the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) \textsuperscript{13} of the Act to determine whether the proposed rule change 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);
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2016–61 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSEARCA-2016–61. This file number should be included on the subject line if email 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 Web site 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-NYSEARCA-2016–61 and should be submitted on or before June 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\textsuperscript{14}

Robert W. Errett,
Deputy Secretary.

[FN Doc. 2016–11876 Filed 5–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


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

May 16, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),\textsuperscript{1} and Rule 19b–4 thereunder,\textsuperscript{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 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.\textsuperscript{3}

Specifically, the Exchange proposes to allow a Mercury Appointed Order Flow Provider (“MOFP”) \textsuperscript{4} to designate a Mercury Appointed Market Maker (“MAMM”) \textsuperscript{5} for purposes of Section 1, Table 4 of the Fee Schedule.\textsuperscript{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.\textsuperscript{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.\textsuperscript{8}

The proposed new concepts would be applicable to, and included in, Section

\textsuperscript{1} 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.

\textsuperscript{2} 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.

\textsuperscript{3} 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.

\textsuperscript{4} See proposed ISE Mercury Fee Schedule, Preface.

\textsuperscript{5} See proposed ISE Mercury Fee Schedule, Section 1, Table 4. Members should direct their emails designating a MAMM/MOFP to bizdev@ise.com.

\textsuperscript{6} See id.

\textsuperscript{7} See id.

\textsuperscript{8} See id.


\textsuperscript{14} 17 CFR 200.30–3(a)(12).


I. Table 4 of the ISE Mercury Fee Schedule, as described 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 orders based on the average daily volume (“ADV”) that a member executes in Priority Customer categories.10 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

<table>
<thead>
<tr>
<th>Tier</th>
<th>ADV Tiers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>0–19,999</td>
</tr>
<tr>
<td>Tier 2</td>
<td>20,000–39,999</td>
</tr>
<tr>
<td>Tier 3</td>
<td>40,000–59,999</td>
</tr>
<tr>
<td>Tier 4</td>
<td>60,000–79,999</td>
</tr>
<tr>
<td>Tier 6</td>
<td>80,000 or more</td>
</tr>
</tbody>
</table>

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 determines 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 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 volume14—in other words, volume directed to a specific Market Maker as provided in

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

A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 360 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Mercury Rule 106(a)(17A).

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.

The highest threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. And, what if 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.


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

“Eligible volume” refers to volume that would otherwise count towards 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.”

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

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 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 firm to qualify 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 MOFPs and

18 A MOFP may not have more than one MAMM selected at any given time.
20 15 U.S.C. 78d(b)(4) and (5).
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 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, 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. 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.

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, and subparagraph (f)(2) of Rule 19b–4 thereunder, 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);
- Send an email to rule-comments@sec.gov. Please include File Number SR–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 on the subject line.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32115; File No. 812–14573]

Nationwide Mutual Funds, et al.; Notice of Application

May 16, 2016.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice of an application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (“Act”) granting an exemption from sections 18(f) and 21(b) of the Act; pursuant to section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; pursuant to sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and pursuant to section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.