NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission. [NRC—2012–0002].


PLACE: Commissioners’ Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 25, 2012
There are no meetings scheduled for the week of June 25, 2012.

Week of July 2, 2012—Tentative
There are no meetings scheduled for the week of July 2, 2012.

Week of July 9, 2012—Tentative
Tuesday, July 10, 2012
9:30 a.m. Strategic Programmatic Overview of the Operating Reactors, Business Line (Public Meeting), (Contact: Trent Wertz, 301–415–1568).

This meeting will be webcast live at the Web address—www.nrc.gov.

Week of July 16, 2012—Tentative
There are no meetings scheduled for the week of July 16, 2012.

Week of July 23, 2012—Tentative
There are no meetings scheduled for the week of July 23, 2012.

Week of July 30, 2012—Tentative
There are no meetings scheduled for the week of July 30, 2012.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at william.dosch@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Department of Energy, Washington, DC 20553 (301–415–1969), or send an email to darlene.wright@nrc.gov.


Rochelle C. Bavol,
Policy Coordinator, Office of the Secretary.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 28, 2012 at 1 p.m. Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(9), (5), (7), (9B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, June 28, 2012 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings; and

Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.


Elizabeth M. Murphy,
Secretary.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; International Securities Exchange, LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 1, To Add an Index Option Product for Trading on the Exchange

June 20, 2012.

I. Introduction

On March 9, 2012, the International Securities Exchange, LLC (“Exchange” or “ISE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)4 and Rule 19b–4 thereunder,2 a proposed rule change to list and trade options on the ISE Max SPY Index (“ISE Max SPY”). The proposed rule change was published for comment in the Federal Register on March 22, 2012.3 The Commission received three comment letters on the proposed rule change.4 On May 1, 2012, the Commission extended the time period for Commission action to June 20, 2012.2 On May 4, 2012, ISE submitted a response to the comment letters6 and filed Amendment No. 1 to


6 See letter to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary and
the proposed rule change.7 The Commission subsequently received three additional comment letters8 and a second response letter from ISE.9 All the comment letters received, including ISE’s response letters, are available on the Commission’s Web site.10

This order institutes proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1. Institution of these proceedings, however, does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as addressed below, the Commission desires to solicit additional input from interested parties on the issues presented by the proposed rule change.

II. Description of the Proposal

As set forth in more detail in the Notice, ISE proposes to list and trade options, including long-term options, on the ISE Max SPY Index, which is “designed to represent 10 times the value of the published share prices in the SPDR S&P 500 ETF ([‘‘SPY’’]) Trust.”11 Options on the ISE Max SPY Index would be European-style and p.m. cash-settled, and they would be quoted and traded in U.S. dollars.

According to ISE, the real-time value of the ISE Max SPY Index is calculated by multiplying the share prices of SPY by a factor of ten and rounding to the tenth place. This value would be calculated by ISE or its agent, and would be disseminated by ISE every 15 seconds during its regular trading hours to market information vendors via the Options Price Reporting Authority.12 ISE proposes to calculate the settlement value for options on the ISE Max SPY Index using the net asset value (‘‘NAV’’) of the fund, as calculated by ISE, on a per share basis, times ten. ISE states that the method it will use for calculating the NAV of SPY is the same method that is used industry-wide for calculating the NAV of an exchange traded fund (‘‘ETF’’) with equity-only holdings, and is the per-share dollar amount of the fund, which is calculated by dividing the fair market value of all the securities in its portfolio, less any liabilities, by the number of fund shares outstanding.13 ISE also states that the settlement value that it calculates may be different from the NAV published by the trustee of the SPY trust.14 In calculating the settlement value for options on the ISE Max SPY Index, ISE states that it would use the published closing prices from the primary market of the SPY trust’s portfolio securities.15

As proposed, Exchange rules that are applicable to the trading of options on broad-based indexes would apply to the trading of options on the ISE Max SPY Index.16 Specifically, the trading of options on the ISE Max SPY Index also would be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options. The trading of options on the ISE Max SPY Index also would be subject to the Exchange’s customer protection rules.17

ISE proposes that options on the ISE Max SPY Index be approved on a pilot basis for an initial period of 14 months. ISE states that if it were to propose an extension of the program or propose to make the program permanent, then it would submit a filing proposing such amendments to the program. ISE notes that any positions established under the pilot would not be impacted by the expiration of the pilot. As part of the pilot program, ISE would submit a pilot program report to the Commission at least two months prior to the expiration date of the program (‘‘annual report’’). The annual report would contain an analysis of volume, open interest and trading patterns. The analysis would examine trading in the proposed option product as well as trading in the securities that comprise the S&P 500 index. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and share trading activity. In addition to the annual report, ISE committed to provide the Commission with periodic interim reports while the pilot is in effect that would contain some, but not all, of the information contained in the annual report. In its filing, ISE notes that it would provide the annual and interim reports to the Commission on a confidential basis.

Comment Letters

As noted above, the Commission received six comment letters and two
ISE response letters on the proposed rule change. 19

One commenter expresses support for the proposed rule change and states that it “generally applaud[s] efforts to provide investors with additional opportunities to invest using listed options.” 20 In particular, this commenter supports ISE’s proposal to allow p.m. settlement for options on the ISE Max SPY Index. 21 This commenter also supports the proposal to impose no position limits for options on the ISE Max SPY Index. 22 This commenter states that a key part of its basis for agreeing with the proposed position limits is the fact that “there is a very large degree of economic equivalence between options on [ISE’s] proposed index and the existing C2 SPXPM product.” 23

Two commenters oppose the proposed rule change for the reasons discussed below.

A. Pending Litigation; Potential for Market Disruption and Harm to Investors

Two commenters argue that the proposed options are, in fact, options on the S&P 500 index and therefore would violate a permanent injunction entered by the Illinois state court in 2010 (“Injunction”). 24 These two commenters have filed a motion to enforce this Injunction against ISE in Illinois Circuit Court, 25 and request that the Commission disapprove the proposed rule change 26 or not take action to approve the proposed rule change until the litigation is resolved. 27 In a second comment letter, CBOE argues that the Commission should disapprove the proposed options because they could not legally be traded. 28 In addition, CBOE requests that if the Commission considers the proposed rule change prior to judicial action on the motion, the Commission should make clear that any approval is solely concerned with whether the proposed rule change is consistent with the Act, and that the Illinois state court has full and independent authority to resolve the issues that arise under state law. 29

In its response letter, ISE states that it is opposing the motion to enforce the Injunction. 30 ISE objects to the commenters’ request that the Commission delay approval of the proposed rule change until the Illinois court decides on the motion, referring to prior Commission action where the Commission indicated that its decision to approve a rule filing commences the process of listing products that have previously been determined not legally be traded. 28 In addition, trading options on the ISE Max SPY Index until the Illinois Circuit Court has ruled on the motion. 31

In a second comment letter, CBOE reiterates its concerns regarding potential market disruption and harm to investors. 32 In response to ISE’s letter, CBOE states that the Illinois lower court’s ruling on the motion to enforce the Injunction may not be the end of the litigation over whether the proposed options may be validly traded under state law, and that the Commission should condition any approval on ISE’s undertaking not to commence trading until all judicial challenges to the lawfulness of the proposed options under state law have been resolved. 33

In its second response letter, ISE again represents that it will not launch the proposed options for trading unless and until the Illinois Circuit Court denies the motion to enforce the Injunction. 34 In addition, in the event that the Illinois Circuit Court were to deny the motion to enforce the Injunction, and such a decision was to be subsequently reversed and ISE were to be enjoined from offering the proposed options after it had commenced trading and there is open interest, ISE represents that it would seek to have the state court permit it to continue to offer a market for closing-only transactions for so long as it takes all open interest to wind down in an orderly manner. 40 ISE states that it has systems, rules, and procedures in place that would permit such a closing-only orderly wind down, and that it is “inconceivable that the Court would refuse to permit such a closing-only market.” 41 ISE further states that even if the court were to deny a closing-only market, there are adequate rules and procedures in place, at the exchange and the clearing level, to allow for an orderly wind down of...
any open interest. In addition, ISE represents that it will insert a litigation risk discussion into the Options Disclosure Document (“ODD”), which will be substantially similar to the litigation risk language included in prior versions of the ODD with respect to index participation products. Finally, ISE states that these investor protection risks are not unique to the proposed product, and that there have been multiple cases where a market becomes unavailable for the continued trading of a product in which there is open interest.

B. Potential for Investor Confusion

1. Characterization of the Product as Options on the ISE Max SPY Index

One commenter asserts that ISE’s description of the proposed options is inaccurate and misleading. This commenter understands from the filing that the settlement value for options on the ISE Max SPY Index would be calculated differently from all other values of the ISE Max SPY Index, stating that “the settlement value will be calculated by reference to the stocks in the S&P 500 Index as weighted by S&P in its S&P 500 Index.” This commenter argues that the benchmark for the proposed option is not SPY, because the proposed options are not actually settled by reference to SPY.

This commenter subsequently asserts that the proposed rule change “misleads investors by falsely characterizing the Proposed Options as options on the ISE Max SPY Index.” Specifically, this commenter states that ISE has admitted that the proposed options would not be settled based on the value of SPY and has failed to set forth any way in which the settlement value for the proposed options would have any relation to the ISE Max SPY Index. This commenter also asserts that the proposed rule change misleads investors by characterizing the proposed option as a broad-based index option, when the ISE Max SPY Index actually consists of only a single component security.

In response, ISE states that the rule filing makes clear that the ISE Max SPY Index is calculated based on the traded prices of SPY shares, and that the options on the ISE Max SPY Index are settled on the basis of a calculation of the NAV of the SPY trust’s assets. Further, to ensure that investors have an ongoing means to access information about options on the ISE Max SPY Index, ISE responds in its second response letter, that it will: (i) Work with the OCC to amend the ODD to provide a clear and unambiguous description of the product and any unique risks associated with it; (ii) display the contract specifications on its Web site; (iii) create a special web page devoted exclusively to the proposed options, which will describe in plain English all the terms of this product, including index calculation and settlement; and (iv) follow the same marketing process it follows for all of its other new products, which is designed to promote awareness and a clear understanding of the product.

Further, according to one commenter, to the extent that the “ISE Max SPY Index” is “index-like,” it is only because the SPY trust holds all of the stocks in the S&P 500 index, weighted as the stocks in the S&P 500 index are weighted. This commenter argues that even if the benchmark could be said to have reference to SPY, the benchmark would have only one component security and therefore would not be an index.

ISE states in response that an index with one component is still an index and refers to CBOE’s micro narrow-based index options and CBOE’s indexes that measure the spot yield of individual U.S. Treasury Securities by simply multiplying them by ten (i.e., TNX). In its second letter, CBOE states that, consistent with Section 3 of the Act and the principles set forth in Commission’s staff legal bulletin, micro narrow-based indexes may consist of no fewer than two securities and no more than nine securities. CBOE also states that its micro narrow-based index option rule applies only to an underlying benchmark that is itself a security index. With respect to ISE’s reference to CBOE’s indexes that measure the spot yield of individual U.S. Treasury Securities, CBOE states that “TNX options were not security index options, but instead were interest rate options based on interest rate values that were ‘indexed’ to make the options contracts a suitable size.” CBOE further states that TNX options were regulated as interest rate options and were described for all purposes as interest rate options.

In response, ISE states that there is no legal requirement that an index consists of more than one component. ISE disagrees with the commenter’s rationale that indexes must contain at least two components, and states that the commenter is “backpedaling on its
In a second comment letter, CBOE reiterates that ISE fails to explain the differences between its calculation of the NAV and the NAV published by the trustee of the trust. CBOE states that ISE’s proposal did not make clear that the settlement of the proposed options is based on a calculation of the NAV of the SPY ETF, and that the proposal misleads investors about how ISE would calculate the settlement value. CBOE notes that “ISE states that the NAV calculation of an ETF ‘generally’ is determined by ‘adding the trust’s net cash (accrued dividends minus accrued fees and expenses) to the value of the portfolio securities,’” thereby implying that it would do so as well when computing the settlement value of the proposed options. CBOE states, however, that “ISE is careful never to actually state—either in the ISE Proposal or [ISE Response Letter I]—that it would use dividends and Trust expenses when calculating the settlement value of the Proposed Options.” CBOE further points out that ISE may not be able to include those factors in its calculation because the trust disseminates information about the SPY ETF’s net cash at the same time as the information about the value of its stock holdings.

In a second response letter, ISE specifically sets forth the formula for settlement value calculation, including the formula for calculating the NAV of SPY. ISE states that its NAV calculating method is the same standard method that is used industry-wide for ETFs with equity-only holdings.

Specifically, ISE explains that after the close of each trading day, the fund’s administrator provides to the NSCC the portfolio securities of the fund, the number of shares of each security, the net cash of the fund, and the shares outstanding of the fund. The NSCC makes this information available to market participants on a daily basis after the close of each trading day. ISE states that, by way of its market data vendor, it will calculate the settlement value using the data received from the NSCC.

ii. Source of Prices Used in Calculating Settlement Values

One commenter states that ISE is unclear in describing the sources of the prices that it would use in calculating settlement values for the proposed options and that ISE’s representation of the trust’s NAV calculation is inconsistent with the prospectus. In its response letter, ISE states that the filing clearly identifies the source of the prices—the published closing prices from the primary market of the securities. ISE also disagrees with the comment that its representation is inconsistent with the SPDR prospectus because the trust may independently decide which exchange it deems to be the “primary market” as a source for closing prices. In a second response letter, ISE again states that its calculation of the NAV would be based upon the closing prices from the primary markets of each portfolio security, and that it recognizes that the SPY trust may use different prices because the trustee reserves the right to evaluate portfolio securities independently of closing sale prices if it deems such prices to be “inappropriate.”

iii. Differences between Settlement Value and All Other Values

One commenter states that ISE’s filing “does not contain any explanation of why it proposes to calculate settlement values of the Proposed Benchmark differently from all other values of the Proposed Benchmark.” In its response
letter, ISE explains that it is doing so to decrease the opportunity for manipulation and other abusive trading practices. Specifically, ISE states that a would-be manipulator would need to manipulate the closing price of 500 individual stocks, as opposed to the closing price of one ETF. ISE also states that its calculation of the NAV would allow for a timely settlement of the proposed options. Specifically, ISE states that the obligation of SSgA is to establish a NAV of the SPY ETF the same day as the settlement of an option, ISE cannot rely on the SSgA-published NAV. Further, ISE points out that “the concept of utilizing a reference price to settle an index option product that differs from the values of the proposed benchmark is not novel, and is best illustrated in CBOE’s AM-settled S&P 500 index (‘‘SPX’’) options.”

In response, CBOE differentiates the settlement of SPX options from the settlement of ISE Max SPY options. Specifically, CBOE states that SOQ represents a modified calculation of the same interest that underlies SPX options during their life—the S&P 500 index. Conversely, CBOE states that ISE would use a different underlying benchmark to calculate the settlement value of the proposed options—the benchmark during the life of the proposed options would be the ISE Max SPY Index (based on the traded prices of SPY), whereas the benchmark at settlement would be a recalculated S&P 500 index. iv. Special Dividends and Special Distributions

One commentor states that in the S&P 500 index from time to time pay special dividends and make special distributions to their shareholders, and ISE did not explain whether or how the relationship between settlement value and other values would be preserved in such a circumstance. In its response letter, ISE states that it has never been a practice of the exchanges to describe the details on dividend processing for components of indexes in rule filings seeking approval of index options. Further, ISE states that because the proposed product is an index option, it does not anticipate adjustments being made to the options as a result of any component dividends, and that this is customary practice for index options.

3. ODD Amendments

One commentor suggests that the ODD would require supplementation before the proposed options could be listed and traded. First, this commentor states that an investor looking for disclosure with respect to the proposed product might be uncertain as to whether they are described in Chapter III (Options on Equity Securities) or Chapter IV (Index Options) of the ODD. Second, this commentor states that the ODD would need to be supplemented to provide disclosure with respect to the difference between the calculation of the settlement value and all other values of the proposed options.

In its response letter, ISE states that it will follow the well-settled process for supplementing the ODD to devise disclosure of any risks associated with the proposed options that are determined by the Listed Options Disclosure Committee (“LODC”) to be necessary for disclosure. Further, as discussed above, in its second response letter, ISE represents that it will work with the OCC to amend the ODD to provide a clear and unambiguous description of the proposed options and any unique risks associated with them.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–ISE–2012–22, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2) of the Act to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change.

As discussed above, the proposed rule change would allow ISE to list and trade European-style, p.m. and cash settled options on the ISE Max SPY Index. The proposed options would not be subject to position limits. The real-time value of the ISE Max SPY Index would be calculated by multiplying the share prices of SPY by a factor of ten and rounding to the tenth place, whereas the settlement value of the option would be...
based on the NAV of SPY, as calculated by ISE,\textsuperscript{107} on a per share basis, times ten.

The section of the Act applicable to the proposed rule change that provides the grounds for the disapproval (or approval) under consideration is Section 6(b)(5),\textsuperscript{108} which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

As discussed above, one commenter supports the proposed rule change,\textsuperscript{109} while two commenters oppose the proposed rule change.\textsuperscript{110} Commenters raise the concern that the proposed rule change will lead to significant market disruption and harm to investors if ISE commences trading in the proposed options before all judicial challenges to the lawfulness of the proposed options under state law have been resolved.\textsuperscript{111} In addition, commenters raise concerns regarding whether the proposed new product could be misleading to investors and questioned the accuracy and clarity of ISE’s description of the proposed options, including the calculation of the settlement value,\textsuperscript{112} the differences between the calculation of the settlement value and all other values of the ISE Max SPY Index,\textsuperscript{113} and the characterization of the proposed options as options on the “ISE Max SPY Index.”\textsuperscript{114}

In light of the concerns raised by commenters, the Commission believes that questions remain as to whether the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act, including whether the proposed options are designed to protect investors and the public interest.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the issues identified above, as well as any others they may have identified with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.\textsuperscript{115}

Interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be approved or disapproved by August 10, 2012. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by August 27, 2012.

The Commission is asking that commenters address the merit of ISE’s statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Specifically, the Commission is requesting comment on the following:

- What are commenters’ views as to whether market disruption and harm to investors would occur if the Commission were to approve the proposed rule change before all judicial challenges to the lawfulness of the proposed options under state law have been resolved? In light of the Exchange’s representation that it would not start trading the proposed options until the Illinois Circuit Court rules on the motion to enforce the Injunction, and its representation regarding the potential mechanisms to ensure an orderly wind down of trading in the event that ISE is enjoined from offering the product after the Exchange should provide additional clarity in the filing regarding the calculation methodology for the settlement value of options on the ISE Max SPY Index to mitigate concerns regarding the potential for investor confusion?

As noted above, the Exchange would calculate the value of the ISE Max SPY Index by reference to the NAV of SPY, times ten. However, the settlement value of the options on the ISE Max SPY Index would be calculated by reference to the NAV of SPY, as calculated by the Exchange, on a per share basis, times ten.\textsuperscript{117} What are commenters’ views of the impact, if any, of the differences between the calculation of the settlement value of the proposed options and the value of the ISE Max SPY Index itself could cause investor confusion? Please explain why or why not.

If commenters believe that the differences between the calculation of the settlement value of the proposed options and the value of the ISE Max SPY Index itself could cause investor confusion, what are commenters’ views as to whether the steps that ISE has proposed to take to provide investors with information about the product after trading has already begun, do commenters believe any harm would result if the Exchange started trading the proposed options before all judicial challenges to the lawfulness of the proposed options under state law have been resolved? Why or why not?

- As outlined above, the Exchange has provided additional detail about how it intends to calculate the settlement value for options on the ISE Max SPY Index.\textsuperscript{116} What are commenters’ views as to whether the Exchange should provide additional clarity in the filing regarding the calculation methodology for the settlement value of options on the ISE Max SPY Index to mitigate concerns regarding the potential for investor confusion? Please be specific in your response.

As noted above, the Exchange would calculate the value of the ISE Max SPY Index by reference to the traded prices of SPY, times ten, at all times. However, the settlement value of the options on the ISE Max SPY Index would be calculated by reference to the NAV of SPY, as calculated by the Exchange, on a per share basis, times ten.\textsuperscript{118} What are commenters’ views of the impact, if any, of the differences between the calculation of the settlement value of the proposed options and the value of the ISE Max SPY Index itself could cause investor confusion? Please explain why or why not.

If commenters believe that the differences between the calculation of the settlement value of the proposed options and the value of the ISE Max SPY Index itself could cause investor confusion, what are commenters’ views as to whether the steps that ISE has proposed to take to provide investors with information about the product after trading has already begun, do commenters believe any harm would result if the Exchange started trading the proposed options before all judicial challenges to the lawfulness of the proposed options under state law have been resolved? Why or why not?

- As outlined above, the Exchange has provided additional detail about how it intends to calculate the settlement value for options on the ISE Max SPY Index. What are commenters’ views as to whether the Exchange should provide additional clarity in the filing regarding the calculation methodology for the settlement value of options on the ISE Max SPY Index to mitigate concerns regarding the potential for investor confusion? Please be specific in your response.

As noted above, the Exchange would calculate the value of the ISE Max SPY Index by reference to the traded prices of SPY, times ten, at all times. However, the settlement value of the options on the ISE Max SPY Index would be calculated by reference to the NAV of SPY, as calculated by the Exchange, on a per share basis, times ten. What are commenters’ views of the impact, if any, of the differences between the calculation of the settlement value of the proposed options and the value of the ISE Max SPY Index itself could cause investor confusion? Please explain why or why not.

If commenters believe that the differences between the calculation of the settlement value of the proposed options and the value of the ISE Max SPY Index itself could cause investor confusion, what are commenters’ views as to whether the steps that ISE has proposed to take to provide investors with information about the product after trading has already begun, do commenters believe any harm would result if the Exchange started trading the proposed options before all judicial challenges to the lawfulness of the proposed options under state law have been resolved? Why or why not?

- As outlined above, the Exchange has provided additional detail about how it intends to calculate the settlement value for options on the ISE Max SPY Index. What are commenters’ views as to whether the Exchange should provide additional clarity in the filing regarding the calculation methodology for the settlement value of options on the ISE Max SPY Index to mitigate concerns regarding the potential for investor confusion? Please be specific in your response.

As noted above, the Exchange would calculate the value of the ISE Max SPY Index by reference to the traded prices of SPY, times ten, at all times. However, the settlement value of the options on the ISE Max SPY Index would be calculated by reference to the NAV of SPY, as calculated by the Exchange, on a per share basis, times ten. What are commenters’ views of the impact, if any, of the differences between the calculation of the settlement value of the proposed options and the value of the ISE Max SPY Index itself could cause investor confusion? Please explain why or why not.

If commenters believe that the differences between the calculation of the settlement value of the proposed options and the value of the ISE Max SPY Index itself could cause investor confusion, what are commenters’ views as to whether the steps that ISE has proposed to take to provide investors with information about the product after trading has already begun, do commenters believe any harm would result if the Exchange started trading the proposed options before all judicial challenges to the lawfulness of the proposed options under state law have been resolved? Why or why not?

- As outlined above, the Exchange has provided additional detail about how it intends to calculate the settlement value for options on the ISE Max SPY Index. What are commenters’ views as to whether the Exchange should provide additional clarity in the filing regarding the calculation methodology for the settlement value of options on the ISE Max SPY Index to mitigate concerns regarding the potential for investor confusion? Please be specific in your response.

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If commenters believe that the differences between the calculation of the settlement value of the proposed options and the value of the ISE Max SPY Index itself could cause investor confusion, what are commenters’ views as to whether the steps that ISE has proposed to take to provide investors with information about the product after trading has already begun, do commenters believe any harm would result if the Exchange started trading the proposed options before all judicial challenges to the lawfulness of the proposed options under state law have been resolved? Why or why not?
would be sufficient to mitigate such concerns?

- Do commenters believe that the characterization of the proposed options as options on the “ISE Max SPY Index” would have the potential to cause investor confusion? If so, why? If not, why not? If so, what are commenters’ views on whether any potential confusion would be sufficiently mitigated by the steps that ISE has proposed to take to provide investors with information about the product? Please be specific in your response.

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–ISE–2012–22 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–ISE–2012–22. 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 a.m. and 3 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–ISE–2012–22 and should be submitted on or before August 10, 2012. Rebuttal comments should be submitted by August 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\(^{119}\)

Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations;
NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making a Clerical Correction to the Grandfathered Rules

June 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),\(^{1}\) and Rule 19b–4 thereunder,\(^{2}\) notice is hereby given that on June 7, 2012, NASDAQ OMX BX, Inc. ("BX" 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 the Grandfathered Rules. The text of the proposed rule change is available at http://nasdaq.cchwallstreet.com, at the Exchange’s principal office, 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

The Exchange proposes to make administrative changes and correct inadvertent typographical errors to the Exhibit 5 to SR–BX–2012–036\(^{3}\) ("2012–036 Exhibit 5") so that the text properly reflects the changes as intended in the purpose section of SR–BX–2012–036. SR–BX–2012–036 was filed for immediate effectiveness on May 14, 2012. The administrative changes and typographical errors to 2012–036 Exhibit 5 are explained below:

The Grandfathered BSE Rules

Chapter I–B ends in a comma. The comma is being deleted and a period is being added. In Chapter XVIII—Conduct, Section 4, the language “provided in” was added to the 2012–036 Exhibit 5, but it should have been underlined to denote that it was new text. In addition, a reference to BX Rules 9126, should read BX Rule 9126. As proposed an “s” in the Word Rules, is being deleted from the rule text.

Chapter XXXIII, Section 7 had a single bracket (“[”) denoting that text was going to be removed before the word Article that should not have been placed in the 2012–036 Exhibit 5. It was intended that that word remain in the rule text. In Chapter XXXIV, Section 4, a reference to BX Rule 9000 and a reference to BX Rule 9216 was added to the rule text. However, in both places, BX should have been underlined to denote that it was new text.

Grandfathered Boston Options Exchange Group LLC Rules

In Chapter 1, Section 1 (9), the word “a” was added as new text, which as proposed will be deleted. In Chapter II, Section 1(c), the language “of the Boston Stock Exchange, Inc. ("Constitution")”, should have been removed, the opening bracket was added, to the 2012–036 Exhibit 5, but the closing bracket was not added. The Exchange is proposing to add the closing bracket to properly note what language should have been deleted. Section 6 added the word Reserved to the Rule text; however, it should have been underlined to denote that it was new text.

\(^{1}\) See id.


