

Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in the Shares, in the equity securities in which the Fund will invest, and in the U.S. exchange-traded options that the Fund will buy and write, with other markets and other entities that are members of the ISG, and that FINRA may obtain trading information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from such markets and other entities.³⁴ In addition, the Exchange may obtain information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁵

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.³⁶ In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange,

to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

³⁴ See Notice, *supra* note 3, 78 FR at 59407.

³⁵ See *id.*

³⁶ See *id.*

which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Exchange Act.³⁷

(6) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment); will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained; and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.

(8) The equity securities in which the Fund will invest and the options that the Fund will write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

³⁷ 17 CFR 240.10A-3.

(9) Under normal market conditions, the Fund will invest primarily in large-cap U.S. exchange-traded equity securities. The Fund will also utilize an options strategy in which it will write U.S. exchange-traded covered call options on the Index. The market value of the options strategy may be up to 20% of the Fund's overall net asset value.

(10) In addition to the options strategy that is part of the Fund's principal investment strategy, the Fund may invest up to 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps, and forward contracts. To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

(11) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act³⁸ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁹ that the proposed rule change (SR-NASDAQ-2013-122) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70830; File No. SR-
TOPAZ-2013-10]

Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Exchange Trading Days and Hours of Business and Trading Halts

November 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ 17 CFR 200.30-3(a)(12).

“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 31, 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 Exchange. 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

The Exchange proposes to amend Exchange rules to clarify Rule 700, “Days and Hours of Business,” and Rule 702, “Trading Halts.”

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, at the Commission’s Public Reference Room, and on the Commission’s Web site at <http://www.sec.gov>.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules to clarify when it will be open for trading along with when trading halts on underlying securities will inhibit trading on the Exchange. The Exchange is submitting this proposed rule change as a competitive response to a recently approved rule filing submitted by the Chicago Board Options Exchange (“CBOE”).³ Specifically, the Exchange is proposing to amend its rules to clarify that it will not be solely

dependent upon the “primary market” when determining when to open and/or halt securities. Instead, the Exchange is proposing to clarify in its rules that it will be open if there is ample liquidity in the underlying market for the security. Generally, the national equity exchanges have similar core business hours.⁴ With this proposal, the Exchange is attempting to clarify in its rules that it can remain open to trade options during such business hours even if the “primary market” of the underlying securities is not open for business. The Exchange believes that the proposed changes will allow the markets to continue to function in an instance where all exchanges may not be halted. In addition, the Exchange believes the proposed changes will bring greater clarity to its Members regarding when the Exchange will be open for trading.

Currently, Exchange Rule 700 provides that no Member shall make any bid, offer, or transaction on the Exchange before or after business hours.⁵ As an administrative cleanup change, the Exchange is proposing to eliminate this language as it is no longer relevant. Executions may only happen during business hours, however, Members have the ability to submit information in the Exchange’s electronic trading system outside of business hours. The Exchange believes deleting this language would bring greater clarity to Exchange rules while updating the rule text to the current trading environment.

Next, the Exchange is proposing to add language to Rule 700(a) to specify that the Exchange will not solely rely on the “primary market” of an underlying security to determine whether the Exchange may trade the option for such security. The Exchange believes that the proposed rule change will specify that if there is an ample market in the underlying security, the Exchange has the authority to trade the option even if the primary market is not open. The Exchange believes that allowing such discretion will create a lesser market disruption if the primary exchange is unable to open for trading.

Further, Rule 702 specifies when the Exchange will halt trading.⁶

Specifically, Rule 702(a)(1) lists factors that may be considered in making that determination. Currently, Rule 702(a)(1)(i) lists, as a factor in the decision with respect to options, “trading in the underlying security has been halted or suspended in the primary market.” The Exchange is proposing to add language to state, instead of the “primary market,” that the Exchange may factor in if “trading in the underlying security has been halted or suspended in one or more of the markets trading the underlying security.” The Exchange believes the proposed changes will grant discretion for the Exchange to be open for trading when there is a robust market in the underlying security rather than limit it to only when the “primary market” is open.

Next, the Exchange is proposing to amend Rule 702(a)(2) so that a designated Exchange official may halt trading in an option not only if the “primary market” of the security has halted trading but if the security has been halted in “one or more of the markets trading the underlying security.” Under the current rule, the designated Exchange official almost certainly must halt trading whenever there is a halt of trading in the underlying security. The Exchange believes this proposed change will provide the designated Exchange official the discretion and the authority to halt trading in an option if the primary market for an underlying security is not open for business however that security is being traded elsewhere. For example, if the primary market is unable to open due to a natural disaster, or other circumstance, but other stock exchanges are trading the underlying security, the proposed change will allow the Exchange to continue trading the underlying options.

The Exchange believes the proposed changes will allow the Exchange to trade options for underlying stocks even if that underlying listing market shall be unable to trade due to an emergency or other circumstance unique to that stock exchange. Making these proposed changes will allow the Exchange to trade options when an underlying security is trading on any national securities exchange regardless of where that security is formally listed. The proposed discretion attempts to create a lesser [sic] market disruption if a listing or primary market is unable to trade due to some circumstance. Because of the connectivity of the national securities exchanges today, the Exchange believes limiting its ability to trade options when the primary market of the underlying security is open might hurt

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 69558 (May 10, 2013), 78 FR 28911 (May 16, 2013) (SR-CBOE-2013-035).

⁴ See, e.g., New York Stock Exchange Rule 51(a) and BATS Exchange Rule 1.5(w) which describes regular trading hours as 9:30 a.m. through 4:00 p.m. Eastern.

⁵ See Exchange Rule 700.

⁶ See Exchange Rule 702. The Exchange is not proposing any change to Rule 702(c), *Trading Pauses*, because a trading halt with respect to options is mandatory and not subject to discretion whenever trading in the security underlying the option contract has been paused by the primary listing market.

investors if some circumstance should render the primary exchange inoperable. In addition, the Exchange believes that the reference to “primary market” is ambiguous and has the potential to cause confusion. Thus, the Exchange believes by further clarifying the language, it is clearer when the Exchange will be open for trading.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.⁷ In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change protects investors by allowing trading in options as long as the underlying security is trading on another exchange. Instead of only relying on the “primary market,” the proposed rule change attempts to clarify when options will trade on the Exchange to allow greater continuity in the marketplace. By allowing the Exchange to trade options whenever the underlying securities are trading, the proposed rule change seeks to create less of a disconnect if the “primary” market should be experiencing technical difficulties, an emergency, or other situation that may inhibit it to be connected to the marketplace.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change imposes any burden on intramarket competition because it will apply to all Members [sic]. In addition, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition as it will merely give the Exchange discretion to trade options when there is an ample market for the

underlying security of those options. Thus, the Exchange believes the proposed rule change will promote competition by giving the Exchange the ability to trade options when the underlying security is trading anywhere, and, thus, helping the Exchange to better participate in the marketplace. Additionally, as noted above, the proposed rule change is a competitive response to a recently approved rule filing submitted by the CBOE.⁹ Topaz believes this proposed rule change is necessary to permit fair competition among the options exchanges.

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 Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6) thereunder¹¹ because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days after its filing date, or such shorter time as the Commission may designate.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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. Please include File Number SR–TOPAZ–2013–10 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 Number SR–TOPAZ–2013–10. 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 Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also 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–TOPAZ–2013–10 and should be submitted on or before December 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O’Neill,
Deputy Secretary.

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¹² 17 CFR 200.30-3(a)(12).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See *supra* note 3.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).