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June 19, 2012

Via Electronic Mail

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
comments@sec.gov

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

Dear Ms. Murphy:

Chicago Board Options Exchange, Incorporated (“CBOE”) hereby provides further comments on the proposed rule change of International Securities Exchange, LLC (“ISE”) rule filing number SR-ISE-2012-22¹ (the “ISE Proposal”) and responds to ISE’s letter dated June 15, 2012 (the “ISE Surreply”).

CBOE’s earlier comment letters detail various substantive problems with the ISE Proposal,² and CBOE will not restate those arguments here.³ CBOE continues to believe that the ISE Proposal should be disapproved for the reasons stated in those comment letters. We write at this late juncture to address two issues that arise for the first time out of ISE’s June 15 Surreply.

First, CBOE has grave doubts about ISE’s claims that the settlement value of the Proposed Options would – or could – be based on the net asset value (“NAV”) of the SPY ETF. ISE represents that it would use the data that the SPY ETF administrator makes available to National Securities Clearing Corporation (“NSCC”) and that NSCC then makes available to market participants “soon after” the close of trading on the day that the settlement value is reported to OCC.⁴ ISE acknowledges that the settlement value of the Proposed Options must be

¹ See Securities Exchange Act Release No. 66614 (March 16, 2012), 77 FR 16883 (March 22, 2012) (noticing SR-ISE-2012-22).

² Letters from Edward T. Tilly, President and Chief Operating Officer, CBOE, dated April 13, 2012 (the “CBOE Letter”) and June 7, 2012. CBOE uses the same defined terms here that were used in these letters.

³ CBOE joins S&P’s comment about ISE’s claim that its Proposed Options would be “proprietary,” a claim that ISE once again makes in its Surreply. See ISE Surreply, p. 1. As S&P observed, there is no logical basis for ISE to claim proprietary rights in an index that purports merely to be based on a simple multiplication of an existing ETF value. See Letter from Kenneth M. Victor, Executive Vice President and General Counsel, The McGraw-Hill Companies, dated April 11, 2012, p. 2, fn. 3.

⁴ ISE Surreply, pp. 3-4.

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transmitted to OCC “generally before 6PM ET.”⁵ However, CBOE is informed by NSCC that the “Domestic Portfolio Composition File,” which is the data that would include information about the net cash for the SPY ETF, is not disseminated until approximately 8 p.m. ET. Accordingly, the information on which ISE purportedly would rely to compute the NAV of the SPY ETF would not be available until hours after ISE’s admitted deadline. The ISE Proposal therefore continues to mislead investors about how the Proposed Options would settle. Accordingly, it would be inconsistent with the requirements of the Exchange Act to approve the ISE Proposal.

Second, ISE must include in an amended rule filing any description about how it would calculate the settlement value of the Proposed Options. Although CBOE demonstrated in each of its comment letters that the ISE Proposal fails to describe this most essential attribute of its Proposed Options – how the settlement value would be calculated – only in the ISE Surreply does ISE finally purport to explain how it would make that calculation. Even if ISE’s explanation were not inaccurate, Rule 19b-4 requires the explanation to be addressed in the ISE Proposal itself, not buried in a letter.⁶ Contrary to ISE’s apparent plan,⁷ it is not sufficient for fundamental descriptions of the attributes of the Proposed Options to be formally addressed only in the Options Disclosure Document. In order for commenters and the SEC to assess the Proposed Options and whether they are structured and would trade in conformity with the Exchange Act, such descriptions must be contained in the ISE Proposal, which should be formally amended to include the recently disclosed information.

Sincerely,



Edward T. Tilly
President and Chief Operating Officer
Chicago Board Options Exchange, Incorporated

cc: Robert Cook (SEC)
James Burns (SEC)
Heather Seidel (SEC)
Richard Holley (SEC)
John Roeser (SEC)
Victoria Crane (SEC)
Joanne Moffic-Silver (CBOE)

⁵ ISE Surreply, p. 4.

⁶ See Form 19b-4 (providing that Form 19b-4 “must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act”).

⁷ See ISE Surreply at 2.