SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71149; File No. SR-Topaz-2013-16)

December 19, 2013

Self-Regulatory Organizations; Topaz Exchange, 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 December 16, 2013, 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 the Substance of the Proposed Rule Change

Topaz is proposing to amend its Schedule of Fees to adopt various membership and other non-transaction fees, and to add clarifying language related to fees charged for Priority Customer orders executed during the opening rotation. 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

1 15 U.S.C. 78s(b)(1).

2 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule filing is to amend the Schedule of Fees to adopt various membership and other non-transaction fees, and to add clarifying language related to fees charged for Priority Customer orders executed during the opening rotation. The proposed non-transaction fees include membership application fees, access and CMM trading right fees, network and gateway fees, session fees, and regulatory fees. Each of the non-transaction fees is being waived until January 1, 2014. The Exchange is filing these fees now to give advance notice to its Members.

Membership Application Fees

The Exchange is proposing to assess a one-time application fee based upon the applicant's status as a Primary Market Makers ("PMM"), Competitive Market Maker ("CMM"), or Electronic Access Member ("EAM"). Applicants for Topaz membership will be assessed a one-time application fee of $3,000 per firm for PMMs, $2,000 per firm for CMMs, or $1,500 per firm for EAMs. The higher fee charged for PMMs and CMMs, compared to the fee for EAMs, reflects the additional review and processing effort needed for market maker applications, and particularly PMM applications, which require the most Exchange resources of the three types of membership applications. As this fee is being waived until January 1, 2014, applicants for Topaz membership that have already applied for membership, and those that apply for membership before January 1, 2014, will not be assessed a fee for their applications.

Access & CMM Trading Right Fees

Under the proposed fee change, Members will also be required to pay a monthly access fee starting January 2014. In particular, the Exchange is proposing to charge EAMs and PMMs a monthly access fee [sic] $200 for each membership, while CMMs will pay $100 per month for each membership.[3] Payment of the proposed monthly access fee will entitle Members to trade on the Exchange as a PMM, CMM, or EAM based on their membership type. In order to receive appointments to quote in options classes, CMMs will also be required to pay for CMM trading rights. CMM trading rights entitle a CMM to enter quotes in options symbols that comprise a certain percentage of industry volume. A CMM’s first trading right entitles that CMM to quote in 20 percent of volume, and each subsequent right provides the ability to quote an additional 10 percent of volume.[4] In order to encourage CMMs to quote on the Exchange, Topaz launched without any fees associated with obtaining CMM trading rights, allowing CMMs to freely quote in all options classes. We are now proposing to adopt a monthly CMM trading right fee. Under the proposed fee structure, the first CMM trading right obtained by a CMM will cost $850 per month, and will entitle the CMM to quote in 20 percent of volume. Each additional CMM trading right obtained will cost $500 per month, and will entitle the CMM to quote an additional 10 percent of volume.

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3 In the case where a single member firm has multiple Topaz memberships, the monthly access fee is charged for each membership. For example, if a single member firm is both an EAM and a CMM, or owns multiple CMM memberships, the firm is subject to the access fee for each of those memberships.

4 See Topaz Rule 804(c) [sic] for a complete description of Topaz trading rights. CMMs can select the options classes to which they seek appointment, but the Exchange retains the authority to make such appointments and to remove appointments from CMMs based on their performance.

Network & Gateway Fees

The Exchange is proposing to charge Members and non-Members certain network and gateway fees as described in more detail below. The Exchange offers four different Ethernet connection options: a 1 Gigabit ("Gb") connection, a 10 Gb connection, a 10 Gb low latency connection, and a 40 Gb low latency connection.[5] In addition, the Exchange offers both shared and dedicated gateways to facilitate Member access to the Exchange. While Topaz launched without connectivity or gateway fees in order to attract order flow to Exchange, the Exchange now proposes to charge fees for these connectivity and gateway options. In particular, the Exchange will charge a connectivity fee of $500 per month for a 1 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 for a 40 Gb low latency connection. With respect to gateway fees, the Exchange proposes to charge a monthly fee of $250 per shared gateway, and $2,000 per dedicated gateway pair for Members that elect to use their own dedicated gateways as an alternative to using shared gateways.[6] The Exchange notes that these proposed fees are the same as fees charged by the International Securities Exchange, LLC ("ISE"),[7] as the network and gateway options provide connectivity to both Topaz and the ISE. Market participants that connect to Topaz and the ISE will be able to access both exchanges for a single fee for each of the listed connectivity options.

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5 The low latency connections are available to Members only, whereas the regular connections are available to both Members and non-Members.

6 While the shared gateways provide for full redundancy and the same latency, these Members nevertheless desire their own dedicated gateways as a risk management alternative. For redundancy and load balancing purposes, Members that choose the dedicated gateway option are connected to a pair of dedicated gateways for which the Exchange proposes to charge one fee.

7 See ISE Schedule of Fees, Section VIII, Access Services.

Session Fees

Topaz Members can connect to the Exchange via an Application Programming Interface ("API") session. The Exchange uses an open API which Members program to in order to develop applications that send trading commands and/or queries to, and receive broadcasts and/or transactions from, the trading system. The API processes quotes, receives orders from Members, tracks activity in the underlying markets, when applicable, executes trades in the matching engine, and broadcasts trade details to the participating Members. The Exchange is proposing to charge Members a monthly API fee of $100 per session for each authorized login that a Member utilizes for quoting, order entry, or "listening" to system broadcasts.[8] Each login allows the user to enter quotes, orders, and perform other miscellaneous functions, such as setting risk management parameters, pulling quotes, and performing linkage functions. In addition, EAMS can connect to Topaz via a Financial Information eXchange ("FIX") session.[9] EAMS that choose to connect to Topaz via FIX will be charged a monthly FIX session fee of $50 per session. The Exchange notes that Members may connect to both Topaz and the ISE through a single FIX session.[10] For Members that are also members of the ISE and wish to connect to both exchanges, the Exchange will charge a monthly fee of $250 per session for the first two sessions and $50 per session for the third and additional sessions. This is consistent with the tiered pricing and level of fees on the ISE.[11] The Exchange is charging a higher fee for the first two sessions

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[8] Quoting functionalities are available only to Market Makers, i.e., PMMs and CMMs, while order entry and listening functionalities are available to all Members.

[9] Market Makers, i.e., PMMs and CMMs, must connect to the Exchange via API as the FIX connection does not supporting [sic] quoting.

[10] API session fees are separate for Topaz and the ISE.

[11] See ISE Schedule of Fees, Section VII, Trading Application Software, FIX Session/API Session Fees.

for Members that connect to both exchanges as these Members will be allowed to access both markets through a single FIX session.

Regulatory Fees

The Exchange is proposing to charge an annual regulatory fee to all PMMs and CMMs in order to recover the cost of surveilling these members and performing other regulatory responsibilities. In particular, the Exchange proposes to charge $1,000 per year for a PMM membership, and, for PMMs that are also CMMs, $250 per year for each CMM membership. For CMMs that are not also PMMs the proposed regulatory fee is $500 per year for the first CMM membership, and $250 per year for each additional CMM membership. The Exchange is not proposing to charge a regulatory fee to EAMs.

Clarifying Text

On December 2, 2013 the Exchange filed an immediately effective rule change that amended the Schedule of Fees to specify that the Exchange will charge its "taker" fee for non-Priority Customer orders executed during the opening rotation.[12] As explained in that filing, Priority Customers [sic] orders executed during the opening rotation will continue to receive the applicable "maker" rebate. Since the current language for Priority Customer orders does not explicitly state that it applies to orders executed during the opening rotation, the Exchange proposes to clarify this in the Schedule of Fees. In particular, the Exchange proposes to revise the relevant language in its Schedule of Fees to state that Priority Customer orders executed during the opening rotation will receive the applicable maker rebate. The Exchange believes that this change will add further clarity to its Schedule of Fees.

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[12] See ISE-2013-14 (citation pending publication by the SEC). [sic]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(4) of the Act,[14] in particular, in that it provides for an equitable allocation of reasonable fees and other charges among Exchange Members and other persons using its facilities.

Membership Application Fees

The Exchange believes the proposed one-time membership application fees are reasonable and equitable as they are similar to, and generally lower than, one time application fees in place at other options exchanges. For example, MIAX Options ("MIAX") charges a one-time application fee of $2,500 for electronic exchange members and $3,000 for market makers,[15] compared to the proposed $1,500 fee for EAMs, and proposed $2,000 and $3,000 fees for CMMs and PMMs, respectively. Furthermore, the Exchange does not believe that it is unfairly discriminatory to assess different fees for PMMs, CMMs, and EAMs. The one-time application fees are designed to recover costs associated with the processing of such applications, which are lowest for EAM applications, and greater for Market Maker applications, and PMM applications particularly. Charging a higher application fee for Market Makers is consistent with the fees charged by other options exchanges, including, for example, the MIAX application fee discussed above.[16]

Access & CMM Trading Right Fees

The Exchange believes its proposed access fees and CMM trading right fees are

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[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] See MIAX Fee Schedule, Section 3, Membership Fees, Application for MIAX Membership.

[16] Id.

reasonable, equitable and not unfairly discriminatory. The proposed fees compare favorably with those of other options exchanges. For example, a market maker on NYSE Arca Options ("Arca") has to purchase at least one trading permit for $6,000 per month, and up to four trading permits that total $18,000 per month in order to quote in all options classes.[17] By comparison, under the proposed fee structure, a CMM could quote on the Exchange for as little as $950 per month (i.e., a $100 access fee and an $850 trading right), and could quote in all options classes on the Exchange by paying the access fee and purchasing nine CMM trading rights for a total of $4,950 per month. The Exchange notes that its tiered model for CMM trading rights is consistent with the pricing practices of other exchanges, such as Arca, which charges $6,000 per month for the first market maker trading permit, as mentioned above, down to $1,000 per month for the fifth and additional trading permits, with various tier in-between. Like other options exchanges, the Exchange is proposing this tiered pricing model because the first CMM trading right requires the most support from the Exchange, with each additional trading right requiring an incremental increase in the amount of support provided. The Exchange also believes that a tiered price structure for successive CMM trading rights may encourage CMM firms to purchase additional trading rights and quote more issues, thereby enhancing liquidity on the Exchange. For PMMs on Topaz the fees required to access the Exchange are substantially lower than those on competing exchanges. For example, a PMM could quote on the Exchange for only $200 (i.e., the access fee), compared with the minimum $6,000 per month trading permit fee charged by Arca. The Exchange notes that it is not proposing trading right fees for PMMs as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting requirements. Similarly, the Exchange is proposing only to charge the $200

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17 See Arca Fees and Charges, General Options and Trading Permit (OTP) Fees.

access fee to EAMs as the technical, regulatory, and administrative costs associated with an EAM's use of the Exchange are not as high as those associated with Market Makers.

Network & Gateway Fees

The Exchange believes that its proposed network and gateway fees are fair, reasonable, and not unfairly discriminatory. The Exchange notes that these fees are the same as applicable to trading on the ISE. Because market participants may connect to both ISE and Topaz through each of the available options, the Exchange is proposing the same fees for connectivity to Topaz as applicable to ISE. The Exchange believes that it is reasonable to charge the same fees as ISE since market participants are able to access both ISE and Topaz through their selected connectivity options. With respect to network fees, the Exchange believes that it is fair to charge higher fees for higher bandwidth allocations, and for access to the Exchange's low latency connections, which are priced to allow the Exchange to recoup the hardware, installation, testing and connection costs to maintain and manage enhanced connections. The Exchange notes that its proposed connectivity fees, which are the same as fees charged by the ISE, are also lower than those charged by other options exchanges for similar connectivity services. For example, 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, and up to $20,000 per month plus a $15,000 per connection initial charge for their 40 Gb offering,[18] compared to the proposed monthly fees for Topaz, which range from $500 per month to $12,500 per month for the 1 Gb and 40 Gb connections, respectively. With respect to gateway fees, the Exchange notes that Members may choose whichever option is appropriate for their firm as the shared gateways provide for full redundancy and the same latency as the dedicated gateways. The Exchange believes that it is fair

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[18] See Arca Fees and Charges, Floor and Equipment and Co-location Fees.

to charge more to Members that desire their own dedicated gateways for risk management purposes, as all similarly situated Members will be charged the same amount, based on their preference for either a shared gateway or a dedicated gateway.

Session Fees

The Exchange believes that its proposed API/FIX session fees are fair and equitable as they compare favorably with, and are generally lower than, fees charged by other options exchanges. For example, Arca charges a port fee for order/quote entry ports of $200 per month for ports 6 – 100, and $100 per month for additional ports, with the first five ports offered at no charge.[19] Moreover, the Exchange believes that the proposed fees are not unreasonably discriminatory as each Member that connects to the Exchange will pay the same per session fee, regardless of whether that Member is a PMM, CMM, or EAM, or whether that Member uses its connection for quoting, order entry, or listening only. While the cheaper FIX option does not support quoting, and is therefore available only to EAMs, the Exchange does not believe that this is unfairly discriminatory as FIX is a free, industry-wide messaging protocol, whereas the Exchange pays a licensing fee for the use of the API, which provides additional quoting functionality for Market Makers. As with network and gateway fees described above, EAMs have the option to connect to both ISE and Topaz through a single FIX session. The Exchange believes that it is fair and equitable to charge a higher fee to Members that wish to connect to both Topaz and the ISE as such Members will benefit from access to both markets. Members that only connect to Topaz will pay a lower fee equal to the incremental fee for the third and additional sessions for Members that connect to both exchanges.

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[19] Id.

Regulatory Fees

The Exchange believes the proposed market maker regulatory fees are reasonable and equitable as they are designed to recoup costs associated with performing surveillance and other regulatory obligations with respect to PMMs and CMMs. The Exchange does not believe that it is unfairly discriminatory to charge a higher regulatory fee to PMMs than CMMs, or to not charge any regulatory fee to EAMs, as the resources dedicated to surveilling the activities of a Member vary [sic] on the type of membership. For example, the Exchange has rules that apply to a PMM that do not apply to a CMM or an EAM, and which necessitate surveillance by the Exchange. Generally, PMMs are subject to greater obligations than CMMs are and CMMs are subject to more obligations than EAMs are. As such, the Exchange believes that a tiered fee system is the most equitable method of assessing these fees.

Clarifying Text

The Exchange believes that the proposed clarifying text to its Schedule of Fees is reasonable, equitable, and not unfairly discriminatory as it is intended to increase transparency for Members and investors. The Exchange notes that this is a non-substantive change and, as described in the original filing, non-Priority Customer orders will continue to be charged the “taker” fee while Priority Customer orders will receive the applicable “maker” rebate for trades executed during the opening rotation.

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

In accordance with Section 6(b)(8) of the Act,[20] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule

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[20] 15 U.S.C. 78f(b)(8).

change will impose an unnecessary burden on intermarket competition as the proposed fees are comparable to, and generally lower than, fees charged by other options exchanges. With respect to intramarket competition, the Exchange notes that the proposed fees apply equally to all similarly situated Members based on their membership type. As noted above, the Exchange believes that any differences in the treatment of PMMs, CMMs, and EAMs are reasonably based on the differences between those membership types, and are consistent with differentiation that exists on other options exchanges, including, for example, the ISE. With respect to the clarifying text being adopted, the Exchange notes that this is non-substantive and will therefore 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 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,[21] and subparagraph (f)(2) of Rule 19b-4 thereunder,[22] because it establishes a due, fee, or other charge imposed by Topaz.

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21 15 U.S.C. 78s(b)(3)(A)(ii).

22 17 CFR 240.19b-4(f)(2).

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. Please include File No. SR-Topaz-2013-16 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 No. SR-Topaz-2013-16. 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 No. SR-Topaz-2013-16, 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.[23]

Kevin M. O'Neill
Deputy Secretary

[23] 17 CFR 200.30-3(a)(12).