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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70200; File No. SR-Topaz-2013-01)

August 14, 2013

Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish 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 August 5, 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 establish a Schedule of Fees by adopting fees and rebates for all Regular Orders in standard options and Mini Options traded on Topaz. The proposed fees and rebates will apply to transactions that take and make liquidity in symbols traded on the Exchange. 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

¹ 15 U.S.C. 78s(b)(1).

² 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

The purpose of the proposed rule filing is to establish a Schedule of Fees by adopting fees and rebates for Regular Orders³ that make or take liquidity in standard options and Mini Options traded on Topaz.⁴

Fees and Rebates

The Exchange proposes to assess per contract transaction fees in all option classes traded on the Exchange to market participants that take liquidity from the Exchange's orderbook and provide rebates to those participants that make liquidity. The fees depend on the category of market participant submitting orders to the Exchange.

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

⁴ The fees proposed herein are similar to the maker/taker fees currently assessed by NASDAQ Options Market ("NOM"). NOM currently charges a fee for adding liquidity to the following class of market participants on that exchange: (i) Firm, (ii) Broker-Dealer, and (iii) Non-NOM Market Maker. NOM also charges a fee for removing liquidity to the following class of market participants: (i) Customer, (ii) Professional, (iii) Firm, (iv) Non-NOM Market Maker, (v) NOM Market Maker and (vi) Broker-Dealer. NOM also provides a rebate for adding liquidity to the following class of market participants: (i) Customer, (ii) Professional, and (iii) NOM Market Maker. See NOM Price List, Chapter XV, Options Pricing, at <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing>.

The proposed Schedule of Fees identifies the following categories of market participants: (i) Market Maker;⁵ (ii) Non-Topaz Market Maker;⁶ (iv) [sic]⁷ Firm Proprietary⁸ / Broker-Dealer;⁹ (v) Professional Customer;¹⁰ and (vi) Priority Customer.¹¹ The fees to be assessed for Regular Orders that take liquidity in standard options that are in the Penny Pilot¹² (including SPY) are: (i) \$0.48 per contract for Market Maker, Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (ii) \$0.45 per contract for Priority Customer orders. The transaction charges to be assessed for Regular Orders that take liquidity in Mini

⁵ The term Market Makers 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 at the same level as Market Maker orders. See footnote 2, Schedule of Fees, Section I and II.

⁶ 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 (“Exchange Act”), registered in the same options class on another options exchange.

⁷ The Commission notes that three ordered lists in the Exchange’s filing appear to have been misnumbered.

⁸ A Firm Proprietary order is an order submitted by a member for its own proprietary account.

⁹ A Broker-Dealer order is an order submitted by a member for a non-member broker-dealer account.

¹⁰ A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

¹¹ 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).

¹² Under the Penny Pilot program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (“QQQ”), the SPDR S&P 500 Exchange Traded Fund (“SPY”) and the iShares Russell 2000 Index Fund (“IWM”), is \$0.01 for all quotations in options series that are quoted at less than \$3 per contract and \$0.05 for all quotations in options series that are quoted at \$3 per contract or greater. The proposed fees and rebates for Penny Pilot symbols (including SPY) apply to all classes in the Penny Pilot, i.e., to series that are quoted at less than \$3 that have a minimum price variation of \$0.01 and to series that are quoted at \$3 or more that have an minimum price variation of \$0.05. QQQ, SPY and IWM are quoted in \$0.01 increments for all options series.

Options that are in the Penny Pilot (including SPY) are: (i) \$0.048 per contract for Market Maker, Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (ii) \$0.045 per contract for Priority Customer orders.

The transaction charges to be assessed for Regular Orders that take liquidity in standard options that are not in the Penny Pilot are: (i) \$0.84 per contract for Market Maker orders; (ii) \$0.87 per contract for Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (ii) [sic] \$0.82 per contract for Priority Customer orders. The transaction charges to be assessed for Regular Orders that take liquidity in Mini Options that are not in the Penny Pilot are: (i) \$0.084 per contract for Market Maker orders; (ii) \$0.087 per contract for Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (ii) [sic] \$0.082 per contract for Priority Customer orders.

In order to provide an incentive for market participants to provide liquidity in option classes traded on the Exchange, Topaz proposes to adopt per contract rebates. The per contract rebate for Regular Orders that make liquidity in standard options that are in the Penny Pilot are: (i) \$0.37 per contract (for SPY, this rebate is \$0.39 per contract) for Market Maker orders; (ii) \$0.25 per contract for Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (iii) \$0.48 per contract for Priority Customer orders. The per contract rebate for Regular Orders that make liquidity in Mini Options that are in the Penny Pilot are: (i) \$0.037 per contract (for SPY, this rebate is \$0.039 per contract) for Market Maker orders; (ii) \$0.025 per contract for Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (iii) \$0.048 per contract for Priority Customer orders.

The Exchange proposes to adopt per contract rebates for Regular Orders that make liquidity in standard options that are not in the Penny Pilot of: (i) \$0.40 per contract for Market

Maker orders; (ii) \$0.10 per contract for Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (iii) \$0.82 per contract for Priority Customer orders. The Exchange also proposes to adopt per contract rebate for Regular Orders that make liquidity in Mini Options that are not in the Penny Pilot of: (i) \$0.040 per contract for Market Maker orders; (ii) \$0.010 per contract for Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (iii) \$0.082 per contract for Priority Customer orders.

The maker and taker fees and rebates noted above also apply to orders that are exposed at the National Best Bid or Offer (NBBO) by the Exchange (“Flash Order”).¹³ When Topaz is not at the NBBO, certain orders are exposed to members to give them an opportunity to match the NBBO before those orders are sent for execution pursuant to intermarket linkage rules. For all Flash Orders, the Exchange will charge the applicable taker fee and for responses that trade against a Flash Order, the Exchange will provide the applicable maker rebate.

The Exchange proposes to adopt fees of \$0.20 per contract and \$0.020 per contract for Regular Crossing Orders in standard options and Mini Options, respectively, in all symbols traded on the Exchange for all market participants, except Priority Customers. The fee for Regular Crossing Orders in standard options and Mini Options for Priority Customer orders will be \$0.00 per contract. A Crossing Order is an order executed in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism or submitted as a Qualified Contingent Cross order. Orders executed in the Block Order Mechanism are also considered Crossing Orders.

¹³ See Topaz Rule 1901, Supplementary Material .02.

The Exchange proposes to adopt fees for Responses to Crossing Orders. A Response to Crossing Order is any contra-side interest (i.e., orders and quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or Price Improvement Mechanism. For Regular Orders in standard options that are in the Penny Pilot (including SPY), the Exchange proposes to adopt a fee of (i) \$0.48 per contract for Market Maker, Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (ii) \$0.45 per contract for Priority Customer orders. For Regular Orders in standard options that are not in the Penny Pilot, the Exchange proposes to adopt a fee of (i) \$0.84 per contract for Market Maker orders; (ii) \$0.87 per contract for Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (iii) \$0.82 per contract for Priority Customer orders. For Regular Orders in Mini Options that are in the Penny Pilot (including SPY), the Exchange proposes to adopt a fee of \$0.048 per contract for Market Maker, Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (ii) \$0.045 per contract for Priority Customer orders. For Regular Orders in Mini Options that are not in the Penny Pilot, the Exchange proposes to adopt a fee of (i) \$0.084 per contract for Market Maker orders; (ii) \$0.087 per contract for Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and (iii) \$0.082 per contract for Priority Customer orders.

The Exchange believes the proposed fees for Crossing Orders and Responses to Crossing Orders are competitive with fees charges by other options exchanges that have functionality for crossing orders. For example, a crossing order at the BOX Options Exchange ("BOX") executed through its PIP is subject to a transaction fee as high as \$0.65 per contract for Penny Pilot symbols and \$1.10 per contract for non-Penny Pilot symbols, as follows: the customer side of the

order being auctioned is not charged a fee and receives a ‘Credit for Removing Liquidity’ of \$0.30 per contract in Penny Pilot symbols and \$0.75 per contract in non-Penny Pilot symbols. The improvement side of the order (on behalf of the BOX member seeking to internalize the customer order) would be charged a fee of as much as \$0.35 per contract or as little as \$0.10 per contract based on that members’ ADV at BOX – keeping in mind that the ‘Credit for Removing Liquidity’ mentioned above is credited to that executing broker, either completely negating the total fee paid or creating a credit for that member firm.

For responding to PIP and participating or improving the customer side of the order, BOX participants are charged the ‘Fee for Adding Liquidity’ of \$0.30 per contract in Penny Pilot symbols and \$0.75 per contract in non-Penny Pilot symbols. This fee is in addition to regular transaction fees charged to BOX members, which range between \$0.10 per contract and \$0.35 per contract. As a result, the total fee charged for responding to PIP orders on BOX ranges between \$0.40 and \$0.65 per contract for Penny Pilot symbols and \$0.85 and \$1.10 for non-Penny Pilot symbols. The fees proposed by Topaz for Responses to Crossing Orders are well below those charged for similar orders on BOX.¹⁴

Further, the Chicago Board Options Exchange (“CBOE”), for transactions executed in its Automated Improvement Mechanism (“AIM”), does not charge any fees on facilitation orders, where the initiating firm is seeking to internalize a customer order. Other transactions executed in AIM are charged a fee as high as \$0.05 per contract. At CBOE, firms internalizing customer orders are also able to generate payment for order flow (“PFOF”) fees of \$0.25 and \$0.65 per contract for Penny Pilot and non-Penny Pilot symbols, respectively, when market makers

¹⁴ These fees apply to Improvement Orders on BOX. Primary Improvement Orders are not subject to any fees in addition to their ADV-based fees therefore the differential at BOX for Primary Improvement Orders is even greater.

responding to auctions interact with customer orders that are part of the AIM auction. These market makers are also eligible to collect rebates under CBOE's VIP program based on that member's average daily volume.

The fees for responding to AIM auctions at CBOE depend on the category of the responder and range dramatically. For broker/dealers, these fees are \$0.45 and \$0.60 per contract in Penny Pilot and non-Penny Pilot symbols, respectively, and for firm proprietary orders, these fees are \$0.25 per contract. Fees for market makers on CBOE vary as they depend on the member's average daily volume and can range between \$0.03 and \$0.25 per contract in addition to being subject to a PFOF fee of \$0.25 and \$0.65 per contract for Penny Pilot and non-Penny Pilot symbols, respectively. Thus, market maker fees on CBOE range between \$0.28 and \$0.50 per contract in Penny Pilot symbols and between \$0.68 and \$0.90 per contract in non-Penny Pilot symbols. As a result, the fees paid by members initiating the crossing auctions are significantly lower at CBOE than the fees paid by members responding, resulting in a differential ranging from as little as \$0.20 (i.e., when a initiating firm pays \$0.05 per contract and a responding member pays \$0.25 per contract) to as much as \$0.50 per contract (i.e., when an initiating firm pays no fee and a market maker responding pays \$0.25 per contract, in addition to a payment for order flow fee of \$0.25 per contract in a Penny Pilot symbol). The Exchange notes that the differential in the fees is even higher in Non-Penny Pilot symbols.

The Exchange believes that when taken as a whole, i.e., the low fee charged to an internalizing member at CBOE, even without the potential for a credit provided to that member through CBOE's VIP program and the PFOF fee collected from market makers, the differential between fees charged by CBOE for crossing orders and for responses to crossing orders is

comparable to the fee differential proposed by Topaz, and in some cases, exceeds the fee differential proposed by Topaz.

Route-Out Fees

The Exchange proposes to adopt a fee of \$0.50 per contract and \$0.55 per contract for executions of Priority Customer and Professional Customer orders, respectively, for standard options in symbols that are in the Penny Pilot (including SPY) that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. For Mini Options in these symbols, the Exchange proposes to adopt a fee of \$0.050 per contract for Priority Customer orders and \$0.055 per contract for Professional Customer orders.

The Exchange proposes to adopt a fee of \$0.90 per contract and \$0.95 per contract for executions of Priority Customer and Professional Customer orders, respectively, for standard options in symbols that are not in the Penny Pilot that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. For Mini Options in these symbols, the Exchange proposes to adopt a fee of \$0.090 per contract for Priority Customer orders and \$0.095 per contract for Professional Customer orders.

The route-out fee offsets costs incurred by the Exchange in connection with using unaffiliated broker-dealers to access other exchanges for linkage executions and is therefore appropriate because market professionals, in this case, Professional Customers, that are submitting these orders can route them directly to away exchanges, if desired, and should not be able to forgo an away market fee by directing their orders to the Exchange. The Exchange believes that it is appropriate to assess lower route-out fees to Priority Customer orders than to Professional Customer orders because Priority Customers have historically been assessed lower fees than other market participants. Further, Professional Customers are market professionals

and engage in trading activity similar to that conducted by broker-dealers. While the Exchange does not have any obligation to route-out broker/dealer orders, it does have an obligation to route-out Professional Customer orders and believes it is appropriate to charge these orders a higher fee because these orders are submitted by market professionals that have the ability to send their orders directly to the exchange displaying the best quote but choose not to do so. The Exchange therefore believes it is appropriate to charge these orders the proposed fee in order to recoup costs associated with routing out these orders.

Options Regulatory Fee

The Exchange proposes to adopt an Options Regulatory Fee (“ORF”) of \$0.0010 per contract for both standard options and Mini Options in order to recoup its regulatory expenses while also ensuring that the ORF will not exceed costs. The per-contract ORF will be assessed by the Exchange to each Exchange member for all options transactions executed and cleared, or simply cleared, by the member, that are cleared by The Options Clearing Corporation (“OCC”) in the “customer” range, regardless of the exchange on which the transaction occurs. The ORF will be collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF also will be charged for transactions that are not executed by a member but are ultimately cleared by a member. In the case where a non-member executes a transaction and a member clears the transaction, the ORF will be assessed to the member who clears the transaction. In the case where a member executes a transaction and another member clears the transaction, the ORF will be assessed to the member who clears the transaction. As a practical matter, it is not feasible or reasonable for the Exchange (or any SRO) to identify each executing member that submits an order on a trade-by-trade basis. There are countless executing market

participants, and each day such participants can and often do drop their connection to one market center and establish themselves as participants on another. It is virtually impossible for any exchange to identify, and thus assess fees such as an ORF on, each executing participant on a given trading day.

Clearing members, however, are distinguished from executing participants because they remain identified to the Exchange regardless of the identity of the initiating executing participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to assess the ORF to clearing members.

The Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC.

The Exchange believes that its broad regulatory responsibilities with respect to a member's activities supports applying the ORF to transactions cleared but not executed by a member. The Exchange's regulatory responsibilities are the same regardless of whether a member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading.¹⁵ These activities span across multiple exchanges.

¹⁵ The Exchange also participates in The Options Regulatory Surveillance Authority ("ORSA") national market system plan and in doing so shares information and coordinates with other exchanges designed to detect the unlawful use of undisclosed material information in the trading of securities options. ORSA is a national market system comprised of several self-regulatory organizations whose functions and objectives include the joint development, administration, operation and maintenance of systems and facilities utilized in the regulation, surveillance, investigation and detection of the unlawful use of undisclosed material information in the trading of securities options. The Exchange compensates ORSA for the Exchange's portion of the cost to perform insider

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority ("FINRA") under a 17d-2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange expects to monitor Topaz regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify members of adjustments to the ORF via regulatory circular.

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by members and their associated persons under the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity

trading surveillance on behalf of the Exchange. The ORF will cover the costs associated with the Exchange's arrangement with ORSA.

across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail ("COATS")¹⁶ system in order to surveil a member's activities across markets.

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group ("ISG"),¹⁷ the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the requirement that it has coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.¹⁸

The Exchange believes that charging the ORF across markets will avoid having members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share for regulation. If the ORF did not apply to activity across markets then a member would send their orders to the least cost, least regulated exchange. Other exchanges do impose a

¹⁶ COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

¹⁷ ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by co-operatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

¹⁸ See Section 6(h)(3)(I) of the Act.

similar fee on their member's activity, including the activity of those members on the Exchange.¹⁹

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRA's Trading Activity Fee²⁰ and the ORF currently charged by a number of other options exchanges. While the Exchange does not have all the same regulatory responsibilities as FINRA, the Exchange believes that, like other exchanges that have adopted an ORF, its broad regulatory responsibilities with respect to a member's activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a member's customer options transactions.

FINRA Web CRD Fees

The Exchange proposes to adopt regulatory fees related to Web CRD, which are collected by the Financial Industry Regulatory Authority ("FINRA") ("FINRA Web CRD Fees").²¹ The proposed fees are collected and retained by FINRA via Web CRD for the registration of employees of Topaz members that are not FINRA members ("Non-FINRA members"). The Exchange is merely listing these fees on its Schedule of Fees. The Exchange does not collect or retain these fees.

¹⁹ Similar regulatory fees have been instituted by Nasdaq OMX PHLX (See Securities Exchange Act Release No. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100)); and Miami International Securities Exchange (See Securities Exchange Act Release No. 68711 (January 23, 2013), 78 FR 6155 (January 29, 2013) (SR-MIAX-2013-01)).

²⁰ See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

²¹ FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

The FINRA Web CRD Fees listed on Topaz Schedule of Fees consists of General Registration Fees of \$100 (for each initial Form U4 filed for the registration of a representative or principal), \$110 (for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings), and \$45 (annual system processing fee assessed only during renewals). The FINRA Web CRD Fees also consist of Fingerprint Processing Fees for the initial, second and third submissions. There is a separate fee for electronic submissions and paper submissions. The initial electronic and paper submission fees are \$29.50 and \$44.50, respectively. The second electronic and paper submission fees are \$15.00 and \$30.00, respectively. The third electronic and paper submission fees are \$29.50 and \$44.50, respectively. Finally, there is a \$30 processing fee for fingerprint results submitted by self-regulatory organizations other than FINRA. The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.²²

The Exchange does not propose to adopt any other fees at this time. The Exchange expects to adopt additional fees, i.e., membership fees, access fees, market data fees, etc., at a later date and will submit a fee change filing with the Commission prior to any such fees becoming effective.

2. Statutory Basis

The Exchange believes that its proposal to adopt a Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the “Exchange Act”)²³ in general, and

²² See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030) (the “FINRA Fee Filing”).

²³ 15 U.S.C. 78f(b).

further the objectives of Section 6(b)(4) of the Exchange Act²⁴ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members and other persons using its facilities.

The Exchange believes the fees proposed for transactions on Topaz are reasonable. Topaz will operate within a highly competitive market in which market participants can readily send order flow to any of eleven other competing venues if they deem fees at a particular venue to be excessive. The proposed fee structure is intended to attract order flow to Topaz by offering market participants incentives to submit their orders to Topaz.

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 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, levying fees that are 1/10th of what market participants pay today.

The Exchange believes that its proposal to assess per contract taker fee for Market Maker, Non-Topaz Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer and Priority Customer orders is reasonable and equitably allocated because the proposed fees are within the range of fees assessed by other exchanges employing similar pricing schemes. For example, NOM currently charges a taker fee as high as \$0.48 per contract in symbols that are in

²⁴ 15 U.S.C. 78f(b)(4).

the Penny Pilot and as much as \$0.89 per contract in symbols that are not in the Penny Pilot.²⁵

The Exchange believes the proposed taker fees are not unfairly discriminatory because they would apply uniformly to all market participants.

The Exchange believes proposed fee for Crossing Orders is reasonable and equitably allocated because the proposed fees are also within the range of fees assessed by other exchanges. For example, the International Securities Exchange (“ISE”) currently charges an identical fee for Crossing Orders. The Exchange believes the proposed fee for Crossing Orders is not unfairly discriminatory because they would uniformly apply to all market participants, except Priority Customers, who historically have paid lower fees than other market participants as an incentive to attract that order flow to an exchange.

The Exchange further believes it is reasonable and equitable to charge the proposed fees for Responses to Crossing Orders because an execution resulting from a Response to a Crossing Order is akin to an execution and therefore its proposal to establish execution fees and fees for Responses to Crossing Orders that are identical is reasonable and equitable. The Exchange further believes that while the differential between the fee charged for Crossing Orders and the fee for Responses to Crossing Orders is significant, the differential on Topaz is less than the differential that currently exists on other exchanges that offer a similar functionality, and therefore, the Exchange believes the proposed fees are reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes and differ from each other far less than the fees at other exchanges. As noted above, the differential between the fee charged to participants that internalize customer orders and the response fee charged on BOX and CBOE is much greater than the differential proposed by

²⁵ See supra note 4.

Topaz. The Exchange is not introducing a novel pricing scheme for Crossing Orders and for Responses to Crossing Orders. This functionality is currently available on a number of exchanges, all of whom have a pricing differential that promotes internalizing customer orders. The differential proposed by Topaz is simply smaller than that which currently exists, notably at CBOE and BOX. The Exchange believes the fees for Responses to Crossing Orders are not unfairly discriminatory because they would uniformly apply to all market participants.

The Exchange believes that it is reasonable and equitable to provide rebates because paying a rebate will attract order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on Topaz. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange believes that the price differentiation between the various market participants is justified. With respect to fees for Market Maker orders, 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 the other market participants do not (such as quoting requirements and paying membership-related non-transaction fees). The Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to market participants that do not have such requirements and obligations that Exchange Market Makers do. The Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges.

The Exchange believes charging lower fees and providing higher rebates to Priority Customer orders 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 assess lower fees 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, non-Topaz Market Makers, and Firm Proprietary / Broker-Dealers, 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 continue to join bids and offers on the Exchange and thus compete for incoming order flow whereas Priority Customers do not engage in such activity.

The Exchange believes the proposed route-out fees are reasonable and equitable as they provides the Exchange the ability to recover costs associated with using unaffiliated broker-dealers to route Priority Customer and Professional Customer orders to other exchanges for linkage executions. The Exchange also believes that the proposed fees are not unfairly discriminatory because these fees would be uniformly applied to all Priority Customer and Professional Customer orders. As fees to access liquidity for Priority and Professional Customer orders have risen at other exchanges, it has become necessary for the Exchange to adopt routing fees in order to recoup the costs associated with routing orders. The Exchange notes that a number of other exchanges currently charge a variety of routing related fees associated with

customer and non-customer orders that are subject to linkage handling. The Exchange also notes that the fees proposed herein are within the range of fees charged by some of the Exchange's competitors.²⁶

The Exchange believes the ORF is equitable and not unfairly discriminatory because it is objectively allocated to members in that it is charged to all members on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those members that are directly based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., member proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor, on at least an annual basis the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular.

²⁶ See NASDAQ OMX PHLX Fee Schedule, Section V, Routing Fees; and Chicago Board Options Exchange Fees Schedule, Linkage Fees.

The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the initial level of the fee is reasonable.

The Exchange believes that its proposal to adopt the FINRA Web CRD Fees is reasonable because the proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. In the FINRA Fee Filing, FINRA noted that it believed that its fees are reasonable based on the increased costs associated with operating and maintaining Web CRD, and listed a number of enhancements made to Web CRD in support of its fee change. These costs are borne by FINRA when a Non-FINRA member uses Web CRD. FINRA further noted its belief that the fees are reasonable because they help to ensure the integrity of the information in Web CRD, which is very important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use Web CRD to make licensing and registration decisions, among other things. The Exchange notes that the proposed rule change is reasonable because the amount of the fees are those provided by FINRA, and the Exchange does not collect or retain these fees. The proposed rule change is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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 fees and rebates are competitive with those established by other exchanges for similar trading strategies. The

Exchange will be operating in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fees at a particular exchange to be too high, or in the case of rebates, not high enough. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

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.

The Exchange notes that the difference between the fees for Crossing Orders and the fees for Responses to Crossing Orders may appear discriminatory and an undue burden on competition. The Exchange, however, believes the crossing mechanisms on Topaz provide incentives for market participants to submit customer order flow to the Exchange and thus, creates a greater opportunity for customers to receive better executions. The crossing mechanisms on Topaz provide an opportunity for market participants to compete for customer orders, and have no limitations regarding the number of and type of market participant that can participate and compete for such orders. Topaz notes that its market model and fees are generally intended to attract a specific segment of the options industry and the Exchange is competing with exchanges that currently attract that segment. The Exchange further notes that the proposed fees are more transparent than PFOF arrangements and are generally less than fees that include PFOF.

Unilateral action by Topaz in establishing fees for services provided to its Members and others using its facilities will not have any adverse impact on competition. As a new entrant in the already highly competitive environment for equity options trading, Topaz does not have the market power necessary to set prices for services that are inequitably allocated, unreasonable or

unfairly discriminatory in violation of the Act. Topaz's proposed fees and rebates, as described herein, are comparable to fees charged and rebates provided by other options exchanges for the same or similar services. To the extent the proposed fees and rebates prove unattractive to attract order flow away from its competitors, Topaz will necessarily have to adjust level of fees and rebates.

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 Act²⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder,²⁸ 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

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 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. Please include File Number SR-Topaz-2013-01 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-2013-01. 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-2013-01, 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.²⁹

Kevin M. O'Neill
Deputy Secretary

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²⁹ 17 CFR 200.30-3(a)(12).