

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74113; File No. SR-ISE Gemini-2015-02)

January 22, 2015

Self-Regulatory Organizations; ISE Gemini, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 8, 2015, ISE Gemini, LLC (the “Exchange” or “ISE Gemini”) filed with the Securities and Exchange 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

ISE Gemini proposes to amend the Schedule of Fees to introduce new fees for Crossing Orders and Responses to Crossing Orders executed in the Price Improvement Mechanism (“PIM”). 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 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Schedule of Fees to introduce new fees for Crossing Orders and Responses to Crossing Orders executed in the PIM. The Exchange’s Schedule of Fees has separate 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.

ISE Gemini charges a fee for Crossing Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism, PIM, or submitted as a Qualified Contingent Cross (“QCC”) order. This fee is currently \$0.20 per contract in both Penny<sup>3</sup> and Non-Penny Symbols,<sup>4</sup> and applies to Market Maker,<sup>5</sup> Non-ISE Gemini Market Maker,<sup>6</sup> Firm

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<sup>3</sup> “Penny Symbols” are options overlying all symbols listed on ISE Gemini that are in the Penny Pilot Program.

<sup>4</sup> “Non- Penny Symbols” are options overlying all symbols excluding Penny Symbols.

<sup>5</sup> 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.

<sup>6</sup> A “Non-ISE Gemini Market Maker” 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.

Proprietary<sup>7</sup> / Broker-Dealer,<sup>8</sup> and Professional Customer<sup>9</sup> (“non-Priority Customer”) orders on both the originating and contra side of a Crossing Order. The Exchange now proposes to reduce this fee for non-Priority Customer Crossing Orders to \$0.05 per contract for PIM orders only. Priority Customers<sup>10</sup> do not currently pay a fee for Crossing Orders executed on ISE Gemini. In connection with the above change, the Exchange further proposes to apply a \$0.05 per contract fee to Priority Customer Crossing Orders executed in the PIM when the Priority Customer is on the contra-side of a PIM auction.

In addition, the Exchange charges a fee for Responses to Crossing Orders. In Penny Symbols this fee is \$0.49 per contract for non-Priority Customer orders, and \$0.45 per contract for Priority Customer orders. In Non-Penny Symbols this fee is \$0.86 per contract for Market Maker orders, \$0.87 per contract for Non-ISE Gemini Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders, and \$0.82 per contract for Priority Customer orders. The Exchange now proposes to reduce this fee to \$0.05 per contract for PIM orders executed for all market participant types.

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<sup>7</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

<sup>8</sup> A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>9</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

<sup>10</sup> 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), as defined in ISE Gemini Rule 100(a)(37A).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general, and Section 6(b)(4) of the Act,<sup>12</sup> 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 Exchange believes that the proposed fee changes are reasonable and equitable as members that enter or respond to PIM auctions will benefit from significantly lower overall fees for their PIM trades, leading to greater participation and competition in the PIM, and enhanced price improvement opportunities for investors. By lowering fees for PIM orders, the proposed fee change is designed to encourage members to execute this order flow on ISE Gemini rather than on competing exchanges. In addition, the Exchange believes that decreasing the fee for Responses to Crossing Orders will encourage market participants to be more aggressive in providing additional price improvement when they respond to orders entered into the PIM.

The Exchange believes that the proposed PIM fees are not unfairly discriminatory as the proposed fees apply equally to all members that enter or respond to PIM auctions, except that Priority Customer orders on the originating side of a PIM order will continue to not pay a fee. Priority Customer orders on ISE Gemini are generally entitled to lower fees and higher rebates as the Exchange believes that attracting more liquidity from Priority Customers will benefit all market participants that trade on ISE Gemini.<sup>13</sup> While Priority Customer orders previously

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<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 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 whose behavior is substantially similar to that of market professionals, including Professional

enjoyed free executions on both the originating and contra-side of PIM orders, the Exchange has determined to no longer offer this inducement to contra-side orders, which are solicited by members from other sophisticated parties that engage in this type of trading activity. As such, all market participants that trade on the contra-side of a PIM order will pay the same fee for this activity.

The Exchange notes that it has determined to charge fees and provide rebates in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees and rebates are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing fees and rebates for Mini Options that are 1/10th of those applicable to Standard Options.

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

In accordance with Section 6(b)(8) of the Act,<sup>14</sup> 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 fee change will increase competition by making it cheaper to enter or respond to PIM auctions. 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

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Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

<sup>14</sup> 15 U.S.C. 78f(b)(8).

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,<sup>15</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>16</sup> because it establishes a due, fee, or other charge imposed by ISE Gemini.

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:

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>16</sup> 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](mailto:rule-comments@sec.gov). Please include File No. SR-ISE Gemini-2015-02 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-ISE Gemini-2015-02. 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 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-ISE Gemini-2015-02 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Brent J. Fields  
Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).