SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77841; File No. SR-ISEMercury-2016-11)

May 16, 2016

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 May 2, 2016, ISE Mercury, LLC (the "Exchange" or "Mercury") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Mercury proposes to amend its Schedule of Fees proposes to amend its Schedule of Fees [sic] to add the definitions of "Mercury Appointed Market Maker" and "Mercury Appointed Order Flow Provider" effective May 2, 2016, which would increase opportunities for Market Makers to qualify for the Exchange's Member Volume Program ("MVP"). The text of the proposed rule change is available on the Exchange's Internet website at http://www.ise.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

2 17 CFR 240.19b-4.

Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

Mercury proposes to amend its Schedule of Fees to add the definitions of Mercury Appointed Market Maker and Mercury Appointed Order Flow Provider effective May 2, 2016, which would increase opportunities for members to qualify for the Exchange's MVP.[3]

Specifically, the Exchange proposes to allow a Mercury Appointed Order Flow Provider ("MOFP")[4] to designate a Mercury Appointed Market Maker ("MAMM")[5] for purposes of Section I, Table 4 of the Fee Schedule.[6] MOFPs and MAMMs would effectuate the designation by each sending an email to the Exchange by the 5th day of the month with their designations.[7] The Exchange would view the corresponding emails as acceptance of such an appointment and would only recognize one such designation for each party once every 6 months, which designation would remain in effect until the Exchange receives an email from either party indicating that the appointment has been terminated.[8] The proposed new concepts would be applicable to, and included in, Section I, Table 4 of the ISE Mercury Fee Schedule, as described

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3 The MVP tiers are determined by a member's average daily volume of Priority Customer Regular Orders, in Penny and Non-Penny Pilot Symbols traded on the Exchange.

4 A "MOFP" is an Electronic Access Member who has been appointed by a Mercury Market Maker pursuant to Section I, Table 4 of the ISE Mercury Fee Schedule.

5 A "MAMM" is a Mercury Market Maker who has been appointed by an Electronic Access Member pursuant to Section I, Table 4 of the ISE Mercury Fee Schedule.

6 See proposed ISE Mercury Fee Schedule, Preface.

7 See proposed ISE Mercury Fee Schedule, Section 1, Table 4. Members should direct their emails designating a MAMM / MOFP to bizdev@ise.com.

8 See id.

below, and are designed to increase opportunities for firms to qualify for the Exchange's MVP.[9]

ISE Mercury introduced the MVP fee and rebate tiers for Market Maker and Priority Customer[10] orders based on the average daily volume ("ADV") that a member executes in Priority Customer orders.[11] The Exchange assesses fees and rebates for Market Maker and Priority Customer orders based on five tiers of Total Affiliated Priority Customer ADV, as described in Table 4 of the Fee Schedule:[12] 0 – 19,999 contracts ("Tier 1"), 20,000 – 39,999 contracts ("Tier 2"), 40,000 – 59,999 contracts ("Tier 3"), 60,000 – 79,999 contracts ("Tier 4"), and 80,000 or more contracts ("Tier 5").[13] As is the case on ISE Mercury's affiliated exchanges – the International Securities Exchange, LLC ("ISE") and ISE Gemini, LLC ("ISE Gemini") – the Exchange's ADV calculation includes volume executed by affiliated members. In particular, the Exchange aggregates all eligible volume from affiliated members in determining applicable tiers, provided that there is at least 75% common ownership between the members as reflected on the member's Form BD, Schedule A. While this method of aggregating volume is beneficial to large

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9 See proposed ISE Mercury Fee Schedule, Section 1, Table 4.

10 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).

11 See Exchange Act Release No. 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR-ISE Mercury-2016-05).

12 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 Price Improvement Mechanism, Facilitation, and Qualified Contingent Cross mechanisms.

13 The highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

firms with multiple affiliated members, the Exchange believed that it was also important to give smaller firms the ability to compete for more favorable fees and rebates.

The Exchange then adopted ADV tiers that are based on preferenced volume[14] – i.e., volume directed to a specific Market Maker as provided in Supplementary Material .03 to Rule 713.[15] In particular, the Exchange gives Market Makers volume credit for 100% of eligible traded volume preferenced to that member,[16] regardless of the actual allocation that the Market Maker receives ("the Preferenced Volume Program."). For example, assume Market Maker ABC is quoting at the national best bid or offer ("NBBO") and receives a Preferenced Order for 10 contracts from an unaffiliated firm for the account of a Priority Customer. If there are other Market Makers quoting at the NBBO, Market Maker ABC may receive an allocation of 4 contracts – i.e., 40% of the order. Rather than counting only the 4 contracts executed towards the Market Maker's volume total, the Exchange now proposes to give that Market Maker credit for the full 10 contracts preferenced to it. This is the same credit the member would receive if the 10 contracts were sent to the exchange by an affiliated member. The Exchange notes that even though Market Maker ABC receives full credit for all 10 contracts when executing 4 contracts, Market Makers that execute the remaining 6 contracts will still receive credit for those 6 contracts.

The proposed rule would replace the Preferenced Volume Program, but all other aspects

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14 See Exchange Act release No. 77412 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR-ISE Mercury-2016-06).

15 An EAM may designate a "Preferred Market Maker" on orders it enters into the System ("Preferenced Orders"). Supplementary Material .03 to Rule 713 describes the Exchange's rules concerning Preferenced Orders.

16 "Eligible volume" refers to volume that would otherwise count towards to applicable volume tier. In the case of ADV thresholds based on Total Affiliated Priority Customer ADV, as currently implemented on ISE Mercury, all Priority Customer volume would be "eligible."

of the MVP, including its five tiers of Total Affiliated Priority Customer ADV, will remain in effect. The Exchange proposes to modify its Fee Schedule to include the newly introduced concepts of a MOFP and MAMM. The proposal would be available to all MOFPs and MAMMs as defined in the Fee Schedule. Specifically, the proposed changes would enable any MOFP to qualify its MAMM for credits under the MVP. In this regard, the proposed change would enable a MAMM to enter a relationship with a MOFP and receive volume credit from that MOFP.[17] Thus, the proposed changes would 1) enable members that are not currently eligible for the MVP to avail themselves of the MVP and 2) assist firms that are currently eligible for the MVP to potentially achieve a higher MVP tier, thus qualifying for lower fees or higher rebates.

The Exchange believes these proposed changes would incentivize firms to direct their order flow to the Exchange to the benefit of all market participants. As proposed, the Exchange would only process one designation of a MOFP and MAMM every 6 months, which designation would remain in effect unless or until either party informs the Exchange of its termination.[18] The Exchange believes that this requirement would impose a measure of exclusivity and would enable MAMMs to rely upon the MOFP's transaction volume executed on the Exchange, which is beneficial to all Exchange participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[20] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

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17 The Market Maker (i.e. MAMM) would still receive volume credit from its affiliates.

18 A MOFP may not have more than one MAMM selected at any given time.

19 15 U.S.C. 78f(b).

20 15 U.S.C. 78f(b)(4) and (5).

charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposal is reasonable, equitable and not unfairly discriminatory for the following reasons. First, this rule filing is substantially similar NYSE MKT LLC's fee filing to modify NYSE Amex's Option Fee Schedule.[21] As such, the proposal would be available to all Electronic Access Members ("EAMs") and Market Makers. Additionally, the designations are completely voluntary and members may elect to accept this appointment or not. In addition, the proposed changes would enable firms that are not currently eligible for the MVP to avail themselves of the MVP as well as to assist firms that are currently eligible for the MVP to potentially achieve a higher MVP tier, thus qualifying for lower fees or higher rebates. The Exchange believes these proposed changes would incentivize firms to direct their order flow to the Exchange. Specifically, the proposed changes would enable any qualifying member (i.e. a MAMM) by virtue of designating a MOFP to aggregate its Priority Customer volume with that of the MOFP, which would enhance the MAMM's potential to qualify for lower fees or higher rebates under the MVP. The Exchange believes these proposed changes would incentivize MOFPs and MAMMs to direct their order flow to the Exchange, which would increase orders routed to the Exchange and benefit all market participants by expanding liquidity, providing more trading opportunities and tighter spreads, including those market participants that opt not to become a MAMM and therefore may be ineligible to earn the credits under the MVP.

The proposal is also reasonable, equitable and not unfairly discriminatory because the Exchange would only process one designation of a MOFP and MAMM every 6 months, which requirement would impose a measure of exclusivity while allowing MAMM's to rely upon, and

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[21] Exchange Act Release No. 77370 (March 15, 2016), 81 FR 15136 (March 21, 2016) (SR-NYSEMKT-2016-35).

potentially increase, the MOFP's transaction volume executed on the Exchange to the benefit of all Exchange participants.

Finally, the Exchange believes the proposal is reasonable, equitable and not unfairly discriminatory as it may encourage an increase in orders routed to the Exchange, which would expand liquidity and provide more trading opportunities and tighter spreads to the benefit of all market participants.

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

In accordance with Section 6(b)(8) of the Act,[22] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change will increase competition by allowing smaller Market Makers to compete for more favorable fees and rebates. As currently implemented, Market Makers that are affiliated with an order router are advantaged relative to other firms in achieving volume based fees and rebates. Although the Exchange continues to believe that counting volume across affiliated members is appropriate, a Market Maker that has a similar relationship, without common ownership, should be able to compete for and receive similar benefits. The proposed rule change is designed to level the playing field between these members and their competitors that already benefit from affiliated volume. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. For the reasons described above, the Exchange believes that the proposed fee change reflects this competitive environment.

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[22] 15 U.S.C. 78f(b)(8).

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,[23] and subparagraph (f)(2) of Rule 19b-4 thereunder,[24] because it establishes a due, fee, or other charge imposed by ISE Mercury.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

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

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23 15 U.S.C. 78s(b)(3)(A)(ii).

24 17 CFR 240.19b-4(f)(2).

ISEMercury-2016-11 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISEMercury-2016-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-ISEMercury-2016-11, 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.[25]

Robert W. Errett
Deputy Secretary

[25] 17 CFR 200.30-3(a)(12).