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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79800; File No. SR-ISEGemini-2017-01]

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

January 13, 2017.

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> notice is hereby given that on January 3, 2017, ISE Gemini, LLC (“ISE Gemini” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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 the Schedule of Fees to eliminate the Performance Routing Program.

The text of the proposed rule change is available on the Exchange’s Web site at [www.ise.com](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 Exchange 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

Currently, the Exchange offers Performance Routing Program (“PRP”) rebates to Non-ISE Gemini Market Maker,<sup>3</sup> Firm Proprietary,<sup>4</sup> Broker-Dealer,<sup>5</sup> and Professional Customer<sup>6</sup> orders based on the member’s maker average daily volume (“ADV”) in Non-ISE Gemini Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer orders that improve the national best bid or offer (“NBBO”) in a series at the time of order entry (“PRP eligible contracts”).<sup>7</sup> Specifically, members that execute an ADV of 9,999 PRP eligible contracts or fewer are entitled to a maker rebate of \$0.25 per contract in both Penny Symbols and Non-Penny Symbols for their Non-ISE Gemini Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer orders. Members that execute an ADV of 10,000 or more PRP eligible contracts are entitled to a maker rebate of \$0.40 per contract in Penny Symbols and \$0.65 per contract in Non-Penny Symbols for the above market participant types if the order does not improve the NBBO at the time of order entry. In addition, members that qualify for the higher tier of PRP rebates are entitled to a maker rebate of \$0.47 per contract in Penny Symbols and \$0.71 per contract in Non-Penny Symbols for the above market participant types if the order improves

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

<sup>4</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

<sup>5</sup> A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>6</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

<sup>7</sup> All eligible volume from affiliated members is aggregated in determining applicable tiers, provided there is at least 75% common ownership between the members as reflected on each member’s Form BD, Schedule A.

the NBBO in the series at the time it is entered.<sup>8</sup>

The Exchange now proposes to eliminate the PRP as this program has not been successful in attracting order flow that improves the NBBO. As proposed, members will receive a maker rebate of \$0.25 per contract in Penny Symbols and Non-Penny Symbols for their Non-ISE Gemini Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer orders (*i.e.*, the current Tier 1 maker rebate). Members will no longer be able to achieve higher maker rebates based on their maker ADV in Non-ISE Gemini Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer orders that improve the NBBO in a series at the time of order entry.<sup>9</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and Section 6(b)(4) of the Act,<sup>11</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 eliminate the PRP as this rebate program was not successful in attracting the type of order flow that it was designed to incentivize. The Exchange adopted the PRP to encourage members enter orders that improve the NBBO in order to create more trading opportunities at better prices for all market participants that trade on the Exchange. The Exchange does not believe that the PRP has met this goal, and is therefore proposing to eliminate the program. With the proposed elimination of the PRP, Non-ISE Gemini Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer orders will continue to be entitled to a maker rebate in Penny and Non-Penny Symbols that is the same as the current Tier 1 maker rebate. The current Tier 2 maker rebates for these market participant types will be removed as this tier is being eliminated with the elimination of the PRP program. The Exchange believes

<sup>8</sup> See Schedule of Fees, Section I., Regular Order Fees and Rebates, footnotes 14 and 15.

<sup>9</sup> This includes both the regular rebate for orders that do not improve the NBBO at the time of order entry, and the enhanced rebates provided in footnotes 14 and 15 of the Schedule of Fees for orders that improve the NBBO at the time of order entry. The regular rebates will now be marked “n/a” since there will no longer be any PRP tiers, and the associated footnotes for enhanced rebates will be eliminated.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>8</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.

that the Tier 1 maker rebate remains competitive and will continue to incentivize members to send order flow to the Exchange. The Exchange further believes that the proposed fee change is not unfairly discriminatory as it provides equal rebates to Non-ISE Gemini Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer orders. In addition, although Priority Customer<sup>12</sup> and Market Maker<sup>13</sup> orders will be entitled to more favorable maker rebates, the Exchange does not believe that this is unfairly discriminatory. As has historically been the case, Priority Customer orders remain entitled to more favorable maker rebates in order to encourage this order flow. 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, who will generally submit a higher number of orders than Priority Customers. Similarly, the Exchange believes that it is not unfairly discriminatory to offer higher maker rebates to Market Makers as Market Makers are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not.

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

In accordance with Section 6(b)(8) of the Act,<sup>14</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 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.

<sup>12</sup> A "Priority Customer" is 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), as defined in Rule 100(a)(37A).

<sup>13</sup> The term Market Maker refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Rule 100(a)(25).

<sup>14</sup> 15 U.S.C. 78f(b)(8).

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

#### **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>15</sup> and Rule 19b-4(f)(2)<sup>16</sup> thereunder. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISEGemini-2017-01 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-2017-01. 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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

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 the 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-2017-01 and should be submitted on or before February 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79791; File No. SR-NASDAQ-2017-002]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7018**

January 13, 2017.

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> notice is hereby given that on January 3, 2017, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>17</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.