

proceedings is appropriate at this time in view of the legal and policy issues raised by the proposals. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposals.

Pursuant to Section 19(b)(2)(B),<sup>35</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission notes that Section 15A(b)(9) of the Act<sup>36</sup> requires that FINRA's rules be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Commenters have raised concerns about whether the proposed reclassification of depositary shares for trade reporting purposes could cause harm to the market for hybrid preferred securities. They have also questioned whether the proposal could cause investor confusion, and whether it is sufficiently detailed to provide adequate guidance to market participants.

The Commission believes that these concerns raise questions as to whether the proposed rule change is consistent with the requirements of the Section 15A(b)(9) of the Act, including whether they would promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. As of the date of this order, FINRA had not yet addressed the comments by, for example, amending the proposal to respond to comments or arguing that the proposal should be approved by the Commission in its present form notwithstanding the comments. The self-regulatory organization submitting the proposal bears the burden of demonstrating that it is consistent with the Act, and given the outstanding comments, FINRA has not at this time satisfied that burden.<sup>37</sup> Accordingly, the Commission believes that it is appropriate at this time to issue this order to institute proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change.

## V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 15A(b)(9) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>38</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule changes should be [approved or] disapproved by January 21, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 4, 2014.

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 Number SR-FINRA-2013-039 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-FINRA-2013-039. 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/>

<sup>38</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[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. 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 publicly available. All submissions should refer to File Number SR-FINRA-2013-039 and should be submitted on or before January 21, 2014. Rebuttal comments should be submitted by February 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>39</sup>

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71181; File No. SR-Topaz-2013-19]

### Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to More Specifically Address the Number and Size of Contra-parties to a Qualified Contingent Cross Order

December 24, 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 December 18, 2013, Topaz Exchange, LLC (d/b/a ISE Gemini) (the "Exchange") 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

<sup>39</sup> 17 CFR 200.30-3(a)(57).

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

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

<sup>35</sup> See *id.*

<sup>36</sup> 15 U.S.C. 78o-3(b)(6).

<sup>37</sup> See 17 CFR 201.700(b)(3).

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 is proposing to amend Rule 715 (Types of Orders) to more specifically address the number and size of contra-parties to a Qualified Contingent Cross Order ("QCC Order"). 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 self-regulatory organization 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 this proposal is to expand the availability of QCC Orders by permitting multiple contra-parties on a QCC Order. Under the proposal, multiple contra-parties would be allowed, so long as each contra-party order consists of an order for at least 1,000 contracts; provided however, that the originating QCC Order must also be for at least 1,000 contracts (in addition to meeting the other requirements of a QCC Order). This is intended to accommodate multiple contra-parties, as explained further below.

A QCC Order must be comprised of an order to buy or sell at least 1,000 contracts<sup>3</sup> that is identified as being part of a qualified contingent trade,<sup>4</sup>

<sup>3</sup> In the case of Mini Options, the minimum size is 10,000 contracts.

<sup>4</sup> A "qualified contingent trade" is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) At least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution

coupled with a contra-side order to buy or sell an equal number or contracts. QCC Orders are automatically executed upon entry provided that the execution (i) is not at the same price as a Priority Customer Order on the Exchange's limit order book and (ii) is at or between the NBBO. QCC Orders will be automatically canceled if they cannot be executed. QCC Orders may only be entered in the regular trading increments applicable to the options class under Rule 710 (Minimum Trading Increments).

The QCC Order type was approved for the Exchange in its current form on February 24, 2011 [sic].<sup>5</sup> It was always the Exchange's intent and understanding when drafting the rule text that a QCC Order could involve multiple contra-parties of the QCC trade when the originating QCC Order consisted of at least 1,000 contracts. However, the rule language addressing the contra-side of a QCC Order is drafted from the perspective of how the QCC Order gets entered into the Exchange system. Specifically, the contra-side order to a QCC Order will always be entered as a single order, even if that order consists of multiple contra-parties who are allocated their portion of the trade in a post-trade allocation. Notwithstanding the foregoing, the literal wording of the current QCC Order rule could result in a more limited interpretation of the rule. Therefore, the Exchange now proposes to make it clear that a QCC Order must involve a single order for at least 1,000 contracts on the originating side, but that it may consist of multiple orders on the opposite, contra-side, so long as each of the contra-side orders is for at least 1,000 contracts.

For instance, a 5,000 contract originating QCC Order to buy could, under this proposal, be coupled with two contra-side orders to sell 2,500 contracts each. Similarly, a 5,000 contract originating QCC Order to buy could, under this proposal, be coupled with a [sic] two contra-side orders to sell, one for 4,000 contracts and one for

one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

<sup>5</sup> See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10-209).

1,000 contracts. In the above examples, each sell (contra-side) order needs to be for a minimum of 1,000 contracts, provided that the total of all sell (contra-side) orders equals the size of the originating order and that originating order is at least 1,000 contracts.

Accordingly, the Exchange is proposing to amend the definition of QCC Order to clarify that an originating order to buy or sell at least 1,000 contracts coupled with a contra-side order or orders totaling an equal number of contracts is permitted, so long as each contra-side order is for at least 1,000 contracts.

##### 2. Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>6</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest by amending the rule text to more clearly defining the QCC Order. Specifically, because the proposal clarifies that a QCC Order permits multiple contra-parties, it should therefore provide members and participants with certainty as to what is allowed and, therefore, provide more opportunity to participate in QCC trades, consistent with the key principles behind the QCC Order.

In approving QCC Orders, the Commission has stated that ". . . qualified contingent trades are of benefit to the market as a whole and a contribution to the efficient functioning of the securities markets and the price discovery process."<sup>7</sup> The Commission "also has recognized that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and equity derivatives such as options [emphasis added]."<sup>8</sup> In light of these benefits, the Exchange believes that the proposal should improve the usefulness of the QCC Order without raising novel regulatory issues, because the proposal does not impact the fundamental aspects of this order type—it merely

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> QCC Approval Order at text accompanying footnote 115.

<sup>8</sup> QCC Approval Order at Section III.A. citing Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Original QCT Exemption).

permits multiple contra-parties, while preserving the 1,000 contract minimum.

Consistent with Section 6(b)(8) of the Act, the Exchange seeks to compete with other options exchanges for QCC Orders involving multiple parties, including where there are multiple contra-parties. The Exchange believes that this will be beneficial to participants because allowing multiple contra-parties of at least 1,000 contracts should foster competition for filling one side of a QCC Order and thereby result in potentially better prices, as opposed to only allowing one contra-party and, thereby requiring that contra-party to do a larger size order which could result in a worse price for the trade.

#### *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 competition not necessary or appropriate in furtherance of the purposes of the Act. In fact, the proposal is intended to relieve a burden on competition, which results from different exchanges interpreting their rules differently. Among the options exchanges, the Exchange believes that the proposal to allow multiple contra-parties of at least 1,000 contracts should foster competition for filling the contra-side of a QCC order and thereby result in potentially better prices for such orders.

#### *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**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and Rule 19b-4(f)(6)<sup>10</sup> thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed

rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **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-Topaz-2013-19 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-Topaz-2013-19. 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-Topaz-2013-19 and should be submitted by January 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71183; File No. SR-NYSEMKT-2013-86]

### **Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt Commentary .03 to Rule 980NY To Limit the Volume of Complex Orders by a Single ATP Holder During the Trading Day**

December 24, 2013.

On October 28, 2013, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt Commentary .03 to NYSE MKT Rule 980NY to limit the volume of complex orders that may be entered by a single ATP Holder during the trading day. On November 5, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on November 13, 2013.<sup>3</sup> The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the

<sup>11</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.

<sup>3</sup> See Securities Exchange Act Release No. 70816 (November 6, 2013), 78 FR 68111.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR. 240.19b-4(f)(6).