

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70426; File No. SR-Topaz-2013-04)

September 17, 2013

Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending 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 September 3, 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 adopt volume-based tiered rebates for adding liquidity on the Exchange (“Maker Rebate”), and to increase the rebate for certain participant types in Non-Penny Symbols. The text of the proposed rule change is available on the Exchange’s website, 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 self-regulatory organization 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

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

<sup>2</sup> 17 CFR 240.19b-4.

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.

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

1. Purpose

Topaz is proposing to amend its Schedule of Fees to establish volume-based rebates for adding liquidity in Regular Orders<sup>3</sup> traded on the Exchange. The Exchange believes the proposed rebates will incentivize firms that route orders to Topaz to increase order flow to the Exchange. The Exchange is also proposing to increase the rebates applicable to Non-Topaz Market Maker,<sup>4</sup> Firm Proprietary / Broker-Dealer,<sup>5</sup> and Professional Customer<sup>6</sup> orders in Non-Penny Symbols.<sup>7</sup>

For Regular Orders in Penny Symbols<sup>8</sup> and SPY the Exchange currently pays a Maker Rebate in Standard Options of \$0.48 per contract for Priority Customer orders,<sup>9</sup> \$0.37 per

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<sup>3</sup> A Regular Order is an order that consists of only a single option series and is not submitted with a stock leg.

<sup>4</sup> 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.

<sup>5</sup> 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.

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

<sup>7</sup> Non-Penny Symbols are options overlying all symbols excluding Penny Symbols.

<sup>8</sup> Penny Symbols are options overlying all symbols listed on Topaz that are in the Penny Pilot Program.

<sup>9</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).

contract (\$0.39 per contract in SPY) for Market Maker orders,<sup>10</sup> and \$0.25 per contract for Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders. For Regular Orders in Non-Penny Symbols, the Exchange currently pays a Maker Rebate in Standard Options of \$0.82 per contracts for Priority Customer orders, \$0.40 per contract for Market Maker orders, and \$0.10 per contract for Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders. For Regular Orders in Mini Options,<sup>11</sup> Maker Rebates are 1/10th the rate applicable in Standard Options.

The Exchange proposes to amend the rebates described above so that Maker Rebates will be based on a Member's average daily volume ("ADV") in a given month.<sup>12</sup> In particular, the Exchange proposes to pay a Maker Rebate based on four volume tier levels as described in the table below. Members may qualify for each tier based on their volume in the following categories: (i) Total Affiliated Member ADV,<sup>13</sup> (ii) Priority Customer Maker ADV, or (iii) Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV. For example, a Member can reach Tier 2 by sending 65,000 contracts in Total Affiliated Member ADV, 20,000 contracts in Priority Customer Maker ADV, or 40,000 contracts in Total Affiliated Member ADV of which 15,000 contracts is Priority Customer Maker volume.

Maker Rebates will be paid based on the highest tier that a Member reaches in a given month, and this tiered rate will apply retroactively to all eligible traded contracts for all client

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<sup>10</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>11</sup> Mini Options are options overlying ten (10) shares of AAPL, AMZN, GLD, GOOG and SPY.

<sup>12</sup> ADV includes all volume in all symbols and order types.

<sup>13</sup> The Total Affiliated Member ADV category includes all volume in all symbols and order types.

categories. This means, for example, a Member with an ADV of 115,000 Priority Customer Maker contracts would also qualify for the highest rebate tier for all Market Maker volume it trades on the Exchange that provides liquidity.

<b>Qualifying Tier Thresholds</b>			
<b>Tier</b>	<b>Total Affiliated Member ADV</b>	<b>Priority Customer Maker ADV</b>	<b>Total Affiliated Member ADV / Minimum Priority Customer Maker ADV</b>
<b>Tier 1</b>	0 – 64,999	0 – 19,999	0 – 39,999 / 0+
<b>Tier 2</b>	65,000 – 149,999	20,000 – 64,999	40,000 – 114,999 / 15,000+
<b>Tier 3</b>	150,000 – 274,999	65,000 – 114,999	115,000 – 224,999 / 45,000+
<b>Tier 4</b>	275,000+	115,000+	225,000+ / 65,000+

Volume in Standard Options and Mini Options will be combined to calculate the tier a Member has reached. For example, a Member can reach Tier 2 under Total Affiliated Member ADV by sending an ADV of 50,000 contracts in Standard Options and 15,000 contracts in Mini Options. Based on the tier achieved, the Member will be rebated for that tier for all the Standard Options traded at the Standard Option rebate amount, and for all the Mini Options traded at the Mini Option rebate amount. In addition, all eligible volume from affiliated Topaz Members will be aggregated in determining applicable tiers.<sup>14</sup>

The proposed Maker Rebates for each tier and participant type are as follows:

<sup>14</sup> Each Member would be responsible for notifying the Exchange of its affiliations so that volume of the Member and its affiliates may be aggregated.

**I. Regular Order Rebates for Adding Liquidity in Standard Options**

<b>Penny Symbols and SPY Maker Rebates (per contract)</b>			
<b>Tier</b>	<b>Priority Customer</b>	<b>Topaz Market Maker</b>	<b>Firm Proprietary, B/D, FarMM &amp; Professional Customer</b>
<b>Tier 1</b>	(\$0.25)	(\$0.30)	(\$0.25)
<b>Tier 2</b>	(\$0.40)	(\$0.32)	(\$0.25)
<b>Tier 3</b>	(\$0.45)	(\$0.34)	(\$0.25)
<b>Tier 4</b>	(\$0.48)	(\$0.37)	(\$0.25)
<b>Tier 4 SPY</b>	(\$0.48)	(\$0.39)	(\$0.25)

<b>Non-Penny Symbols Maker Rebates (per contract)</b>			
<b>Tier</b>	<b>Priority Customer</b>	<b>Topaz Market Maker</b>	<b>Firm Proprietary, B/D, FarMM &amp; Professional Customer</b>
<b>Tier 1</b>	(\$0.70)	(\$0.40)	(\$0.25)
<b>Tier 2</b>	(\$0.75)	(\$0.42)	(\$0.25)
<b>Tier 3</b>	(\$0.80)	(\$0.44)	(\$0.25)
<b>Tier 4</b>	(\$0.82)	(\$0.46)	(\$0.25)

**II. Regular Order Rebates for Adding Liquidity in Mini Options**

<b>Penny Symbols and SPY Maker Rebates (per contract)</b>			
<b>Tier</b>	<b>Priority Customer</b>	<b>Topaz Market Maker</b>	<b>Firm Proprietary, B/D, FarMM &amp; Professional Customer</b>
<b>Tier 1</b>	(\$0.025)	(\$0.030)	(\$0.025)
<b>Tier 2</b>	(\$0.040)	(\$0.032)	(\$0.025)
<b>Tier 3</b>	(\$0.045)	(\$0.034)	(\$0.025)
<b>Tier 4</b>	(\$0.048)	(\$0.037)	(\$0.025)
<b>Tier 4 SPY</b>	(\$0.048)	(\$0.039)	(\$0.025)

<b>Non-Penny Symbols Maker Rebates (per contract)</b>			
<b>Tier</b>	<b>Priority Customer</b>	<b>Topaz Market Maker</b>	<b>Firm Proprietary, B/D, FarMM &amp; Professional Customer</b>
<b>Tier 1</b>	(\$0.070)	(\$0.040)	(\$0.025)
<b>Tier 2</b>	(\$0.075)	(\$0.042)	(\$0.025)
<b>Tier 3</b>	(\$0.080)	(\$0.044)	(\$0.025)
<b>Tier 4</b>	(\$0.082)	(\$0.046)	(\$0.025)

By way of example, under the new tiered rebate structure a Member that executed an ADV of 20,000 Priority Customer contracts in all classes listed on the Exchange that added liquidity in a given month would be entitled to receive the proposed Tier 2 Maker Rebate of \$0.40 per contract for Standard Options and \$0.040 per contract for Mini Options in Penny Symbols. If the Member executed an ADV of 65,000 Priority Customer contracts that added liquidity in the same month, the Exchange would instead pay the proposed Tier 3 Maker Rebate of \$0.45 per contract for Standard Options and \$0.045 per contract for Mini Options in Penny Symbols. The applicable tier reached will similarly affect the maker rebates paid on non-Priority Customer maker volume as reflected in the tables.

The Exchange notes that the Maker Rebates currently being paid on Topaz are equivalent to Tier 4 rebates under the new structure, with a few exceptions. During the initial rollout of symbols on Topaz, the Exchange could not adopt the proposed tiered structure due to the impossibility of calculating appropriate ADV thresholds for each tier when symbols were being listed on the Exchange each week. The Exchange, therefore, opted to provide a higher introductory rate for Maker Rebates in order to attract orders to the Exchange during the initial rollout phase. By adopting the proposed tiered structure now, the Exchange seeks to incentivize Members to send additional order flow to the Exchange in order to qualify for the higher Maker Rebates.

At this time the Exchange is not modifying the Maker Rebates applicable to Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer, or Professional Customer orders in Penny Symbols and SPY. Although the Exchange is adopting a tiered structure for these orders, the amount of the applicable Maker Rebate remains unchanged from current levels of \$0.25 per contract for Standard Options and \$0.025 per contract for Mini Options, regardless of the tier achieved. In order to increase order flow from these market participants in Non-Penny symbols, the Exchange is increasing the Maker Rebate for these market participants so that the rebate is now equivalent to the rebate offered in Penny Symbols and SPY. As such, Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders in Non-Penny Symbols will be provided an increased Maker Rebate of \$0.25 per contract for Standard Options and \$0.025 per contract for Mini Options, up from \$0.10 per contract and \$0.010 per contract, respectively.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>15</sup> in general, and Section 6(b)(4) of the Act,<sup>16</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 the proposed rebates are reasonable and equitably allocated because Topaz has already established Maker Rebates for Members that provide liquidity on the Exchange, and is merely proposing to adopt volume-based tiers designed to incentivize Members to send additional order flow to the Exchange. The Exchange believes that the proposed Maker Rebates are not unfairly discriminatory because the rebate structure is competitive with tiered

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

rebate structures that exist today at other options exchanges such as the NASDAQ Options Market (“NOM”).<sup>17</sup> For example, NOM provides its members with a rebate for adding liquidity in Penny Symbols that ranges between \$0.25 per contract and \$0.48 per contract for customer and professional orders, and between \$0.25 per contract and \$0.32 per contract for Market Maker orders.<sup>18</sup> As proposed, Topaz will also offer Priority Customers the same range of rebates as currently provided by NOM, and will actually offer more competitive rebates for Market Makers, from \$0.30 per contract for the base tier and as high as \$0.37 per contract for the highest tier. Topaz also compares competitively with respect to the thresholds required to achieve higher levels of rebates. For example, a Member executing an ADV of 275,000 contracts on Topaz would qualify for the highest \$0.48 rebate for Priority Customer orders, whereas the same firm would have to execute an extra 50,000 contracts in ADV to qualify for that level of rebate on NOM. Topaz also does not separate out thresholds for different participant types, meaning that a Member that qualifies for a higher tier in Priority Customer volume would also earn the higher rebate amount for any Market Maker volume it trades on the Exchange that provides liquidity.

While the Exchange is lowering the current Maker Rebate provided to Members that have not achieved the highest volume tier, the Exchange believes that Members will in fact be incentivized to bring additional order flow to the Exchange to obtain higher rebates. Additionally, the Exchange believes that the proposed Maker Rebates are fair, equitable and not unfairly discriminatory because they are consistent with rebate differentiation that exists today at other option exchanges.

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<sup>17</sup> See NASDAQ Options Rules, Chapter XV Options Pricing, Section 2, NASDAQ Options Market—Fees and Rebates.

<sup>18</sup> Both Topaz and NOM provide higher rebates than those listed here for market maker orders in certain specific symbols (e.g. SPY).



With respect to rebates for Market Makers, the Exchange believes that the price differentiation between the various market participants is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). The Exchange believes that it is equitable and not unfairly discriminatory to provide a lower rebate to market participants that do not have such requirements and obligations that Exchange Market Makers do.

The Exchange also believes that providing higher rebates to Priority Customer orders, and creating ADV thresholds specifically for Members that send such orders to Topaz, attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Further, the Exchange believes that it is equitable and not unfairly discriminatory to provide higher rebates to Priority Customer orders than to Professional Customer orders. 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. Further, Professional Customers engage in trading activity similar to that conducted by market makers and proprietary traders. For example, Professional Customers join bids and offers on the Exchange and thus compete for incoming order flow.

The Exchange has determined to charge fees and provide rebates for Regular Orders in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange currently 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 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 rebates that are 1/10th of those applicable to Standard Options.

The Exchange notes that the proposed rule filing is intended to establish Topaz as an attractive venue for market participants to direct their order flow as the proposed rebates are competitive with those established by other exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem rebates at a particular exchange to be too low. For the reasons noted above, the Exchange believes that the proposed rebates are fair, equitable and not unfairly discriminatory.

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

In accordance with Section 6(b)(8) of the Act,<sup>19</sup> the Exchange does not believe that the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The tiered rebate structure that the Exchange proposes to adopt here is similar to that currently in effect on other maker/taker options exchanges such as NOM,<sup>20</sup> and will increase competition between Topaz and other markets.

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<sup>19</sup> 15 U.S.C. 78f(b)(8).

<sup>20</sup> See NASDAQ Options Rules, Chapter XV Options Pricing, Section 2, NASDAQ Options Market—Fees and Rebates.

In establishing tiered rebates for providing liquidity, the Exchange is not imposing any burden on intra-market competition. The established volume tiers are transparent and offer Members a variety of ways to reach different levels of rebates on the exchange, similar to levels and differentials these same participants are familiar with on several other exchanges. Volume tiers are not new to the options industry and generally reward Members for submitting additional volume to the Exchange, with Topaz now seeking to introduce a similar structure.

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>21</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>22</sup> 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

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>22</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Topaz-2013-04 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-2013-04. 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-2013-04, 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.<sup>23</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).