



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76214; File No. SR-ISEGemini-2015-21]

October 21, 2015

Self-Regulatory Organizations; ISE Gemini, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 7, 2015, ISE Gemini, LLC (the “Exchange” or “ISE Gemini”) 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

ISE Gemini proposes to amend the Schedule of Fees to adjust the maker rebates provided to Non-ISE Gemini Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders by adopting a new Performance Routing Program as described in more detail below. 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 Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange provides maker rebates to Firm Proprietary<sup>3</sup> / Broker-Dealer<sup>4</sup> and Professional Customer<sup>5</sup> orders in four tiers based on the member’s maker average daily volume (“ADV”) in Firm Proprietary / Broker-Dealer and Professional Customer orders. Members must execute an ADV of 9,999 contracts or fewer 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. Based on the tier achieved, Firm Proprietary / Broker-Dealer and Professional Customer orders in Penny Symbols<sup>6</sup> are entitled to a maker rebate of \$0.25 per contract for Tier 1, \$0.30 per contract for Tier 2, \$0.35 per contract for Tier 3, and \$0.40 per contract for Tier 4. In Non-Penny Symbols,<sup>7</sup> this maker rebate is \$0.35 per contract for Tier 1, \$0.45 per contract for Tier 2, \$0.55 per contract for Tier 3, and \$0.65 per contract for Tier 4. In order to attract additional order flow, Exchange proposes to eliminate the current tiers, and replace them with a new Performance

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<sup>3</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

<sup>4</sup> A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>5</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

<sup>6</sup> “Penny Symbols” are options overlying all symbols listed on ISE Gemini that are in the Penny Pilot Program.

<sup>7</sup> “Non- Penny Symbols” are options overlying all symbols excluding Penny Symbols.

Routing Program (“PRP”) that the Exchange believes will be more attractive to members.

The proposed rebates under the PRP will be based on each member’s maker ADV in Non-ISE Gemini Market Maker,<sup>8</sup> Firm Proprietary / Broker-Dealer and Professional Customer orders that improve the national best bid or offer (“NBBO”) in a series at the time of order entry (“PRP eligible contracts”). As proposed, members that execute an ADV of 9,999 PRP eligible contracts or fewer will be entitled to a maker rebate of \$0.25 per contract in both Penny Symbols and Non-Penny Symbols for their Non-ISE Gemini Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders. Members that execute an ADV of 10,000 or more PRP eligible contracts will be entitled to a maker rebate of \$0.47 per contract in Penny Symbols and \$0.71 per contract in Non-Penny Symbols for the above market participant types if the order improves the NBBO in the series at the time it is entered.<sup>9</sup> As an additional incentive, members that qualify for the higher tier of PRP rebates by executing an ADV of 10,000 or more PRP eligible contracts will also be entitled to a maker rebate of \$0.40 per contract in Penny Symbols and \$0.65 per contract in Non-Penny Symbols for their Non-ISE Gemini Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders that do not improve the NBBO at the time of order entry.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of

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<sup>8</sup> A “Non-ISE Gemini Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. Non-ISE Gemini Market Makers currently earn a flat maker rebate of \$0.25 per contract for all tiers in Penny and Non-Penny Symbols. The PRP introduces tiered maker rebates for Non-ISE Gemini Market Makers for the first time.

<sup>9</sup> As is the case today, 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. Members that achieve the higher tier threshold will be eligible for the enhanced rebates for all eligible orders executed during the month.



Section 6 of the Act,<sup>10</sup> in general, and Section 6(b)(4) of the Act,<sup>11</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable and equitable to eliminate the current standalone tiers for Firm Proprietary / Broker-Dealer and Professional Customer orders as this rebate program being replaced with a new rebate program that is designed to be more attractive to members. The PRP is similar to a program offered on the BATS Options Exchange (“BATS”),<sup>12</sup> and will benefit the members that qualify for enhanced rebates as well as other members that can trade in a tighter and more liquid market. With the proposed changes, Non-ISE Gemini Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders in the lowest tier will be entitled to a maker rebate in Penny and Non-Penny Symbols that is the same as the rebate currently provided as a “Tier 1” rebate for Firm Proprietary / Broker-Dealer and Professional Customer orders in Penny Symbols as well as the flat rebate provided to Non-ISE Gemini Market Maker orders in both Penny and Non-Penny Symbols. Members that execute a larger volume of PRP eligible contracts will receive higher rebates that compare favorably to the rebates provided on the Exchange today. In particular, the proposed maker rebates for non-NBBO setting orders in Penny and Non-Penny Symbols executed by members that meet the volume requirements for the higher PRP tier are equivalent to the rebates provided today based on the highest volume tier of Firm Proprietary / Broker-Dealer and Professional Customer orders, and significantly higher than the current flat maker rebate for Non-ISE Gemini Market

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<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> See BATS Fee Schedule, NBBO Setter Tiers.

Maker orders.<sup>13</sup> For orders executed by these members that improve the NBBO, the proposed maker rebate is higher than anything offered on the Exchange today for these market participants. The Exchange believes that introducing a PRP rebate program will encourage members to enter orders that improve the NBBO, which will create more trading opportunities at better prices for all market participants that trade on the Exchange.

The Exchange further believes that the proposed fee change is not unfairly discriminatory as it provides equal rebates to Non-ISE Gemini Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders. The Exchange notes that, with the proposed fee change, Non-ISE Gemini Market Makers will now be entitled to tiered rebates similar to other market participants. Priority Customer<sup>14</sup> and Market Maker<sup>15</sup> rebates, which have been successful in attracting that order flow to the Exchange, will remain at current levels. The Exchange does not believe that it is unfairly discriminatory to provide higher rebates to Priority Customer orders. As has historically been the case, Priority Customer orders remain entitled to more favorable fees and rebates than other market participants in order to encourage this order flow. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants whose behavior is substantially similar

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<sup>13</sup> The Exchange notes that members that achieve the PRP volume threshold will be entitled to enhanced rebates on all orders, not just orders that improve the NBBO. The Exchange believes that it is reasonable and equitable to provide enhanced rebates on all orders as this creates an added incentive for members to qualify for PRP. However, the Exchange believes that it is important to offer the highest level of rebate specifically to those orders that improve the NBBO.

<sup>14</sup> 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), as defined in Rule 100(a)(37A).

<sup>15</sup> The term Market Maker refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Rule 100(a)(25).

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. Similarly, while Market Maker orders may receive higher or lower rebates depending on the tier achieved, the Exchange does not believe that this is unfairly discriminatory as it reflects the different mix of benefits and obligations applicable to Market Makers that trade on the Exchange. Market Makers currently receive tiered rebates based on their volume executed on the Exchange, without the additional requirement that those orders improve the NBBO. As such, the Exchange believes that it is not unfairly discriminatory to provide potentially higher rebates to other market participants that have demonstrated a high level of commitment to the Exchange by entering orders that improve the NBBO.

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

In accordance with Section 6(b)(8) of the Act,<sup>16</sup> 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 fee change is designed to provide more attractive rebates to ISE Gemini members, and will compete with rebate programs offered by competitor exchanges such as BATS. 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.

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<sup>16</sup> 15 U.S.C. 78f(b)(8).

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,<sup>17</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>18</sup> because it establishes a due, fee, or other charge imposed by ISE Gemini.

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](mailto:rule-comments@sec.gov). Please include File Number SR-ISEGemini-

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

2015-21 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISEGemini-2015-21. 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 office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISEGemini-2015-21, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

Brent J. Fields,  
Secretary.

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