thereby simplifying the regulatory requirements by members of the Exchange that are also participants on the Nasdaq Exchanges.

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

The proposed rule change is based on BX Rule 4626(b) and Phlx Rule 1015. The

proposal is also based on subsections (b)(1), (b)(5) and (b)(6) of NSM Rule 4626.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. _____ ; File No. SR-ISEMercury-2017-04)

March __, 2017

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Harmonize Liability Caps and Related Reimbursement Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 27, 2017, ISE Mercury, LLC (“ISE Mercury” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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 705 (Limitation of Liability) to harmonize its liability caps and related reimbursement requirements with those of NASDAQ BX, Inc. (“BX”), NASDAQ PHLX LLC (“Phlx”) and NASDAQ Stock Market LLC (“NSM” and together with BX and Phlx, the “Nasdaq Exchanges”).

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

1. Purpose

The purpose of this proposed rule change is to amend Rule 705 (Limitation of Liability) to harmonize the Exchange's existing liability caps and related reimbursement requirements for claims under Rule 705(d) with the caps and requirements set forth in the rules of the Nasdaq Exchanges.³ The Exchange and its affiliates, International Securities Exchange, LLC and ISE Gemini, LLC (together, the "ISE Exchanges"), were recently acquired (the "Acquisition") by Nasdaq, Inc. ("HoldCo").⁴ In the context of the Acquisition, the ISE Exchanges are working to align certain rules with rules of the Nasdaq Exchanges in order to provide consistent standards across the six exchanges operated by HoldCo (the "HoldCo Affiliated Exchanges"). As part of this effort, the proposal set forth below harmonizes the Exchange's liability caps and the related

³ See BX Rule 4626(b) and Phlx Rule 1015. See also NSM Rule 4626(b).

⁴ See Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISE-2016-11; SR-ISEGemini-2016-05; SR-ISEMercury-2016-10).

reimbursement requirements with those of the Nasdaq Exchanges in order to provide uniform standards and requirements for users of the HoldCo Affiliated Exchanges.⁵

Rule 705 in its current form generally states that the Exchange is not liable for any losses due to the Exchange's negligence or unintentional actions, but also provides in Rule 705(d) that notwithstanding this general limitation on liability, the Exchange may compensate its members for losses resulting directly from the malfunction of the Exchange's physical equipment, devices and/or programming. Subsections (d)(1) – (d)(3) of Rule 705 contains express conditions governing the voluntary payments made by the Exchange under these limited circumstances. Specifically, the Exchange's payments for any and all system failures on a single trading day are capped at \$250,000 under subsection (d)(1). The rule text states that for the aggregate of all claims made by all market participants related to the use of the Exchange on a single trading day, the Exchange's payments shall not exceed \$250,000. Subsection (d)(2) further provides that if the cumulative claims exceed the \$250,000 cap, this amount would be proportionally allocated among all such claims. Finally, subsection (d)(3) specifies that in order for a member to be eligible to receive payment under this Rule, claims for payment must be made in writing and submitted no later than the opening of trading on the next business day after the loss. Once in receipt of a claim, the Exchange is required to verify that: (i) a valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure occurred during the execution or handling of that order. A system failure will be deemed to have occurred when there is a malfunction of the Exchange's physical systems, devices or software.

⁵ International Securities Exchange, LLC and ISE Gemini, LLC will each file a proposed rule change with the Commission to adopt similar requirements.

The Exchange now proposes to amend the existing rule text in Rule 705(d) to adopt the same liability caps and reimbursement requirements as the Nasdaq Exchanges.⁶ Proposed Rule 705(d) would provide that the Exchange may, notwithstanding the general limitations on liability contained in Rule 705(a), compensate users of the Exchange for losses directly resulting from the actual failure of the System,⁷ or any other Exchange quotation, transaction reporting, execution, order routing or other systems or facility to correctly process an order, quote, message, or other data, provided that the Exchange has acknowledged receipt of the order, quote, message, or data. This limited exception in proposed Rule 705(d) would be subject to certain conditions and requirements contained in proposed subsections (d)(1) – (3).

Subsection (d)(1) proposes that the aggregate payments for all compensation claims made by all market participants related to the use of the Exchange during a single calendar month would not exceed the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.⁸ Under this proposal, the Exchange will eliminate the existing \$250,000 daily cap on liability and consider all such claims on a monthly basis, subject to proposed \$500,000 monthly liability cap. Each Nasdaq Exchange currently analyzes total eligible liability claims on a per-month look-back basis. The Exchange's proposal to adopt an identical claims process, in effect, would allow ISE Mercury an increased capability to compensate a market participant up

⁶ See note 4 above.

⁷ “System” means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. See the Constitution of ISE Mercury, Section 13.1(ee).

⁸ See BX Rule 4626(b)(1), Phlx Rule 1015(1), and NSM Rule 4626(b)(1) for substantially similar provisions.

to the monthly cap of \$500,000 even though the losses occurred on a single day or were across multiple days for a single participant.

Proposed subsection (d)(2) specifies how the reimbursement funds would be allocated in the event all of the compensation claims submitted during a single calendar month exceed the \$500,000 monthly cap. Specifically, if all of the claims arising out of the use of the Exchange cannot be fully satisfied because in the aggregate they exceed the limitations provided for in the Rule (\$500,000), then the maximum permitted amount would be proportionally allocated among all such claims arising during a single calendar month.⁹ This is substantially similar to the existing process where the maximum amount is proportionally allocated among all such claims, except it would be for all claims arising during a one-month period under the proposed rule change rather than during a single trading day under the existing Rule.

Finally, proposed subsection (d)(3) specifies the requirements and procedures applicable to the submission of reimbursement claims. Specifically, all claims for compensation must be submitted in writing no later than 12:00 P.M. ET on the next business day following the day on which the use of the Exchange gave rise to such claims.¹⁰ As such, the Exchange is proposing to extend the deadline to submit compensation claims from the opening of trading on the next business day to 12:00 P.M. ET. The Exchange believes that the extension of time to make such compensation claims increases the ability of market participants to submit claims in a timely manner.

⁹ See BX Rule 4626(b)(2), Phlx Rule 1015(2), and NSM Rule 4626(b)(5) for substantially similar provisions.

¹⁰ See BX Rule 4626(b)(3) and Phlx Rule 1015(3) for substantially similar provisions. See also NSM Rule 4626(b)(6).

Proposed subsection (d)(3) also states that nothing in the Rule obligates the Exchange to seek recovery under any applicable insurance policy. If the Exchange does seek and receive an insurance recovery that is larger than \$500,000, the amount of that recovery would limit the reimbursement funds available for the incident supporting the recovery to the greater recovery amount.¹¹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal supports this policy by establishing a fair and transparent process by which the Exchange can accommodate claims for reimbursement for the failure of specified systems in specified facilities and under specified conditions. The Exchange believes that its proposal to amend Rule 705(d) will continue to promote fairness in the marketplace in situations where one or more firm's claim results from a problem in a function performed by the Exchange's trading system that is solely the fault of the Exchange. As noted above, the proposal would allow the Exchange an increased capability to compensate a

¹¹ There are no other practical differences between the Exchange's existing reimbursement rule and this proposal than as described above. Specifically these differences are: the liability caps (i.e. the greater of \$500,000 or, if the Exchange opts to seek recovery, the recovery amount under any applicable insurance policy), the look-back analysis period of one month, and the later claims deadline of 12:00 PM ET.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

market participant up to the monthly cap of \$500,000 even though the losses occurred on a single day or were across multiple days for a single participant. Furthermore, the proposed expansion of time to make such compensation claims would increase the ability of market participants to submit claims in a timely manner.

Lastly, the proposed rule change is intended to align the liability caps and compensation claims requirements with the caps and requirements currently provided by the Nasdaq Exchanges in order to provide consistent rules across the six HoldCo Affiliated Exchanges.¹⁴ Consistent rules, in turn, would simplify the regulatory requirements for members of the Exchange that are also participants on the Nasdaq Exchanges. The Exchange believes that the proposed rule change would provide greater harmonization among similar rules of the HoldCo Affiliated Exchanges, resulting in greater uniformity and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because all members would be subject to the same liability caps and reimbursement requirements. The proposed rule change is designed to provide greater harmonization among similar rules across the six HoldCo Affiliated Exchanges, resulting in more efficient regulatory compliance for common members.

¹⁴ See note 4 above.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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)(iii) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

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.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, 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.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISEMercury-2017-04 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISEMercury-2017-04. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing

also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-ISEMercury-2017-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

ISE MERCURY, LLC RULES

* * * * *

Rule 705. Limitation of Liability

(a) - (c) No change.

(d) Notwithstanding paragraph (a) above, [and subject to the express limits set forth below, the Exchange may compensate Members for losses resulting directly from the malfunction of the Exchange's physical equipment, devices and/or programming]the Exchange, subject to the express limits set forth below, may compensate users of the Exchange for losses directly resulting from the actual failure of the System, or any other Exchange quotation, transaction reporting, execution, order routing or other systems or facility to correctly process an order, quote, message, or other data, provided that the Exchange has acknowledged receipt of the order, quote, message, or data.

(1) For the aggregate of all claims made by all market participants related to the use of the Exchange [on a single trading day]during a single calendar month, the Exchange's payments shall not exceed [\$250,000]the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.

(2) In the event that all of the claims arising out of the use of the Exchange cannot be fully satisfied because in the aggregate they exceed the limitations provided for in this Rule, then the maximum permitted amount will be proportionally allocated among all such claims arising [on a single trading day]during a single calendar month.

(3) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than [the opening of trading on the next business day following the day on which the use of the Exchange gave rise to such claims. Once in receipt of a claim, the Exchange will verify that: (i) a valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure occurred during the execution or handling of that order]12:00 P.M. ET on the next business day following the day on which the use of the Exchange gave rise to such claims. Nothing in this rule shall obligate the Exchange to seek recovery under any applicable insurance policy.

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