

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76332; File No. SR-ISEGemini-2015-23)

November 3, 2015

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing of Proposed Rule Change to Comply with the Requirements of Rule 1004 of Regulation SCI

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 October 23, 2015, ISE Gemini, LLC (the "Exchange" or the "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 designate all members that function as Primary Market Makers ("PMMs") as necessary for the maintenance of a fair and orderly market should business continuity and disaster recovery plans (collectively "DR Plans") be activated, and proposes to require PMMs to participate in scheduled functional and performance testing of the operation of such DR Plans by amending Rule 803, Obligations of Market Makers. The Exchange notes that ISE Rule 1903³ Order Routing to Other Exchanges, which is incorporated by reference into ISE Gemini's rulebook, designates members that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This rule is being amended by SR-ISE-2015-35 to designate Linkage Handlers as necessary for the maintenance of a fair and orderly market should the Exchange's DR Plans activate, and require Linkage Handlers to participate in scheduled functional and performance testing of the operation of such DR Plans.

function as Linkage Handlers as necessary for the maintenance of a fair and orderly market should DR Plans be activated and requires Linkage Handlers to participate in scheduled functional and performance testing of the operation of such DR Plans. The text of the proposed rule change is available on the Exchange's website at 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 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 places specified in Item IV below. The Exchange 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

Rule 1004 requires the establishment of standards for the designation of those members the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of a fair and orderly market should the Exchange's business continuity and disaster recovery plans be activated. Rule 1004 also requires the Exchange to designate members pursuant to those standards and require participation by such members in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months. Therefore, in accordance with

Rule 1004, the Exchange proposes to designate all PMMs⁴ and Linkage Handlers,⁵ as the minimum necessary for the maintenance of a fair and orderly market should the Exchange's DR Plans be activated. This proposed rule also mandates participation by designated members in scheduled functional and performance testing of the operation of such DR Plans.

Background

On November 19, 2014, the Securities and Exchange Commission unanimously voted to adopt Regulation SCI, which is a set of rules designed to strengthen the technology infrastructure of the U.S. securities markets.⁶ Specifically, the rules are designed to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the Commission's oversight and enforcement of securities market technology infrastructure.⁷

Regulation SCI applies to "SCI entities," a term which includes SROs such as ISE Gemini. Regulation SCI requires SCI entities to, among other things, 1) establish written policies and procedures reasonably designed to ensure that their systems have levels of

⁴ A PMM posts two-sided continuous quotations in all of the options classes to which it is appointed and undertakes special responsibilities for maintaining fair and orderly markets. PMM memberships are represented by PMM Trading Rights. The options classes trading on ISE Gemini are divided into groups or "bins", each with one PMM. One PMM member may, however, represent more than one bin.

⁵ A Linkage Handler is a broker that is unaffiliated with the Exchange with which the Exchange has contracted with to provide routing services, by routing certain orders, to other exchanges as agent in connection with the Options Order Protection and Locked/Crossed Market Plan. See .03 to Supplementary Material to ISE Rule 1901.

⁶ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) ("SCI Adopting Release").

⁷ Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Regulation SCI at <https://www.sec.gov/divisions/marketreg/regulation-sci-faq.shtml>.

capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability; 2) mandate participation by designated members in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities; 3) take corrective action with respect to “SCI events” (such as systems disruptions, systems compliance issues, and systems intrusions), and to notify the Commission of such events; 4) disseminate information about certain SCI events to affected members and, for certain “major” SCI events, to all members; and 5) review their systems by objective, qualified personnel at least annually, to submit quarterly reports regarding completed, ongoing, and planned material changes to their SCI systems to the Commission, and to maintain certain books and records.⁸

Proposed Rule Change

Rule 1004 of Regulation SCI requires the establishment of standards for the designation of those members ISE Gemini reasonably determines are, taken as a whole, the minimum necessary for the maintenance of a fair and orderly market should the Exchange activate its DR Plans. To comply with this rule, the Exchange proposes to amend .02 of Supplementary Material to ISE Gemini Rule 803, Obligations of Market Makers, by designating all members that function as PMMs. The Exchange also notes that .03 of Supplementary Material to ISE Rule 1903, Order Routing to Other Exchanges, has been incorporated by reference into ISE Gemini’s rulebook and designates all members that function as Linkage Handlers as necessary for the maintenance of a fair and orderly market should the Exchange activate its DR Plans.⁹

⁸ Id.

⁹ The Exchange notes that these designations are determined by the members’ respective functions.

ISE Gemini believes PMMs (together with Linkage Handlers) meet the requirements of Regulation SCI because they are vital to maintaining a fair and orderly market. Among other things, PMMs compete with other market makers¹⁰ to improve the market in all series of options classes to which the PMM is appointed; make markets that are honored for the number of contracts entered into the Exchange's system in all series of options classes to which the PMM is appointed; update market quotations in response to changed market conditions in all series of options classes to which the PMM is appointed; and price option contracts fairly.¹¹ If the DR Plans are activated, PMMs will ensure ISE Gemini's market continues to run smoothly. Similarly, Linkage Handlers meet the requirements of Regulation SCI because they route orders to other exchanges when ISE Gemini is not at the National Best Bid or Offer ("NBBO"). Should the DR Plans be activated, Linkage Handlers will ensure that investors receive the best price available across all exchanges for their orders.

Rule 1004 also requires that the Exchange mandate participation by designated members in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months. The Exchange now proposes that PMMs and Linkage Handlers (requirements incorporated by reference) are required to participate in scheduled functional and performance testing of such plans at least once every 12 months. This testing will prepare the designated members for certain SCI events, and enable the market to continue operating without major issues during such events.

¹⁰ Market makers refers to "Competitive Market Makers" and "PMMs" collectively. See ISE Gemini Rule 100(a)(25).

¹¹ See ISE Gemini Rule 803.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹² In particular, the proposal is consistent with Section 6(b)(5) of the Act,¹³ because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule is consistent with the Exchange Act because it complies with Regulation SCI's requirements. ISE Gemini's Rule 803, and ISE Rule 1903, which is incorporated by reference, designate members they determine are necessary for the maintenance of a fair and orderly market if the Exchange's DR Plans are activated and mandate participation by designated members in scheduled functional and performance testing of the DR Plans at least once every 12 months.

The Exchange further believes the proposed rule change is consistent with the protection of investors and the public interest because ISE Gemini has designated PMMs, which maintain a fair and orderly market by making markets that are honored, competing with other market makers to improve the market, updating market quotations, and pricing option contracts fairly. Similarly, ISE Gemini has incorporated by reference the designation of Linkage Handlers, which route certain orders to other exchanges when ISE Gemini is not at the NBBO. This provides investors with the best price available across exchanges for their orders. Further, the proposed rule is consistent with the protection of

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

investors and the public interest because, as proposed and incorporated by reference, these designated members are required to participate in functional and performance testing of the DR Plans. As a result, if the DR Plans are activated, the designated members and their systems will be prepared to handle a potential SCI event and ensure that investors can continue to trade during the event.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because ISE Gemini is implementing the requirements of Regulation SCI.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change,

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission, as required by Rule 19b-4(f)(6).

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-ISEGemini-2015-23 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-ISEGemini-2015-23. 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. Copies of such filing also will be available for inspection and copying at the principal office of ISE Gemini. 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-ISEGemini-2015-23 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.¹⁶

Brent J. Fields
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).