

Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on December 14, 2016.<sup>27</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### 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-BX-2016-069 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2016-069. 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-BX-2016-069 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2016-31107 Filed 12-23-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79621; File No. SR-CBOE-2016-089]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Credit Option Margin Pilot Program Through July 18, 2017

December 20, 2016.

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 December 14, 2016, 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 Rule 12.3 by extending the Credit Option Margin Pilot Program through July 18, 2017.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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

On February 2, 2011, the Commission approved the Exchange's proposal to establish a Credit Option Margin Pilot Program ("Program").<sup>5</sup> The proposal became effective on a pilot basis to run on a parallel track with Financial Industry Regulatory Authority ("FINRA") Rule 4240 that similarly operates on an interim pilot basis.<sup>6</sup>

On January 17, 2012, the Exchange filed a rule change to, among other things, decouple the Program with the FINRA program and to extend the expiration date of the Program to January 17, 2013.<sup>7</sup> The Program, however, continues to be substantially

<sup>5</sup> See Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) order approving (SR-CBOE-2010-106). To implement the Program, the Exchange amended Rule 12.3(l), *Margin Requirements*, to make CBOE's margin requirements for Credit Options consistent with Financial Industry Regulatory Authority ("FINRA") Rule 4240, *Margin Requirements for Credit Default Swaps*. CBOE's Credit Options (*i.e.*, Credit Default Options and Credit Default Basket Options) are analogous to credit default swaps.

<sup>6</sup> See Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; SR-FINRA-2009-012).

<sup>7</sup> See Securities Exchange Act Release No. 66163 (January 17, 2012), 77 FR 3318 (January 23, 2012) (SR-CBOE-2012-007).

<sup>27</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<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).

similar to the provisions of the FINRA program. Subsequently, the Exchange filed rule changes to extend the program until January 17, 2014, January 16, 2015, January 15, 2016, and January 17, 2017, respectively.<sup>8</sup> The Exchange believes that extending the expiration date of the Program further will allow for further analysis of the Program and a determination of how the Program should be structured in the future. Thus, the Exchange is now currently proposing to extend the duration of the Program for an additional six months until July 18, 2017.

Additionally, the Exchange believes that it is in the public interest to extend the expiration date of the Program because it will continue to allow the Exchange to list Credit Options for trading. As a result, the Exchange will remain competitive with the Over-the-Counter Market with respect to swaps and security-based swaps. In the future, if the Exchange proposes an additional extension of the Credit Option Margin Pilot Program or proposes to make the Program permanent, then the Exchange will submit a filing proposing such amendments to the Program.

## 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>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirements that the rules of an 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 facilitation 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirement that the rules of an exchange not be designed

to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change will further the purposes of the Act because, consistent with the goals of the Commission at the initial adoption of the Program, the margin requirements set forth by the proposed rule change will help to stabilize the financial markets. In addition, the proposed rule change is substantially similar to existing FINRA Rule 4240.

### 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. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

### 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

Because the foregoing proposed rule change does not:

- A. Significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## 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-2016-089 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CBOE-2016-089. 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

<sup>8</sup> See Securities Exchange Act Release Nos. 68539 (December 27, 2012), 78 FR 138 (January 2, 2013) (SR-CBOE-2012-125), 71124 (December 18, 2013), 78 FR 77754 (December 24, 2013) (SR-CBOE-2013-123), 73837 (December 15, 2014), 79 FR 75850 (December 19, 2014) (SR-CBOE-2014-091), and 76824 (January 5, 2016), 81 FR 1255 (January 11, 2016) (SR-CBOE-2015-118).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> *Id.*

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</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, along with a brief description and the 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 satisfied this requirement.

available publicly. All submissions should refer to File Number SR-CBOE-2016-089 and should be submitted on or before January 17, 2017.

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

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2016-31113 Filed 12-23-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79608; File No. SR-CHX-2016-16]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt the CHX Liquidity Taking Access Delay

December 20, 2016.

#### I. Introduction

On September 6, 2016, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt the CHX Liquidity Taking Access Delay (“LTAD”). The proposed rule change was published for comment in the *Federal Register* on September 22, 2016.<sup>3</sup> On November 1, 2016, pursuant to Section 19(b)(2) of the Exchange Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> The Commission received 20 comments on the proposed rule change, including a response to certain comment letters by the Exchange.<sup>6</sup> This

order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Summary of the Proposal

##### A. Description

The LTAD would require all new incoming orders<sup>8</sup> received during the Open Trading State<sup>9</sup> that could immediately execute against one or more resting orders on the CHX book, as well as certain related cancel messages, to be intentionally delayed for 350 microseconds before such delayed messages would be processed<sup>10</sup> by the

(“Hudson River Trading Letter”); (4) Beste Bidd, Trader, dated October 9, 2016 (“Beste Bidd Letter”); (5) Joanna Mallers, Secretary, FIA Principal Traders Group, dated October 13, 2016 (“FIA PTD Letter”); (6) John L. Thornton, Co-Chair, Hal S. Scott, Director, and R. Glenn Hubbard, Co-Chair, Committee on Capital Markets Regulation, dated October 13, 2016 (“Committee on Capital Markets Letter”); (7) Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated October 13, 2016 (“Citadel Letter”); (8) Tyler Gellasch, Executive Director, Healthy Markets Association, dated October 13, 2016 (“HMA Letter”); (9) Eric Budish, Professor of Economics, University of Chicago Booth School of Business, dated October 13, 2016 (“Budish Letter”); (10) Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, dated October 14, 2016 (“NYSE Letter”); (11) James J. Angel, Associate Professor, McDonough School of Business, Georgetown University, dated October 16, 2016 (“Angel Letter”); (12) Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated October 25, 2016 (“Bats Letter”); (13) Eric Pritchett, Chief Executive Officer, Potamus Trading LLC, dated October 26, 2016 (“Potamus Letter”); (14) James Ongena, Executive Vice President and General Counsel, CHX, dated October 28, 2016 (“CHX Response”); (15) Steve Crutchfield, Head of Market Structure, CTC Trading Group, L.L.C., dated November 1, 2016 (“CTC Letter”); (16) Boris Ilyevsky, Brokerage Director, Interactive Brokers LLC, dated November 7, 2016 (“IB Letter”); (17) Alex Jacobson, dated November 9, 2016 (“Jacobson Letter”); (18) Brian Donnelly, Founder and Chief Executive Officer, Volant Trading, dated November 28, 2016 (“Volant Letter”); (19) R.T. Leuchtkafer, dated December 14, 2016 (“Leuchtkafer Letter 2”); and (20) Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 16, 2016 (“SIFMA Letter”). All of the comment letters are available at: <https://www.sec.gov/comments/sr-chx-2016-16/chx201616.shtml>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> “New incoming orders” are orders received by the Matching System for the first time. The LTAD would not apply to other situations where existing orders or portions thereof are treated as incoming orders, such as (1) resting orders that are price slid into a new price point pursuant to the CHX Only Price Sliding or Limit Up-Limit Down Price Sliding Processes and (2) unexecuted remainders of routed orders released into the Matching System. See Notice, *supra* note 3, 81 FR at 65443, n.5.

<sup>9</sup> “Open Trading State” means the period of time during the regular trading session when orders are eligible for automatic execution. See CHX Article 1, Rule 1(j)(q).

<sup>10</sup> “Processed” means executing instructions contained in a message, including, but not limited to, permitting an order to execute within the

Matching System.<sup>11</sup> All other messages, including liquidity providing orders (*i.e.*, orders that would not immediately execute against resting orders) and cancel messages for resting orders, would be immediately processed without delay.

Each delayable message would be diverted into the LTAD queue and would remain delayed until it is released for processing. A delayed message would become releasable 350 microseconds after initial receipt by the Exchange (“Fixed LTAD Period”), and would be processed only after the Matching System has evaluated and processed, if applicable, all messages in the security received by the Exchange during the Fixed LTAD Period for the delayed message.<sup>12</sup> A message may be delayed for longer than the Fixed LTAD Period depending on the then-current messaging volume in the security, according to the Exchange.<sup>13</sup>

##### B. Purpose of the LTAD

The Exchange states that it designed and proposed the LTAD to respond to declines in CHX volume and size at the national best bid or offer (“NBBO”) in the SPDR S&P 500 trust exchange-traded fund (“SPY”) between January 2016 and July 2016, which it attributes to latency arbitrage activity in SPY.<sup>14</sup> CHX defines “latency arbitrage” as the practice of exploiting disparities in the price of a security or related securities that are being traded in different markets by taking advantage of the time it takes to access and respond to market information.<sup>15</sup>

The Exchange asserts that much of the CHX liquidity in SPY and other S&P 500-correlated securities is provided as part of an arbitrage strategy between CHX and the futures markets, whereby liquidity providers utilize, among other things, proprietary algorithms to price and size resting orders on CHX to track index market data from a derivatives market (*e.g.*, E-Mini S&P traded on the Chicago Mercantile Exchange’s Globex trading platform).<sup>16</sup> According to the Exchange, prior to the beginning of the SPY latency arbitrage activity, which CHX first observed in January of 2016, CHX volume and liquidity in SPY

Matching System pursuant to the terms of the order or cancelling an existing order. See Notice, *supra* note 3, 81 FR at 65443, n.7.

<sup>11</sup> “Matching System” means the automated order execution system, which is part of CHX’s “Trading Facilities” as defined under CHX Article 1, Rule 1(z). See *id.* at 65443, n.8.

<sup>12</sup> See *id.* at 65444.

<sup>13</sup> See *id.* at 65444, text accompanying n.35.

<sup>14</sup> See *id.* at 65443.

<sup>15</sup> See *id.* at 65443, n.3.

<sup>16</sup> See *id.* at 65443, n.10.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</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. 78860 (September 16, 2016), 81 FR 65442 (“Notice”).

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

<sup>5</sup> See Securities Exchange Act Release No. 79216, 81 FR 78228 (November 7, 2016). The Commission designated December 21, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> See letters from: (1) Douglas A. Cifu, Chief Executive Officer, Virtu Financial, dated September 21, 2016 (“Virtu Letter”); (2) R.T. Leuchtkafer, dated September 29, 2016 (“Leuchtkafer Letter 1”); (3) Adam Nunes, Head of Business Development, Hudson River Trading LLC, dated October 6, 2016