Trading Committee created by the Exchange will determine the percentage of the specialist's participation for each ETF on a case-by-case basis, depending on the liquidity of the product, the type of orders sent to the Exchange and its competitors, and the type of order flow the Exchange seeks to attract.[8] The Commission believes that the proposed rule change should provide for a reasonable participation allocation in ETFs between specialists and registered traders based on their respective responsibilities and obligations. The Commission notes that the proposed rule change sets forth a method to be used by the specialist in allocating shares to registered traders and provides an articulated sequence for allocating an ETF trade in a situation where a customer order is on parity with the specialist and registered traders. The Commission also notes that these methods are similar to the methods that the Commission has approved for the allocation of contracts among registered traders in options trading on the Exchange.[9]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change, as amended, (File No. SR–Amex–2002–35) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5986 Filed 3–16–04; 8:45 am]

BILLING CODE 8010–01–P

[8] Under the proposal, the ETF Trading Committee will also determine the specialist participation in trades executed by the Exchange's automatic execution (''Auto-Ex'') system, in lieu of the table of percentages set forth in the current rule.

[9] *See* Securities Exchange Act Release No. 47729 (April 24, 2003), 68 FR 23344 (May 1, 2003).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49388; File No. SR–CBOE–2003–51]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options on Three Russell Indexes

March 10, 2004.

I. Introduction

On October 30, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain CBOE rules to provide for the listing and trading on the Exchange of options on the Russell Top 200® Index, the Russell Top 200® Growth Index, and the Russell Top 200® Value Index (together, the ''Russell Top 200 Indexes'' or ''Indexes'').

On November 25, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] On January 6, 2004, the CBOE filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change and Amendments Nos. 1 and 2 were published for comment in the **Federal Register** on January 28, 2004.[5] The Commission received one comment letter regarding the proposal.[6] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on the Russell Top 200 Indexes. Each Russell Top 200 Index is a capitalization-weighted Index containing various groups of stocks drawn from the 200 largest companies in the Russell 1000 Index, which is drawn from the largest 3,000 companies incorporated in the U.S. and its territories. These 3,000 companies represent approximately 98% of the investable U.S. equity market. The Exchange represents that all of the components of the Russell Top 200 Indexes are traded on the New York Stock Exchange, Inc. (''NYSE''), the American Stock Exchange, Inc. (''AMEX''), or NASDAQ and are ''reported securities'' as defined in Rule 11Aa3–1 under the Act.[7] The CBOE has received Commission approval to trade options on the following Russell Indexes.[8]

Russell 2000® Index
Russell 2000® Growth Index
Russell 2000® Value Index
Russell 1000® Index
Russell 1000® Growth Index
Russell 1000® Value Index
Russell 3000® Index
Russell 3000® Growth Index
Russell 3000® Value Index
Russell MidCap® Index
Russell MidCap® Growth Index
Russell MidCap® Value Index

Index Design

According to the Exchange, each of the three Russell Top 200 Indexes is designed to be a comprehensive representation of the large cap sector of the U.S. equity market. The Russell Top 200 Indexes are capitalization-weighted and include only the common stocks of corporations domiciled in the United States and its territories and that are traded on the NYSE, NASDAQ or the AMEX. Component stocks are weighted by their ''available'' market capitalization, which is calculated by multiplying the primary market price by the ''available'' shares, *i.e.*, the total shares outstanding less corporate cross-owned shares, ESOP and LESOP-owned[9] shares comprising 10% or more of shares outstanding, unlisted share classes and shares held by an individual, a group of individuals acting together, or a corporation not in the Index that owns 10% or more of the shares outstanding. Below is a brief description of each Russell Top 200 Index:

Russell Top 200® Index: Measures the performance of the 200 largest companies in the Russell 1000 Index, which represents approximately 74% of the Index total market capitalization of the Russell 1000 Index.

Russell Top 200® Growth Index: Measures the performance of those Russell Top 200 companies with higher price-to-book ratios and higher forecasted growth values. The stocks are also members of the Russell 1000 Growth Index.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James M. Flynn, Attorney, Legal Division, CBOE, to Kelly Riley, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 21, 2003 (''Amendment No. 1''). In Amendment No. 1, CBOE expanded its Statement on Burden on Competition in response to Item 4 of Form 19b–4.

[4] *See* letter from James M. Flynn, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Special Counsel, Division, dated January 6, 2004 (''Amendment No. 2''). In Amendment No. 2, CBOE expanded its Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others in response to Item 5 of Form 19b–4.

[5] *See* Securities Exchange Act Release No. 49111 (January 21, 2004), 69 FR 4189.

[6] *See* letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. (''ISE'') to Jonathan G. Katz, Secretary, Commission, dated November 11, 2003 (''ISE Letter'').

[7] 17 CFR 240.11Aa3–1.

[8] *See* Securities Exchange Act Release Nos. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (order approving SR–CBOE–92–02) (listing and trading of options on the Russell 2000 Index) and 48591 (October 2, 2003), 68 FR 58728 (order approving SR–CBOE–2003–17) (listing and trading of options on 11 Russell Indexes).

[9] ESOP and LESOP-owned shares represent, generally, those shares of a corporation that are owned through employee stock ownership plans.

Russell Top 200® Value Index: Measures the performance of those Russell Top 200 companies with lower price-to-book ratios and lower forecasted growth values. The stocks are also members of the Russell 1000 Value Index.

All companies listed on the NYSE, AMEX or NASDAQ are considered for inclusion in the universe of stocks that comprise the Russell Top 200 Indexes with the following exceptions: (1) Stocks trading at less than $1.00 per share on May 31; (2) non-U.S. incorporated companies; and (3) preferred and convertible preferred stock, redeemable shares, participating preferred stock, warrants and rights, trust receipts, royalty trusts, limited liability companies, bulletin board stocks, pink sheet stocks, closed-end investment companies, limited partnerships, and foreign stocks.

The Russell Top 200 Growth Index and the Russell Top 200 Value Index are both subsets of the Russell Top 200 Index, which itself is a subset of the Russell 1000 and Russell 3000 Indexes. These Growth and Value versions of the Russell Top 200 Index may contain common components, but the capitalization of those components is apportioned so that the sum of the total capitalization of the Russell Top 200 Growth and Russell Top 200 Value Indexes equals the total capitalization of the Russell Top 200 Index. The CBOE represents that as of September 30, 2003, the Russell Top 200 Growth Index and the Russell Top 200 Value Index have 129 and 140 components, respectively.

According to the CBOE, on September 30, 2003, the Russell Top 200 Index had a total capitalization of $7.2 trillion and the total capitalization of the Russell Top 200 Growth and Russell Top 200 Value Indexes was $3.9 trillion and $3.3 trillion, respectively. As of September 30, 2003, the stocks comprising the Russell Top 200 Indexes had an average market capitalization of $35.7 billion, ranging from a high of $298 billion (General Electric Co.) to a low of $4.9 billion (FOX Entertainment Group, Inc.).[10] The number of available shares outstanding ranged from a high of 9.99 billion (General Electric Co.) to a low of 66.7 million (M & T Bank Corp.), and averaged 1.04 billion shares. The six-month average daily trading volume for Russell Top 200 Index components was 5.68 million shares per day, ranging from a high of 59.96 million shares per day (Intel Corp.) to a low of 314,000 shares per day (M & T Bank Corp.). The CBOE represents that as of September 30, 2003, all of the Russell Top 200 Index components were options eligible.

Calculation

The values of each Index currently are being calculated by Reuters on behalf of the Frank Russell Company and will be disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via the Options Price Reporting Authority (''OPRA'').

The CBOE notes that the methodology used to calculate the value of each of the Russell Top 200 Indexes is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes. The level of each Index reflects the total market value of the component stocks relative to a particular base period and is computed by dividing the total market value of the companies in each Index by its respective Index divisor. The divisor is adjusted periodically to maintain consistent measurement of each Index. The following is a table of base dates and the respective Index levels as of September 30, 2003:

Index	Base date/base index value	9/30/03 index value
Russell Top 200® Index	3/16/00/400.00	249.51
Russell Top 200® Growth Index	3/16/00/400.00	191.94
Russell Top 200® Value Index	3/16/00/400.00	324.72

Index Option Trading

According to the CBOE, options on the Indexes will be A.M.-settled. In addition to regular Index options, the Exchange may provide for the listing of long-term Index option series (''LEAPS®'') in accordance with CBOE Rule 24.9, ''Term of Index Option Contracts.''

For options on each Index, strike prices will be set to bracket the respective Index in 2.5-point increments for strikes below $200 and 5 point increments for strikes at or above $200. The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The trading hours for options on all of the Indexes will be from 8:30 a.m. to 3:15 p.m. Chicago time.

Maintenance

The CBOE represents that the Russell Top 200 Indexes will be monitored and maintained by the Frank Russell Company. The Frank Russell Company will be responsible for making all necessary adjustments to the Indexes to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, would require simple changes to the available shares outstanding and the stock prices of the underlying components. Other corporate actions, such as share issuances, would require a change in the divisor of an Index to effect adjustments.

The Exchange represents that the Russell Top 200 Indexes are re-constituted annually on June 30 and such reconstitution is based on prices and available shares outstanding as of the preceding May 31. New Index components are added only as part of the annual re-constitution and, after that, a stock removed from an Index for any reason will not be replaced until the next re-constitution.

Although the CBOE is not involved in the maintenance of the Russell Top 200 Indexes, the Exchange represents that it will monitor each Russell Top 200 Index on an annual basis and, will notify the Commission if: (1) The number of securities in any Index drops by 33% or more; (2) 10% or more of the weight of any Index is represented by component securities having a market value of less than $75 million; (3) less than 80% of the weight of any Index is represented by component securities that are options eligible; (4) 10% or more of the weight of any Index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of any Index or the largest five components in the aggregate account for

[10] *See* Exhibit B to Form 19b–4.

more than 50% of the weight of any Index.[11]

Surveillance

The Exchange represents that the CBOE's surveillance procedures are adequate to monitor the trading in options and LEAPS on the Russell Top 200 Indexes. Further, the Exchange will have complete access to the information regarding the trading activity of the underlying securities.

Exercise and Settlement

The proposed options on each Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of each Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of each Index at option expiration will be calculated by Reuters on behalf of the Frank Russell Company based on the opening prices of the component securities on the last business day prior to expiration. If a component security fails to open for trading, the exercise settlement value will be determined in accordance with CBOE Rules 24.7(e) and 24.9(a)(4). When the last trading day is moved because of Exchange holidays (such as when the CBOE is closed on the Friday before expiration), the last trading day for expiring options on the Indexes will be Wednesday and the exercise settlement value of options on the Indexes at expiration will be determined at the opening of regular trading on Thursday.

Position Limits

The Exchange proposes to establish position limits for options on the Russell Top 200 Indexes at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are identical to the limits applicable to options on the Russell 2000 Index as specified in CBOE Rule 24.4(a).

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV of the CBOE's rules will govern the trading of options on the Russell Top 200 Indexes on the Exchange. Additionally, the CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of the Russell Top 200 Index options. The CBOE also has been informed that OPRA has the capacity to support such new series.[12]

III. Summary of Comments

The Commission received one comment letter regarding the proposal, which stated that the CBOE had entered into an exclusive licensing agreement to list and trade options on the Indexes.[13] The commenter expressed concern about the potential effect on competition of an exclusive licensing agreement and about the CBOE's failure to discuss the competitive implications of exclusive index licenses in its filing. Because the CBOE's proposal failed to discuss the competitive implications of the exclusive licenses, the commenter urged the Commission to reject the filing or to publish the proposal for comment before acting on it.

In response, the CBOE filed Amendment No. 1 to the proposal, which discussed the proposal's burden on competition. In Amendment No. 1, the CBOE stated, among other things, that the proposal would not impose a burden on competition because the ability to grant an exclusive license enhances the value of indexes to index providers, thereby providing index providers with an incentive to develop additional indexes for derivatives trading. The CBOE also noted that options on the Russell Top 200 Indexes would compete with other broad-based index options and derivative products traded on the CBOE and on other markets.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[14] Specifically, the Commission believes that the listing and trading of options on the Russell Top 200 Indexes will permit investors to participate in the price movements of the securities comprising each Index. The Commission also believes that the trading of options on the Russell Top 200 Indexes will allow investors holding positions in some or all of the securities underlying the Indexes to hedge the risks associated with their portfolios more efficiently and effectively. Accordingly, the Commission believes that the trading of options on the Russell Top 200 Indexes will provide investors with important trading and hedging mechanisms that should reflect accurately the overall movement of stocks in the large capitalization range of U.S. equity securities.[15] By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of options on the Russell Top 200 Indexes will serve to protect investors, promote the public interest and contribute to the maintenance of fair and orderly markets.[16]

The trading of options on the Russell Top 200 Indexes, however, raises several issues related to the design and structure of the Indexes, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the CBOE has adequately addressed these issues.

A. Index Design and Structure

The Commission finds it is appropriate and consistent with the Act to classify the Russell Top 200 Indexes as broad-based, and thus, to permit Exchange rules applicable to the trading of broad-based index options to apply to options on the Indexes. Specifically, the Commission believes that the Indexes are broad-based because they reflect a substantial segment of the U.S. equity market, in general, and the most highly capitalized U.S. securities, in particular. As of September 30, 2003, the Russell Top 200 Index had a total capitalization of $7.2 trillion and the total capitalization of the Russell Top 200 Growth and Russell Top 200 Value Indexes was $3.9 trillion and $3.3 trillion, respectively. As of September 30, 2003, the stocks comprising the Indexes had an average market capitalization of $35.7 billion, ranging

[11] The CBOE clarified that it will notify the Commission if any of these changes occur in any of the Indexes. Telephone conversation between James Flynn, Attorney, Legal Division, CBOE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on March 3, 2004.

[12] *See* letter from Joe Corrigan, Executive Director, OPRA, to William Speth, Director of Research, CBOE, dated October 21, 2003 (''OPRA Letter'').

[13] *See* ISE Letter, *supra* note 6.

[14] 15 U.S.C. 78f(b)(5).

[15] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of options on the Indexes will provide investors with hedging vehicles that should reflect the overall movement of stocks representing a substantial segment of the U.S. equity market.

[16] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

from a high of $298 billion to a low of $4.9 billion. In addition, as of September 30, 2003, the largest single component of the Russell Top 200 Index, the Russell Top 200 Growth Index, and the Russell Top 200 Value Index represented 4.15%, 7.63%, and 7.47% of the weight of their respective Indexes, and the five largest component stocks represented 17.62%, 28.55%, and 23.39% of the weight of their respective Indexes. The component securities of the Indexes are diverse, actively traded, and represent a broad cross-section of highly capitalized securities in the U.S. equity market. The CBOE has also represented that all of the component securities of the Indexes are reported securities, and that as of September 30, 2003, all of the Russell Top 200 Index components are options eligible.[17] Accordingly, the Commission believes that it is appropriate for the Exchange to classify the Indexes as broad-based and apply its rules governing broad-based index options to options on the Indexes.

B. Potential for Manipulation

The Commission also believes that the general broad diversification, capitalizations, liquidity, and relative weightings of the component securities of the Indexes significantly minimize the potential for manipulation of the Indexes. First, as noted above, the Russell Top 200 Indexes represent a broad cross-section of highly capitalized U.S. companies and no single security dominates any of the Indexes. Second, as of September 30, 2003, the total market capitalizations of the Russell Top 200 Index, the Russell Top 200 Growth Index, and the Russell Top 200 Value Index were $7.2 trillion, $3.9 trillion, and $3.3 trillion, respectively. Third, as of September 30, 2003, the six-month average daily trading volume of the component securities of the Russell Top 200 Index, the Russell Top 200 Growth Index, and the Russell Top 200 Value Index was approximately 5.67 million shares, 6.5 million shares, and 3.98 million shares, respectively. Fourth, the CBOE has represented that it will notify the Commission when: (1) The number of securities in any Index drops by 33% or more; (2) 10% or more of the weight of any Index is represented by component securities having a market value of less than $75 million; (3) less than 80% of the weight of any Index is represented by component securities that are options eligible; (4) 10% or more of the weight of any Index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of any Index or the largest five components in the aggregate account for more than 50% of the weight of any Index.[18] Accordingly, the Commission believes that these factors minimize the potential for manipulation because it is unlikely that attempted manipulation of the prices of the Indexes' components would affect significantly the Indexes' values. Finally, the CBOE has proposed position and exercise limits for options on the Indexes that are identical to the position and exercise limits for options on other Russell Indexes traded on the CBOE.[19] Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulation and other trading abuses.

C. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as the trading of options on the Russell Top 200 Indexes (including full-value and reduced value LEAPS on the Indexes), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the options on the Indexes, including LEAPS, will be subject to the same regulatory regime as the other standardized options traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options on the Russell Top 200 Indexes.[20]

D. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the CBOE, the NYSE, the AMEX, and the NASD are all members of the ISG [21] and the ISG Agreement will apply to the trading of options on the Indexes. Further, the CBOE has represented that its surveillance procedures are adequate to monitor trading in options, including LEAPS, on the Indexes.

E. Market Impact

The Commission believes that the listing and trading of options on the Russell Top 200 Indexes on the Exchange will not adversely impact the underlying securities markets. First, as described above, the Russell 200 Indexes are broad-based and no one stock or industry group dominates any of the Indexes. Second, as noted above, the stocks contained in the Indexes have large capitalizations and are actively traded. Third, existing CBOE stock index options rules and surveillance procedures will apply to options on the Indexes. Fourth, the Exchange has established position and exercise limits for options on the Russell Top 200 Indexes that will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because options on the Indexes will be issued and guaranteed by the Options Clearing Corporation like other standardized

[17] The CBOE's option listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7 million shares; (2) there must be a minimum of 2,000 holders of the underlying security; (3) trading volume must have been at least 2.4 million shares over the preceding twelve months; and (4) the market price per share must have been at least $7.50 for a majority of business days during the preceding three calendar months. *See* CBOE Rule 5.3, Interpretation and Policy.01.

[18] *See* note 11, *supra.* If the composition of any of the underlying securities of any Index were to change substantially, the Commission's decision regarding the appropriateness of the current maintenance standards for the Indexes would be reevaluated, and additional approval under Section 19(b) of the Act might be necessary to continue to trade options on the Indexes.

[19] *See* CBOE Rule 24.4, ''Position Limits for Broad-Based Index Options.''

[20] In addition, the CBOE has represented that the Exchange has the necessary systems capacity to support these new series of options that would result from the introduction of options on the Indexes. OPRA also has represented that it has the capacity to support the new series that would result from the introduction of options on the Indexes. *See* Opra Letter, *supra* note. 11.

[21] The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and option markets. All of the registered national securities exchanges and the NASD are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of the ISG.

options traded in the U.S. Lastly, the Commission believes that settling options on the Russell Top 200 Indexes based on the opening prices of component securities is reasonable and consistent with the Act because it may contribute to the orderly unwinding of positions in options on the Indexes upon expiration.

F. Exclusive Licensing Agreement

As noted above, the ISE raised concerns about the CBOE's exclusive licensing agreement with the Frank Russell Company to trade options on the Russell Top 200 Indexes. The Commission notes that the ISE has filed a petition for rulemaking to amend Rule 19c–5 under the Act [22] to prohibit options exchanges from entering into exclusive licensing agreements with respect to index option products.[23] The Commission believes that the issues raised by the ISE in its comment letter and in its petition for rulemaking regarding the exclusive licensing of index option products should be considered comprehensibly rather than on an *ad hoc* basis in the context of a particular index option product or products, such as the Russell Top 200 Indexes. In addition, the Commission believes that investors will benefit from the availability of trading options on the Russell Top 200 Indexes because, as described above, they will provide investors with additional hedging and trading vehicles. Accordingly, the Commission believes that it is appropriate in the public interest to approve the current proposal in order to make options on the Russell Top 200 Indexes available to investors while the Commission considers the issues presented by the exclusive licensing of index options products in the context of the ISE's petition for rulemaking.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–CBOE–2003–51), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

J. Lynn Taylor,

Assistant Secretary.

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[22] 17 CFR 240.19c–5.

[23] *See* Letter from David Krell, President and Chief Executive Officer, ISE, to Jonathan Katz, Secretary, Commission, dated November 1, 2002.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49387; File No. SR–CHX–2003–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by The Chicago Stock Exchange, Incorporated Relating to Execution of Limit Orders Following an Exempted ITS Trade-Through

March 10, 2004.

On August 7, 2003, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to render voluntary a CHX specialist's obligation to fill limit orders for the Nasdaq-100 Index, the Dow Jones Industrial Average Index and the Standard & Poor's 500 Index (collectively ''Exempt ETFs'') [3] resting in the specialist's book when the primary market is trading at the limit price, or when the bid or offering at the limit price has been exhausted in the primary market. On January 20, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 3, 2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The CHX has represented that the proposed rule change is warranted because the Exchange believes that it is difficult, if not impossible, for a CHX specialist to obtain liquidity on behalf of his customers via the Intermarket Trading System in the case of Exempt ETFs given the dynamic and rapidly changing nature of the exchange-traded fund market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposal is consistent with the requirements of section 6(b) of the Act,[6] in general, and section 6(b)(5) of the Act,[7] in particular, which requires that the rules of an Exchange be designed to promote just and equitable principles of trade, to remove impediments and to 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 obligations on specialists to execute limit orders resting on the specialist book when the primary market is trading at the limit price, or when the bid or offer at the limit price has been exhausted in the primary market were obligations that the CHX assumed voluntarily in order to make its market more attractive to sources of order flow. The Commission believes that the business decision to potentially forego order flow by no longer requiring specialist to provide such protections to certain limit orders is a judgment the Act allows the CHX to make.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change, as amended, (File No. SR–CHX–2003–27) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5948 Filed 3–16–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exchange has represented that to the extent the CHX Board of Governors designates subject issues other than or in addition to the Exempt ETFs identified in this proposed rule change, the Exchange will file those changes with the Commission as an interpretation of an existing rule pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder.

[4] *See* Securities Exchange Act Release No. 49130 (January 27, 2004), 69 FR 5227.

[5] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49393; File No. SR–ISE–2003–26]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendments No. 1, 2 and 3 Thereto by the International Securities Exchange, Inc. To Amend Its Rules Governing Limits on the Entry of Orders of Less Than Ten Contracts and Revise the Quotation Size Requirements for Market Makers

March 10, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934