

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69235; File No. SR-CBOE-2013-036]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Order Type and Auction Rules in Advance of Mini-Option Launch

March 25, 2013.

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 20, 2013, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

CBOE proposes to amend Rules 6.53 (Certain Types of Orders Defined), 6.74 (Crossing Orders), 6.74A (Automated Improvement Mechanism (“AIM”)) and 6.74B (Solicitation Auction Mechanism). Each of these rules sets forth minimum order quantities predicated on an option contract delivering 100 shares. The proposal would amend these rules to maintain the same minimum order quantities in amounts proportional to mini-options delivering 10 shares (*i.e.*, the same number of underlying securities). The Exchange is not proposing to change the substantive content of these rules. The text of the proposed rule change is

available on the Exchange’s Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the 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

CBOE recently amended its rules to allow for the listing of mini-options that deliver 10 physical shares on SPDR S&P 500 (“SPY”), Apple, Inc. (“AAPL”), SPDR Gold Trust (“GLD”), Google Inc. (“GOOG”) and Amazon.com Inc. (“AMZN”).⁵ Mini-options trading is expected to commence on March 18, 2013.

Standard equity and exchange-traded fund (“ETF”) option contracts have a unit of trading of 100 shares deliverable and mini-options will have a unit of trading of 10 shares deliverable.⁶ Except for the difference in the number of deliverable shares, mini-options will have the same terms and contract characteristics as standard equity and ETF options, including exercise style. Accordingly, the Exchange represented in its original mini-option filing that Exchange rules that apply to the trading of standard option contracts will apply to mini-options as well.⁷

⁵ See Securities Exchange Act Release No. 68656 (January 15, 2013), 78 FR 4526 (January 22, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List and Trade Option Contracts Overlying 10 Shares of Certain Securities) (SR-CBOE-2013-001). See also CBOE Rule 5.5.22.

⁶ Strike prices for mini-options will be set at the same level as for standard options. See CBOE Rule 5.5.22(b). Bids and offers for mini-options will be expressed in terms of dollars per 1/10th part of the total value of the contract. See CBOE Rule 6.41(c). No additional series of mini-options may be added if the underlying security is trading at \$90 or less. The underlying security must trade above \$90 for five consecutive days prior to listing mini-option contracts in an additional expiration month. See CBOE Rule 5.5.22(c).

⁷ 78 FR 4527.

Prior to the commencement of trading mini-options, the Exchange proposes to amend Rules 6.53 (Certain Types of Orders Defined), 6.74 (Crossing Orders), 6.74A (AIM) and 6.74B (Solicitation Auction Mechanism). Each of these rules sets forth minimum order quantities predicated on an option contract delivering 100 shares. The purpose of the proposed rule change is to amend these rules to maintain the same minimum order quantities in amounts proportional to mini-options delivering 10 shares (*i.e.*, the same number of underlying securities). The Exchange is not proposing to change the substantive content of these rules.

CBOE Rule 6.53(u): Certain Types of Orders Defined—Qualified Contingent Crosses (“QCC”)

CBOE Rule 6.53 sets forth different order types that may be made available on a class-by-class basis for trading on the Exchange. Subparagraph (u) to CBOE Rule 6.53 provides for the availability of QCC orders, which are orders to buy (sell) at least 1,000 standard options that are identified as being a part of a qualified contingent trade coupled with a contra-side order to buy (sell) an equal number of contracts.

A controversial feature of QCC orders is that they “may execute without exposure provided the execution (1) is not at the same price as a public customer order resting in the electronic book and (2) is at or between the [National Best Bid or Offer]”.⁸ The Commission approved the availability of QCC orders in which the order has a minimum size of 1,000 standard option contracts (which is equivalent to 10,000 mini-option contracts). Because QCC orders may be executed without exposure, the Exchange believes that it is imperative to maintain the minimum QCC order size for mini-options that is required for standard options in proportion.

Accordingly, CBOE proposes to amend CBOE Rule 6.53(u) to specify that the minimum QCC order size for standard options is 1,000 contracts and the minimum order size for mini-

⁸ See CBOE Rule 6.53(u)(ii). CBOE commented extensively when QCC orders were initially proposed by the International Securities Exchange, LLC (“ISE”) and a protracted regulatory review of QCC orders culminated with the Commission approving the introduction of QCC orders, notwithstanding CBOE’s strong objections to the order type. See Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR-ISE-2010-73). CBOE adopted rules to permit QCC orders as a competitive response but continues to remain critical of the order type. See Exchange Act Release No. 64653 (June 13, 2011), 76 FR 35491 (June 17, 2011) (SR-CBOE-2011-041).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

options is 10,000 contracts. Contra-side orders to sell (buy) must contain an equal number of contracts that are comprised exclusively of the same option type (*i.e.*, all standard options or all mini-options).

CBOE Rule 6.74: Crossing Orders, SizeQuote Mechanism and Tied Hedges

CBOE Rule 6.74 sets forth rules of priority and order allocation procedures that apply to crossing orders in open outcry. Subparagraph (d) to Rule 6.74 provides that Floor Brokers may cross a certain percentage of a public customer order with a facilitation order of the originating firm (*i.e.*, the firm from which the original customer order originated). That provision further provides that the Exchange may determine to include solicited orders within the provision of the rule and may determine (on a class-by-class basis) the eligible size for an order that may be transacted under subparagraph (d), however, the eligible order size may not be less than 50 standard option contracts (which is equivalent to 500 mini-option contracts). The Exchange proposes to maintain the minimum eligible order size for mini-options that is required for standard options in proportion.

Accordingly, CBOE proposes to amend CBOE Rule 6.74(d) to specify that the minimum crossing order size for standard options may not be less than 50 contracts and the minimum crossing order size for mini-options may not be less than 500 contracts.

CBOE Rule 6.74(f) sets forth rules regarding the Open Outcry "SizeQuote Mechanism," which is a process by which a Floor Broker may execute and facilitate large-size orders in open outcry. The eligible order size may not be less than 250 standard option contracts (which is equivalent to 2,500 mini-option contracts). The Exchange proposes to maintain the minimum eligible order size for mini-options that is required for standard options in proportion.

Accordingly, CBOE proposes to amend CBOE Rule 6.74(f)(i)(A) to specify that the minimum order size for standard options may not be less than 250 contracts and the minimum order size for mini-options may not be less than 2,500 contracts.

The Exchange proposes to make a technical, non-substantive change to CBOE Rule 6.74(f)(i) to delete obsolete rule text that references a pilot program that expired on February 15, 2008.

CBOE Rule 6.74.10 provides that Rule 6.9 (Solicited Transactions) does not prohibit a Trading Permit Holder ("TPH") or TPH organization from

buying or selling a stock, security futures or futures position following receipt of an option order, including a complex order. Prior to announcing such an order to the trading crowd, the option order must be in a class that has been designated eligible for "tied hedge" transactions and must be within the designated tied hedge eligibility size parameters, which are established by CBOE on class-by-class basis and which may not be smaller than 500 standard option contracts per order (which is equivalent to 5,000 mini-option contracts). Multiple orders may not be aggregated to satisfy the size parameter. The Exchange proposes to maintain the minimum designated tied hedge eligibility size parameters for mini-options that are required for standard options in proportion.

Accordingly, CBOE proposes to amend CBOE Rule 6.74.10 to specify that the minimum order size for standard options may not be smaller than 500 contracts and the minimum order size for mini-options may not be smaller than 5,000 contracts.

CBOE Rule 6.74A: AIM

CBOE Rule 6.74A permits a TPH that represents agency orders to electronically execute an order it represents as an agent ("Agency Order") against principal interest or against a solicited order provided it submits the Agency Order for electronic execution into the AIM auction pursuant to the requirements of CBOE Rule 6.74A. CBOE Rule 6.74A sets forth minimum size requirements for initiating auctions. Specifically, CBOE Rule 6.74A(a)(1) and (2) provide:

- if the Agency Order is for 50 standard option contracts (which is equivalent to 500 mini-option contracts) or more, the Initiating Trading Permit Holder must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO or the Agency Order's limit price (if the order is a limit order); and
- if the Agency Order is for less than 50 option standard contracts (which is equivalent to 500 mini-option contracts), the Initiating Trading Permit Holder must stop the entire Agency Order as principal or with a solicited order at the better of (A) the NBBO price improved by one minimum price improvement increment, which increment shall be determined by the Exchange but may not be smaller than one cent; or (B) the Agency Order's limit price (if the order is a limit order).

Similarly, CBOE Rule 6.74A(b)(1)(A) sets forth provisions governing the auction period and request for responses ("RFRs"). CBOE Rule 6.74A(b)(1)(A)

sets forth order procedures for automatic matching based on size that provide:

- the Agency Order will be stopped at the NBBO (if 50 standard contracts or greater (which is equivalent to 500 mini-option contracts)), or
- one cent/one minimum increment better than the NBBO (if less than 50 contracts (which is equivalent to 500 mini-option contracts)).

The Exchange proposes to maintain the order sizes for mini-options that are required for standard options in proportion.

Accordingly, CBOE proposes to amend CBOE Rule 6.74A(a)(2) and (3) and 6.74A(b)(1)(A) to specify that order size for standard options is 50 contracts and the order size for mini-options is 500 contracts.

CBOE Rule 6.74B: Solicitation Auction Mechanism

CBOE Rule 6.74B permits a TPH that represents agency orders to electronically execute orders it represents as agent ("Agency Order") against solicited orders provided it submits the Agency Order for electronic execution into the solicitation auction mechanism (the "Auction") pursuant to the requirements of CBOE Rule 6.74B. CBOE Rule 6.74B requires the Exchange to determine minimum eligible size parameters for participation in Auctions, however, the eligible order size may not be less than 500 standard option contracts (which is equivalent to 5,000 mini-option contracts). The Exchange proposes to maintain the minimum eligibility size parameters for mini-options that are required for standard options in proportion.

Accordingly, CBOE proposes to amend CBOE Rule 6.74B(a)(1) to specify that the minimum order size for standard options may not be less than 500 contracts and the minimum order size for mini-option may not be less than 5,000 contracts.

Standard option series subject to an adjustment will be subject to the minimum order quantities for standard options contained in the CBOE Rules addressed by this filing and mini-option series subject to an adjustment will be subject to the minimum order quantities for mini-options contained in the CBOE Rules addressed by this filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements

of Section 6(b) of the Act.⁹ In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that investors would benefit from the current rule proposal because it would clarify how minimum order quantities that are predicated on an option contract delivering 100 shares will apply to mini-options. The Exchange believes that the marketplace and investors will be expecting clarification by the Exchange on this issue. As a result, the Exchange believes that this change would lessen investor and marketplace confusion because the rules being amended by this filing will be clear as to the application to mini-options.

The Exchange also believes that the current proposal is designed to promote just and equitable principles of trade because it will maintain the same minimum order quantities in amounts proportional to mini-options.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, since mini-options are permitted on multiply-listed classes, the Exchange understands and expects similar rule filings will be submitted by other exchanges to similarly change any order type and auction rules so that their rules that set forth minimum order quantities for standard options will apply in amounts proportional to mini-options. CBOE also believes that the proposed rule change will enhance competition by providing for the same proportional minimum order quantities contained in order type and auction rules to apply to standard and mini-options on the same security.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide with the anticipated launch of trading in Mini Options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹³ Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in Mini Options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-CBOE-2013-036 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-CBOE-2013-036. 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-CBOE-2013-036 and should be submitted on or before April 22, 2013.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69238; File No. SR-BATS-2013-020]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

March 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 18, 2013, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange’s Web site at <http://www.batstrading.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to implement pricing applicable to the Exchange’s options platform (“BATS Options”) with respect to executions in Mini Options. Mini Options are options that overlie 10 equity or ETF shares, rather than the standard 100 shares.⁶ Specifically, the Exchange is proposing that executions in Mini Options will be free for both orders that add to and orders that remove liquidity from the BATS Options book.

Currently, all orders executed on BATS Options are subject to standard pricing, which includes variable fees and/or rebates based on whether the order adds or removes liquidity, the capacity of the order (Professional,⁷ Firm, Market Maker,⁸ or Customer⁹ orders), a Member’s average daily trading volume, the amount that a Member increases its total trading volume from month to month, and whether the issue is a penny pilot issue, among others. In addition to standard

rebates, orders that add liquidity may be eligible for additional rebates upon execution of orders that originally set a new NBBO¹⁰ as well as executions that qualify for the Exchange’s quoting incentive program.¹¹

The Exchange is proposing that executions in Mini Options will be free for both orders that add to and orders that remove liquidity from the BATS Options book and that no executions in Mini Options will be eligible for additional liquidity rebates. Specifically, executions in Mini Options will not be eligible for any rebate, including the NBBO setter liquidity rebate or the quoting incentive program liquidity rebates. It should be noted, however, that executions in Mini Options will be counted in calculations of ADV¹² and TCV¹³ for purposes of calculating other rebates and fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.¹⁴ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

The introduction of pricing for Mini Options, as described above and proposed by this filing, is intended to allow the Exchange to begin trading in Mini Options without charging any fees

⁶ See Securities Exchange Act Release No. 69018 (March 1, 2013), 78 FR 15090 (March 8, 2013) (Notice of filing and immediate effectiveness allowing Mini Options to be listed and traded on BATS Options) (SR-BATS-2013-013). The Exchange expects to begin listing and trading Mini Options on March 18, 2013.

⁷ The term “Professional” is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

⁸ As defined on the Exchange’s fee schedule, the terms “Firm” and “Market Maker” apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation (“OCC”).

⁹ As defined on the Exchange’s fee schedule, a Customer order refers to an order identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a “Professional” as defined in Exchange Rule 16.1.

¹⁰ As defined in Exchange Rule 27.1(11), the term “NBBO” is defined to mean the national best bid and offer in an option series as calculated by an Eligible Exchange.

¹¹ See Securities Exchange Act Release No. 69079 (March 8, 2013) (SR-BATS-2013-017) (notice of filing and immediate effectiveness of proposed rule change related to fees for use of BATS Options).

¹² As defined on the Exchange’s fee schedule, ADV is average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. The fee schedule also provides that routed contracts are not included in ADV calculation.

¹³ As defined on the Exchange’s fee schedule, TCV is total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.