

SECURITIES AND EXCHANGE COMMISSION
(Release No. 69246; File No. SR-NYSEArca-2013-25)

March 27, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Arca Options Fee Schedule to Establish Fees for Mini-Options Contracts

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 18, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “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

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (the “Fee Schedule”) to establish fees for mini-options contracts (“Minis”). The text of the proposed rule change is available on the Exchange’s website at www.nyse.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 those statements may be examined at the places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to modify the Fee Schedule to establish fees for Minis.⁴

The Exchange represented in its filing with the Commission to establish Minis that “the current schedule of Fees will not apply to the trading of mini-options contracts. The Exchange will not commence trading of mini-option contracts until specific fees for mini-options contracts trading have been filed with the Commission.”⁵ As the Exchange intends to begin trading Minis on March 18, 2013, it is submitting this filing to describe the transaction fees that will be applicable to the trading of Minis.

Minis have a smaller exercise and assignment value due to the reduced number of shares they deliver as compared to standard option contracts. As such, the Exchange is proposing generally lower per contract fees as compared to standard option contracts, with some exceptions to be fully described below. Despite the smaller exercise and assignment value of a Mini, the cost to the Exchange to process quotes and orders in Minis, perform regulatory surveillance and retain quotes and orders for archival purposes is the same as a for a standard contract. This leaves the Exchange in a position of trying to strike the right balance of fees applicable to Minis – too low and the costs of processing Mini quotes and orders will necessarily cause the Exchange to either raise fees for everyone or just for participants trading Minis; too high and participants

⁴ In addition to the changes discussed below, the Exchange also proposes to make clarifying changes to the endnotes to the Fee Schedule to describe the impact, or lack thereof, of the introduction of Minis, including within endnotes 2, 8, 9 and 12.

⁵ See Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (SR-NYSEArca-2012-64).

may be deterred from trading Minis, leaving the Exchange less able to recoup costs associated with development of the product, which is designed to offer investors a way to take less risk in high dollar securities. The Exchange believes, therefore, that adopting fees for Minis that are in some cases lower than fees for standard contracts, and in other cases the same as for standard contracts, is appropriate, not unreasonable, not unfairly discriminatory and not burdensome on competition between participants, or between the Exchange and other exchanges in the listed options market place.

General Options and Trading Permit (OTP) Fees

What follows is a discussion of the existing Fee Schedule as it relates to the treatment of Mini options as compared to standard option contracts.

Trading Permit Fees: The number of Trading Permits or OTPs required by participants is unchanged by the introduction of Mini options.

Lead Market Maker (“LMM”) Rights Fees: The monthly rights fees charged to LMMs will continue to apply to them for transactions executed in Mini options. For purposes of calculating the Rights Fee, a transaction in a Mini option shall be counted the same as a transaction in a standard option contract from a volume perspective (i.e., one contract in a Mini will equal one contract in a standard option contract).

Options Regulatory Fee: Presently the Exchange charges an Options Regulatory Fee (“ORF”) of \$0.005 per contract. The ORF is assessed on each OTP Holder for all options transactions executed or cleared by the OTP Holder that are cleared by The Options Clearing Corporation (“OCC”) in the customer range, regardless of the exchange on which the transaction occurs. The Exchange is proposing to charge the same rate for transactions in Mini options, \$0.005 per contract, since, as noted, the costs to the Exchange to process quotes, orders, trades

and the necessary regulatory surveillance programs and procedures in Minis are the same as for standard option contracts. As such, the Exchange believes that it is appropriate to charge the ORF at the same rate as the standard option contract.

Per Contract Trade Related Charges, Including Qualified Contingent Cross (“QCC”) Orders

The Exchange discusses below the newly proposed per contract transaction charges applicable to Minis. The tables below show the per contract charge applicable to electronic, manual, electronic complex orders, and QCC executions in Minis for various participants on the Exchange:⁶

MINI OPTIONS TRANSACTION FEES - PER CONTRACT		
	Manual Executions	
Order Type		
NYSE Arca Market Maker	\$0.02	
Firm and Broker Dealer	\$0.09	
Customer	\$0.00	

	Electronic Executions in Penny Pilot Issues		Electronic Executions in Non- Penny Pilot Issues	
	Post Liquidity	Take Liquidity	Post Liquidity	Take Liquidity
Order Type				
NYSE Arca Market Maker	(\$0.04)	\$0.07	(\$0.06)	\$0.10

⁶ The Exchange proposes to create a duplicative reference to Routing Fees under the section of fees applicable to Minis.

Firm and Broker Dealer	(\$0.01)	\$0.09	\$0.00	\$0.12
Customer	(\$0.03)	\$0.06	(\$0.04)	\$0.08

COMPLEX ORDERS - TRANSACTION FEE - PER CONTRACT			
	Order Type		Fees
Complex Order to Complex Order	Customer	Penny Pilot Issues	(\$0.03)
		Non-Penny Pilot Issues	(\$0.04)
	Non Customer	Penny Pilot Issues	\$0.08
		Non-Penny Pilot Issues	\$0.10
Complex Order against Consolidated Book	Customer	Penny Pilot Issues	\$0.06
		Non-Penny Pilot Issues	\$0.08
	NYSE Arca Market Maker	Penny Pilot Issues	\$0.07
		Non-Penny Pilot Issues	\$0.10
	Firm and Broker Dealer	Penny Pilot Issues	\$0.09
		Non-Penny Pilot Issues	\$0.12

QCC Fees	\$0.05	per side
Floor Broker Rebate	\$0.01	per side

As with standard options, Customers manually transacting Mini options on the Exchange will trade for free. Mini options contracts on the Exchange will NOT count toward the Customer Monthly Posting Credit Tiers or Super Tier and Qualifications for Executions in Penny Pilot Issues and SPY or associated rebates paid to Order Flow Providers (“OFPs”) described in

endnote 8 to the current Fee Schedule.⁷ As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. This, coupled with the lower per contract transaction fees charged to other participants, makes it impractical to offer OFPs a rebate for any Customer Mini options volume they transact.

Customers electronically transacting Mini options in Penny Pilot issues will receive a rebate of \$.03 when they post liquidity and be charged \$.06 when they take liquidity. Customers electronically transacting Mini options in non-Penny Pilot issues will receive a rebate of \$.04 when they post liquidity and be charged \$.08 when they take liquidity. For Complex Order to Complex Order executions, Customers electronically transacting Mini options will receive a rebate of \$.03 in Penny Pilot issues and will receive a rebate of \$.04 in non-Penny Pilot issues. For Complex Orders that execute against the Consolidated Book, Customers electronically transacting Mini options will be charged \$.06 in Penny Pilot issues and will be charged \$.08 in non-Penny Pilot issues.

For Mini option transactions, all NYSE Arca Market Makers, including Lead Market Makers, will have the same rates and charges applied. NYSE Arca Options Market Makers manually trading Mini options will be charged \$.02 per contract. NYSE Arca Options Market Makers electronically transacting Mini options in Penny Pilot issues will receive a rebate of \$.04 when they post liquidity and be charged \$.07 when they take liquidity. NYSE Arca Options Market Makers electronically transacting Mini options in non-Penny Pilot issues will receive a

⁷ See NYSE Arca Options fee schedule dated March 1, 2013, available at https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_arca_options_fee_schedule_eff_3_01_13.pdf. However, the Exchange proposes to specify in endnote 8 that Total Industry Customer equity and ETF option average daily volume includes OCC calculated Customer volume of all types, including Complex Order Transactions, QCC transactions, and mini options transactions, in equity and ETF options.

rebate of \$.06 when they post liquidity and be charged \$.10 when they take liquidity. For Complex Order to Complex Order executions, NYSE Arca Options Market Makers electronically transacting Mini options will be charged \$.08 in Penny Pilot issues and will be charged \$.10 in non-Penny Pilot issues. For Complex Orders that execute against the Consolidated Book, NYSE Arca Options Market Makers electronically transacting Mini options will be charged \$.07 in Penny Pilot issues and will be charged \$.10 in non-Penny Pilot issues. These NYSE Arca Options Market Maker charges are generally anywhere from slightly less than $1/10^{\text{th}}$ to slightly more than $1/10^{\text{th}}$ of the charges incurred by NYSE Arca Options Market Makers today for standard option contract transactions.

Firm and Broker Dealer manual transactions, in Mini options will be charged at the rate of \$.09 per contract. Firms and Broker Dealers electronically transacting Mini options in Penny Pilot issues will receive a rebate of \$.01 when they post liquidity and be charged \$.09 when they take liquidity. Firms and Broker Dealers electronically transacting Mini options in non-Penny Pilot issues will neither be charged nor receive a credit (i.e., free) when they post liquidity and will be charged \$.12 when they take liquidity. For Complex Order to Complex Order executions, Firms and Broker Dealers electronically transacting Mini options will be charged \$.08 in Penny Pilot issues and will be charged \$.10 in non-Penny Pilot issues. For Complex Orders that execute against the Consolidated Book, Firms and Broker Dealers electronically transacting Mini options will be charged \$.09 in Penny Pilot issues and will be charged \$.12 in non-Penny Pilot issues. These Firms and Broker Dealer charges are generally anywhere from slightly less than $1/10^{\text{th}}$ to slightly more than $1/10^{\text{th}}$ of the charges incurred by NYSE Arca Options Market Makers today for standard option contract transactions.

Additionally, the existing \$75,000 cap per month of fees on Firm and Broker Dealer outcry trades described in endnote 9 of the current Fee Schedule will NOT include Mini transactions. As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options, therefore the Exchange does not wish to include Firm and Broker Dealer trades in Mini options in the monthly fee cap. Further, the proposed charge is slightly higher than 1/10th of the current charges applicable to Firm Proprietary trades. This relatively higher rate is necessitated by the fact that the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options.

OTP Holders or OTP Firms that execute QCC transactions in Minis will be charged \$0.05 per contract side. QCC transactions in Minis executed by a Floor Broker on the Floor of the Exchange will be eligible for a \$0.01 rebate per contract side rebate.

Routing Surcharge: In order to comply with the requirements of the Distributive Linkage Plan,⁸ the Exchange uses various means of accessing better priced interest located on other exchanges. Presently, the Exchange charges a Routing Surcharge of \$.11 per contract plus a pass through of the fees associated with the execution of the routed order on the other exchanges. The \$.11 is designed to recover the Exchange's costs in routing orders to the other exchanges. Those costs include clearance charges imposed by The OCC and per contract routing fees charged by the Broker Dealers who charge the Exchange for the use of their systems to route orders to other exchanges. The Exchange has spoken with both The OCC and the Broker Dealers who have informed the Exchange that their charges applicable to Mini options will be the same as for standard option contracts, as their cost to process a contract (i.e., routing or clearing) is the same irrespective of the exercise and assignment value of the contract. As such, the Exchange intends

⁸ See Rule 6.92, Rule 6.94, Rule 6.95 and Rule 6.96.

to charge the same Routing Surcharge for Mini options as it presently does for standard options. The Exchange notes that participants can avoid the Routing Surcharge in several ways. First, they can simply route to the exchange with the best priced interest. The Exchange, in recognition of the fact that markets can move while orders are in flight, also offers participants the ability to utilize order types that do not route to other exchanges. Specifically, the Post No Preference (“PNP”) order modifier is one such order that would never route to another exchange. In addition, there are others, such as PNP Blind and PNP Plus,⁹ which also would never route to another exchange. Given this ability to avoid the Routing Surcharge, coupled with the fixed third-party costs associated with routing, the Exchange believes it is reasonable to charge the same Routing Surcharge for Mini options that is charged for standard option contracts.

Limit Of Fees On Options Strategy Executions: Presently, the Exchange has a \$750 cap on transaction fees for Strategy Executions involving reversals and conversions, box spreads, short stock interest spreads, merger spreads and jelly rolls. The fees for these Strategy Executions are further capped at \$25,000 per month per initiating firm. The Exchange will NOT include Mini option transactions as being eligible for any part of these per trade or per month Strategy Execution caps. As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. Given that the per contract transaction fees are already substantially lower than the per contract fees for standard options, inclusion of Mini options in these fee caps is not warranted.

Ratio Threshold Fee

⁹ See Rule 6.62(p), Rule 6.62(u), and Rule 6.62(y).

Order To Trade Ratio Fee: For purposes of calculating the Order To Trade Ratio Fee, an order and an execution in Mini options will be counted the same as an order and an execution in standard option contracts.

The Exchange proposes to implement these changes on March 18, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

General Options and Trading Permit (OTP) Fees

For purposes of the Fee Schedule relating to OTP fees, LMM Rights Fees, and the regulatory fees, including the ORF, the Exchange is not proposing any changes as a result of the introduction of Minis. This is due to, in part, the fact that there will be no separate allocation for Minis – the existing LMMs and NYSE Arca Options Market Makers who trade AAPL, for example, will automatically be able, and obligated, to quote and trade AAPL Minis. Since this is the case, the Exchange believes it is entirely appropriate and, in fact, necessary, to treat Mini options the same as standard options with respect to the fees listed above. The fees listed above have not been deemed to be unreasonable, inequitable, or unfairly discriminatory, and the introduction of Mini options raises no new issues with respect to such fees. Therefore, the treatment of Minis in the same manner as standard option contracts for purposes of the OTP fees, LMM Rights Fees, and the regulatory fees, including the ORF, is reasonable, equitable and not

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

unfairly discriminatory. Further, the Exchange notes, particularly in the context of the ORF, that the cost to perform surveillance to ensure compliance with various Exchange and industry-wide rules is no different for a Mini option than it is for a standard option contract. Reducing the ORF for Mini options could result in a higher ORF for standard options. Such an outcome would arguably be discriminatory towards investors in standard options for the benefit of investors in Minis. As such, the appropriate approach is to treat both Minis and standard options the same with respect to the amount of the ORF that is being charged.

Per Contract Trade Related Charges, Including QCCs

The Exchange noted earlier that, while Minis have a smaller exercise and assignment value due to the reduced number of shares to be delivered as compared to standard option contracts, and despite the smaller exercise and assignment value of a Mini, the cost to the Exchange to process quotes and orders in Minis, perform regulatory surveillance and retain quotes and orders for archival purposes is the same as for a standard contract. This leaves the Exchange in a position of trying to strike the right balance of fees applicable to Minis – too low and the costs of processing Mini quotes and orders will necessarily cause the Exchange to either raise fees for everyone or just for participants trading Minis; too high and participants may be deterred from trading Minis, leaving the Exchange less able to recoup costs associated with development of the product, which is designed to offer investors a way to take less risk in high dollar securities. The Exchange believes, therefore, that adopting fees for Minis that are in some cases lower than standard contracts, and in other cases the same as for standard contracts, is appropriate, not unreasonable, not unfairly discriminatory and not burdensome on competition between participants, or between the Exchange and other exchanges in the listed options market place.

In the case of most trade related charges, the Exchange has decided to offer lower per contract fees to participants as part of trying to strike the right balance between recovering costs associated with trading Minis and encouraging use of the new Mini option contracts, which are designed to allow investors to reduce risk in high dollar underlying securities.

The Exchange proposal to charge Customers \$.00 per contract for manual orders is reasonable, as Customers have long traded manual orders for free on all options on the Exchange. The ability to trade manual orders for free attracts Customer order flow to the Exchange, which is beneficial to all other participants on the Exchange who generally seek to trade with Customer order flow. The proposed fee of \$.00 per contract is the same fee charged to Customer manual orders in standard option contracts, which is an effective fee on the Exchange and has not been determined to be inequitable or unfairly discriminatory. Therefore, the proposed Customer pricing for Minis is equitable and not unfairly discriminatory. The Exchange feels that different rates for Customer manual transaction fees as compared to other market participants is equitable and not unfairly discriminatory because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees, and is equitable and not unfairly discriminatory to Firms and Broker Dealers because Market Makers have obligations that are not required of Firms and Broker Dealers and because Market Makers have additional costs that are not applicable to Firms and Broker Dealers.

The Exchange proposal to credit Customers electronically transacting Mini options in Penny Pilot and non-Penny Pilot issues \$.03 and \$.04, respectively, per contract when they post liquidity and charging them \$.06 and \$.08, respectively, when they take liquidity is reasonable, as Customers are currently subject to the same pricing structure (albeit at higher rates) for standard options. The rates proposed for Customer Minis transactions for Complex Order to

Complex Order executions (a rebate of \$.03 in Penny Pilot issues and a rebate of \$.04 in non-Penny Pilot issues) and Complex Orders that execute against the Consolidated Book (a charge of \$.06 in Penny Pilot issues and a charge of \$.08 in non-Penny Pilot issues) is also reasonable, as Customers are currently subject to the same pricing structure (albeit at higher rates) for standard options. The Exchange feels that different rates for Customer electronic transaction fees as compared to other market participants is equitable and not unfairly discriminatory because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees, and is equitable and not unfairly discriminatory to Firms and Broker Dealers because Market Makers have obligations that are not required of Firms and Broker Dealers and because Market Makers have additional costs that are not applicable to Firms and Broker Dealers.

The Exchange proposal to exclude Mini options from the Customer Monthly Posting Credit Tiers or Super Tier and Qualifications for Executions in Penny Pilot Issues and SPY and associated rebates paid to OFPs described in endnote 8 to the current Fee Schedule is reasonable, equitable and not unfairly discriminatory for the following reasons. First, as noted above, the Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options. Given the overall lower expected revenues from Mini options, it is reasonable to exempt Mini option volumes from qualifying for the OFP rebates paid on standard option contracts. It is also equitable, since paying the rebate on Mini option volumes would likely necessitate either reducing the rebates paid to OFPs for all activity, or raising other participant fees. It is not unfairly discriminatory, as it will apply equally to all Customer executions in Mini options, regardless of the market participant submitting the order.

The Exchange proposal to charge NYSE Arca Market Makers manually trading Mini options \$.02 per contract is reasonable. Additionally, the Exchange proposal for NYSE Arca

Market Makers electronically trading Mini options in Penny Pilot issues to receive a rebate of \$.04 or \$.06 when they post liquidity in Penny Pilot and non-Penny Pilot classes, respectively, and to be charged \$.07 or \$.10 when they take liquidity in Penny Pilot and non-Penny Pilot classes, respectively, is also reasonable. The Complex Order rates proposed for NYSE Arca Options Market Makers electronically transacting Mini options are also reasonable. Generally, these fees range from slightly more than, to slightly less than, 10% of what the various NYSE Arca Options Market Maker participants pay today. Charging all types of NYSE Arca Options Market Makers, including Lead Market Makers, the same fees to trade Minis is certainly not unfairly discriminatory, as it applies to all of them equally. The fees are reasonable in light of the fact that the Minis do have a smaller exercise and assignment value, specifically 1/10th that of a standard contract, and, as such, levying fees that are approximately 10% of what an NYSE Arca Options Market Maker pays today is reasonable and equitable. The Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options.

The Exchange feels that different rates for Market Maker transaction fees as compared to other market participants is equitable and not unfairly discriminatory because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees, and is equitable and not unfairly discriminatory to Firms and Broker Dealers because Market Makers have obligations that are not required of Firms and Broker Dealers and because Market Makers have additional costs that are not applicable to Firms and Broker Dealers. For example, NYSE Arca Options Market Makers are required to have trading permits in order to stream quotes. The number of permits is variable based on the number of options traded, and can cost as much as \$16,000 per month to quote all issues on the Exchange as an NYSE Arca Options Market Maker. Conversely, Firms pay a monthly permit fee of \$1,000 per month and Broker Dealers, typically

access the facilities of the Exchange through either a Firm or Order Flow Provider who may or may not pass along the \$1,000 per month permit fee cost. Consequently, when all fees are taken together, the difference charged to NYSE Arca Options Market Makers as compared to Broker Dealers, and Firms is reasonable, equitable and not unfairly discriminatory. The Exchange further notes that there are no limits on the number of NYSE Arca Options Market Makers that are permitted to quote in a given option and that any of the other participant types are free to apply to the Exchange to become a NYSE Arca Options Market Maker to avail themselves of the transaction charges applicable to NYSE Arca Options Market Makers presuming they are willing to accept the quoting obligations applicable to NYSE Arca Options Market Makers, which serve to foster price discovery and transparency.

The Exchange proposal to charge Firms and Broker Dealers, , the rates proposed herein for their transactions in Minis and to exclude Mini options from the \$75,000 cap per month of fees on Firm and Broker Dealer open outcry executions described in endnote 9 of the current Fee Schedule is reasonable, equitable and not unfairly discriminatory. First, the per contract charges proposed are lower than what Firms and Broker Dealers pay for a standard contract in acknowledgement of the smaller exercise and assignment value. Although some of these proposed rates are more than 10% of the rate paid by a Firm or Broker Dealer for a standard contract, this is warranted by the fact that the Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options. In this regard the proposal is reasonable and it is also equitable, as it allows the Exchange to offer this innovative product to investors without raising fees for other investors who may have no interest in trading Minis. Likewise, excluding Mini option volumes from the monthly fee cap for Firm and Broker Dealer open outcry executions is reasonable and equitable in light of the Exchange's desire to fund the costs

associated with Minis with revenues from only those participants who trade them. Offering a fee cap for a product with reduced fees might necessitate raising costs for other participants; therefore, the Exchange believes that the exclusion from the monthly fee cap for Firm and Broker Dealer open outcry executions is both reasonable and equitable. As the per contract Mini pricing for all Firms and Broker Dealers is the same, the proposal is also not unfairly discriminatory.

The Exchange feels that different rates for Firm and Broker Dealer transaction fees as compared to other market participants is equitable and not unfairly discriminatory because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees, and is equitable and not unfairly discriminatory to Firms and Broker Dealers because Market Makers have obligations that are not required of Firms and Broker Dealers and because Market Makers have additional costs that are not applicable to Firms and Broker Dealers. For example, NYSE Arca Options Market Makers are required to have trading permits in order to stream quotes. The number of permits is variable based on the number of options traded, and can cost as much as \$16,000 per month to quote all issues on the Exchange as an NYSE Arca Options Market Maker. Conversely, Firms pay a monthly permit fee of \$1,000 per month and Broker Dealers, typically access the facilities of the Exchange through either a Firm or Order Flow Provider who may or may not pass along the \$1,000 per month permit fee cost. Consequently, when all fees are taken together, the difference charged to NYSE Arca Options Market Makers as compared to Broker Dealers, and Firms is reasonable, equitable and not unfairly discriminatory. The Exchange further notes that there are no limits on the number of NYSE Arca Options Market Makers that are permitted to quote in a given option and that any of the other participant types are free to apply to the Exchange to become a NYSE Arca Options Market Maker to avail themselves of the

transaction charges applicable to NYSE Arca Options Market Makers presuming they are willing to accept the quoting obligations applicable to NYSE Arca Options Market Makers, which serve to foster price discovery and transparency.

The Exchange proposal for QCC pricing for Minis is to charge Customers and non-Customers \$.10 per contract (\$.05 charge per contract side), as compared with \$.20 per contract for standard options (\$.10 charge per contract side). The Exchange will also offer NYSE Arca Floor Brokers a rebate of \$.02 per contract (\$.01 rebate per contract side) for all Mini options they execute as a QCC trade, as compared to \$.07 per contract rebate for standard options (\$.035 rebate per contract side). The Exchange believes that this pricing is reasonable, equitable and not unfairly discriminatory. First, the Exchange has always charged for QCC trades in standard options due to the fact that qualifying QCC trades are executed immediately, upon entry, without exposure or any opportunity for other participants to participate on the trade. This pricing proposal preserves this, and, as such, is reasonable. It is equitable since, as noted, the Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options, so charging a relatively small premium for the opportunity to trade without exposure is warranted, given the Exchange's need to cover the costs of participants trading Minis so as to avoid sharing those costs with other participants who are not trading Minis. The proposal is also not unfairly discriminatory as it applies equally to all Customers and non-Customers. The Floor Broker rebate of \$.02 (\$.01 rebate per contract side) is reasonable and equitable as it is designed to allow Floor Brokers to compete for QCC volumes that might otherwise execute on an exchange that offers a front end order entry system, like ISE PrecISE Trade application¹² or

¹² See <http://www.ise.com/WebForm/viewPage.aspx?categoryId=129>.

CBOE's HyTS,¹³ which would allow participants to potentially avoid paying a brokerage fee. The Floor Broker rebate is not unfairly discriminatory as it applies equally to all NYSE Arca Floor Brokers who execute Mini options as QCC trades.

The Exchange proposal to treat Mini options the same as standard options for purposes of the Routing Surcharge is reasonable, equitable and not unfairly discriminatory for the following reasons. Presently, the Exchange charges a Routing Surcharge of \$.11 per contract plus a pass through of the fees associated with the execution of the routed order on the other exchanges. The \$.11 is designed to recover the Exchange's costs in routing orders to the other exchanges. Those costs include clearance charges imposed by The OCC and per contract routing fees charged by the Broker Dealers who charge the Exchange for the use of their systems to route orders to other exchanges. The Exchange has spoken with both The OCC and the Broker Dealers, who have informed the Exchange that their charges applicable to Mini options will be the same as for standard option contracts, as their cost to process a contract (i.e., routing or clearing) is the same irrespective of the exercise and assignment value of the contract. As such, the Exchange intends to charge the same Routing Surcharge for Mini options as it presently does for standard options. The Exchange notes that participants can avoid the Routing Surcharge in several ways. First they can simply route to the exchange with the best priced interest. The Exchange, in recognition of the fact that markets can move while orders are in flight, also offers participants the ability to utilize order types that do not route to other exchanges. Specifically, the PNP order modifier is one such order that would never route to another exchange. In addition, there are others, such as PNP Blind and PNP Plus,¹⁴ which also would never route to another exchange. Given this ability to avoid the Routing Surcharge, coupled with the fixed third party costs

¹³ See <https://www.cboe.org/hybrid/HyTs.aspx>.

¹⁴ See Rule 6.62(p), Rule 6.62(u), and Rule 6.62(y).

associated with routing, the Exchange believes it is reasonable and equitable to charge the same Routing Surcharge for Mini options that is charged for standard option contracts. Because the Routing Surcharge will apply to all participants in Minis as it is applied for standard options, and because such surcharge has not previously been found to be unreasonable, inequitable or unfairly discriminatory, the Exchange believes such surcharge is reasonable and equitable with respect to Minis as well.

The Exchange is proposing to exclude Mini option volumes from being eligible for the Limit Of Fees On Options Strategy Executions. Presently the Exchange has a \$750 cap on transaction fees for Strategy Executions involving reversals and conversions, box spreads, short stock interest spreads, merger spreads and jelly rolls. The fees for these Strategy Executions are further capped at \$25,000 per month per initiating firm. The Exchange will NOT include Mini option transactions as being eligible for any part of these per trade or per month Strategy Execution caps. As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. Given that the per contract transaction fees for Minis are already substantially lower than the per contract fees for standard options, inclusion of Mini options in these fee caps is not warranted, and is reasonable and equitable. Further, it is not unfairly discriminatory as the exclusion of Mini volumes from the cap on fees for Strategy Executions applies equally to all participants on the Exchange.

Ratio Threshold Fee

The Exchange proposes to treat Mini options the same as standard options for purposes of the Ratio Threshold Fee. As noted, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options and, as such, treating Minis the same as standard option contracts for the purposes of calculating the Ratio Threshold Fee is reasonable and

equitable. It is also not unfairly discriminatory, as such treatment will apply to all participants equally.

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 proposed change designed to provide greater specificity and precision within the Fee Schedule with respect to the fees that will be applicable to Minis when they begin trading on the Exchange on March 18, 2013.

The Exchange believes that adopting fees for Minis that are in some cases lower than for standard contracts, but in other cases the same as for standard contracts, strikes the appropriate balance between fees applicable to standard contracts versus fees applicable to Mini's, and will not impose a burden on competition among various market participants on the Exchange, or between the Exchange and other exchanges in the listed options market place, that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange feels that different rates for different market participants will not impose a burden on competition because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees, and will not impose a burden on competition to Firms and Broker Dealers because Market Makers have obligations that are not required of Firms and Broker Dealers and because Market Makers have additional costs that are not applicable to Firms and Broker Dealers. Further the Exchange notes that for standard options a greater difference in fees for various participants already exists than that which is being proposed for Minis. For example, Customers already trade for lower Take Liquidity fees than an NYSE Arca Options Market Maker. An NYSE Arca Market Maker who trades with a Customer electronically in a

non-Penny name can pay as much as \$0.80 per contract. Similarly, Firms and Broker Dealers pay \$0.85 per contract when they Take Liquidity in non-Penny Pilot names opposed to Customers, who pay a lower Take Liquidity rate in the same issues of \$0.79 per contract in standard options. For Minis, the greatest differential being proposed is in Manual Trades in mini-options, where Customers will trade for free, and Firms and Broker Dealers will pay \$0.09 per contract. Firms and Broker Dealers pay \$.25 per contract versus \$.00 per contract for Customers, in standard options. The differential for mini-options is de minimus as compared to the differential for standard options.

The Exchange notes that the difference in fees for various participants in standard options has not proven to be a burden on competition. Therefore, the fee differential for Minis, being quite a bit smaller, should not prove to be a burden on competition at all. In this regard, as Minis are a new product being introduced into the listed options marketplace, the Exchange is unable at this time to absolutely determine the impact that the fees and rebates proposed herein will have on trading in Minis. That said, however, the Exchange believes that the rates proposed for Minis, on their face, would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects 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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

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 under Section 19(b)(2)(B)¹⁷ of the Act to determine whether the proposed rule change 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-NYSEArca-2013-25 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

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-NYSEArca-2013-25. 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 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-NYSEArca-2013-25 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).