

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71074; File No. SR-Topaz-2013-13)

December 13, 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 December 2, 2013, the Topaz Exchange, LLC (d/b/a ISE Gemini) (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 charge a “taker” fee to non-Priority Customers orders executed during the opening rotation. 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees to specify that the Exchange will charge its “taker” fee for non-Priority Customer orders executed during the opening rotation as described below. The fee changes discussed apply to both Standard Options and Mini Options traded on the Exchange. The Exchange’s Schedule of Fees has separate tables for fees applicable to Standard Options and Mini Options. The Exchange notes that while the discussion below relates to fees for Standard Options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for Standard Options.

The Exchange currently treats all volume executed during the opening rotation as adding liquidity for the purpose of determining applicable fees and rebates. This has resulted in a negative rate per contract for the Exchange during the opening rotation as both sides of each trade are paid the applicable rebate for adding liquidity, *i.e.*, the “maker” rebate. As volume executed on the opening rotation continues to grow, and in order to avoid a situation where the Exchange must pay a significant rebate on both sides of these trades, the Exchange proposes to charge its “taker” fee to non-Priority Customer orders executed during the opening rotation. Thus, based on current fee levels, the Exchange will charge a fee of \$0.48 per contract in Penny Symbols and SPY to Market Maker,³ non-Topaz Market Maker,⁴ Firm Proprietary / Broker-

³ The term Market Maker refers to “Competitive Market Makers” and “Primary Market Makers” collectively. Market Maker orders sent to the Exchange by an Electronic Access Member are assessed fees and rebates at the same level as Market Maker orders. See footnote 2, Schedule of Fees, Section I and II.

⁴ A Non-Topaz Market Maker, or Far Away Market Maker (“FarMM”), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

Dealer,⁵ and Professional Customer orders.⁶ In non-Penny Symbols the Exchange will charge a fee of \$0.84 per contract for Market Maker orders, and a fee of \$0.87 per contract for non-Topaz Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders. In order to attract Priority Customer orders,⁷ the Exchange will continue to pay Priority Customers the “maker” rebate, which currently ranges from \$0.25 per contract for Tier 1 Priority Customers to \$0.48 per contract for Tier 4 Priority Customers,⁸ for orders executed during the opening rotation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁰ in particular, in that it provides for an equitable allocation of reasonable fees and other charges among Exchange Members and other persons using its facilities.

The Exchange believes that it is fair and equitable to charge its “taker” fee for non-Priority Customer orders executed during the opening rotation in order to avoid the negative economics associated with paying a rebate on both sides of each trade. The Exchange notes that

⁵ A Firm Proprietary order is an order submitted by a Member for its own proprietary account. A Broker-Dealer order is an order submitted by a Member for a non-Member broker-dealer account.

⁶ A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

⁷ 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).

⁸ The Exchange provides rebates to Members for adding liquidity based on tiers that reflect their Total Affiliated Member Average Daily Volume (“ADV”), Priority Customer Maker ADV, or a combination of the two. See Securities Exchange Act Release No. 70426 (September 17, 2013) 78 FR 58359 (September 23, 2013).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

other options exchanges have implemented opening-only pricing. For example, the BOX Options Exchange (“BOX”) LLC fee schedule provides that transactions that occur on the opening or re-opening of trading will be deemed to neither “add” nor “remove” liquidity, and will therefore be exempt from certain fees and credits.¹¹ The Exchange is proposing to charge non-Priority Customers its “taker” fee rather than waiving fees and rebates for all market participants so that it can attract Priority Customer orders, which will continue to be paid rebates. The Exchange does not believe that it is unfairly discriminatory not to similarly charge its “taker” fee to Priority Customers. In general, Priority Customers are provided higher rebates and lower fees than other market participants on the Exchange. The Exchange believes continuing to provide rebates to Priority Customer orders executed during the opening rotation will attract that order flow to Topaz and thereby create liquidity to the benefit of all market participants who trade on the Exchange. A Priority Customer is by definition not a broker or 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). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

The Exchange notes that it has determined to charge fees in Mini Options at a rate that is 1/10th the rate of fees the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees are reasonable and equitable in light of the fact that Mini Options

¹¹ See BOX Fee Schedule, Section II. Liquidity Fees and Credits, Exempt Transactions.

have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing fees that are 1/10th of those applicable to Standard Options.

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 intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described above, this proposed rule change is intended to remedy the negative economics associated with paying a rebate to market participants on both sides of trades executed during the opening rotation. While only Priority Customers will continue to receive a rebate for trades executed during the opening rotation, this is consistent with current practices of charging lower fees and providing higher rebates to Priority Customers, and will encourage Members to send additional Priority Customer order flow to the Exchange, to the benefit of all market participants. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect 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,¹² and subparagraph (f)(2) of Rule 19b-4 thereunder,¹³ 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:

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 No. SR-Topaz-2013-13 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.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File No. SR-Topaz-2013-13. 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 No. SR-Topaz-2013-13, 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).