Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [34] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements provisions of the CAT NMS Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the Proposed Rules 4.5 through 4.16 implement provisions of the CAT NMS Plan will apply equally to all firms that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing similar rules to apply the requirements of the CAT NMS Plan to their members. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

[34] Approval Order at 84697.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBZX–2017–08 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–BatsBZX–2017–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2017–08 and should be submitted on or before March 1, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–02535 Filed 2–7–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79936; File No. SR–BOX–2016–50]

Self-Regulatory Organizations; BOX Options Exchange LLC; Order Granting Approval of a Proposed Rule Change To Amend Rule 5050 Series of Options Contracts Open for Trading To Provide for the Listing and Trading on the Exchange of RealDay™ Options Pursuant to a Pilot Program

February 2, 2017.

I. Introduction

On October 26, 2016, BOX Options Exchange LLC (the ''Exchange'') 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 provide for the listing and trading on the Exchange of RealDay™ Options (''RealDay Options'') on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on November 15, 2016.[3] The Commission received one comment letter on the proposed rule change.[4] On December 20, 2016, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] This order approves the proposed rule change.

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79258 (November 8, 2016), 81 FR 80125 (''Notice'').

[4] *See* Letter from Edward T. Tilly, Chief Executive Officer, Chicago Board Options Exchange (''CBOE''), Incorporated, to Brent J. Fields, Secretary, Commission, dated December 6, 2016 (''CBOE Letter'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 79613, 81 FR 95206 (December 27, 2016). The Commission designated February 13, 2017 as the date by which the Commission would either approve or disapprove, or institute proceedings to determine whether to approve of disapprove, the proposed rule change.

II. Description of the Proposed Rule Change

General Description [7]

Pursuant to a twelve-month pilot program, the Exchange proposes to amend its rules to list and trade on the Exchange RealDay Options on the SPDR® S&P 500® Exchange Traded Fund (''SPY''). The Exchange states that RealDay Options are designed and exclusively licensed by the RealDay Options Corporation, and would be exclusively listed on BOX. RealDay Options would share many characteristics of existing standardized options with some distinct variations. Most notably, at the commencement of trading of a particular RealDay Option and until the close of trading on the last trading day before its expiration, the numerical value of the strike price would not be known. However, the formula used to calculate the strike price would be fixed and known from the time of listing.[8]

The trading of RealDay Options would in essence be divided into two periods: The anticipatory period and the active period. The anticipatory period would be the period of time from the day the option is listed up until the close of trading on the last trading day before expiration. The active period would be the expiration day of the option. During the anticipatory period, the strike intervals and strike price setting formula would be known, but not the numerical value of the strike prices, because they would depend on the closing price of SPY from the last trading day before expiration. RealDay Options could still be traded in the anticipatory period in the same manner as standard options on SPY. During the active period, the numerical value of the strike prices would be known. Although the active period is only one trading day, RealDay Options could be listed for up to nine months in advance of the expiration date, but at least two weeks prior to their expiration.[9]

The Exchange has only proposed to list RealDay Options on SPY, but the Exchange states that it may seek to list RealDay Options on additional securities in the future.[10] According to the Exchange, it has proposed to list RealDay Options initially on SPY due to the vast liquidity in the security, which the Exchange states to be the largest and most actively traded Exchange Traded Fund (''ETF'') in the United States.[11]

Strike Price, Strike Intervals, Settlement and Exercise Price

While the numerical value of the strike prices for RealDay Options would not be known until the close of trading on the last trading day before expiration, the strike intervals and strike price setting formula would be fixed from inception.[12] The formula would involve multiplying the closing price of SPY from the last trading day before expiration (''Strike Setting Price'') by the Strike Multiplier.[13] In effect, the strike price would stay at the same percentage relationship to the price of SPY from the time of listing. The Exchange proposes to only list up to a maximum of seven strike prices for each expiration date, consisting of up to three strike prices with a price greater than the Strike Setting Price, three strike prices with a price less than the Strike Setting Price, and one strike price equal to the Strike Setting Price.[14] The Exchange proposes to have discretion in determining the number of strike prices that would be listed per expiration, provided that the strike prices satisfy these restrictions. Additionally, the Exchange would be required to always list the strike price that is equal to the Strike Setting Price for each RealDay Options expiration. The Exchange proposes to have the discretion to determine not to list in-the-money (''ITM'') put or call options for any of the seven strike prices,[15] as the Exchange believes the value of RealDay Options is in the instruments that are at-the-money and out-of-the-money. Similar to other options products listed by the Exchange, the Exchange proposes to allow for the addition of strike prices after the initial listing of a RealDay Option, provided that the Exchange does not list more than the seven strike prices permitted by the guidelines described above.[16]

The Exchange also proposes additional procedures in determining the exact number of strike prices that may be listed for a RealDay Option.[17] Specifically, if the underlying security is priced at or above $25.00 per share, the Exchange would be permitted to list up to all seven permitted strike prices. If the underlying security is priced at or below $10.00 per share, the Exchange would not list any RealDay Options on the underlying security. If the underlying security is priced between $10.00 and $25.00 per share, the Exchange would only list one strike price, which would be equal to the Strike Setting Price.

The strike price formula would be used after the close of trading on the last trading day before expiration in order to calculate the numerical values of the strike prices. Specifically, the strike prices would be determined by multiplying the Strike Setting Price by the Strike Multiplier. Rather than applying the Exchange's general strike price interval rules, the strike prices for RealDay Options would have fixed strike intervals of 0.50%.[18] The strike prices would be rounded to the nearest minimum trading increment, if necessary. If SPY does not open for trading on the trading day before the expiration date, the Exchange proposes to use the last available closing price for SPY as the Strike Setting Price.

The Exchange proposes to calculate the exercise and settlement price of RealDay Options based on the closing price of SPY on the trading day of expiration. The exercise-settlement amount would be equal to the difference between the settlement price and the exercise price of the option multiplied by 100. Exercise would result in the delivery of cash on the business day following expiration. If SPY does not open for trading on the trading day of expiration, at the close of trading on expiration, RealDay Options would have an exercise price that is equal to the

[7] For additional details, including examples provided by the Exchange with respect to the proposed operation of RealDay Options, *see* Notice, *supra* note 3.

[8] The Exchange describes RealDay Options as true, or real, one-day options because they are forward start (or delayed start) options with strike increments and a strike price setting formula that are fixed from the time of listing, but with numerical strike prices determined based on the formula using the closing price of SPY from the last trading day before expiration.

[9] *See* Proposed Rule 5050(f).

[10] *See* Notice, *supra* note 3, at 80126 (representing that, if it were to seek to list RealDay Options on additional securities, the Exchange would use the approval process under Form 19b–4).

[11] *See* Notice, *supra* note 3, at 80126.

[12] *See* proposed Rule 5050(f)(8).

[13] The ''Strike Multiplier'' is the decimal equivalent of the percentage strike of the specific option. The Strike Multiplier would be expressed with three decimal places. For example, an option that is equal to the Strike Setting price would be 100%, making the Strike Multiplier 1.000.

[14] *See* proposed Rule 5050(f)(2).

[15] *See* proposed Rule 5050(f)(2)(ii). The ITM puts that the Exchange may decide to not list are those corresponding to the three strike prices that are greater than the Strike Setting Price and the ITM call options are those corresponding to the three strike prices that are less than the Strike Setting Price.

[16] *See* Notice, *supra* note 3, at 80127.

[17] *See* proposed Rule 5050(f)(2).

[18] *See* Proposed Rule 5050(f)(3). There would be one strike price equal to 100% of the Strike Setting Price (with a Strike Multiplier of 1.000), three strike prices greater than then Strike Setting Price determined by adding 0.5%, 1.0%, and 1.5%, respectively, to the Strike Setting Price (with Strike Multipliers of 1.005, 1.010, and 1.015, respectively), and three strike prices lower than the Strike Setting Price determined by subtracting 0.5%, 1.0%, and 1.5%, respectively, from the Strike Setting Price (with Strike Multipliers of 0.995, 0.990, and 0.985, respectively).

closing price from the last trading day before expiration.

Other Characteristics

The Exchange proposes that RealDay Options be P.M. cash-settled and have European-style exercise provisions.[19] These options may expire every trading day, including days on which monthly options series, Short Term Options Series, and Quarterly Options Series on SPY expire.

The Exchange proposes to list RealDay Options on SPY with the symbol ''SPYZ.'' During the anticipatory period, the Exchange proposes to list the strike prices as the Strike Multiplier because the numerical value of the strike price would not yet be known. The Exchange proposes to use three decimal places to indicate the strike prices as the Strike Multiplier during the anticipatory period.[20] According to the Exchange, using three decimal places is unique and not a practice currently used for options, which the Exchange believes would put investors on notice and aware that the Strike Multiplier does not represent a strike price of a typical standard option.[21] The Exchange represents that it has explained what the three decimal places would represent to data vendors, the Options Clearing Corporation, and various market participants, and the Exchange represents that they have confirmed that they would be able to handle the three decimal places when RealDay Options are launched.[22] The Exchange also represents that it will provide information and education to market participants via circular prior to the launch of RealDay Options to further minimize any potential investor confusion.[23]

After the close of trading on the last trading day before expiration, the decimal would be converted into the numerical strike price by multiplying the Strike Setting Price by the Strike Multiplier.[24]

The Exchange proposes for RealDay Options to overlie 100 shares of SPY in the same manner as standard options on SPY. The Exchange's standard trading hours for SPY options would also apply to trading in RealDay Options. The Exchange proposes to apply margin requirements for the purchase and sale of RealDay Options that are identical to the margin requirements for standard options on SPY.[25] The Exchange proposes to calculate margin requirements for RealDay Options in the same manner as margins for standard options on SPY. The Exchange notes that margins would be calculated in the same manner during both the anticipatory and active periods. The Exchange states that the strike price used for calculating the margin would be the numerical value of the strike price using the current price of SPY for the strike setting formula.[26] The Exchange proposes to apply the same minimum trading increment of $0.01 to RealDay Options as applicable to standard options on SPY.[27] The Exchange further proposes that the position limits for RealDay Options would be the same as the position limits for standard options, such that there would be no position or exercise limits for RealDay Options on SPY, as with standard options on SPY.[28] In addition, positions in RealDay Options would be aggregated with positions in all other options on SPY.

The Exchange proposes to apply Section 4000 of its rules, which is designed to protect public customer trading, to trading in RealDay Options. Specifically, Exchange Rules 4020(a) and (b) prohibit Order Flow Providers (''OFPs'') [29] from accepting a Public Customer order to purchase or write an option, including RealDay Options, unless such customer's account has been approved in writing by a designated Options Principal of the OFP. Additionally, Exchange Rule 4040 regarding suitability is designed to ensure that options, including RealDay Options, are sold only to customers capable of evaluating and bearing the risks associated with trading in the instrument. Further, Exchange Rule 4050 permits OFPs to exercise discretionary power with respect to trading options, including RealDay Options, in a Public Customer's account only if the OFP has received prior written authorization from the customer and the account has been accepted in writing by a designated Options Principal. Finally, the Exchange states that Exchange Rules 4030 (Supervision of Accounts), 4060 (Confirmation to Public Customers), and 4100 (Delivery of Current Options Disclosure Documents and Prospectus) would also apply to trading in RealDay Options.

The Exchange represents that it has an adequate surveillance program in place for RealDay Options and intends to apply the same program procedures that it applies to the Exchange's other options products, which the Exchange believes would adequately monitor trading in RealDay Options.[30] The Exchange stated that it is also a member of the Intermarket Surveillance Group (''ISG''), the members of which work together to coordinate surveillance and investigative information sharing in the stock and options markets.

The Exchange further represents that it has the necessary system capacity to support the additional quotations and messages that would result from the listing and trading of RealDay Options.[31] The Exchange intends to minimize the system capacity required to list RealDay Options by limiting the listing to seven strike prices per expiration. The Exchange also states that having the discretion to not list ITM call or put options would further minimize the required system capacity to list RealDay Options.

Pilot

The Exchange has filed this proposal on a pilot basis for a period of twelve months (the ''Pilot Program'' or ''Pilot Period'').[32] The Exchange further states that, if it were to propose an extension of the Pilot Program or propose to make the Pilot Program permanent, the Exchange would submit a filing to the Commission proposing such amendments.[33]

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[19] *See* Proposed Rule 5050(f)(4). *See also* Notice, *supra* note 3, at 80126–27 and 80129–30 (discussing the Exchange's representations with respect to the appropriateness of its proposed settlement and exercise methodologies for RealDay Options).

[20] *See* Notice, *supra* note 3, at 80128 (providing an example of strike prices for RealDay Options during the anticipatory period).

[21] *See id.* at 80128.

[22] *See id.* at 80128 n.24.

[23] *See id.* at 80128.

[24] *See id.* at 80129 (providing an example of the conversion into the numerical strike prices). The Exchange notes that an adjustment to the Strike Setting Price may be needed in order to remove the effects of corporate actions, such as cash dividends. If a dividend is declared, the Exchange would adjust the Strike Setting Price by subtracting the declared dividend before multiplying it by the Strike Multiplier. *See id.* at 80128 n.25.

[25] *See* Proposed Rule 5050(f)(6). The Exchange notes that Options Participants and associated persons are bound by the initial and maintenance margin requirements of either CBOE or the New York Stock Exchange. *See* Exchange Rule 10120; *see also* CBOE Rule 12.3.

[26] *See* Notice, *supra* note 3, at 80129.

[27] *See* Proposed Rule 5050(f)(5).

[28] *See* Proposed Rule 5050(f)(10). *See also* Securities Exchange Act Release No. 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (SR–BOX–2012–013). The Exchange noted that since the removal of any position limits on SPY is subject to a pilot program, if such pilot is discontinued and SPY becomes subject to position limits, then RealDay Options would become subject to the same position limits as SPY options. *See* Notice, *supra* note 3, at 80130.

[29] *See* Rule 100(a)(45). The term OFP means those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading.

[30] *See* Notice, *supra* note 3, at 80130.

[31] *See id.*

[32] *See* Proposed Rule 5050(f)(9).

[33] The Exchange noted that any positions established under the pilot would not be impacted by the expiration of the pilot. For example, a position in a RealDay Options series that expires beyond the conclusion of the pilot period could be

The Exchange proposes to submit a report to the Commission two months prior to the expiration date of the Pilot Program (the ''Pilot Report'').[34] The Pilot Report would contain an analysis of volume, open interest, and trading patterns examining trading in RealDay Options. In addition, for certain series, the Pilot Report would provide an analysis of price volatility and trading activity in additional option series. In addition to the Pilot Report, the Exchange would provide the Commission with periodic interim reports while the Pilot Program is in effect that would contain some, but not all, of the information contained in the Pilot Report. The Pilot Report would be provided to the Commission on a confidential basis.

The Exchange states that the Pilot Report would contain the following volume and open interest data for RealDay Options:

(1) Daily contract trading volume aggregated for all trades, for all option series with less than 31 days until expiration;

(2) daily contract trading volume aggregated by expiration date, for all option series with less than 31 days until expiration;

(3) daily contract trading volume for each individual series;

(4) daily open interest aggregated for all series, for all option series with less than 31 days until expiration;

(5) daily open interest aggregated for all series by expiration date, for all option series with less than 31 days until expiration;

(6) daily open interest for each individual series;

(7) statistics on the distribution of trade sizes;

(8) type of market participant trading (*e.g.,* contract trading volume for each market participant type); and

(9) 5-minute returns, level changes, and trading volume for the S&P 500 Index, VIX, SPY, IVV, and expiring RealDay options between open and close for the first and second Wednesday of the month that is a trading day and trading days when standard SPY options expire.

In addition to the Pilot Report, the Exchange would periodically provide the Commission with interim reports of the information listed in items (1) through (9) above as required by the Commission while the Pilot Program is in effect. These interim reports will also be provided on a confidential basis. The initial period of the Exchange's proposed Pilot Program is set to expire on February 2, 2018.

III. Summary of Comment Letter

The Commission received a comment letter from the Chicago Board Options Exchange opposing the Exchange's RealDay Options proposal.[35] The commenter argues that the proposal should be disapproved. First, the commenter questions whether a RealDay Option can be considered a securities option and therefore within the Commission's jurisdiction. The commenter asserts that there is no precedent for classifying RealDay Options as a securities option[36] and cites a Seventh Circuit decision holding that a contract is an option only if, among other things, it ''establish[es] a careful balance among premium, strike price, and duration.''[37] The commenter notes that, for all but ''a tiny portion of its life'' (*i.e.,* one day), a RealDay Option would not have a specified strike price and believes that there is a ''serious and novel issue about whether [RealDay Options] can be considered a securities option—and therefore can fall within the Commission's jurisdiction. . . .''[38]

In its filing, the Exchange cited to CBOE's Delayed Start Options (''DSOs'') as precedent for the approval of RealDay Options.[39] The commenter argues that RealDay Options are ''fundamentally different'' from DSOs. The commenter notes that, in its own filing seeking approval for DSOs, it represented that the time interval between setting the strike price and expiration initially would be three months, as compared to one day for RealDay Options. At the same time, the commenter acknowledges that it also stated that it would be able to increase or decrease that interval, but maintains that it ''never considered reducing that interval so drastically that the DSO would live as a fully specified option for but a single day in a much longer lifespan.''[40]

In addition, the commenter states that it would be unprecedented to have a cash-settled option on an ETF.[41] In its filing, the Exchange cites to other cash-settled options, including CBOE's SPX options, as support for the notion that cash settlement of options is not novel.[42] The commenter notes that SPX options are index options, whereas the proposed RealDay Option would be an ETF option, which the commenter notes ''have always been physically settled.''[43] The commenter also argues that it would be without precedent for RealDay Options to have European-style exercise when they would be trading alongside physically settled options with American-style exercise on the same ETF that might have the exact same strikes and would permitted to expire on the same day.[44]

IV. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[45] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[46] which requires, among other things, that the rules of a national securities exchange be designed 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.

Comment Letter

The Commission disagrees with the commenter's assertion that, with respect to the timing of strike price setting, there is no precedent for RealDay Options or their classification as securities options. As noted by both the Exchange and the commenter, the Commission previously approved an options product with a strike price not specified at the time of issuance (*i.e.,* DSOs).[47] In its order approving the DSO product, the Commission examined the question of whether DSOs should be designated as standardized options for purposes of Rule 9b–1 under the Act and concluded that DSOs should be so designated.[48] In concluding that the ''lack [of] a specified exercise price at the commencement of trading does not detract from [the DSOs'] character as

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established during the 12-month pilot. If the pilot program were not extended, then the position could continue to exist. However, any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction.

[34] *See* Notice, *supra* note 3, at 80131.

[35] *See* CBOE Letter, *supra* note 4.

[36] *See id.* at 2.

[37] *See id.* at 2 (citing *Chicago Mercantile Exchange* v. *SEC,* 883 F.2d 537, 546 (7th Cir. 1989)).

[38] *See id.* at 2.

[39] *See* Notice, *supra* note 3, at 80126 n.3; *see also id.* at 80127 n.16.

[40] *See* CBOE Letter, *supra* note 4, at 2.

[41] *See id.* at 2–3.

[42] *See* Notice, *supra* note 3, at 80126 n.11.

[43] *See* CBOE Letter, *supra* note 4, at 2–3.

[44] *See id.* at 3.

[45] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[46] 15 U.S.C. 78f(b)(5).

[47] *See* Securities Exchange Act Release No. 56855 (November 28, 2007), 72 FR 68610 (December 5, 2007) (SR–CBOE–2006–90).

[48] *See id.* at 68612–13 (discussing the Commission's designation of DSOs as standardized options).

options,'' the Commission noted that each DSO series would trade with a fixed formula for determining the numerical strike price,[49] which is similar to the operation of RealDay Options. Moreover, although CBOE states that, for DSOs, it never considered an active period as short as a single day, it acknowledges that its own rule filing seeking approval for DSOs stated that it would be able to increase or *decrease* the three-month time interval between setting the strike price and expiration. The Commission does not believe that the strike price setting feature of RealDay Options is a novel issue, and believes the same analysis it applied to DSOs applies to RealDay Options.[50]

As noted above, CBOE also asserts that the Exchange's RealDay Options proposal is unprecedented because of its proposed settlement and exercise methodologies. Among other things, the commenter criticizes the Exchange for misleadingly making assertions regarding cash settlement and options, noting that while it is not unusual for index and currency options to be cash settled, that is not the case with ETF options (such as the proposed RealDay Options product). In the Notice, the Exchange argues that its proposed settlement and exercise methodologies are appropriate for the proposed RealDay Options product.[51] Among other things, the Exchange asserts that there is a low potential for manipulation of the settlement value of RealDay Options on SPY due to the high cost and regulatory scrutiny that would result from any attempted manipulation and the vast liquidity and high level of participation among market participants in the market for SPY, making manipulation very difficult.[52] In addition, while the Exchange notes that manipulation of the settlement value is unlikely, it represents that its current surveillance procedures for its other options products will be sufficient to monitor RealDay Options.[53] The Exchange further asserts that this low potential for manipulation and its continued monitoring will alleviate any concerns regarding the P.M., cash-settled nature of RealDay Options.[54] According to the Exchange, cash settlement helps to mitigate the risk that the price of the security could change overnight before the investor would be able to liquidate their position, which would undermine the intent of the product having an active period designed to cover only a single trading day.[55] The Exchange further notes that P.M. settlement is necessary for RealDay Options to prevent events occurring after the close from having an effect on the settlement price, which the Exchange believes would similarly undermine the intent of RealDay Options to cover only one trading day.[56]

The Commission is cognizant that the proposed settlement and exercise features of RealDay Options—while they exist in options more broadly—would, taken together, be unique. However, given the significant liquidity of the underlying ETF for the proposed product,[57] the Commission initially believes that the proposed settlement and exercise features can be appropriate for RealDay Options on SPY. As discussed above, though the Commission believes that the liquidity of SPY and the proposed surveillance of RealDay Options can serve to mitigate manipulation concerns, because of the proposed features of RealDay Options, including those with respect to settlement and exercise, the Commission believes it is appropriate for the product to be approved on a pilot basis such that the Commission may further review trading in the product to determine whether its proposed features including, among other things, cash settlement, continue to be appropriate. Importantly, the Commission notes that, if the Exchange were to propose listing RealDay Options on any additional underlying product (*i.e.,* other than SPY), the Exchange has stated that it would seek approval for such product through a proposed rule change and the Commission would have to evaluate such different underlying product in the context of RealDay Options, and whether or not the proposed settlement and exercise features, among other things, for such RealDay Options are appropriate.

Other Issues

The Commission believes that the Exchange's proposal to impose no position limits on RealDay Options is appropriate and consistent with the Act. As noted above, the Exchange proposed to initially list RealDay Options only on SPY. The Commission notes that SPY options are the most actively-traded options in terms of average daily volume. The Commission believes that because these options are extremely liquid, the potential manipulation and potential market disruption concerns that position limits are designed to address are mitigated in the case of this product. Moreover, the Commission believes that having no position limits for these options may benefit investors by bringing additional depth and liquidity to these options without raising significant concerns about potential manipulation or potential market disruption. Further, the Commission notes that standard options on SPY are currently not subject to any position limits under a pilot program, and the Exchange has proposed to apply any position limits for standard options on SPY if that pilot program were discontinued.[58]

The Commission also believes that it is consistent with the Act to apply margin requirements to the proposed RealDay Options that are otherwise applicable to standard options on SPY. The Commission further believes that the Exchange's proposed minimum trading increments, strike price setting process,[59] and other aspects of the proposed rule change are appropriate and consistent with the Act.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,[60] to enforce compliance by its members and persons associated with its members with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In this regard, other than for certain exercise and settlement features as described above,[61] the Commission notes that trading of RealDay Options will be subject to many of the same rules that currently govern the trading of other options on the Exchange.[62] In addition, as noted above, the Exchange has asserted that manipulation of the settlement value of RealDay Options on SPY will be difficult based on the size and liquidity of the market for SPY.[63] Moreover, the Exchange has represented that it has an adequate surveillance program in place for RealDay Options on SPY, and will monitor for any potential manipulation of the settlement value according to its current

[49] *See id.* at 68613.

[50] *See id.*

[51] *See* Notice, *supra* note 3, at 80126–27.

[52] *See id.* at 80129–30.

[53] *See id.* at 80130.

[54] *See id.* at 80126 and 80129–30.

[55] *See id.* at 80126.

[56] *See id.* at 80127.

[57] *See id.* at 80126 and 80129–30.

[58] *See id.* at 80130.

[59] The Commission notes that, as described above, the Exchange has represented that it has informed various market participants about the nature of the proposed use of three decimal places to represent the Strike Multiplier, that it has ensured that these market participants will understand the meaning of and be able to handle the three decimal places, and that it will continue to further educate market participants on this process to minimize any potential investor confusion. *See* Notice, *supra* note 3, at 80128 n.24.

[60] 15 U.S.C. 78f(b)(1).

[61] *See supra* notes 12–19 and accompanying text.

[62] *See* Exchange Rule 5050.

[63] *See supra* note 52 and accompanying text.

surveillance procedures.[64] In approving the proposed listing and trading of the proposed RealDay Options, the Commission has also relied on the Exchange's representation that it has the necessary systems capacity to support the new options series that will result from this proposal.[65]

Pilot

Given the size and liquidity of the market for SPY, the Commission believes that the risks of manipulation and potential market disruption are significantly mitigated as discussed above. Notwithstanding this and the Exchange's representations in this regard, the Commission believes that a prudent approach is warranted with respect to the Exchange's proposal to list RealDay Options on SPY. To the extent the potential for adverse effects with regard to the markets for the SPY ETF, the S&P 500 component securities underlying the SPY ETF, or RealDay Options on SPY continues to exist, the Exchange's proposal to implement this change on a pilot basis should help to address this concern. Accordingly, the Commission is approving the proposal on a twelve-month pilot basis. Within two months of the end of the Pilot Program the Exchange will be required to submit to the Commission the Pilot Report. As described in more detail above,[66] the Pilot Report will contain an analysis of volume, open interest, and trading patterns examining trading in RealDay Options. In addition, for certain series, the Pilot Report will provide an analysis of price volatility and trading activity in additional option series. In addition to the Pilot Report, the Exchange will provide the Commission with periodic interim reports while the Pilot Program is in effect that would contain some, but not all, of the information contained in the Pilot Report. The Pilot Report will be provided to the Commission on a confidential basis. Furthermore, if the pilot is not extended or permanently approved by the end of the Pilot Program, any position in RealDay Options established during the Pilot Program would remain in effect, but any further trading in those RealDay Options would be restricted to transactions where at least one side of the trade is a closing transaction.

The Commission expects that, throughout the Pilot Program, the Exchange will monitor for any problems and collect and analyze on an ongoing basis the data and information that the Exchange ultimately intends to include in the Pilot Report. The Commission also expects that the Exchange will take prompt action, including timely communication with the Commission and with other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

Based on the Exchange's representations with respect to the proposed RealDay Options on SPY and for the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[67] that the proposed rule change (SR–BOX–2016–50) be, and hereby is, approved on a twelve-month pilot basis set to expire on February 2, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–02541 Filed 2–7–17; 8:45 am]

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[64] *See supra* note 30 and accompanying text.

[65] *See supra* note 31 and accompanying text.

[66] *See supra* note 34 and accompanying text.

[67] 15 U.S.C. 78s(b)(2).

[68] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79934; File No. SR–IEX–2017–04]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt the Rule Series 11.600 To Implement the Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

February 2, 2017.

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 January 30, 2017, the Investors Exchange LLC ("IEX" or the "Exchange") 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.[4] 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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[5] and Rule 19b–4 thereunder,[6] IEX is filing with the Commission a proposed rule change to adopt the Rule Series 11.600 to implement the compliance rule ("Compliance Rule") regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").[7] The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.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 the Statutory Basis for, the Proposed Rule Change

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

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

1. Purpose

(a) Purpose [sic]

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Investors Exchange LLC, ISE Gemini, LLC, ISE Mercury, LLC, Miami International Securities Exchange LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed this proposed rule change on January 17, 2017 under File No. SR–IEX–2017–02, and the Exchange subsequently withdrew that filing on January 30, 2017 and filed this proposed rule change.

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CRF 240.19b–4.

[7] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein or in the CAT NMS Plan.