

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72454; File No. SR-ISEGemini-2014-09]

Self-Regulatory Organizations; ISE Gemini, LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change Relating to Market Maker Risk Parameters

June 24, 2014.

I. Introduction

On March 10, 2014, the ISE Gemini, LLC (“Exchange” or “ISE Gemini”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend ISE Gemini Rule 804 to mitigate market maker risk by adopting an Exchange-provided risk management functionality. The proposed rule change was published for comment in the *Federal Register* on March 26, 2014.³ The Commission received no comments on the proposal. On May 7, 2014, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷

II. Description of the Proposal

As described in the Notice, the Exchange proposes to amend ISE Gemini Rule 804 to mitigate market

maker risk by adopting an Exchange-provided risk management functionality. Currently, pursuant to ISE Gemini Rule 804, the Exchange automatically removes a market maker’s quotes in all series of an options class when certain parameter settings are triggered. Specifically, there are four parameters that can be set by market makers on a class-by-class basis and are available for market maker quotes in single options series and in complex instruments on the complex order book. Pursuant to the rules, market makers establish a time frame during which the system calculates: (1) The number of contracts executed by the market maker in an options class; (2) the percentage of the total size of the market maker’s quotes in the class that has been executed; (3) the absolute value of the net between contracts bought and contracts sold in an options class; and (4) the absolute value of the net between (a) calls purchased plus puts sold and (b) calls sold plus puts purchased. The market maker establishes limits for each of these four parameters, and when the limits are exceeded within the prescribed time frame, the market maker’s quotes in that class are removed or curtailed.⁸ Separately, the Exchange recently adopted another risk management parameter that permits market maker quotes in all classes to be automatically removed from the trading system if a specified number of curtailment events are exceeded within the prescribed time period across the ISE Gemini market.⁹ It is mandatory for market makers to enter values into all of the quotation risk management parameters for all options classes in which it enters quotes.

In the Notice, the Exchange proposes to further enhance its risk management offering by implementing an additional functionality that would permit market maker quotes to be automatically removed from the trading system if a specified number of curtailment events occur across ISE Gemini and its affiliated exchange, ISE. According to the Exchange, a single trading system governs the trading activity on both ISE Gemini and ISE.¹⁰

As proposed, market makers who choose to use this functionality would be able to set market wide parameters to govern its trading activity across both ISE Gemini and ISE. Once the parameter is set, the trading system would count

the number of times a market maker’s pre-set curtailment event occurs on each exchange, as specified in ISE Gemini Rule 804(g), and aggregate them. Once the specified number of curtailment events across both markets has been reached, the trading system would automatically remove all of the market maker’s quotes in all classes on both ISE Gemini and ISE. The Exchange believes this functionality would reduce market maker risk in the event the market maker suffers from a systems issue or the occurrence of an unusual or unexpected market activity. As proposed, any quotes sent by the market maker after the market-wide parameter across both markets has been triggered would be rejected until the market maker notifies each exchange—in a non-automated manner, such as email or telephone—that it is ready to come out of its curtailment. Once notified by the market maker, the market operations staff for each exchange would reactivate the market maker’s quotes and the market maker would again be active in on both ISE Gemini and ISE.¹¹

According to the Exchange, the proposed risk management functionality would operate consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. The Exchange anticipates that any marketable orders or executable quotes received before the proposed functionality is triggered would automatically execute at the price up to the market maker’s size, regardless of whether such execution would result in executions in excess of the market maker’s pre-set parameters. Further, the Exchange states that the proposed cross-exchange market wide parameter will not be mandatory and that market makers who prefer to use their own risk management systems can set the Exchange parameters to not be triggered.

III. Proceedings To Determine Whether To Approve or Disapprove SR-ISEGemini-2014-09 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹² to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has

¹¹ See Notice, *supra* note 3 for examples illustrating how the Exchange’s market wide risk management parameter would be applied under the proposal.

¹² 15 U.S.C. 78s(b)(2)(B).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 71758 (Mar. 20, 2014), 79 FR 16846 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 72118 (May 7, 2014), 79 FR 27355 (May 13, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated June 24, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ Relatedly, the Commission is also instituting proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove a proposed rule change filed by ISE Gemini’s affiliated exchange, International Securities Exchange, LLC (“ISE”), that mirrors the rule change proposed by ISE Gemini. See Securities Exchange Act Release No. 34-72455 (June 24, 2014).

⁸ See Securities Exchange Act Release No. 70644 (October 9, 2013), 78 FR 62785 (October 22, 2013) (SR-Topaz-2013-06).

⁹ See Securities Exchange Act Release No. 71447 (January 30, 2014), 79 FR 6956 (February 5, 2014) (SR-Topaz-2014-04).

¹⁰ See Notice, *supra* note 3.

reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

As discussed above, the Exchange proposes to amend ISE Gemini Rule 804, which would expand the current risk management offerings by ISE Gemini and provide for cross-exchange risk management functionality. The Commission believes that the proposal, which seeks to allow removal of a market maker's quotes in all classes on both ISE Gemini and ISE once an aggregated pre-set number of curtailment events on both exchanges is reached, raises important issues that warrant further public comment and Commission consideration. Namely, the Commission believes that proceedings are appropriate to consider, among other matters, whether the proposal is unfairly discriminatory to any member of the Exchange and the impact of the proposal on competition among exchanges.

Pursuant to Section 19(b)(2)(B) of the Act,¹³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market systems; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers."¹⁴ The Commission is also instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(8) of the Act, which requires that rules of a national securities exchange "do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of" the Act.

IV. 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 other concerns they may have with the proposal. In particular, the Commission

invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8) or any other provision of the Act, or the rules and regulations 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.¹⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by July 21, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 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. Please include File Number SR-ISEGemini-2014-09 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-2014-09. 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

¹⁵ 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).

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 filings 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-2014-09 and should be submitted on or before July 21, 2014. Rebuttal comments should be submitted by August 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72459; File No. SR-FINRA-2014-010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Withdrawal of Proposed Rule Change To Adopt FINRA Rule 2243 (Disclosure and Reporting Obligations Related to Recruitment Practices)

June 24, 2014.

On March 10, 2014, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt FINRA Rule 2243, which would establish disclosure and reporting obligations related to member recruitment practices. The proposed rule change was published for comment in the **Federal Register** on March 28, 2014.³ To date, the Commission has received 189 comments on the proposal.⁴

On May 1, 2014, FINRA voluntarily extended the date for Commission

¹⁶ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 71786 (Mar. 24, 2014), 79 FR 17592 (Mar. 28, 2014).

⁴ See <http://www.sec.gov/comments/sr-finra-2014-010/finra2014010.shtml>.

¹³ *Id.*

¹⁴ 15 U.S.C. 78f(b)(5).