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SECURITIES AND EXCHANGE COMMISSION
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April 2, 2013

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Fees and Rebates for Mini Options

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 21, 2013, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 ISE proposes to amend its Schedule of Fees to establish fees for Mini Options. The text of the proposed rule change is available on the Exchange's website (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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 these

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

ISE recently amended its rules to allow for the listing of Mini Options on SPDR S&P 500 ("SPY"), Apple, Inc. ("AAPL"), SPDR Gold Trust ("GLD"), Google Inc. ("GOOG") and Amazon.com Inc. ("AMZN").³ In the Mini Options Filing, the Exchange represented to the Commission that "the current Schedule of Fees is not applicable to Mini Options and that the Exchange will not begin to trade Mini Options without a prior submission of a proposed rule change to adopt transaction fees for Mini Options."⁴ The Exchange is therefore submitting this proposed rule change to establish fees and rebates applicable to Mini Options. This proposal also seeks to adopt a definition for Mini Options in the Preface of the Schedule of Fees, as options overlying ten (10) shares of AAPL, AMZN, GLD, GOOG, and SPY. For purposes of the Exchange's fee schedule, Mini Options in SPY, AAPL, GLD and AMZN are classified as Select Symbols⁵ while Mini Options in GOOG is classified as a Non-Select Symbol.⁶

³ Mini Options were approved for trading on September 28, 2012. See Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (SR-ISE-2012-58) ("Mini Options Filing").

⁴ Id.

⁵ "Select Symbols" are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

⁶ "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

Mini Options 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 to adopt per contract fees and rebates that are 1/10th of the fees and rebates for standard option contracts, with some exceptions. Despite the smaller exercise and assignment value of Mini Options, the cost to the Exchange to process quotes and orders in Mini Options, perform regulatory surveillance and retain quotes and orders for archival purposes is the same as for a standard contract. The Exchange believes that adopting fees and rebates for Mini Options that are in some cases lower than fees and rebates for standard option contracts, and in other cases the same as for standard option contracts, is appropriate, not unreasonable, not unfairly discriminatory and not burdensome to competition between participants, or between the Exchange and other exchanges that list and trade Mini Options.

A. Regular Order Fees and Rebates for Mini Options

The Exchange proposes to adopt separate tables for fees and rebates applicable to regular orders in Mini Options. The fees and rebates listed in the table below are 1/10th of the fees and rebates currently applicable to regular orders for standard options in classes that overlie SPY, AAPL, GLD, AMZN, and GOOG:

Select Symbols						
Market Participant	Maker Rebate/Fee	Taker Fee	Fee for Crossing Orders	Fee for Responses to Crossing Orders	PIM Break-up Rebate	Facilitation and Solicitation Break-up Rebate
Market Maker Plus	(\$0.010)	\$0.032	\$0.020	\$0.040	N/A	N/A
Market Maker	\$0.010	\$0.032	\$0.020	\$0.040	N/A	N/A
Non-ISE Market Maker (FarMM)	\$0.010	\$0.036	\$0.020	\$0.040	(\$0.025)	(\$0.015)
Firm Proprietary / Broker-Dealer	\$0.010	\$0.033	\$0.020	\$0.040	(\$0.025)	(\$0.015)
Professional Customer	\$0.010	\$0.033	\$0.020	\$0.040	(\$0.025)	(\$0.015)
Priority Customer	\$0.000	\$0.025	\$0.000	\$0.040	(\$0.025)	(\$0.015)
Non-Select Symbols						

Market Participant	Fee	Fee for Crossing Orders	Fee for Responses to Crossing Orders
Market Maker	\$0.018	\$0.018	\$0.018
Market Maker (for orders sent by Electronic Access Members)	\$0.020	\$0.020	\$0.020
Non-ISE Market Maker (FarMM)	\$0.045	\$0.020	\$0.045
Firm Proprietary / Broker-Dealer	\$0.020	\$0.020	\$0.020
Professional Customer	\$0.020	\$0.020	\$0.020
Priority Customer	\$0.000	\$0.000	\$0.020

For Mini Options in the Select Symbols, the following maker fees and rebates shall apply: i) for Market Maker,⁷ Non-ISE Market Maker,⁸ Firm Proprietary / Broker-Dealer and Professional Customer⁹ orders, \$0.010 per contract; ii) for Priority Customer¹⁰ orders, \$0.000 per contract; and iii) for Market Maker Plus¹¹ orders, a rebate of \$0.010

⁷ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

⁸ A Non-ISE Market Maker, or Far Away Market Maker (“FarMM”), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 registered in the same options class on another options exchange.

⁹ A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

¹⁰ A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

¹¹ In order to promote and encourage liquidity in Mini Options in the Select Symbols, the Exchange proposes to adopt a \$0.010 per contract rebate to Market Makers if the quotes they sent to the Exchange qualify the Market Maker to become a Market Maker Plus. A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between \$0.03 and \$5.00 (for options whose underlying stock’s previous trading day’s last sale price was less than or equal to \$100) and between \$0.10 and \$5.00 (for options whose underlying stock’s previous trading day’s last sale price was greater than \$100) in premium in each of the front two expiration months and 80% of the time for series trading between \$0.03 and \$5.00 (for options whose underlying stock’s previous trading day’s last sale price was less than or equal to \$100) and between \$0.10 and \$5.00 (for options whose underlying stock’s previous trading day’s last sale price was greater than \$100) in premium for all expiration months in that symbol during the current trading month. A Market

per contract. For Mini Options in the Select Symbols, the following taker fees shall apply: i) for Market Maker and Market Maker Plus orders, \$0.032 per contract; ii) for Non-ISE Market Maker orders, \$0.036 per contract; iii) for Firm Proprietary / Broker-Dealer and Professional Customer orders, \$0.033 per contract; and iv) for Priority Customer orders, \$0.025 per contract.

Additionally, the Exchange proposes to charge Market Maker, Market Maker Plus, Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customers a fee of \$0.020 per contract (\$0.000 per contract for Priority Customers) for regular Crossing Orders for Mini Options in the Select Symbols, and a fee of \$0.040 per contract to all market participants for regular Responses to Crossing Orders for Mini Options in the Select Symbols.

The Exchange also proposes to adopt a rebate of \$0.025 per contract for contracts that are submitted to the Price Improvement Mechanism that do not trade with their contra order for Mini Options in the Select Symbols, and a rebate of \$0.015 per contract for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order for Mini Options in the Select Symbols except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbook.

For Mini Options in Non-Select Symbols, the following fees shall apply: i) for Market Maker orders, a fee of \$0.018 per contract; ii) for Market Maker (for orders sent by Electronic Access Members), Firm Proprietary / Broker-Dealer and Professional Customer orders, a fee of \$0.020 per contract; iii) for Non-ISE Market Maker orders, a

Maker's single best and single worst overall quoting days each month, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

fee of \$0.045 per contract; and iv) for Priority Customer orders, a fee of \$0.000 per contract.

Additionally, for regular Crossing Orders for Mini Options in Non-Select Symbols, the following fees shall apply: i) for Market Makers, a fee of \$0.018 per contract; ii) for Market Maker (for orders sent by Electronic Access Members), Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customers, a fee of \$0.020 per contract; and iii) for Priority Customers, a fee of \$0.000 per contract. For regular Responses to Crossing Orders for Mini Options in Non-Select Symbols, the following fees shall apply: i) for Market Makers, \$0.018 per contract; ii) for Non-ISE Market Maker, \$0.045 per contract; and iii) for Market Maker (for orders sent by Electronic Access Members), Firm Proprietary / Broker-Dealer, Professional Customer and Priority Customers, a fee of \$0.020 per contract.

Further, the Exchange currently charges Primary Market Makers (PMMs) a transaction fee for standard options in Non-Select Symbols when they trade report a Priority Customer or Professional Customer order in accordance with their obligation to provide away market price protection. This fee shall also apply to Mini Options in Non-Select Symbols. On the other hand, for standard options in the Select Symbols, PMMs do not receive a maker rebate nor pay a taker fee when trade reporting. With this proposed rule change, PMMs in Mini Options in the Select Symbols will also not receive a maker rebate nor pay a taker fee when trade reporting.

PMM Linkage Credit

The Exchange also proposes to adopt a \$0.020 per contract fee credit to PMMs for execution of Priority Customer orders in Mini Options in Non-Select Symbols¹² – for classes in which it serves as a PMM – that send an Intermarket Sweep Order to other exchanges. This credit will be applied regardless of the transaction fee charged by a destination market. For PMMs executing Priority Customer orders in Mini Options in the Select Symbols, this credit will be equal to the fee charged by the destination market, and for executing Professional Customer orders, the fee credit will be equal to the fee charged by a destination market, but not more than \$0.045 per contract.

Credit for Responses to Flash Orders

The Exchange proposes to adopt a \$0.020 per contract credit for responses to Flash Orders for Mini Option in Non-Select Symbols when trading against Professional Customers. For Mini Options in the Select Symbols, the per contract fee credit for responses to Flash Orders will be i) \$0.010 per contract when trading against Priority Customers; and ii) \$0.010 per contract when trading against Professional Customers.

Payment for Order Flow

The Exchange proposes to adopt a payment for order flow (PFOF) fee of \$0.07 per contract, applicable to Market Makers when trading against Priority Customer orders in Mini Options in Non-Penny Pilot Symbols.¹³ The Exchange will not charge a PFOF fee for trading Mini Options in the Select Symbols.

¹² This fee credit applies to only GOOG as GOOG is the only Non-Select Symbol approved as a Mini Option.

¹³ For the purposes of the PFOF fee noted in the Schedule of Fees, GOOG is a Non-Penny Pilot Symbol because all Non-Select Symbols are Non-Penny Pilot

Route-Out Fees

Consistent with Distributive Linkage and pursuant to ISE rules, PMMs have an obligation to address customer¹⁴ orders when there is a better market displayed on another exchange. ISE's PMMs meet this obligation via the use of Intermarket Sweep Orders ("ISOs"). With the costs associated with servicing customer orders that must be executed at another exchange, the Exchange currently charges a fee, at a rate of \$0.45 per contract for Professional Customers and \$0.35 per contract for Priority Customers, for executions that result from the PMM routing ISOs to another exchange. This fee applies to standard options in all symbols traded on the Exchange. At this time, the Exchange proposes to charge 1/10th of the fee for routing out Mini Options than the fee charged by the Exchange for routing out standard options. Specifically, the Exchange proposes to adopt a route-out fee of \$0.045 per contract for Professional Customer orders in Mini Options that are routed out for execution and a fee of \$0.035 per contract for Priority Customer orders in Mini Options that are routed out for execution.

B. Complex Order Fees and Rebates for Mini Options

The Exchange proposes to adopt separate tables for fees and rebates applicable to complex orders in Mini Options. The fees and rebates listed in the table below are 1/10th of the fees and rebates currently applicable to complex orders for standard options in classes that overlie SPY, AAPL, GLD, AMZN, and GOOG:

Rebates

Symbols. Therefore, the PFOF fee proposed in this filing will apply only to Mini Options in GOOG.

¹⁴ Pursuant to ISE Rule 1900(f) of the Distributive Linkage rules, a customer is an individual or organization that is not a broker-dealer.

Market Participant	Rebate for Select Symbols (excluding SPY)	Rebate for SPY	Rebate for Non-Select Symbols	Rebate for Priority Customer orders that trade with quotes and orders on the regular orderbook (excluding SPY)	Rebate for Priority Customer orders that trade with quotes and orders on the regular orderbook In SPY	PIM Break-up Rebate for Select Symbols	Facilitation and Solicitation Break-up Rebate for Select Symbols
Market Maker	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Non-ISE Market Maker (FarMM)	N/A	N/A	N/A	N/A	N/A	(\$0.025)	(\$0.015)
Firm Proprietary / Broker-Dealer	N/A	N/A	N/A	N/A	N/A	(\$0.025)	(\$0.015)
Professional Customer	N/A	N/A	N/A	N/A	N/A	(\$0.025)	(\$0.015)
Priority Customer Complex ADV 0-39,999	(\$0.033)	(\$0.036)	(\$0.066)	(\$0.006)	(\$0.007)	(\$0.025)	(\$0.015)
Priority Customer Complex ADV 40,000-74,999	(\$0.035)	(\$0.038)	(\$0.072)	(\$0.008)	(\$0.009)	(\$0.025)	(\$0.015)
Priority Customer Complex ADV 75,000-124,999	(\$0.037)	(\$0.039)	(\$0.075)	(\$0.009)	(\$0.010)	(\$0.025)	(\$0.015)
Priority Customer Complex ADV 125,000-224,999	(\$0.039)	(\$0.040)	(\$0.077)	(\$0.010)	(\$0.011)	(\$0.025)	(\$0.015)
Priority Customer Complex ADV 225,000+	(\$0.040)	(\$0.041)	(\$0.078)	(\$0.011)	(\$0.012)	(\$0.025)	(\$0.015)
Incremental Priority Customer Complex ADV above 225,000	(\$0.001)	(\$0.001)	(\$0.001)	(\$0.000)	(\$0.000)	(\$0.000)	(\$0.000)

Maker Fees					
Market Participant	Maker Fee for Select Symbols	Maker Fee for Non-Select Symbols	Maker Fee for Select Symbols when trading against Priority Customer (excluding SPY)	Maker Fee for SPY when trading against Priority Customer	Maker Fee for non-Select Symbols when trading against Priority Customer
Market Maker	\$0.010	\$0.010	\$0.039	\$0.039	\$0.082
Non-ISE Market Maker (FarMM)	\$0.020	\$0.020	\$0.040	\$0.041	\$0.084
Firm Proprietary / Broker-Dealer	\$0.010	\$0.010	\$0.040	\$0.041	\$0.084
Professional Customer	\$0.010	\$0.010	\$0.040	\$0.041	\$0.084
Priority Customer	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000

Taker and other Fees						
Market Participant	Taker Fee for Select Symbols (excluding SPY)	Taker Fee for SPY	Taker Fee for Non-Select Symbols	Fee for Crossing Orders (largest leg only)	Fee for Responses to Crossing Orders for Select Symbols	Fee for Responses to Crossing Orders for non-Select Symbols
Market Maker	\$0.039	\$0.039	\$0.082	\$0.020	\$0.040	\$0.082
Non-ISE Market Maker (FarMM)	\$0.040	\$0.041	\$0.084	\$0.020	\$0.040	\$0.084
Firm Proprietary / Broker-Dealer	\$0.040	\$0.041	\$0.084	\$0.020	\$0.040	\$0.084
Professional Customer	\$0.040	\$0.041	\$0.084	\$0.020	\$0.040	\$0.084
Priority Customer	\$0.000	\$0.000	\$0.000	\$0.000	\$0.040	\$0.000

For complex orders in Mini Options in the Select Symbols and Non-Select Symbols, the following maker fees shall apply: i) \$0.010 per contract for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; ii) \$0.020 per contract for Non-ISE Market Maker orders; and iii) \$0.000 per contract for Priority Customer orders. For complex orders in Mini Options in the Select Symbols when trading against Priority Customers (excluding SPY), the following maker fees shall apply: i) \$0.039 per contract for Market Maker orders; ii) \$0.040 for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and iii) \$0.000 per contract for Priority Customer orders. For complex orders in Mini Options in SPY when trading against Priority Customers, the following maker fees shall apply: i) \$0.039 per contract for Market Maker orders; ii) \$0.041 for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and iii) \$0.000 per contract for Priority Customer orders. For complex orders in Mini Options in non-Select Symbols when trading against Priority Customers, the following maker fees shall apply: i) \$0.082 per contract for Market Maker orders; ii) \$0.084 for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and iii) \$0.000 per contract for Priority Customer orders.

For complex orders in Mini Options in the Select Symbols (excluding SPY), the following taker fees shall apply: i) \$0.039 per contract for Market Maker orders; ii) \$0.040 for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and iii) \$0.000 per contract for Priority Customer orders. For complex orders in Mini Options in SPY, the following taker fees shall apply: i) \$0.039 per contract for Market Maker orders; ii) \$0.041 for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and iii) \$0.000 per contract for Priority Customer orders. For complex orders in Mini Options in non-Select Symbols, the following taker fees shall apply: i) \$0.082 per contract for Market Maker orders; ii) \$0.084 for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders; and iii) \$0.000 per contract for Priority Customer orders.

Additionally, the Exchange proposes to charge Market Maker, Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customers a fee of: i) \$0.020 per contract (\$0.000 per contract for Priority Customers) for Crossing Orders for complex orders in Mini Options; ii) \$0.040 per contract to all market participants for Responses to Crossing Orders for complex orders in Mini Options in the Select Symbols; and iii) \$0.082 per contract for Market Makers (\$0.084 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customers and \$0.000 per contract for Priority Customers) for Responses to Crossing Orders for complex orders in Mini Options in non-Select Symbols).

The Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, and in the Non-Select Symbols for standard options when these orders trade with non-Priority

Customer orders in the complex order book. The Exchange proposes to extend this rebate program to Mini Options also, as follows:

For Mini Options in Select Symbols (excluding SPY), the Exchange proposes to adopt a base rebate of \$0.033 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month will be provided a rebate of \$0.035 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; \$0.037 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; \$0.039 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and \$0.040 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts. Additionally, the Exchange also proposes to adopt a rebate of \$0.001 per contract payable for incremental Priority Customer complex order volume when trading against non-Priority Customer complex orders in the complex order book above the highest tier for Mini Options in the Select Symbols (excluding SPY).

For Mini Options in SPY, the Exchange proposes to adopt a base rebate of \$0.036 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, members who achieve a certain level of ADV of executed Priority Customer complex order contracts across all symbols during a calendar month will be provided a rebate of

\$0.038 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; \$0.039 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; \$0.040 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and \$0.041 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts. Additionally, the Exchange also proposes to adopt a rebate of \$0.001 per contract payable for incremental Priority Customer complex order volume when trading against non-Priority Customer complex orders in the complex order book above the highest tier for Mini Options in SPY.

For Mini Options in non-Select Symbols, the Exchange proposes to adopt a base rebate of \$0.066 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month will be provided a rebate of \$0.072 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; \$0.075 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; \$0.077 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and \$0.078 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts. Additionally, the Exchange also proposes to adopt a rebate of \$0.001 per contract payable for incremental Priority Customer complex

order volume when trading against non-Priority Customer complex orders in the complex order book above the highest tier for Mini Options in the non-Select Symbols.

Further, the Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in all symbols for standard options when these orders trade against quotes or orders in the regular orderbook. The Exchange proposes to extend this rebate to Mini Options also, as follows:

For Mini Options (excluding SPY), the Exchange proposes to adopt a base rebate of \$0.006 per contract, per leg, for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook. Additionally, members who achieve a certain level of ADV of executed Priority Customer complex order contracts across all symbols during a calendar month will be provided a rebate of \$0.008 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; \$0.009 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; \$0.010 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and \$0.011 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts.

For Mini Options in SPY, the Exchange proposes to adopt a base rebate of \$0.007 per contract, per leg, for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook. Additionally, members who achieve a certain level of ADV of executed Priority Customer complex order contracts across all symbols during a calendar month will be provided a rebate of \$0.009 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer

complex order contracts; \$0.010 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; \$0.011 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and \$0.012 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts.

For each of the volume-based tiered rebates noted above, the highest rebate amount achieved by the Member for the current calendar month will apply retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month, with the exception of the incremental rebate, as noted above. For purposes of these volume-based tiered rebates, volume in standard options and Mini Options will be combined to calculate the tier a Member has reached. Based on the tier achieved, the Member will be rebated for that tier for all the standard options traded at the standard option rebate amount and for all the Mini Options traded at the Mini Option rebate amount.

The Exchange also proposes to adopt a rebate of \$0.025 per contract for contracts that are submitted to the Price Improvement Mechanism that do not trade with their contra order for Mini Options in the Select Symbols, and a rebate of \$0.015 per contract for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order for Mini Options in the Select Symbols except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbook.

Firm Fee Cap

The Exchange currently has a fee cap program that, subject to certain exclusions noted in the Schedule of Fees, is applicable across all products traded on ISE. Under the fee cap program, the Exchange caps proprietary transaction fees in all products traded on ISE, in the aggregate, at \$75,000 per month per Member. All proprietary transactions, including non-ISE market maker transactions, that are part of a crossing transaction are eligible towards the fee cap. Crossing volume from regular and complex orders in Mini Options, such as orders executed in the Facilitation Mechanism, Price Improvement Mechanism, Solicited Order Mechanism, Block Order Mechanism and Qualified Contingent Cross orders in Mini Options, counts towards the fee cap. The Exchange proposes to extend the fee cap to also include proprietary transactions in Mini Options that are part of a crossing transaction.

ISE also currently has a service fee of \$0.01 per side on all transactions that are eligible for the fee cap. The service fee applies once a member reaches the fee cap level and applies to every contract side included in and above the fee cap. A member who does not reach the monthly fee cap is not charged the service fee. The service fee is not calculated in reaching the fee cap. Once the fee cap is reached, the service fee applies to both proprietary and other account designations¹⁵ in all ISE products in addition to those transactions that were included in reaching the fee cap. For Mini Options, the Exchange

¹⁵ Other account designations include Prop-firm (Member trading for its own account and clearing in the F range at OCC), Prop-cust (Member trading for its own account and clearing in the C range at OCC), BD-firm (Member trading on behalf of another registered broker/dealer clearing in the F range at OCC), BD-cust (Member trading on behalf of another registered broker/dealer clearing in the C range at OCC), FarMM (Member trading on behalf of another registered broker/dealer clearing in the M range at OCC).

proposes to adopt a service fee of \$0.001 per side on all transactions that are eligible for the fee cap.

QCC and Solicitation Rebate

The Exchange currently provides a rebate for Qualified Contingent Cross (“QCC”) orders and Solicitation orders for standard options to further encourage members to submit greater numbers of QCC orders and Solicitation orders to the Exchange. The Exchange proposes to extend that rebate incentive to Mini Options. With this proposed rule change, the Exchange will provide a rebate to members who reach a certain volume threshold in QCC orders and/or Solicitation orders in standard options and Mini Options during a month. Once a Member reaches a volume threshold, the Exchange will provide a rebate to that Member for all of its QCC and Solicitation contracts traded for that month. For purposes of this rebate, volume in standard options and Mini Options will be combined to calculate the tier a Member has reached. Based on the tier achieved, the Member will be rebated for that tier for all the standard options traded at the standard option rebate amount and for all the Mini Options traded at the Mini Option rebate amount, as provided in the following table:

Originating Contract Sides	Rebate for Standard Options	Rebate for Mini Options
0 to 199,999	\$0.00	\$0.000
200,000 to 499,999	(\$0.07)	(\$0.007)
500,000 to 699,999	(\$0.08)	(\$0.008)
700,000 to 999,999	(\$0.09)	(\$0.009)
1,000,000+	(\$0.11)	(\$0.011)

The rebate will be paid to the Member entering a qualifying order, i.e., a QCC order and/or a Solicitation order. The rebate applies to QCC orders and Solicitation orders in all symbols traded on the Exchange. Additionally, the threshold levels are based on the originating side so if an order is broken up and executed with multiple

counter parties, all contracts of the originating side will be counted to reach the established threshold levels.

Complex Quoting in GLD

The Exchange currently allows Market Makers to enter quotations for complex order strategies in the complex order book in a limited group of symbols (“Complex Quoting Symbols”), one of which is GLD, a Mini Option class. Given this enhancement to the complex order functionality, and in order to maintain a competitive fee and rebate structure for Priority Customer orders, the Exchange has adopted maker fees that apply to transactions in the complex order book when they interact with Priority Customer orders in options overlying the Complex Quoting Symbols, including GLD. Specifically, the Exchange currently charges a maker fee of \$0.39 per contract for standard options in the Complex Quoting Symbols, including GLD. Of all the Complex Quoting Symbols, only GLD is approved for Mini Options trading and therefore, the Exchange proposes to charge a maker fee of \$0.039 per contract for Mini Options in GLD for Market Maker, Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders when these orders interact with Priority Customer orders. Priority Customer orders in GLD that trade in the complex order book are not charged a fee and do not receive a rebate when interacting with other Priority Customer orders.

Options Regulatory Fee

The Exchange currently charges an Options Regulatory Fee (“ORF”) of \$0.0042 per contract. The ORF is assessed to each member for all options transactions executed or cleared by the member 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, \$0.0042 per contract, since, as noted above, the costs to the Exchange to perform the necessary regulatory surveillance programs and procedures for Mini Options 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 has designated this proposal to be operative on March 18, 2013.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act¹⁷ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities and does not unfairly discriminate between issuers, brokers or dealers.

Regular Order Fees and Rebates for Mini Options

The Exchange has determined to charge fees and provide rebates for regular orders in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange currently provides for trading in standard options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees and rebates are reasonable and equitable in light of the fact that Mini Options do have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, levying fees that are 1/10th of what market participants pay today. As for Priority Customers, for the most part, the Exchange does

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

not charge Priority Customers a fee (Priority Customers have traditionally traded options on the Exchange without a fee) and to the extent they pay a transaction fee for trading in standard options, they will continue to pay a transaction fee in Mini Options but at 1/10th the rate they pay for standard options. The Exchange believes charging lower fees, or no fees, to Priority Customer orders attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. With respect to fees to Non-ISE Market Maker orders, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer regular orders is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, the Exchange believes it is appropriate and not unfairly discriminatory to assess a higher transaction fee to Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members. With respect to fees for Market Maker orders, the Exchange believes that the price differentiation between the various market participants is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements and paying membership-related non-transaction fees). The Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to market participants that do not have such requirements and obligations that Exchange Market Makers do. The Exchange believes the proposed fees and rebates

for regular orders in Mini Options will encourage use of Mini Options, which are designed to allow investors to reduce risk in high-priced underlying securities.

PMM Linkage Credit

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to provide a fee credit to PMMs for execution of Priority Customer orders in Mini Options in Non-Select Symbols and to Priority Customer and Professional Customer orders in Mini Options in Select Symbols to offset the costs incurred by PMMs as these fees will be uniformly applied to all PMMs that route out these orders at a rate that is 1/10th of the rate the Exchange currently provides for such orders in standard options.

Credit for Responses to Flash Orders

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to provide a fee credit for responses to Flash Orders when trading against Professional Customers orders in Mini Options in Non-Select Symbols and for responses to Flash Orders when trading against Priority Customers and Professional Customers in the Select Symbols at a rate that is 1/10th of the rate the Exchange currently provides for such orders in standard options. The Exchange believes the credit provides an incentive for members to trade these orders on the Exchange. The Exchange further believes that adopting a fee credit for executions resulting from responses to Priority Customer orders is reasonable and equitable because doing so will incentivize Exchange members to execute Priority Customer orders on the Exchange by trading against these orders at the National Best Bid or Offer. Further, the Exchange believes that the proposed fee credit is not unfairly discriminatory because the credit would be applied uniformly to responses to Priority Customer orders that are flashed and executed on the Exchange.

Payment for Order Flow

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a PFOF fee to Market Makers when trading against Priority Customers in GOOG because the Exchange already charges this fee for standard options in GOOG and is simply proposing to charge this fee at a level that is $1/10^{\text{th}}$ the rate for standard options in GOOG. The Exchange believes the proposed fee is equitable and not unfairly discriminatory because it will apply to all Exchange Market Makers. The Exchange does not currently charge a PFOF fee for standard options in AAPL, AMZN, GLD and SPY and therefore does not propose a PFOF fee for Mini Options in these symbols.

Route-Out Fee

Despite the Exchange's costs in routing orders to other exchanges, which are fixed regardless of whether the routed order is a standard option or a Mini Option, the Exchange has determined to charge a fee for routing out orders in Mini Options that is $1/10^{\text{th}}$ of the fee the Exchange charges for routing out orders in standard options. The Exchange believes it is reasonable, equitable and not unfairly discriminatory as these fees will be uniformly applied to all market participants that choose to trade Mini Options on the Exchange.

Complex Order Fees and Rebates for Mini Options

The Exchange has determined to charge fees and provide rebates for complex orders in Mini Options at a rate that is $1/10^{\text{th}}$ the rate of fees and rebates the Exchange currently provides for trading in standard options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange

believes the proposed fees and rebates are reasonable and equitable in light of the fact that Mini Options do have a smaller exercise and assignment value, specifically $1/10^{\text{th}}$ that of a standard option contract, and, as such, levying fees that are $1/10^{\text{th}}$ of what market participants pay today. As for Priority Customers, for the most part, the Exchange does not charge Priority Customers a fee (Priority Customers have traditionally traded options on the Exchange without a fee) and to the extent they pay a transaction fee for trading in standard options, they will continue to pay a transaction fee in Mini Options but at $1/10^{\text{th}}$ the rate they pay for standard options. With respect to fees to Non-ISE Market Maker orders, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer complex orders is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, the Exchange believes it is appropriate and not unfairly discriminatory to assess a higher transaction fee to Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members. With respect to fees for Market Maker orders, the Exchange believes that the price differentiation between the various market participants is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements and paying membership-related non-transaction fees). The Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to market participants that do not have such

requirements and obligations that Exchange Market Makers do. The Exchange believes the proposed fees and rebates for complex orders in Mini Options will encourage use of Mini Options, which are designed to allow investors to reduce risk in high-priced underlying securities.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders in Mini Options when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate will attract additional order flow to the Exchange and create liquidity in Mini Options, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these rebates for standard options that overlie the five securities on which Mini Options are approved for trading. The Exchange believes that the proposed rebates are competitive and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange. The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to combine volume in standard options and Mini Options to calculate the tier a Member has reached because doing so will provide members with an opportunity to qualify for increased rebates and therefore, incentivize members to trade more of such order flow on the Exchange.

Firm Fee Cap

The Exchange believes it is reasonable and equitable and not unfairly discriminatory to include Mini Options in the Exchange's fee cap program because it will potentially lower transaction fees for members providing liquidity in Mini Options on the Exchange. Members who reach the fee cap during a month will not have to pay

incremental transaction fees and thus will be able to lower their monthly fees. The Exchange believes that the fee cap is not unfairly discriminatory because all members, including non-ISE market makers, are eligible to reach the cap. The Exchange believes that the proposed service fee, which is $1/10^{\text{th}}$ of the service fee charged for standard options, is reasonable because members who reach the fee cap during a month will pay the service fee instead of the regular transaction fees and thus will be able to lower their monthly fees.

QCC and Solicitation Rebate

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to provide rebates for QCC and Solicitation orders in Mini Options. The Exchange believes that the proposed fee change will generally allow the Exchange and its members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal is reasonable as it will encourage members to direct their QCC and Solicitation orders in Mini Options to the Exchange instead of sending this order flow to a competing exchange. The Exchange believes that with the various tiers, which provides for additional volume thresholds, members will have the ability to qualify for higher rebates for sending their QCC and Solicitation orders in Mini Options to the Exchange. While the Exchange proposes to adopt the rebate levels for QCC and Solicitation orders in Mini Options that are $1/10^{\text{th}}$ of the rebate for standard options, the Exchange is also proposing to combine volume in Mini Options and standard options to allow members to reach a higher tier and therefore, qualify for higher rebates. The Exchange also believes that its rebate program for QCC and Solicitation orders is

equitable because it would uniformly apply to all members engaged in QCC and Solicitation trading in Mini Options traded on the Exchange.

Complex Quoting in GLD

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge the proposed maker fee for complex quoting in Mini Options in GLD. The Exchange believes it is reasonable and equitable to charge fees for orders in standard options executed in the complex order book when trading against Priority Customers in GLD given this unique functionality that allows Market Makers to quote in the complex order book. The Exchange believes that the proposed maker fee for complex orders in Mini Options in GLD is not unfairly discriminatory because the fees proposed herein are already applicable to complex orders in standard options in GLD; with this proposed rule change, the Exchange is simply extending fees that are already established on the Exchange to Mini Options in GLD at a rate that is 1/10th of the fee charged for standard options in GLD.

Options Regulatory Fee

The Exchange is not proposing any change to the ORF with the introduction of Mini Options. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge the ORF at the same rate for Mini Options as the Exchange charges for standard options. The Exchange believes that the cost to perform surveillance to ensure compliance with various Exchange and industry-wide rules is no different for Mini Options that it is for standard options. 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 Mini

Options. Therefore, the Exchange believes it is appropriate to treat both Mini Options and standard options the same with respect to the amount of ORF that is being charged.

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

ISE 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. This rule change is designed to provide greater specificity within the Schedule of Fees with respect to fees and rebates applicable to Mini Options.

The Exchange believes that the proposed fees and rebates for Mini Options which, with the exception to the ORF, are 1/10th of the fees and rebates the Exchange currently charges for standard options will not impose a burden on competition among various market participants on the Exchange, or between the Exchange and other exchanges that list and trade Mini Options, that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that charging different rates to different market participants does not impose a burden on competition for a number of reasons. For one, charging lower fees, or no fees, to Priority Customer orders attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Further, Market Makers have certain obligations and commitments to the Exchange that non-Market Makers (i.e., Non-ISE Market Makers, Firm Proprietary/Broker-Dealer and Professional Customer participants) do not and therefore it is appropriate for the Exchange to charge Market Makers fees that are different from those charged to other market participants. Further, the Exchange notes that for standard options a greater difference in fees for various market participants already exists than that which is proposed for Mini Options. For example, Priority

Customers already trade for lower taker fees than do Market Makers when trading complex orders on the Exchange. For complex orders in standard options, ISE Market Makers currently pays a taker fee as high as \$0.82 per contract for Non-Select Symbols (which are essentially non-Penny Pilot symbols) while the taker fee for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders in these symbols is \$0.84 per contract. For complex orders in standard options in these symbols, Priority Customers do not pay a taker fee. For Mini Options in these symbols, the taker fee proposed by the Exchange for ISE Market Makers is \$0.082 per contract, $1/10^{\text{th}}$ of the fee charged for standard options in these symbols, while the taker fee proposed by the Exchange for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders in these symbols is \$0.084 per contract, again $1/10^{\text{th}}$ of the fee charged for standard options. The differential for Mini Options is de minimus 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 Mini Options, being quite a bit smaller, should not prove to be a burden on competition. Mini Options are a new product being introduced to the listed options market and while the Exchange at this time believes that the proposed fees and rebates are appropriate, the impact of this proposed rule change will only be known for certain once Mini Options have begun trading.

The Exchange notes that it operates in a highly competitive environment in which market participants can readily direct their order flow to competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees

and rebates to remain competitive with other exchanges. For the reasons noted 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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁹ because it establishes a due, fee, or other charge imposed by ISE.

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 to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

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-ISE-2013-28 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-ISE-2013-28. 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-ISE-2013-28 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.²⁰

Kevin M. O'Neill
Deputy Secretary

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²⁰ 17 CFR 200.30-3(a)(12).