

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-BATS-2015-94 and should be submitted on or before May 5, 2016.

#### V. Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, No. 2, and No. 3, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. The Exchange submitted Amendment No. 1 to, among other things, provide clarifying details about the investments the Fund would be permitted to hold; to further limit the percentage of the Fund's portfolio that may be composed of structured securities and junior bank loans; to limit the potential risk associated with derivative transactions; and to represent that the Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives. This information aided the Commission in evaluating the likelihood that market participants may engage in effective arbitrage. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>44</sup> to approve the proposed rule change, as modified by Amendment No. 1, No. 2, and No. 3, on an accelerated basis.

#### VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR-BATS-2015-94), as modified by Amendment No. 1, No. 2, and No. 3, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

**Robert W. Errett,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77573; File No. SR-CBOE-2016-036]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to SPXPM Pilot Program

April 8, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 7, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to extend the operation of its SPXPM pilot program through May 3, 2017. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

\* \* \* \* \*

#### Chicago Board Options Exchange, Incorporated

##### Rules

\* \* \* \* \*

#### Rule 24.9. Terms of Index Option Contracts

No change.

. . . Interpretations and Policies:  
.01-.13 No change.

.14 In addition to A.M.-settled Standard & Poor's 500 Stock Index options approved for trading on the Exchange pursuant to Rule 24.9, the Exchange may also list options on the S&P 500 Index whose exercise settlement value is derived from closing prices on the last trading day prior to

expiration ("SPXPM"). The Exchange may also list options on the Mini-SPX Index ("XSP") whose exercise settlement value is derived from closing prices on the last trading day prior to expiration ("P.M.-settled"). SPXPM options and P.M.-settled XSP options will be listed for trading for a pilot period ending May 3, 2016[7].

\* \* \* \* \*

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

On February 8, 2013, the Exchange received approval of a rule change that established a Pilot Program that allows the Exchange to list options on the S&P 500 Index whose exercise settlement value is derived from closing prices on the last trading day prior to expiration ("SPXPM").<sup>5</sup> On July 31, 2013, the Exchange received approval of a rule change that amended the Pilot Program to allow the Exchange to list options on the Mini-SPX Index ("XSP") whose exercise settlement value is derived from closing prices on the last trading day prior to expiration ("P.M.-settled")<sup>6</sup> (together, SPXPM and P.M.-settled XSP to be referred to herein as the "Pilot Products").<sup>7</sup> In January 2014, the

<sup>5</sup> See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR-CBOE-2012-120) (the "SPXPM Approval Order").

<sup>6</sup> See Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR-CBOE-2013-055) (the "P.M.-settled XSP Approval Order").

<sup>7</sup> For more information on the Pilot Products or the Pilot Program, see the SPXPM Approval Order and the P.M.-settled XSP Approval Order.

<sup>44</sup> 15 U.S.C. 78s(b)(2).

<sup>45</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

Exchange filed a proposed rule change that extended the end date of the pilot period from February 8, 2014 to November 3, 2014.<sup>8</sup> Additionally, in October 2014, the Exchange filed a proposed rule change that extended the end date of the pilot period from November 3, 2014 to May 3, 2016.<sup>9</sup> The Exchange hereby proposes to further extend the end date of the pilot period to May 3, 2017.

During the course of the Pilot Program and in support of the extensions of the Pilot Program, the Exchange submits to the Securities and Exchange Commission (the "Commission") reports regarding the Pilot Program that detail the Exchange's experience with the Pilot Program, pursuant to the SPXPM Approval Order and the P.M.-settled XSP Approval Order. To date, the Exchange has submitted two annual Pilot Program reports to the Commission, as well as various periodic interim reports, as required by the Commission while the Pilot Program is in effect. The annual reports contain an analysis of volume, open interest, and trading patterns. The analysis examines trading in Pilot Products as well as trading in the securities that comprise the underlying index. Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and share trading activity. The periodic interim reports contain some, but not all, of the information contained in the annual reports. In providing the annual and periodic interim reports (the "pilot reports") to the Commission, the Exchange has requested confidential treatment of the pilot reports under the Freedom of Information Act ("FOIA").<sup>10</sup> The confidentiality of the pilot reports is subject to the provisions of FOIA.

The pilot reports both contain the following volume and open interest data:

- (1) Monthly volume aggregated for all trades;
- (2) monthly volume aggregated by expiration date;
- (3) monthly volume for each individual series;
- (4) month-end open interest aggregated for all series;
- (5) month-end open interest for all series aggregated by expiration date; and
- (6) month-end open interest for each individual series.

The annual reports also contain the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled, S&P 500 index options traded on CBOE, as well as the following analysis of trading patterns in the Pilot Products options series in the Pilot Program:

- (1) A time series analysis of open interest; and
- (2) an analysis of the distribution of trade sizes.

Finally, for series that exceed certain minimum parameters, the annual reports contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

- (1) A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data includes a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the CBOE Volatility Index (VIX), is provided; and
- (2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data includes a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods are determined by the Exchange and the Commission. In proposing to extend the Pilot Program, the Exchange will continue to abide by the reporting requirements described herein, as well as in the SPXPM Approval Order and the P.M.-settled XSP Approval Order.<sup>11</sup> Additionally, all such pilot reports provided by the Exchange will continue to include a request for confidential treatment under FOIA.<sup>12</sup>

<sup>11</sup> Pursuant to Securities Exchange Act Release No. 75914 (September 14, 2015), 80 FR 56522 (September 18, 2015) (SR-CBOE-2015-079), the Exchange added SPXPM and P.M.-settled XSP options to the list of products approved for trading during Extended Trading Hours ("ETH"). The Exchange will also include the applicable information regarding SPXPM and P.M.-settled XSP options that trade during ETH in its annual and interim reports.

<sup>12</sup> See *supra* note 10 and surrounding discussion. If the Exchange seeks permanent approval of the pilot program, the Exchange recognizes that certain information in the pilot reports may need to be made available on a public basis.

The Exchange proposes the extension of the Pilot Program in order to continue to give the Commission more time to consider the impact of the Pilot Program. To this point, CBOE believes that the Pilot Program has been well-received by its Trading Permit Holders and the investing public, and the Exchange would like to continue to provide investors with the ability to trade SPXPM and P.M.-settled XSP options. All terms regarding the trading of the Pilot Products shall continue to operate as described in the SPXPM Approval Order and the P.M.-settled XSP Approval Order. The Exchange merely proposes herein to extend the term of the Pilot Program to May 3, 2017.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the Pilot Program will continue to provide greater opportunities for investors. Further, the Exchange believes that it has not experienced any adverse effects or meaningful regulatory concerns from the operation of the Pilot Program. As such, the Exchange believes that the extension of the Pilot Program does not raise any unique or prohibitive regulatory concerns. Also, the Exchange believes that such trading has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying stocks comprising the

<sup>8</sup> See Securities Exchange Act Release No. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014) (SR-CBOE-2014-004).

<sup>9</sup> See Securities Exchange Act Release No. 73338 (October 10, 2014), 79 FR 62502 (October 17, 2014) (SR-CBOE-2014-076).

<sup>10</sup> 5 U.S.C. 552.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> *Id.*

S&P 500 index. The extension of the Pilot Program will continue to provide investors with the opportunity to trade the desirable products of SPXPM and P.M.-settled XSP, while also providing the Commission further opportunity to observe such trading of the Pilot Products.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the continuation of the Pilot Program will impose any unnecessary or inappropriate burden on intramarket competition because it will continue to apply equally to all CBOE market participants, and the Pilot Products will be available to all CBOE market participants. The Exchange believes there is sufficient investor interest and demand in the Pilot Program to warrant its extension. The Exchange believes that, for the period that the Pilot Program has been in operation, it has provided investors with desirable products with which to trade. Furthermore, the Exchange believes that it has not experienced any adverse market effects or regulatory concerns with respect to the Pilot Program. The Exchange further does not believe that the proposed extension of the Pilot Program will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on CBOE. To the extent that the continued trading of the Pilot Products may make CBOE a more attractive marketplace to market participants at other exchanges, such market participants may elect to become CBOE market participants.

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

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

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, 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>16</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>17</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The existing Pilot Program currently expires on May 3, 2016. The Commission believes that waiving the 30-day operative delay to the extent necessary to allow the proposal to become operative on May 3, 2016 is consistent with the protection of investors and the public interest, as it will allow the Pilot Program to continue uninterrupted after its current expiration date, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Program. For this reason, the Commission designates the proposed rule change to be operative on May 3, 2016.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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-CBOE-2016-036 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>18</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).

Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2016-036. 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 Number SR-CBOE-2016-036 and should be submitted on or before May 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **Submission for OMB Review; Comment Request**

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

#### **Extension:**

Rule 15b1-1/Form BD, SEC File No. 270-19, OMB Control No. 3235-0012.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

<sup>19</sup> 17 CFR 200.30-3(a)(12).