

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75959; File No. SR-ISE Gemini-2015-16)

September 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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 11, 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 as described in more detail below.

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

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees to increase Taker Fees and Fees for Responses to Crossing Orders³ (excluding PIM orders) for Market Maker,⁴ Non-ISE Gemini Market Maker,⁵ Firm Proprietary⁶ / Broker-Dealer,⁷ and Professional Customer⁸ (collectively, “non-Priority Customer”) orders in Non-Penny Symbols.⁹ In Non-Penny Symbols, the current Taker Fee for Market Maker orders is \$0.86 per contract, and the current Taker Fee for Non-ISE Gemini Market Maker, Firm Proprietary / Broker Dealer, and Professional Customer orders is \$0.87 per contract. Additionally, ISE Gemini charges Fees for Responses to Crossing Orders that are equivalent to the Taker Fees described above. The Exchange now proposes to increase its

³ “Responses to Crossing Orders” are any contra-side interest (i.e., orders & quotes) submitted after the commencement of an auction in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or Price Improvement Mechanism (“PIM”).

⁴ The term Market Maker refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Rule 100(a)(25).

⁵ 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.

⁶ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

⁷ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

⁸ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

⁹ “Non-Penny Symbols” are options overlying all symbols excluding Penny Symbols.

Taker Fees and Fees for Responses to Crossing Orders to \$0.89 per contract for all non-Priority Customer orders executed in Non-Penny Symbols.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and Section 6(b)(4) of the Act,¹¹ 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 it is reasonable and equitable to increase fees for non-Priority Customer orders in Non-Penny Symbols as the proposed Taker Fee is marginally higher than ISE's current fees and is set at a level ISE believes will remain attractive to its members. Further, the proposed Taker Fee is within the range of fees charged by other options exchanges, including, for example, the Nasdaq Options Market ("NOM"), which charges a fee of \$0.94 per contract for Non-Priority Customer orders in Non-Penny Pilot Symbols.¹² Similarly, the proposed Fee for Responses to Crossing Orders in Non-Penny Symbols is being increased slightly and is appropriate to attract price improvement for Crossing Orders submitted to ISE. Further, the proposed Fee for Responses to Crossing Orders in Non-Penny Symbols is within the range of fees charged by other options exchanges, including, for example, BOX Options Exchange ("BOX"), which charges up to \$1.22 per contract for non-customer responses in Non-Penny Pilot Symbols.¹³ In addition, while the Exchange is increasing the fee spread between

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

¹² See NOM Fee Schedule, Chapter XV Options Pricing, Sec. 2. NASDAQ Options Market – Fees and Rebates.

¹³ The fees charged by BOX to non-customers for Responses in the Solicitation of Facilitation Auction Mechanisms range from \$0.20 to \$0.27. See BOX Fee Schedule,

non-Priority Customer and Priority Customer¹⁴ orders, the Exchange does not believe that the proposed changes are unfairly discriminatory. 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 Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Thus, as has historically been the case, Priority Customer orders remain entitled to more favorable fees than other market participants.

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

In accordance with Section 6(b)(8) of the Act,¹⁵ 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. The proposed fees are competitive with fees offered to orders executed on other options exchanges. 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,

Section I. Exchange Fees, C. Facilitation and Solicitation Transactions. According to the Fee Schedule, “Responses to Facilitation and Solicitation Orders executed in these mechanisms shall be charged the ‘add’ fee.” *Id.* at Section II. Liquidity Fees and Credits, B. Facilitation and Solicitation Transactions, second bullet. The Fee for Adding Liquidity in Non-Penny Pilot Classes for all account types is \$0.95. *Id.* at Section II. Liquidity Fees and Credits, B. Facilitation and Solicitation Transactions. Thus, BOX’s fees range from \$1.15 to \$1.22 per contract.

¹⁴ In contrast to the proposed Taker Fee and Fee for Responses to Crossing Orders of \$0.89, Priority Customer orders that remove liquidity on ISE Gemini are charged a lower Taker Fee of \$0.82 for Tier 1 and \$0.81 for Tiers 2-5 and a \$0.82 Fee for Responses to Crossing Orders.

¹⁵ 15 U.S.C. 78f(b)(8).

and consider adjusting, its fees 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,¹⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁷ 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:

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 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 No. SR-ISE Gemini-2015-16 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE Gemini-2015-16. 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-2015-16 and should be submitted by [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.¹⁸

Robert W. Errett
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).