

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

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Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73393; File No. SR-ISEGemini-2014-27]

### Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

October 21, 2014.

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 10, 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 to adopt a route-out fee for Non-Customer orders routed to away markets. 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.

#### 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 adopt a route-out fee for Non-Customer orders<sup>3</sup> routed to away markets. The Exchange's Schedule of Fees has separate 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.

The Exchange presently charges a route-out fee applicable to Priority Customer<sup>4</sup> and Professional Customer<sup>5</sup> orders routed to away markets pursuant to the Options Order Protection and Locked/Crossed Market Plan (the "Plan"). Specifically, Priority Customer orders pay a route-out fee of \$0.50 per contract in Penny Symbols (including SPY),<sup>6</sup> and \$0.90 per contract in Non-Penny Symbols.<sup>7</sup> Professional Customer orders pay a fee of \$0.55 per contract in Penny Symbols (including SPY), and \$0.95 per contract in Non-Penny Symbols. On July 31, 2014 the Exchange's sister exchange, the International Securities Exchange, LLC ("ISE"), filed a proposed rule change that introduced linkage routing for Non-Customer orders, which became effective on September 1, 2014.<sup>8</sup> Thereafter, the Exchange filed its own proposed rule change, which noted that certain of the rules adopted in the ISE filing are incorporated by reference into ISE Gemini rules, and adopted other related rules in chapters that are not incorporated by reference, effective as of September 18, 2014.<sup>9</sup> In connection with this new functionality, the

Exchange now proposes to adopt a route-out fee for Non-Customer orders routed to other options exchanges. The proposed route-out fee will be \$0.55 per contract in Penny Symbols (including SPY), and \$0.95 per contract in Non-Penny Symbols, in line with the rates described above for Professional Customer orders, and will be applicable to all Market Maker,<sup>10</sup> Non-ISE Gemini Market Maker,<sup>11</sup> and Firm Proprietary<sup>12</sup>/Broker-Dealer<sup>13</sup> orders routed to away markets pursuant to the Plan.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>14</sup> in general, and Section 6(b)(4) of the Act,<sup>15</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.

In particular, the Exchange believes the proposed route-out fee is reasonable and equitable as it offsets costs incurred by the Exchange in connection with using unaffiliated broker-dealers to access other exchanges for linkage executions. As the Exchange recently expanded its linkage routing capabilities to include Non-Customer orders, the Exchange believes that it is appropriate to adopt corresponding fees at this time. The fees proposed herein are lower than those charged by some of the Exchange's competitors, including, for example, NASDAQ OMX PHLX ("PHLX"), which charges a fee of \$0.97 per contract for routing Non-Customer orders to away markets.<sup>16</sup>

Furthermore, the Exchange believes that the proposed fees are not unfairly discriminatory because these fees are equivalent to fees currently charged for Professional Customer orders routed by the Exchange to other options markets, and would therefore be uniformly applied to all Professional Customer and Non-Customer orders. As has historically been the case, Priority

<sup>3</sup> A Non-Customer Order is an order for the account of a person or entity that is a broker or dealer in securities. See ISE Gemini Rules 100(a)(27)-(28).

<sup>4</sup> A Priority Customer is defined in ISE Gemini Rule 100(a)(37A) as 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).

<sup>5</sup> A Professional Customer is a person who 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.

<sup>8</sup> See Securities Exchange Act Release No. 72816 (August 12, 2014), 79 FR 48811 (August 18, 2014) (SR-ISE-2014-37).

<sup>9</sup> See Securities Exchange Act Release No. 72919 (August 26, 2014) 79 FR 52096 (September 2, 2014) (SR-ISE Gemini-2014-22).

<sup>10</sup> The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See ISE Gemini Rule 100(a)(25).

<sup>11</sup> A Non-ISE Gemini Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 registered in the same options class on another options exchange.

<sup>12</sup> A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

<sup>13</sup> A Broker-Dealer order is an order submitted by a Member for a non-Member broker-dealer account.

<sup>14</sup> 15 U.S.C. 78f.

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

<sup>16</sup> See PHLX Fee Schedule, Section V, Routing Fees.

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

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

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

Customer orders will continue to pay lower route-out fees than orders from other market participants, including Professional Customer and, now, Non-Customer orders. The Exchange believes that it is equitable and not unfairly discriminatory to charge lower fees for Priority Customer orders than Professional Customer and Non-Customer orders as 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 to that of market professionals, including Professional Customers and Non-Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Moreover, the Exchange notes that Priority Customer orders are often charged lower taker fees than Professional Customer and Non-Customer orders on other options exchanges, meaning that the execution costs to the Exchange for routing these orders is correspondingly lower. As such, the Exchange believes that it is equitable and not unfairly discriminatory to pass on this cost savings to the firms entering these orders.

The Exchange has determined to charge fees for regular orders in Mini Options at a rate that is 1/10th the rate of fees the Exchange currently provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees 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, levying fees that are 1/10th of what market participants pay to trade Standard Options. As a result, routing fees for Mini Options will continue to be charged at 1/10th the rate of fees of Standard Options.

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

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 as it simply adopts fees for routing Non-Customer orders to other options exchanges, in connection with the introduction of

linkage routing for these orders. 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 competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee change reflects 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>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 Email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISEGemini-2014-27 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-2014-27. This file number should be included on the subject line if email 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 Web site (<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 Web site 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-2014-27 and should be submitted by November 17, 2014.

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

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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).

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