

Required fields are shown with yellow backgrounds and asterisks.

Filing by ISE Gemini, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to adjust qualifying tier thresholds and fees and rebates under the Schedule of Fees.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Last Name *
Adrian	Griffiths
Title *	
Assistant General Counsel	
E-mail *	
agriffiths@ise.com	
Telephone *	Fax
(212) 897-8176	

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date	12/09/2016	Executive Vice President and General Counsel
By	Edward S. Knight	
	(Name *)	

edward.knight@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) ISE Gemini, LLC (the “Exchange” or “ISE Gemini”) proposes to adjust qualifying tier thresholds and fees and rebates under the Exchange’s Schedule of Fees.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Exchange staff approved this proposed rule change pursuant to authority delegated to it by the Exchange’s Board of Directors on August 15, 2016. This action constitutes the requisite approval under the Exchange’s Certificate of Formation, Operating Agreement and Constitution.

3. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) Purpose – The purpose of the proposed rule change is to adjust qualifying tier thresholds and fees and rebates under the Exchange’s Schedule of Fees. Each of the proposed changes is described in more detail below.

*Qualifying Tier Thresholds*

ISE Gemini currently provides volume-based maker rebates to Market Maker<sup>1</sup> and Priority Customer<sup>2</sup> orders in five tiers based on a member’s average daily volume (“ADV”) in the following categories: (i) Total Affiliated Member ADV,<sup>3</sup> (ii) Priority Customer Maker ADV,<sup>4</sup> and (iii) Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV, as shown in the table below.<sup>5</sup> In addition, the Exchange

---

<sup>1</sup> The term Market Maker refers to “Competitive Market Makers” and “Primary Market Makers” collectively.

<sup>2</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).

<sup>3</sup> The Total Affiliated Member ADV category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms.

<sup>4</sup> The Priority Customer Maker ADV category includes all Priority Customer volume that adds liquidity in all symbols.

<sup>5</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.

charges volume based taker fees to market participants based on achieving these volume thresholds.

<b>Table 1: Current</b>			
<b>Tier</b>	<b>Total Affiliated Member ADV</b>	<b>Priority Customer Maker ADV</b>	<b>Total Affiliated Member ADV / Minimum Priority Customer Maker ADV</b>
<b>Tier 1</b>	0 – 49,999	0 – 19,999	0 – 39,999 / 0+
<b>Tier 2</b>	50,000 – 124,999	20,000 – 49,999	40,000 – 99,999 / 15,000+
<b>Tier 3</b>	125,000 – 249,999	50,000 – 84,999	100,000 – 174,999 / 40,000+
<b>Tier 4</b>	250,000 – 349,999	85,000 – 124,999	175,000 – 249,999 / 65,000+
<b>Tier 5</b>	350,000+	125,000+	250,000+ / 85,000+

As outlined in the following table, the Exchange now proposes to decrease the number of tiers available to four, modify the ADV thresholds required for members to achieve for each of those tiers, and eliminate the qualifying thresholds based on Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV. With the elimination of the fifth tier, the Exchange hereby proposes to eliminate all fees and rebates applicable to members that achieve that tier.<sup>6</sup> As described in the following sections, the Exchange is proposing to make changes to rates in other tiers so that fees and rebates remain competitive.

---

The highest tier threshold attained by any method above applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

<sup>6</sup> The current fees and rebates applicable to Tier 5 are described in the following sections. Those fees and rebates are eliminated in connection with the reduction to four tiers.

**Table 1: Proposed**

<b>Tier</b>	<b>Total Affiliated Member ADV</b>	<b>Priority Customer Maker ADV</b>
<b>Tier 1</b>	0 – 99,999	0 – 19,999
<b>Tier 2</b>	100,000 – 224,999	20,000 – 99,999
<b>Tier 3</b>	225,000 – 349,999	100,000 – 149,999
<b>Tier 4</b>	350,000 or more	150,000 or more

#### *Maker Rebates in Penny Symbols and SPY*

Currently, the Exchange provides a maker rebate to Market Maker orders in Penny Symbols and SPY that is \$0.30 per contract in Tier 1, \$0.32 per contract in Tier 2 (or \$0.33 per contract for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month), \$0.34 per contract in Tier 3, \$0.37 per contract in Tier 4, and \$0.38 per contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Market Maker orders in Penny Symbols and SPY to \$0.45 per contract in Tier 4.<sup>7</sup> In addition, the Exchange proposes to eliminate the higher maker rebate provided in Tier 2 for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month.<sup>8</sup>

Currently, the Exchange provides a maker rebate to Priority Customer orders in Penny Symbols and SPY that is \$0.25 per contract in Tier 1 (or \$0.32 per contract for members that execute a Priority Customer Maker ADV of 5,000 to 19,999 contracts in a given month), \$0.40 per contract in Tier 2, \$0.48 per contract in Tier 3, \$0.50 per contract in Tier 4, and \$0.52 per contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Priority Customer orders in Penny Symbols and SPY to \$0.53 per contract in Tier 4.

#### *Maker Rebates in Non-Penny Symbols*

Currently, the Exchange provides a maker rebate to Market Maker orders in Non-Penny Symbols that is \$0.40 per contract in Tier 1, \$0.42 per contract in Tier 2 (or \$0.43 per contract for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month), \$0.44 per contract in Tier 3, \$0.47 per contract in Tier 4, and \$0.49 per contract in Tier 5. The Exchange proposes to increase the maker rebate

<sup>7</sup> Tier 5 is being eliminated, and the Exchange has therefore proposed to eliminate all fees and rebates applicable to members that achieve this tier. See id. and accompanying text. The proposed Tier 4 rates in this and following sections will therefore represent the rates for the highest volume tier.

<sup>8</sup> The Exchange will therefore eliminate footnote 9 under the Schedule of Fees, Section I Regular Order Fees and Rebates.

provided to Market Maker orders in Non-Penny Symbols to \$0.50 per contract in Tier 3, and \$0.75 per contract in Tier 4. In addition, the Exchange proposes to eliminate the higher rebate provided in Tier 2 for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month.<sup>9</sup>

Currently, the Exchange provides a maker rebate to Priority Customer orders in Non-Penny Symbols that is \$0.75 per contract in Tier 1 (or \$0.76 per contract for members that execute a Priority Customer Maker ADV of 5,000 to 19,999 contracts in a given month), \$0.80 per contract in Tier 2, and \$0.85 per contract in Tiers 3 through 5. The Exchange proposes to increase the maker rebate provided to Priority Customer orders in Non-Penny Symbols to \$1.05 per contract in Tier 4.

#### *Taker Fees in Penny Symbols and SPY*

Currently, the Exchange charges a taker fee for Market Maker and Non-ISE Gemini Market Maker<sup>10</sup> orders in Penny Symbols and SPY that is \$0.49 per contract for Tiers 1 through 4, and \$0.48 per contract in Tier 5, for trades executed against a Non-Priority Customer.<sup>11</sup> Firm Proprietary,<sup>12</sup> Broker-Dealer,<sup>13</sup> and Professional Customer<sup>14</sup> orders in Penny Symbols and SPY are charged a \$0.49 per contract taker fee for trades executed against a Non-Priority Customer, regardless of the tier achieved. The taker fee is \$0.50 per contract for all Non-Priority Customer orders in Penny Symbols and SPY for trades executed against a Priority Customer. Finally, the Exchange charges a taker fee for Priority Customer orders in Penny Symbols and SPY that is \$0.45 per contract in Tier 1, and \$0.44 per contract in Tiers 2 through 5. Priority Customer orders are charged these rates regardless of the counterparty.

The Exchange proposes to decrease the taker fee charged to Market Maker and Non-ISE Gemini Market Maker orders in Penny Symbols and SPY to \$0.48 per contract in Tier 4 for trades executed against a Non-Priority Customer. The Exchange also proposes to increase the taker fee for Priority Customer orders in Penny Symbols and SPY to \$0.48 per contract in Tier 1, \$0.47 per contract in Tiers 2 and 3, and \$0.45 per contract in Tier 4. Finally, the Exchange proposes to charge a taker fee of \$0.49 per

---

<sup>9</sup> The Exchange will therefore eliminate footnote 10 under the Schedule of Fees, Section I Regular Order Fees and Rebates.

<sup>10</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>11</sup> Non-Priority Customer includes Market Maker, Non-ISE Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer.

<sup>12</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

<sup>13</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>14</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

contract for Priority Customer orders in Penny Symbols and SPY for trades executed against a Priority Customer.

*Taker Fees in Non-Penny Symbols*

Currently, the Exchange charges a taker fee for Non-Priority Customer orders in Non-Penny Symbols that is \$0.89 per contract, regardless of the tier achieved.<sup>15</sup> In addition, the Exchange charges a taker fee for Priority Customer orders that is \$0.82 per contract for Tier 1, and \$0.81 per contract for Tiers 2 through 5. Today, the taker fees in Non-Penny Symbols described above apply regardless of the counterparty.

The Exchange proposes to increase the taker fee for Non-Priority Customer orders to \$1.10 for trades executed against a Priority Customer in Non-Penny Symbols. In addition, the Exchange proposes to increase the taker fee for Priority Customer orders in Non-Penny Symbols to \$0.85 per contract for trades executed against a Priority Customer. With these changes, different taker fees will be charged for trades executed against a Priority Customer similar to taker fees charged in Penny Symbols. Orders that do not trade against a Priority Customer will continue to be charged at their current rates.

(b) Basis – The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>16</sup> in general, and Section 6(b)(4) of the Act,<sup>17</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 the proposed fee change is reasonable and equitable. The Exchange is reducing the number of tiers offered to four, and is eliminating one of the methods of achieving those tiers – i.e., the Total Affiliated Member ADV / Minimum Priority Customer ADV categories. These two changes will simplify the Exchange's volume tiers. As the Exchange implements new pricing programs over time, the Exchange believes that it is appropriate to eliminate pricing programs when the Exchange no longer believes they are necessary. With respect to the elimination of the Total Affiliated Member ADV / Minimum Priority Customer ADV qualifying methodology in particular, the Exchange notes that members were not making use of these qualifying thresholds to achieve higher tiers on the Exchange. The Exchange therefore believes that it is appropriate to remove this alternative method of qualifying for higher tiers. The proposed changes to the tier structure are also accompanied by changes to the fees charged and rebates offered to members. The Exchange believes that these changes taken together will be attractive to market participants. The proposed fee change will allow the Exchange to offer more favorable rebates to Market Maker and Priority Customer orders in the highest tiers, and is designed to attract more of that volume to the Exchange. Even

---

<sup>15</sup> Non-Priority Customer orders are also charged the taker fee for trades executed during the opening rotation. Priority Customer orders executed during the opening rotation receive the applicable maker rebate based on the tier achieved.

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(4).

though the Exchange is reducing the number of volume tiers, the maker rebates proposed for the new highest tier (i.e., Tier 4) are higher than the current Tier 5 maker rebates.

Today, the Exchange provides enhanced maker rebates for Market Maker Priority Customer orders. Further increasing the rebates will incentivize these members to send additional order flow to ISE Gemini, thereby creating additional liquidity to the benefit of members and investors that trade on the Exchange. Although the proposed fee changes are designed to attract liquidity from Market Makers and Priority Customers by increasing maker rebates, certain taker fees will also be increased. The Exchange believes that the taker fee increases are appropriate as the fees will remain attractive to market participants who will now also benefit from additional liquidity posted on the Exchange.

With respect to increased taker fees for trades executed against a Priority Customer, the Exchange believes that the proposed fees are appropriate as they are designed to offset the enhanced rebates. With the proposed changes, Priority Customers will be offered even more favorable maker rebates. The Exchange believes that members will benefit from the additional liquidity created by the higher Priority Customer rebates, and it is therefore appropriate to charge an increased taker fee for trades executed against a Priority Customer. Furthermore, these taker fees are within the range of taker fees charged on other markets, including for example the Nasdaq Options Market (“NOM”), which charges a taker fee of up to \$1.10 in Non-Penny Pilot Options and \$0.50 per contract in Penny Pilot Options.<sup>18</sup>

The Exchange also does not believe that the proposed fee change is unfairly discriminatory. While the proposed fee change generally increases maker rebates for Market Maker and Priority Customer orders, and increases taker fees for trades executed against a Priority Customer, the Exchange believe that the proposed fee structure will remain attractive to all members. As has historically been the case, Market Maker and Priority Customer orders will earn more favorable maker rebates in order to encourage that order flow. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). In addition, 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.

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

In accordance with Section 6(b)(8) of the Act,<sup>19</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 proposed changes to fees and rebates are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed fees and rebates are competitive

---

<sup>18</sup> See NOM Rules, Chapter XV Options Pricing, Sec. 2 NOM—Fees and Rebates.

<sup>19</sup> 15 U.S.C. 78f(b)(8).



with fees and rebates offered to orders executed on other options exchanges. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>20</sup> the Exchange has designated this proposal as establishing or changing a due, fee or other charge imposed on any person, whether or not the person is a member of a self-regulatory organization, which renders the proposed rule change effective upon filing.

8. Proposed Rule change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

---

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-ISEGemini-2016-22)

December \_\_, 2016

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adjust Qualifying Tier Thresholds and Fees and Rebates

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 December 9, 2016, 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, 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 adjust qualifying tier thresholds and fees and rebates under the Schedule of Fees.

The text of the proposed rule change is available on the Exchange’s Website 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

---

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

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

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

The purpose of the proposed rule change is to adjust qualifying tier thresholds and fees and rebates under the Exchange's Schedule of Fees. Each of the proposed changes is described in more detail below.

*Qualifying Tier Thresholds*

ISE Gemini currently provides volume-based maker rebates to Market Maker<sup>3</sup> and Priority Customer<sup>4</sup> orders in five tiers based on a member's average daily volume ("ADV") in the following categories: (i) Total Affiliated Member ADV,<sup>5</sup> (ii) Priority Customer Maker ADV,<sup>6</sup> and (iii) Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV, as shown in the table below.<sup>7</sup> In addition, the Exchange

---

<sup>3</sup> The term Market Maker refers to "Competitive Market Makers" and "Primary Market Makers" collectively.

<sup>4</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).

<sup>5</sup> The Total Affiliated Member ADV category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms.

<sup>6</sup> The Priority Customer Maker ADV category includes all Priority Customer volume that adds liquidity in all symbols.

<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.

charges volume based taker fees to market participants based on achieving these volume thresholds.

<b>Table 1: Current</b>			
<b>Tier</b>	<b>Total Affiliated Member ADV</b>	<b>Priority Customer Maker ADV</b>	<b>Total Affiliated Member ADV / Minimum Priority Customer Maker ADV</b>
<b>Tier 1</b>	0 – 49,999	0 – 19,999	0 – 39,999 / 0+
<b>Tier 2</b>	50,000 – 124,999	20,000 – 49,999	40,000 – 99,999 / 15,000+
<b>Tier 3</b>	125,000 – 249,999	50,000 – 84,999	100,000 – 174,999 / 40,000+
<b>Tier 4</b>	250,000 – 349,999	85,000 – 124,999	175,000 – 249,999 / 65,000+
<b>Tier 5</b>	350,000+	125,000+	250,000+ / 85,000+

As outlined in the following table, the Exchange now proposes to decrease the number of tiers available to four, modify the ADV thresholds required for members to achieve for each of those tiers, and eliminate the qualifying thresholds based on Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV. With the elimination of the fifth tier, the Exchange hereby proposes to eliminate all fees and rebates applicable to members that achieve that tier.<sup>8</sup> As described in the following

---

The highest tier threshold attained by any method above applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

<sup>8</sup> The current fees and rebates applicable to Tier 5 are described in the following sections. Those fees and rebates are eliminated in connection with the reduction to four tiers.

sections, the Exchange is proposing to make changes to rates in other tiers so that fees and rebates remain competitive.

<b>Table 1: Proposed</b>		
<b>Tier</b>	<b>Total Affiliated Member ADV</b>	<b>Priority Customer Maker ADV</b>
<b>Tier 1</b>	0 – 99,999	0 – 19,999
<b>Tier 2</b>	100,000 – 224,999	20,000 – 99,999
<b>Tier 3</b>	225,000 – 349,999	100,000 – 149,999
<b>Tier 4</b>	350,000 or more	150,000 or more

*Maker Rebates in Penny Symbols and SPY*

Currently, the Exchange provides a maker rebate to Market Maker orders in Penny Symbols and SPY that is \$0.30 per contract in Tier 1, \$0.32 per contract in Tier 2 (or \$0.33 per contract for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month), \$0.34 per contract in Tier 3, \$0.37 per contract in Tier 4, and \$0.38 per contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Market Maker orders in Penny Symbols and SPY to \$0.45 per contract in Tier 4.<sup>9</sup> In addition, the Exchange proposes to eliminate the higher maker rebate provided in Tier 2 for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month.<sup>10</sup>

<sup>9</sup> Tier 5 is being eliminated, and the Exchange has therefore proposed to eliminate all fees and rebates applicable to members that achieve this tier. See id. and accompanying text. The proposed Tier 4 rates in this and following sections will therefore represent the rates for the highest volume tier.

<sup>10</sup> The Exchange will therefore eliminate footnote 9 under the Schedule of Fees, Section I Regular Order Fees and Rebates.

Currently, the Exchange provides a maker rebate to Priority Customer orders in Penny Symbols and SPY that is \$0.25 per contract in Tier 1 (or \$0.32 per contract for members that execute a Priority Customer Maker ADV of 5,000 to 19,999 contracts in a given month), \$0.40 per contract in Tier 2, \$0.48 per contract in Tier 3, \$0.50 per contract in Tier 4, and \$0.52 per contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Priority Customer orders in Penny Symbols and SPY to \$0.53 per contract in Tier 4.

*Maker Rebates in Non-Penny Symbols*

Currently, the Exchange provides a maker rebate to Market Maker orders in Non-Penny Symbols that is \$0.40 per contract in Tier 1, \$0.42 per contract in Tier 2 (or \$0.43 per contract for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month), \$0.44 per contract in Tier 3, \$0.47 per contract in Tier 4, and \$0.49 per contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Market Maker orders in Non-Penny Symbols to \$0.50 per contract in Tier 3, and \$0.75 per contract in Tier 4. In addition, the Exchange proposes to eliminate the higher rebate provided in Tier 2 for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month.<sup>11</sup>

Currently, the Exchange provides a maker rebate to Priority Customer orders in Non-Penny Symbols that is \$0.75 per contract in Tier 1 (or \$0.76 per contract for members that execute a Priority Customer Maker ADV of 5,000 to 19,999 contracts in a given month), \$0.80 per contract in Tier 2, and \$0.85 per contract in Tiers 3 through 5.

---

<sup>11</sup> The Exchange will therefore eliminate footnote 10 under the Schedule of Fees, Section I Regular Order Fees and Rebates.

The Exchange proposes to increase the maker rebate provided to Priority Customer orders in Non-Penny Symbols to \$1.05 per contract in Tier 4.

*Taker Fees in Penny Symbols and SPY*

Currently, the Exchange charges a taker fee for Market Maker and Non-ISE Gemini Market Maker<sup>12</sup> orders in Penny Symbols and SPY that is \$0.49 per contract for Tiers 1 through 4, and \$0.48 per contract in Tier 5, for trades executed against a Non-Priority Customer.<sup>13</sup> Firm Proprietary,<sup>14</sup> Broker-Dealer,<sup>15</sup> and Professional Customer<sup>16</sup> orders in Penny Symbols and SPY are charged a \$0.49 per contract taker fee for trades executed against a Non-Priority Customer, regardless of the tier achieved. The taker fee is \$0.50 per contract for all Non-Priority Customer orders in Penny Symbols and SPY for trades executed against a Priority Customer. Finally, the Exchange charges a taker fee for Priority Customer orders in Penny Symbols and SPY that is \$0.45 per contract in Tier 1, and \$0.44 per contract in Tiers 2 through 5. Priority Customer orders are charged these rates regardless of the counterparty.

---

<sup>12</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>13</sup> Non-Priority Customer includes Market Maker, Non-ISE Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer.

<sup>14</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

<sup>15</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>16</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.



The Exchange proposes to decrease the taker fee charged to Market Maker and Non-ISE Gemini Market Maker orders in Penny Symbols and SPY to \$0.48 per contract in Tier 4 for trades executed against a Non-Priority Customer. The Exchange also proposes to increase the taker fee for Priority Customer orders in Penny Symbols and SPY to \$0.48 per contract in Tier 1, \$0.47 per contract in Tiers 2 and 3, and \$0.45 per contract in Tier 4. Finally, the Exchange proposes to charge a taker fee of \$0.49 per contract for Priority Customer orders in Penny Symbols and SPY for trades executed against a Priority Customer.

*Taker Fees in Non-Penny Symbols*

Currently, the Exchange charges a taker fee for Non-Priority Customer orders in Non-Penny Symbols that is \$0.89 per contract, regardless of the tier achieved.<sup>17</sup> In addition, the Exchange charges a taker fee for Priority Customer orders that is \$0.82 per contract for Tier 1, and \$0.81 per contract for Tiers 2 through 5. Today, the taker fees in Non-Penny Symbols described above apply regardless of the counterparty.

The Exchange proposes to increase the taker fee for Non-Priority Customer orders to \$1.10 for trades executed against a Priority Customer in Non-Penny Symbols. In addition, the Exchange proposes to increase the taker fee for Priority Customer orders in Non-Penny Symbols to \$0.85 per contract for trades executed against a Priority Customer. With these changes, different taker fees will be charged for trades executed against a Priority Customer similar to taker fees charged in Penny Symbols. Orders that do not trade against a Priority Customer will continue to be charged at their current rates.

---

<sup>17</sup> Non-Priority Customer orders are also charged the taker fee for trades executed during the opening rotation. Priority Customer orders executed during the opening rotation receive the applicable maker rebate based on the tier achieved.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>18</sup> in general, and Section 6(b)(4) of the Act,<sup>19</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 the proposed fee change is reasonable and equitable. The Exchange is reducing the number of tiers offered to four, and is eliminating one of the methods of achieving those tiers – i.e., the Total Affiliated Member ADV / Minimum Priority Customer ADV categories. These two changes will simplify the Exchange's volume tiers. As the Exchange implements new pricing programs over time, the Exchange believes that it is appropriate to eliminate pricing programs when the Exchange no longer believes they are necessary. With respect to the elimination of the Total Affiliated Member ADV / Minimum Priority Customer ADV qualifying methodology in particular, the Exchange notes that members were not making use of these qualifying thresholds to achieve higher tiers on the Exchange. The Exchange therefore believes that it is appropriate to remove this alternative method of qualifying for higher tiers. The proposed changes to the tier structure are also accompanied by changes to the fees charged and rebates offered to members. The Exchange believes that these changes taken together will be attractive to market participants. The proposed fee change will allow the Exchange to offer more favorable rebates to Market Maker and Priority Customer orders in the highest tiers, and is designed to attract more of that volume to the Exchange. Even

---

<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78f(b)(4).

though the Exchange is reducing the number of volume tiers, the maker rebates proposed for the new highest tier (i.e., Tier 4) are higher than the current Tier 5 maker rebates.

Today, the Exchange provides enhanced maker rebates for Market Maker Priority Customer orders. Further increasing the rebates will incentivize these members to send additional order flow to ISE Gemini, thereby creating additional liquidity to the benefit of members and investors that trade on the Exchange. Although the proposed fee changes are designed to attract liquidity from Market Makers and Priority Customers by increasing maker rebates, certain taker fees will also be increased. The Exchange believes that the taker fee increases are appropriate as the fees will remain attractive to market participants who will now also benefit from additional liquidity posted on the Exchange.

With respect to increased taker fees for trades executed against a Priority Customer, the Exchange believes that the proposed fees are appropriate as they are designed to offset the enhanced rebates. With the proposed changes, Priority Customers will be offered even more favorable maker rebates. The Exchange believes that members will benefit from the additional liquidity created by the higher Priority Customer rebates, and it is therefore appropriate to charge an increased taker fee for trades executed against a Priority Customer. Furthermore, these taker fees are within the range of taker fees charged on other markets, including for example the Nasdaq Options Market (“NOM”), which charges a taker fee of up to \$1.10 in Non-Penny Pilot Options and \$0.50 per contract in Penny Pilot Options.<sup>20</sup>

The Exchange also does not believe that the proposed fee change is unfairly discriminatory. While the proposed fee change generally increases maker rebates for

---

<sup>20</sup> See NOM Rules, Chapter XV Options Pricing, Sec. 2 NOM—Fees and Rebates.

Market Maker and Priority Customer orders, and increases taker fees for trades executed against a Priority Customer, the Exchange believe that the proposed fee structure will remain attractive to all members. As has historically been the case, Market Maker and Priority Customer orders will earn more favorable maker rebates in order to encourage that order flow. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). In addition, 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.

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

In accordance with Section 6(b)(8) of the Act,<sup>21</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 proposed changes to fees and rebates are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed fees and rebates are competitive with fees and rebates offered to orders executed on other options exchanges. 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

---

<sup>21</sup> 15 U.S.C. 78f(b)(8).

competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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>22</sup> 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISEGemini-2016-22 on the subject line.

---

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISEGemini-2016-22. 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 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 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 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-2016-22 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.<sup>23</sup>

Robert W. Errett  
Deputy Secretary

---

<sup>23</sup> 17 CFR 200.30-3(a)(12).

Exhibit 5 - Text of the Proposed Rule Change  
Underlining indicates additions; [Brackets] indicate deletion

\* \* \*

I. Regular Order Fees and Rebates

Penny Symbols and SPY												
Market Participant	Maker Rebate: Tier 1	Maker Rebate: Tier 2	Maker Rebate: Tier 3	Maker Rebate: Tier 4	[Maker Rebate: Tier 5]	Taker Fee: Tier 1 <sup>(4)(13)</sup>	Taker Fee: Tier 2 <sup>(4)(13)</sup>	Taker Fee: Tier 3 <sup>(4)(13)</sup>	Taker Fee: Tier 4 <sup>(4)(13)</sup>	[Taker Fee: Tier 5 <sup>(4)(13)</sup> ]	Fee for Crossing Orders (excluding PIM) <sup>(1)(11)</sup>	Fee for Responses to Crossing Orders (excluding PIM) <sup>(12)</sup>
Market Maker <sup>(2)(3)(5)</sup>	(\$0.30)	(\$0.32) <sup>(9)</sup>	(\$0.34)	[( <del>\$0.37</del> )] (\$0.45)	[( <del>\$0.38</del> )]	\$0.49	\$0.49	\$0.49	[\$0.49] <u>\$0.48</u>	[\$0.48]	\$0.20	\$0.49
Non-ISE Gemini Market Maker (FarMM) <sup>(3)(6)</sup>	(\$0.25)	(\$0.40) <sup>(14)</sup>	n/a	n/a	[n/a]	\$0.49	\$0.49	\$0.49	[\$0.49] <u>\$0.48</u>	[\$0.48]	\$0.20	\$0.49
Firm Proprietary / Broker-Dealer <sup>(3)(6)</sup>	(\$0.25)	(\$0.40) <sup>(14)</sup>	n/a	n/a	[n/a]	\$0.49	\$0.49	\$0.49	\$0.49	[\$0.49]	\$0.20	\$0.49
Professional Customer <sup>(3)(6)</sup>	(\$0.25)	(\$0.40) <sup>(14)</sup>	n/a	n/a	[n/a]	\$0.49	\$0.49	\$0.49	\$0.49	[\$0.49]	\$0.20	\$0.49
Priority Customer <sup>(3)(5)</sup>	(\$0.25) <sup>(7)</sup>	(\$0.40)	(\$0.48)	[( <del>\$0.50</del> )] (\$0.53)	[( <del>\$0.52</del> )]	[\$0.45] <u>\$0.48</u>	[\$0.44] <u>\$0.47</u>	[\$0.44] <u>\$0.47</u>	[\$0.44] <u>\$0.45</u>	[\$0.44]	\$0.00	\$0.45



Non-Penny Symbols												
Market Participant	Maker Rebate: Tier 1	Maker Rebate: Tier 2	Maker Rebate: Tier 3	Maker Rebate: Tier 4	[Maker Rebate: Tier 5]	Taker Fee: Tier 1 <sup>(4)(16)</sup>	Taker Fee: Tier 2 <sup>(4)(16)</sup>	Taker Fee: Tier 3 <sup>(4)(16)</sup>	Taker Fee: Tier 4 <sup>(4)(16)</sup>	[Taker Fee: Tier 5 <sup>(4)</sup> ]	Fee for Crossing Orders (excluding PIM) <sup>(1)(11)</sup>	Fee for Responses to Crossing Orders (excluding PIM) <sup>(12)</sup>
Market Maker <sup>(2)(3)(5)</sup>	(\$0.40)	(\$0.42) <sup>(10)</sup>	[((\$0.44)] (\$0.50)	[((\$0.47)] (\$0.75)	[((\$0.49)]	\$0.89	\$0.89	\$0.89	\$0.89	[\$0.89]	\$0.20	\$0.89
Non-ISE Gemini Market Maker (FarMM) <sup>(3)(6)</sup>	(\$0.25)	(\$0.65) <sup>(15)</sup>	n/a	n/a	[n/a]	\$0.89	\$0.89	\$0.89	\$0.89	[\$0.89]	\$0.20	\$0.89
Firm Proprietary / Broker-Dealer <sup>(3)(6)</sup>	(\$0.25)	(\$0.65) <sup>(15)</sup>	n/a	n/a	[n/a]	\$0.89	\$0.89	\$0.89	\$0.89	[\$0.89]	\$0.20	\$0.89
Professional Customer <sup>(3)(6)</sup>	(\$0.25)	(\$0.65) <sup>(15)</sup>	n/a	n/a	[n/a]	\$0.89	\$0.89	\$0.89	\$0.89	[\$0.89]	\$0.20	\$0.89
Priority Customer <sup>(3)(5)</sup>	(\$0.75) <sup>(8)</sup>	(\$0.80)	(\$0.85)	[((\$0.85)] (\$1.05)	[((\$0.85)]	\$0.82	\$0.81	\$0.81	\$0.81	[\$0.81]	\$0.00	\$0.82

\* \* \*

9. [This rebate is \$0.33 per contract for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month.] Reserved.

10. [This rebate is \$0.43 per contract for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month.] Reserved.

\* \* \*

13. Non-Priority Customer orders will be charged a taker fee of \$0.50 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a taker fee of \$0.49 per contract for trades executed against a Priority Customer [the rates shown regardless of the contra party].

\* \* \*

16. Non-Priority Customer orders will be charged a taker fee of \$1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a taker fee of \$0.85 per contract for trades executed against a Priority Customer.

\* \* \*

\* \* \*

**Qualifying Tier Thresholds**

<b>Table 1</b>			
<b>Tier</b>	<b>Total Affiliated Member ADV</b>	<b>Priority Customer Maker ADV</b>	<b>[Total Affiliated Member ADV / Minimum Priority Customer Maker ADV]</b>
<b>Tier 1</b>	0 – [49,999] <u>99,999</u>	0 – 19,999	[0 – 39,999 / 0+]
<b>Tier 2</b>	[50,000 – 124,999] <u>100,000 – 224,999</u>	20,000 – [49,999] <u>99,999</u>	[40,000 – 99,999 / 15,000+]
<b>Tier 3</b>	[125,000 – 249,999] <u>225,000 – 349,999</u>	[50,000 – 84,999] <u>100,000 – 149,999</u>	[100,000 – 174,999 / 40,000+]
<b>Tier 4</b>	[250,000 – 349,999] <u>350,000 or more</u>	[85,000 – 124,999] <u>150,000 or more</u>	[175,000 – 249,999 / 65,000+]
<b>[Tier 5]</b>	[350,000+]	[125,000+]	[250,000+ / 85,000+]

<b>Table 2</b>	
<b>Tier</b>	<b>Performance Routing Program ADV</b>
<b>Tier 1</b>	0 – 9,999
<b>Tier 2</b>	10,000 or more

\* \* \*