

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67937; File No. SR-CBOE-2012-091]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Eliminate Position and Exercise Limits for Physically-Settled SPY Options on a Pilot Basis

September 27, 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 September 14, 2012, 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 its rules to eliminate position and exercise limits for physically-settled options on the SPDR S&P 500 ETF Trust ("SPY") pursuant to a pilot program. 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 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

CBOE proposes to amend Interpretation and Policy .07 to Rule 4.11 to eliminate position and exercise limits for physically-settled SPY options pursuant to a pilot program.<sup>5</sup> This filing is based on a filing previously submitted by NYSE MKT LLC (f/k/a NYSE Amex, LLC ("NYSE Amex")), which the Commission recently approved.<sup>6</sup>

The Exchange began trading SPY options on January 10, 2005 on the CBOE Hybrid Trading System. That year, the position limit for these options was increased from 75,000 contracts to 300,000 contracts on the same side of the market.<sup>7</sup> In July 2011, the position limit for these options was again increased from 300,000 contracts to the current limit of 900,000 contracts on the same side of the market.<sup>8</sup>

The underlying SPY tracks the performance of the S&P 500 Index and the Exchange states that the SPY and SPY options have deep, liquid markets that reduce concerns regarding manipulation and disruption in the underlying markets. In support of this proposed rule change, the Exchange has collected the following trading statistics for SPY and SPY options: (1) The average daily volume ("ADV") to date (as of August 24 2012) for SPY is 148 million shares; (2) the ADV to date in 2012 for SPY options is 2.6 million; (3) the total shares outstanding for SPY are 750.3 million; and (4) the fund market cap for SPY is \$106 billion. The Exchange represents further that there is tremendous liquidity in the securities that make up the S&P 500 Index. For example, the ADV of the component securities in the S&P 5000 Index for the 6-month period of February 28, 2012 through August 28, 2012 was 635,583,189.

Under the Exchange's proposal, the options reporting requirement for SPY options would continue unabated. Thus, the Exchange would still require that each Trading Permit Holder ("TPH") or TPH organization that maintains a

position in SPY options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the option position, whether such position is hedged and, if so, a description of the hedge, and the collateral used to carry the position, if applicable. Exchange market-makers (including Designated Primary Market-Makers) would continue to be exempt from this reporting requirement, as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more option contracts would remain at this level for SPY options.<sup>9</sup>

In addition, CBOE Rule 4.12 [sic] provides:

In addition to the reporting requirement described in paragraph (a) of this Rule, each Trading Permit Holder (other than an Exchange market-maker or DPM) 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, shall report information as to whether such positions are hedged, and provide documentation to as to how such contracts are hedged, in a manner and form prescribed by the Exchange. In addition, whenever the Exchange determines based on a report to the Department of Market Regulation or otherwise, that a higher margin requirement is necessary in light of the risks associated with an under-hedged Non-FLEX equity option position in excess of 10,000 contracts on the same side of the market, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position, pursuant to its authority under Exchange Rule 12.10. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3-1 to the extent of any margin deficiency resulting from the higher margin requirements.

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at CBOE, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques

<sup>5</sup> By virtue of CBOE Rule 4.12, Interpretation and Policy .02, which is not being amended by this filing, the exercise limit for SPY options would be similarly eliminated.

<sup>6</sup> See Securities Exchange Act Release No. 67672 (August 15, 2012) 77 FR 50750 (August 22, 2012) (SR-NYSEAmex-2012-29).

<sup>7</sup> See Securities Exchange Act Release No. 51041 (January 14, 2005), 70 FR 3408 (January 24, 2005) (SR-CBOE-2005-06).

<sup>8</sup> See Securities Exchange Act Release No. 64928 (July 20, 2011), 76 FR 44633 (July 26, 2011) (SR-CBOE-2011-065).

<sup>9</sup> See CBOE Rule 4.13(a).

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

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

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

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

to identify unusual activity in both options and underlying stocks.<sup>10</sup>

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.<sup>11</sup> Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that TPHs file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a TPH or its customer may try to maintain an inordinately large un-hedged position in an option, particularly on SPY. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a TPH must maintain for a large position held by itself or by its customer.<sup>12</sup> In addition, the Commission's net capital rule, Rule 15c3-1<sup>13</sup> under the Securities Exchange Act of 1934 (the "Act"),<sup>14</sup> imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.

#### *Pilot Program*

The Exchange proposes that this rule change be adopted pursuant to a pilot program, set to expire November 27, 2013.<sup>15</sup> The Exchange will perform an analysis of the initial pilot program to eliminate position limits in SPY after the first twelve (12) months of the pilot program (the "Pilot Report"). The Pilot Report will detail the size and different types of strategies employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. 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 shares, particularly at expiration. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange will make available to Commission staff data elements relating to the effectiveness of the pilot program.

Conditional on the findings in the Pilot Report, CBOE will file with the Commission a proposal to either extend the pilot program, adopt the pilot program on a permanent basis, or terminate the pilot program. If the pilot program is not extended or adopted on a permanent basis by November 27, 2013, the position limits for SPY would revert to limits in effect at the commencement of the pilot program.

The Exchange believes that the elimination of position and exercise limits on SPY options on a pilot basis is required for competitive purposes as well as for purposes of consistency and uniformity among the competing options exchanges. This supports the Exchange's current proposal to eliminate the position and exercise limits applicable to physically-settled SPY options on a pilot basis.

#### 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.<sup>16</sup> In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</sup> 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 proposed rule change will benefit large market makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers, by providing them with a more effective trading and hedging vehicle. In addition, the Exchange believes that the structure of SPY options and the considerable liquidity of the market for SPY options diminish the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against. The Exchange also believes that the

proposed rule change will benefit a greater number of market participants who are CBOE TPHs and members of other exchanges, such as NYSE Amex. This is because SPY is a multiply listed options class and currently there is not a uniform and consistent position and exercise limits regime across all of the exchanges that list SPY options. The proposed filing will benefit market participants because it will ensure consistency and uniformity among the competing options exchanges as to the position and exercise limits for a multiply listed options class.

#### *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 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**

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>20</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>21</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that doing so will ensure fair competition among

<sup>10</sup> These procedures have been effective for the surveillance of SPY options trading and will continue to be employed.

<sup>11</sup> 17 CFR 240.13d-1.

<sup>12</sup> See CBOE Rule 12.3 for a description of margin requirements.

<sup>13</sup> 17 CFR 240.15c3-1.

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>15</sup> The Exchange will notify CBOE Trading Permit Holders of the establishment of the pilot program and the running dates of the pilot program via regulatory circular.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 satisfied this requirement.

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

options exchanges and immediately benefit market participants who are CBOE TPHs and members of other exchanges, such as NYSE Amex, by ensuring consistency and uniformity across options exchanges with respect to the multiply listed SPY options class. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative as of September 27, 2012.<sup>22</sup>

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-2012-091 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-2012-091*. 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

<sup>22</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2012-091 and should be submitted on or before October 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67936; File No. SR-BOX-2012-013]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Eliminate Position Limits for Options on the SPDR® S&P 500® Exchange-Traded Fund,<sup>1</sup> Which List and Trade Under the Symbol SPY

September 27, 2012.

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> notice is hereby given that on September 17, 2012, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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

comments on the proposed rule from interested persons.

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

The Exchange proposes to amend IM-3120-2 to Rule 3120 (Position Limits) to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund ("SPY ETF"),<sup>4</sup> which list and trade under the symbol SPY. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at <http://boxexchange.com>, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to amend Interpretive Material IM-3120-2 to Rule 3120 (Position Limits) to eliminate position limits for SPY options.

###### Background

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. The Exchange understands that the Commission, when considering the appropriate level at which to set option position and exercise limits, has considered the concern that the limits be sufficient to prevent investors from disrupting the market in the security underlying the option.<sup>5</sup> This consideration has been balanced by the concern that the limits "not be established at levels that are so low as to discourage participation in the options market by institutions and other

<sup>4</sup> See *supra* note 1.

<sup>5</sup> See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4912-4913 (February 1, 1999) (SR-CBOE-98-23) (citing H.R. No. IFC-3, 96th Cong., 1st Sess. at 189-91 (Comm. Print 1978)).