

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73889; File No. SR-ISEGemini-2014-30)

December 19, 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 December 15, 2014, ISE Gemini, LLC (the “Exchange” or “ISE Gemini”) filed with the Securities and Exchange Commission (“SEC” or “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 language in the Schedule of Fees related to excluding days from its average daily volume (“ADV”) calculations when the market is not open for the entire trading day. 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 in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A,

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

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

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 Exchange proposes to amend language in the Schedule of Fees related to excluding days from its ADV calculations when the market is not open for the entire trading day. The Exchange currently provides tiered fees and rebates to market participants based on members' ADV in a given month. In determining applicable tiers, the Exchange may exclude from its ADV calculation any day that the market is not open for the entire trading day. This allows the Exchange to exclude days, for example, where the Exchange declares a trading halt in all securities, honors a market-wide trading halt declared by another market, or closes early for holiday observance. On November 3, 2013, the Exchange's affiliate, the International Securities Exchange, LLC ("ISE"), amended its Schedule of Fees to permit it to exclude days only for those members that would have a lower ADV with the day included.<sup>3</sup> As noted in the ISE proposed rule filing, some members may be inadvertently disadvantaged when a day is removed from the ADV calculation if the member continues to trade significant volume on that day. In order to prevent this undesirable result, and preserve the Exchange's intent behind adopting volume-based pricing, ISE Gemini proposes to adopt language similar to ISE, allowing the Exchange to exclude days from its ADV calculation only for members that would have a lower ADV with the day included.

2. Statutory Basis

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

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<sup>3</sup> See Securities Exchange Act Release No. 73601 (November 14, 2014), 79 FR 69170 (November 20, 2014) (SR-ISE-2014-51).

Section 6 of the Act,<sup>4</sup> in general, and Section 6(b)(4) of the Act,<sup>5</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 only exclude a day from its ADV calculations for members that would otherwise have a lower ADV for the month as this preserves the Exchange's intent behind adopting volume-based pricing, and avoids penalizing members that continue to actively trade during excluded days. Without this change, members that step up and trade significant volume on days where the market is not open for the entire trading day may be negatively impacted, resulting in an effective cost increase for those members. The Exchange further believes that the proposed rule change is not unfairly discriminatory because it applies equally to all members and ADV calculations. As is ISE Gemini's current practice, the Exchange will provide a notice, and post it on the Exchange's website, to inform members of any day that is to be excluded from its ADV calculations in connection with this proposed rule change.

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

In accordance with Section 6(b)(8) of the Act,<sup>6</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 Exchange believes that the proposed modifications to its ADV calculation are pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. 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

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<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78f(b)(8).

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,<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>8</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>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</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-2014-30 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-2014-30. 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-2014-30, 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>9</sup>

Brent J. Fields  
Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).