SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79539; File No. SR-ISEMercury-2016-25)

December 13, 2016

Self-Regulatory Organizations; ISE Mercury LLC; Notice of Filing of Proposed Rule Change to Amend ISE Mercury Rule 723 and to Make Pilot Program Permanent

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 December 12, 2016, ISE Mercury, LLC (the "Exchange" or "ISE 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 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 ISE Mercury Rule 723, concerning its Price Improvement Mechanism ("PIM"). Certain aspects of PIM are currently operating on a pilot basis ("Pilot"), which is set to expire on January 18, 2017.[3] The Pilot concerns (i) the termination of the exposure period by unrelated orders; and (ii) no minimum size requirement of orders eligible for PIM. ISE Mercury seeks to make the Pilot permanent, and also proposes to change the requirements for providing price improvement for Agency Orders of less than 50 option contracts.

The text of the proposed rule change is available on the Exchange's Website at http://nasdaq.cchwallstreet.com, at the principal office of the Exchange, and at the Commission's

---

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 78342 (July 15, 2016), 81 FR 47481 (July 21, 2016) (SR-ISEMercury-2016-13).

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 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 make permanent certain pilots within Rule 723, relating to PIM. Paragraph .03 of the Supplementary Material to Rule 723 provides that there is no minimum size requirement for orders to be eligible for PIM. Paragraph .05 concerns the termination of the exposure period by unrelated orders. In addition, ISE Mercury proposes to modify the requirements for PIM auctions involving less than 50 contracts where the National Best Bid and Offer ("NBBO") is only $0.01 wide.

Background

The Exchange adopted PIM as part of its application to be registered as a national securities exchange.[4] In approving PIM, the Commission noted that it was largely based on a similar functionality offered by the International Securities Exchange, LLC ("ISE").[5] The PIM is a process that allows Electronic Access Members ("EAM") to provide price improvement

---

4 See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (File No. 10-221) ("Exchange Approval Order").

5 See Exchange Approval Order, supra note 4.

opportunities for a transaction wherein the Member seeks to execute an agency order as principal or execute an agency order against a solicited order (a "Crossing Transaction"). A Crossing Transaction is comprised of the order the EAM represents as agent (the "Agency Order") and a counter-side order for the full size of the Agency Order (the "Counter-Side Order"). The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both.

Rule 723 sets forth the criteria pursuant to which the PIM is initiated. Specifically, a Crossing Transaction must be entered only at a price that is equal to or better than the national best bid or offer ("NBBO") and better than the limit order or quote on the Exchange order book on the same side of the Agency Order. The Crossing Transaction may be priced in one-cent increments. The Crossing Transaction may not be canceled, but the price of the Counter-Side Order may be improved during the exposure period.

Rule 723 also sets forth requirements relating to the exposure of orders in PIM and the termination of the exposure period. Upon entry of a Crossing Transaction into the Price Improvement Mechanism, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, will be sent to all Members. This broadcast message will not be included in the ISE Mercury disseminated best bid or offer and will not be disseminated through OPRA. Members will be given 500 milliseconds to indicate the size and price at which they want to participate in the execution of the Agency Order ("Improvement Orders"). Improvement Orders may be entered by all Members for their own account or for the account of a Public Customer in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and for any size up to the size of the Agency Order. During the exposure period, Improvement Orders may not be canceled, but may be modified to (1) increase the size at the same price, or (2) improve the price of the Improvement Order for any size up to the size of the Agency Order. During the exposure period, responses (including the Counter Side Order, Improvement Orders, and any changes to either) submitted by Members shall not be visible to other auction participants. The exposure period will automatically terminate (i) at the end of the 500 millisecond period, (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a nonmarketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange.

Rule 723 also describes how orders will be executed at the end of the exposure period. Specifically, at the end of the exposure period, the Agency Order will be executed in full at the best prices available, taking into consideration orders and quotes in the Exchange market, Improvement Orders, and the Counter-Side Order. The Agency Order will receive executions at multiple price levels if there is insufficient size to execute the entire order at the best price. At a given price, Priority Customer interest is executed in full before Professional Orders and any other interest of Members (i.e., proprietary interest from Electronic Access Members and Exchange market makers).

After Priority Customer interest at a given price, Professional Orders and Members' interest will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the Members' interest.

In the case where the Counter-Side Order is at the same price as Members' interest (after Priority Customer interest at a given price), the Counter-Side order will be allocated the greater of one (1) contract or forty percent (40%) of the initial size of the Agency Order before other Member interest is executed. Upon entry of Counter-Side orders, Members can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. In this case, the Counter-Side order will be allocated its full size at each price point, or at each price point within its limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed. At such price point, the Counter-Side order shall be allocated the greater of one contract or forty percent (40%) of the original size of the Agency Order, but only after Priority Customer Orders at such price point are executed in full. Thereafter, all other orders, Responses, and quotes at the price point will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the order, Response or quote. An election to automatically match better prices cannot be cancelled or altered during the exposure period.

When a market order or marketable limit order on the opposite side of the market from the Agency Order ends the exposure period, it will participate in the execution of the Agency Order at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market or marketable limit order and the Agency Order receive price improvement. Transactions will be rounded, when necessary, to the $.01 increment that favors the Agency Order.

The Pilot

As described above, two components of PIM are currently operating on a pilot basis: (i) the termination of the exposure period by unrelated orders; and (ii) no minimum size requirement of orders entered into PIM. The pilot has been extended until January 18, 2017.[6]

As described in greater detail below, during the pilot period the Exchange has been required to submit, and has been submitting, certain data periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders within the PIM, that there is significant price improvement for all orders executed through the PIM, and that there is an active and liquid market functioning on the Exchange both within PIM and outside of the Auction mechanism. The Exchange has also analyzed the impact of certain aspects of the Pilot; for example, situation in which PIM is terminated prematurely by an unrelated order.

The Exchange now seeks to have the Pilot approved on a permanent basis. In addition, the Exchange proposes to modify the scope of PIM so that, with respect to PIM orders for less than 50 option contracts, members will be required to receive price improvement of at least one minimum price improvement increment over the NBBO if the NBBO is only $0.01 wide. For orders of 50 contracts or more, or if the difference in the NBBO is greater than $0.01, the requirements for price improvement remain the same.

Price Improvement for Orders Under 50 Contracts

Currently, the PIM may be initiated if all of the following conditions are met. A Crossing Transaction must be entered only at a price that is equal to or better than the NBBO and better than the limit order or quote on the Exchange order book on the same side of the Agency Order. The Crossing Transaction may be priced in one-cent increments. The Crossing Transaction may not be canceled, but the price of the Counter-Side Order may be improved during the exposure period.

---

[6] See note 3 above.

ISE Mercury proposes to amend Rule 723(b) to require Electronic Access Members to provide at least $0.01 price improvement for an Agency Order if that order is for less than 50 contracts and if the difference between the NBBO is $0.01. For the period beginning January 19, 2017 until a date specified by the Exchange in a Regulatory Information Circular, which date shall be no later than September 15, 2017, ISE Mercury will adopt a member conduct standard to implement this requirement.[7] Under this provision, the Exchange is proposing to amend the Auction Eligibility Requirements to require that, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO is $0.01, an Electronic Access Member shall not enter a Crossing Transaction unless such Crossing Transaction is entered at a price that is one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than any limit order on the limit order book on the same side of the market as the Agency Order. This requirement will apply regardless of whether the Agency Order is for the account of a public customer, or where the Agency Order is for the account of a broker dealer or any other person or entity that is not a Public Customer. Failure to provide such price improvement will subject Members to the fines set forth in Rule 1614(d)(4) of the International Securities Exchange, LLC ("ISE").[8]

---

[7] The Exchange notes that its indirect parent company, U.S. Exchange Holdings, Inc. has been acquired by Nasdaq, Inc. See Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISEMercury-2016-10). Pursuant to this acquisition, ISE Mercury platforms are migrating to Nasdaq platforms, including the platform that operates PIM. ISE Mercury intends to retain the proposed member conduct standard requiring price improvement for options orders of under 50 contracts where the difference between the NBBO is $0.01 until the ISE Mercury platforms and the corresponding symbols are migrated to the platforms operated by Nasdaq, Inc.

[8] In a separate proposed rule change, ISE is proposing to adopt similar price improvement requirements for orders of less than 50 contracts for its PIM. As part of that rule change, ISE is proposing to amend ISE Rule 1614 (Imposition of Fines for Minor Rule Violations) to add Rule 1614(d)(4), which will provide that, beginning January 19, 2017, any Member who enters an order into PIM for less than 50 contracts, while the National

The Exchange will conduct electronic surveillance of PIM to ensure that members comply with the proposed price improvement requirements for option orders of less than 50 contracts. Specifically, using an electronic surveillance system that produces alerts of potentially unlawful PIM orders, the Exchange will perform a frequent review of member firm activity to identify instances of apparent violations. Upon discovery of an apparent violation, the Exchange will attempt to contact the appropriate member firm to communicate the specifics of the apparent violation with the intent to assist the member firm in preventing submission of subsequent problematic orders. The Exchange will review the alerts monthly and determine the applicability of the MRVP and appropriate penalty. The Exchange is not limited to the application of the MRVP, and may at its discretion, choose to escalate a matter for processing through the Exchange's disciplinary program.

The Exchange is also proposing a systems-based mechanism to implement this price improvement requirement, which shall be effective following the migration of a symbol to INET, the platform operated by Nasdaq, Inc. that will also operate the PIM. Under this provision, if the Agency Order is for less than 50 option contracts, and if the difference between the National Best Bid and National Best Offer ("NBBO") is $0.01, the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the ISE order book on the same side of the Agency Order.

Best Bid or Offer spread is $0.01, must provide price improvement of at least one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order, which increment may not be smaller than $0.01. Failure to provide such price improvement will result in members being subject to the following fines: $500 for the second offense, $1,000 for the third offense, and $2,500 for the fourth offense. Subsequent offenses will subject the member to formal disciplinary action. ISE will review violations on a monthly cycle to assess these violations.

The Exchange believes that these changes to PIM may provide additional opportunities for Agency Orders of under 50 option contracts to receive price improvement over the NBBO where the difference in the NBBO is $0.01 and therefore encourage the increased submission of orders of under 50 option contracts. The Exchange notes that the statistics for the current pilot, which include, among other things, price improvement for orders of less than 50 option contracts under the current auction eligibility requirements, show relatively small amounts of price improvement for such orders. ISE Mercury believes that the proposed requirements will therefore increase the price improvement that orders of under 50 option contracts may receive in PIM.

The Exchange will retain the current requirements for auction eligibility where the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01. Accordingly, the Exchange is amending the Auction Eligibility Requirements to state that, if the PIM Order is for 50 option contracts or more or if the difference between the NBBO is greater than $0.01, the Crossing Transaction must be entered only at a price that is equal to or better than the NBBO and better than the limit order or quote on the ISE Mercury order book on the same side as the Agency Order.

No Minimum Size Requirement

Supplemental Material .03 to Rule 723 provides that, as part of the current Pilot, there will be no minimum size requirement for orders to be eligible for the Auction.[9] As with the ISE

---

9 The provision relating to the no minimum size requirement also requires the Exchange to submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders within the PIM, that there is significant price improvement for all orders executed through the PIM, and that there is an active and liquid market functioning on the Exchange outside of the PIM. Any raw data which is submitted to the Commission will be provided on a confidential basis.

PIM, the Exchange proposed the no-minimum size requirement for the PIM because it believed that this would provide small customer orders with the opportunity to participate in the PIM and to receive corresponding price improvement. In initially approving the ISE PIM, the Commission noted that the no minimum size requirement provided an opportunity for more market participants to participate in the auction.[10] The Commission also stated that it would evaluate PIM during the Pilot Period to determine whether it would be beneficial to customers and to the options market as a whole to approve any proposal requesting permanent approval to permit orders of fewer than 50 contracts to be submitted to the PIM.[11]

As noted above, throughout the Pilot, the Exchange has been required to submit certain data periodically to provide supporting evidence that, among other things, there is meaningful competition for all size orders within the PIM, that there is significant price improvement for all orders executed through the PIM, and that there is an active and liquid market functioning on the Exchange both within PIM and outside of the Auction mechanism.

The Exchange believes that the data gathered since the approval of the Pilot establishes that there is liquidity and competition both within PIM and outside of PIM, and that there are opportunities for significant price improvement within PIM.[12]

In the period between February and June 2016, the PIM executed a total of 613,353

---

10 See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06) ("ISE PIM Approval Order").

11 Id.

12 Specifically, the Exchange gathered and reported nine separate data fields relating to PIM orders of fewer than 50 contracts, including (1) the number of orders of fewer than 50 contracts entered into the PIM; (2) the percentage of all orders of fewer than 50 contracts sent to the Exchange that are entered into the PIM; (3) the spread in the option, at the time an order of fewer than 50 contracts is submitted to the PIM; and (4) of PIM trades, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc. See Exhibit B to ISE Mercury Exchange Application (File No. 10-209).

contracts, which represented 26.36% of total ISE Mercury contract volume and 0.04% of industry volume. The percent of ISE Mercury volume traded in PIM ranged from 0% in February 2016 to 37.88% in June 2016.

The Exchange compiled price improvement data in orders from February through June 2016 that divides the data into the following groups: (1) orders of over 50 contracts where the Agency Order was on behalf of a Public Customer and ISE Mercury was at the NBBO; (2) orders of over 50 contracts where the Agency Order was on behalf of a Public Customer and ISE Mercury was not at the NBBO; (3) orders of over 50 contracts where the Agency Order was on behalf of a non-customer and ISE Mercury was at the NBBO; (4) orders of over 50 contracts where the Agency Order was on behalf of a non-customer and ISE Mercury was not at the NBBO; (5) orders of 50 contracts or less where the Agency Order was on behalf of a Public Customer and ISE Mercury was at the NBBO; (6) orders of 50 contracts or less where the Agency Order was on behalf of a Public Customer and ISE Mercury was not at the NBBO; (7) orders of 50 contracts or less where the Agency Order was on behalf of a non-customer and ISE Mercury was at the NBBO; and (8) orders of 50 contracts or less where the Agency Order was on behalf of a non-customer and ISE Mercury was not at the NBBO.

For March 2016, where the order was on behalf of a Public Customer, the order was for 50 contracts or less, and ISE Mercury was at the NBBO, the most contracts traded (2,525) occurred when the spread was $0.03, with an average number of two participants.[13] All of these contracts received $0.01 price improvement. When the spread was $0.01 for this same category, a total of 734 contracts traded, with none of those contracts receiving price improvement. There

[13] This discussion of March 2016 data is intended to be illustrative of data that was gathered between February 2016 and July 2016. The complete underlying data for February 2016 through June 2016 for these eight categories is attached as Exhibit 3.

was an average number of 3 participants when the spread was $0.01.

In comparison, where the order was on behalf of a Public Customer, the order was for greater than 50 contracts, and ISE Mercury was at the NBBO, the most contracts traded (934) occurred when the spread was $0.10 to $0.20, with an average number of 3 participants. The greatest number of these contracts (429) received $0.05 - $0.10 price improvement.

In March 2016, where the order was on behalf of a Public Customer, the order was for 50 contracts or less, and ISE Mercury was not at the NBBO, the most contracts traded (3,772) occurred when the spread $0.01. Of this category, the greatest number of contracts (3,722) received no price improvement, and 50 contracts received $0.01 price improvement. There was an average number of 2 participants when the spread was $0.01.

In comparison, in March 2016, where the order was on behalf of a Public Customer, the order was for greater than 50 contracts, and ISE Mercury was not at the NBBO, the most contracts traded (1,431) occurred when the spread was $0.02. Of these contracts, the greatest number of contracts (758) received no price improvement. There was an average number of 2 participants when the spread was $0.02.

ISE Mercury believes that the data gathered during the Pilot period indicates that there is meaningful competition in PIM auctions for all size orders, there is an active and liquid market functioning on the Exchange outside of the auction mechanism, and that there are opportunities for significant price improvement for orders executed through PIM. The Exchange therefore believes that it is appropriate to approve the no-minimum size requirement on a permanent basis.

Early Conclusion of the PIM Auction

Supplemental Material .05 to Rule 723 provides that Rule 723(c)(5) and Rule 723(d)(4), which relate to the termination of the exposure period by unrelated orders shall be part of the current Pilot. Rule 723(c)(5) provides that the exposure period will automatically terminate (i) at the end of the 500 millisecond period,[14] (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a nonmarketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange. Rule 723(d)(4) provides that, when a market order or marketable limit order on the opposite side of the market from the Agency Order ends the exposure period, it will participate in the execution of the Agency Order at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market or marketable limit order and the Agency Order receive price improvement. Transactions will be rounded, when necessary, to the $.01 increment that favors the Agency Order.

As with the no minimum size requirement, the Exchange has gathered data on these three conditions to assess the effect of early PIM conclusions on the Pilot.[15]

---

[14] The Exchange notes that it is proposing to modify the exposure period to a time period of no less than 100 milliseconds and no more than one second. See Securities Exchange Act Release No. 79354 (November 18, 2016), 81 FR 85295 (November 25, 2016) (SR-ISEMercury-2016-21).

[15] The Exchange agreed to gather and submit the following data on this part of the Pilot: (1) The number of times that a market or marketable limit order in the same series on the same side of the market as the Agency Order prematurely ended the PIM auction, and the number of times such orders were entered by the same (or affiliated) firm that initiated the PIM that was terminated; (2) the percentage of PIM early terminations due to the receipt of a market or marketable limit order in the same series on the same side of the market that occurred within a 1/2 second of the start of the PIM auction; the percentage that occurred within one second of the start of the PIM auction; the percentage that occurred within one and 1/2 second of the start of the PIM auction; the percentage that occurred within 2 seconds of the start of the PIM auction; the percentage that occurred within 2 and 1/2 seconds of the PIM auction; and the average amount of price improvement provided to the Agency Order where the PIM is terminated early at each of these time periods; (3) the number of times that a market or marketable limit order in the same series on the opposite side of the market as the Agency Order prematurely ended the PIM auction and at what time the unrelated order ended the PIM auction, and the

For the period from January 2016 through June 2016, there were a total of 77 early terminated auctions. The number of orders in early terminated PIM auctions constituted 0.35% of total PIM orders. There were a total of 1,581 contracts that traded through early terminated auctions. The number of contracts in early terminated PIM auctions represented 0.26% of total PIM contracts. Of the early terminated auctions, 46.75% of those auctions received price improvement, and 31.37% of contracts that traded in an early-terminated auction received price improvement. Of the PIM auctions that terminated early and received price improvement from February 2016 through June 2016, the total amount of price improvement received was $16.53.

Based on the data gathered during the pilot, the Exchange does not anticipate that any of these conditions will occur with significant frequency, or will otherwise significantly affect the

---

number of times such orders were entered by the same (or affiliated) firm that initiated the PIM that was terminated; (4) the percentage of PIM early terminations due to the receipt of a market or marketable limit order in the same series on the opposite side of the market that occurred within a 1/2 second of the start of the PIM auction; the percentage that occurred within one second of the start of the PIM auction; the percentage that occurred within one and 1/2 second of the start of the PIM auction; the percentage that occurred within 2 seconds of the start of the PIM auction; the percentage that occurred within 2 and 1/2 seconds of the PIM auction; and the average amount of price improvement provided to the Agency Order where the PIM is terminated early at each of these time periods; (5) the number of times that a nonmarketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange prematurely ended the PIM auction and at what time the unrelated order ended the PIM auction, and the number of times such orders were entered by the same (or affiliated) firm that initiated the PIM that was terminated; (6) the percentage of PIM early terminations due to the receipt of a market or marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange that occurred within a 1/2 second of the start of the PIM auction; the percentage that occurred within one second of the start of the PIM auction; the percentage that occurred within one and 1/2 second of the start of the PIM auction; the percentage that occurred within 2 seconds of the start of the PIM auction; the percentage that occurred within 2 and 1/2 seconds of the PIM auction; and the average amount of price improvement provided to the Agency Order where the PIM is terminated early at each of these time periods; and (7) the average amount of price improvement provided to the Agency Order when the PIM auction is not terminated early. See Exhibit B to ISE Mercury Exchange Application (File No. 10-209).

functioning of the PIM. Of the early terminated auctions, 46.75% of those auctions received price improvement, and 31.37% of contracts that traded in an early-terminated auction received price improvement. The total amount of price improvement for PIM auctions that terminated early was $16.53. The Exchange therefore believes it is appropriate to approve this aspect of the Pilot on a permanent basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[16] in general and with Section 6(b)(5) of the Act,[17] in that it is designed to promote just and equitable principles of trade, to 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act[18] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that PIM, including the rules to which the Pilot applies, results in increased liquidity available at improved prices, with competitive final pricing out of the complete control of the Electronic Access Member that initiated the auction. The

---

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(8).

Exchange believes that PIM promotes and fosters competition and affords the opportunity for price improvement to more options contracts. The Exchange believes that the changes to the PIM requiring price improvement of at least one minimum price improvement increment over the NBBO for Agency Orders of less than 50 option contracts where the difference in the NBBO is $0.01 will provide further price improvement for those orders, and thereby encourage additional submission of those orders into PIM. The Exchange believes that the proposal, which subjects members to the Minor Rule Violation Plan for failing to provide the required price improvement, coupled with the Exchange's surveillance efforts, are designed to facilitate members' compliance with the proposed requirement.

The Exchange believes that approving the Pilot on a permanent basis is also consistent with the Act. With respect to the no minimum size requirement, the Exchange believes that the data gathered during the Pilot period indicates that there is meaningful competition in the PIM for all size orders, there is an active and liquid market functioning on the Exchange outside of the auction mechanism, and that there are opportunities for significant price improvement for orders executed through PIM, including for small customer orders.

With respect to the early termination of the PIM, the Exchange believes that it is appropriate to terminate an auction (i) at the end of the 500 millisecond period, (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a nonmarketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange. The Exchange also believes that it is consistent with the Act to require that, when a market order or marketable limit order on the opposite side of the market from the Agency Order ends the exposure period, it will participate in the execution of the

Agency Order at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market or marketable limit order and the Agency Order receive price improvement. Based on the data gathered during the pilot, the Exchange does not anticipate that any of these conditions will occur with significant frequency, or will otherwise disrupt the functioning of the PIM. The Exchange also notes that a significant percentage of PIM auctions that terminated early executed at a price that was better than the NBBO at the time the auction began, and that a significant percentage of contracts in auctions that terminated early received price improvement.

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. The proposal will apply to all Exchange members, and participation in the PIM process is completely voluntary. Based on the data collected by the Exchange during the Pilot, the Exchange believes that there is meaningful competition in the PIM for all size orders, there are opportunities for significant price improvement for orders executed through PIM, and that there is an active and liquid market functioning on the Exchange outside of the PIM. The Exchange believes that requiring increased price improvement for Agency Orders may encourage competition by attracting additional orders to participate in the PIM. The Exchange believes that approving the Pilot on a permanent basis will not significantly impact competition, as the Exchange is proposing no other change to the Pilot beyond implementing it on a permanent basis.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-ISEMercury-2016-25 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-2016-25. 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 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-2016-25 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.[19]

Eduardo A. Aleman
Assistant Secretary

---

[19] 17 CFR 200.30-3(a)(12).