

letter<sup>12</sup> requesting an extension of this relief until the effective date of the final rules defining the terms “swap” and “security-based swap.”<sup>13</sup>

#### B. Roundtable Request

In support of its request for an extension of section 6(l) relief, the Roundtable stated that the extension is necessary in order to give the industry more time to “review the requirements and implement the systems necessary to conform to the newly finalized definition of [eligible contract participant].”<sup>14</sup> The Roundtable further stated that linking the expiration of the section 6(l) relief to the effective date of the Product Definitions Adopting Release will be more efficient for market participants due to the large number of CFTC Title VII provisions that are already tied to the effectiveness of that release.<sup>15</sup> Finally, the Roundtable stated that the requested extension would result in harmonization with the CFTC.<sup>16</sup>

In light of the concerns expressed by the commenter, the Commission finds that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to extend the section 6(l) relief provided in the Effective Date Relief for the limited time requested, that is, until the effective date of the Product Definitions Adopting Release. Specifically, pursuant to the Commission’s authority under Section 36 of the Exchange Act,<sup>17</sup> the Commission is extending the temporary conditional exemption provided in the Effective Date Relief from section 6(l) of the Exchange Act for persons that meet the definition of eligible contract participant as set forth

<sup>12</sup> Letter from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable, to Elizabeth M. Murphy, Secretary, Commission (July 13, 2012) (“Roundtable Extension Request”), available at: <http://www.sec.gov/comments/s7-05-12/s70512-9.pdf>.

<sup>13</sup> The Commission and the CFTC have approved the final rules (“Product Definitions Adopting Release”). See <http://sec.gov/rules/final/2012/33-9338.pdf>.

<sup>14</sup> Roundtable Extension Request at 2.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* The CFTC’s existing relief from the CEA analogue to section 6(l) expires on the effective date of the Product Definitions Adopting Release. See Second Amendment to July 14, 2011 Order for Swap Regulation, 77 FR 41260, 41263 n.42 (July 13, 2012).

<sup>17</sup> 15 U.S.C. 78mm. Subject to certain exceptions, section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

in section 1a(12) of the CEA (as in effect on July 20, 2010). This temporary conditional exemption will expire on the effective date of the Product Definitions Adopting Release.

#### III. Conclusion

*It is hereby ordered*, pursuant to section 36(a) of the Exchange Act, that the temporary conditional exemption from section 6(l) of the Exchange Act provided in the Effective Date Release for persons that meet the definition of eligible contract participant as set forth in section 1a(12) of the Commodity Exchange Act (as in effect on July 20, 2010) is extended until 60 days after publication of the Product Definitions Adopting Release (Rel. No. 33-9338, 34-67453; File No. S7-16-11) in the **Federal Register**.

By the Commission.

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-67475; File No. SR-NYSEArca-2012-48]**

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h) To Add a PL Select Order Type

July 20, 2012.

On May 22, 2012, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending NYSE Arca Equities Rule 7.31(h) to add a PL Select Order type. The proposed rule change was published for comment in the **Federal Register** on June 8, 2012.<sup>3</sup> The Commission received no comments on the proposal.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 67101 (June 4, 2012), 77 FR 34115 (June 8, 2012) (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is July 23, 2012. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal. Pursuant to NYSE Arca Equities Rule 7.31(h)(4), a Passive Liquidity (“PL”) Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price. The PL Select Order would be a subset of the PL Order that would not interact with certain contra-side interest, specifically, any incoming order that: (i) Has an immediate-or-cancel (“IOC”) time in force condition, (ii) is an ISO, or (iii) is larger than the size of the PL Select Order.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates September 6, 2012, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Kevin M. O’Neill,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-67481; File No. SR-CBOE-2012-068]**

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

July 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 11, 2012, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

“Commission”) the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

#### **1. Purpose**

The Exchange proposes to amend its Customer Large Trade Discount (the “Discount”), which is intended to cap fees on large customer trades. Currently, regular customer transaction fees are charged up to the first 10,000 VIX options contracts in a customer order. The Exchange proposes to amend the Discount to state that for any executing Trading Permit Holder (“TPH”) whose affiliate<sup>3</sup> is the issuer of one or more

<sup>3</sup> See CBOE Rule 1.1(j), which defines “affiliate” as “a person who, directly or indirectly, controls, is controlled by, or is under common control with, such other person.” CBOE Rule 1.1(k) defines “control” as “the power to exercise a controlling influence over the management or policies of a person, unless such power is solely the result of an official position with such person. Any person who owns beneficially, directly or indirectly, more than 20% of the voting power in the election of directors of a corporation, or more than 25% of the voting power in the election of directors of any other corporation which directly or through one or more affiliates owns beneficially more than 25% of the voting power in the election of directors of such corporation, shall be presumed to control such corporation.” CBOE Rule 1.1(ff) defines “person” as “an individual, partnership (general or limited), joint stock company, corporation, limited liability

securities, the combined total asset value of which is \$1 billion or greater, that are based on or track the performance of VIX futures, regular customer transaction fees will only be charged up to the first 7,500 VIX options contracts per order in that month (“the Amendment”). On the first business day following the end of a calendar month, the Exchange will multiply the reported net asset value of each security that is based on or tracks the performance of VIX futures (as reported on the final calendar day of the month) by the amount of outstanding shares in that security to determine the total asset value of that security. The Exchange will then amalgamate the total asset values of all the securities that are based on or track the performance of VIX futures issued by the same issuer to determine if such issuer reaches the \$1,000,000 [sic] threshold. The Exchange will then announce via information circular, on the first trading day of the calendar month, the TPH entities that are affiliated with issuers who met the threshold and therefore with which qualifying VIX options trades will only be charged transaction fees up to 7,500 contracts.

The purpose of the Amendment is to incentivize the creation and issuance of securities that are based on or track the performance of VIX futures.

The proposed change is to take effect on August 1, 2012.

#### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>5</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Amendment is reasonable because it will allow qualifying TPHs to pay lower transaction fees for large customer VIX options transactions. The Amendment is equitable and not unfairly discriminatory because it is intended to incentivize the creation and issuance of securities that are based on or track the performance of VIX futures, which provides more trading opportunities for

company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.”

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

all market participants. Further, the lower 7,500-contract threshold for TPHs that are affiliated with issuers who hit the \$1,000,000 [sic] threshold will encourage such TPHs to bring more customer VIX options orders to the Exchange, and the resulting increased volume and liquidity will benefit all market participants trading VIX options.

## *B. Self-Regulatory Organization’s Statement on Burden on Competition*

CBOE 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*

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and paragraph (f) of Rule 19b-4<sup>7</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## **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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-068 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.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2012-068. 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-2012-068 and should be submitted on or before August 16, 2012.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67482; File No. SR-CBOE-2012-042]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To List and Trade CBOE S&P 500 AM/PM Basis Options

July 20, 2012.

#### I. Introduction

On May 23, 2012, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission

("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the listing and trading of cash-settled CBOE S&P 500 AM/PM Basis ("SPBAS") options. The proposed rule change was published for comment in the **Federal Register** on June 6, 2012.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

CBOE proposes to list and trade SPBAS options that reflect the difference between the Special Opening Quotation ("SOQ") of the S&P 500 Index<sup>4</sup> and the closing level of the S&P 500 Index on the last trading day for SPBAS options (typically the third Friday of the month).

#### Design of the Product

At expiration, SPBAS options will settle against the following index calculation: SPBAS = MAX (100 + (SOQ of S&P 500) - (Closing Value of S&P 500), 0). In other words, SPBAS is the greater of (1) the SOQ of a.m.-settled S&P 500 Index ("SPX") options minus the closing value of SPX plus 100 and (2) zero. The Exchange notes that this formulation ensures that the settlement value for SPBAS options can never be less than zero.

Because SPBAS options settle to the difference between the SOQ of the S&P 500 Index and the closing level of the S&P 500 Index on the third Friday of each month, an intraday value for SPBAS options will not be disseminated. Rather, prior to the open on all trading days other than the last trading day (typically the third Friday of the month), CBOE will disseminate a single value of 100 for SPBAS options through the Options Price Reporting Authority ("OPRA"), the Consolidated Tape Association ("CTA") tape and/or the Market Data Index ("MDI") feed. After the close of trading on the last trading day, CBOE will disseminate the exercise settlement value (calculated as described above) for the expiring contract.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 67084 (May 31, 2012), 77 FR 33541 (June 6, 2012) ("Notice").

<sup>4</sup> The SOQ is calculated per normal index calculation procedures and uses the opening (first) reported sales price in the primary market of each component stock in the index on the last business day (usually a Friday) before the expiration date. If a stock in the index does not open on the day on which the exercise-settlement value is determined, the last reported sales price in the primary market is used to calculate the exercise-settlement value.

#### Options Trading

SPBAS options will be quoted in points and fractions and one point will equal \$100. The contract multiplier will be \$100. The minimum tick size for series trading below \$3 will be 0.05 (\$5.00) and above \$3 will be 0.10 (\$10.00). The Exchange also proposes to list series at \$1 or greater where the strike price is \$200 or less and \$5 or greater where the strike price is greater than \$200.<sup>5</sup>

Initially, the Exchange proposes to list in-, at- and out-of-the-money strike prices (where the "at-the-money" strike price is 100) and may open for trading up to twelve near term expiration months.<sup>6</sup> New series will be added in accordance with Rule 29.4.01(d), which requires exercise prices to be reasonably related to the current value of the underlying index at the time new series are first opened for trading. Rules 24.9.01(d) and 24.9.04 will apply to the listing of additional series for SPBAS options. However, for purposes of those provisions, the Exchange proposes that the "current index value" will be 100, since that is the single value for SPBAS option that CBOE will disseminate during the life of an option. Rule 24.9.04 will generally bound the listing of additional series to within 30% of the current index value.<sup>7</sup> The Exchange also proposes to list LEAPS.

The Exchange states that it currently intends to trade SPBAS options electronically on the Hybrid Platform with a Designated Market Maker appointed to the class. Prior to the product launch, the Exchange represents that it will issue a circular announcing the specific trading platform and other relevant trading information concerning SPBAS options.

#### Trading Hours, Exercise and Settlement

The proposed options will expire on the Saturday following the third Friday of the expiring month and be cash-settled, P.M.-settled, and European-style. The trading hours for SPBAS options will be from 8:30 a.m. (Chicago time) to 3:15 p.m. (Chicago time), except that trading in expiring SPBAS options will close at 3:00 p.m. (Chicago time) on

<sup>5</sup> See proposed amendment to Rule 24.9.01(e) (Terms of Index Options Contracts). The Exchange also proposes to add new Interpretation and Policy .21 to Rule 5.5 (Series of Option Contracts Open for Trading), which will be an internal cross reference stating that the intervals between strike prices for SPBAS option series will be determined in accordance with Interpretation and Policy .01(e) to Rule 24.9.

<sup>6</sup> See proposed amendment to Rule 24.9(a)(2) (Terms of Index Options Contracts).

<sup>7</sup> The rule also provides the Exchange with the ability to add additional strikes in response to customer demand.