INTERNATIONAL SECURITIES EXCHANGE®

60 Broad Street, New York, NY 10004
TEL: 212 943-2400
FAX: 212 425-4926
www.ise.com

June 15, 2012

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File No. SR-ISE-2012-22

Dear Ms. Murphy:

We submit this letter in response to the second round of comments submitted to the U.S. Securities and Exchange Commission ("SEC" or "Commission") by the Chicago Board Options Exchange, Incorporated ("CBOE")[1] on the above-referenced rule filing in which the International Securities Exchange, LLC ("ISE") proposes to amend its rules to provide for the listing and trading of options on the ISE Max SPY™ Index on the ISE (that rule filing, "ISE Max SPY™ Filing").[2]

Introduction

CBOE will continue to submit negative comment letters on the ISE Max SPY™ proposal for so long as it has a legal opportunity to do so, and the Commission should not be fooled by CBOE's duplicitous, routine delaying tactics and its attempt to manufacture confusion where there is none. The Commission should see CBOE's "concerns" about the proposal for what they really are – a disingenuous attempt to stifle innovation and competition through a regulatory channel. The CBOE Letter generally rehashes the same arguments that ISE previously addressed in its response letter to CBOE's original comment letter.[3] The comment letters are simply an attempt by our competitor to delay the ability of ISE to bring a new, lawful, proprietary, competitive, index option product to market. We urge the Commission to put an end to these delaying tactics and approve the ISE Max SPY™ Filing as quickly as possible.

[1] Letter from Edward T. Tilly, President and Chief Operating Officer, CBOE, dated June 7, 2012 ("CBOE Letter").
[2] Securities Exchange Act Release No. 66614 (March 16, 2012), 77 FR 16883 (March 22, 2012) (Notice for ISE-2012-22).
[3] Letter from Michael Simon, Secretary and General Counsel, ISE, dated May 4, 2012 ("ISE Letter").

Investors will Know and Understand ISE Max SPY™ Index

CBOE argues that somehow our proposal will mislead investors. However, we believe that investors will know and understand what it is they are buying – options on the ISE Max SPY™ Index. The ISE has clearly described and defined the ISE Max SPY™ Index in both the ISE Max SPY™ Filing and the ISE Letter. To ensure that investors have an ongoing means to access information about the ISE Max SPY™ Index, ISE further represents that it will do the following:

- ISE will work with The Options Clearing Corporation ("OCC") to amend the Options Disclosure Document ("ODD") to provide a clear and unambiguous description of the product, as well as any unique risks associated with it.
- ISE will display the contract specifications for options on the ISE Max SPY™ Index on its website.
- ISE will create a special website page devoted exclusively to this product, which will describe in plain English all of the terms of this product, including how the index is calculated and how it is settled.
- ISE will follow the same marketing process it follows for all of its other new products, which process is designed to promote awareness and a clear understanding of the product.

The Settlement Calculation Method is Clear and Unambiguous

Yet again the CBOE rehashes an old argument that the ISE Letter fully addressed. Nevertheless, we again will explain how the settlement calculation is a clear formula with a completely transparent method. The method is as follows:

Index Settlement Value Formula and Calculation Details

The settlement value for the ISE Max SPY™ is calculated using a Net Asset Value ("NAV") calculation of the fund, on a per share basis, times a constant multiplier.

The formula for the index settlement value is provided below.

$$I_{sett(t)} = NAV_{SPY(t)} \times M$$

Where:

$I_{sett(t)}$ =	ISE Max SPY settlement value at time (t)
$NAV_{SPY(t)}$ =	Net Asset Value per share of SPDR® S&P 500® ETF Trust ("Trust) at time (t), as calculated by ISE:

	$\dfrac{\left[\sum_{i=1}^{n} P_{(i)} \times S_{(i)} + Cash\right] \times \left[1 - \dfrac{Fee}{365}\right]}{Shares\ Outstanding}$
M =	Constant multiplier of 10
n =	Number of stocks held by the Trust
$P_{(i)}$ =	Closing price of each stock held by the Trust
$S_{(i)}$ =	Number of shares of each stock held by the Trust
Cash =	Cash held in the Trust
Fee =	Stated fee for the Trust (currently 0.0945%, as declared by the Trust)
Shares Outstanding =	Number of Trust shares outstanding

The method ISE will use for calculating the NAV is the same standard method that is used industry-wide for exchange-traded funds ("ETFs") with equity-only holdings. After the close of each trading day, the fund's administrator provides to the National Securities Clearing Corporation ("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 net cash amount is determined by adding the accrued dividends of the portfolio securities since the fund's last distribution minus the accrued fees, which are essentially the annual management fees prorated per day. NSCC makes this information available to market data vendors, data aggregators, and other market participants on a daily basis after the close of each trading day.

ISE, by way of its market data vendor, will calculate the ISE Max SPY™ settlement value using the same data received from NSCC in the manner prescribed above. ISE's version of the Trust's NAV calculation will use the closing prices from the primary markets of each portfolio security. ISE recognizes that the Trust may use different prices because the trustee reserves the right to evaluate portfolio securities independently of closing sale prices of those securities if it deems such prices to be "inappropriate".[4] Because ISE is using the published closing prices from the primary markets of each portfolio security, whereas the Trust may use "different" prices, ISE's methodology provides an absolute and transparent method for calculating the settlement value. Accordingly, and in direct contravention to CBOE's argument, investors will have certainty in knowing how the settlement value was calculated by ISE, whereas the Trust's NAV calculation offers no such certainty or transparency into their methodology.

Even though the data described above is available soon after the close of trading each business day, the trustee is only obligated to make the NAV of the

[4] SPDR Prospectus, Page 67.

Trust publicly available before the next day's open, and is therefore under no requirement to distribute that value prior to that time. ISE therefore performs its own calculation of the NAV to ensure that the ISE Max SPY™ settlement value is transmitted to OCC in time for regular processing of expiring contracts (generally before 6PM ET). The settlement value is calculated on the last trading day prior to expiration.

The bottom line is that there is nothing confusing, ambiguous, or inappropriate about ISE's settlement calculation method. The formula is clear and transparent, and at all times will be displayed on ISE's website. CBOE's continued suggestion that a settlement calculation formula that differs from the index calculation formula is confusing or inappropriate blatantly ignores reality, as there are multiple examples of products that have different settlement and calculation formulas, including CBOE's own SPX and SOQ.

<u>There are No Novel or Unique Investor Protection Concerns</u>

There are no novel or unique investor protection concerns with respect to the trading of this product, as CBOE otherwise suggests. CBOE is following a two-pronged strategy for delay by sending groundless and repetitious comments letters to the Commission while pursuing a meritless "Motion to Enforce Permanent Injunction" in Illinois Circuit Court[5] Nevertheless, ISE represents that, following Commission approval, it will not launch this product for trading unless and until the Circuit Court denies the Motion.

In the highly unlikely event that a Circuit Court decision denying the injunction were subsequently reversed and ISE was enjoined from offering this product for trading after it commences trading and there is open interest, ISE represents that it would seek to have the Illinois court permit ISE to continue to offer a market for closing-only transactions for so long as it takes all open interest to be wound down in an orderly manner. ISE has systems, rules, and procedures in place that would permit such a closing-only orderly wind down. It is inconceivable that the Court would refuse to permit such a closing-only market.

And, even if the Court did deny a closing-only market, there are adequate rules and procedures in place, at both the exchange level and the clearing level, to handle that situation and allow for an orderly wind down of any open interest. For example, OCC has by-laws and rules that, in the case of index options, permits it to create and use a "replacement index" to close out the open interest.[6] So even in the extremely unlikely doomsday scenario painted by CBOE, there would be a process to follow that protects investors and winds down open interest in an orderly manner. As an added precautionary measure, to alert investors to this highly unlikely scenario, ISE represents that it will insert a

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[5] *Chicago Board Options Exch., et al. v. Int'l Sec. Exch., LLC, et al*, Case No. 06 CH 24798 (Circuit Court, Cook County, Ill.)

[6] <u>See</u> Article XVII, Section 3 of the Options Clearing Corporation By-Laws.

"litigation risk" discussion into the ODD. Again, since and proving this scenario is not novel, such description shall be substantially similar to the litigation risk language that was included in prior versions of the ODD with respect to Index Participation products.

It is important to stress, however, that the remote risk identified by CBOE is not unique to this product. There have been multiple cases in the past whereby a market becomes unavailable for the continued trading of a product in which there is open interest. For example, on the equity option side, when a listed company declares bankruptcy, the options markets race to delist options on the stock. It has occurred in the past that all options markets delisted options on the stock and there was no available market to close the open interest. Investors with open positions waited until expiration and were either assigned or not, according to OCC rules and procedures. There was no opportunity for investors to trade out of their positions, since there was no available market. While this outcome is not ideal, it is nevertheless a risk that options investors assume and it is not at all unique to this product.

<u>An Index with only One Component is still an Index</u>

There is no legal requirement that an index consist of more than one component -- not in any exchange's rules, in law, or in practice. CBOE's claim that Congress has broadly defined the term "index" is absurd. To arrive at this conclusion, CBOE had to extrapolate from numerous different sources and add conjecture and interpretations to language that otherwise clearly states that an index consists of "9 or fewer" components. Clearly, one component is fewer than nine, thereby substantiating the validity of ISE's proposed index. Further, it is obvious that CBOE is backpedaling on its own past history of creating one-component indexes, claiming that interest rate values "were 'indexed' to make options contracts a suitable size." Regardless of what CBOE chooses to say now, it is irrefutable that CBOE set the precedent for having an index that consists of one component.

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For the reasons set forth above, we respectfully request that the Commission approve the proposed rule filing. If you have any additional questions, or if we can be of further assistance in this matter, please do not hesitate to contact us.

Sincerely,

Michael J. Simon
Secretary and General Counsel