

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-110 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-CBOE-2012-110. 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-CBOE-2012-110 and should be submitted on or before December 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-68246; File No. SR-CBOE-2012-068]**

##### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Withdrawal of a Proposed Rule Change To Amend the Customer Large Trade Discount**

November 15, 2012.

On July 11, 2012, Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the Customer Large Trade Discount. Notice of the proposed rule change was published in the **Federal Register** on July 26, 2012.<sup>3</sup> On September 6, 2012, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposal.<sup>4</sup> The Commission received no comment letters on the proposed rule change. On November 14, 2012, CBOE withdrew the proposed rule change (SR-CBOE-2012-068).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 67481 (July 20, 2012), 77 FR 43879 (July 26, 2012).

<sup>4</sup> See Securities Exchange Act Release No. 67794 (September 6, 2012), 77 FR 56247 (September 12, 2012).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

#### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-68247; File No. SR-ISE-2012-22]**

##### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Withdrawal of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Options on the ISE Max SPY Index**

November 15, 2012.

On March 9, 2012, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to list and trade options on the ISE Max SPY Index. The proposed rule change was published for comment in the **Federal Register** on March 22, 2012.<sup>3</sup> The Commission initially received three comment letters on the proposed rule change.<sup>4</sup> On May 1, 2012, the Commission extended the time period for Commission action to June 20, 2012.<sup>5</sup> On May 4, 2012, the Exchange submitted a response to the comment letters<sup>6</sup> and filed Amendment No. 1 to the proposed rule change.<sup>7</sup> The Commission subsequently received three additional comment letters<sup>8</sup> and a second response letter from the Exchange.<sup>9</sup> On June 20, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.<sup>10</sup> The

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 66614 (March 16, 2012), 77 FR 16883.

<sup>4</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP & Corporate Secretary, NYSE Euronext, dated April 2, 2012; Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill Companies, Inc. ("McGraw-Hill"), dated April 11, 2012; and Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated ("CBOE"), dated April 13, 2012.

<sup>5</sup> See Securities Exchange Act Release No. 66889 (May 1, 2012), 77 FR 26812 (May 7, 2012).

<sup>6</sup> See letter to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary and General Counsel, ISE, dated May 4, 2012.

<sup>7</sup> See Order Instituting Proceedings, *infra* note 10, at note 7 (describing Amendment No. 1).

<sup>8</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from Edward T. Tilly, President and Chief Operating Officer, CBOE, dated June 7, 2012; Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill, dated June 18, 2012; and Edward T. Tilly, President and Chief Operating Officer, CBOE, dated June 19, 2012.

<sup>9</sup> See letter to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary and General Counsel, ISE, dated June 15, 2012.

<sup>10</sup> See Securities Exchange Act Release No. 67225 (June 20, 2012), 77 FR 38100 (June 26, 2012) ("Order Instituting Proceedings").

Commission thereafter received six comment letters<sup>11</sup> and two response letters from the Exchange.<sup>12</sup> On September 14, 2012, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.<sup>13</sup> The Commission thereafter received two additional comment letters.<sup>14</sup> On November 13, 2012, the Exchange withdrew the proposed rule change, as modified by Amendment No. 1 (SR-ISE-2012-22).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68238; File No. SR-NASDAQ-2012-128]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Exemption to the Direct Registration Program Requirement to All Foreign Issuers Rather Than Only Foreign Private Issuers

November 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 7, 2012, The NASDAQ Stock Market LLC ("Nasdaq" or "the

Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared primarily by the Exchange. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder so that the proposed rule change was effective upon filing with the Commission.<sup>2</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to expand the exemption to the Direct Registration Program requirement under Nasdaq Rules 5210(c) and 5255(c) so that it applies to all foreign issuers rather than foreign private issuers only. If the Commission waives the pre-operative delay provided for in Rule 19b-4(f)(6),<sup>3</sup> Nasdaq proposes to implement the proposed rule change immediately. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at Nasdaq'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, Nasdaq 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. Nasdaq has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

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

###### (1) Purpose

Nasdaq Rules 5210(c) and 5255 provide that all securities listed on Nasdaq (except securities which are book-entry only) must be eligible for a Direct Registration Program<sup>5</sup> ("DRS") operated by a clearing agency registered

under Section 17A of the Act.<sup>6</sup> When this requirement was initially adopted, Nasdaq recognized that the laws or regulations of certain foreign countries might make it impossible for companies incorporated in those countries to comply. Consequently, the current rule permits a foreign private issuer to follow its home country practice in lieu of this requirement when prohibited from complying by a law or regulation in its home country.<sup>7</sup>

Nasdaq now proposes to amend this exemption to extend its application to all "foreign issuers" as that term is used in Securities Exchange Act Rule 3b-4<sup>8</sup> rather than only to foreign private issuers. Nasdaq believes this amendment is necessary because the same legal or regulatory impediments to DRS eligibility exist for a foreign issuer which is incorporated in a foreign jurisdiction but which does not qualify for foreign private issuer status as is the case for a foreign private issuer incorporated in the same jurisdiction which is currently eligible to utilize the existing exemption. Absent this extension of the scope of the exemption, the DRS eligibility requirement would render it impossible for a foreign issuer to list if it was not a foreign private issuer but was incorporated in a foreign jurisdiction whose law or regulation made compliance with the DRS requirement impossible. Nasdaq believes that the proposed rule change is appropriate in light of the specific and discrete problem faced by foreign issuers that are not foreign private issuers but who are prohibited by home country law or regulation from becoming DRS eligible. As under the current exemption, the foreign issuer will have to submit to Nasdaq a written statement from an independent counsel in the company's home country certifying that a law or regulation in the home country prohibits compliance with the DRS requirement in order to utilize the exemption.

Nasdaq Rule 5615 provides limited exemptions with respect to certain corporate governance and reporting requirements for foreign private issuers. The proposed rule change does not expand the scope of such relief to

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> See Securities Exchange Act Release No. 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) (order approving SR-NASDAQ-2006-008). See also Exchange Act Release No. 58125 (July 9, 2008), 73 FR 42389 (July 21, 2008) (order approving SR-NASDAQ-2008-031).

<sup>8</sup> Exchange Act Rule 3b-4 defines the term "foreign issuer" as any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country. 17 CFR 240.3b-4.

<sup>11</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, President, KOR Trading LLC, dated August 6, 2012; John L. Jacobs, Executive Vice President, NASDAQ OMX Global Index Group, NASDAQ OMX Group, Inc., dated August 10, 2012; Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill, dated August 10, 2012; Edward T. Tilly, President and Chief Operating Officer, CBOE, dated August 10, 2012; John V. O'Hanlon, Dechert LLP, on behalf of the Index Industry Association, dated August 10, 2012; and Edward T. Tilly, President and Chief Operating Officer, CBOE, dated August 27, 2012.

<sup>12</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary, ISE, dated August 10, 2012 and August 27, 2012.

<sup>13</sup> See Securities Exchange Act Release No. 67865 (September 14, 2012), 77 FR 58432 (September 20, 2012).

<sup>14</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill, dated November 5, 2012 and Edward T. Tilly, President and Chief Operating Officer, CBOE, dated November 7, 2012.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(6).

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> The Commission has modified the text of the summaries prepared by Nasdaq.

<sup>5</sup> The Direct Registration Program is more often referred to in the securities industry as the Direct Registration System or "DRS."