

charged to all Permit Holders on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those Permit Holders that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Permit Holder proprietary transactions) of its regulatory program.<sup>6</sup>

The ORF is designed to recover a material portion of the costs of supervising and regulating Permit Holder customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Permit Holders of adjustments to the ORF via regulatory circular.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

<sup>6</sup> If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on Permit Holder proprietary transactions if the Exchange deems it advisable. See email from Jaime Galvan, Senior Attorney, C2, to Johnna Dumler, Special Counsel, Commission, dated December 18, 2012.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and paragraph (f) 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2012-040 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-C2-2012-040. 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 NW., Washington, DC 20549, on official

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2012-040, and should be submitted on or before January 16, 2013.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2012-31018 Filed 12-21-12; 4:15 pm]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68478; File No. SR-BOX-2012-023]

### **Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Position and Exercise Limits for Options on the iShares MSCI Emerging Markets Index Fund to 500,000 Contracts**

December 19, 2012.

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 December 12, 2012, BOX Options Exchange LLC ("BOX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Interpretive Material to Rule 3120 (Position Limits) to increase the position and exercise limits for options on the iShares MSCI Emerging Markets Index Fund ("EEM") to 500,000 contracts. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public

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

<sup>8</sup> 17 C.F.R. 240.19b-4(f).

Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

## 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

Position limits for exchange-traded fund ("ETFs") options, such as EEM options, are determined pursuant to Rule 3120 (Position Limits) and vary according to the number of outstanding shares and trading volume during the most recent six-month trading period of an underlying stock or ETF. The largest in capitalization and most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. The current position limit for EEM options is 250,000 contracts. The purpose of the

proposed rule change is to amend Interpretative Material (IM-3120-2) to Rule 3120 to increase the position and exercise limits for EEM options to 500,000 contracts.<sup>3</sup> There is precedent for establishing position limits for options on actively-traded ETFs and these position limit levels are set forth in IM-3120-2.<sup>4</sup>

In support of this proposed rule change, and as noted by the Chicago Board Options Exchange, Incorporated ("CBOE") in a related filing,<sup>5</sup> the below trading statistics compare EEM to IWM and SPY. As shown in the table, the average daily volume in 2011 for EEM was 65 million shares compared to 64.1 million shares for IWM and 213 million shares for SPY. The total shares outstanding for EEM was 922.9 million compared to 192.6 million shares for IWM and 716.1 million shares for SPY. Further, the fund market cap for EEM was \$41.1 billion compared to \$15.5 billion for IWM and \$98.3 billion for SPY.

ETF	2011 ADV (mil. shares)	2011 ADV (option contracts)	Shares outstanding (Mil.)	Fund market cap (\$bil)
EEM .....	65	280,000	922.9	41.1
IWM .....	64.1	662,500	192.6	15.5
SPY .....	213	2,892,000	716.1	98.3

In further support of this proposal, the Exchange represents that EEM still qualifies for the initial listing criteria set forth in Rule 5020(h) for ETFs holding non-U.S. component securities.<sup>6</sup> EEM tracks the performance of the MSCI Emerging Markets Index, which has approximately 800 component securities.<sup>7</sup> "The MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance of emerging markets. The MSCI Emerging Markets Index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey."<sup>8</sup> The Exchange represents that more than 50% of the weight of the

securities held by EEM are now subject to a comprehensive surveillance agreement ("CSA").<sup>9</sup> Additionally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any one country that is not subject to a CSA do not represent 20% or more of the weight of the MSCI Emerging Markets Index.<sup>10</sup> Finally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any two countries that are not subject to CSAs do not represent 33% or more of the weight of the MSCI Emerging Markets Index.<sup>11</sup>

The Exchange believes that the liquidity in the underlying ETF and the liquidity in EEM options support its request to increase the position and exercise limits for EEM options. As to the underlying ETF, through October 17,

2012 the year-to-date average daily trading volume for EEM across all exchanges was 49.3 million shares. As to EEM options, the year-to-date average daily trading volume for EEM options across all exchanges was approximately 250,000 contracts. The Exchange believes that increasing position limits for EEM options will lead to a more liquid and competitive market environment for EEM options that will benefit customers interested in this product. Under the Exchange's proposal, the options reporting requirement for EEM would continue unabated. Thus, the Exchange would still require that each Options Participant and associated person of an Options Participant that maintain a position in EEM options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange.

<sup>3</sup> By virtue of IM-3140-1 to Rule 3140, which is not being amended by this filing, the exercise limit for EEM options would be similarly increased. See IM-3140-1 to Rule 3140 (Exercise Limits).

<sup>4</sup> IM-3120-2 lists exceptions to standard position limits which are, for put or call option contracts overlying the following securities: 300,000 contracts for the DIAMONDS Trust (DIA); 500,000 contracts for the iShares Russell 2000 Index Fund (IWM); 900,000 contracts for the PowerShares QQQ Trust (QQQQ); and no limit for the Standard and Poor's Depository Receipts Trust (SPY).

<sup>5</sup> See Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

<sup>6</sup> The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. See Rule 5020(h) and Rule 5030(h).

<sup>7</sup> See [http://us.ishares.com/product\\_info/fund/overview/EEM.htm](http://us.ishares.com/product_info/fund/overview/EEM.htm) and <http://www.msci.com/products/indices/licensing/>

[msci\\_emerging\\_markets/](http://www.msci.com/products/indices/identification_of_the_specific_securities_in_the_EEM_and_their_individual_concentrations_in_the_EEM). Identification of the specific securities in the EEM and their individual concentrations in the EEM can be accessed at: [http://us.ishares.com/product\\_info/fund/holdings/EEM.htm](http://us.ishares.com/product_info/fund/holdings/EEM.htm).

<sup>8</sup> See <http://www.msci.com/products/indices/tools/index.html#EM>.

<sup>9</sup> See Rule 5020(h)(2)(A).

<sup>10</sup> See Rule 5020(h)(2)(B).

<sup>11</sup> See Rule 5020(h)(2)(C).

This information would include, but would not be limited to, the option position, whether such position is hedged and, if so, a description of the hedge, and the collateral used to carry the position, if applicable. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more option contracts would remain at this level for EEM options.<sup>12</sup>

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at BOX Options Exchange LLC, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.<sup>13</sup>

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.<sup>14</sup> Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that Options Participants are to file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that an Options Participant or associated person of an Options Participants or its customer may try to maintain an inordinately large un-hedged position in an option, particularly on EEM. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Participant must maintain for a large position held by itself or by its customer.<sup>15</sup> In addition, the Commission's net capital rule, Rule

15c3-1<sup>16</sup> under the Act imposes a capital charge on Participants to the extent of any margin deficiency resulting from the higher margin requirement, which should serve as an additional form of protection.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.<sup>17</sup> In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>18</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the proposed rule change will benefit large market makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers, by providing them with a more effective trading and hedging vehicle. In addition, the Exchange believes that the structure of EEM options and the considerable liquidity of the market for EEM options diminish the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

The Exchange has 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: (1) Does not significantly affect the protection of investors or the public

interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it can increase the position and exercise limits for EEM options immediately, which will result in consistency and uniformity among the competing options exchanges as to the position and exercise limits for EEM options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>21</sup> The Commission notes the proposal is substantively identical to a proposal that was recently approved by the Commission, and does not raise any new regulatory issues.<sup>22</sup> For these reasons, the Commission designates the proposed rule change as operative upon filing.

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

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> See Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

<sup>12</sup> Reporting requirements are stated in Rule 3150 (Reports Related to Position Limits).

<sup>13</sup> These procedures have been effective for the surveillance of EEM options trading and will continue to be employed.

<sup>14</sup> 17 CFR 240.13d-1.

<sup>15</sup> See Rule 10120 (Margin Requirements) for a description of margin requirements.

<sup>16</sup> 17 CFR 240.15c3-1.

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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-BOX-2012-023 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-BOX-2012-023*. 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-BOX-2012-023* and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-31017 Filed 12-21-12; 4:15 pm]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68457; File No. SR-CBOE-2012-120]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 2, To Allow the Listing and Trading of a P.M.-Settled S&P 500 Index Option Product**

December 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 5, 2012, 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. On December 17, 2012, the Exchange filed Amendments No. 1 and 2 to the proposed rule change.<sup>3</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**

The Exchange proposes to permit the listing and trading of P.M.-settled S&P 500 Index options on a pilot basis. 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 the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The purpose of this rule filing is to permit the listing and trading, on a pilot basis, of Standard & Poor's 500 Index ("S&P 500") options with third-Friday-of-the-month ("Expiration Friday") expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities ("P.M.-settled") for an initial period of twelve months (the "Pilot Program"). The S&P 500 is a capitalization-weighted index of 500 stocks from a broad range of industries. The component stocks are weighted according to the total market value of their outstanding shares. The impact of a component's price change is proportional to the issue's total market share value, which is the share price times the number of shares outstanding. These are summed for all 500 stocks and divided by a predetermined base value. The base value for the S&P 500 is adjusted to reflect changes in capitalization resulting from, among other things, mergers, acquisitions, stock rights, and substitutions.

The proposed contract ("SPXPM") would use a \$100 multiplier, and the minimum trading increment would be \$0.05 for options trading below \$3.00 and \$0.10 for all other series. Strike price intervals would be set no less than 5 points apart. Consistent with existing rules for index options, the Exchange would allow up to twelve near-term expiration months,<sup>4</sup> as well as LEAPS.<sup>5</sup> Expiration processing would occur on Saturday following the Expiration Friday. The product would have European-style exercise, and because it is based on the S&P 500, there would be no position limits.<sup>6</sup> The Exchange has the flexibility to open for trading additional series in response to customer demand. SPXPM would be

<sup>4</sup> The Exchange wishes to give the same expiration month options for SPXPM as are given for SPX, since both options classes are derived from the S&P 500.

<sup>5</sup> Pursuant to CBOE Rule 24.9(b)(1)(A), index LEAPS may expire from 12-180 months from the date of issuance.

<sup>6</sup> There would be reporting requirements pursuant to Rule 4.13, *Reports Related to Position Limits*, and Interpretation and Policy .03 to Rule 24.4, *Position Limits for Broad-Based Index Options*, which sets forth the reporting requirements for certain broad-based indexes that do not have position limits.

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

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

<sup>3</sup> The Exchange withdrew Amendment No. 1 on December 17, 2012. In Amendment No. 2, the Exchange represented that it does not believe that CBOE Trading Permit Holders will experience significant operations issues when trading P.M.-settled S&P 500 Index products on CBOE.

<sup>23</sup> 17 CFR 200.30-3(a)(12).