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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69258; File No. SR-CBOE-2013-038)

March 29, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 18, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's website (http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 Exchange recently amended CBOE rules to enable the listing and trading of option contracts overlying 10 shares of a security ("Mini options", or "Minis").[3] Because the regular per-contract unit of trading for the five options classes (SPY, AAPL, GLD, GOOG, and AMZN) on which the Exchange has proposed listing Minis is 100 shares, a Mini effectively functions as 1/10 of a regular options contract (generally speaking). The Exchange hereby proposes to adopt fees for the trading of Minis (all fees referenced herein are per-contract unless otherwise stated).

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 only for participants trading Minis; too high and participants may be

3 See Securities Exchange Act Release No. 68656 (January 15, 2013), 78 FR 4526 (January 22, 2013) (SR-CBOE-2013-001), in which the Exchange proposed to list Mini Options on SPDR S&P 500 (''SPY''), Apple, Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN'') (together, the "Mini Classes"). SPY and GLD are Exchange-Traded Funds ("ETFs") and AAPL, AMZN and GOOG are equity options.

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, therefore, believes 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 marketplace.

Under the proposed fees structure for Minis, Customers will be assessed no fees for Mini transactions, just as no Customer fees are assessed for transactions in the standard-sized Mini Classes. Mini volume will be excluded from counting towards the Exchange's Volume Incentive Program ("VIP"). 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 market participants, makes it impractical to offer Trading Permit Holders ("TPHs") a credit for Customer electronic Mini volume they transact. As there is no fee assessed to Customer Mini transactions, such transactions will not qualify towards the Exchange's Customer Large Trade Discount.

CBOE Market-Makers, DPMs, E-DPMs and LMMs (together, "CBOE Market-Makers") will be assessed a $0.02 fee for manual and electronic Mini transactions (including CFLEX AIM transactions). It is difficult to compare the proposed $0.02 amount to the amount assessed to CBOE Market-Makers for standard options transactions, as that amount can differ depending on which tier each CBOE Market-Maker reaches in the Liquidity Provider Sliding Scale (though it is less than 1/10th the fee assessed at the lowest tier of the Liquidity Provider Sliding Scale for standard options transactions).[4] The Exchange wishes to assess such a fee of $0.02 to CBOE Market-Makers in order to encourage them to quote often and aggressively.

In addition, a Marketing Fee collection of $0.02 for Penny Pilot Classes and $0.06 for all other classes (these amounts are slightly less than 1/10 of the charges incurred by CBOE Market-Makers for standard options contract transactions) will also apply under the same conditions under which a Marketing Fee collection applies to standard options contract transactions. Unlike for standard options contract transactions, no Hybrid Agency Liaison ("HAL") Step-Up Rebate will be given to Market-Makers for 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. This, coupled with the lower per-contract transaction fees charged, makes it impractical to offer CBOE Market-Makers the HAL Step-Up Rebate. As such, Minis shall be excluded from the HAL Step-Up Rebate. Mini transactions will also be excluded from counting towards the Liquidity Provider Sliding Scale (as the fee levels at all tiers in the Liquidity Provider Sliding Scale are all higher than the $0.02 fee for Market-Maker Mini transactions).

Clearing Trading Permit Holder Proprietary orders will be assessed a $0.03 fee for manual and electronic Mini transactions (including CFLEX AIM transactions). This fee amount is slightly more than 1/10th the amount assessed for standard options transactions for Clearing Trading Permit Holder Proprietary executions. As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options, and therefore, in some situations (including for Clearing Trading Permit Holder Proprietary orders), the Exchange must assess a Minis fee of more than 1/10th the amount assessed for standard options transactions. Mini volume will not count towards the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit

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4 See CBOE Fees Schedule, "Liquidity Provider Sliding Scale" table.

Holder Proprietary Orders (the "Proprietary Products Sliding Scale"). As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. Further, as the measuring stick to determine whether a Clearing Trading Permit Holder reaches new tiers on the Proprietary Products Sliding Scale is the number of contracts traded, it would be difficult for the Exchange to count Mini contracts, since they effectively function as 1/10th of a regular standard options contract. Therefore, the Exchange does not wish to count Clearing Trading Permit Holder Proprietary orders towards the Proprietary Products Sliding Scale, and therefore Minis will be excluded from counting towards the Proprietary Products Sliding Scale.

The Exchange proposes to count Mini fees towards the Clearing Trading Permit Holder Fee Cap in all products except SPX, SPXpm, SRO, VIX or other volatility indexes, OEX or XEO (the "Fee Cap") in the same manner that the Fee Cap applies to standard options transactions.[5] This will help Clearing Trading Permit Holders to reach this cap on their fees. Further, since the Fee Cap is calculated based on fees, it makes sense to count Minis fees towards the Fee Cap. Further, the Exchange does recognize that Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers' trading activity and, as such, the waiver of Clearing Trading Permit Holder Proprietary transaction fees, as described in Footnote 11 to the CBOE Fees Schedule, for facilitation orders[6] executed in AIM, open outcry, or as a QCC or FLEX transaction, will continue to apply to facilitation orders in Minis.

The Exchange also has caps on transaction fees that apply to merger strategies and short stock interest strategies as well as to reversals, conversions and jelly roll strategies (the "Strategy

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5 See CBOE Fees Schedule, Footnote 11, for more details on the Fee Cap.

6 "Facilitation orders" are defined for this purpose in Footnote 11 as "any paired order in which a Clearing Trading Permit Holder (F) origin code is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the order".

Caps").[7] The Exchange proposes to count Mini fees towards the Strategy Caps in the same manner that the Strategy Caps apply to standard options transactions. This will help market participants reach these caps on their fees. Further, since the Strategy Caps are calculated based on fees, it makes sense to count Minis fees towards the Strategy Caps.

Broker-Dealers and Non-Trading Permit Holder Market-Makers ("Away Market-Makers") will be assessed a $0.04 fee for manual and electronic Mini transactions (including CFLEX AIM transactions). This fee amount is less than 1/10th the amount assessed for standard options transactions for electronic Broker-Dealer and Non-Trading Permit Holder Market-Maker executions, though more than 1/10th the amount assessed for standard options transactions for manual Broker-Dealer and Non-Trading Permit Holder Market-Maker executions. The Exchange determined to establish a simple, flat fee for manual and electronic Broker-Dealer and Non-Trading Permit Holder Market-Maker Mini transactions, and the extent to which the Mini fee amount is more than 1/10th the amount assessed for standard options transactions for manual Broker-Dealer and Non-Trading Permit Holder Market-Maker executions is necessary to make up for the extent to which the Mini fee amount is less than 1/10th the amount assessed for standard options transactions for electronic Broker-Dealer and Non-Trading Permit Holder Market-Maker executions.

Professional, Voluntary Professional, and Joint Back-Office orders will be subject to a $0.03 fee for manual and electronic Mini transactions (including CFLEX AIM transactions). This amount is 1/10th the amount assessed for standard options transactions for electronic Professional, Voluntary Professional, and Joint Back-Office executions, though slightly more than 1/10th the amount assessed for standard options transactions for manual Professional, Voluntary Professional,

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[7] See CBOE Fees Schedule, Footnote 13, for more details on the Strategy Caps.

and Joint Back-Office executions (which is $0.25). As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. As such, the Exchange determined to base the Mini transaction fee amount for Professional, Voluntary Professional, and Joint Back-Office orders on the amount assessed for standard options transactions for electronic Professional, Voluntary Professional, and Joint Back-Office executions (also, the Exchange does not at this time wish to assess Mini transaction fees in sub-penny increments unless such fee amounts are also assessed in sub-penny increments for standard options transactions or the fee amounts for standard options are less than $0.05).

The Exchange proposes to assess a $0.02 fee for all Mini Qualified Contingent Cross ("QCC") transactions (except for Customer Mini QCC transactions, which, like other Customer Mini transactions, will be assessed a $0.00 fee). This fee amount is 1/10th of the $0.20 amount assessed for standard options QCC transactions (except for CBOE Market-Maker QCC transactions, which are subject to the Liquidity Provider Sliding Scale; $0.20 falls within the range of fees assessed under the Liquidity Provider Sliding Scale, and the Exchange desires to make determining Mini fees simple by merely assessing a flat, non-moving amount for Mini QCC fees).

The Exchange proposes to assess a $0.02 fee for all Mini AIM Agency/Primary orders (except Customer AIM Agency/Primary orders, which, like other Customer Mini transactions will be assessed a $0.00 fee).). This fee amount is 1/10th of the $0.20 amount assessed for standard options AIM Agency/Primary orders (except for CBOE Market-Maker AIM Agency/Primary transactions, which are subject to the Liquidity Provider Sliding Scale; $0.20 falls within the range of fees assessed under the Liquidity Provider Sliding Scale, and the Exchange desires to make determining Mini fees simple by merely assessing a flat, non-moving amount for Mini AIM Agency/Primary fees).

The Exchange proposes to assess a $0.01 fee for Clearing Trading Permit Holder Proprietary, Broker-Dealer, Away Market-Maker, and Professional/Voluntary Professional/Joint Back-Office Mini AIM Contra executions. Standard options AIM Contra execution fees for these market participants are $0.05. While the $0.01 amount is more than 1/10th of the $0.05 amount assessed for standard options AIM Contra executions, the Exchange notes again that the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. Further, as the Exchange desires not to list and assess sub-penny fee increments on its main rate tables (in order to keep such tables simple), and as the nearest whole penny increment to 1/10th of $0.05 is $0.01, it makes sense to assess that amount. The Exchange proposes to assess a $0.02 fee for CBOE Market-Maker Mini AIM Contra executions. The Liquidity Provider Sliding Scale that applies fees to CBOE Market-Maker transactions (including AIM Contra executions), has a first fee tier of $0.25. A fee amount of $0.02 for Mini AIM Contra executions is less than 1/10th the amount that can be assessed to CBOE Market-Makers for standard options AIM Contra executions. The Exchange proposes to assess a fee of $0.00 for Customer Mini AIM Contra executions, as this is the amount assessed to all other Customer Mini executions. The statement in Footnote 18 that the AIM Contra Execution Fee will apply to AIM Contra executions "instead of the applicable standard transaction fee except if the applicable standard transaction fee is lower than $.05 per contract, in which case the applicable standard transaction fee will apply" will not apply to Minis, as the applicable standard transaction fees for Minis will be lower than $0.05 per contract.

Currently, the Exchange assesses a $0.0085 per contract Options Regulatory Fee ("ORF").[8] The Exchange is proposing to charge the same rate for transactions in Mini options, $0.0085 per

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8 See CBOE Fees Schedule, "Regulatory Fees" table.

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 feels that it is appropriate to charge the ORF at the same rate as the standard option contract. The Exchange also assesses a DPM and Firm Designated Examining Authority Fee (the "DEA Fee") of $0.60 per $1,000 of gross revenue.[9] Any revenue that comes from Mini trading would count towards the DEA Fee (as does other revenue).

Similarly, because, 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, the Exchange will assess to Mini transactions the same PULSe Workstation Away-Market Routing, Away-Market Routing Intermediary, and CBOE/CBSX Routing fees (the "PULSe Workstation Fees"),[10] Trade Processing Services fees,[11] and PAR Official Fees[12] as are assessed to standard options transactions.

In order to comply with the Options Order Protection and Locked/Crossed Market Plan (the "Linkage Plan"), the Exchange uses various means of accessing better priced interest located on other exchanges and assesses fees associated with the execution of orders routed to other exchanges.[13] For Customers, these fees involve, to some extent, the passing-through of the actual transaction fee assessed by the exchange(s) to which the order was routed, while for non-Customers, a set amount is assessed. These fees are designed to help recover the Exchange's costs

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9 See CBOE Fees Schedule, "Regulatory Fees" table for more details on the DEA Fee.

10 See CBOE Fees Schedule, "PULSe Workstation" section of the "Facility Fees" table.

11 See CBOE Fees Schedule, "Trade Processing Services" Table.

12 See CBOE Fees Schedule, "PAR Official Fees in All Other Classes" section of the "Floor Brokerage and PAR Official Fees" table.

13 See CBOE Fees Schedule, "Linkage Fees" table.

in routing orders to other exchanges. The Exchange believes that the Options Clearing Corporation ("OCC") and broker-dealers will be assessing the same charges for Minis as are assessed to standard options. Further, the Exchange's costs for routing Minis through to other exchanges will be the same as the Exchange's costs for routing standard options to other exchanges. As such, the Exchange intends apply to Mini options the same Linkage Fees structure as applies to standard options. The Exchange notes that participants can avoid the Linkage Fees 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 Immediate-or-Cancel Order ("IOC Order") is one such order that would never route to another exchange. For all these reasons, the Exchange believes it is reasonable to apply to Mini options the same Linkage Fees structure as applies to standard options.

The Exchange has Order Router Subsidy ("ORS") Programs that state that CBOE may enter into subsidy arrangements with Trading Permit Holders ("TPHs") or broker-dealers that are not CBOE Trading Permit Holders ("Non-CBOE TPHs") that provide certain routing functionalities to other CBOE TPHs, Non-CBOE TPHs and/or use such functionalities themselves. Under the ORS, participating TPHs or participating Non-CBOE TPHs ("participants") will receive a payment from CBOE for every executed contract for orders routed to CBOE through that participant's system to subsidize their costs associated with providing order routing functionalities.[14] The Exchange offers a subsidy of $0.04 for the simple and complex ORS Programs ($0.03 for participants that elect for the Exchange to perform certain additional marketing services on the participant's behalf (the "Marketing Service Election")). The Exchange

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14 See CBOE Fees Schedule, "Order Router Subsidy Programs" table for more details on the ORS Programs.

proposes to offer subsidies for Minis under the ORS Programs that are 1/10th the amounts offered for standard options ($0.004 for simple and complex Minis, with $0.003 for Minis under the Marketing Service Election). Under the simple ORS Program, a participant may elect to have CBOE perform the service of billing other CBOE TPHs with respect to the use of the participant's router (the "Billing Election"). A participant that elects to have CBOE perform this service would pay CBOE a service fee of one percent of the fees collected by CBOE for that TPH. The Exchange proposes to apply the Billing Election to Minis in the same way it applies to standard options. For billing purposes, Minis fees will be rounded to the nearest $0.01 using standard rounding rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.15 Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

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

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15 15 U.S.C. 78f(b).

16 15 U.S.C. 78f(b)(4).

Mini quotes and orders will necessarily cause the Exchange to either raise fees for everyone or only 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. Given these realities, the Exchange believes 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 $0.00 per contract is reasonable, as Customers have long traded for free all options on the Exchange. This $0.00 fee for Customer Mini executions 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 and who benefit from the increased volume and trading opportunities. The proposed fee of $.00 per contract is the same fee charged to Customer orders in standard option contracts, which is an effective fee on the Exchange and has not been determined to be inequitable or unfairly discriminatory. Further, the options marketplace has a history of offering preferential pricing to Customers. Finally, NYSE Arca, Inc.

("Arca") proposes to charge Customers $0.00 for some Customer Mini transactions.[17] Therefore, the Exchange believes that the proposed Customer pricing for Minis is equitable and not unfairly discriminatory.

The Exchange believes that excluding Customer Mini transactions from counting towards the VIP 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 VIP credits paid on standard option contracts. It is also equitable, since paying the rebate on Mini option volumes would likely necessitate either reducing the VIP credits paid under the VIP, or raising other participant fees. It is not unfairly discriminatory, as it will apply equally to all Customer executions in Mini options.

The Exchange believes that the proposal to assess to CBOE Market-Makers a $0.02 fee for manual and electronic Mini transactions (including CFLEX AIM transactions) is reasonable. It is difficult to compare the proposed $0.02 amount to the amount assessed to CBOE Market-Makers for standard options transactions, as that amount can differ depending on which tier each CBOE Market-Maker reaches in the Liquidity Provider Sliding Scale. However, $0.02 is less than 1/10th the fee assessed at the lowest tier of the Liquidity Provider Sliding Scale for standard options transactions. The Exchange believes that these CBOE Market-Maker Mini fees are equitable and not unfairly discriminatory for a number of reasons. First, they will apply equally to all CBOE Market-Makers. Second, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fee amounts to CBOE Market-Makers than to some other market participants

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17 See SR-NYSEArca-2013-25, available at http://www.nyse.com/nysenotices/nysearca/rule-filings/pdf?file_no=SR-NYSEArca-2013-25&seqnum=1 (the "Arca filing"), page 5, which proposes to assess a fee of $0.00 for manual Customer executions in Minis.

because CBOE Market-Makers have obligations, such as quoting obligations, that other market participants do not possess. Further, these lower fees are intended to encourage Market-Makers to quote aggressively and more often, which provides more trading opportunities for all market participants. Finally, the proposed $0.02 CBOE Market-Maker fee for Minis is equivalent to Arca's proposed NYSE Arca Market Maker Mini fee for manual executions, and significantly lower than Arca's proposed Market Maker Mini fees for Taker electronic executions ($0.07 in Penny Pilot classes and $0.10 in non-Penny Pilot classes).[18]

The Exchange also believes that the proposal to assess to CBOE Market-Makers a Marketing Fee collection of $0.02 for Penny Pilot Classes and $0.06 for all other classes is reasonable, equitable and not unfairly discriminatory because these amounts are slightly less than 1/10th the amount assessed for standard options. The Exchange also believes that this proposed fee is equitable and not unfairly discriminatory because it will apply to all CBOE Market-Makers. The Exchange believes that not providing the HAL Step-Up Rebate is reasonable because it merely prevents CBOE Market-Makers trading Minis from receiving a rebate; it does not impose another fee. The Exchange believes that it is equitable and not unfairly discriminatory to not provide the HAL Step-Up Rebate to CBOE Market-Makers trading Minis when the HAL Step-Up Rebate is provided to CBOE Market-Makers trading standard options products because, as stated previously, 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, makes it impractical to offer CBOE Market-Makers the HAL Step-Up Rebate. Further, no CBOE Market-Maker will receive the HAL Step-Up Rebate for Minis transactions. The Exchange believes that it is reasonable to not count Minis transactions towards the Liquidity Provider Sliding Scale because

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[18] See Arca filing, page 5.

this merely prevents Market-Makers from being able to receive reduced fees; this does not impose a greater fee. The Exchange believes that this is equitable and not unfairly discriminatory because the amounts in the tiers of the Liquidity Provider Sliding Scale are all higher than the $0.02 fee for Market-Maker Mini transactions. Further, no Market-Maker Mini transactions will count towards or qualify for the Liquidity Provider Sliding Scale.

The Exchange believes that assessing a $0.03 fee for manual and electronic Clearing Trading Permit Holder Proprietary Mini executions is reasonable because, while this amount is slightly more than 1/10th the amount assessed for standard options Clearing Trading Permit Holder Proprietary executions, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options, and therefore, in some situations (including for Clearing Trading Permit Holder Proprietary orders), the Exchange must assess a Minis fee of more than 1/10th the amount assessed for standard options transactions. This amount is still significantly less than the amount assessed for standard options Clearing Trading Permit Holder Proprietary executions, despite the fact that the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. The Exchange believes that this fee is equitable and not unfairly discriminatory because it will be assessed to all qualifying manual and electronic Clearing Trading Permit Holder Proprietary executions in Minis. Further, the Exchange believes it is equitable and not unfairly discriminatory to assess lower fees to Clearing Trading Permit Holder Proprietary executions than to those of other market participants (such as Broker-Dealers and Away Market-Makers) because Clearing Trading Permit Holders have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that other market participants do not need to take on. Finally, the amount of the proposed fees for Clearing Trading Permit Holder Proprietary executions in Minis is significantly lower than the $0.09 fee that is proposed to be assessed by Arca for Mini Firm manual executions and electronic Penny Pilot Taker executions (as well as significantly lower than Arca's proposed $0.12 Taker fee for Firm Mini electronic non-Penny Pilot Taker executions).[19]

The Exchange believes that the proposal to not count Mini volume towards the Proprietary Products Sliding Scale is reasonable in light of the Exchange's desire to fund the costs associated with Minis with revenues only from those participants who trade them. As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. Including Mini volume towards the Proprietary Products Sliding Scale might necessitate raising costs for other market participants; therefore, the Exchange believes that the exclusion of Minis from the Proprietary Products Sliding Scale is both reasonable and equitable. Because this exclusion will apply to all Clearing Trading Permit Holder Proprietary Mini orders, the Exchange believes that it is equitable and not unfairly discriminatory. Further, as the measuring stick to determine whether a Clearing Trading Permit Holder reaches new tiers on the Proprietary Products Sliding Scale is the number of contracts traded, it would be difficult for the Exchange to count Mini contracts, since they effectively function as 1/10th of a regular standard options contract.

The Exchange believes that the proposal to count Minis fees towards the Fee Cap is reasonable because it will help Clearing Trading Permit Holders to reach this cap on their fees. Further, since the Fee Cap is calculated based on fees, it makes sense to count Minis fees towards the Fee Cap. The Exchange believes this is equitable and not unfairly discriminatory because Minis fees will count towards the Fee Cap in the same manner that standard options transaction fees count towards the Fee Cap. Further, Arca proposes to exclude Minis fees from its $75,000 per

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19 See Arca filing, page 5.

month cap on Firm Proprietary fees,[20] making the Exchange's proposal to count Minis fees towards the Fee Cap competitively advantageous and more attractive to market participants.

The Exchange believes that the proposal to count Minis fees towards the Strategy Caps is reasonable because it will help market participants to reach these caps on their fees. Further, since the Strategy Caps are calculated based on fees, it makes sense to count Minis fees towards the Strategy Caps. The Exchange believes this is equitable and not unfairly discriminatory because Minis fees will count towards the Strategy Caps in the same manner that standard options transaction fees count towards the Strategy Caps. Further, Arca proposes to exclude Minis fees from its Limit of Fees on Options Strategy Executions, which is a similar program to the Exchange's Strategy Caps,[21] making the Exchange's proposal to count Minis fees towards the Strategy Caps competitively advantageous and more attractive to market participants.

The Exchange believes that the proposal to waive Clearing Trading Permit Holder Proprietary transaction fees for Mini facilitation orders executed in AIM, open outcry, or as a QCC or FLEX transaction is reasonable because it will exempt such orders from being assessed fees. The Exchange believes that this is equitable and not unfairly discriminatory because such orders are exempt from fees for standard options transactions. Further, the Exchange recognizes that Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers' trading activity. Such trades add transparency and promote price discovery to the benefit of all market participants. Moreover, the exemption from fees for Mini facilitation orders executed in AIM, open outcry, or as a QCC or FLEX transaction will apply to all such orders.

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20 See Arca filing, page 8.

21 See Arca filing, page 9.

The Exchange believes that the proposed $0.04 fee for Broker-Dealers and Away Market-Makers for manual and electronic Mini transactions (including CFLEX AIM transactions) is reasonable. This fee amount is significantly less than the fee assessed for standard options contracts, and indeed is less than 1/10th the amount assessed for standard options transactions for electronic Broker-Dealer and Non-Trading Permit Holder Market-Maker executions, though more than 1/10th the amount assessed for standard options transactions for manual Broker-Dealer and Non-Trading Permit Holder Market-Maker executions. The Exchange determined to establish a simple, flat fee for manual and electronic Broker-Dealer and Non-Trading Permit Holder Market-Maker Mini transactions, and the extent to which the Mini fee amount is more than 1/10th the amount assessed for standard options transactions for manual Broker-Dealer and Non-Trading Permit Holder Market-Maker executions is necessary to make up for the extent to which the Mini fee amount is less than 1/10th the amount assessed for standard options transactions for electronic Broker-Dealer and Non-Trading Permit Holder Market-Maker executions, as well as to account for the fact that, as noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. In this regard, the proposed fee amount is reasonable and also equitable in that 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. Further, the Exchange believes this fee is equitable and not unfairly discriminatory because it will apply to all Broker-Dealers and Away Market-Makers. Also, the Exchange believes that it is equitable and not unfairly discriminatory to assess higher fees to Broker-Dealers and Away Market-Makers because they do not have some of the obligations that other market participants, such as CBOE Market-Makers and Clearing Trading Permit Holders, may have. Finally, the proposed $0.04 fee amount is significantly lower than the $0.09 fee proposed by Arca for Mini Broker Dealer manual executions and electronic Penny Pilot Taker executions (as well as significantly lower than Arca's proposed $0.12 Broker Dealer Taker fee for Mini electronic non-Penny Pilot Taker executions).[22]

The Exchange believes that the proposal to assess Professional, Voluntary Professional, and Joint Back-Office orders a $0.03 fee for manual and electronic Mini transactions (including CFLEX AIM transactions) is reasonable. This amount is 1/10th the amount assessed for standard options transactions for electronic Professional, Voluntary Professional, and Joint Back-Office executions, though slightly more than 1/10th the amount assessed for standard options transactions for manual Professional, Voluntary Professional, and Joint Back-Office executions (which is $0.25). As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. As such, the Exchange determined to base the Mini transaction fee amount for Professional, Voluntary Professional, and Joint Back-Office orders on the amount assessed for standard options transactions for electronic Professional, Voluntary Professional, and Joint Back-Office executions. Further, this amount is significantly less than the amount assessed for Professional, Voluntary Professional, and Joint Back-Office executions for standard options. In this regard, the proposed fee amount is reasonable and also equitable in that 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. The Exchange believes that this proposed fee is equitable and not unfairly discriminatory because it will be assessed to all Professional, Voluntary Professional, and Joint Back-Office Mini transactions.

The Exchange believes that the proposal to assess a $0.02 fee for all Mini QCC transactions (except for Customer Mini QCC transactions, which, like other Customer Mini transactions, will be assessed a $0.00 fee) is reasonable, equitable and not unfairly discriminatory

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22 See Arca filing, page 5.

because this fee amount is 1/10th of the $0.20 amount assessed for standard options QCC transactions (except for CBOE Market-Maker QCC transactions, which are subject to the Liquidity Provider Sliding Scale; $0.20 falls within the range of fees assessed under the Liquidity Provider Sliding Scale, and the Exchange desires to make determining Mini fees simple by merely assessing a flat, non-moving amount for Mini QCC fees). The Exchange further believes that it is equitable and not unfairly discriminatory to assess a $0.02 fee for all Mini QCC transactions (except Customer Mini QCC transactions) because all market participants will be paying this same amount (except for Customers) for Mini QCC transactions. The Exchange believes that it is equitable and not unfairly discriminatory to assess a $0.00 fee for Customer Mini QCC transactions because this is the same amount being assessed to other Customer Mini transactions, and because this $0.00 fee for Customer Mini executions 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 and who benefit from the increased volume and trading opportunities. Further, the proposed fee of $.00 per contract is the same fee charged to Customer QCC orders in standard option contracts, which is an effective fee on the Exchange and has not been determined to be inequitable or unfairly discriminatory. Also, the options marketplace has a history of offering preferential pricing to Customers. Finally, the proposed Mini QCC fee amounts are significantly lower than the $0.05 fee (per side) for Mini QCCs proposed by Arca.[23]

The Exchange believes that the proposal to assess a $0.02 fee for all Mini AIM Agency/Primary transactions (except for Customer Mini AIM Agency/Primary transactions, which, like other Customer Mini transactions will be assessed a $0.00 fee) is reasonable, equitable and not unfairly discriminatory because this fee amount is 1/10th of the $0.20 amount assessed for

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[23] See Arca filing, page 6.

standard options AIM Agency/Primary transactions (except for CBOE Market-Maker AIM Agency/Primary transactions, which are subject to the Liquidity Provider Sliding Scale; $0.20 falls within the range of fees assessed under the Liquidity Provider Sliding Scale, and the Exchange desires to make determining Mini fees simple by merely assessing a flat, non-moving amount for Mini AIM Agency/Primary fees). The Exchange further believes that it is equitable and not unfairly discriminatory to assess a $0.02 fee for all Mini AIM Agency/Primary transactions (except Customer Mini AIM Agency/Primary transactions) because all market participants will be paying this same amount (except for Customers) for Mini AIM Agency/Primary transactions. The Exchange believes that it is equitable and not unfairly discriminatory to assess a $0.00 fee for Customer Mini AIM Agency/Primary transactions because this is the same amount being assessed to other Customer Mini transactions, and because this $0.00 fee for Customer Mini executions 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 and who benefit from the increased volume and trading opportunities. Further, the proposed fee of $.00 per contract is the same fee charged to Customer AIM Agency/Primary orders in standard option contracts, which is an effective fee on the Exchange and has not been determined to be inequitable or unfairly discriminatory. Finally, the options marketplace has a history of offering preferential pricing to Customers.

The Exchange believes the proposal to assess a $0.01 fee for Clearing Trading Permit Holder Proprietary, Broker-Dealer, Away Market-Maker, and Professional/Voluntary Professional/Joint Back-Office Mini AIM Contra executions is reasonable, equitable and not unfairly discriminatory because, while the $0.01 amount is more than 1/10th of the $0.05 amount assessed for standard options AIM Contra executions, the Exchange notes again that the cost to the

Exchange to process quotes, orders and trades in Minis is the same as for standard options. Further, as the Exchange desires not to list and assess sub-penny fee increments on its main rate tables (in order to keep such tables simple), and as the nearest whole penny increment to 1/10th of $0.05 is $0.01, it makes sense to assess that amount. The Exchange believes that the proposal to assess a $0.02 fee for CBOE Market-Maker Mini AIM Contra executions is reasonable, equitable and not unfairly discriminatory because the Liquidity Provider Sliding Scale that applies fees to CBOE Market-Maker transactions (including AIM Contra executions), has a first fee tier of $0.25. A fee amount of $0.02 for Mini AIM Contra executions is less than 1/10th the amount that can be assessed to CBOE Market-Makers for standard options AIM Contra executions. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess a $0.00 fee for Customer Mini AIM Contra transactions because this is the same amount being assessed to other Customer Mini transactions, and because this $0.00 fee for Customer Mini executions 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 and who benefit from the increased volume and trading opportunities. Further, the proposed fee of $.00 per contract is the same fee charged to Customer AIM Contra orders in standard option contracts, which is an effective fee on the Exchange and has not been determined to be inequitable or unfairly discriminatory. Finally, the options marketplace has a history of offering preferential pricing to Customers. The Exchange believes that it is equitable and not unfairly discriminatory to apply different Mini AIM Contra fees to different market participants for the reasons described above. Finally, the Exchange believes that the proposed Mini AIM Contra fees are equitable and not unfairly discriminatory because all market participants within the same market participant category will be assessed the same fee amounts (meaning that all for Clearing Trading Permit Holder Proprietary orders, Broker-Dealers, Away Market-Makers, and Professional/Voluntary Professional/Joint Back-Office orders will be assessed a $0.01 fee, all CBOE Market-Makers will be assessed a $0.02 fee, and all Customers will be assessed a $0.00 fee).

The Exchange believes that the proposal to assess the same ORF amount to Minis as are assessed to standard options is reasonable because, 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 feels that it is appropriate to charge the ORF at the same rate as the standard option contract. Further, the Exchange notes 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. As such, the Exchange currently believes that 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. The proposed ORF for Minis is equitable and not unfairly discriminatory because the same ORF amount is currently assessed to standard options. Further, all Minis will be assessed the ORF. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to count revenue from Mini trading towards a DPM or Firm's DEA Fee because revenue from Mini trading is revenue, and other revenue counts towards the DEA Fee. The Exchange also believes that this is equitable and not unfairly discriminatory because it will apply to all market participants to whom the DEA Fee apply.

The Exchange believes that subjecting Minis to the same amounts as standard options for purposes of PULSe Workstation Fees, Trade Processing Services fees and PAR Official fees is reasonable because the costs of operating and maintaining the PULSe Workstations, Trade Processing Services and PAR workstations for Mini transactions are the same as for standard options transactions. This is equitable and not unfairly discriminatory because the same fee amounts will be assessed for Minis as for standard options, and because such fees will apply to all Mini transactions.

The Exchange believes that its proposal to treat Mini options the same as standard options for purposes of the Linkage Fees is reasonable, equitable and not unfairly discriminatory for the following reasons. The Linkage Fees are designed to help recover the Exchange's costs in routing orders to other exchanges. The Exchange believes that the OCC and broker-dealers will be assessing the same charges for Minis as are assessed to standard options. Further, the Exchange's costs for routing Minis through to other exchanges will be the same as the Exchange's costs for routing standard options to other exchanges. As such, the Exchange believes that it makes sense apply to Mini options the same Linkage Fees structure as applies to standard options. The Exchange notes that participants can avoid the Linkage Fees 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 IOC Order is one such order that would never route to another exchange. For all these reasons, the Exchange believes it is reasonable and equitable to apply to Mini options the same Linkage Fees structure as applies to standard options. Further, the Exchange believes that it is equitable and not unfairly discriminatory to treat Mini options the same as standard options for purposes of the Linkage Fees for that tautological reason; Mini options will be treated the same as standard options for the purposes of Linkage Fees. Finally, since the Linkage Fees will apply to all participants in Minis as they apply for standard options, and because such Linkage Fees have not previously been found to be unreasonable, inequitable or unfairly discriminatory, the Exchange believes this to be the case for Minis as well.

The Exchange believes that the Mini ORS Program subsidy amounts proposed are reasonable, equitable and not unfairly discriminatory because they are 1/10th the amounts that apply to standard options. The Exchange believes that applying the Billing Election to Minis in the same manner that it applies to standard options is reasonable, equitable and not unfairly discriminatory for that tautological reason; it will apply to Minis in the same manner that it applies to standard options. The Exchange also believes that the proposed adaptations to the ORS Programs for Minis is equitable and not unfairly discriminatory because such adaptations will apply to all participants.

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 changes are designed to provide greater specificity and precision within the Fee Schedule with respect to the fees applicable to Minis.

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 Minis, and will not impose a burden on competition among various market participants on the Exchange not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the Exchange proposes assessing different fee amounts to different Exchange market participants, the Exchange believes that such differing assessments will not impose an unnecessary burden on intramarket competition due to the different natures of such market participants and different obligations imposed on such market participants (as described above). Further, in the cases in which some market participants are assessed lower fee amounts than others, the Exchange often does so with the intention of attracting greater trading from those market participants, and the increased volume and trading opportunities benefits all market participants.

The Exchange believes that the proposed fees structure for Mini options will not impose an unnecessary burden on intermarket competition. The Exchange has shown in a number of places in this proposed rule change that the Exchange's fees are at least competitive with, if not preferable to, comparable fees at other exchanges. As such, the Exchange believes that the proposed fees structure for Minis will increase intermarket competition, which benefits all market participants. To the extent that market participants on other exchanges may be attracted to trade on CBOE by the proposed fees structure for Mini options, they are always welcome to become market participants on CBOE.

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 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

The Exchange neither solicited nor received comments on the proposed rule change.

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) of the Act[24] and paragraph (f) of Rule 19b-4[25] thereunder. 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 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 will institute proceedings 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-CBOE-2013-038 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2013-038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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24 15 U.S.C. 78s(b)(3)(A).

25 17 C.F.R. [sic] 240.19b-4(f).

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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2013-038, 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.[26]

Kevin M. O'Neill
Deputy Secretary

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26 17 CFR 200.30-3(a)(12).