

For the Nuclear Regulatory Commission.
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70085; File Nos. SR-NYSE-2011-55; SR-NYSEAmex-2011-84]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS In Connection With the Exchanges' Retail Liquidity Programs

July 31, 2013.

On July 3, 2012, the Commission issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")¹ that granted the New York Stock Exchange LLC ("NYSE" or "Exchange") and NYSE MKT LLC² ("NYSE MKT" and, together with NYSE, the "Exchanges") limited exemptions from the Sub-Penny Rule in connection with the operation of each Exchange's Retail Liquidity Program ("Programs").³ The limited exemptions were granted concurrently with the Commission's approval of the Exchanges' proposals to adopt their respective Retail Liquidity Programs for one-year pilot terms.⁴ The exemptions were granted coterminous with the effectiveness of the pilot Programs; both the pilot Programs and exemptions are scheduled to expire on July 31, 2013.

The Exchanges now seek to extend the exemptions until July 31, 2014.⁵ The Exchanges' request was made in conjunction with immediately effective filings that extend the operation of the Programs for one year, until July 31, 2014.⁶ In their request to extend the

exemptions, the Exchanges note that the Programs took some time after they were adopted to develop and implement fully. Accordingly, the Exchanges have asked for additional time to allow themselves and the Commission to analyze more robust data concerning the Programs, which the Exchanges committed to provide to the Commission.⁷ For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemptions, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, each Exchange is granted a one-year extension of the limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than \$1.00 per share in increments of \$0.001, in connection with the operation of its Retail Liquidity Program.

The limited and temporary exemptions extended by this Order are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Responsibility for compliance with any applicable provisions of the federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill,
 Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70084; File No. SR-NYSEArca-2013-76]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Increase the Royalty Fees Applicable to Non-Customer Transactions in Options on the Russell 2000 Index

July 31, 2013.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 25, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule to increase the Royalty Fees applicable to non-Customer transactions in options on the Russell 2000 Index ("RUT"). The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁷ See Order, *supra* note 3, 77 FR at 40681.

⁸ 17 CFR 200.30-3(a)(83).

¹ 17 CFR 242.612(c).

² At the time it filed the original proposal to adopt the Retail Liquidity Program, NYSE MKT went by the name NYSE Amex LLC. On May 14, 2012, the Exchange filed a proposed rule change, immediately effective upon filing, to change its name from NYSE Amex LLC to NYSE MKT LLC. See Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR-NYSEAmex-2012-32).

³ See Securities Exchange Act Release No. 67347, 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) ("Order").

⁴ See *id.*

⁵ See Letter from Janet McGinness, SVP and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated July 30, 2013.

⁶ See SR-NYSE-2013-48 and SR-NYSEMKT-2013-60.

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

1. Purpose

The Exchange proposes to amend the NYSE Arca Options Fee Schedule to increase the Royalty Fees applicable to non-Customer transactions in options on RUT from \$0.15 to \$0.40 per contract. Royalty Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase in the Royalty Fee for RUT from \$0.15 to \$0.40 per contract is a reflection of the increased cost the Exchange has incurred in securing a license agreement from the index provider. Absent the license agreement, the Exchange and its participants would be unable to trade RUT options and would lose the ability to hedge small cap securities with a large notional value, European-style cash-settled index option.

The proposed change will be operative on August 1, 2013.

The proposed change is not otherwise intended to address any other issues relating to Royalty Fees and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in the Royalty Fee from \$0.15 to \$0.40 for options on RUT is reasonable because Royalty Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase is therefore a direct result of an increase in the licensing fee charged to the Exchange by the index provider and the owner of the intellectual property associated with the index.

The Exchange believes that the proposed increase in the Royalty Fee from \$0.15 to \$0.40 for options on RUT is equitable and not unfairly

discriminatory because Royalty Fees are assessed only on those non-Customer participants who choose to transact in a product that requires the Exchange to obtain a licensing agreement based on the intellectual property rights associated with the product, as is the case with RUT. The Exchange further believes that this is equitable and not unfairly discriminatory because RUT has some products that can give participants a similar economic exposure without an associated Royalty Fee. In particular, there are exchange-traded fund ("ETF") options that are based on RUT, such as the iShares Russell 2000 ETF traded under the symbol IWM. This means that participants that would be liable for the Royalty Fees can avoid them by transacting in alternative products, if they so choose.

The Exchange assesses the Royalty Fees on non-Customer participants such as NYSE Arca Market Makers, non-NYSE Arca Market Makers, OTP Holders and OTP Firms, and Broker Dealers.⁶ The Exchange believes that it is equitable and not unfairly discriminatory to continue to not charge Royalty Fees to Customers, which has been the case since the Exchange implemented Royalty Fees, because the Exchange is attempting to continue to attract Customer order flow in RUT options, which in turn can interact with other participants' order flow on the Exchange to their benefit.⁷

For the reasons given above, the Exchange believes that the proposed increase from \$0.15 to \$0.40 for the Royalty Fee charged to non-Customer transactions in RUT options is reasonable, equitable, and not unfairly discriminatory. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

In accordance with Section 6(b)(8) of the Act,⁸ the Exchange 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. By providing all participants on the Exchange with the ability to hedge via RUT options, the Exchange is not placing any burden on competition among its various participants. The

Exchange further notes that the licensing agreement it has secured is not an exclusive agreement as at least two other option exchanges continue to trade RUT options and charge a fee related to such license.⁹ As such, there is no burden on competition among exchanges for the trading of RUT options.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹² of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

⁹ See Chicago Board Options Exchange ("CBOE") Fee Schedule, available at <http://www.cboe.com/TradingResources/FeeSchedule.aspx>. The Exchange's affiliate NYSE MKT LLC also has proposed to increase its Royalty Fee for RUT options from \$0.15 to \$0.40 per contract. See SR-NYSEMKT-2013-65.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 15 U.S.C. 78s(b)(2)(B).

⁶ See endnote 11 of the Fee Schedule.

⁷ See Securities Exchange Act Release No. 55099 (January 12, 2007), 72 FR 2720 (January 22, 2007) (SR-NYSEArca-2006-91).

⁸ 15 U.S.C. 78f(b)(8).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

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. Please include File Number SR-NYSEArca-2013-76 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-NYSEArca-2013-76. 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 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 offices 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-NYSEArca-2013-76, and should be submitted on or before August 27, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70087; File No. SR-CBOE-2013-055]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade a P.M.-settled Mini-SPX Index Option Product

July 31, 2013.

I. Introduction

On May 14, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to permit the listing and trading of P.M.-settled, cash-settled options on the Mini-SPX Index ("XSP").³ The proposed rule change was published for comment in the *Federal Register* on May 30, 2013.⁴ The Commission received no comment letters on the proposal. On July 31, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ The Commission is publishing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ XSP options have 1/10th the value of S&P 500 Index options.

⁴ See Securities Exchange Act Release No. 69638 (May 24, 2013), 78 FR 32524 (May 30, 2013) ("Notice").

⁵ In Amendment No. 1, the Exchange provided more details regarding the volume, open interest, and trading patterns data that the Exchange proposes to include in the report that it will submit to the Commission at least two months before the expiration of the pilot program. The Exchange noted that the analysis would examine trading in the proposed option product as well as trading in the securities that comprise the underlying index. The Exchange also described the interim reports that would be submitted to the Commission pursuant to the pilot program. In addition, the Exchange clarified its proposed amendment to Rule 6.42, Interpretation and Policy .03 to state that for so long as SPY options participate in the Penny Pilot program, the minimum increments for XSP options shall be the same as SPY for all option series (including LEAPS). Further, the Exchange proposed to amend its originally proposed change to Rule 24.9, Interpretation and Policy .11, to lower from \$300 to \$200 the maximum strike price for which the strike price interval for series of XSP options may be \$1. The Exchange also proposed to lower from \$5 to \$1 the minimum strike price interval for LEAPS and reduced-value LEAPS on XSP options. In addition, the Exchange represented that it has enhanced surveillance and reporting procedures in place that are intended to allow the Exchange to detect and deter possible trading abuses that could otherwise occur in the absence of position limits, and described the Exchange's requirements for opening for trading additional

this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The Exchange is proposing to amend its rules to permit it to list and trade, on a pilot basis, cash-settled XSP 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 the component securities ("P.M.-settled").

CBOE proposes to add P.M.-settled XSP options to the existing SPXPM pilot program on CBOE. SPXPM options, which are P.M.-settled options on the S&P 500 Index,⁶ are currently listed and traded on CBOE on a 12-month pilot set to end on February 8, 2014. CBOE has proposed to add P.M.-settled XSP options to that pilot so that the end of the pilot period for P.M.-settled XSP options will also be February 8, 2014.

CBOE proposes to abide by the same reporting requirements for the trading of P.M.-settled XSP options that it does for the trading of SPXPM options.⁷ The Exchange proposes to include data regarding P.M.-settled XSP options in a pilot program report that it will submit to the Commission at least two months prior to the expiration date of the pilot program (the "annual report"). The annual report will contain an analysis of volume, open interest, and trading patterns; and will examine trading in the proposed option product as well as trading in the securities that comprise the underlying index. In addition, for series that exceed certain minimum open interest parameters, the annual report will provide analysis of index price volatility and share trading

series of P.M.-settled XSP options. The Exchange further represented that it and the Options Price Reporting Authority have the necessary systems capacity to handle any potential additional traffic associated with trading of P.M.-settled XSP options. Finally, the Exchange provided a more detailed description of its procedures relating to the changeover from A.M.-settled XSP options.

⁶ SPXPM options were initially traded on a 14-month pilot basis on C2 Options Exchange, Incorporated ("C2"), an exchange that is wholly owned by CBOE Holdings, Inc., the same corporation that owns CBOE. See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) ("C2 SPXPM Approval Order"). The pilot to list and trade SPXPM was subsequently transferred from C2 to CBOE and reset to a new 12-month pilot period. See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) ("CBOE SPXPM Approval Order").

⁷ For the details of SPXPM's reporting requirements, see Securities Exchange Act Release No. 68457 (December 18, 2012), 77 FR 76135 (December 26, 2012).

¹³ 17 CFR 200.30-3(a)(12).