CBOE
CHICAGO BOARD OPTIONS EXCHANGE

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Via Electronic Mail
Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
comments@sec.gov

Re: Comment Letter on File Nos. SR-NYSEArca-2012-26 and SR-ISE-2012-26

Dear Ms. Murphy:

Chicago Board Options Exchange, Incorporated ("CBOE") hereby submits comments on File No. SR-NYSEArca-2012-26 submitted by NYSE Arca, Inc. ("NYSE Arca")[1] and File No. SR-ISE-2012-26 submitted by International Securities Exchange, LLC ("ISE").[2] Each filing proposes to modify the submitting exchange's rules to permit the listing and trading of options on high-priced securities that provide for delivery of ten physical shares ("Mini options").

Overall, CBOE supports the objective of providing investors with access to exchange-traded options overlying high-priced securities that are smaller in size and therefore more readily available as an investing tool than options that provide for delivery of 100 physical shares (sometimes referred to in this letter as "standard-sized options").

However, CBOE does offer comments on certain aspects of the NYSE Arca filing and the ISE filing, as set forth in this letter. In summary, CBOE believes that: (1) the contract specifications for Mini contracts should be the same from one exchange to the next and that failure to have common contract specifications is likely to create investor confusion; (2) if the Securities and Exchange Commission ("SEC" or "Commission") approves the NYSE Arca filing and/or the ISE filing, it will be reversing a policy that it should reverse only after a broader opportunity for industry comment than is provided by the opportunity to comment on the NYSE Arca filing and the ISE filing; and (3) the NYSE Arca proposal and the ISE proposal should be amended to expressly address whether Mini options will be made available with Weekly expirations, quarterly expirations and long-term expirations.

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[1] See Securities Exchange Act Release No. 66725 (April 3, 2012), 77 FR 21120 (April 9, 2012) (noticing SR-NYSEArca-2012-26). The NYSE Arca proposed rule change is sometimes referred to in this letter as the "NYSE Arca filing."

[2] See Securities Exchange Act Release No. 66827 (April 18, 2012), 77 FR 24547 (April 24, 2012) (noticing SR-ISE-2012-26). The ISE proposed rule change is sometimes referred to in this letter as the "ISE filing."

1. All Mini Options on Multiply Listed Classes Should Be Fungible

In the Notice of Filing for the ISE filing, the Commission noted that the contract specifications proposed by NYSE Arca and ISE are different and that as a result Mini options traded on the two exchanges, even if on the same overlying security, would not necessarily be fungible. The Commission requested comment on whether the listing and trading of two distinct and non-fungible "mini" options products, particularly if on the same underlying security, would create investor confusion or raise any other issues or concerns for market participants.[3]

CBOE believes that, if both filings are approved in their current form, Mini options on an underlying security traded on one of the exchanges would indeed not be fungible with Mini options traded on the other exchange, since the contract specifications proposed in the respective filings differ as to the "sizing" of exercise prices, premium multipliers and premium quotations. Further, CBOE believes that investor confusion would indeed result if both filings are approved in their current forms.[4] CBOE believes that the basic objective of providing investors with access to smaller-sized exchange-traded options overlying high-priced securities is best served by the introduction to the market of Mini options having one consistent set of contract specifications. Accordingly, CBOE believes that uniformity in the contract design of Mini options is very desirable.[5]

CBOE also notes that, in addition to proposing different contract specification structures, NYSE Arca and ISE have proposed substantially different listing criteria for Mini options.[6] CBOE believes that, if these different listing criteria are both approved, the Commission's approval order or orders should provide guidance with respect to the listing criteria that another exchange would need to incorporate in its rules prior to multiply listing one or more of the

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[3] 77 FR at 24549.

[4] As an example, if both the ISE Mini option on Apple and the NYSE Arca Mini option on Apple are successful, it is not at all inconceivable that they might trade side-by-side on one or more of the exchanges. The possibility that an investor who intended to close out a long Mini options position instead discovers that he or she has established a short position in the other kind of Mini options seems very realistic. CBOE believes that consideration should be given as to whether the risk of such an occurrence should be disclosed in the Options Disclosure Document (the "ODD"). NYSE Arca stated that it "believes that the terms of mini-options are consistent with the terms of the [ODD]." (77 FR at 21121.) CBOE is not prepared to agree or disagree with that statement in general, but submits that NYSE Arca may have made it at a time when it was not aware of the possibility of the listing and trading of non-fungible Mini options on the same underlying security.

[5] In the Notice of Filing for the ISE filing, the Commission also requested comment on the ISE proposed contract methodology. CBOE understands this request as in effect to be a request for comment as to whether the contract methodology proposed by ISE or NYSE Arca is preferable. CBOE is not responding to this request.

[6] NYSE Arca has simply identified "5 high priced securities for which the standard contract overlying the same security exhibits significant liquidity" (77 FR at 21120), whereas ISE has proposed that "Mini Options may only be listed on stocks and Exchange-Traded Fund Shares that meet the following criteria, at the time of listing: (a) the industry average daily options volume over the previous three calendar months is at least 10,000 contracts, and (b) the price of the underlying security is at least $150" (77 FR at 24547).

classes of Mini options, specifically, as to whether an exchange would need to implement separate listing criteria for Mini options first listed on each of those two exchanges.

2. Approval of these Proposals Would Require Reversal of a Commission Policy.

In its filing, NYSE Arca noted that the Commission has previously approved proposals from NYSE Arca's predecessor and other exchanges to list and trade option contracts overlying a number of shares other than 100, and that the Commission has also approved full-value and reduced-value options overlying the same index, including full-value and reduced-value options on the S&P 500 Index ("SPX" and "XSP," respectively), the Nasdaq 100 Index ("NDX" and "MNX," respectively) and the Russell 2000 Index ("RUT" and "RMN", respectively).[7]

More recently, however, in 2008 the Commission declined to approve a proposed rule filing in which CBOE proposed to list and trade both full-value and reduced-value options based on the CBOE S&P500 BuyWrite Index ("BXM"), and required CBOE to offer only reduced-value or full-value BXM options.[8] Also in 2008, the Philadelphia Stock Exchange, Inc. ("Phlx") filed a proposal to trade options on exchange traded funds ("ETFs" and on Trust Issued Receipts, each with a unit of trading of 1,000 shares.[9] CBOE understands that Phlx withdrew that filing because it presented the same price protection issues to the SEC staff. In the BXM case, the concern expressed by the SEC was that having two sizes of options on the same underlying interest created a potential for price protection issues because of the possibility that trades in the reduced-value options might occur at a price inferior to the price available in the full-size options, or vice versa; CBOE understands that the SEC expressed the same concern with the Phlx filing. In 2010, NYSE Amex, LLC ("NYSE Amex") submitted a filing – File No. SR-NYSEAmex-2010-14 – that presented the same issue to the Commission. In that filing, NYSEAmex proposed to trade options on various ETFs with 1,000 share deliverables alongside the standard-sized options on the same underlying ETFs. To date, SR-NYSEAmex-2010-14 has not been approved by the Commission.[10]

In 2008, in connection with its original BXM filing, CBOE referred to the same full-value and reduced-value products trading side-by-side that NYSE Arca refers to in its current filing. The SEC staff, however, rejected that precedent and advised that any exchange proposing

[7] 77 FR at 21121.

[8] See Securities Exchange Act Release No. 58207 (July 22, 2008), 73 FR 43963 (July 29, 2008) (File No. SR-CBOE-2008-26) (approving reduced value BXM options). In SR-CBOE-2008-26, at the request of the SEC staff, CBOE included the statement, "The Exchange is not currently proposing to list and trade options that overlie the full-value BXM Index, but may do so in the future. In that event, the Exchange will seek Commission approval." See Securities Exchange Act Release No. 57946 (June 10, 2008), 73 FR 34811 (June 18, 2008) (noticing SR-CBOE-2008-26) at 34911, fn 3.

[9] That filing was File No. SR-Phlx-2008-11 (filed on February 8, 2008).

[10] CBOE believed that File No. SR-NYSEAmex-2010-14 presented other issues as well, and described its concerns in a comment letter which is available on the SEC website at http://www.sec.gov/comments/sr-nyseamex-2010-14/nyseamex201014-2.pdf. CBOE is not aware of any public statement as to why the filing has not been approved, and it is therefore possible that the non-approval was caused by some other concern.

to trade full-value and reduced-value products on the same underlying interest side-by-side would be required to provide a means to assure price protection between them.

Consistent treatment by the SEC is an important factor on which exchanges rely and depend on in the regulatory process. The NYSE Arca and ISE proposals present the same issue that the SEC staff cited in rejecting the CBOE proposal to list and trade both full-value and reduced-value BXM options. CBOE believes that, if the SEC is considering reversing its position and exempting Mini options from the price protection requirement that it articulated in the context of the CBOE, Phlx and NYSEAmex filings described above, the SEC should first describe the policy change in a broader market structure release seeking industry comment.

3. <u>The NYSE Arca and ISE Proposals Should Expressly Address the Interaction of Mini Options with Other Listing Programs</u>

NYSE Arca and ISE have adopted rules pursuant to which they may each list standard-sized options with non-standard expiration dates. (CBOE has done the same.) For example, NYSE Arca and ISE (and CBOE) trade Weeklys series on all of the classes they have proposed to serve as underlyings for their respective Mini options. Similarly, both NYSE Arca and ISE have rules that permit the listing and trading of quarterly option series and LEAPs. Because these types of programs have been adopted by the other exchanges as well, it is important to know whether Mini options for non-traditional expiration dates would be permitted under the NYSE Arca and ISE proposals. If for example, the noticed proposals will permit Weekly Mini options, the Commission should, in connection with its review of the filing, consider the impact that the potential doubling of the number of Weekly exchange-traded options on the underlying securities might have on the options trading industry.

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CBOE appreciates the opportunity to provide these comments. Should you require any further information, please contact Jenny Klebes, Senior Attorney, at (312) 786-7466.

Sincerely,

Edward T. Tilly
President and Chief Operating Officer
Chicago Board Options Exchange, Incorporated

cc: Heather Seidel (SEC)
Richard Holley (SEC)