

the expedite fee proposed corresponds to the additional Exchange resources needed to expedite customer requests, including the potential need for overtime compensation for data center staff. Respecting LCN CSP connections, the Exchange charges the same initial fee as for a standard LCN connection since the connection is physically the same, but the monthly fee is lower because LCN CSP connections are functionally limited in comparison to the standard LCN connection.<sup>14</sup> Additionally, the Exchange represents that there is no differentiation among Users regarding the fees charged for a particular product, service or piece of equipment. In light of the Exchange's representations, the Commission believes that the co-location fees proposed are consistent with Section 6(b)(4) and 6(b)(5) of the Exchange Act.

The Exchange is offering additional co-location services as a convenience to Users. For instance, the cross connects and LCN CSP connections provide Users within the data center with another alternative to transmit data or provide services, such as order routing or market data delivery services. The cages offered to Users can help prevent the discovery of the hardware employed by Users for co-location. As noted by the Exchange, these additional co-location services are available to all Users on an equal basis. The Commission believes that these additional services are also consistent with Section 6(b)(5) of the Exchange Act, as they are designed to remove impediments to and perfect the mechanism of a free and open market and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NYSEArca-2012-62) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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<sup>14</sup> A LCN CSP connection may only be used for providing services to Subscribing Users and may not be used for other purposes, such as accessing the Exchange.

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67670; File No. SR-CBOE-2012-076]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Automatic Order Handling Process

August 15, 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 August 2, 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 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 rules regarding its automatic order handling process. The text of the proposed rule change is available on the Exchange's Web site at <http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>, 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 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 rules regarding its automatic order handling process. The proposed rule change adds subparagraph (vi) to Rule 6.13(b) to codify how the CBOE Hybrid System<sup>3</sup> handles market orders to sell in option series for which the national best bid in the series is zero ("no-bid series").<sup>4</sup> If the CBOE Hybrid System receives during the trading day or has resting in the electronic book after the opening of trading a market order to sell in a no-bid series, it handles the order as follows:

- If the Exchange best offer in that series is less than or equal to \$0.30, then the CBOE Hybrid System will consider, for the remainder of the trading day, the market order as a limit order to sell with a limit price equal to the minimum trading increment applicable to the series and enter the order into the electronic book behind limit orders to sell at the minimum increment that are already resting in the book.

- If the Exchange best offer in that series is greater than \$0.30, then the CBOE Hybrid System will route the market order to sell to PAR or, at the order entry firm's discretion, to the order entry firm's booth. If the market order is not eligible to route to PAR, then it will be cancelled.

The Exchange's Rules are currently silent on how the CBOE Hybrid System handles market orders to sell in no-bid series. The Exchange believes that proposed Rule 6.13(b)(vi) will clarify for investors how the CBOE Hybrid System handles these orders.<sup>5</sup> The Exchange

<sup>3</sup> The CBOE Hybrid System is a trading platform that allows automatic executions to occur electronically and open outcry trades to occur on the floor of the Exchange. To operate in this "hybrid" environment, the Exchange has a dynamic order handling system that has the capability to route orders to the trade engine for automatic execution and book entry, to Trading Permit Holder and PAR Official workstations located in the trading crowds for manual handling, and/or to other order management terminals generally located in booths on the trading floor for manual handling. Where an order is routed for processing by the Exchange order handling system depends on various parameters configured by the Exchange and the order entry firm itself.

<sup>4</sup> The Exchange notes that, for singly listed series, the national best bid is equivalent to the Exchange's best bid and the national best offer is equivalent to the Exchange's best offer.

<sup>5</sup> The Exchange notes for informational purposes that other options exchanges have rules that address how their systems handle market orders to sell no-bid series. See, e.g., NASDAQ OMX PHLX ("Phlx") Rule 1080(i) (which provides that the Phlx system will convert market orders to sell a no-bid series to limit orders to sell with a limit price of the

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

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

believes that the automatic handling of market orders to sell in no-bid series if the Exchange best offer is less than or equal to \$0.30 reduces the manual handling of orders and facilitates the CBOE Hybrid System's automatic handling process. Additionally, the \$0.30 threshold serves as a protection feature for investors in certain situations, such as when a series is no-bid because the last bid traded just prior to the entry of the market order to sell. The purpose of this threshold is to limit the automatic handling of market orders to sell in no-bid series to only those for true zero-bid options, as options in no-bid series with an offer of more than \$0.30 are likely not worthless.

For example, if the CBOE Hybrid System receives a market order to sell in a no-bid series with a minimum increment of \$0.01 and the Exchange best offer is \$0.20, the CBOE Hybrid System will consider, for the remainder of the trading day, the order as a limit order with a price of \$0.01 and submit it to the electronic book behind other limit orders to sell at the minimum increment that are already resting in the book. At that point, even if the series is no-bid because, for example, the last bid just traded and the limit order trades at \$0.01, the next bid entered after the trade would not be higher than \$0.20.<sup>6</sup>

However, if the CBOE Hybrid System receives a market order to sell in a no-bid series with a minimum increment of \$0.01 and the Exchange best offer is \$1.20 (because, for example, the last bid of \$1.00 just traded), the CBOE Hybrid System will instead route the order to PAR (or, at the order entry firm's discretion, to the order entry firm's booth). Manual handling of the order provides the entering firm with a potential opportunity to trade at a better price, since the next bid entered in that series is likely to be much higher than \$0.01.<sup>7</sup> It would be unfair to the

minimum trading increment applicable to that series that are received when Phlx's disseminated quotation in the series has a bid/ask differential less than or equal to \$0.25, and will place the limit orders on the book).

<sup>6</sup> If the order does not execute during the trading day as a limit order and remains outstanding after the close of trading (i.e., a good-til-cancelled order), the CBOE Hybrid System at that time will no longer consider the order as a limit order and will again handle the order as a market order to sell after the close of trading. The market order will stay on the electronic book until the opening of the next trading day (or until cancelled), at which point it may execute during the open or, if it remains unexecuted after the opening of trading, it will either execute with the best bid at the time or, if the series is still no-bid, again be handled pursuant to proposed Rule 6.13(b)(vi).

<sup>7</sup> Routing the market order to PAR or the order entry firm's booth provides for an alternative means through which the order may be executed before it is simply cancelled.

entering firm to let its market order trade as a limit order for \$0.01 because, for example, the firm submitted the order during the brief time when there were no disseminated bids in a series trading significantly higher than the minimum increment. Once entered into PAR, the appropriate PAR Official<sup>8</sup> will review the terms of the order and handle the order as set forth in Rule 7.12 (for example, the PAR Official may bring the order to the trading crowd or enter the order into the electronic book). PAR Officials must use due diligence to execute orders that they receive at their PAR workstations at the best prices available to them under the Exchange Rules.<sup>9</sup>

The \$0.30 threshold has been in place for a number of years, and the Exchange believes the threshold is reasonable. The Exchange notes that this threshold is less than the acceptable price range ("APR") in the price check parameter provision in Rule 6.13(b)(v). Pursuant to that provision, the CBOE Hybrid System will not automatically execute a marketable order if the width between the national best bid and national best offer is not within the APR, which for an option contract with a bid of less than \$2 may not be less than \$0.375.<sup>10</sup> Instead, the CBOE Hybrid System will route the order to PAR or the order entry firm's booth, or if the order is not eligible to route to PAR, it will be cancelled. Notwithstanding this provision, proposed Rule 6.13(b)(vi) allows for the potential execution of market orders to sell in no-bid series with offers less than [sic]<sup>11</sup> \$0.30 as

<sup>8</sup> A "PAR Official" is an Exchange employee or independent contractor whom the Exchange may designate as being responsible for (a) operating the PAR workstation in a DPM trading crowd with respect to the classes of options assigned to him/her; (b) when applicable, maintaining the book with respect to the classes of options assigned to him/her; and (c) effecting proper executions of orders placed with him/her. The PAR Official may not be affiliated with any Trading Permit Holder that is approved to act as a Market-Maker. See Rule 7.12(a).

<sup>9</sup> Rule 7.12(b)(ii).

<sup>10</sup> Rule 6.13(b)(v) also provides that the CBOE Hybrid System will not automatically execute eligible orders that are marketable if the execution would follow an initial partial execution on the Exchange and would be at a subsequent price that is not within an acceptable tick distance from the initial execution. The APR for purposes of Rule 6.13(b)(v) is determined by the Exchange on a class-by-class basis and may not be less than \$0.375 between the bid and offer for each option contract for which the bid is less than \$2, \$0.60 where the bid is at least \$2 but does not exceed \$5, \$0.75 where the bid is more than \$5 but does not exceed \$10, \$1.20 where the bid is more than \$10 but does not exceed \$20, and \$1.50 where the bid is more than \$20. An "acceptable tick distance" [sic] less than two minimum increments.

<sup>11</sup> The Commission notes that CBOE's proposed rule text actually specifies that the Exchange would convert market orders in no-bid series to limit

limit orders at the price of a minimum increment. If the threshold in proposed Rule 6.13(b)(vi) were higher, the risk of having a market order trade at a minimum increment in a series that is not truly no-bid would increase. This risk of execution is not present in the price check parameter provision in Rule 6.13(b)(v), and therefore the Exchange believes a wider APR is appropriate for that provision.

## 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>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</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 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.

In particular, the proposed rule change protects investors and the public interest by providing investors with more clarity regarding the CBOE Hybrid System's automatic order handling process—specifically how it processes market orders to sell in no-bid series. The Exchange believes that the automated handling of market orders to sell in no-bid series if the Exchange best offer is \$0.30 or less assists with the maintenance of fair and orderly markets and protects investors and the public interest because it provides for automated handling of these orders, ultimately resulting in more efficient executions of these orders. The Exchange believes that the \$0.30 threshold also protects investors and assists with the maintenance of fair and orderly markets by preventing executions of market orders to sell in no-bid series with higher offers at potentially extreme prices in series that are not truly no-bid. The Exchange believes this threshold appropriately reflects the interests of investors, as options in no-bid series with offers higher than \$0.30 are likely not worthless, and manual handling of these orders will lead to better executions for investors than would occur through automatic handling.

orders where the Exchange's best offer is less than or equal to \$.30 (emphasis added).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

### 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