

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79644; File No. SR-ISEGemini-2016-22)

December 21, 2016

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adjust Qualifying Tier Thresholds and Fees and Rebates

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on December 9, 2016, ISE Gemini, LLC (“ISE Gemini” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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

The Exchange proposes to adjust qualifying tier thresholds and fees and rebates under the Schedule of Fees.

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 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 in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The purpose of the proposed rule change is to adjust qualifying tier thresholds and fees and rebates under the Exchange’s Schedule of Fees. Each of the proposed changes is described in more detail below.

Qualifying Tier Thresholds

ISE Gemini currently provides volume-based maker rebates to Market Maker³ and Priority Customer⁴ orders in five tiers based on a member’s average daily volume (“ADV”) in the following categories: (i) Total Affiliated Member ADV,⁵ (ii) Priority Customer Maker ADV,⁶ and (iii) Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV, as shown in the table below.⁷ In addition, the Exchange charges volume based taker fees to market participants based on achieving these volume thresholds.

³ The term Market Maker refers to “Competitive Market Makers” and “Primary Market Makers” collectively.

⁴ 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).

⁵ The Total Affiliated Member ADV category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms.

⁶ The Priority Customer Maker ADV category includes all Priority Customer volume that adds liquidity in all symbols.

⁷ All eligible volume from affiliated members is aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member’s Form BD, Schedule A.

The highest tier threshold attained by any method above applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

Table 1: Current			
Tier	Total Affiliated Member ADV	Priority Customer Maker ADV	Total Affiliated Member ADV / Minimum Priority Customer Maker ADV
Tier 1	0 – 49,999	0 – 19,999	0 – 39,999 / 0+
Tier 2	50,000 – 124,999	20,000 – 49,999	40,000 – 99,999 / 15,000+
Tier 3	125,000 – 249,999	50,000 – 84,999	100,000 – 174,999 / 40,000+
Tier 4	250,000 – 349,999	85,000 – 124,999	175,000 – 249,999 / 65,000+
Tier 5	350,000+	125,000+	250,000+ / 85,000+

As outlined in the following table, the Exchange now proposes to decrease the number of tiers available to four, modify the ADV thresholds required for members to achieve for each of those tiers, and eliminate the qualifying thresholds based on Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV. With the elimination of the fifth tier, the Exchange hereby proposes to eliminate all fees and rebates applicable to members that achieve that tier.⁸ As described in the following sections, the Exchange is proposing to make changes to rates in other tiers so that fees and rebates remain competitive.

Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

⁸ The current fees and rebates applicable to Tier 5 are described in the following sections. Those fees and rebates are eliminated in connection with the reduction to four tiers.

Table 1: Proposed

Tier	Total Affiliated Member ADV	Priority Customer Maker ADV
Tier 1	0 – 99,999	0 – 19,999
Tier 2	100,000 – 224,999	20,000 – 99,999
Tier 3	225,000 – 349,999	100,000 – 149,999
Tier 4	350,000 or more	150,000 or more

Maker Rebates in Penny Symbols and SPY

Currently, the Exchange provides a maker rebate to Market Maker orders in Penny Symbols and SPY that is \$0.30 per contract in Tier 1, \$0.32 per contract in Tier 2 (or \$0.33 per contract for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month), \$0.34 per contract in Tier 3, \$0.37 per contract in Tier 4, and \$0.38 per contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Market Maker orders in Penny Symbols and SPY to \$0.45 per contract in Tier 4.⁹ In addition, the Exchange proposes to eliminate the higher maker rebate provided in Tier 2 for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month.¹⁰

Currently, the Exchange provides a maker rebate to Priority Customer orders in Penny Symbols and SPY that is \$0.25 per contract in Tier 1 (or \$0.32 per contract for members that execute a Priority Customer Maker ADV of 5,000 to 19,999 contracts in a given month), \$0.40 per contract in Tier 2, \$0.48 per contract in Tier 3, \$0.50 per contract in Tier 4, and \$0.52 per

⁹ Tier 5 is being eliminated, and the Exchange has therefore proposed to eliminate all fees and rebates applicable to members that achieve this tier. See id. and accompanying text. The proposed Tier 4 rates in this and following sections will therefore represent the rates for the highest volume tier.

¹⁰ The Exchange will therefore eliminate footnote 9 under the Schedule of Fees, Section I Regular Order Fees and Rebates.

contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Priority Customer orders in Penny Symbols and SPY to \$0.53 per contract in Tier 4.

Maker Rebates in Non-Penny Symbols

Currently, the Exchange provides a maker rebate to Market Maker orders in Non-Penny Symbols that is \$0.40 per contract in Tier 1, \$0.42 per contract in Tier 2 (or \$0.43 per contract for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month), \$0.44 per contract in Tier 3, \$0.47 per contract in Tier 4, and \$0.49 per contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Market Maker orders in Non-Penny Symbols to \$0.50 per contract in Tier 3, and \$0.75 per contract in Tier 4. In addition, the Exchange proposes to eliminate the higher rebate provided in Tier 2 for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month.¹¹

Currently, the Exchange provides a maker rebate to Priority Customer orders in Non-Penny Symbols that is \$0.75 per contract in Tier 1 (or \$0.76 per contract for members that execute a Priority Customer Maker ADV of 5,000 to 19,999 contracts in a given month), \$0.80 per contract in Tier 2, and \$0.85 per contract in Tiers 3 through 5. The Exchange proposes to increase the maker rebate provided to Priority Customer orders in Non-Penny Symbols to \$1.05 per contract in Tier 4.

Taker Fees in Penny Symbols and SPY

Currently, the Exchange charges a taker fee for Market Maker and Non-ISE Gemini Market Maker¹² orders in Penny Symbols and SPY that is \$0.49 per contract for Tiers 1 through

¹¹ The Exchange will therefore eliminate footnote 10 under the Schedule of Fees, Section I Regular Order Fees and Rebates.

¹² 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.

4, and \$0.48 per contract in Tier 5, for trades executed against a Non-Priority Customer.¹³ Firm Proprietary,¹⁴ Broker-Dealer,¹⁵ and Professional Customer¹⁶ orders in Penny Symbols and SPY are charged a \$0.49 per contract taker fee for trades executed against a Non-Priority Customer, regardless of the tier achieved. The taker fee is \$0.50 per contract for all Non-Priority Customer orders in Penny Symbols and SPY for trades executed against a Priority Customer. Finally, the Exchange charges a taker fee for Priority Customer orders in Penny Symbols and SPY that is \$0.45 per contract in Tier 1, and \$0.44 per contract in Tiers 2 through 5. Priority Customer orders are charged these rates regardless of the counterparty.

The Exchange proposes to decrease the taker fee charged to Market Maker and Non-ISE Gemini Market Maker orders in Penny Symbols and SPY to \$0.48 per contract in Tier 4 for trades executed against a Non-Priority Customer. The Exchange also proposes to increase the taker fee for Priority Customer orders in Penny Symbols and SPY to \$0.48 per contract in Tier 1, \$0.47 per contract in Tiers 2 and 3, and \$0.45 per contract in Tier 4. Finally, the Exchange proposes to charge a taker fee of \$0.49 per contract for Priority Customer orders in Penny Symbols and SPY for trades executed against a Priority Customer.

Taker Fees in Non-Penny Symbols

¹³ Non-Priority Customer includes Market Maker, Non-ISE Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer.

¹⁴ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

¹⁵ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

¹⁶ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

Currently, the Exchange charges a taker fee for Non-Priority Customer orders in Non-Penny Symbols that is \$0.89 per contract, regardless of the tier achieved.¹⁷ In addition, the Exchange charges a taker fee for Priority Customer orders that is \$0.82 per contract for Tier 1, and \$0.81 per contract for Tiers 2 through 5. Today, the taker fees in Non-Penny Symbols described above apply regardless of the counterparty.

The Exchange proposes to increase the taker fee for Non-Priority Customer orders to \$1.10 for trades executed against a Priority Customer in Non-Penny Symbols. In addition, the Exchange proposes to increase the taker fee for Priority Customer orders in Non-Penny Symbols to \$0.85 per contract for trades executed against a Priority Customer. With these changes, different taker fees will be charged for trades executed against a Priority Customer similar to taker fees charged in Penny Symbols. Orders that do not trade against a Priority Customer will continue to be charged at their current rates.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁸ in general, and Section 6(b)(4) of the Act,¹⁹ 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 change is reasonable and equitable. The Exchange is reducing the number of tiers offered to four, and is eliminating one of the methods of achieving those tiers – i.e., the Total Affiliated Member ADV / Minimum Priority Customer

¹⁷ Non-Priority Customer orders are also charged the taker fee for trades executed during the opening rotation. Priority Customer orders executed during the opening rotation receive the applicable maker rebate based on the tier achieved.

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(4).

ADV categories. These two changes will simplify the Exchange's volume tiers. As the Exchange implements new pricing programs over time, the Exchange believes that it is appropriate to eliminate pricing programs when the Exchange no longer believes they are necessary. With respect to the elimination of the Total Affiliated Member ADV / Minimum Priority Customer ADV qualifying methodology in particular, the Exchange notes that members were not making use of these qualifying thresholds to achieve higher tiers on the Exchange. The Exchange therefore believes that it is appropriate to remove this alternative method of qualifying for higher tiers. The proposed changes to the tier structure are also accompanied by changes to the fees charged and rebates offered to members. The Exchange believes that these changes taken together will be attractive to market participants. The proposed fee change will allow the Exchange to offer more favorable rebates to Market Maker and Priority Customer orders in the highest tiers, and is designed to attract more of that volume to the Exchange. Even though the Exchange is reducing the number of volume tiers, the maker rebates proposed for the new highest tier (i.e., Tier 4) are higher than the current Tier 5 maker rebates.

Today, the Exchange provides enhanced maker rebates for Market Maker Priority Customer orders. Further increasing the rebates will incentivize these members to send additional order flow to ISE Gemini, thereby creating additional liquidity to the benefit of members and investors that trade on the Exchange. Although the proposed fee changes are designed to attract liquidity from Market Makers and Priority Customers by increasing maker rebates, certain taker fees will also be increased. The Exchange believes that the taker fee increases are appropriate as the fees will remain attractive to market participants who will now also benefit from additional liquidity posted on the Exchange.

With respect to increased taker fees for trades executed against a Priority Customer, the Exchange believes that the proposed fees are appropriate as they are designed to offset the enhanced rebates. With the proposed changes, Priority Customers will be offered even more favorable maker rebates. The Exchange believes that members will benefit from the additional liquidity created by the higher Priority Customer rebates, and it is therefore appropriate to charge an increased taker fee for trades executed against a Priority Customer. Furthermore, these taker fees are within the range of taker fees charged on other markets, including for example the Nasdaq Options Market (“NOM”), which charges a taker fee of up to \$1.10 in Non-Penny Pilot Options and \$0.50 per contract in Penny Pilot Options.²⁰

The Exchange also does not believe that the proposed fee change is unfairly discriminatory. While the proposed fee change generally increases maker rebates for Market Maker and Priority Customer orders, and increases taker fees for trades executed against a Priority Customer, the Exchange believe that the proposed fee structure will remain attractive to all members. As has historically been the case, Market Maker and Priority Customer orders will earn more favorable maker rebates in order to encourage that order flow. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). In addition, 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 than Priority Customers.

²⁰ See NOM Rules, Chapter XV Options Pricing, Sec. 2 NOM—Fees and Rebates.

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

In accordance with Section 6(b)(8) of the Act,²¹ 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 changes to fees and rebates are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed fees and rebates are competitive with fees and rebates 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, and consider adjusting, its fees and rebates 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

No written comments were either solicited or received.

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,²² and Rule 19b-4(f)(2)²³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

²¹ 15 U.S.C. 78f(b)(8).

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

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 Number SR-ISEGemini-2016-22 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-ISEGemini-2016-22. 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 the 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-ISEGemini-2016-22 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.²⁴

Eduardo A. Aleman
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).