

be submitted on or before September 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78668; File No. SR-BOX-2016-28]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Order Approving a Proposed Rule Change To Expand the Short Term Option Series Program To Allow Wednesday Expirations for SPY Options

August 24, 2016.

#### I. Introduction

On June 30, 2016, BOX Options Exchange LLC (“BOX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its rules governing the Short Term Option Series Program<sup>3</sup> to allow the listing and trading of options on the SPDR S&P 500 ETF Trust (“SPY”) with Wednesday expirations. The proposed rule change was published for comment in the **Federal Register** on July 13, 2016.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Under the terms of the current Short Term Option Series Program, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on each of the next five Fridays, provided that such Friday is not a Friday in which monthly options series or Quarterly Options Series expire.<sup>5</sup>

The Exchange’s proposed rule change would expand the Short Term Option Series Program to permit BOX to open

for trading, on any Tuesday or Wednesday that is a business day, series of options on SPY that expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (“Wednesday SPY Expirations”).<sup>6</sup> Wednesday SPY Expirations would be subject to the same rules as the standard Short Term Option Series program,<sup>7</sup> with two exceptions. The Exchange proposes that the current limitation of no more than five Short Term Option Series expiration dates in a class<sup>8</sup> would not include any Wednesday SPY Expiration. Instead, the Exchange proposes a separate limit of five consecutive Wednesday SPY expiration dates<sup>9</sup> so that the Exchange could list five Short Term Option Series expiration dates for SPY expiring on Friday as well as five Wednesday SPY Expiration dates.<sup>10</sup> In addition, unlike other option series in the Short Term Option Series program, Wednesday SPY Expirations could expire in the same week in which monthly option series in the same class expire.<sup>11</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b) of the Act.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

facilitating transactions in securities, 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 Commission believes that the proposed rule change may provide the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY options, thus allowing them to better manage their risk exposure.

In approving this proposal, the Commission notes that the Exchange has represented that it has an adequate surveillance program in place to detect manipulative trading in Wednesday SPY Expirations.<sup>14</sup> The Exchange further states that it has the necessary systems capacity to support the new options series.<sup>15</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-BOX-2016-28) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78663; File No. SR-NYSEMKT-2016-80]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending and Restating the Second Amended and Restated Certificate of Incorporation of the Exchange’s Ultimate Parent Company, Intercontinental Exchange, Inc.

August 24, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 17, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have

<sup>6</sup> Under the proposal, the Exchange would expand the definition of “Short Term Option Series” in BOX Rule 100(a)(64) and add a description of Wednesday SPY Expirations in proposed IM-5050-6(c) to BOX Rule 5050. For further details, see Notice, *supra* note 4, at 45346.

<sup>7</sup> For example, Wednesday SPY Expirations would be subject to the same series limitations and strike interval rules as standard Short Term Option Series and would be P.M.-settled. See IM-5050-6(b) to BOX Rule 5050. See also Notice, *supra* note 4, at 45346-47.

<sup>8</sup> See IM-5050-6(a) to BOX Rule 5050.

<sup>9</sup> See proposed IM-5050-6(c) to BOX Rule 5050.

<sup>10</sup> See Notice, *supra* note 4, at 45346.

<sup>11</sup> See *id.*

<sup>12</sup> 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Notice, *supra* note 4, at 45347.

<sup>15</sup> See *id.*

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</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. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>9</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 IM-5050-6 to BOX Rule 5050.

<sup>4</sup> See Securities Exchange Act Release No. 78243 (July 7, 2016), 81 FR 45346 (July 13, 2016) (“Notice”).

<sup>5</sup> See Securities Exchange Act Release No. 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010).

been prepared by the self-regulatory organization. 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 amend and restate the Second Amended and Restated Certificate of Incorporation (the "ICE Certificate") of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to increase ICE's authorized share capital, and to make other, non-substantive changes. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://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 the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The proposed amendments would revise the ICE Certificate<sup>4</sup> to increase the total number of authorized shares of ICE common stock, par value \$0.01 per share ("Common Stock"), and make other, non-substantive changes. More specifically, the Exchange proposes to

make the following amendments to the ICE Certificate:

- In Article IV, Section A, the total number of shares of stock that ICE is authorized to issue would be changed from 600,000,000 to 1,600,000,000 shares, and the portion of that total constituting Common Stock would be changed from 500,000,000 to 1,500,000,000 shares.
- In Article V, Section A.5, the reference to "this Section A of ARTICLE VI" would be corrected to refer to "this Section A of ARTICLE V".
- References to the "Second Amended and Restated Certificate of Incorporation" would be changed throughout to refer to the "Third Amended and Restated Certificate of Incorporation", and related technical and conforming changes would be made to the recitals and signature page of the ICE Certificate.

The proposed amendments to the ICE Certificate were approved by the board of directors of ICE ("ICE Board") on August 1, 2016. The Exchange proposes that the above amendments to the ICE Certificate would be effective when filed with the Department of State of Delaware, which would not occur until approval of the amendments by the stockholders of ICE is obtained at a Special Meeting of Stockholders on October 12, 2016.

The trading price of ICE's Common Stock has risen significantly since ICE's initial public offering in 2005,<sup>5</sup> and the ICE Board believes that such price appreciation may impact the liquidity of ICE's Common Stock, making it more difficult to efficiently trade and potentially less attractive to certain investors. Accordingly, the ICE Board approved pursuing a 5-for-1 stock split by way of a stock dividend, pursuant to which the holders of record of shares of Common Stock would receive, by way of a dividend, four shares of Common Stock for each share of Common Stock held by such holder (the "Stock Dividend"). The ICE Board's approval of the Stock Dividend was contingent upon Commission and ICE stockholder approval of the proposed amendments to the ICE Certificate.

The number of shares of Common Stock proposed to be issued in the Stock Dividend exceeds ICE's authorized but unissued shares of Common Stock. The proposed rule change would increase ICE's authorized shares of Common Stock and shares of capital stock

sufficient to allow ICE to effectuate the Stock Dividend.

The proposed changes would not alter the limitations on voting and ownership set forth in Section V of the ICE Certificate. Such limitations were introduced at the time of ICE's acquisition of the Exchange, to "minimize the potential that a person could improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act."<sup>6</sup>

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>7</sup> in general, and Section 6(b)(1) of the Exchange Act,<sup>8</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal to increase ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend would not impact the Exchange's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Section V of the ICE Certificate, and so the proposed changes would not enable a person to "improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act."<sup>9</sup>

For similar reasons, the proposal is consistent with Section 6(b)(5) of the Exchange Act,<sup>10</sup> because it would not impact the Exchange's governance or regulatory structure, which would continue to be designed to prevent

<sup>4</sup> ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc., which in turn owns 100% of the equity interest in NYSE Holdings LLC. NYSE Holdings LLC owns 100% of the equity interest of NYSE Group, Inc., which in turn directly owns 100% of the equity interest of the Exchange and its affiliates New York Stock Exchange LLC and NYSE Arca, Inc. ICE is a publicly traded company listed on the Exchange's affiliate New York Stock Exchange LLC. The Exchange's affiliates, New York Stock Exchange LLC and NYSE Arca, Inc., have each submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2016-57 and SR-NYSEArca-2016-119.

<sup>5</sup> The closing price of ICE's Common Stock on July 29, 2016, the trading date prior to the ICE Board vote to approve the proposal, was \$264.20. The price of ICE's Common Stock at its initial public offering on November 16, 2005, was \$26.00.

<sup>6</sup> See Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR-NYSE-2013-42; SR-NYSEMKT-2013-50; and SR-NYSEArca-2013-62), at 51760. ICE was previously named IntercontinentalExchange Group, Inc. See Securities Exchange Act Release No. 72156 (May 13, 2014), 79 FR 28782 (May 19, 2014) (SR-NYSEMKT-2014-41).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(1).

<sup>9</sup> See Securities Exchange Act Release No. 70210, *supra* note 6, at 51760.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Exchange believes that approval of the proposal would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because by increasing ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of ICE.

The Exchange believes that amending Article V, Section A.5, to correct the reference to "this Section A of ARTICLE VI" to refer to "this Section A of ARTICLE V" would reduce potential confusion that may result from having an incorrect reference in the ICE Certificate. Replacing such incorrect reference would further the goal of transparency and add clarity to the ICE Certificate.

#### *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 Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with the number of authorized shares of Common Stock and shares of capital stock of the Exchange's ultimate parent.

#### *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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

the Exchange consents, the Commission will:

A. by order approve or disapprove such 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 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-NYSEMKT-2016-80 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2016-80. 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-NYSEMKT-2016-80, and should be

submitted on or before September 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 1, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

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 Brent J. Fields from the Office of the Secretary at (202) 551-5400.

Dated: August 25, 2016.

**Brent J. Fields,**

*Secretary.*

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<sup>11</sup> 17 CFR 200.30-3(a)(12).