

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<sup>22</sup> to prohibit options exchanges from entering into exclusive licensing agreements with respect to index option products.<sup>23</sup> 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 comprehensively 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,<sup>24</sup> 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.<sup>25</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>22</sup> 17 CFR 240.19c-5.

<sup>23</sup> See Letter from David Krell, President and Chief Executive Officer, ISE, to Jonathan Katz, Secretary, Commission, dated November 1, 2002.

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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")<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Specifically, the

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

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

<sup>3</sup> 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.

<sup>4</sup> See Securities Exchange Act Release No. 49130 (January 27, 2004), 69 FR 5227.

<sup>5</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency,

Commission finds that the proposal is consistent with the requirements of section 6(b) of the Act,<sup>6</sup> in general, and section 6(b)(5) of the Act,<sup>7</sup> 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,<sup>8</sup> 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.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## 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

competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).