

is consistent with the Exchange Act \* \* \* is on the self-regulatory organization that proposed the rule change” and that a “mere assertion that the proposed rule change is consistent with those requirements \* \* \* is not sufficient.”<sup>19</sup> For the reasons articulated above, the Commission does not believe that FINRA has met that burden in this case.

#### IV. Conclusion

For the foregoing reasons, the Commission does not find that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with Section 15A(b)(6) of the Act.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2010-055) be, and hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Cathy H. Ahn,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63876; File No. SR-CBOE-2011-013]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees Schedule and Circular Regarding Trading Permit Holder Application and Other Related Fees

February 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 1, 2011, the Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) 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 CBOE. 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 and circular regarding Trading Permit Holder application and other related fees (“Trading Permit Fee Circular”). 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, CBOE 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. CBOE 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

CBOE Rule 2.20 grants the Exchange the authority to, from time to time, fix the fees and charges payable by Trading Permit Holders. CBOE is proposing to amend its Fees Schedule and Trading Permit Fee Circular effective February 1, 2011 to: (i) Clarify that the tier appointment fees will be assessed, as applicable, for open outcry transactions and not electronic transactions for those Market-Maker Trading Permit Holders that do not already have a tier appointment; (ii) establish a minimum open outcry contract level for assessment of a tier appointment fee to those Market-Maker Trading Permit Holders that do not maintain a tier appointment in VIX; and (iii) clarify that written notification to terminate a tier appointment should be provided to the Market Quality Assurance & DPM Administration Department.

CBOE Rule 8.3(e) provides that the Exchange may establish one or more types of tier appointments. In accordance with CBOE Rule 8.3(e), a tier appointment is an appointment to trade one or more options classes that must be held by a Market-Maker to be eligible to act as a Market-Maker in the options class or options classes subject to that

appointment. CBOE currently maintains tier appointments for Market-Maker Trading Permit Holders trading in SPX and VIX.

Section 10(A) of the current Fees Schedule provides that the SPX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX or any open outcry or electronic transaction in SPX Weeklys at any time during a calendar month. CBOE amended this provision in January 2011 to reflect the addition of SPX Weeklys and to incorporate any electronic transactions that occur in SPX Weeklys.<sup>3</sup> However, since the only Trading Permit Holders that are able to submit quotes electronically in SPX Weeklys are those Market-Maker Trading Permit Holders that have an appointment in SPX Weeklys, CBOE is proposing to clarify this provision by removing the language that would assess the tier appointment fee to any Market-Maker Trading Permit Holder that conducts any electronic transactions in SPX Weeklys. CBOE has never intended to assess the tier appointment fee to a Trading Permit Holder that submits an occasional order electronically in SPX Weeklys.

Similarly, Section 10(A) of the current Fees Schedule provides that the VIX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder that either (a) has a VIX Tier Appointment at any time during a calendar month; or (b) conducts any transactions in VIX at any time during a calendar month. However, since the only Market-Maker Trading Permit Holders that are able to submit quotes electronically in VIX are those Market-Maker Trading Permit Holders that have an appointment in VIX, CBOE is proposing to clarify this provision by removing the language that would assess the tier appointment fee to any Market-Maker Trading Permit Holder that conducts any electronic transactions in VIX. CBOE has never intended to assess the tier appointment fee to a Trading Permit Holder that submits an occasional order electronically in VIX. CBOE is also proposing to add language to the Fees Schedule to provide that the VIX Tier Appointment fee will be assessed to a Market-Maker Trading Permit Holder that trades at least 1,000 VIX options contracts per month in open outcry. In addition, because Market-Maker Trading

<sup>19</sup> 17 CFR 201.700(b)(3).

<sup>20</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> See Securities Exchange Act Release No. 63706 (January 12, 2011), 76 FR 3184 (January 19, 2011) (SR-CBOE-2011-004).

Permit Holders have an appointment to trade in open outcry in all options classes traded on the Hybrid Trading System (including VIX) pursuant to Exchange Rule 8.3(c)(ii). CBOE is proposing establish a 1,000 contract per month minimum to allow for minimum activity in VIX without having to pay a VIX Tier Appointment fee.<sup>4</sup>

In addition to the proposed changes to the Fees Schedule described above, CBOE is proposing to revise its regulatory circular that sets forth the existing Trading Permit Holder application and other related fees. The Exchange proposes to revise this circular to incorporate the changes to Section 10 of the CBOE Fees Schedule that are described above. The proposed changes to the circular are included as Exhibit 2 to the Form 19b-4.

## 2. Statutory Basis

The proposed rule change will treat similarly situated Trading Permit Holders in the same manner. Specifically, CBOE shall assess the same base tier appointment fees to all Trading Permit Holders based on the type of tier appointment requested and based on objective standards with respect to open outcry trading in the applicable class. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities for the reasons described above.

### 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

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</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.

## 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-013 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-2011-013. This file number should be included on the subject line if e-mail 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 website 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 a.m. and 3 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 No. SR-CBOE-2011-013 and should be submitted on or before March 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Cathy H. Ahn,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63881; File No. SR-NYSEArca-2010-120]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the SPDR Nuveen S&P High Yield Municipal Bond ETF

February 9, 2011.

## I. Introduction

On December 21, 2010, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the SPDR Nuveen S&P High Yield Municipal Bond ETF ("ETF" or "Fund") under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02. The proposed rule change was published for comment in the **Federal Register** on January 6, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to list and trade shares ("Shares") under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units ("Units"), of the following series of the SPDR Series

<sup>9</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> See Securities Exchange Act Release No. 63624 (December 30, 2010), 76 FR 805 ("Notice").

<sup>4</sup> This may be distinguished from SPX as all Market-Maker Trading Permit Holders trading in open outcry in SPX, a Hybrid 3.0 class, are required to maintain a separate appointment in SPX in accordance with Rule 8.3(c)(iii).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).