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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71077; File No. SR-Topaz-2013-14]

Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees
December 13, 2013.

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 December 2, 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 decrease Priority Customer taker fees for affiliated Members that achieve the ADV threshold for Tiers 2, 3, or 4. 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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to decrease Priority Customer³ taker fees for affiliated Members that achieve the average daily volume ("ADV") threshold for Tiers 2, 3, or 4 as described below. The fee changes discussed apply to both Standard Options and Mini Options traded on the Exchange. The Exchange's Schedule of Fees has separate tables for fees applicable to Standard Options and Mini Options. The Exchange notes that while the discussion below relates to fees for Standard Options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for Standard Options.

On September 3, 2013 the Exchange filed with the Commission an immediately effective rule filing that established volume-based tiered rebates for adding liquidity on the Exchange.⁴ Under the framework proposed in that rule filing, the Exchange established four qualifying tiers based on a Member's ADV in a given month. The Exchange is now proposing to also apply tiers – which currently only apply to rebates for adding liquidity – to Priority Customer fees for removing liquidity. In order to qualify for the lower Priority Customer taker fee being proposed in this filing a Member would, at a minimum, have to qualify for Tier 2 by executing (i) a Total Affiliated Member ADV of 65,000 or more contracts, (ii) a Priority Customer Maker ADV of at

³ 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).

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

least 20,000 contracts, or (iii) a Total Affiliated Member ADV of 40,000 contracts with a Minimum Priority Customer Maker ADV of 15,000 contracts.

Currently all Members pay a Priority Customer taker fee of \$0.45 per contract in Penny Symbols and SPY, and \$0.82 per contract in non-Penny Symbols. Under the proposed rule change, Members that qualify for Tier 2 or higher will instead be charged taker fees for Priority Customer orders that are \$0.01 per contract less than the taker fees currently charged on the Exchange. In particular, Members that have achieved Tier 2 or higher will pay a taker fee of \$0.44 per contract in Penny Symbols and SPY, and \$0.81 per contract in non-Penny Symbols, for Priority Customer orders. The Exchange believes that lowering the taker fee for Priority Customer orders for Members that achieve higher volume tiers will incentivize Members to bring more order flow to Topaz, including a higher volume of Priority Customer orders, to the benefit of all market participants that trade on the Exchange. The Exchange is not proposing to modify the fees charged to any other market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and Section 6(b)(4) of the Act,⁶ 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 the proposed Priority Customer taker fees for Priority Customers that achieve Tiers 2, 3, or 4 are reasonable and equitably allocated because Topaz has already established volume-based pricing, and is merely proposing to adopt taker fees in line with such pricing in order to further incentivize Members to send additional order flow to the Exchange.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

The Exchange believes that charging lower taker fees to Priority Customer orders, and in particular Priority Customer orders from Members that have achieved specified volume thresholds, attracts that order flow to Topaz and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Moreover, the proposed fees are within the range of fees currently charged by other maker/taker options exchange such as NYSE Arca Options (“Arca”), which charges a customer fee for taking liquidity of \$0.45 per contract in penny pilot names, and \$0.82 per contract in non-penny pilot names.⁷

The Exchange further believes that it is equitable and not unfairly discriminatory to lower the fees only for Priority Customer orders in order to attract that order flow to the Exchange. 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, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Moreover, the Exchange does not believe that it is unfairly discriminatory to apply the proposed lower fee only to those Members that have achieved at least Tier 2 based on ADV, as this is in line with the Exchange’s tiered approach to fees and rebates, and incentivizes Members to bring more order flow to the Exchange.

The Exchange notes that it has determined to charge fees in Mini Options at a rate that is 1/10th the rate of fees the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange

⁷ See Arca Fees and Charges, Trade-Related Charges for Standard Options.

believes the proposed fees 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 fees that are 1/10th of those applicable to Standard Options.

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

In accordance with Section 6(b)(8) of the Act,⁸ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees are within the range of fees currently charged by other maker/taker options exchanges, as explained above, and will increase competition between Topaz and other markets by incentivizing Members to execute more volume on the Exchange in order to qualify for the lower Priority Customer taker fee. While the lower proposed fees only apply to Priority Customers, this is consistent with current practices of charging lower fees and providing higher rebates to Priority Customers. The proposed rule change will encourage Members to send additional Priority Customer order flow to the Exchange, to the benefit of all market participants.

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

⁸ 15 U.S.C. 78f(b)(8).

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,⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁰ 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-2013-14 on the subject line.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 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-2013-14. 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-2013-14, and should be submitted on or before [INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

¹¹ 17 CFR 200.30-3(a)(12).

Kevin M. O'Neill,
Deputy Secretary.

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