

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71276; File No. 4-669)

January 9, 2014

Self-Regulatory Organizations; Topaz Exchange, LLC (d/b/a ISE Gemini); Order Declaring Effective a Minor Rule Violation Plan for Topaz Exchange, LLC

On November 14, 2013, Topaz Exchange, LLC (d/b/a ISE Gemini) (the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed minor rule violation plan ("MRVP") pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19d-1(c)(2) thereunder.² The proposed MRVP was published for public comment on November 29, 2013.³ The Commission received no comments on the proposal. This order declares the Exchange's proposed MRVP effective.

The Exchange's MRVP specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 that would not be subject to the provisions of Rule 19d-1(c)(1) of the Act,⁴ which requires a self-regulatory organization ("SRO") to promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.⁵

¹ 15 U.S.C. 78s(d)(1).

² 17 CFR 240.19d-1(c)(2).

³ See Securities Exchange Act Release No. 70927 (November 22, 2013), 78 FR 71689 ("Notice").

⁴ 17 CFR 240.19d-1(c)(1).

⁵ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

In accordance with Rule 19d-1(c)(2) under the Act,⁶ the Exchange proposed to designate certain specified rule violations as minor rule violations, and requested that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. The Exchange proposed to include in its MRVP the procedures and violations currently included in Exchange Rule 1614 (“Imposition of Fines for Minor Rule Violations”), which had been incorporated by reference from the International Securities Exchange’s rule book.⁷

According to the Exchange’s proposed MRVP, under Exchange Rule 1614, the Exchange may impose a fine (not to exceed \$2,500) on any Member, or person associated with or employed by any Member, with respect to any rule listed in Exchange Rule 1614(d).⁸ The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person’s right to a disciplinary proceeding and any review of the matter under the Exchange rules. Any person against whom a fine is imposed may contest the Exchange’s determination by filing with the Exchange a written answer, at which point the matter shall become a disciplinary proceeding.

Upon the Commission’s declaration of effectiveness of the Exchange’s MRVP, the Exchange will provide the Commission a quarterly report for any actions taken on minor rule

⁶ 17 CFR 240.19d-1(c)(2).

⁷ On July 26, 2013, the Exchange received its grant of registration, which included approval of the rules that govern the Exchange. See Securities Exchange Act Release No. 70050, 78 FR 46622 (August 1, 2013) (File No. 10-209).

⁸ See Notice, supra note 3.

violations under the MRVP. The quarterly report will include: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation occurred, and the date of disposition.⁹

The Commission finds that the proposed MRVP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,¹⁰ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, 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. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,¹¹ which require that the exchange enforce compliance with, and provide appropriate discipline for violations of, Commission and Exchange rules. In addition, because the MRVP offers procedural rights to a person sanctioned under Exchange Rule 1614, the Commission believes that Exchange Rule 1614 provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.¹²

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹³ because the MRVP strengthens the Exchange's ability to carry out its

⁹ The Exchange attached a sample form of the quarterly report with its submission to the Commission.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

¹² 15 U.S.C. 78f(b)(7) and 78f(d)(1).

¹³ 17 CFR 240.19d-1(c)(2).

oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In declaring the Exchange's MRVP effective, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Exchange Rule 1614. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Exchange Rule 1614 provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

IT IS THEREFORE ORDERED, pursuant to Rule 19d-1(c)(2) under the Act,¹⁴ that the proposed MRVP for Topaz Exchange, LLC (d/b/a ISE Gemini), File No. 4-669, be, and hereby is, declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁴ Id.

¹⁵ 17 CFR 200.30-3(a)(44).