

June 18, 2012

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

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

Dear Ms. Murphy:

The McGraw-Hill Companies, Inc. ("McGraw-Hill"), on behalf of itself and its wholly-owned subsidiary, Standard & Poor's Financial Services LLC ("S&P"), hereby replies to the letter submitted by International Securities Exchange, LLC ("ISE"), dated May 4, 2012 (the "ISE Response"). The ISE Response, among other topics, addressed comments by McGraw-Hill in opposition to ISE's Proposed Rule Change, number SR-ISE-2012-22 (the "Rule Change Filing").

As an initial matter, we note that on May 25, 2012, the Illinois Appellate Court affirmed the injunction that bars ISE from listing or providing an exchange market for the trading of options on the S&P 500 Composite Stock Price Index ("S&P 500"). The Court held that ISE's unauthorized use of the S&P 500 in connection with options based on that index constitutes misappropriation of S&P's intellectual property under long-standing Illinois law. *Chicago Bd. Options Exch., Incorporated v. Int'l Sec. Exch., LLC*, 2012 WL 1956853, at *17 (Ill. App. 1 Dist. May 25, 2012) (also noting that such unauthorized use also would violate New York law).

In ISE's response to our April 11, 2012 letter commenting on its proposed rule change, ISE misrepresents the scope of this recently affirmed injunction as to S&P, contending that it only enjoined the listing of SPX options and did not bar ISE from offering any other option product. ISE Response at 2. The injunction, a copy of which was attached to our April 11 letter, was not limited to the trading of the SPX options currently offered by CBOE. It applies more broadly to any S&P 500 index option. See *Chicago Bd. Options Exch., Incorporated v. Int'l Sec. Exch., LLC*, No. 06 CH 24798 (Ill. Circuit Ct. July 8, 2010) (the "Injunction").¹ The court held that S&P was "entitled to protection against the misappropriation of [its] indexes from unlicensed use in the creation of index options by ISE," and it permanently restrained and enjoined ISE "from listing or providing an exchange market for the trading of . . . S&P 500 index options and from thereby attempting

¹ A copy of the Injunction was attached to our April 11, 2012 letter.

to cause [the Options Clearing Corporation (“OCC”)] to issue such options, clear trades in, or settle the exercise of such options.” Injunction at 15-16. ISE cannot evade the scope of the Injunction by offering S&P 500 index options, even if they differ from the precise product specifications of SPX options and are offered under a different (and misleading) name. The only distinction between the options described in the Rule Change Filing and the options ISE previously sought to offer is that ISE will attempt to calculate the S&P 500 itself at settlement, rather than use the published value of the S&P 500. For purposes of the Injunction and state misappropriation law, this is “a distinction without a difference.” *Board of Trade of the City of Chicago v. Dow Jones & Co., Inc.*, 108 Ill. App. 3d 681, 695 (1st Dist. 1982), *aff’d*, 98 Ill. 2d 109 (1983).

Nor can ISE evade the scope of the injunction by withdrawing the admission in its Rule Change Filing that ISE’s proposed options on the so-called “ISE Max SPY Index” are in fact “additional opportunities to trade S&P 500® options . . . in an exchange environment.” Rule Change Filing at 15. ISE’s recent amendment of the Rule Change Filing to erase that revealing language cannot obscure the fact that the manner in which the proposed options would settle makes plain that they are “S&P 500 options” within the scope of the Injunction.² As detailed in our previous comment letter dated April 11, 2012, the proposed options would settle not based on any value of the ISE Max SPY Index, but rather based on ISE’s recalculation of the S&P 500, using the same stocks selected by S&P and the same methodology for weighting those stocks. ISE admits that it “is clearly not taking the closing price of the SPY ETF and multiplying that by ten (10) to achieve the settlement value for the [ISE SPY Max Index],” ISE Response at 4, and the Commission should not be misled by ISE’s oblique reference to the use of a “well known methodology that is intended to track, as closely as possible SSGA’s methodology for its calculation of the NAV for the SPY ETF,” *id.* at 6. The “well known methodology” that ISE proposes to employ is to use S&P’s selection of stocks for inclusion in the S&P 500 and the manner in which those stocks are weighted by S&P for purposes of calculating the S&P 500, both of which are proprietary to S&P.

As stated in our April 11, 2012 letter, McGraw-Hill recognizes that resolving intellectual property disputes is not the province of the Securities and Exchange Commission. It is, however, the province of the Illinois courts, which have already enjoined ISE from offering S&P 500 options and are currently considering a motion by McGraw-Hill and CBOE to enforce that injunction against ISE’s so-called “ISE Max SPY” options. We respectfully submit that it would be

² Nor can ISE’s attempt to retreat from this admission be squared with ISE’s repeated statements that the so-called “ISE Max SPY” options will be a market substitute for licensed S&P 500 options. See ISE Response at 2 (describing product as “constitut[ing] a real and meaningful threat to CBOE’s monopoly franchise”); Rule Change Filing at 12 (describing expectation that ISE’s proposed product also would attract trading interest away from licensed over-the-counter index options based on the S&P 500).

inappropriate and contrary to the public interest for the Commission to approve a product that has been enjoined and is the subject of ongoing litigation to enforce the injunction.

For the foregoing reasons and those expressed in our April 11 letter, the Commission should disapprove ISE's proposed rule change.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kenneth Vittor".

Kenneth M. Vittor
Executive Vice President and General Counsel
The McGraw-Hill Companies, Inc.

KMV/lm