

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="22"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2012"/> - * <input type="text" value="091"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Proposed Rule Change by Chicago Board Options Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>			
			Rule					
Pilot <input checked="" type="checkbox"/>	Extension of Time Period for Commission Action * <input type="text"/>	Date Expires * <input type="text"/>	19b-4(f)(1) <input type="checkbox"/>	19b-4(f)(2) <input type="checkbox"/>	19b-4(f)(3) <input type="checkbox"/>	19b-4(f)(4) <input type="checkbox"/>	19b-4(f)(5) <input type="checkbox"/>	19b-4(f)(6) <input checked="" type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name *	<input type="text" value="Jenny"/>	Last Name *	<input type="text" value="Klebes-Golding"/>
Title *	<input type="text" value="Senior Attorney"/>		
E-mail *	<input type="text" value="golding@cboe.com"/>		
Telephone *	<input type="text" value="(312) 786-7466"/>	Fax	<input type="text" value="(312) 786-7919"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By

(Name \*)

(Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) proposes to amend its rules to eliminate position and exercise limits for physically-settled options on the SPDR S&P 500 ETF Trust (“SPY”) pursuant to a pilot program. The text of the proposed rule change is provided below with additions underlined and deletions [bracketed].

Chicago Board Options Exchange, Incorporated  
Rules

\* \* \* \* \*

**Rule 4.11—Position Limits**

RULE 4.11

No change.

*...Interpretations and Policies:*

**.01 – .06** No change.

**.07** The position limits under Rule 4.11 applicable to options on shares or other securities that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that satisfy the criteria set forth in Interpretation and Policy .06 under Rule 5.3 shall be the same as the position limits applicable to equity options under Rule 4.11 applicable to option contracts on the securities listed in the below chart are as follows:

Security Underlying Option	Position Limit
The DIAMONDS Trust (DIA)	300,000 contracts
The Standard and Poor’s Depository Receipts Trust (SPY)	[900,000 contracts] <u>None</u>
The iShares Russell 2000 Index Fund (IWM)	500,000 contracts
The PowerShares QQQ Trust (QQQQ)	900,000 contracts

Position limits for SPY options are subject to a pilot program through [fourteen months from start of pilot program].

\* \* \* \* \*

(b) The proposed rule change does not amend the text of Interpretation and Policy .02 of Rule 4.12 (Exercise Limits) which provides that exercise limits are equivalent to position limits. The proposed rule change will eliminate the exercise limit for SPY options during the duration of the pilot program.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) CBOE's Office of the Chairman approved the proposed rule change pursuant to delegated authority on June 26, 2012. No further action is required.

(b) Please refer questions and comments on the proposed rule change to Joanne Moffic-Silver, General Counsel, CBOE, 400 South LaSalle, Chicago, IL 60605, (312) 786-7462 or Jenny Klebes-Golding, (312) 786-7466.

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

(a) Purpose

CBOE proposes to amend Interpretation and Policy .07 to Rule 4.11 to eliminate position and exercise limits for physically-settled SPY options pursuant to a pilot program.<sup>1</sup> This filing is based on a filing previously submitted by NYSE MKT LLC (f/k/a NYSE Amex, LLC ("NYSE Amex")), which the Commission recently approved.<sup>2</sup>

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<sup>1</sup> By virtue of CBOE Rule 4.12, Interpretation and Policy .02, which is not being amended by this filing, the exercise limit for SPY options would be similarly eliminated.

<sup>2</sup> See Securities Exchange Act Release No. 67672 (August 15, 2012) 77 FR 50750 (August 22, 2012) (SR-NYSEAmex-2012-29).

The Exchange began trading SPY options on January 10, 2005 on the CBOE Hybrid Trading System. That year, the position limit for these options was increased from 75,000 contracts to 300,000 contracts on the same side of the market.<sup>3</sup> In July 2011, the position limit for these options was again increased from 300,000 contracts to the current limit of 900,000 contracts on the same side of the market.<sup>4</sup>

The underlying SPY tracks the performance of the S&P 500 Index and the Exchange states that the SPY and SPY options have deep, liquid markets that reduce concerns regarding manipulation and disruption in the underlying markets. In support of this proposed rule change, the Exchange has collected the following trading statistics for SPY and SPY options: (1) the average daily volume (“ADV”) to date (as of August 24 2012) for SPY is 148 million shares; (2) the ADV to date in 2012 for SPY options is 2.6 million; (3) the total shares outstanding for SPY are 750.3 million; and (4) the fund market cap for SPY is \$106 billion. The Exchange represents further that there is tremendous liquidity in the securities that make up the S&P 500 Index. For example, the ADV of the component securities in the S&P 5000 Index for the 6-month period of February 28, 2012 through August 28, 2012 was 635,583,189.

Under the Exchange’s proposal, the options reporting requirement for SPY options would continue unabated. Thus, the Exchange would still require that each Trading Permit Holder (“TPH”) or TPH organization that maintains a position in SPY 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. This information would include,

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<sup>3</sup> See Securities Exchange Act Release No. 51041 (January 14, 2005), 70 FR 3408 (January 24, 2005) (SR-CBOE-2005-06).

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. Exchange market-makers (including Designated Primary Market-Makers) would continue to be exempt from this reporting requirement, as market-maker information can be accessed through the Exchange's market surveillance systems. 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 SPY options.<sup>5</sup>

In addition, CBOE Rule 4.12 provides:

In addition to the reporting requirement described in paragraph (a) of this Rule, each Trading Permit Holder (other than an Exchange market-maker or DPM) that maintains a position in excess of 10,000 non-FLEX equity option contracts on the same side of the market on behalf of its own account or for the account of a customer, shall report information as to whether such positions are hedged, and provide documentation as to how such contracts are hedged, in a manner and form prescribed by the Exchange. In addition, whenever the Exchange determines based on a report to the Department of Market Regulation or otherwise, that a higher margin requirement is necessary in light of the risks associated with an under-hedged Non-FLEX equity option position in excess of 10,000 contracts on the same side of the market, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position, pursuant to its authority under Exchange Rule 12.10. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3-1 to the extent of any margin deficiency resulting from the higher margin requirements.

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at CBOE, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight

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<sup>4</sup> See Securities Exchange Act Release No. 64928 (July 20, 2011), 76 FR 44633 (July 26, 2011) (SR-CBOE-2011-065).

<sup>5</sup> See CBOE Rule 4.13(a).

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>6</sup>

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.<sup>7</sup> Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that TPHs 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 a TPH or its customer may try to maintain an inordinately large un-hedged position in an option, particularly on SPY. 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 TPH must maintain for a large position held by itself or by its customer.<sup>8</sup> In addition, the Commission's net capital rule, Rule 15c3-1<sup>9</sup> under the Securities Exchange Act of 1934 (the "Act"),<sup>10</sup> imposes a capital charge on TPHs to the extent of any margin

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<sup>6</sup> These procedures have been effective for the surveillance of SPY options trading and will continue to be employed.

<sup>7</sup> 17 CFR 240.13d-1.

<sup>8</sup> See CBOE Rule 12.3 for a description of margin requirements.

<sup>9</sup> 17 CFR 240.15c3-1.

<sup>10</sup> 15 U.S.C. 78s(b)(1).

deficiency resulting from the higher margin requirement.

### Pilot Program

The Exchange proposes that this rule change be adopted pursuant to a pilot program, set to expire [fourteen (14) months from start of pilot program].<sup>11</sup> The Exchange will perform an analysis of the initial pilot program to eliminate position limits in SPY after the first twelve (12) months of the pilot program (the “Pilot Report”). The Pilot Report will detail the size and different types of strategies employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Pilot Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange will make available to Commission staff data elements relating to the effectiveness of the pilot program.

Conditional on the findings in the Pilot Report, CBOE will file with the Commission a proposal to either extend the pilot program, adopt the pilot program on a permanent basis, or terminate the pilot program. If the pilot program is not extended or adopted on a permanent basis by [fourteen (14) months from start of pilot program], the position limits for SPY would revert to limits in effect at the commencement of the pilot program.

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<sup>11</sup> The Exchange will notify CBOE Trading Permit Holders of the establishment of the pilot program and the running dates of the pilot program via regulatory circular.

The Exchange believes that the elimination of position and exercise limits on SPY options on a pilot basis is required for competitive purposes as well as for purposes of consistency and uniformity among the competing options exchanges. This supports the Exchange's current proposal to eliminate the position and exercise limits applicable to physically-settled SPY options on a pilot basis.

(b) 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>12</sup> In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</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 SPY options and the considerable liquidity of the market for SPY options diminish the opportunity to manipulate this product and disrupt the underlying

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

market that a lower position limit may protect against. The Exchange also believes that the proposed rule change will benefit a greater number of market participants who are CBOE TPHs and members of other exchanges, such as NYSE Amex. This is because SPY is a multiply listed options class and currently there is not a uniform and consistent position and exercise limits regime across all of the exchanges that list SPY options. The proposed filing will benefit market participants because it will ensure consistency and uniformity among the competing options exchanges as to the position and exercise limits for a multiply listed options class.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a NYSE Amex filing. CBOE believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform positions for a multiply listed options class.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

- (a) The proposed rule change is filed for immediate effectiveness pursuant to

Section 19(b)(3)(A)<sup>14</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

(b) The Exchange asserts that 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 after its filing date, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The proposed rule change is substantially similar in all material respects to an existing pilot program established by NYSE Amex,<sup>16</sup> which proposes to eliminate the position and exercise limits for physically-settled SPY options on a pilot basis. The Exchange also provided the Commission with written notice of its intent to file the proposal, along with a brief description and text of the proposal, prior to the date of the filing of the proposed rule change as required by Rule 19b-4(f)(6).

The Exchange requests that the Commission waive the pre-filing period and the 30-day operative delay period. Waiver of the pre-filing period and operative delay is consistent with the protection of investors and the public interest because it: (a) will ensure fair competition among exchanges by allowing CBOE to eliminate the position and exercise limits for physically-settled SPY options on a pilot basis and operate the same type of pilot program as currently exists at NYSE Amex, and (b) will immediately benefit a greater number of participants who are CBOE TPHs and members of other exchanges, such as NYSE Amex, by ensuring consistency and uniformity among the competing options exchanges as to the position and exercise limits for the multiply listed SPY options class.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

For the foregoing reasons, the Exchange believes the rule filing qualifies for expedited effectiveness as a “non-controversial” rule change under Rule 19b-4(f)(6) of the Act.

(c) Not applicable.

(d) Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

As discussed above, this proposed rule change is based on a notice rule change of NYSE Amex and is identical in all material respects to that filing.

Item 9. Exhibits

Exhibit 1. Form of Notice of Proposed Rule Change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-CBOE-2012-091

Dated: \_\_\_\_\_

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule to Eliminate Position and Exercise Limits for Physically-Settled SPY Options on a Pilot Basis

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 \_\_\_\_\_, 2012, the 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

CBOE proposes to amend its rules to eliminate position and exercise limits for physically-settled options on the SPDR S&P 500 ETF Trust (“SPY”) pursuant to a pilot program. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, and at the Commission.

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<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).

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

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

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

1. Purpose

CBOE proposes to amend Interpretation and Policy .07 to Rule 4.11 to eliminate position and exercise limits for physically-settled SPY options pursuant to a pilot program.<sup>5</sup> This filing is based on a filing previously submitted by NYSE MKT LLC (f/k/a NYSE Amex, LLC ("NYSE Amex")), which the Commission recently approved.<sup>6</sup>

The Exchange began trading SPY options on January 10, 2005 on the CBOE Hybrid Trading System. That year, the position limit for these options was increased from 75,000 contracts to 300,000 contracts on the same side of the market.<sup>7</sup> In July 2011, the position limit for these options was again increased from 300,000 contracts to the current limit of 900,000 contracts on the same side of the market.<sup>8</sup>

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<sup>5</sup> By virtue of CBOE Rule 4.12, Interpretation and Policy .02, which is not being amended by this filing, the exercise limit for SPY options would be similarly eliminated.

<sup>6</sup> See Securities Exchange Act Release No. 67672 (August 15, 2012) 77 FR 50750 (August 22, 2012) (SR-NYSEAmex-2012-29).

<sup>7</sup> See Securities Exchange Act Release No. 51041 (January 14, 2005), 70 FR 3408 (January 24, 2005) (SR-CBOE-2005-06).

<sup>8</sup> See Securities Exchange Act Release No. 64928 (July 20, 2011), 76 FR 44633 (July 26, 2011) (SR-CBOE-2011-065).

The underlying SPY tracks the performance of the S&P 500 Index and the Exchange states that the SPY and SPY options have deep, liquid markets that reduce concerns regarding manipulation and disruption in the underlying markets. In support of this proposed rule change, the Exchange has collected the following trading statistics for SPY and SPY options: (1) the average daily volume (“ADV”) to date (as of August 24 2012) for SPY is 148 million shares; (2) the ADV to date in 2012 for SPY options is 2.6 million; (3) the total shares outstanding for SPY are 750.3 million; and (4) the fund market cap for SPY is \$106 billion. The Exchange represents further that there is tremendous liquidity in the securities that make up the S&P 500 Index. For example, the ADV of the component securities in the S&P 5000 Index for the 6-month period of February 28, 2012 through August 28, 2012 was 635,583,189.

Under the Exchange’s proposal, the options reporting requirement for SPY options would continue unabated. Thus, the Exchange would still require that each Trading Permit Holder (“TPH”) or TPH organization that maintains a position in SPY 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. 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. Exchange market-makers (including Designated Primary Market-Makers) would continue to be exempt from this reporting requirement, as market-maker information can be accessed through the Exchange’s market surveillance systems. 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 SPY options.<sup>9</sup>

In addition, CBOE Rule 4.12 provides:

In addition to the reporting requirement described in paragraph (a) of this Rule, each Trading Permit Holder (other than an Exchange market-maker or DPM) that maintains a position in excess of 10,000 non-FLEX equity option contracts on the same side of the market on behalf of its own account or for the account of a customer, shall report information as to whether such positions are hedged, and provide documentation as to how such contracts are hedged, in a manner and form prescribed by the Exchange. In addition, whenever the Exchange determines based on a report to the Department of Market Regulation or otherwise, that a higher margin requirement is necessary in light of the risks associated with an under-hedged Non-FLEX equity option position in excess of 10,000 contracts on the same side of the market, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position, pursuant to its authority under Exchange Rule 12.10. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3-1 to the extent of any margin deficiency resulting from the higher margin requirements.

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at CBOE, 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>10</sup>

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<sup>9</sup> See CBOE Rule 4.13(a).

<sup>10</sup> These procedures have been effective for the surveillance of SPY options trading and will continue to be employed.

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.<sup>11</sup> Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that TPHs 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 a TPH or its customer may try to maintain an inordinately large un-hedged position in an option, particularly on SPY. 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 TPH must maintain for a large position held by itself or by its customer.<sup>12</sup> In addition, the Commission's net capital rule, Rule 15c3-1<sup>13</sup> under the Securities Exchange Act of 1934 (the "Act"),<sup>14</sup> imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.

#### Pilot Program

The Exchange proposes that this rule change be adopted pursuant to a pilot program, set to expire [fourteen (14) months from start of pilot program].<sup>15</sup> The Exchange will perform an analysis of the initial pilot program to eliminate position limits in SPY after the first twelve (12) months of the pilot program (the "Pilot Report"). The

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<sup>11</sup> 17 CFR 240.13d-1.

<sup>12</sup> See CBOE Rule 12.3 for a description of margin requirements.

<sup>13</sup> 17 CFR 240.15c3-1.

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>15</sup> The Exchange will notify CBOE Trading Permit Holders of the establishment of the pilot program and the running dates of the pilot program via regulatory circular.

Pilot Report will detail the size and different types of strategies employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Pilot Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange will make available to Commission staff data elements relating to the effectiveness of the pilot program.

Conditional on the findings in the Pilot Report, CBOE will file with the Commission a proposal to either extend the pilot program, adopt the pilot program on a permanent basis, or terminate the pilot program. If the pilot program is not extended or adopted on a permanent basis by [fourteen (14) months from start of pilot program], the position limits for SPY would revert to limits in effect at the commencement of the pilot program.

The Exchange believes that the elimination of position and exercise limits on SPY options on a pilot basis is required for competitive purposes as well as for purposes of consistency and uniformity among the competing options exchanges. This supports the Exchange's current proposal to eliminate the position and exercise limits applicable to physically-settled SPY options on a pilot basis.

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>16</sup> In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</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 SPY options and the considerable liquidity of the market for SPY options diminish the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against. The Exchange also believes that the proposed rule change will benefit a greater number of market participants who are CBOE TPHs and members of other exchanges, such as NYSE Amex. This is because SPY is a multiply listed options class and currently there is not a uniform and consistent position and exercise limits regime across all of the exchanges that list SPY options. The proposed filing will benefit market participants because it will ensure consistency and uniformity among the competing options exchanges as to the position and exercise limits for a multiply listed options class.

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-091 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2012-091. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 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 CBOE. 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-2012-091 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Dated: \_\_\_\_\_

Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).