

Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission held a Closed Meeting on Monday, June 4, 2012 at 3:00 p.m.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(2), (6), (8) and (9)(A) and 17 CFR 200.402(a)(2), (6), (8) and (9)(A) permit consideration of the scheduled matters at the Closed Meeting. Certain staff members who had an interest in the matters were present.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matters of the Closed Meeting on June 4, 2012 were a matter related to financial institutions and markets and a personnel matter.

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.

Dated: June 5, 2012.

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67107; File No. SR–NYSEArca–2012–50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of the First Trust CBOE VIX Tail Hedge Index Fund under NYSE Arca Equities Rule 5.2(j)(3)

June 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) ¹ and Rule 19b–4 thereunder,² notice is hereby given that, on May 25, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca” or “Corporation”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 list and trade shares (“Shares”) of the First Trust CBOE VIX Tail Hedge Index Fund under NYSE Arca Equities Rule 5.2(j)(3). 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.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the First Trust CBOE VIX Tail Hedge Index Fund (“Fund”) under NYSE Arca Equities Rule 5.2(j)(3), the Exchange’s listing standards for Investment Company Units (“Units”).³

The Shares will be offered by First Trust Exchange-Traded Fund (“Trust”), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.⁴ The

³ An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

⁴ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (“1940 Act”). On October 17, 2011, the Trust filed with the Commission an amendment to the Trust’s registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–125751 and 811–21774) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the

investment adviser to the Fund will be First Trust Advisors L.P. (“Adviser” or “First Trust”). First Trust Portfolios L.P. (“Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon Corporation (“BNY”) will serve as administrator, custodian, and transfer agent for the Fund (“Custodian”).

According to the Registration Statement, the Fund will seek investment results that correspond generally to the price and yield, before the Fund’s fees and expenses, of an equity index called the CBOE S&P VIX Tail Hedge Index (“Index”). The Fund will normally invest at least 90% of its net assets (plus the amount of any borrowings for investment purposes) in common stocks included in the Index. In addition, the Fund will normally invest 0.0% to 1.0% of its net assets in VIX call options, as described below.

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the “generic” listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based upon an index of US Component Stocks.⁵ Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3)⁶ sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. As described further below, the Index consists of an S&P 500 Index stock portfolio and a position in specified VIX Index (“VIX”) call options.⁷ The Index meets all requirements of NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(a)(A) thereto except that the Index includes VIX call options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS. As described below, the Index is predominately S&P 500 companies and includes an exposure to

Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 27068 (September 20, 2005) (File No. 812–13000) (“Exemptive Order”).

⁵ NYSE Arca Equities Rule 5.2(j)(3) provides that the term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

⁶ Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) states, in part, that the components of an index of US Component Stocks, upon the initial listing of a series of Units pursuant to Rule 19b–4(e) under the Exchange Act, shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act.

⁷ According to the Registration Statement, the VIX Index is a measure of estimated near-term future volatility based upon the weighted average of the implied volatilities of near-term put and call options on the S&P 500.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

VIX call options ranging from 0.00% to 1.00% of the weight of the Index. All securities in the S&P 500 Index are listed and traded on a national securities exchange. Options on the VIX are traded on the Chicago Board Options Exchange ("CBOE"). Notwithstanding that the Index does not meet all of the generic listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), the Exchange believes that the Index is sufficiently broad-based to deter potential manipulation in that the S&P 500 Index stocks are among the most actively traded, highly capitalized stocks traded in the U.S. In addition, VIX call options are highly liquid, with trading volume on the CBOE during the first quarter of 2012 of 257,220 contracts per day. VIX call options would represent, at most, only 1% of the total weight of the Index. All Index components are traded on exchanges that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange, therefore, is able to share surveillance information with such exchanges with respect to trading in all Index components.

The CBOE S&P VIX Tail Hedge Index

The Index is rules-based and is owned and was developed by Standard & Poor's Financial Services LLC ("S&P" or "Index Provider").⁸ The Index Provider will calculate and maintain the Index. The Index is designed to provide a benchmark for investors interested in hedging tail risk in an S&P 500 portfolio.⁹ Index components are reviewed quarterly for eligibility, and the weights are re-set according to that distribution. As of the Index rebalance on March 21, 2012, the Index was comprised of 99.0% S&P 500 stocks and 1.00% VIX call options. The Index consists of an S&P 500 stock portfolio (with dividends reinvested), and an amount of one-month, 30-delta VIX call options that is determined by the level of forward volatility. On the day of the monthly expiration of VIX call options, previously purchased VIX call options

are cash-settled and new VIX call options are purchased at the 10:00 a.m., Central Time asking price. The percent of money allocated to VIX call options depends on the level of forward volatility at the next call expiration as measured by the opening price of VIX futures with the same expiration as the VIX call options as follows:

- VIX futures price less than or equal to 15,¹⁰ no VIX call options are purchased;
- VIX futures price greater than 15 and less than or equal to 30, 1% Index weight in VIX call options;
- VIX futures price greater than 30 and less than or equal to 50, 0.50% Index weight in VIX call options; and
- VIX futures price above 50, no VIX call options are purchased.

According to the Registration Statement, this dynamic allocation to VIX call options is designed to reduce hedging costs by limiting the number of VIX call options that are purchased during periods of expected low volatility, and also has the effect of taking VIX call option profits when extreme volatility levels are reached. The Index is reconstituted and rebalanced monthly.

The Index Provider will, in most cases, use the quantitative ranking and screening system described herein. However, subjective screening based on fundamental analysis or other factors may be used, if, in the opinion of the Index Provider, certain components should be included or excluded from the Index.

The Fund intends to qualify annually and to elect to be treated as a regulated investment company ("RIC") under the Internal Revenue Code of 1986, as amended.¹¹

¹⁰ VIX futures represent the level of expected future 30-day volatility as measured in standard deviation units, expressed in percent terms (expected volatility multiplied by 100). For example, assume that on September 21, 2011, the September VIX call options expired and new call options expiring on October 19, 2011 were included within the Index. The amount or weighting assigned to the October VIX call options within the Index would have been determined by the opening price on September 21 of the October 2011 VIX futures contract. CBOE data indicate that the opening price was 31.15. Because the opening price of the October VIX futures contract was greater than 30.00 but less than or equal to 50.00, the allocation to VIX call options within the Index would have been equal to 0.50% and the S&P 500 weighting would have been 99.50%. If the opening futures price had been equal to or below 15.0 or greater than 50.0, the allocation to the call options would have been 0% and the Index's composition would have been equal to the S&P 500's weightings. If the opening futures price had been greater than 15.0 but less than or equal to 30.0, the allocation to VIX call options within the Index would have been equal to 1.0% and the S&P 500 weighting would have been equal to 99.0%.

¹¹ 26 U.S.C. 851. According to the Registration Statement, to qualify for the favorable U.S. federal

The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,¹² as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per Share will be calculated daily and will be made available to all market participants at the same time.

Creations and Redemptions

The Fund will issue and redeem Shares on a continuous basis, at NAV, only in large specified blocks each consisting of 50,000 Shares (each such block of Shares called a "Creation Unit"). Each group of Creation Units of such specified number of individual Fund Shares is referred to as a "Creation Unit Aggregation." The Creation Units will be issued and redeemed for securities in which the Fund invests, cash or both securities and cash.

The consideration for purchase of Creation Unit Aggregations of the Fund may consist of (i) cash in lieu of all or a portion of the Deposit Securities, as defined below, and/or (ii) a designated portfolio of equity securities determined by First Trust—the "Deposit Securities"—per each Creation Unit Aggregation ("Fund Securities") and

income tax treatment generally accorded to RICs, the Fund must, among other things, (a) derive in each taxable year at least 90% of its gross income from dividends, interest, payments with respect to securities loans and gains from the sale or other disposition of stock, securities or foreign currencies or other income derived with respect to its business of investing in such stock, securities or currencies, or net income derived from interests in certain publicly traded partnerships; (b) diversify its holdings so that, at the end of each quarter of the taxable year, (i) at least 50% of the market value of the Fund's assets is represented by cash and cash items (including receivables), U.S. Government securities, the securities of other RICs and other securities, with such other securities of any one issuer generally limited for the purposes of this calculation to an amount not greater than 5% of the value of the Fund's total assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets is invested in the securities (other than U.S. Government securities or the securities of other RICs) of any one issuer, or two or more issuers which the Fund controls which are engaged in the same, similar or related trades or businesses, or the securities of one or more of certain publicly traded partnerships; and (c) distribute at least 90% of its investment company taxable income (which includes, among other items, dividends, interest and net short-term capital gains in excess of net long-term capital losses) and at least 90% of its net tax-exempt interest income each taxable year. There are certain exceptions for failure to qualify if the failure is for reasonable cause or its [sic] de minimis, and certain action is taken and certain tax payments are made by the Fund.

¹² 17 CFR 240.10A-3.

⁸ The Index Provider is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

⁹ According to the Registration Statement, tail hedging, in the context used by the Index Provider, is the practice of trying to hedge the portfolio from extreme market moves that are the result of random, unexpected, and unpredictable events. Unexpected events of this nature often result in rapid increases in market volatility, both realized and implied volatility. The Fund will utilize a tail hedging strategy which attempts to profit from the sudden rise in implied volatility due to any unexpected event. The gains from the "tail hedge" would then hopefully offset some of the losses incurred in the common stock portfolio due to the unexpected events.

generally an amount of cash—the “Cash Component.” Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of the Fund.

BNY, through the National Securities Clearing Corporation (“NSCC”) (as discussed below), will make available on each business day, prior to the opening of business of the New York Stock Exchange (“NYSE”) (currently 9:30 a.m., Eastern Time (“E.T.”)), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, BNY, through the NSCC, also will make available, on each business day, the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit Aggregation of the Fund.

All orders to create Creation Unit Aggregations must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (“Closing Time”) (ordinarily 4 p.m., E.T.) in each case on the date such order is placed in order for creation of Creation Unit Aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Fund Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through the transfer agent and only on a business day. The Fund will not redeem Shares in amounts less than Creation Unit Aggregations. With respect to the Fund, the Custodian, through the NSCC, will make available prior to the opening of business on the NYSE (currently 9:30 a.m., E.T.) on each business day, the identity of the Fund Securities that will be applicable to redemption requests received in proper form on that day.

Availability of Information

The Fund’s Web site (www.ftportfolios.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund’s Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading

volume, the prior business day’s reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (“Bid/Ask Price”),¹³ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the portfolio of securities and financial instruments that will form the basis for the Fund’s calculation of NAV at the end of the business day.¹⁴

On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund’s Web site: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund’s Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the Fund.

In addition, an Intraday Indicative Value (“IIV”) for the Shares will be widely disseminated at least every 15 seconds during the Core Trading Session (9:30 a.m. to 4 p.m., E.T.) by one or more major market data vendors.¹⁵ The IIV should not be viewed as a “real-time” update of the NAV per Share of the Fund because the IIV may not be calculated in the same manner as the

NAV, which is computed once a day, generally at the end of the business day.

In addition, the Index value will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors such as Bloomberg. Additional information regarding the Index and the underlying components (S&P 500 stock portfolio (with dividends reinvested) and the allocation of VIX call options) will be available at www.cboe.com.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Fund’s Shareholder Reports, and the Trust’s Form N–CSR and Form N–SAR, filed twice a year. The Trust’s SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission’s Web site at www.sec.gov. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the CTA high-speed line and, for the securities, including VIX call options, held by the Fund, will be available from the exchange on which they are listed. The intra-day, closing, and settlement prices of the portfolio securities will also be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

The Exchange represents that the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares. The Exchange further represents that the VIX options components of the Index, if any, must remain listed and traded on a national securities exchange. In addition, the Exchange represents that the Fund and the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index, IIV, and NAV, rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers, and Information Bulletin to Equity Trading Permit (“ETP”) Holders (each as

¹³ The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

¹⁴ Under accounting procedures followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

¹⁵ Currently, it is the Exchange’s understanding that several major market data vendors widely disseminate IIVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

described in more detail herein), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.¹⁶

The Fund's NAV will be determined as of the close of trading (normally 4 p.m., E.T.) on each day the NYSE is open for business. NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust's Board of Trustees ("Board") or its delegate.¹⁷

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.¹⁸ If the IIV or the Index value is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Index value occurs. If the interruption to the dissemination of the applicable IIV or Index value persists past the trading day in which it occurred, the Corporation will halt trading. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may

include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Fund's portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares on the Exchange until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Investment Company Units) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁹ The

equity securities and VIX options in which the Fund will invest will trade in markets that are ISG members or are parties to comprehensive surveillance sharing agreements with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)²⁰ that an exchange have rules that are designed 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange

¹⁶ See, e.g., Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (order approving generic listing standards for ICUs and Portfolio Depositary Receipts); Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of ICUs).

¹⁷ The Fund's investments will be valued at market value or, in the absence of market value with respect to any portfolio securities, at fair value in accordance with valuation procedures adopted by the Board and in accordance with the 1940 Act.

¹⁸ See NYSE Arca Equities Rule 7.12, Commentary .04.

¹⁹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Fund's portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

²⁰ 15 U.S.C. 78f(b)(5).

pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 5.2(j)(3). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Index Provider is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index is predominately S&P 500 companies and includes an exposure to VIX call options. All securities in the S&P 500 Index are listed and traded on a national securities exchange. Options on the VIX are traded on the CBOE. All components of the Index have active, liquid markets on national securities exchanges. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The equity securities and VIX options in which the Fund will invest will trade in markets that are ISG members or are parties to comprehensive surveillance sharing agreements with the Exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV and the Index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. If the IIV or the Index value is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Index value occurs. If the interruption to the dissemination of the applicable IIV or Index value persists past the trading day in which it occurred, the Corporation will halt trading. In addition, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares on the Exchange until such time as the NAV is available to all market participants. On each business day, before commencement of trading in Shares in the Core Trading

Session on the Exchange, the Fund will disclose on its Web site the securities and other financial instruments in the Fund's portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, Index value, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of Units that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, Index value, and quotation and last-sale information for the Shares.

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

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.

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

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 self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 Exchange 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-2012-50 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-2012-50. 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-NYSEArca-2012-50 and should be submitted on or before June 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority:²¹

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67102; File No. SR-BX-2012-039]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Dissolve the BOX Committee

June 4, 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 May 25, 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, II, and III 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 a rule change to dissolve the BOX Committee of the Board of Directors. 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 dissolve the BOX Committee of the Board of Directors. After NASDAQ OMX Group, Inc. acquired the Boston Stock Exchange, Inc., the Exchange adopted resolutions ("Resolutions") to establish a committee of its Board of Directors, referred to as the BOX Committee.³ The Exchange delegated to the BOX Committee all actions and decisions governing the Boston Options Exchange LLC ("BOX") Market. Because BOX is no longer a facility of the Exchange,⁴ there is no longer a reason for the BOX Committee to exist. Moreover, BOX and the BX Board of Directors have approved the dissolution of the Committee.

The Exchange believes the Resolutions are rules of an exchange which are concerned solely with the administration of the self-regulatory organization (as defined in Rule 19b-4 under the Act) of the Exchange. Accordingly, to dissolve the Committee, the Exchange is filing this proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(5) of the Act,⁶ in particular, in that the

proposal is 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. The proposed rule change is consistent with these provisions in that the Exchange is dissolving a Committee that no longer has a purpose.

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

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

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

Written comments were neither solicited nor received.

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

Pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(3) thereunder,⁸ the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, the Exchange believes this proposal should become immediately effective. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2012-039 on the subject line.

²¹ 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. 34-58324 (August 7, 2008); 73 FR 46936 (August 12, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) ("Order approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.).

⁴ See Securities Exchange Act Release No. 66871 (April 27, 2012), 77 FR 86 (May 3, 2012).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(3).