

100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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–NASDAQ–2013–053 and should be submitted on or before April 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69247; File No. SR–NYSEMKT–2013–24]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Amex Options Fee Schedule To Establish Fees for Mini-Options Contracts

March 27, 2013.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on March 18, 2013, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Amex Options Fee Schedule to Establish Fees for Mini-Options Contracts. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

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

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

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

⁴ In addition to the changes discussed below, the Exchange also proposes to make clarifying changes to the endnotes to the Fee Schedule to describe the impact, or lack thereof, of the introduction of Minis, including within endnotes 1, 5, 6, 7, 9, 10, 12, 13, 15, 16 and 17.

⁵ See File No. SR–NYSEMKT–2013–23 available at http://www.nyse.com/nyse/notices/nyseamex/rule-filings/pdf?sessionid=941DFBD950F4931B5A5B9153CB857BDB?file_no=SR-NYSEMKT-2013-23&seqnum=1.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

¹⁵ 17 CFR 200.30–3(a)(12).

participants, or between the Exchange and other exchanges in the listed options market place.

General Options and Trading Permit (ATP) Fees

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

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

Specialist/e-Specialist/DOMM Rights Fees: The monthly rights fees charged to Specialists, e-Specialists and Directed Order Market Makers (“DOMMs”) will continue to apply to them for transactions executed in Mini options. For purposes of calculating the Rights Fee, a transaction in a Mini option shall be counted the same as a transaction in a standard option contract from a volume perspective (i.e., one contract in a Mini will equal one contract in a standard option contract).

Premium Product Issues List— Monthly NYSE Amex Options Market Maker Participation Fee: Currently, the Premium Product Issues List is comprised of SPY, AAPL, IWM, QQQ, BAC, EEM, GLD, JPM, XLF and VXX. The Exchange notes that of these, three will have Mini options available for trading, specifically AAPL, GLD and SPY. To the extent that a NYSE Amex Options Market Maker transacts in any option series associated with a Premium Product Issue, including Mini option series, it will become liable for the associated Monthly Fee of \$1,000 per product, which is capped at \$7,000 per NYSE Amex Options Market Maker per month.

Options Regulatory Fee: Presently the Exchange charges an Options Regulatory Fee (“ORF”) of \$0.005 per contract. The ORF is assessed on each ATP Holder for all options transactions executed or cleared by the ATP Holder that are cleared by The Options Clearing Corporation (“OCC”) in the customer range, regardless of the exchange on which the transaction occurs. The

Exchange is proposing to charge the same rate for transactions in Mini options, \$0.005 per contract, since, as noted, the costs to the Exchange to process quotes, orders, trades and the necessary regulatory surveillance programs and procedures in Minis are the same as for standard option contracts. As such, the Exchange feels that it is appropriate to charge the ORF at the same rate as the standard option contract. The Exchange is proposing a non-substantive change to remove obsolete text describing a recent effective date for a change in the rate of the ORF.⁶

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

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

	Electronic executions		Manual executions		Electronic complex order executions		QCC executions	
	Fee/rebate	Marketing charge	Fee/rebate	Marketing charge	Fee/rebate	Marketing charge	Fee/rebate	Marketing charge
Customer	\$0.00	N/A	\$0.00	N/A	\$0.00	N/A	\$0.00	N/A
NYSE Amex Options Market Maker.	0.02	\$.02 Penny/ \$.06 Non Penny.	0.02	N/A	0.02	\$.02 Penny/ \$.06 Non Penny.	0.10	N/A
Firm	0.09	N/A	0.09	N/A	0.09	N/A	0.10	N/A
Non-NYSE Amex Options Market Maker.	0.09	N/A	0.09	N/A	0.09	N/A	0.10	N/A
Broker Dealer	0.09	N/A	0.09	N/A	0.09	N/A	0.10	N/A
Professional Customer.	0.09	N/A	0.09	N/A	0.09	N/A	0.10	N/A
NYSE Amex Options Floor Broker.	N/A	N/A	N/A	N/A	N/A	N/A	(0.02)	N/A

As with standard options, Customers transacting Mini options on the Exchange will trade for free. Mini options contracts on the Exchange will NOT count toward the Customer Electronic average daily volume (“ADV”) Tiers or associated rebates paid to Order Flow Providers (“OFPs”) described in endnote 17 to the current Fee Schedule.⁷ As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same

as for standard options. This, coupled with the lower per contract transaction fees charged to other participants, makes it impractical to offer OFPs a rebate for any Customer electronic Mini options volume they transact.

NYSE Amex Options Market Makers trading Mini options will be charged \$.02 per contract, except for QCC executions, where the charge will be \$.10 per contract. As with standard options, when an NYSE Amex Options

Market Maker trades contra to a Customer electronic order or Customer electronic Complex order, it will be subject to marketing charges. The marketing charges for Mini options will be \$.02 for Penny Pilot names and \$.06 for non-Penny Pilot names. These charges are generally anywhere from slightly less than 1/10th to slightly more than 1/10th of the charges incurred by NYSE Amex Options Market Makers today for standard option contract

⁶ See Securities Exchange Act Release No. 68183 (November 8, 2012), 77 FR 68186 (November 15, 2012) (SR-NYSEMKT-2012-54).

⁷ See NYSE Amex Options fee schedule dated January 2, 2013, available at <http://global>

derivatives.nyx.com/sites/global/derivatives.nyx.com/files/nyse_amex_options_fee_schedule_010213.pdf. However, the Exchange proposes to specify in endnote 17 that Total Industry Customer equity and ETF option average

daily volume includes OCC calculated Customer volume of all types, including Complex Order Transactions, QCC transactions, and mini options transactions, in equity and ETF options.

transactions. One important distinction is that, unlike standard contracts, transactions in Minis will NOT be eligible for the \$350,000 fee cap applicable to NYSE Amex Options Market Makers described in endnote 5 of the current Fee Schedule, nor will Mini volumes count towards the 50,000 ADV threshold described in endnote 5 to the current Fee Schedule. As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options; therefore the Exchange does not wish to include NYSE Amex Options Market Maker trades in Mini options in the monthly fee cap.

Firm transactions in Mini options will be charged at the rate of \$.09 per contract, except for QCC trades, where they will be charged \$.10 per contract, and Firm Facilitation trades, which will be charged \$.00 per contract. Additionally, the existing Firm Proprietary monthly fee cap for manual or open outcry trades described in endnote 6 of the current Fee Schedule will NOT apply to Mini transactions. As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options, therefore the Exchange does not wish to include Firm trades in Mini options in the monthly fee cap. Further, the proposed charge is higher than $\frac{1}{10}$ th of the current charges applicable to Firm Proprietary trades. This relatively higher rate is necessitated by the fact that the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. However, the Exchange does recognize that Firms can be an important source of liquidity when they facilitate their own customer's trading activity and, as such, the Firm Facilitation rate of \$.00, as described in endnote 6 of the current Fee Schedule, will continue to apply to Firm Facilitation trades in Minis.

Non-NYSE Amex Options Market Makers in Mini options will be charged at the rate of \$.09 per contract, except for QCC trades, where they will be charged \$.10 per contract (\$.05 charge per contract side). The proposed charge is higher than $\frac{1}{10}$ th of the current charges applicable to non-NYSE Amex Options Market Makers. This relatively higher rate is necessitated by the fact that the cost to the Exchange to process quotes, orders and trades in Minis is the same as standard options.

Professional Customer and Broker Dealer participants in Mini options will be charged at the rate of \$.09 per contract, except for QCC trades, where they will be charged \$.10 per contract. The proposed charge is higher than $\frac{1}{10}$ th of the current charges applicable

to Professional Customers and Broker Dealers. This relatively higher rate is necessitated by the fact that the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. Mini options volumes will NOT count towards the existing Professional Customer and Broker Dealer Electronic ADV Tiers For Taking Liquidity, as described in endnote 16 of the current Fee Schedule. This exclusion is warranted in the Exchange's view since, as noted, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options.

NYSE Amex Floor Brokers who execute Mini options will be eligible for a \$.02 per contract rebate for Mini options trades executed as a QCC trade. As with standard options, the rebate will NOT be paid for Customer to Customer QCC trades, as described in endnote 15 to the current Fee Schedule.

Routing Surcharge: In order to comply with the requirements of the Distributive Linkage Plan,⁸ the Exchange uses various means of accessing better priced interest located on other exchanges. Presently, the Exchange charges a Routing Surcharge of \$.11 per contract plus a pass through of the fees associated with the execution of the routed order on the other exchanges. The \$.11 is designed to recover the Exchanges costs in routing orders to the other exchanges. Those costs include clearance charges imposed by The OCC and per contract routing fees charged by the broker dealers who charge the Exchange for the use of their systems to route orders to other exchanges. The Exchange has spoken with both The OCC and the broker dealers who have informed the Exchange that their charges applicable to Mini options will be the same as for standard option contracts, as their cost to process a contract (i.e., routing or clearing) is the same irrespective of the exercise and assignment value of the contract. As such, the Exchange intends to charge the same Routing Surcharge for Mini options as it presently does for standard options, as described in endnote 7 of the current Fee Schedule. The Exchange notes that participants can avoid the Routing Surcharge in several ways. First, they can simply route to the exchange with the best priced interest. The Exchange, in recognition of the fact that markets can move while orders are in flight, also offers participants the ability to utilize order types that do not route to other exchanges. Specifically, the Post No

Preference ("PNP") order modifier is one such order that would never route to another exchange. In addition, there are others, such as PNP Blind and PNP Plus,⁹ which also would never route to another exchange. Given this ability to avoid the Routing Surcharge, coupled with the fixed third-party costs associated with routing, the Exchange believes it is reasonable to charge the same Routing Surcharge for Mini options that is charged for standard option contracts.

Limit Of Fees On Options Strategy Executions: Presently, the Exchange has a \$750 cap on transaction fees for Strategy Executions involving reversals and conversions, box spreads, short stock interest spreads, merger spreads and jelly rolls. The fees for these Strategy Executions are further capped at \$25,000 per month per initiating firm.

The Exchange will NOT include Mini option transactions as being eligible for any part of these per trade or per month Strategy Execution caps. As noted earlier, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options. Given that the per contract transaction fees are already substantially lower than the per contract fees for standard options, inclusion of Mini options in these fee caps is not warranted.

Excessive Bandwidth Utilization Fees

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

Messages To Contracts Traded Ratio Fee: For purpose of calculating the Messages to Contracts Traded Ratio Fee, quotes, orders and any executed contracts in Mini options will be counted the same as quotes, orders and any executed contracts involving standard option contracts.

Cancellation Fee: For purposes of calculating the Cancellation Fee, orders and executions in Mini options will be counted as being equivalent to an order or execution for a standard option contract.

As noted, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options and, as such, treating Minis the same as standard option contracts for the purposes of calculating any of the Excessive Bandwidth Utilization Fees is reasonable and equitable.

⁸ See Rule 990NY, Rule 991NY, Rule 992NY and Rule 993NY.

⁹ See Rule 900.3NY(p), Rule 900.3NY(w), and Rule 900.3NY(x).

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

2. Statutory Basis

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

General Options and Trading Permit (ATP) Fees

For purposes of the Fee Schedule relating to ATP fees, Specialist/e-Specialist/DOMM Rights Fees, the Premium Product Issues List—Monthly NYSE Amex Options Market Maker Participation Fee and the regulatory fees, including the ORF, the Exchange is not proposing any changes as a result of the introduction of Minis. This is due to, in part, the fact that the Exchange intends to have the Minis trade with the existing Specialist, e-Specialists and NYSE Amex Options Market Makers who trade AAPL. The Exchange is doing so as it believes it will foster transparency and better price discovery in Minis. This means that for example, the existing Specialist, e-Specialist, and NYSE Amex Options Market Makers will be able, and in fact obligated, to quote and trade AAPL Minis. This being the case, the Exchange believes it is entirely appropriate and, in fact, necessary, to treat Mini options the same as standard options with respect to the fees listed above. The fees listed above for standard options have not been deemed to be unreasonable, inequitable, or unfairly discriminatory and the introduction of Mini options raises no new issues with respect to such fees. Hence, the treatment of Minis in the same manner as standard option contracts for purposes of the ATP fees, Specialist/e-Specialist/DOMM Rights Fees, the Premium Product Issues List—Monthly NYSE Amex Options Market Maker Participation Fee and the regulatory fees, including the ORF, is reasonable, equitable and not unfairly discriminatory. Further, the Exchange notes, particularly in the context of the ORF, that the cost to perform surveillance to ensure compliance with various Exchange and industry-wide rules is no different for a Mini option than it is for a standard option contract.

Reducing the ORF for Mini options could result in a higher ORF for standard options. Such an outcome would arguably be discriminatory towards investors in standard options for the benefit of investors in Minis. As such, the appropriate approach is to treat both Minis and standard options the same with respect to the amount of the ORF that is being charged.

Per Contract Trade Related Charges, Including QCCs

The Exchange noted earlier that, while Minis have a smaller exercise and assignment value due to the reduced number of shares to be delivered as compared to standard option contracts, and despite the smaller exercise and assignment value of a Mini, the cost to the Exchange to process quotes and orders in Minis, perform regulatory surveillance and retain quotes and orders for archival purposes is the same as for a standard contract. This leaves the Exchange in a position of trying to strike the right balance of fees applicable to Minis—too low and the costs of processing Mini quotes and orders will necessarily cause the Exchange to either raise fees for everyone or 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 \$.00 per contract is reasonable, as Customers have long traded for free all options on the Exchange. The ability to trade for free attracts Customer order flow to the Exchange, which is beneficial to all other participants on the Exchange who generally seek to trade with Customer order flow. The proposed fee of \$.00 per

contract is the same fee charged to Customer orders in standard option contracts, which is an effective fee on the Exchange and has not been determined to be inequitable or unfairly discriminatory. Therefore, the proposed Customer pricing for Minis is equitable and not unfairly discriminatory. The Exchange feels that different rates for Customer transaction fees as compared to other market participants is equitable and not unfairly discriminatory because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees, and is equitable and not unfairly discriminatory to Firms and Broker Dealers because Market Makers have obligations that are not required of Firms and Broker Dealers and because Market Makers have additional costs that are not applicable to Firms and Broker Dealers.

The Exchange proposal to exclude volumes attributable to Customer executions in Mini options from the Customer Electronic ADV Tiers and associated rebates paid to OFPs described in endnote 17 to the current Fee Schedule is reasonable, equitable and not unfairly discriminatory for the following reasons. First, as noted above, the Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options. Given the overall lower expected revenues from Mini options, it is reasonable to exempt Mini option volumes from qualifying for the OFP rebate paid on standard option contracts. It is also equitable, since paying the rebate on Mini option volumes would likely necessitate either reducing the rebates paid to OFPs for all activity, or raising other participant fees. It is not unfairly discriminatory, as it will apply equally to all Customer executions in Mini options, regardless of the market participant submitting the order.

The Exchange proposal to charge NYSE Amex Market Makers, including Specialists, e-Specialists, Non-DOMMs and DOMMs a flat rate of \$.02 per contract, plus either \$.02 (for Penny Pilot issues) or \$.06 (for non-Penny Pilot issues) per contract in Marketing Charges when they trade contra to an electronic Customer order or an electronic Customer complex order, is reasonable. Generally, these fees range from slightly more than, to slightly less than, 10% of what the various NYSE Amex Options Market Maker participants pay today. Charging all types of NYSE Amex Options Market Makers the same fees to trade Minis is not unfairly discriminatory, as it applies to all of them equally. The fees are reasonable in light of the fact that the Minis do have a smaller exercise and

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

assignment value, specifically 1/10th that of a standard contract, and, as such, levying fees that are approximately 10% of what an NYSE Amex Options Market Maker pays today is reasonable and equitable.¹² The Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options. Considering the lower per contract fees that are proposed for NYSE Amex Options Market Makers, it is reasonable to exclude Mini option volumes from any part of the monthly NYSE Amex Options Market Maker fee cap of \$350,000 as well as the 50,000 contract ADV threshold applicable to standard options. As this exclusion will apply to all Mini option volumes executed by all NYSE Amex Options Market Makers, it is also equitable and not unfairly discriminatory.

The Exchange feels that different rates for NYSE Amex Market Maker transaction fees as compared to other market participants is equitable and not unfairly discriminatory because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees, and is equitable and not unfairly discriminatory to Firms and Broker Dealers because NYSE Amex Market Makers have obligations that are not required of Firms and Broker Dealers and because NYSE Amex Market Makers have additional costs that are not applicable to Firms and Broker Dealers. For example, NYSE Amex Options Market Makers are required to have trading permits in order to stream quotes. The number of permits is variable based on the number of options traded, and can cost as much as \$26,000 per month to quote all issues on the Exchange as an NYSE Amex Options Market Maker. Conversely, Firms pay a monthly permit fee of \$1,000 per month and broker dealers, Professional Customers and Non-NYSE Amex Options Market Makers typically access the facilities of the Exchange through either a Firm or Order Flow Provider who may or may not pass along the \$1,000 per month permit fee cost. Consequently, when all fees are taken together, the difference charged to NYSE Amex Options Market Makers as compared to Professional Customers, broker dealers, Non-NYSE Amex Options Market Makers and Firms is reasonable, equitable and not unfairly discriminatory. The Exchange further notes that there are no limits on the number of NYSE Amex Options Market

Makers that are permitted to quote in a given option and that any of the other participant types are free to apply to the Exchange to become a NYSE Amex Options Market Maker to avail themselves of the transaction charges applicable to NYSE Amex Options Market Makers presuming they are willing to accept the quoting obligations applicable to NYSE Amex Options Market Makers, which serve to foster price discovery and transparency.

The Exchange proposal to charge Firm proprietary trades \$.09 per contract, charge Firm Facilitation trades \$.00 and to exclude Mini options from the Firm monthly fee cap is reasonable, equitable and not unfairly discriminatory. First, the per contract charge is lower than what Firms pay for a standard contract in acknowledgement of the smaller exercise and assignment value. Although more than 10% of the rate paid by a Firm for a standard contract, this is warranted by the fact that the Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options. In this regard the proposal is reasonable and it is also equitable, as it allows the Exchange to offer this innovative product to investors without raising fees for other investors who may have no interest in trading Minis. Likewise, excluding Mini option volumes from the Firm monthly fee cap for manual trades is reasonable and equitable in light of the Exchange's desire to fund the costs associated with Minis with revenues from only those participants who trade them. Offering a fee cap for a product with reduced fees might necessitate raising costs for other participants; therefore, the Exchange believes that the exclusion from the Firm monthly fee cap for manual trades is both reasonable and equitable. The per contract Mini pricing for all Firms is the same, the proposal is also not unfairly discriminatory. Finally, as noted earlier, the Exchange recognizes that Firms can be an important source of liquidity when they facilitate their own customer volumes. Firm Facilitation trades add transparency and promote price discovery to the benefit of all market participants. For these reasons, the proposal to bill Firm Facilitation trades in Minis at the rate of \$.00 per contract is both reasonable and equitable. It is also not unfairly discriminatory as it applies equally to all Firms and their customers whose business is facilitated by the Firms.

The Exchange proposal to charge non-NYSE Amex Options Market Maker Mini trades \$.09 per contract is reasonable, equitable and not unfairly discriminatory. First, the per contract charge is lower than what non-NYSE

Amex Options Market Makers pay for a standard contract, in acknowledgement of the smaller exercise and assignment value. Although more than 10% of the rate paid by a non-NYSE Amex Options Market Maker for a standard contract, this is warranted by the fact that the Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options. In this regard, the proposal is reasonable and it is also equitable as it allows the Exchange to offer this innovative product to investors without raising fees for other investors who may have no interest in trading Minis. As the per contract Mini pricing for all non-NYSE Amex Options Market Makers is the same, the proposal is also not unfairly discriminatory.

The Exchange feels that different rates for non-NYSE Amex Options Market Maker transaction fees as compared to other market participants is equitable and not unfairly discriminatory because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees, and is equitable and not unfairly discriminatory to Firms and Broker Dealers, including non-NYSE Amex Market Makers, because NYSE Amex Options Market Makers have obligations that are not required of Firms and Broker Dealers, including non-NYSE Amex Market Makers, and because NYSE Amex Market Makers have additional costs that are not applicable to Firms and Broker Dealers, including non-NYSE Amex Market Makers. For example, as noted earlier, NYSE Amex Options Market Makers are required to have trading permits in order to stream quotes. The number of permits is variable based on the number of options traded, and can cost as much as \$26,000 per month to quote all issues on the Exchange as an NYSE Amex Options Market Maker. Conversely, Firms pay a monthly permit fee of \$1,000 per month and broker dealers, Professional Customers and Non-NYSE Amex Options Market Makers typically access the facilities of the Exchange through either a Firm or Order Flow Provider who may or may not pass along the \$1,000 per month permit fee cost. Consequently, when all fees are taken together, the difference charged to NYSE Amex Options Market Makers as compared to Professional Customers, broker dealers, Non-NYSE Amex Options Market Makers and Firms is reasonable, equitable and not unfairly discriminatory. The Exchange further notes that there are no limits on the number of NYSE Amex Options Market Makers that are permitted to quote in a given option and that any of the other participant types are free to apply to the

¹² NYSE Amex Options Market Makers who are not capped pay between \$.10 and \$.20 per contract plus Marketing Charges of \$.25 for Penny Pilot names and \$.65 for Non-Penny Pilot names when they trade contra to electronic Customer orders and electronic Customer complex orders.

Exchange to become a NYSE Amex Options Market Maker to avail themselves of the transaction charges applicable to NYSE Amex Options Market Makers presuming they are willing to accept the quoting obligations applicable to NYSE Amex Options Market Makers, which serve to foster price discovery and transparency.

The Exchange proposal to charge Professional Customer and Broker Dealer Mini trades \$.09 per contract and exclude Mini option volumes from the Professional Customer and Broker Dealer Electronic ADV Tiers For Taking Liquidity, as described in endnote 16 of the current Fee Schedule, is reasonable, equitable and not unfairly discriminatory. First, the per contract charge is lower than what Professional Customers and Broker Dealers pay for a standard contract, in acknowledgement of the smaller exercise and assignment value. Although more than 10% of the rate paid by a Professional Customer and Broker Dealers for a standard contract, this is warranted by the fact that the Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options. In this regard, the proposal is reasonable and it is also equitable as it allows the Exchange to offer this innovative product to investors without raising fees for other investors who may have no interest in trading Minis. As the per contract Mini pricing for all Professional Customer and Broker Dealers is the same, the proposal is also not unfairly discriminatory. The Exchange proposal to exclude volumes attributable to Professional Customer and Broker Dealer executions in Mini options from the Professional Customer and Broker Dealer Electronic ADV Tiers For Taking Liquidity, as described in endnote 16 of the current Fee Schedule, is reasonable, equitable and not unfairly discriminatory for the following reasons. First, as noted above, the Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options. Given the overall lower expected revenues from Mini options, it is reasonable to exempt Mini option volumes from Professional Customer and Broker Dealer Electronic ADV Tiers For Taking Liquidity, as the per contract charge for Minis is quite low to begin with—for example, the lowest fee charged to the highest volume Professional Customer and Broker Dealer is \$.23 per contract, which is still more than double the proposed Mini pricing of \$.09 per contract. It is also equitable since paying the rebate on Mini option volumes would likely necessitate either reducing

the rebates paid to Professional Customers and Broker Dealers for standard option contracts volumes, or raising other participant fees. It is not unfairly discriminatory as it will apply equally to all Professional Customer and Broker Dealer executions in Mini options.

The Exchange feels that different rates for Professional Customer and Broker Dealer transaction fees as compared to other market participants is equitable and not unfairly discriminatory because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees, and is equitable and not unfairly discriminatory to Professional Customers, Firms and Broker Dealers because NYSE Amex Market Makers have obligations that are not required of Professional Customer, Firms and Broker Dealers and because NYSE Amex Market Makers have additional costs that are not applicable to Professional Customers, Firms and Broker Dealers. For example, as noted earlier, NYSE Amex Options Market Makers are required to have trading permits in order to stream quotes. The number of permits is variable based on the number of options traded, and can cost as much as \$26,000 per month to quote all issues on the Exchange as an NYSE Amex Options Market Maker. Conversely, Firms pay a monthly permit fee of \$1,000 per month and broker dealers, Professional Customers and Non-NYSE Amex Options Market Makers typically access the facilities of the Exchange through either a Firm or Order Flow Provider who may or may not pass along the \$1,000 per month permit fee cost. Consequently, when all fees are taken together, the difference charged to NYSE Amex Options Market Makers as compared to Professional Customers, broker dealers, Non-NYSE Amex Options Market Makers and Firms is reasonable, equitable and not unfairly discriminatory. The Exchange further notes that there are no limits on the number of NYSE Amex Options Market Makers that are permitted to quote in a given option and that any of the other participant types are free to apply to the Exchange to become a NYSE Amex Options Market Maker to avail themselves of the transaction charges applicable to NYSE Amex Options Market Makers presuming they are willing to accept the quoting obligations applicable to NYSE Amex Options Market Makers, which serve to foster price discovery and transparency.

The Exchange proposal for QCC pricing for Minis is to charge Customers \$.00, as is the case with standard options, and all non-Customers will be charged \$.10 per contract, as compared

with \$.20 per contract for standard options. The Exchange will also offer NYSE Amex Floor Brokers a rebate of \$.02 per contract for all Mini options they execute as a QCC trade, as compared to \$.07 per contract rebate for standard options. The Exchange believes that this pricing is reasonable, equitable and not unfairly discriminatory. First, the Exchange has always charged a premium for non-Customer participants for QCC trades in standard options due to the fact that qualifying QCC trades are executed immediately, upon entry, without exposure or any opportunity for other participants to participate on the trade. This pricing proposal preserves that premium and, as such, is reasonable. It is equitable since, as noted, the Exchange's cost to process quotes, orders and trades in Minis is the same as for standard options, so charging a relatively small premium for the opportunity to trade without exposure is warranted, given the Exchange's need to cover the costs of participants trading Minis so as to avoid sharing those costs with other participants who are not trading Minis. The proposal is also not unfairly discriminatory as it applies equally to all Customers. Likewise all non-Customers are treated the same under this proposal. The Floor Broker rebate of \$.02 is reasonable and equitable as it is designed to allow Floor Brokers to compete for QCC volumes that might otherwise execute on an exchange that offers a front end order entry system, like ISE PrecISE Trade application¹³ or CBOE's HyTS,¹⁴ which would allow participants to potentially avoid paying a brokerage fee. The Floor Broker rebate is not unfairly discriminatory as it applies equally to all NYSE Amex Floor Brokers who execute Mini options as QCC trades.

The Exchange feels that different rates for QCC fees for different market participants is equitable and not unfairly discriminatory because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees, and is equitable and not unfairly discriminatory to Firms and Broker Dealers because Market Makers have obligations that are not required of Firms and Broker Dealers and because Market Makers have additional costs that are not applicable to Firms and Broker Dealers. The Exchange notes that QCC pricing for standard options is \$.20 for non-Customers and \$.00 for Customers. Such differential has been shown by virtue of its effectiveness for

¹³ See <http://www.ise.com/WebForm/viewPage.aspx?categoryId=129>.

¹⁴ See <https://www.cboe.org/hybrid/HyTs.aspx>.

many months with respect to standard options contracts, to be reasonable, equitable and not unfairly discriminatory; therefore the Exchange believes that the proposed Mini QCC pricing of \$.10 for non-Customers and \$.00 for Customers is reasonable, equitable and not unfairly discriminatory as well.

The Exchange proposal to treat Mini options the same as standard options for purposes of the Routing Surcharge is reasonable, equitable and not unfairly discriminatory for the following reasons. Presently, the Exchange charges a Routing Surcharge of \$.11 per contract plus a pass through of the fees associated with the execution of the routed order on the other exchanges. The \$.11 is designed to recover the Exchange's costs in routing orders to the other exchanges. Those costs include clearance charges imposed by The OCC and per contract routing fees charged by the broker dealers who charge the Exchange for the use of their systems to route orders to other exchanges. The Exchange has spoken with both The OCC and the broker dealers, who have informed the Exchange that their charges applicable to Mini options will be the same as for standard option contracts, as their cost to process a contract (i.e., routing or clearing) is the same irrespective of the exercise and assignment value of the contract. As such, the Exchange intends to charge the same Routing Surcharge for Mini options as it presently does for standard options, as described in endnote 7 of the current Fee Schedule. The Exchange notes that participants can avoid the Routing Surcharge in several ways. First they can simply route to the exchange with the best priced interest. The Exchange, in recognition of the fact that markets can move while orders are in flight, also offers participants the ability to utilize order types that do not route to other exchanges. Specifically, the PNP order modifier is one such order that would never route to another exchange. In addition, there are others, such as PNP Blind and PNP Plus,¹⁵ which also would never route to another exchange. Given this ability to avoid the Routing Surcharge, coupled with the fixed third party costs associated with routing, the Exchange feels it is reasonable and equitable to charge the same Routing Surcharge for Mini options that is charged for standard option contracts. Since the Routing Surcharge will apply to all participants in Minis as it is applied for standard options, and because such surcharge has

not previously been found to be unreasonable, inequitable or unfairly discriminatory, the Exchange believes it is the case for Minis as well.

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

Excessive Bandwidth Utilization Fees

The Exchange proposes to treat Mini options the same as standard options for purposes of the Excessive Bandwidth Utilization Fees, which include the Order To Trade Ratio Fee, the Messages to Contracts Traded Ratio Fee and the Cancellation Fees. As noted, the cost to the Exchange to process quotes, orders and trades in Minis is the same as for standard options and, as such, treating Minis the same as standard option contracts for the purposes of calculating any of the Excessive Bandwidth Utilization Fees is reasonable and equitable. It is also not unfairly discriminatory, as such treatment will apply to all participants equally.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁶ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁷ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2013-24 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-NYSEMKT-2013-24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

¹⁵ See Rule 900.3NY(p), Rule 900.3NY(w), and Rule 900.3NY(x).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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 Web site 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-NYSEMKT-2013-24 and should be submitted on or before April 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-07620 Filed 4-1-13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 69246; File No. SR-NYSEArca-2013-25]

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

March 27, 2013.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 18, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (the "Fee Schedule") to establish fees for mini-options contracts ("Minis"). The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

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

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

Minis have a smaller exercise and assignment value due to the reduced number of shares they deliver as compared to standard option contracts. As such, the Exchange is proposing generally lower per contract fees as compared to standard option contracts, with some exceptions to be fully

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

General Options and Trading Permit (OTP) Fees

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

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

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

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

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

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