

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70296; File No. SR-Topaz-2013-03)

August 30, 2013

Self-Regulatory Organizations; Topaz Exchange, 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 August 26, 2013, the Topaz Exchange, LLC (the “Exchange” or “Topaz”) 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 the Substance of the Proposed Rule Change

Topaz is proposing to amend its Schedule of Fees to establish a surcharge fee of \$0.22 per contract for non-Priority Customer orders in options on the Nasdaq-100 Stock Index. 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 the 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into a license agreement with The NASDAQ OMX Group, Inc. in connection with the listing and trading of options on the Nasdaq-100 Stock Index ("NDX"), and is proposing to adopt a surcharge fee of \$0.22 per contract applicable to non-Priority Customer orders in these options to defray the licensing costs. Absent the license agreement, market participants would be unable to trade NDX options on the Exchange.

This fee reflects the pass-through charges associated with the licensing of this product, and the Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the costs of the license. The Exchange notes that the proposed surcharge fee does not apply to Priority Customer orders in this product.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and Section 6(b)(4) of the Act,⁴ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The proposed surcharge fee is reasonable because it is a direct result of the licensing fee charged to the Exchange by the index provider that owns the intellectual property associated with the index, and reflects the pass-through charges associated with obtaining the license to trade

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4).

NDX options, which the Exchange believes is the most equitable means of recovering the costs of the license. The proposed fee is equitable and not unfairly discriminatory in that it applies uniformly to all similarly situated Exchange participants, and is assessed only on those non-Priority Customer participants who choose to transact in NDX options. The Exchange believes it is equitable and not unfairly discriminatory to assess this surcharge on all participants except Priority Customers because the Exchange seeks to encourage Priority Customer order flow and the liquidity such order flow brings to the marketplace, which in turn benefits all market participants.

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

In accordance with Section 6(b)(8) of the Act,⁵ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. By providing all participants on the Exchange with the ability to hedge via NDX options, the Exchange is not placing any burden on competition among its various participants. The Exchange further notes that the licensing agreement it has secured is not an exclusive agreement as many other option exchanges currently trade NDX options and charge a fee related to such license.⁶ As such, there is no burden on competition among exchanges for the trading of NDX options.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be

⁵ 15 U.S.C. 78f(b)(8).

⁶ For example, NYSE Amex Options ("Amex"), NYSE Arca Options ("Arca"), BOX Options Exchange LLC ("BOX"), and the International Securities Exchange, LLC ("ISE") each also charge a surcharge fee of \$0.22 for trades in NDX options. See Amex Fee Schedule, Royalty Fees; Arca Fees and Charges, Royalty Fees; BOX Fee Schedule, Section I, Exchange Fees, Options Surcharge; and ISE Schedule of Fees, Section VI, Other Options Fees and Rebates, Non-Priority Customer License Surcharge for Index Options.

excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule 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 Act⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁸ because it establishes a due, fee, or other charge imposed by Topaz.

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:

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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-Topaz-2013-03 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Topaz-2013-03. 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 offices 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-Topaz-2013-03, 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.⁹

Elizabeth M. Murphy
Secretary

⁹ 17 CFR 200.30-3(a)(12).