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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70670; File No. SR-Topaz-2013-08)

October 11, 2013

Self-Regulatory Organizations; Topaz Exchange, 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 October 1, 2013, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the “Exchange” or “Topaz”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

Topaz is proposing to amend its Schedule of Fees to increase Maker Rebates for Market Makers that achieve the Tier 4 ADV threshold, to permit Topaz to exclude from its ADV calculations any trading day on which the Exchange is closed for trading due to a market-wide trading halt, to adopt a definition of “affiliate” for the purpose of calculating affiliated Member ADV, and to make other related clarifying changes. 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 the Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 Exchange proposes to increase Maker Rebates for Market Makers³ that achieve the Tier 4 average daily volume ("ADV") threshold, to permit Topaz to exclude from its ADV calculations any trading day on which the Exchange is closed for trading due to a market-wide trading halt, to adopt a definition of "affiliate" for the purpose of calculating affiliated Member ADV, and to make other related clarifying changes to its Schedule of Fees.

On September 3, 2013 the Exchange filed with the Commission an immediately effective rule filing (the "initial filing")⁴ that established volume-based tiered rebates for adding liquidity on the Exchange ("Maker Rebate"). The Exchange is now proposing to increase the Tier 4 Maker Rebate applicable to Market Makers. Currently, Market Makers that achieve Tier 4 receive a Maker Rebate for Regular Orders in Standard Options of \$0.37 per contract for Penny Symbols, \$0.39 per contract for SPY, and \$0.46 per contract for Non-Penny Symbols. For Regular Orders in Mini Options, the Tier 4 Maker Rebate is \$0.037 per contract for Penny

³ The term Market Maker refers to "Competitive Market Makers" and "Primary Market Makers" collectively. Market Maker orders sent to the Exchange by an Electronic Access Member are assessed fees and rebates at the same level as Market Maker orders. See footnote 2, Schedule of Fees, Section I and II.

⁴ See Securities Exchange Act Release No. 70426 (Sept. 17, 2013), 78 FR 58359 (Sept. 23, 2013) (SR-Topaz-2013-04).

Symbols, \$0.039 per contract for SPY, and \$0.046 per contract for Non-Penny Symbols. The Exchange is proposing to increase the Tier 4 Maker Rebate by \$0.01 per contract in Standard Options and \$0.001 per contract in Mini Options. As such, the new Tier 4 Maker Rebate for Market Makers in Standard Options will be \$0.38 per contract for Penny Symbols, \$0.40 per contract for SPY, and \$0.47 per contract for Non-Penny Symbols. For Mini Options the new Tier 4 Maker Rebate for Market Makers will be \$0.038 per contract for Penny Symbols, \$0.040 per contract for SPY, and \$0.047 per contract for Non-Penny Symbols. The Exchange believes that increasing the Maker Rebate applicable to Market Makers that achieve the ADV threshold for Tier 4 will incentivize Market Makers to increase order flow to the Exchange.

The Exchange is further proposing to modify its Schedule of Fees to permit the Exchange to exclude from its ADV calculation, when determining applicable rebate tiers, any day that the market is not open for the entire trading day. This would allow the Exchange to exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market.⁵ For example, this would have allowed the Exchange to exclude August 22, 2013 when trading was halted in Nasdaq-listed securities for three hours across all exchanges.⁶ The Exchange will provide a notice, and post it on the Exchange's website, to inform Members of any day that is to be excluded from its ADV calculations in connection with this proposed rule change.

If the Exchange did not have the ability to exclude aberrant low volume days when calculating ADV for the month, as a result of the decreased trading volume, the numerator for the calculation (e.g., trading volume) would be correspondingly lower, but the denominator for

⁵ The Exchange will not be excluding days on which the Exchange closes early for holiday observance from its ADV calculation.

⁶ Trading in Nasdaq-listed securities was halted across all markets on August 22, 2013 due to a systems issue experienced by the NASDAQ UTP SIP.

the threshold calculations (e.g., the number of trading days) would not be decreased. This could result in an unintended cost increase. Absent the authority to exclude days that the market is not open for the entire trading day, Members will experience an effective decrease in rebates. The artificially low volumes of trading on such days could reduce the trading activity of Members both daily and monthly. Accordingly, excluding such days from the monthly calculation will diminish the likelihood of an effective increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its Members.

As stated in the initial filing, the Exchange will aggregate the trading activity of affiliated members in determining ADV.⁷ For example, a firm with market making and agency desks housed in different entities will be permitted to aggregate ADV across both entities in determining the applicable rebate tiers. To provide more clarity on what “affiliated” means in this context the Exchange is now adopting a definition for this term. In particular, the Exchange will aggregate the trading activity of separate Members in calculating ADV provided there is at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A. The Exchange believes that aggregating volume across Members that share at least 75% common ownership will allow Members to continue to execute trades on the Exchange through separate broker-dealer entities for different types of volume, while receiving rebates based on the aggregate volume being executed across such entities.

The Exchange is also adopting clarifying text to its Schedule of Fees to reflect how Maker Rebates are currently provided on the Exchange. This clarifying text merely explains in the Schedule of Fees items already discussed in the initial filing, and does not make any substantive changes to the rebates being offered. In particular, the Exchange wants to clarify in

⁷ Aggregation is necessary and appropriate because certain Members conduct customer and market maker trading activity through separate but related broker-dealers.

the text of the Schedule of Fees that Total Affiliated Member ADV includes all volume in all symbols and order types, including both maker and taker volume, and that the highest tier threshold attained by a Member applies retroactively only in the given month. The Exchange is also changing a reference to “client categories” to instead refer to “market participants” as that term is used elsewhere in the Schedule of Fees and is therefore clearer. The Exchange believes that adopting this new text in the Schedule of Fees itself will decrease confusion among its Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and Section 6(b)(4) of the Act,⁹ 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.

With respect to increasing the Tier 4 Maker Rebate for Market Makers, the Exchange believes that the price differentiation between Market Makers and other market participants is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). The Exchange believes that increasing the Maker Rebate applicable to Market Makers that achieve Tier 4, which is the highest volume tier, will incentivize Market Makers to increase order flow to the Exchange.

The Exchange notes that it has determined to charge fees and provide rebates in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed rebates are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing rebates that are 1/10th of those applicable to Standard Options.

The Exchange believes that it is equitable and reasonable to permit the Exchange to eliminate from the calculation days on which the market is not open the entire trading day because it preserves the Exchange's intent behind adopting volume-based pricing. The proposed change is non-discriminatory because it applies equally to all Members and to all volume tiers.

The language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. By way of example, many firms that are Members of the Exchange operate several different business lines within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access the Exchange. The Exchange believes that corporate affiliates should continue to be aggregated and is adopting a definition of affiliate to clarify when Members will be considered affiliated. The Exchange notes that the proposed definition of "affiliate" to be used to aggregate affiliated Member ADV is consistent with definitions used by

other options exchanges, including the Chicago Board Options Exchange, Inc. (“CBOE”) and the MIAX Options Exchange (“MIAX”).¹⁰

The Exchange further believes that it is appropriate to add the clarifying text to the Schedule of Fees in order to make it more transparent to Members and investors.

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

In accordance with Section 6(b)(8) of the Act,¹¹ 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.

With respect to Tier 4 Maker Rebates for Market Makers, the Exchange believes that the fee change will not impose any unnecessary burden on intramarket competition because, while it only applies to Market Maker orders, Market Makers take on a number of obligations and responsibilities that other market participants are not required to undertake. The proposed increase to the Tier 4 Maker Rebate applicable to Market Makers is intended to attract increased order flow to the Exchange from Market Makers, which will provide increased volume and greater trading opportunities for all market participants. The Exchange believes the proposed fee change does not impose a burden on inter-market competition because it is consistent with fees charged by other exchanges.¹² The proposed rebates, which the Exchange believes are comparable to those provided by its competitors for similar orders, will encourage competition and continue to attract additional order flow to the Exchange.

¹⁰ See CBOE Fee Schedule, Volume Incentive Program (VIP); MIAX Fee Schedule, Transaction Fees, Exchange Fees, Priority Customer Rebate Program.

¹¹ 15 U.S.C. 78f(b)(8).

¹² For example, NYSE Arca Options (“Arca”) provides a rebate in Standard Options to market makers that achieve their “Super Tier” of \$0.37 per contract for Penny Pilot Issues (except SPY), and \$0.39 per contract in SPY. See Arca Fees and Charges, Trade Related Charges for Standard Options.

With respect to ADV calculations for rebates, the Exchange notes that there are very few instances where the rule will actually be invoked, and when invoked, the Exchange believes the rule will have little or no impact on trading decisions or execution quality. To the contrary, the Exchange believes that the proposed modification to its ADV calculation is pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. Moreover, other options exchanges have adopted rules that are substantially similar to the change in ADV calculation being proposed by the Exchange.¹³

The Exchange also notes that other exchanges have substantially similar requirements for aggregating affiliated Member ADV in determining applicable tiered rebates. As provided in the initial filing, the Exchange currently aggregates affiliated Member ADV in calculating rebate tiers, and this proposed rule change merely explains the how affiliate status is determined for that purpose, which will have no competitive impact.

Furthermore, the Exchange believes that the clarifying text being added to the Schedule of Fees is non-substantive, and therefore does not impact the competition analysis.

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

¹³ See, e.g., Securities Exchange Act Release Nos. 70472 (Sept. 23, 2013) (PHLX-2013-93); 70470 (Sept. 23, 2013) (NASDAQ-2013-117).

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,¹⁴ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁵ 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

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-Topaz-2013-08 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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 No. SR-Topaz-2013-08. 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 No. SR-Topaz-2013-08, 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

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¹⁶ 17 CFR 200.30-3(a)(12).