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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71527; File No. SR-Topaz-2014-07]

Self-Regulatory Organizations; Topaz Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees
February 12, 2014.

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 February 3, 2014, 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 Substance of the Proposed Rule Change

Topaz is proposing to amend its Schedule of Fees. 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

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 change is to amend the Schedule of Fees to (1) introduce volume-based tiered rebates for Firm Proprietary / Broker-Dealer and Professional Customer orders, (2) increase Maker Rebates provided to Priority Customer orders in Non-Penny Symbols, and (3) increase the Taker Fee and Fee for Responses to Crossing Orders charged for Market Maker orders in Non-Penny Symbols. The fee changes discussed apply to both Standard Options and Mini Options traded on Topaz. 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 ("Maker Rebates").³ Specifically, that filing established Maker Rebates applicable to Market Maker⁴ and Priority Customer⁵ orders based on a Member's average daily volume ("ADV") in a given month. Topaz now proposes to amend its Schedule of Fees to introduce similar tiered

³ See Securities Exchange Act Release No. 70426 (September 17, 2013), 78 FR 58359 (September 23, 2013) (SR-Topaz-2013-04).

⁴ 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.

⁵ 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).

Maker Rebates for Firm Proprietary / Broker-Dealer⁶ and Professional Customer⁷ orders that add liquidity on the Exchange. The proposed tiered Maker Rebates will replace the current uniform Maker Rebate of \$0.25 per contract that is currently provided to all Firm Proprietary / Broker-Dealer and Professional Customer orders in all symbols regardless of the volume executed by a Member.

A Member's tier will be based on its "maker" ADV in Firm Proprietary / Broker-Dealer and Professional Customer orders, which must be from 0 – 9,999 contracts for Tier 1, from 10,000 – 24,999 contracts for Tier 2, from 25,000 – 39,999 contracts for Tier 3, and 40,000 or more contracts for Tier 4.⁸ Instead of the uniform Maker Rebates currently provided, Firm Proprietary / Broker Dealer and Professional Customer orders will now qualify for tiered Maker Rebates, which are proposed to be \$0.25 per contract in Penny Symbols and \$0.35 per contract in Non-Penny Symbols for Tier 1, \$0.30 per contract in Penny Symbols and \$0.45 per contract in Non-Penny Symbols for Tier 2, \$0.35 per contract in Penny Symbols and \$0.55 per contract in Non-Penny Symbols for Tier 3, and \$0.40 per contract in Penny Symbols and \$0.65 per contract in Non-Penny Symbols for Tier 4. The highest tier threshold attained by a Member will apply retroactively in a given month to all eligible traded contracts and for all eligible market participants. These tiers, however, will be completely separate from the tiers currently in place

⁶ A Firm Proprietary order is an order submitted by a Member for its own proprietary account. A Broker-Dealer order is an order submitted by a Member for a non-Member broker-dealer account.

⁷ A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

⁸ All eligible volume from affiliated Members will be 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. ADV thresholds will be based on Standard and Mini volume, but their respective rebates/fees will apply. Any day that the market is not open for the entire trading day may be excluded from the ADV calculation.

for Market Maker and Priority Customer orders. Thus, for example, if a Member executes sufficient volume to qualify for Tier 2 rebates for its Firm Proprietary / Broker-Dealer and Professional Customer orders that Member will not thereby qualify for Tier 2 rebates for its Market Maker or Priority Customer orders, and vice versa. Market Maker and Priority Customer orders will continue to be eligible for tiers based exclusively on achieving volume thresholds in the current table of qualifying tier thresholds, which has been relabeled “Table 1.” Firm Proprietary / Broker-Dealer and Professional Customer orders will be eligible for higher tiers based exclusively on achieving volume thresholds in new “Table 2.” Members who do not achieve a higher tier based on the applicable table will receive Tier 1 rates.

In connection with the new tiered Maker Rebates described above, the Exchange is also proposing to make non-substantive edits to the text of its Schedule of Fees to clarify which items are included in the various ADV categories. In particular, the Exchange proposes to adopt amended text that states that: (1) 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;⁹ and (2) the Priority Customer Maker ADV category includes all Priority Customer volume that adds liquidity in all symbols. This amended language will supplement new text indicating, as explained above, that the Firm Proprietary / Broker-Dealer and Professional Customer Maker ADV category includes all Firm Proprietary / Broker-Dealer and Professional Customer volume that adds liquidity in all symbols.

⁹ Only the Total Affiliated Member ADV category includes volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms as orders executed in the Exchange’s crossing mechanisms are not considered “maker” volume.

The Exchange is also proposing to increase the Maker Rebates applicable to Priority Customer orders in Non-Penny Symbols. Currently, Priority Customer orders in Non-Penny Symbols receive a Maker Rebate of \$0.70 per contract for Tier 1, \$0.75 per contract for Tier 2, \$0.80 per contract for Tier 3, and \$0.82 per contract for Tier 4. The Exchange proposes to increase the Maker Rebate for Priority Customer orders in Non-Penny Symbols to be \$0.75 per contract for Tier 1, \$0.80 per contract for Tier 2, \$0.82 per contract for Tier 3, and \$0.85 per contract for Tier 4.

Finally, the Exchange is proposing to increase the Taker Fee and Fee for Responses to Crossing Orders applicable to Market Maker orders in Non-Penny Symbols. Currently, Market Maker orders in Non-Penny Symbols that remove liquidity or respond to a Crossing Order pay a fee of \$0.84 per contract. The Exchange is proposing to increase both of these fees to \$0.86 per contract.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and Section 6(b)(4) of the Act,¹¹ 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 tiered Maker Rebates are reasonable, equitable, and not unfairly discriminatory because Topaz has already established volume-based pricing for Market Maker and Priority Customer orders, and is merely proposing to adopt a similar pricing model for Firm Proprietary / Broker-Dealer and Professional Customer orders in order to incentivize Members to send this order flow to the Exchange. The new Maker Rebate tiers will

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

allow Members to receive increased rebates for their Firm Proprietary / Broker-Dealer and Professional Customer orders. In Penny Symbols, Members that bring this order flow to the Exchange will receive the same \$0.25 per contract Maker Rebate that they receive today at the lowest tier, and an additional \$0.15 per contract above the current rebate at the highest tier. In Non-Penny Symbols, Members will receive an additional \$0.10 per contract above the current rebate at the lowest tier, and an additional \$0.40 per contract above the current rebate at the highest tier. As noted above, Market Maker and Priority Customer orders currently benefit from tiered rebates, and the Exchange believes that these rebates have been successful in attracting that order flow to Topaz. This proposal is designed to attract additional order flow from certain market participants that are not incentivized by the current tiers for Market Maker and Priority Customer orders. The Exchange believes that providing higher rebates for Firm Proprietary / Broker-Dealer and Professional Customer orders executed by Members that have achieved specified volume thresholds will attract that order flow to Topaz, and thereby create additional liquidity to the benefit of all market participants who trade on the Exchange. While non-Topaz Market Makers will not be eligible for the proposed tiers, the Exchange does not believe that this is unfairly discriminatory as the proposal is not intended to incentivize additional flow from non-Members who will continue to receive Maker Rebates at the current rate. In addition, the Exchange believes that it is appropriate, in connection with this change, to make non-substantive amendments to the text of the Schedule of Fees in order to make the current and proposed rebate programs more transparent to Members and investors.

The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory to increase Maker Rebates provided to Priority Customer orders in Non-Penny Symbols. As with the new Maker Rebates discussed above for Firm Proprietary / Broker-Dealer

and Professional Customer orders, the Exchange believes that providing higher rebates for Priority Customer orders attracts that order flow to Topaz and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. While the proposed rule change increases Maker Rebates for both Priority and Professional Customer orders the Exchange notes that Priority Customer orders will remain entitled to higher rebates than Professional Customer orders. The Exchange believes that it is equitable and not unfairly discriminatory to provide higher rebates 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, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

Finally, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to increase the Taker Fee and Fee for Responses to Crossing Orders charged for Market Maker orders in Non-Penny Symbols as these fees are still within the range of fees currently charged on other options exchanges. For example, the NASDAQ Options Market currently charges a fee for removing liquidity of \$0.89 per contract for Market Maker orders in Non-Penny Symbols, which is higher than the \$0.86 per contract fee proposed here.¹² The Exchange notes that it is increasing response fees in tandem with its Taker Fees as an execution resulting from a Response to a Crossing Order is akin to taking liquidity.

¹² See NASDAQ Options Rules, Chapter XV Options Pricing, Section 2, NASDAQ Options Market—Fees and Rebates.

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 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, is providing fees and rebates for Mini Options 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,¹³ the Exchange does not believe that the proposed rule change will impose any burden on inter-market or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed changes will promote competition as they are designed to allow Topaz to better compete for order flow by offering higher rebates to market participants that add liquidity on the Exchange. While the Exchange proposes to increase taker and response fees for a subset of orders, the Exchange believes that this will not impose a burden on competition because the new fees are consistent with those charged by other options exchanges.¹⁴ 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.

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ See supra note 12.

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

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,¹⁵ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁶ 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:

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

- 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-2014-07 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-2014-07. 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-2014-07, and should be submitted on or before [INSERT DATE 21 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill,
Deputy Secretary.

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¹⁷ 17 CFR 200.30-3(a)(12).