

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67777; File No. SR-CBOE-2012-084]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Transaction Fees for CBOE Range Options on the S&P 500 Index

September 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 28, 2012, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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

Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) proposes to amend its Fees Schedule to establish fees for transactions in CBOE Range Options on the S&P 500 Index (“SROs”). 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.

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

The Exchange received approval to list and trade cash-settled, European-style Range Options that overlie any index eligible for options trading on the Exchange.³ Range Options pay an exercise settlement amount if the settlement value of the underlying index at expiration falls within the specified Range Length. As stated in the Range Option approval order:

The Commission believes that Range Options would provide investors with a potentially useful investment choice. The Commission notes that investors now can replicate the features and structures of Range Options through the use of currently available options traded on the Exchange.¹³ [NB: This superscript “13” represents footnote 13 in the Range Option approval order that was published in the **Federal Register**, which is quoted below in text; it does not represent a footnote in this filing.] *The payout structure of a Range Option can be replicated by purchasing four calls or puts with varying strike prices.* Range Options will enable investors to obtain the same payout structure by purchasing one option, with the potential of significantly reducing investors’ transaction costs.⁴ (emphasis added).

The Exchange will list Range Options on the S&P 500 Index (Ticker: SRO) beginning on August 28, 2012. The purpose of this filing is to establish transaction fees for SROs. In considering the appropriate and equitable amount of transaction fees for SROs, the Exchange considered the fact that the exposure provided by Range Options is equivalent to four option positions. Consistent with the spirit of the Commission’s observation noted above, the Exchange will not be assess [sic] a transaction fee equal to the transaction fees for four options positions, but rather will, in general, assess a transaction fee equal to the transaction fees for two option positions. The Exchange believes that this transaction cost level strikes the appropriate balance between establishing reasonable fees and the Exchange’s goal of introducing new products to the marketplace that are competitively priced.

The amount of transaction fees for SROs⁵ will be as follows:

³ See Securities Exchange Act Release No. 57376 (February 25, 2008), 73 FR 11689 (March 4, 2008) (order approving SR-CBOE-2007-104).

⁴ 73 FR at 11692.

⁵ CBOE is adding “SRO” to the title of the Index Options Rate Table, which will exclude SROs from the fees set forth in that table and adding “SRO” to the Proprietary Index Options Rate Table, which

• *Customer, Professional Customer and Voluntary Professional Customer:* \$0.80 per contract for customer, professional customer and voluntary professional customer transactions.⁶ The Exchange notes that the customer, professional customer and voluntary professional customer fees for standard S&P 500 Index (“SPX”) options are: (a) \$0.44 per contract if the premium is greater than or equal to \$1, and (b) \$0.35 per contract if the premium is less than \$1. For ease of use, the Exchange is proposing to establish a single fee for customer, professional customer and voluntary professional customer transactions in SROs regardless of the premium amount. The Exchange is not proposing to double the amount of either existing standard SPX option fee, but rather used those fees as a measure for setting the proposed \$0.80 per contract fee. The Exchange also proposes to layer SROs into the existing Customer Large Trade Discount regime for other S&P products, which will limit the amount of customer transaction fees to the first 10,000 contracts.⁷

• *CBOE Market-Maker, Designated Primary Market-Maker (“DPM”), E-DPM and Lead Market-Maker (“LMM”):* \$0.40 per contract for CBOE Market-Maker DPM, E-DPM and LMM transactions, which is equal to double the transaction fee equal for a single standard SPX option.⁸ As with some other S&P products, transactions in SROs will be excluded from the Liquidity Provider Sliding Scale.⁹

• *Clearing Trading Permit Holder Proprietary:* \$0.50 per contract for Clearing Trading Permit Holder Proprietary transactions, which is equal to double the transaction fee for a single standard SPX option.¹⁰ As with some other S&P products, transactions in SROs will be excluded from the Clearing Trading Permit Holder Fee Cap.¹¹ The Exchange also proposes to

will set forth the fees for SROs in that table, to the Fees Schedule. See pages 19 [sic] and 20 [sic] to Exhibit 5.

⁶ See page 20 [sic] to Exhibit 5.

⁷ See proposed addition of “SRO” to the Customer Large Trade Discount Table to the Fees Schedule. See page 22 [sic] to Exhibit 5.

⁸ See page 20 [sic] to Exhibit 5.

⁹ See proposed addition of “SRO” to the Liquidity Provider Sliding Scale Table to the Fees Schedule. See page 20 [sic] to Exhibit 5. As explained in SR-CBOE-2012-008, the Exchange excludes certain proprietary, singly-listed products from the Liquidity Provider Sliding Scale because the Exchange has “expended considerable resources developing its singly-listed products.” See Securities Exchange Act Release No. 66277 (January 30, 2012), 77 FR 5595 (February 3, 2012).

¹⁰ See page 20 [sic] to Exhibit 5.

¹¹ See proposed addition of “SRO” to Clearing Trading Permit Holder Fee Cap Table and to

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

exclude SROs from the CBOE Proprietary Products Sliding Scale.¹² Because the CBOE Proprietary Products Sliding Scale is structured on a per contract basis and because SROs provide the exposure of four contracts, the Exchange believes that it is appropriate to exclude SROs. As with other S&P products, firm facilitations for SROs will not be free. To reflect this, the Exchange is adding “SROs” to this provision in the “Notes” section to the Clearing Trading Permit Holder Fee Cap Table.¹³ Products such as SROs are assessed fees for firm facilitations because they are proprietary and the Exchange has expended considerable resources developing its singly-listed products.

- *Broker-Dealer and Non-Trading Permit Holder Market-Maker*: \$0.80 per contract for Broker-Dealer and Non-Trading Permit Holder Market-Maker transactions, which is equal to double the transaction fee for a single standard SPX option.¹⁴

- *Marketing Fee*: \$0.00 per contract. As with certain other S&P products, the Exchange proposes to add SROs to footnote 6 to the Fees Schedule so that the Exchange’s marketing fee will not apply to SROs.¹⁵

- *Floor Brokerage Fees*: \$0.08 for non-crossed orders and \$0.04 for crossed orders, which is equal to double the respective Floor Brokerage fees for a single standard SPX option.¹⁶ SROs will be excluded from the calculation of the additional monthly fee assessed to any Floor Broker Trading Privilege Holder that executes more than 20,000 standard SPX options during the month.¹⁷

- *Surcharge Fee (Index License)*: \$0.20 on all non-public customer transactions in SROs.¹⁸ The Index

License fee helps the Exchange recoup some of the license fees that the Exchange pays to the reporting authority.

- *AIM Contract Execution Fee*: As with other certain S&P products, applicable standard transaction fees will apply to AIM, SAM, FLEX AIM and FLEX SAM transactions in SROs.¹⁹

CBOE notes that SROs are eligible for trading on the Exchange as Flexible Exchange (“FLEX”) options, although FLEX option trading functionality is currently disabled.²⁰ When FLEX trading is enabled for SROs, CBOE will submit a filing to establish FLEX fees.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (“Act”),²¹ in general, and furthers the objectives of Section 6(b)(4)²² of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities.

In setting the proposed transaction fees for SROs, the Exchange considered the fact that the exposure provided by Range Options is equivalent to four option positions. Consistent with the spirit of the Commission’s observation in the Range Option approval order (that Range Options may reduce investor transaction costs), the Exchange determined not to propose a transaction fee equal to the fees for four options positions, but rather has proposed, in general, to assess a transaction fee equal to the fees for two option positions. The Exchange believes that this transaction cost level strikes the appropriate balance between establishing reasonable fees and the Exchange’s goal of introducing new products to the marketplace that are competitively priced [sic].

The Exchange believes that the fees are equitable and do not unfairly discriminate because they provide comparable pricing among similar categories of market participants. The Exchange believes that a fee of \$0.80 per contract for Customer, Professional Customer, Voluntary Professional Customer, Broker-Dealer and Non-

Trading Permit Holder Market-Maker transactions is equitable since those market participants will effectively pay half of the transactions costs associated with the exposure of four options.

The Exchange believes that a fee of \$0.40 per contract for CBOE Market-Make, DPM, E-DPM and LMM transactions is equitable since those market participants provide a valuable market service by adding liquidity to the Exchange and since they are subject to liquidity provider obligations. This standard rate is not subject to the Liquidity Provider Sliding Scale as set forth in Footnote 10 to the Fees Schedule. Excluding SROs from the Liquidity Provider Sliding Scale is equitable and not unfairly discriminatory because all similarly-situated market participants trading in the product will be charged the same fees for such transactions and because the Exchange expended significant resources developing SROs.

The Exchange also believes that a fee of \$0.50 per contract for Clearing Trading Permit Holders is equitable since they contribute capital to facilitate customer orders, which in turn provides a deeper pool of liquidity that benefits all market participants. Excluding SROs from the CBOE Proprietary Products Sliding Scale is equitable and not unfairly discriminatory because that scale is structured on a per contract basis and because SROs provide the exposure of four contracts. Accordingly, the Exchange believes that it is appropriate to exclude SROs. As with other S&P products, firm facilitations for SROs will not be free. Products such as SROs are assessed fees for firm facilitations because they are proprietary and the Exchange has expended considerable resources developing its singly-listed products.

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

The proposed rule change is designated by the Exchange as

footnote 11 to the Fees Schedule. See pages 21 [sic] and 32 [sic] to Exhibit 5. See Securities Exchange Act Release No. 63701 (January 11, 2011), 76 FR 2934 (January 18, 2011) (notice of SR-CBOE-2010-116 which filing, among other things, established a multiply-listed options fee cap and a CBOE proprietary products sliding scale).

¹² See proposed addition of the sentence “SROs are excluded from the CBOE Proprietary Products Sliding Scale” to the CBOE Proprietary Products Sliding Scale Table. See page 21 [sic] to Exhibit 5.

¹³ See proposed addition of “SRO” to the CBOE Trading Permit Holder Fee Cap Table. See page 21 [sic] to Exhibit 5.

¹⁴ See page 20 [sic] to Exhibit 5.

¹⁵ See page 31 [sic] to Exhibit 5.

¹⁶ See proposed addition of “SRO” and “SRO Crossed Orders” to the Floor Brokerage and PAR Official Fees Table to the Fees Schedule. See page 24 [sic] to Exhibit 5.

¹⁷ See proposed addition of the sentence “For purposes of determining the 20,000 contract per month threshold, SRO executions are excluded for purposes of the calculation of executed SPX contracts during the month” to footnote 25 to the Fees Schedule at page 34 [sic] to Exhibit 5.

¹⁸ See proposed addition of “SRO” to the Surcharge Fee section of the Proprietary Index

Options Rate Table to the Fees Schedule. See page 20 [sic] to Exhibit 5.

¹⁹ See proposed addition of “SRO” to footnote 18 to the Fees Schedule. See page 33 [sic] to Exhibit 5.

²⁰ See CBOE Rule 20.12 (FLEX Trading) and CBOE Regulatory Circular RG12-056 (CFLEX 2.0 Rollout Schedule and Settings) at page 4, issued on April 20, 2012.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4).

establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act²³ and subparagraph (f)(2) of Rule 19b-4²⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2012-084 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-2012-084. 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 publicly available. All submissions should refer to File Number SR-CBOE-2012-084 and should be submitted on or before October 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67778; File No. SR-FINRA-2012-026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to the Handling of Stop and Stop Limit Orders

September 4, 2012.

I. Introduction

On May 24, 2012, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend FINRA's rules relating to the handling of stop orders and stop limit orders. The proposed rule change was published for comment in the **Federal Register** on June 6, 2012.³ The Commission received four comment letters regarding the proposal.⁴ On July 19, 2012, the Commission designated a longer period to act on the proposed

rule change, until September 4, 2012.⁵ On August 9, 2012, FINRA submitted a response to the comment letters.⁶ This order approves the proposed rule change.

II. Description of the Proposal

FINRA proposes to amend its rules governing the handling of stop orders. FINRA Rule 6140(h) currently provides that a member may, but is not obligated to, accept a stop order or a stop limit order in a designated security.⁷ A buy stop order becomes a market order when a transaction takes place at or above the stop price, and a sell stop order becomes a market order when a transaction takes place at or below the stop price.⁸ When a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the limit price.⁹ Accordingly, FINRA rules provide that stop orders and stop limit orders are triggered (*i.e.*, become a market or a limit order) by a transaction in a security.

FINRA now proposes to also allow members to offer customers stop orders and stop limit orders that would be triggered by a transaction or by an event other than a transaction (*e.g.*, a quotation).¹⁰ FINRA has indicated that some firms and their customers prefer alternative triggers for activating stop orders and stop limit orders.¹¹ According to FINRA, some members believe that, for certain securities, quotations may serve as a better indicator of the current price than transactions.¹² For example, quotations for thinly traded securities may be continuously updated, whereas there may be limited trading in the securities.¹³ However, FINRA also states that some members and customers prefer to have transactions trigger stop orders and stop limit orders, and believe that customers could be disadvantaged

⁵ Securities Exchange Act Release No. 67471, 77 FR 43620 (July 25, 2012).

⁶ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Racquel L. Russell, Assistant General Counsel, Regulatory Policy and Oversight, FINRA, dated August 9, 2012 ("FINRA Response").

⁷ FINRA Rule 6140(a) defines a "designated security" as any NMS stock as defined in Rule 600(b)(47) of Regulation NMS, 17 CFR 242.600(b)(47).

⁸ See FINRA Rule 6140(h)(1)(A)-(B).

⁹ See FINRA Rule 6140(h)(2).

¹⁰ FINRA previously proposed to delete in its entirety Rule 6140(h). See Securities Exchange Act Release No. 63256 (November 5, 2010), 75 FR 69503 (November 12, 2010) (SR-FINRA-2010-055). The Commission disapproved that proposed rule change. See Securities Exchange Act Release No. 63885 (February 10, 2011), 76 FR 9062 (February 16, 2011) (Order Disapproving SR-FINRA-2010-055).

¹¹ See Notice, *supra* note 3, at 33537.

¹² See *id.*

¹³ See *id.*

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 C.F.R. 240.19b-4(f)(2).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67085 (May 31, 2012), 77 FR 33537 ("Notice").

⁴ See Letters to Elizabeth M. Murphy, Secretary, Commission, from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated June 26, 2012 ("SIFMA Letter"); Gary J. Sjostedt, Director, Order Routing and Sales, TD Ameritrade, Inc., dated June 27, 2012 ("TD Ameritrade Letter"); and Christopher Nagy, President, KOR Trading LLC, dated July 9, 2012 ("KOR Letter"); and web comment from Virgil F. Liptak, dated July 3, 2012 ("Liptak Letter"). The comment letters received by the Commission are available at <http://www.sec.gov/comments/sr-finra-2012-026/finra2012026.shtml>.