

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70761; File No. SR-Topaz-2013-09)

October 28, 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 October 22, 2013, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the “Exchange” or “Topaz”) 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

Topaz is proposing to amend its Schedule of Fees to adopt a continuing education fee for Series 56 registered persons. 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 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.

¹ 15 U.S.C. 78s(b)(1).

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 fee for a new continuing education program, the S501,³ which is required for persons who are registered as Proprietary Traders (i.e. Series 56) and do not maintain any other registration.⁴

The S501 addresses the continuing education of Proprietary Traders, based on the content outline for the Series 56 exam, which covers the main categories of rules and regulations generally applicable to such persons. These generally include recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. Each Proprietary Trader required to take the S501 must complete the continuing education program within 120 days after their [sic] second registration anniversary date, and every three years thereafter or as otherwise prescribed by the Exchange.

The Exchange proposes to adopt a \$60 fee for the S501 continuing education program, which will be used for the administration of the S501. The Financial Industry Regulatory Authority (“FINRA”) administers this program on behalf of the exchanges and therefore the fees

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 70417 (September 16, 2013), 78 FR 57907 (September 20, 2013) (SR-ISE-2013-48). ISE Rule 604, which specifies the continuing education requirements for registered persons, including Series 56 registered Proprietary Traders, is incorporated by reference into Chapter 6 of Topaz Rules.

⁴ Individuals that are registered under any other registration are required to maintain the continuing education obligations associated with such registrations. For example, an individual that engages solely in proprietary trading activities but has passed the Series 7 and is registered as a General Securities Representative will be required to continue taking the Series 7 continuing education program (S101). Id.

are payable directly to FINRA. The Exchange expects that the other exchanges that recognize the Proprietary Trader registration either have or will adopt the same fee for continuing education.⁵

The Exchange's Schedule of Fees does not currently set forth the session fees for other continuing education programs required by the Exchange because these programs are within the jurisdiction of FINRA, which collects these session fees from its members. The Series 56, however, applies to Topaz Members that are not required by Section 15(b)(8) of the Act⁶ to become members of FINRA. Therefore, the Exchange believes it is appropriate to include the Series 56 continuing education fee within the Exchange's Schedule of Fees to make the cost of this program clear to Topaz Members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁸ 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. The proposed fee is equitable and not unfairly discriminatory, because it applies equally to all persons registered solely as Proprietary Traders. The Exchange notes that it will not invoice or collect funds from Members that are subject to these fees because these fees will be paid directly to FINRA as administrator of the continuing education program. The proposed fees are reasonably designed to allow FINRA to cover its cost

⁵ See e.g. Securities Exchange Act Release Nos. 70257 (August 26, 2013), 78 FR 53814 (August 30, 2013) (SR-BATS-2013-047); 70064 (July 30, 2013), 78 FR 47469 (August 5, 2013) (SR-CBOE-2013-078); 70194 (August 14, 2013) 78 FR 51259 (August 20, 2013) (SR-C2-2013-030); 70327 (September 5, 2013), 78 FR 55766 (September 11, 2013) (SR-Phlx-2013-85).

⁶ 15 U.S.C. 78o(b)(8).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

of administering the Series 56 continuing education program on behalf of the Exchange, and the Exchange believes it is reasonable and equitable to include these fees in its Schedule of Fees to make the costs of the Series 56 continuing education program clear to Members. Moreover, the Exchange believes other exchanges will be assessing the same fees for this continuing education program.⁹

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will affect intermarket competition because all of the exchanges that recognize the Proprietary Trader registration category are expected to adopt the same continuing education fee.¹⁰ Furthermore, the Exchange does not believe the proposed rule change will affect intramarket competition because all Proprietary Traders required to complete the new S501 continuing education program will pay the same continuing education fee.

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.

⁹ See supra notes 3 and 5.

¹⁰ Id.

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,¹¹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹² because it establishes a due, fee, or other charge imposed by Topaz.

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 Number SR-Topaz-2013-09 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.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-Topaz-2013-09. 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 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-2013-09 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).