

### 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, 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 Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>16</sup>

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.

### 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:

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii). 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.

### 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-2012-076 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-2012-076. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2012-076 and should be submitted on or before September 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Elizabeth M. Murphy,**  
Secretary.

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<sup>17</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67672; File No. SR-NYSEAmex-2012-29]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Commentary .07 to NYSE Amex Options Rule 904 To Eliminate Position Limits for Options on the SPDR® S&P 500® Exchange-Traded Fund

August 15, 2012.

#### I. Introduction

On May 2, 2012, NYSE Amex LLC ("NYSE Amex" or "Exchange")<sup>1</sup> filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund ("SPY ETF") on a pilot basis.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on May 18, 2012.<sup>5</sup> On June 27, 2012, the Commission extended to August 16, 2012 the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.<sup>6</sup> The Commission received two comment letters on the proposal.<sup>7</sup> On August 9, 2012, NYSE Amex filed Amendment No. 1 to the proposed rule change.<sup>8</sup> The Commission is publishing

<sup>1</sup> NYSE Amex now is known as "NYSEMKT." The proposed rule change to which this order relates, however, was submitted before the name change was implemented.

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

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> "SPDR®," "Standard & Poor's®," "S&P®," "S&P 500®," and "Standard & Poor's 500" are registered trademarks of Standard & Poor's Financial Services LLC. As described by the Exchange, the SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

<sup>5</sup> See Securities Exchange Act Release No. 66984 (May 14, 2012), 77 FR 29721 (May 18, 2012) ("Notice").

<sup>6</sup> See Securities Exchange Act Release No. 67278 (June 27, 2012), 77 FR 39547 (July 3, 2012).

<sup>7</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from: John E. Andrie, Managing Member, Andrie Trading LLC, dated July 16, 2012 ("Andrie Letter"); and Jenny Klebes Golding, Senior Attorney, Legal Division, Chicago Board Options Exchange, Incorporated ("CBOE"), dated July 30, 2012 ("CBOE Letter").

<sup>8</sup> In Amendment No. 1, the Exchange proposed to implement its proposal on a pilot basis and also explicitly stated that NYSE Amex Options Rule

this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Amended Proposal

Options on the SPY ETF (“SPY options”) are American-style, p.m.-settled options that physically settle into shares of the underlying SPY ETF.<sup>9</sup> Currently, Commentary .07 to NYSE Amex Options Rule 904 imposes a position limit for SPY options of 900,000 contracts on the same side of the market. The Exchange believes that the current position limit could deter the optimal use of SPY options as a hedging tool.<sup>10</sup> Further, it contends, the current position limit may inhibit the ability of certain large market participants, such as mutual funds and other institutional investors with substantial hedging needs, to utilize SPY options and gain meaningful exposure to the hedging function they provide.<sup>11</sup>

Thus, the Exchange’s proposal, as amended, seeks to amend Commentary .07 to NYSE Amex Options Rule 904 to eliminate position limits for SPY options on a fourteen-month pilot basis set to end October 15, 2013. The Exchange states that it will perform an analysis of the initial pilot program after a twelve month period (the “Pilot Report”), which will be submitted to the Commission within thirty (30) days of the end of the Pilot Period. The Pilot Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY contract, particularly at expiration. The Pilot Report also will detail the size and different types of strategies employed with respect to positions established in SPY options; note whether any problems, in the underlying SPY ETF or otherwise, arose as a result of the no-limit approach; and include any other information that may be useful in evaluating the effectiveness of the pilot program. In preparing the Pilot Report, the Exchange will utilize various data elements such as volume and open interest. If the pilot is not extended or permanently approved by the end of the Pilot Period, the position limits for SPY options will revert to the limits in effect at the commencement of the pilot program.

906(b) applies to SPY options. These aspects of the proposal are described in more detail below.

<sup>9</sup> See Notice, 77 FR at 29724.

<sup>10</sup> *Id.* at 29721.

<sup>11</sup> *Id.* at 29722–23.

The Exchange believes that SPY options with no position limit will (1) offer investors another investment option through which they could obtain and hedge significant levels of exposure to the S&P 500 stocks, (2) be available to trade on the Exchange (and presumably all other U.S. options exchanges) electronically, and (3) provide investors with added flexibility through an additional product that, in the Exchange’s view, may be better tailored to meet their particular investment, hedging, and trading needs, because, among other things, they are p.m.-settled.<sup>12</sup>

The Exchange cites the current treatment of SPX index options<sup>13</sup> and SPXPM index options,<sup>14</sup> both of which, like SPY options, are based on the S&P 500, and neither of which is subject to position limits.<sup>15</sup> The Exchange contends that, because SPX, SPXPM, and SPY options are ultimately derivative of the same benchmark—the S&P 500 Index—they should be treated equally from a position limit perspective.<sup>16</sup> The Exchange also argues that the Delta-Based Equity Hedge Exemption for delta-neutral option

<sup>12</sup> *Id.* at 29722. In support of its proposal, the Exchange contends that the creation and redemption process for the SPY ETF allows large investors to transfer positions from a basket of stocks comprising the S&P 500 Index to an equivalent number of ETF shares (and the reverse) with relative ease, and argues that, because of this, there is no reason to disadvantage options overlying the one versus the other. *Id.*

<sup>13</sup> SPX index options are a.m.-settled, cash-settled options on the S&P 500 Index, which list and trade exclusively on the CBOE.

<sup>14</sup> SPXPM index options are p.m.-settled, cash-settled options on the S&P 500 Index, which list and trade on the C2 Options Exchange (“C2”). SPXPM, unlike SPX, is based on the closing value of the S&P 500 Index, and, in this respect, the Exchange states, it is very much like SPY options, which are also settled at the close, acknowledging that the SPXPM is settled into cash as opposed to shares of the underlying, like SPY options. See Notice, 77 FR at 29722.

<sup>15</sup> *Id.* The Exchange notes that SPX index options are 10 times the size of SPY options, so that a position of only 90,000 SPX index options is the equivalent of a position of 900,000 SPY options. *Id.* The Exchange further notes that the reduced-value option on the S&P 500 Index (option symbol XSP) is the equivalent size of SPY options, and, similar to SPX index options, is not subject to position limits. *Id.*

<sup>16</sup> *Id.* As a practical matter, the Exchange adds, investors utilize SPX, SPXPM, and SPY options and their respective underlying instruments and futures to gain exposure to the same benchmark index, the S&P 500. *Id.* The Exchange also states that, anecdotally, market participants perceive value in avoiding the regulatory risk of exceeding the position limit on SPY options by instead using SPX index options for their hedging needs. Although exemptions are available with respect to the position limits for SPY options, the Exchange believes that such exemptions and the regulatory burden attendant with them, in its view, may dissuade investors from using SPY options when they can instead use an SPX index option without the need for an exemption. *Id.* at 29723.

positions,<sup>17</sup> which allows SPY option positions to be delta-hedged by SPX index option positions, reflects the economic equivalence of the two products.<sup>18</sup>

The Exchange argues that, if no position limits have been found to be warranted on both SPX and SPXPM index options, the same treatment should be extended to SPY options so that inconsistent position limits do not produce competitive advantages and disadvantages among contracts. The Exchange cites observations regarding competition among economically equivalent products, appearing in a 2005 paper by Hans R. Dutt and Lawrence E. Harris,<sup>19</sup> in making this argument.

The Exchange cites the Commission as noting, in its approval of the elimination of position and exercise limits with respect to SPX index options, that the markets for the securities underlying the S&P 500 Index are deep and liquid, and maintaining that this reduces concerns regarding manipulation or disruption in the underlying markets.<sup>20</sup> The Exchange represents that this would similarly be the case if position limits were eliminated for SPY options.<sup>21</sup> According to the Exchange, SPY options as well as the SPY ETF exhibit deep, liquid markets.<sup>22</sup> In this regard, the Exchange states that SPY options are currently the most actively traded option class in terms of average daily volume (“ADV”),<sup>23</sup> with ADV of 5,789,511 for year 2011 and 4,525,709 for the period January 1, 2012 to April 19, 2012.<sup>24</sup> The Exchange also provides figures indicating that the SPY ETF ADV was 218,227,747 for year 2011 and 145,164,527 for the period January 1, 2012 to April 19, 2012.<sup>25</sup> The Exchange represents further that there is tremendous liquidity in the component securities upon which the S&P 500 is based, providing figures indicating that the component securities’ ADV was

<sup>17</sup> See Commentary .10 to NYSE Amex Options Rule 904.

<sup>18</sup> See Notice, 77 FR at 29722. In making this argument, the Exchange states that, given the fact that SPX index options are not subject to position limits, an Exchange member, member organization, or non-member affiliate could theoretically establish a position in SPY options far in excess of the current 900,000 contract limit, provided that the position is hedged with SPX index options.

<sup>19</sup> See *The Journal of Futures Markets*, Vol. 25, no. 10, 945–965 (2005) (“Position Limits for Cash-Settled Derivative Contracts,” by Hans R. Dutt and Lawrence E. Harris) (“Dutt-Harris Paper”).

<sup>20</sup> See Notice, 77 FR at 29723.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 29721.

<sup>24</sup> *Id.* at 29723.

<sup>25</sup> *Id.*

3,289,595,675 for year 2011 and 2,851,457,600 for the period January 1, 2012 to April 19, 2012.<sup>26</sup>

The Exchange also believes that the SPY ETF's market capitalization is at a level consistent with that which the Commission has previously determined to be sufficiently large, in tandem with the depth and liquidity of the markets for the SPY ETF, to reduce concerns regarding manipulation.<sup>27</sup> In this regard, the Exchange provides figures indicating that the average SPY ETF market capitalization was \$89,533,777,897 for year 2011 and \$99,752,986,022 for the period January 1, 2012 to April 19, 2012.<sup>28</sup>

The Exchange further cites the Dutt-Harris Paper in addressing possible concerns that the elimination of the position limit on SPY options could raise the risk of market manipulation. The Exchange believes that the Dutt-Harris analysis, which focuses on concerns relating to manipulation of cash-settled derivatives, suggests that whatever manipulation risk does exist in a cash-settled, broad-based product such as the SPXPM index option, the corresponding risk in a physically-settled, but equally broad-based product such as the SPY option, is likely to be equally low, if not lower.<sup>29</sup>

In assessing the appropriateness of eliminating position limits for SPY options, the Exchange also notes its rules setting forth reporting requirements for large options positions and, among other things, the Exchange's ability to impose higher margin requirements upon accounts that it determines to be under-hedged.<sup>30</sup> The Exchange further states that the reporting, surveillance, and monitoring mechanisms that it currently has in place for certain other option products that trade on the Exchange without position limits are effective and could easily accommodate SPY options.

Finally, with respect to concerns that the elimination of position limits for

SPY options could result in, or increase, market-on-close volatility, the Exchange believes that the ability to hedge SPY options with shares of the SPY ETF reduces the likelihood of such volatility.<sup>31</sup> In this regard, the Exchange argues that, because SPY options are physically-settled, they can be easily hedged via long or short positions in shares of the SPY ETF, which, as discussed at *supra* note 12 and accompanying text, the Exchange maintains can be easily created or redeemed as needed.<sup>32</sup>

### III. Comment Summary

The Commission received two comment letters on the proposal. One letter supported the proposed elimination of position limits on SPY options.<sup>33</sup> The commenter also expressed a belief that elimination of SPY option position limits would result in more trading business on regulated exchanges, as opposed to other venues, and would improve market transparency.<sup>34</sup> A second comment letter neither supported nor opposed the proposal, but suggested that a reporting requirement would be useful should position and exercise limits be eliminated for SPY options.<sup>35</sup>

### IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>36</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>37</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market

and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

Position and exercise limits serve as a regulatory tool designed to address manipulative schemes and adverse market impact surrounding the use of options. Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise.<sup>38</sup> These position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit the options position.<sup>39</sup> In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market.<sup>40</sup> In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.<sup>41</sup>

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits for option products overlying certain ETFs where there is considerable liquidity in both the underlying cash markets and the options markets, and, in the case of certain broad-based index options, toward elimination of such limits altogether.<sup>42</sup> The Commission has been careful to balance two competing concerns when considering proposals by the self-regulatory organizations to change position and exercise limits. The Commission has recognized that the limits can be useful to prevent investors from disrupting the market in securities underlying the options. At the same time, the Commission has determined that limits should not be established in a manner that will unnecessarily discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and

<sup>26</sup> *Id.* at 29723–24.

<sup>27</sup> *Id.* at 29724.

<sup>28</sup> *Id.* The Exchange also provides figures indicating that the average S&P 500 Index market capitalization was \$11,818,270,341,270 for year 2011 and \$12,547,946,920,000 for the period January 1, 2012 to April 19, 2012. *Id.*

<sup>29</sup> See Notice, 77 FR at 29723. In this context, the Exchange notes the observation of the Dutt-Harris Paper that the manipulation of such instruments as U.S. exchange-traded, cash-settled derivative contracts requires “very large trades that are costly to make and easy to detect through conventional surveillance,” and argues that the same observation applies equally to SPY options. *Id.*

<sup>30</sup> See Notice, 77 FR at 29724; see also NYSE Amex Options Rule 906. Additionally, the Exchange notes that Rule 15c3–1 under the Act imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. See Notice, 77 FR at 29724.

<sup>31</sup> See Notice, 77 FR at 29724–25.

<sup>32</sup> *Id.*

<sup>33</sup> See Andrie Letter.

<sup>34</sup> *Id.*

<sup>35</sup> See CBOE Letter. In Amendment No. 1 the Exchange responded to this comment by stating explicitly that the hedge reporting requirements of NYSE Amex Options Rule 906(b) apply to SPY options.

<sup>36</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>37</sup> 15 U.S.C. 78f(b)(5).

<sup>38</sup> See, e.g., Securities Exchange Act Release No. 45236 (January 4, 2002), 67 FR 1378 (January 10, 2002) (SR-Amex–2001–42).

<sup>39</sup> See, e.g., Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR-CBOE–2002–26).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> The Commission's incremental approach to approving changes in position and exercise limits for option products overlying certain ETFs is well-established. See Securities Exchange Act Release No. 64695 (June 17, 2011), 76 FR 36942, n. 19 and accompanying text (June 23, 2011) (SR-Phlx–2011–58) (approving increase of SPY option position limit to 900,000 contracts).

market-makers from adequately meeting their obligations to maintain a fair and orderly market.<sup>43</sup>

The Commission has carefully considered the Exchange's proposal. The Exchange argues that SPY options are ultimately derivative of the S&P 500 Index, and should therefore be treated, from a position limit perspective, similarly to index options based on the S&P 500 which have no position limits, such as SPX and SPXPM. However, in reviewing the Exchange's arguments, the Commission considered certain noteworthy differences that exist, in its view, between SPY options and those index option products.

Among other things, SPX and SPXPM are cash-settled options on the S&P 500 Index. SPY options, on the other hand, are physically-settled options on a single security—the SPY ETF. Moreover, SPY options settle into shares of the SPY ETF, a single security, the performance of which, in turn, generally corresponds to the performance of the S&P 500 Index. Thus, unlike SPX and SPXPM, SPY options are indirectly based on the performance of the individual components of the S&P 500 Index.

Nevertheless, in spite of such differences, the Commission believes that SPY options have certain characteristics that serve to mitigate the concerns that position limits are designed to address. As the Exchange has represented, SPY options are the most actively traded options in terms of ADV. That, in combination with the depth and liquidity of the markets for the underlying SPY ETF as well as the component securities of the S&P 500 Index, and the surveillance capabilities of the Exchange, support the elimination of position limits for SPY options while still helping to ensure that large positions in such options will not unduly disrupt trading in the options or in the underlying SPY ETF. Given the Exchange's belief that eliminating position limits will afford investors more flexibility in meeting their particular investment, hedging, and trading needs, the Commission believes that it is consistent with the Act and appropriate, at this time, to allow SPY options to be traded on the Exchange without position limits on a pilot basis. The Commission believes that eliminating position limits on the highly liquid SPY options represents the next step of a measured approach to position limits on these options.

<sup>43</sup> See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (SR-CBOE-98-23).

As an initial matter, the Commission notes that certain characteristics unique to SPY options, taken together, significantly mitigate concerns regarding manipulation or potential disruptions of the markets for SPY options or the underlying SPY ETF. Importantly, and as supported by the figures the Exchange has provided, the markets for SPY options, the underlying SPY ETF, and the component securities upon which the S&P 500 Index is based are extremely deep and liquid.<sup>44</sup> Figures provided by the Exchange also reflect enormous capitalization of both the SPY ETF and the S&P 500 Index.<sup>45</sup> Given these characteristics, the Commission believes that removing position limits may benefit investors by bringing additional depth and liquidity, in terms of both volume and open interest, to SPY option classes without raising significant concerns about manipulation or potential market disruption. As set forth in more detail below, however, the Commission is approving the proposal on a pilot basis, during which the Exchange will monitor and report to the Commission on the impact of the removal of SPY option position limits on the SPY option market as well as the markets for the underlying securities.

The Commission also believes that the Exchange's reporting requirements and surveillance systems should enable it to detect and deter any trading abuses that might arise from the elimination of position limits for SPY options.<sup>46</sup> These safeguards also should enable the Exchange to monitor large positions to identify instances of potential risk and provide the Exchange with the information to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account.

In this regard, the Commission believes that financial requirements imposed by the Exchange and the Commission help allay concerns that an Exchange member or its customer may try to maintain an inordinately large, unhedged SPY option position. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/

<sup>44</sup> See Notice, 77 FR at 29723–24.

<sup>45</sup> *Id.* at 29724. The Commission also notes that, according to the Exchange, the creation and redemption mechanism for SPY ETF shares is robust, as evidenced by its close tracking of its benchmark index, and limited only by the number of shares available in the component securities of the S&P 500 Index. *Id.*

<sup>46</sup> See Notice, 77 FR at 29724. The Commission also expects that the Exchange's surveillance procedures should enable the Exchange to assess and respond to market concerns at an early stage.

or capital that a member must maintain for a large position held by it or by its customer.<sup>47</sup> The Exchange also has the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines a higher requirement is warranted.<sup>48</sup> In addition, Rule 15c3–1 imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. Further, the OCC will serve as the counter-party guarantor in every exchange-traded transaction.

As the Exchange notes, NYSE Amex Options Rule 906(a) requires Exchange members to report to the Exchange any account with an aggregate position (whether long or short) of 200 or more options contracts where the underlying security is a stock or ETF share.<sup>49</sup> In addition, as the Exchange sets forth in Amendment No. 1, NYSE Amex Options Rule 906(b) requires each member (other than an Exchange market-maker) that maintains a position in excess of 10,000 non-FLEX equity option contracts on the same side of the market, on behalf of its own account or for the account of a customer, to report to the Exchange whether and how such position is hedged.<sup>50</sup> If the position is under-hedged, pursuant to Rule 906(b), the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position.<sup>51</sup> CBOE suggests that the Exchange's proposal lacks a hedge reporting requirement,<sup>52</sup> but the Exchange affirms in Amendment No. 1 that the requirements of Rule 906(b) apply to SPY options.<sup>53</sup> Moreover, the Exchange asserts in Amendment No. 1 that the hedge reporting requirements of Rule 906(b) are actually more stringent than those cited in the CBOE Letter applicable to certain index options.<sup>54</sup> The Commission believes that, if problems were to occur during the Pilot Period, the market surveillance of large positions should help the Exchange to take the appropriate action to avoid any manipulation or market risk concerns.<sup>55</sup>

<sup>47</sup> The Commission's net capital rule, Rule 15c3–1 under the Act, requires a capital charge equal to the maximum potential loss on a broker-dealer's aggregate index position over a + (-) 10% market move.

<sup>48</sup> See NYSE Amex Options Rule 462(e).

<sup>49</sup> See NYSE Amex Options Rule 906(a).

<sup>50</sup> See NYSE Amex Options Rule 906(b).

<sup>51</sup> *Id.*

<sup>52</sup> See CBOE Letter.

<sup>53</sup> See Amendment No. 1 to the proposed rule change.

<sup>54</sup> *Id.*

<sup>55</sup> In addition to the aforementioned reporting requirements, the Commission notes that the Exchange would have, through its membership in

The Commission believes further that, to the extent that the elimination of SPY option position limits results in movement of trading interest from the OTC market onto the Exchange,<sup>56</sup> transparency in the SPY option market would be enhanced, which is a benefit for investors.

Notwithstanding the protections discussed above, the Commission believes that a prudent approach is warranted with respect to the Exchange's proposal to eliminate position limits for SPY options. In this regard, the Commission believes that the risks of manipulation and potential market disruption are significantly mitigated as discussed above. To the extent the potential for adverse effects on the markets for the SPY ETF or the S&P 500 component securities underlying the SPY ETF continues to exist, the Exchange's proposal to implement this change on a pilot basis should help to address this concern. Accordingly, the Commission is approving the proposal, as amended, on a fourteen-month pilot basis.<sup>57</sup> Within thirty (30) days of the end of the Pilot Period the Exchange will be required to submit to the Commission the Pilot Report. The Pilot Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY contract, particularly at expiration. The Pilot Report will also detail the size and different types of strategies employed with respect to positions established in SPY options; note whether any problems, in the underlying SPY ETF or otherwise, arose as a result of the no-limit approach; and include any other information that may be useful in evaluating the effectiveness of the pilot program. Furthermore, if the pilot is not extended or permanently approved by the end of the Pilot Period, the pre-pilot position limit for SPY options of 900,000 contracts on the same side of the market will go back into effect.

The Commission expects that, throughout the Pilot Period, the Exchange will monitor for any problems and collect and analyze on an ongoing basis the data and information that the

the Intermarket Surveillance Group, access to information concerning the trading of the securities underlying the S&P 500 Index, *i.e.*, the securities that are used to create or redeem SPY ETY shares.

<sup>56</sup> See Andrie Letter.

<sup>57</sup> The Commission took a similarly measured approach to the first proposals to eliminate position limits for certain broad-based index options by approving those proposals on a pilot basis. *See, e.g.*, Securities Exchange Act Release Nos. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (SR-CBOE-98-23); 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (SR-Amex-98-38).

Exchange ultimately intends to include in the Pilot Report. The Commission also expects that the Exchange will take prompt action, including timely communication with the Commission and with other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

The Commission finds good cause to approve the filing, as amended by Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, by limiting the proposed rule change to a pilot program, the amendment narrows the scope of the proposal. Moreover, the proposal, which in its original version would have eliminated position limits permanently, was open for comment, as is usual, for twenty-one days after publication and generated only two responses—one of which supported the proposal and one that did not raise objection to it.<sup>58</sup> Further, the Pilot Report and the data that the Exchange commits in Amendment No. 1 to provide to the Commission enhance the proposal by adding a component that should help the Exchange and the Commission assess the impact of eliminating SPY option position limits. In addition, Amendment No. 1 enhances the proposal by making explicit that the hedge reporting requirement of NYSE Amex Options Rule 906(b) applies to SPY options. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve the filing, as amended by Amendment No. 1 to the proposed rule change, on an accelerated basis.

#### V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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-NYSEAmex-2012-29 on the subject line.

<sup>58</sup> See Andrie Letter and CBOE Letter.

##### *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-NYSEAmex-2012-29. 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-NYSEAmex-2012-29 and should be submitted on or before September 12, 2012.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>59</sup> that the proposed rule change (SR-NYSEAmex-2012-29) be, and it hereby is, approved, as amended, on a fourteen-month pilot basis set to expire on October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>60</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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<sup>59</sup> 15 U.S.C. 78s(b)(2).

<sup>60</sup> 17 CFR 200.30-3(a)(12).