

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73704; File No. SR-CBOE-2014-062]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Extended Trading Hours for SPX and VIX

November 28, 2014.

#### I. Introduction

On August 26, 2014, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change 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> to establish a separate early morning trading session specifically for options on the S&P 500 Index ("SPX") and CBOE Volatility Index ("VIX"). The proposed rule change was published for comment in the *Federal Register* on September 12, 2014.<sup>3</sup> On October 24, 2014, CBOE filed Amendment No. 1 to the proposed rule change and also granted the Commission an extension of time to consider its proposal to November 3, 2014.<sup>4</sup> On October 31, 2014, CBOE granted the Commission an

additional extension of time until November 24, 2014. On November 21, 2014, CBOE filed Amendment No. 2 to the proposed rule change and also granted the Commission a further extension of time to consider its proposal to December 3, 2014.<sup>5</sup> The Commission received no substantive comments on the proposal.<sup>6</sup> The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

#### II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2<sup>7</sup>

Currently, transactions in index options may be effected on the Exchange generally between 8:30 a.m. and 3:15 p.m.,<sup>8</sup> Monday through Friday ("Regular Trading Hours"). CBOE has proposed to adopt rules that will allow it to conduct a separate, fully-electronic trading session from 2:00 a.m. to 8:15 a.m. Monday through Friday ("Extended Trading Hours") for SPX and VIX, two index options that are exclusively-listed on CBOE. According to the Exchange, it is proposing Extended Trading Hours to meet demand from investors who want to trade these two products outside of Regular Trading Hours.<sup>9</sup>

Under the proposal, Extended Trading Hours will be a separate trading session from Regular Trading Hours and there will be no carryover from one trading session to the other and no interaction between Extended Trading Hours and

Regular Trading Hours.<sup>10</sup> Extended Trading Hours will operate using separate Exchange servers<sup>11</sup> and hardware from those used during Regular Trading Hours.<sup>12</sup> Accordingly, the electronic order book used during Regular Trading Hours will not be connected to the electronic order book used during Extended Trading Hours, and orders and quotes will not interact between the two sessions.<sup>13</sup> Rather, all orders will be cancelled at the end of each Extended Trading Hours session.<sup>14</sup>

During Extended Trading Hours, all Exchange rules will apply, except as set forth in proposed CBOE Rule 6.1A (Extended Trading Hours), and except for CBOE rules that by their terms are inapplicable during Extended Trading Hours.<sup>15</sup> For example, since all trading during Extended Trading Hours will be electronic on the Hybrid Trading System,<sup>16</sup> all CBOE rules relating to open outcry trading and the Hybrid 3.0 System will be inapplicable to Extended Trading Hours.<sup>17</sup> However, CBOE rules relating to business conduct, doing business with the public, due diligence, and best execution will apply during Extended Trading Hours.<sup>18</sup>

*Access.* As is true during Regular Trading Hours, only authorized Trading Permit Holders, their nominees, and their associated persons will be able to access CBOE's electronic trading system.<sup>19</sup> However, trading privileges will be separate and distinct for

<sup>10</sup> See *id.*

<sup>11</sup> Bandwidth packets will be sold separately for Regular Trading Hours and Extended Trading Hours. See *id.* at 54766. Also, while the same telecommunications lines may be used for both Regular and Extended Trading Hours, those lines will be connected to a separate application server at the Exchange to trade during Extended Trading Hours. See *id.* at note 45.

<sup>12</sup> See *id.* at 54758.

<sup>13</sup> See *id.* at 54759.

<sup>14</sup> See *id.* at 54763.

<sup>15</sup> See proposed CBOE Rule 6.1A(a).

<sup>16</sup> According to the Exchange, SPX currently trades on the Hybrid 3.0 trading platform during Regular Trading Hours (except that the weekly SPX series trade on the Hybrid trading platform during Regular Trading Hours). Pursuant to proposed Rule 6.1A(b), SPX will trade on the Hybrid trading platform (and not the Hybrid 3.0 trading platform) during Extended Trading Hours and thus will trade pursuant to rules applicable to the Hybrid trading platform (rather than the Hybrid 3.0 trading platform) during Extended Trading Hours. See Notice, *supra* note 3 at note 18.

<sup>17</sup> See *id.* at 54759.

<sup>18</sup> See *id.* at note 13.

<sup>19</sup> See *id.* at 54760. This requirement will apply to any non-U.S. based person seeking access to the Extended Trading Hours session. Persons that are not Trading Permit Holders, such as employees of affiliates of Trading Permit Holders located outside of the United States, will not have direct access to the Exchange, and thus their orders and quotes must be submitted to the Exchange through a Trading Permit Holder, subject to applicable laws, rules, and regulations. See *id.* at note 59.

<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. 73017 (September 8, 2014), 79 FR 54758 (September 12, 2014) ("Notice").

<sup>4</sup> CBOE filed Amendment No. 1 to the proposed rule change to (i) amend the requirements for foreign Trading Permit Holders to ensure, in part, that foreign Trading Permit Holders will be able to provide the Exchange with information, including their books and records; (ii) clarify why VIX index values will not be calculated and disseminated during Extended Trading Hours; (iii) clarify that CBOE will make available the number of Trading Permits during Extended Trading Hours to comply with Section 6(c)(4) of the Act; (iv) represent that the Exchange will establish procedures to ensure that Trading Permit Holders only utilize clearing brokers that are authorized by OCC for clearing during Extended Trading Hours; (v) represent that CBOE's systems are designed to prohibit unauthorized access; and (vi) correct an internal cross-reference in proposed CBOE Rule 6.1A(e)(iii)(B). See Amendment No. 1 to File No. SR-CBOE-2014-062, dated October 24, 2014 ("Amendment No. 1"). To promote transparency of its proposed amendment, when CBOE filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR-CBOE-2014-062. The Exchange also posted a copy of its Amendment No. 1 on its Web site at <http://www.cboe.com/publish/RuleFilingsSEC/SR-CBOE-2014-062.a1.pdf> when it filed the amendment with the Commission.

<sup>5</sup> CBOE filed Amendment No. 2 to the proposed rule change to delete proposed rule text in Exhibit 5 and delete related parts in the purpose and statutory basis sections of its Form 19b-4 submission, as well as Exhibit 1 and Item 8 in the Form 19b-4 (each as amended by Amendment No. 1), all of which related to the removal of proposed requirements that would have applied to foreign Trading Permit Holders. See Amendment No. 2 to File No. SR-CBOE-2014-062, dated November 21, 2014 ("Amendment No. 2"). To promote transparency of its proposed amendment, when CBOE filed Amendment No. 2 with the Commission, it also submitted Amendment No. 2 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR-CBOE-2014-062. The Exchange also posted a copy of its Amendment No. 2 on its Web site at <http://www.cboe.com/publish/RuleFilingsSEC/SR-CBOE-2014-062.a2.pdf> when it filed the amendment with the Commission.

<sup>6</sup> See *infra* notes 4 and 5 (noting that when CBOE submitted each Amendment to its proposal, it also submitted them as a comment letter to the file to promote the broad dissemination of its Amendments).

<sup>7</sup> A full description of the proposed rule change can be found in the Notice. See Notice, *supra* note 3.

<sup>8</sup> See CBOE Rule 24.6. All times in this order refer to Chicago time.

<sup>9</sup> See Notice, *supra* note 3 at 54758.

Extended Trading Hours. In other words, a broker-dealer that is not currently a CBOE member, as well as a current CBOE Trading Permit Holder (for Regular Trading Hours) will both need to obtain a *separate* Extended Trading Hours Trading Permit if they want to trade during CBOE's new Extended Trading Hours session.<sup>20</sup> The separate nature of access for the two trading sessions means that Trading Permit Holders will need to use separate log-ins for Extended versus Regular Trading Hours.<sup>21</sup> In this respect, CBOE's systems will be designed to prevent unauthorized access by persons not eligible to trade on CBOE during the Extended Trading Hours session.<sup>22</sup>

**Market Makers.** CBOE's proposal contemplates participation from Market Makers in the Extended Trading Hours session. To be eligible, Market Makers will need to obtain a separate Extended Trading Hours Trading Permit and also will need to request a separate appointment during Extended Trading Hours.<sup>23</sup> During Extended Trading Hours, Market Makers will be required to maintain continuous electronic quotes in 60% of the non-adjusted options series of the Market Maker's appointed classes that expire in less than nine months for 90% of the time when the Market Maker is quoting in a class.<sup>24</sup> In addition, the Exchange's proposal gives it the authority to determine to have no bid/ask differential requirement in the Extended Trading Hours session.<sup>25</sup> Further, Market Makers generally will be able to use the same Exchange functionality during Extended Trading Hours that is available to them during Regular Trading Hours. For example, Market Makers may elect to use a quote risk monitor ("QRM") mechanism during

Extended Trading Hours. Although, a Market Maker that elects to use QRM for both Regular Trading Hours and Extended Trading Hours will need to establish parameters separately for each trading session (even though a Market Maker may elect to use the same parameters for both trading sessions or use QRM for one trading session and not the other).<sup>26</sup>

**LMMs.** The Exchange also may approve one or more Market Makers to act as Lead Market Makers ("LMMs") in each class during Extended Trading Hours.<sup>27</sup> Unlike Regular Trading Hours, however, LMMs will only be required to comply with the continuous quoting obligations and other obligations applicable to regular Market Makers in their assigned classes.<sup>28</sup> Consequently, LMMs will *not* be entitled to receive a participation entitlement in the Extended Hours Session.<sup>29</sup> However, if an LMM meets specific performance criteria during a month, it will be eligible to receive a specified monetary incentive from CBOE. Specifically, if an LMM: (1) Provides continuous electronic quotes in at least the lesser of 99% of the non-adjusted series or 100% of the non-adjusted series minus one call-put pair in an Extended Trading Hours allocated class (excluding intraday add-on series on the day during which such series are added for trading) during Extended Trading Hours in a given month and (2) ensures an opening of the same percentage of series by 2:05 a.m. for at least 90% of the trading days during Extended Trading Hours in a given month, the LMM will be eligible to receive a rebate for that month in an amount set forth in the Exchange Fees Schedule.<sup>30</sup> For purposes of this heightened continuous quoting standard, an LMM will be deemed to have provided continuous electronic quotes during Extended Trading Hours if the LMM provides electronic two-sided quotes for 90% of the time in Extended Trading Hours in a given month.<sup>31</sup>

<sup>26</sup> See proposed CBOE Rule 8.18.

<sup>27</sup> See proposed CBOE Rule 6.1A(e)(iii)(A).

<sup>28</sup> See proposed CBOE Rule 6.1A(e)(iii)(B).

<sup>29</sup> See, e.g., CBOE Rules 6.45B and 8.15B (concerning participation entitlements).

<sup>30</sup> CBOE's adoption of any such rebate will be subject to the rule filing process of Section 19 of the Act. CBOE is not proposing any rebate in this current proposal.

<sup>31</sup> See proposed CBOE Rule 6.1A(e)(iii)(C). Because the heightened quoting standard for LMMs in the Extended Hours Trading session is applicable only to a fee rebate and not a participation entitlement, the monthly measuring period is separate and distinct from the heightened quoting standard in the Regular Trading Hours session, which is measured on a daily basis. See Notice, *supra* note 3 at 54762.

**Trading.** During Extended Trading Hours, the Exchange proposes to limit the available order types that may be entered into the system. Specifically, in recognition of the expected reduced liquidity, higher volatility, and wider spreads during Extended Trading Hours, the Exchange will not allow market orders, market-on-close orders, stop orders, and good-til-cancelled orders.<sup>32</sup> Otherwise, order processing during Extended Trading Hours will operate in the same manner as it does for Regular Trading Hours and there will be no change to ranking, display, or allocation algorithms rules.<sup>33</sup> Moreover, there will be no change between Regular and Extended Trading Hours in regards to the processes for clearing, settlement, exercise, and expiration.<sup>34</sup> In addition, the Exchange will report the best bid and offer and executed trades to the Options Price Reporting Authority ("OPRA") during Extended Trading Hours in the same manner that it reports that information to OPRA during Regular Trading Hours.<sup>35</sup>

The Exchange also may halt trading during Extended Trading Hours in the interests of a fair and orderly market largely in the same manner that it can during Regular Trading Hours.<sup>36</sup> For

<sup>32</sup> See Notice, *supra* note 3 at 54763. See also proposed CBOE Rule 6.1A(f).

<sup>33</sup> See Notice, *supra* note 3 at 54765. The Exchange also intends to activate the complex order auction and the automated improvement mechanism ("AIM") auction during Extended Trading Hours. These auctions will operate in the same manner as they do during Regular Trading Hours, except with respect to AIM, the requirement that three Market Makers must be quoting to initiate an AIM auction will not apply during Extended Trading Hours. See *id.* at note 43.

<sup>34</sup> See Notice, *supra* note 3 at 54765. According to the Exchange, the Options Clearing Corporation has stated that it will be able to clear and settle all transactions and handle exercises of options during Extended Trading Hours. See *id.* at note 48. In addition, the Exchange has represented that it will work with OCC to establish procedures in connection with on-boarding Trading Permit Holders to ensure that Extended Trading Hours Trading Permit Holders only utilize clearing brokers that are properly authorized by OCC for operating during Extended Trading Hours. See Amendment No. 1, *supra* note 4.

<sup>35</sup> See Notice, *supra* note 3 at 54765. The operator of OPRA has informed CBOE that it intends to add a modifier to the disseminated information during Extended Trading Hours. See *id.* at note 57. The Exchange also will disseminate Extended Trading Hours data through its proprietary data feed in the same format and manner that it distributes data during Regular Trading Hours. See *id.* at 54765. Any fees to be charged by CBOE for the Extended Trading Hours proprietary data feed will be subject to a separate fee change filing. See *id.* at note 49.

<sup>36</sup> See proposed CBOE Rule 24.7(d). Further, clearly erroneous trade breaks during Extended Trading Hours will be processed in the same manner as Regular Trading Hours, except that during Extended Trading Hours, only two Exchange Officials that are members of the Exchange's staff

<sup>20</sup> See proposed CBOE Rule 6.1A(d). The Exchange represents that it will make available a sufficient number of Trading Permits during Extended Trading Hours to comply with Section 6(c)(4) of the Act. See Amendment No. 1, *supra* note 4. The Exchange intends to set the initial limit of Extended Trading Hours Trading Permits at 900 Market Maker Trading Permits and 150 Electronic Access Trading Permits (the same total number as available during Regular Trading Hours). See *id.*

<sup>21</sup> See Notice, *supra* note 3 at 54765.

<sup>22</sup> See Amendment No. 1, *supra* note 4.

<sup>23</sup> See proposed CBOE Rule 6.1A(e). For Extended Trading Hours, the appointment cost for VIX will be 0.5 and for SPX it also will be 0.5. Each Extended Trading Hours Trading Permit will have an appointment credit of 1.0 (the same as a Regular Trading Hours Trading Permit), so at the launch of Extended Trading Hours, a Market Maker will only need to hold one Extended Trading Hours Trading Permit if it wants to quote in both SPX and VIX during Extended Trading Hours. See Notice, *supra* note 3 at 54760. See also proposed CBOE Rule 6.1A(e)(i).

<sup>24</sup> See proposed CBOE Rule 6.1A(e)(ii).

<sup>25</sup> See *id.*

example, if there was a marketwide trading halt at the end of the prior trading day, CBOE could consider that as an “unusual condition” in determining whether to halt trading during the following day’s Extended Trading Hours session.<sup>37</sup> Separately, CBOE proposed to amend its trade halt rule to provide that it also may consider whether trading in related futures has been halted as a factor in determining whether to halt trading in an option.<sup>38</sup>

**Surveillance and Disclosures.** The Exchange has represented that it will perform all necessary surveillance coverage and will have appropriately trained and qualified regulatory and operations staff in place during Extended Trading Hours to satisfy its regulatory obligations and administer the Extended Trading Hours session in real time.<sup>39</sup> In addition, because of the differences in the nature of the market and trading between Regular and Extended Trading Hours, CBOE will require Trading Permit Holders to disclose to customers that trading during Extended Trading Hours may involve material risks, including, in part, the possibility of lower liquidity, higher volatility, and lack of an updated underlying index or portfolio value,<sup>40</sup>

will be necessary to make such a determination. See Notice, *supra* note 3 at 54765.

<sup>37</sup> See Notice, *supra* note 3 at 54766; and proposed CBOE Rule 24.7(d). Also, under the proposed rule change, CBOE will not have to consider during Extended Trading Hours existing factors that are not applicable to the Extended session, such as (i) the extent to which trading is not occurring in the stocks or options underlying the index; (ii) the current calculation of the index derived from the current market prices of the stocks is not available; (iii) the “current index level” for a volatility index is not available or the cash (spot) value for a volatility index is not available; and (iv) the extent to which the rotation has been completed or other factors regarding the status of the rotation, in determining whether to halt trading during Extended Trading Hours. See Notice, *supra* note 3 at note 53; and proposed CBOE Rule 24.7(d).

<sup>38</sup> See proposed CBOE Rule 24.7, Interpretation and Policies .01. Currently, CBOE’s rule allows it to consider the activation of price limits on futures exchanges when determining whether to halt trading in an index options. The proposed change will allow CBOE to consider *any* halt in futures trading, including halts called in situations other than in response to the activation of a price limit. See Notice, *supra* note 3 at 54765.

<sup>39</sup> See Notice, *supra* note 3 at 54765 and 54767.

<sup>40</sup> CBOE is the index calculator for the VIX. According to CBOE, the accuracy of the calculation for VIX indicative (or spot) values depends upon the quality of bid and offer quotes for constituent SPX option series. CBOE is unsure whether the SPX option quotes displayed during Extended Trading Hours will be sufficient to calculate accurate and meaningful VIX indicative quote values during Extended Hours. Accordingly, CBOE has determined to not calculate VIX spot values during Extended Trading Hours. See Amendment No. 1, *supra* note 4. However, as the Exchange and market participants gain experience with the Extended Trading Hours session and if activity and market maker participation increases, the Commission

prior to accepting an order from a customer for execution during Extended Trading Hours.<sup>41</sup> The Exchange also will distribute a Regulatory Circular detailing, among other things, some of the risks of trading during Extended Trading Hours.<sup>42</sup>

### III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>43</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>44</sup> which requires, among other things, 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 facilitating 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. While no other options exchange is currently open for trading outside of Regular Trading Hours, the Commission notes that it has previously approved extended trading hours in the cash equities markets.<sup>45</sup>

The proposed rule change, as modified by Amendment Nos. 1 and 2, will allow investors additional trading opportunities to trade in two CBOE exclusively-listed products outside of CBOE’s current Regular Trading Hours. The hours of CBOE’s proposed Extended Trading Hours roughly coincide with the regular trading hours

expects CBOE to reevaluate this decision and consider disseminating a VIX index value if and when quoting activity becomes sufficient to allow CBOE to calculate accurate and meaningful VIX index values during the Extended Trading Hours session.

<sup>41</sup> See proposed CBOE Rule 6.1A(j).

<sup>42</sup> See Notice, *supra* note 3 at 54764.

<sup>43</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>44</sup> 15 U.S.C. 78f(b)(5).

<sup>45</sup> See e.g., Securities Exchange Act Release Nos. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving an off-hours trading facility on a pilot basis); 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999) (SR–CHX–99–16) (approving extended trading hours on a pilot basis); and 56985 (December 18, 2007), 72 FR 73388 (December 27, 2007) (SR–NASDAQ–2007–098) (approving the trading of certain securities outside of regular market hours).

in Europe, and therefore CBOE’s proposal may be of particular interest to traders located in non-U.S. jurisdictions. At the same time, CBOE has proposed certain limitations and protections on access and trading during Extended Trading Hours that are designed to promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. For example, as discussed above, only authorized Trading Permit Holders, their nominees, and their associated persons will be able to access the CBOE trading system during Extended Trading Hours, and CBOE’s system is designed to allow CBOE to restrict unauthorized access to its systems in Extended Trading Hours.<sup>46</sup> Specifically, CBOE is requiring a new class of trading permits for Extended Trading Hours with their own unique log-in ID, and only persons in possession of those credentials will have access to CBOE’s systems to trade during Extended Trading Hours. Moreover, consistent with fostering cooperation and coordination with persons engaged in clearing and settling transactions in securities, CBOE has represented that it will work with OCC to establish procedures in connection with on-boarding Extended Trading Hours permit holders to ensure that Trading Permit Holders only utilize clearing brokers that have been properly authorized by OCC for operating during Extended Trading Hours.<sup>47</sup> This process is designed to help assure the orderly functioning of the clearing process in Extended Trading Hours by avoiding any risk associated with a CBOE permit holder trading through a clearing broker during Extended Trading Hours if such clearing broker does not, in OCC’s opinion, meet OCC’s standards for clearing outside of regular trading hours.

In addition, as discussed above, all of CBOE’s rules, with certain exceptions, will continue to apply during Extended Trading Hours. These rules, among other things, prohibit Trading Permit Holders from engaging in acts or practices inconsistent with just and equitable principles of trade, making any willful or material misrepresentation or omission in any

<sup>46</sup> The Commission notes that in order to be a Trading Permit Holder, an individual or organization must be, in part, registered as a broker or dealer pursuant to Section 15 of the Act or be associated with a Trading Permit Holder organization that is registered as a broker or dealer pursuant to Section 15 of the Act. See CBOE Rules 3.2 and 3.3.

<sup>47</sup> See Amendment No. 1, *supra* note 4.

application, report, or other communication to the Exchange or the OCC, and from effecting or inducing the purchase, sale, or exercise of any security for the purpose of manipulating the price or activity of the security,<sup>48</sup> as well as impose best execution requirements and prohibit trading ahead of customer orders.<sup>49</sup> In addition, the Exchange has represented that it will revise its surveillance procedures to incorporate transactions that occur and orders and quotations that are submitted during Extended Trading Hours and perform all necessary surveillance coverage during Extended Trading Hours.<sup>50</sup> Importantly, CBOE has represented that it will have a sufficient number of appropriately qualified staff on-site and otherwise available as necessary during Extended Trading Hours to provide support and handle any operations and regulatory issues that may arise.<sup>51</sup> CBOE's represented commitment to adequately staff its operations during Extended Trading Hours is important to assure the integrity of CBOE's operations during those early morning hours and necessary to assure that CBOE is able to carry out and enforce its rules during this session, including rules relating to trading halts and obvious error trades, as well as thoroughly monitor trading and the operations of its trading systems. Accordingly, the Commission believes that CBOE has designed its Extended Trading Hours session to promote just and equitable principles of trade and prevent fraudulent and manipulative acts and practices to the same extent that its Regular Trading Hours session has been so designed.

The Commission also believes that CBOE's disclosure requirement that obligates members to make certain written disclosures to customers regarding material trading risks that may exist during Extended Trading Hours is consistent with the protection of investors.<sup>52</sup> Specifically, Trading Permit Holders will be required to make certain disclosures to customers regarding the risk of lower liquidity, higher volatility,

and wider spreads during Extended Trading Hours as compared to Regular Trading Hours.<sup>53</sup> The Commission believes that such disclosures should help ensure that customers are reasonably informed about the specific risks associated with trading in the non-core market before they decide to submit their first order in the Extended Trading Hours session. Further, these requirements are designed to mitigate, to the extent possible, the likelihood of investor confusion regarding the significant differences between the character of the market typical of Regular and Extended Trading Hours sessions.

The Commission further believes that CBOE's proposal to use a fully electronic trading platform during Extended Trading Hours that shares most of the functionality of its Hybrid System is reasonable. As discussed above, CBOE will use separate servers and hardware for the Extended Trading Hours session and the two sessions will not be linked or otherwise interact with each other. Nevertheless, according to the Exchange, orders will be processed in the same manner during Extended Trading Hours as Regular Trading Hours and there will be no changes to the ranking, display, or allocation algorithm rules.<sup>54</sup> CBOE also explained that there will be no changes to the processes for clearing, settlement, exercise, and expiration.<sup>55</sup> The Commission believes that maintaining separate infrastructure for the two separate trading systems is designed to protect the resiliency of the Regular Trading Hours session. Further, utilizing the existing trading and clearing process for the Extended Trading Hours session that CBOE uses for its electronic trading during Regular Trading Hours should facilitate the ability of CBOE members to trade in the new session on terms and with functionality that is familiar to them.

However, there will be some differences during Extended Trading Hours, such as returning certain kicked-out orders to a Trading Permit Holder in lieu of routing such order to PAR, and limiting the types of orders available for electronic processing to avoid the use of market orders or any order that could convert into a market order. The Commission believes these differences reflect that the character of trading during Extended Trading Hours will likely differ from typical trading during Regular Trading Hours, including the likelihood of reduced liquidity, higher

volatility, and wider spreads during Extended Trading Hours.

Furthermore, CBOE has proposed to provide for Market Makers during Extended Trading Hours. Any Market Maker that elects to have an appointment during Extended Trading Hours will be subject to the same general quoting obligations as are applicable during Regular Trading Hours, though CBOE may determine not to impose bid/ask differential requirements during Extended Trading Hours.<sup>56</sup>

CBOE also has provided for Lead Market Makers, though the Commission notes that LMMs will not be entitled to a participation entitlement in Extended Trading Hours. However, LMMs that satisfy a heightened quoting standard during a month will be eligible to receive a rebate from CBOE for that month.<sup>57</sup> The Commission believes that CBOE's proposed LMM incentive program during Extended Trading Hours is designed to encourage two-sided liquidity during Extended Trading Hours and, to the extent it is successful, may contribute to the maintenance of fair and orderly markets during Extended Trading Hours. To the extent that CBOE is successful in encouraging active participation of Market Makers and LMMs during Extended Trading Hours, then CBOE may be able to help address some of the risks inherent in a non-core hours trading session, including the risks of reduced liquidity, higher volatility, and wider markets. Therefore, the proposal's provision for Market Makers and LMMs during the Extended Trading Hours session is consistent with the protection of investors and the public interest as well as the promotion of fair and orderly markets.

The Commission also believes that CBOE's proposed changes to its trading halt rule are consistent with the Act and designed to promote fair and orderly markets. The Commission notes that the Exchange will consider halting trading during Extended Trading Hours in the interests of a fair and orderly market in the same manner that it could halt trading during Regular Trading Hours. CBOE's proposed amendment to the trading halt rule to allow it to consider a halt in trading in related futures contracts is a reasonable additional

<sup>48</sup> See Chapter IV (Business Conduct) of CBOE's rules.

<sup>49</sup> See CBOE Rules 53.2 (Prohibition Against Trading Ahead of Customer Orders) and 53.8 (Best Execution and Interpositioning). The Commission notes that CBOE Rule 53.2, Interpretations and Policies .07, specifically provides that Trading Permit Holders may limit the life of a customer order to the period of normal market hours. However, if the customer and Trading Permit Holder agree to the processing of the customer's order outside normal market hours, the protections of the rule will apply to that customer's order for the entirety of the agreed upon executable time.

<sup>50</sup> See Notice, *supra* note 3 at 54765 and 54767.

<sup>51</sup> See *id.*

<sup>52</sup> See proposed CBOE Rule 6.1A(j).

<sup>53</sup> See *id.*

<sup>54</sup> See Notice, *supra* note 3 at 54758.

<sup>55</sup> See *id.* at 54765.

<sup>56</sup> As noted above, Market Makers will not have to satisfy the open outcry quoting obligations since all trading during Extended Trading Hours will be electronic. See proposed CBOE Rule 6.1A(e)(ii).

<sup>57</sup> The Commission notes that the Exchange will need to submit a proposed rule change pursuant to Section 19(b) of the Act if and when it seeks to add such a rebate for LMMs to the Exchange's fee schedule.

factor and consistent with the existing factors under the rule that allows CBOE to consider the activation of price limits in the futures markets.<sup>58</sup>

In addition, the Commission finds that the proposed rule change, as amended, is consistent with Section 11A(a)(1)(C) of the Act.<sup>59</sup> Congress found in those provisions that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market. The proposed rule change is designed to accomplish these objectives by ensuring that the Exchange will report its best bid and offer and executed trades to OPRA during Extended Trading Hours in the same manner that they are reported during Regular Trading Hours,<sup>60</sup> thereby providing public transparency of activity in the Extended Trading Hours market.

#### IV. Solicitation of Comments on Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 1 and 2 are 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 No. SR-CBOE-2014-062 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 No. SR-CBOE-2014-062. 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 will also 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-2014-062 and should be submitted on or before December 26, 2014.

#### V. Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice of Amendment Nos. 1 and 2 in the **Federal Register**. The Commission notes that, in addition to filing Amendment Nos. 1 and 2 with the Commission, CBOE also submitted Amendment No. 1 and 2 as comments to the file, which the Commission promptly posted on its Web site on October 27, 2014 and November 21, 2014, respectively, in order to promote public availability and accessibility of the Amendments. The Commission notes that it did not receive any comments on CBOE's initial proposal or on either Amendment Nos. 1 or 2 prior to the date of this order.

In Amendment No. 1, the Exchange made several discrete changes to its proposal to provide additional clarity and further legal support for why its proposal is consistent with the Act. In particular, CBOE represented that it will establish procedures with OCC to ensure that Trading Permit Holders only utilize clearing brokers that have been authorized by OCC to clear during Extended Trading Hours.<sup>61</sup> Further, CBOE clarified that it will be able to prohibit an unauthorized user from accessing the trading system during

Extended Trading Hours.<sup>62</sup> CBOE also represented that it will comply with the provisions of Section 6(c)(4) of the Act in making Trading Permits available during Extended Trading Hours by authorizing a total of 1,050 total permits for the Extended Trading Hours session.<sup>63</sup> Finally, CBOE provided additional support to justify its decision to not disseminate VIX values during Extended Trading Hours.<sup>64</sup> As the index calculator for VIX, CBOE explained that it does not currently know whether SPX options quotes (on which the VIX index is calculated) displayed in Extended Trading Hours will be sufficient to calculate an accurate and meaningful VIX indicative value in the same manner as what typically occurs during Regular Trading Hours. CBOE further pledged to reconsider the issue in the future and reassess whether trading in the Extended Trading Hours session rises to a sufficient level that is capable of supporting the calculation of accurate and meaningful VIX indicative values. The Commission believes that these proposed changes in Amendment No. 1 are reasonable and clarify the application and operation of CBOE's original proposal in a manner that is materially consistent with the scope of what CBOE originally proposed and what the Commission noticed for public comment in the **Federal Register**.

In addition, in Amendment No. 1, CBOE revised its proposed rules regarding foreign Trading Permit Holders and access from foreign jurisdictions. However, in Amendment No. 2 CBOE withdrew those proposed rule changes. The Commission believes that those proposed changes were incidental to the Exchange's core proposal to adopt an Extended Trading Hours session for SPX and VIX, and that their deletion from the proposal does not raise any concerns with the remainder of the proposal. If, in the future, CBOE decides to revisit its rules applicable to foreign Trading Permit Holders, it would need to submit a proposed rule change filing pursuant to Section 19(b) of the Act.<sup>65</sup>

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>66</sup> that the

<sup>58</sup> See proposed CBOE Rule 24.7, Interpretations and Policies .01.

<sup>59</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>60</sup> See Notice, *supra* note 3 at 54765. See also *supra* note 35 (noting that OPRA intends to add a modifier to Extended Trading Hours quotes and trades).

<sup>61</sup> See Amendment No. 1, *supra* note 4.

<sup>62</sup> See *id.*

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> 15 U.S.C. 78s(b).

<sup>66</sup> 15 U.S.C. 78s(b)(2).

proposed rule change, as modified by Amendment Nos. 1 and 2, (SR-CBOE-2014-062), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>67</sup>

**Brent J. Fields,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73702; File No. SR-BX-2014-048]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Granting Approval to Proposed Rule Change To Establish the Retail Price Improvement Program on a Pilot Basis Expiring Twelve Months From the Date of Implementation

November 28, 2014.

#### I. Introduction

On October 17, 2014, The NASDAQ OMX BX Stock Market LLC (the "Exchange" or "BX") 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 establish a Retail Price Improvement ("RPI") Program (the "Program") on a pilot basis for a period of 12 months from the date of implementation, if approved. The proposed rule change was published for comment in the *Federal Register* on October 29, 2014.<sup>3</sup> The Commission did not receive any comments on the proposed rule change.

In connection with the proposal, the Exchange requested exemptive relief from Rule 612 of Regulation NMS,<sup>4</sup> which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than \$1.00 per share in an increment smaller than \$0.01.<sup>5</sup> On

October 10, 2014, the Exchange submitted a letter requesting that the staff of the Division of Trading and Markets not recommend any enforcement action under Rule 602 of Regulation NMS based on the Exchange's and its Members' participation in the Program.<sup>6</sup>

This order approves the proposed rule change and grants the exemption from the Sub-Penny Rule sought by the Exchange in relation to the proposed rule change.

#### II. Description of the Proposal

The Exchange is proposing a 12-month pilot program to attract additional retail order flow to the Exchange, while also providing the potential for price improvement to retail order flow. The Program would be limited to trades occurring at prices equal to or greater than \$1.00 per share.<sup>7</sup> All Regulation NMS securities traded on the Exchange would be eligible for inclusion in the Program.

Under the Program, a new class of market participants called Retail Member Organizations ("RMOs")<sup>8</sup> would be eligible to submit certain retail order flow ("Retail Orders") to the Exchange. All Exchange Members would be permitted to provide potential price improvement for Retail Orders in the form of designated non-displayed interest, called a Retail Price Improvement Order ("RPI Order" or "RPI interest"), that is priced more aggressively than the Protected National Best Bid or Offer ("Protected NBBO")<sup>9</sup>

relating to the required form of a filing on Form 19b-4, it was rejected.

<sup>6</sup> See Letter from Jeffrey Davis, Deputy General Counsel, NASDAQ OMX BX, Inc., to Stephen Luparello, Director, Division of Trading and Markets, Commission, dated October 10, 2014. This letter was submitted contemporaneously with the Exchange's original filing for this proposed rule change, which was filed on October 10, 2014. As noted above, that filing was rejected because it did not comply with the rules of the Commission relating to the required form of a filing on Form 19b-4.

<sup>7</sup> The Exchange notes that certain orders submitted to the Program designated as eligible to interact with liquidity outside of the Program—Type 2 Retail Orders, discussed below—could execute at prices below \$1.00 if they do in fact execute against liquidity outside of the Program.

<sup>8</sup> An RMO would be a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders. See Proposed BX Rule 4780. A "Member" is any registered broker or dealer that has been admitted to membership in the Exchange. See BX Rule 0120(i).

<sup>9</sup> The terms Protected Bid and Protected Offer are defined in Rule 600(b)(57) of Regulation NMS. 17 CFR 242.600(b)(57). The Exchange represents that, generally, the Protected Bid and Protected Offer, and the national best bid ("NBB") and national best offer ("NBO," together with the NBB, the "NBBO"), will be the same. However, it further represents that a market center is not required to route to the NBB or NBO if that market center is subject to an

exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Exchange states that the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Rule 611 of Regulation NMS.

#### Types of Orders and Identifier

A Retail Order would be an agency or riskless principal<sup>11</sup> order that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price (except in the case of a market order being changed to a marketable limit order) or side of market and provided that the order does not originate from a trading algorithm or any other computerized methodology. A Retail Order is an Immediate or Cancel Order. As discussed in greater detail below, Retail Orders may be designated as Type 1 or Type 2. Retail Orders, regardless of Type, may be entered in sizes that are odd lots, rounds lots, or mixed lots.

An RPI Order would be non-displayed liquidity on the Exchange that is priced better than the Protected NBBO by at

exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Exchange states that the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Rule 611 of Regulation NMS.

<sup>10</sup> As explained further below, the Exchange has proposed two types of Retail Orders, one of which could execute against other contra-side interest if it was not completely filled by contra-side RPI Interest or other price-improving liquidity. All Retail Orders would first execute against available contra-side RPI Orders or other price-improving liquidity. Any remaining portion of the Retail Order would then either cancel, be executed as an immediate-or-cancel order, or be routed to another market for execution, depending on the type of Retail Order. The Exchange notes that other price improving liquidity may include, but is not limited to: Booked non-displayed orders with a limit price that is more aggressive than the then-current NBBO; midpoint-pegged orders (which are by definition non-displayed and priced more aggressively than the NBBO); non-displayed orders pegged to the NBBO with an aggressive offset, as defined in Proposed BX Rule 4780(a)(4) as Other Price Improving Contra-Side Interest. Orders that do not constitute other price improving liquidity include, but are not limited to: Orders with a time-in-force instruction of IOC; displayed orders; limit orders priced less aggressively than the NBBO.

<sup>11</sup> In order to qualify as a "Retail Order," a "riskless principal" order must satisfy the criteria set forth in FINRA Rule 5320.03. RMOs that submit riskless principal orders as Retail Orders must maintain supervisory systems to reconstruct such orders in a time-sequenced manner, and the RMOs must submit reports contemporaneous with the execution of the facilitated orders that identify such trades as riskless principal.

<sup>67</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. 73410 (October 23, 2014), 79 FR 64447 (SR-BX-2014-048) ("Notice").

<sup>4</sup> 17 CFR 242.612 ("Sub-Penny Rule").

<sup>5</sup> See Letter from Jeffrey Davis, Deputy General Counsel, NASDAQ OMX BX, Inc., to Brent J. Fields, Secretary, Commission, dated October 10, 2014 ("Request for Sub-Penny Rule Exemption"). The Request for Sub-Penny Rule Exemption was submitted contemporaneously with the Exchange's original filing for this proposed rule change, which was filed on October 10, 2014. Because that filing did not comply with the rules of the Commission