

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72587; File No. SR-ISEGemini-2014-20)

July 10, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 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 the Substance of the Proposed Rule Change

ISE Gemini is proposing to amend its Schedule of Fees to increase certain network and gateway 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 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

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

<sup>2</sup> 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees to increase certain network and gateway fees. The Exchange charges an Ethernet fee for its four different Ethernet connection options, which is \$500 per month for a 1 Gigabit (“Gb”) connection, \$4,000 per month for a 10 Gb connection, \$7,000 per month for a 10 Gb low latency connection, and \$12,500 per month for a 40 Gb low latency connection.<sup>3</sup> These Ethernet connectivity options provide access to both ISE Gemini and ISE Gemini’s sister exchange, International Securities Exchange, LLC (“ISE”).<sup>4</sup> The Exchange proposes to increase the fees charged for the 1 Gb connection to \$750 per month. In addition, the Exchange offers both shared and dedicated gateways to facilitate member access to ISE Gemini and ISE for a single fee. The Exchange charges members a monthly gateway fee of \$250 per gateway for a shared gateway or \$2,000 per gateway pair for members that elect to use their own dedicated gateways as an alternative to using shared gateways.<sup>5</sup> The Exchange proposes to increase the shared gateway fee to \$500 per month.

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<sup>3</sup> See Securities Exchange Act Release No. 71149 (December 19, 2013), 78 FR 78447 (December 26, 2014) (SR-Topaz-2013-16).

<sup>4</sup> Id. Market participants pay the same fees regardless of whether they choose to connect to both exchanges or solely to ISE Gemini.

<sup>5</sup> Id.

In addition, the Schedule of Fees currently notes that the network and gateway fees discussed above, as well as certain other non-transaction fees, were waived until January 1, 2014.<sup>6</sup> As this date has already passed, the Exchange proposes to delete references to this waiver.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</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 increase the network and gateway fees described in this filing as the Exchange has not increased the fees charged for these network and gateway options since each was introduced,<sup>9</sup> and the new fees are more in line with the Exchange's current connectivity costs, including costs for software and hardware enhancements, and resources dedicated to development, quality assurance, and support. The Exchange also notes that these connectivity options now provide access to two exchanges, ISE and ISE Gemini, for a single fee and thus believes that the new fees are appropriate given the additional benefit that this provides to firms that choose to connect to both markets.<sup>10</sup> The new fees are also well within the range of fees

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<sup>6</sup> Id.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> While both of these fees were introduced on ISE Gemini in January 2014 as described above, the Exchange notes that the fees were adopted on earlier dates on the ISE, which shares these connectivity options with ISE Gemini. See Securities Exchange Act Release No. 55289 (February 13, 2007), 72 FR 8218 (February 23, 2007) (SR-ISE-2007-04); 68324 (November 30, 2012), 77 FR 72901 (December 6, 2012) (SR-ISE-2012-89).

<sup>10</sup> As described above, these fees were originally adopted on the ISE and then on ISE Gemini to allow members to connect to both exchanges for a single fee. The Exchange believes that the new fees reflect the benefit of being able to connect to multiple exchanges for market participants that choose to do so.

currently charged by other options exchanges. For example, NYSE Arca Options (“Arca”) charges a monthly fee of \$5,000 per connection for a 1 Gb liquidity center network connection with a \$6,000 per connection initial charge, which is significantly more expensive than the proposed Ethernet fee of \$750 per month.<sup>11</sup> Furthermore, the Exchange believes that the new fees are not unfairly discriminatory as all market participants that use these connectivity options will pay the same fee, and there is no differentiation among market participants with regard to the fees charged.

The Exchange also believes that it is appropriate to remove obsolete text about the waiver of non-transaction fees prior to January 1, 2014, as this is a non-substantive change intended to increase the clarity of the Exchange’s Schedule of Fees.

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

In accordance with Section 6(b)(8) of the Act,<sup>12</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 rule change increases certain network and gateway fees to levels that are within the range of fees charged by other options exchanges. These fees will be charged to all firms that elect to use the connectivity options described in this filing. In addition, removing obsolete text from the Schedule of Fees will have no competitive impact. 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 to remain

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<sup>11</sup> See Arca Fees and Charges, Floor and Equipment and Co-location Fees. There is no gateway fee listed on Arca’s fee schedule, but the cost of obtaining a 1 Gb connection to Arca is considerably higher than the fees proposed in this filing even with the additional \$500 gateway fee. There is no similar initial charge for setting up connectivity to ISE Gemini.

<sup>12</sup> 15 U.S.C. 78f(b)(8).

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,<sup>13</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>14</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:

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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-2014-20 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISEGemini-2014-20. 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, 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-ISEGemini-2014-20, 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.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).