

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71915; File No. SR-ISE Gemini-2014-12)

April 9, 2014

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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 1, 2014 ISE Gemini, LLC (the “Exchange” or “ISE Gemini”) filed with the Securities and Exchange 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 is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange’s Internet Web site 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees. 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.

1. Qualifying Tier Thresholds

ISE Gemini currently provides volume-based maker rebates and charges volume-based taker fees to Market Maker³ and Priority Customer⁴ orders in four tiers based on a member’s average daily volume (“ADV”) in the following categories: (i) Total Affiliated Member ADV,⁵ (ii) Priority Customer Maker ADV,⁶ and (iii) Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV, as shown in the table below. The highest tier threshold attained by any method below applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

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 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).

⁵ 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.

⁶ The Priority Customer Maker ADV category includes all Priority Customer volume that adds liquidity in all symbols.

Table 1: Current			
Tier	Total Affiliated Member ADV	Priority Customer Maker ADV	Total Affiliated Member ADV / Minimum Priority Customer Maker ADV
Tier 1	0 – 64,999	0 – 19,999	0 – 39,999 / 0+
Tier 2	65,000 – 149,999	20,000 – 64,999	40,000 – 114,999 / 15,000+
Tier 3	150,000 – 274,999	65,000 – 114,999	115,000 – 224,999 / 45,000+
Tier 4	275,000+	115,000+	225,000+ / 65,000+

As outlined in the following table, the Exchange now proposes to decrease the thresholds for achieving the four current volume tiers, and to add an additional fifth tier for members that execute either (i) a Total Affiliated Member ADV of at least 350,000 contracts, (ii) a Priority Customer Maker ADV of at least 125,000 contracts, or (iii) a Total Affiliated Member ADV of at least 250,000 contracts with a Minimum Priority Customer Maker ADV of at least 85,000 contracts.⁷

Table 1: Proposed			
Tier	Total Affiliated Member ADV	Priority Customer Maker ADV	Total Affiliated Member ADV / Minimum Priority Customer Maker ADV
Tier 1	0 – 49,999	0 – 19,999	0 – 39,999 / 0+
Tier 2	50,000 – 124,999	20,000 – 49,999	40,000 – 99,999 / 15,000+
Tier 3	125,000 – 249,999	50,000 – 84,999	100,000 – 174,999 / 40,000+
Tier 4	250,000 – 349,999	85,000 – 124,999	175,000 – 249,999 / 65,000+
Tier 5	350,000+	125,000+	250,000+ / 85,000+

In addition, the Exchange proposes to apply these tiers to fees for all market participants when taking liquidity on ISE Gemini. Maker rebates will continue to be based on Table 1 for

Market Maker or Priority Customer orders, and Table 2 for Firm Proprietary / Broker-Dealer or Professional Customer orders.

2. Maker Rebates for Market Maker and Priority Customer Orders

Currently, the Exchange provides maker rebates in Penny Symbols and SPY to Market Maker orders as follows: \$0.30 per contract (Tier 1), \$0.32 per contract (Tier 2), \$0.34 per contract (Tier 3), and \$0.38 per contract (Tier 4).⁸ The Exchange now proposes to decrease the Tier 4 maker rebate for Market Maker orders in these symbols to \$0.37 per contract. Market Makers that meet the proposed volume requirements for the new Tier 5 will receive the higher \$0.38 per contract rebate currently offered for Tier 4 Market Maker orders in Penny Symbols. The Exchange will no longer offer an increased rebate for SPY to Market Makers that achieve the highest volume tier.

For Non-Penny Symbols the maker rebate for Market Maker orders is currently \$0.40 per contract (Tier 1), \$0.42 per contract (Tier 2), \$0.44 per contract (Tier 3), and \$0.47 per contract (Tier 4). As proposed, these rates will remain unchanged. Market Makers that achieve the new Tier 5 described above, however, will be entitled to a higher maker rebate of \$0.49 per contract for orders in Non-Penny Symbols.

The Exchange also provides maker rebates in Penny Symbols and SPY to Priority Customer orders as follows: \$0.25 per contract (Tier 1), \$0.40 per contract (Tier 2), \$0.45 per contract (Tier 3), and \$0.48 per contract (Tier 4). The Exchange now proposes to increase the Tier 3 maker rebate for Priority Customer orders in these symbols to \$0.46 per contract. In

⁷ New maker rebates and taker fees for members that achieve Tier 5 are described in Sections 2 and 3 below. Where not otherwise noted in this proposed rule change, Tier 5 fees will be introduced at the applicable Tier 4 rate.

⁸ This rebate is presently \$0.40 per contract for SPY.

addition, Priority Customer orders executed by members that achieve the new Tier 5 will receive a higher maker rebate of \$0.50 per contract.

For Non-Penny Symbols the maker rebate for Priority Customer orders is currently \$0.75 per contract (Tier 1), \$0.80 per contract (Tier 2), \$0.82 per contract (Tier 3), and \$0.85 per contract (Tier 4). The Exchange now proposes to offer the higher maker rebate of \$0.85 per contract to Priority Customer orders in Non-Penny Symbols for members that achieve Tier 3, Tier 4, or Tier 5.

3. Taker and Response Fees for Penny Symbols and SPY

Currently, all Market Maker, Non-ISE Gemini Market Maker,⁹ Firm Proprietary / Broker-Dealer,¹⁰ and Professional Customer¹¹ orders in Penny Symbols and SPY pay a taker fee and a fee for responses to Crossing Orders of \$0.48 per contract. The Exchange proposes to increase the taker fee for each of these market participants to \$0.49 per contract for current Tiers 1 through 4. For members that meet the volume requirements for the new Tier 5, Market Maker and Non-ISE Gemini Market Maker orders will pay a discounted rate of \$0.48 per contract. The Exchange also proposes to increase the response fee, which is not based on tiers, to \$0.49 per contract for all non-Priority Customer orders. As will remain the case, Priority Customer orders in these symbols pay a taker fee of \$0.45 per contract for Tier 1 and \$0.44 per contract for Tier 2 or higher, and a flat response fee of \$0.45 per contract.

⁹ 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.

¹⁰ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. This proposed rule change modifies the definition of a “Broker-Dealer” order as discussed in subsection 5 below.

¹¹ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

4. *Non-Substantive Layout Changes*

Currently the Schedule of Fees has a single taker fee column for Tiers 2, 3, and 4. In order to make the fee schedule easier to read with the addition of new tier 5 for Market Maker, Non-ISE Gemini Market Maker, and Priority Customer orders, the Exchange proposes to break this into three separate columns for each tier as is currently done for maker rebates.¹² The Exchange is not introducing any differentiation between taker fees charged for Tiers 2 through 4 at this time.

5. *Broker Dealer Definition*

A “Broker-Dealer” order is presently defined as an order submitted by a member for a non-member broker-dealer account. In some instances, however, a member may submit orders for the account of another broker-dealer that is also an ISE Gemini member. Currently these orders would not fall into any of the market participant categories on the fee schedule. The Exchange believes that these orders should also be marked as Broker-Dealer orders, and therefore proposes to amend the definition of a Broker-Dealer order to include all orders submitted by a member for a broker-dealer account that is not its own proprietary account.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and Section 6(b)(4) of the Act,¹⁴ 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.

¹² In addition, the Exchange notes that its maker rebate columns are each labeled “maker rebate/fee.” The Exchange proposes to take out the reference to fees from the header to these columns, which indicate only applicable rebate numbers.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

1. Qualifying Tier Thresholds

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to decrease the volume thresholds for achieving the four current tiers for Market Maker and Priority Customer orders as this proposed change is designed to attract additional volume to ISE Gemini. The Exchange already provides volume-based tiered maker rebates and taker fees for these orders, and believes that lowering the applicable volume thresholds to more attainable levels will incentivize members to send additional order flow to ISE Gemini in order to receive higher rebates and lower fees. In addition, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to introduce a new volume tier, and to apply the volume tiers described in this filing to taker fees for all market participants, as the Exchange is providing additional incentives for members that bring substantial volume to ISE Gemini.

2. Maker Rebates for Market Maker and Priority Customer Orders

The Exchange believes that the proposed changes to the maker rebates provided to Market Maker and Priority Customer orders are reasonable, equitable, and not unfairly discriminatory as the proposed rebates are still within the range of rebates provided by other maker/taker options exchanges. The Exchange believes that providing higher rebates for Priority Customer orders, and for Priority Customer and Market Maker orders for members that meet the volume requirements for the new Tier 5, attracts that order flow to ISE Gemini and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Furthermore, while the Exchange is decreasing the maker rebate currently provided to certain Market Maker orders, it is also decreasing the volume thresholds required to achieve those rebates as described above. The Exchange believes that the combination of maker rebate rate

changes, lower volume thresholds, and the addition of a fifth tier will encourage greater participation from Market Makers and Priority Customers on ISE Gemini.

3. Taker and Response Fees for Penny Symbols and SPY

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to increase the taker and response fees for Market Maker, Non-ISE Gemini Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders in Penny Symbols and SPY as these fees are within the range of fees currently charged by other maker/taker options exchanges. The Exchange further believes that it is reasonable, equitable, and not unfairly discriminatory to offer members that achieve new Tier 5 lower taker fees for their Market Maker and Non-ISE Gemini Market Maker orders. As described above, this filing introduces a new tier that applies to orders executed by members that bring substantial volume to ISE Gemini. By offering discounted taker fees in these symbols for members that achieve the new tier, the Exchange is providing an incentive for these members to bring additional order flow to ISE Gemini, which will ultimately create liquidity to the benefit of all market participants who trade on the Exchange. The Exchange also notes that while it is not proposing similar fee discounts for Priority Customer orders, these orders are entitled to a rate that is lower than the rate charged to other market participants, and are already subject to a tiered discount for members that achieve Tier 2 or higher. The Exchange does not believe that it is unfairly discriminatory to limit the proposed taker fee discount to Market Maker and Non-ISE Gemini Market Maker orders as volume from other market participants is already sufficiently incited by the current fees and rebates offered. Moreover, with the introduction of tiered pricing that extends to Non-ISE Gemini Market Maker orders all market participants that trade on ISE Gemini will now be eligible for some form of volume based fees or rebates.

4. Non-Substantive Layout Changes

The Exchange believes that the taker fee layout changes are reasonable, equitable, and not unfairly discriminatory as these are non-substantive changes intended to make the Schedule of Fees more transparent to members and investors.

5. Broker Dealer Definition

The Exchange believes that the proposed amendment to the definition of a Broker-Dealer order is reasonable, equitable, and not unfairly discriminatory as this is a technical change intended to clarify how members should mark their orders. With this clarification, orders from a member broker-dealer executed through another member will be properly marked as Broker-Dealer orders, while orders submitted by a member for its own proprietary account will continue to be marked Firm Proprietary. This change is necessary to eliminate member confusion, as the current definitions of market participant types do not account for the scenario described above.

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,¹⁵ 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 ISE Gemini to better compete for order flow. 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

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,¹⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁷ 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

¹⁵ 15 U.S.C. 78f(b)(8).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4(f)(2).

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-ISE Gemini-2014-12 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-ISE Gemini-2014-12. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 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-ISE Gemini-2014-12 and should be submitted by [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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).