with the rules and by-laws of the OCC. This filing implements those changes.

2. Statutory Basis

The Exchange believes that the proposed changes to CBOE Rules 24.7(e) and 24.9(a)(4) are consistent with and in furtherance of the provisions of section 6(b)(5) of the Act.[8] CBOE believes that, by establishing Exchange rules that make clear that current index option settlement values in the event of market disruption shall be determined in accordance with the rules and by-laws of the OCC, this filing will help public customers and market-makers alike to be better able to use stock index options to predictably hedge their transactions in stock index futures and/or the underlying stocks themselves. CBOE further believes that this rule change would improve the efficiency of, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, thus better protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

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

CBOE asserts that, because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate), it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally would not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission waive the 30-day pre-operative waiting period. The Commission believes that waiving the 30-day period is consistent with the protection of investors and the public interest. The Commission has previously found that allowing OCC to have authority to determine settlement prices for OCC-cleared index options in times of market disruptions is consistent with the Act,[12] and the Exchange's proposal incorporates by reference the OCC's ability to exercise that authority with respect to CBOE-traded index options. The Commission believes that market participants should be able to benefit immediately from this clarification and that no purpose would be served by delaying the operative date of this rule change for 30 days. Accordingly, the Commission hereby determines to waive the 30-day pre-operative period, and the proposed rule change becomes operative immediately.[13]

Rule 19b–4(f)(6) also requires the self-regulatory organization submitting the proposed rule change to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. CBOE has requested that the Commission waive the five-day pre-filing requirement, and the Commission hereby grants that request.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–13 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7225 Filed 3–25–03; 8:45 am]

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[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See* 15 U.S.C. 78s(b)(3)(C).

[12] *See* 67 FR at 91944.

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47541; File No. SR–CBOE–2002–67]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Amending its Margin Rule 12.3 To Incorporate Security Futures

March 20, 2003.

On November 1, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 amending CBOE Rule 12.3 (''Margin Requirements'') to incorporate security futures. On November 21, 2002, the CBOE filed an amendment to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on December 16, 2002.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Madge M. Hamilton, Senior Attorney, CBOE, to Theodore R. Lazo, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 20, 2002 (''Amendment No. 1'').

[4] Securities and Exchange Act Release No. 46971 (December 9, 2002), 67 FR 77108.

I. Description of the Proposed Rule Change

CBOE has proposed to amend its margin rules, in a manner consistent with the joint margin regulations of the Commission and the Commodity Futures Trading Commission (''CFTC'') [5] to incorporate security futures. Specifically, the proposed rule change adds a new provision (k) to CBOE Rule 12.3 to address margin for security futures contracts. Proposed Rule 12.3(k) would: (1) Require the initial and maintenance margin for security futures contracts to be 20 percent unless an offset provision provides for a different margin requirement or the positions are excluded from CBOE Rule 12.3(k); (2) allow for good faith margin of certain positions in security futures contracts; (3) clarify that security futures contracts have no value for margin purposes; (4) make necessary conforming changes to other CBOE margin provisions; and (5) make some non-substantive changes to CBOE margin rules for consistency purposes.

CBOE's proposed margin requirement for security futures contracts would adopt the applicable provisions of the Joint Regulations of the SEC and CFTC (''Joint Regulations'').[6] In particular, CBOE Rule 12.3(k) would require compliance with the security futures contract margin requirements of the SEC and CFTC, in addition to the Exchange margin rules and Regulation T of the Federal Reserve Board. Accordingly, under proposed CBOE Rule 12.3(k)(1), the initial and maintenance margin requirement for a security futures contract would be 20 percent of the current market value of the contract unless an offset provision enumerated in 12.3(k) or another rule provided for a different margin requirement.[7]

Proposed CBOE Rules 12.3(k)(2) and 12.3(k)(3) would set a time limit for obtaining required margin by incorporating by reference the same time frame that the SEC's Net Capital Rule [8] permits maintenance margin calls to remain unsatisfied before the member organization must deduct the maintenance margin deficiency in computing its net capital. As a result, if a customer did not satisfy an initial or maintenance margin call on a security futures contract for five days, the proposed rule change would require the broker or dealer carrying that customer's security futures positions would be required to take a deduction for the undermargined customer account when computing its own net capital.

CBOE Rule 12.3(k)(4) would expressly state that day trading rules do not apply to security futures contracts. CBOE has noted that the Joint Regulations do not include a day trading margin requirement.

The proposed rule change includes lower margin requirements for a security futures contract held in conjunction with an offsetting position in another security futures contract, an underlying security, or an option on an underlying security.[9] Specifically, the proposed rule change would incorporate the offsets identified in the **Federal Register** release announcing the adoption of the Joint Regulations, except for the offset involving a broad-based index future (No. 17) because a broad-based index future may not be carried in a securities account. In addition, the proposed rule change includes a definition of the term ''underlying basket'' as pertains to security futures contracts,[10] which would require that the composition of the basket match the composition of the index being offset.

The proposed rule change also would amend CBOE Rule 12.3(f) (''Market-Maker and Specialist Accounts'') to permit options market-makers to receive good faith margin treatment from a CBOE member for certain transactions in security futures contracts that are based on the same underlying security as the options in which they make markets. In addition, the proposed rule change provides that security futures contracts that qualify for the ''security futures dealer'' exclusion from margin under the Joint Regulations [11] would be subject to margin that is satisfactory to the member and the carrying broker or dealer.

Proposed changes to CBOE Rule 12.5 (''Determination of Value for Margin Purposes'') would clarify that security futures contracts have no value for margin purposes. Proposed amendments to CBOE Rule 12.2 (''Time Margin Must Be Obtained'') and CBOE Rule 12.9 (''Meeting Margin Calls by Liquidation Prohibited'') would clarify that these rules do not apply to security futures contracts. The proposed rule change would also make necessary conforming changes to other margin provisions,[12] and other changes for consistency purposes.

II. Discussion

After careful review, 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.[13] In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[15] In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,[16] which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, CBOE's proposed rule change provides that, with respect to security futures contracts, its members must collect proper and adequate margin in accordance with the Joint Regulations. As a result, the proposed rule change requires a minimum margin level of 20% of current market value for positions in security futures, which the Commission believes is the minimum margin level necessary to satisfy the

[5] *See* Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

[6] 17 CFR 242.400 through 242.406 and 17 CFR 41.42 through 41.49.

[7] The current market value of the contract would be calculated on a market-to-market basis at the conclusion of each trading day. Based on the market-to-market value of a security futures contract, a variation settlement amount could be debited from or credited to a customer's account balance at the conclusion of the trading day. These variation settlement entries represent actual cash withdrawals from, or deposits to, the account that will change its cash balance in the same way as would any other routine cash withdrawal or deposit. When account equity is computed, variation settlement amounts are automatically accounted for in that they can be viewed as integrated into the cash balance, which is a component of the formula for computing equity.

[8] 17 CFR 240.15c3–1(c)(2)(xii).

[9] In some cases only lower maintenance margin levels are proposed.

[10] *See* proposed CBOE Rule 12.3(k)(5)(D).

[11] SEC Rule 400(c)(2)(v); CFTC Rule 41.42(c)(2)(v).

[12] *See* Proposed CBOE Rules 12.3(b), (f)(1)(A) and (D), (2)(A), (3)(A)(i), (A)(ii), (A)(iii) and (A)(iv), (g)(i), (h), and (i)(2).

[13] 15 U.S.C. 78s(b)(2).

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

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

[16] 15 U.S.C. 78g(c)(2)(B).

requirements of section 7(c)(2)(B) of the Act.

In addition, Rule 403 under the Act [17] provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in Section 7(c)(2)(B) of the Act. The offsets proposed by CBOE are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

Finally, the Commission believes it is consistent with the Act for the CBOE to exclude from its margin requirements positions in security futures contracts carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of its rules, the CBOE has made compliance by members that are subject to regulatory requirements of several SROs easier.

III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–2002–67), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7228 Filed 3–25–03; 8:45 am]

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[17] 17 CFR 240.403(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47536; File No. SR–ISE–2003–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Fee Changes

March 19, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2003, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

The Exchange is proposing to establish a $.10 surcharge for non-public customer transactions in options on certain Select Sector SPDR Funds and exchange traded funds based on indexes developed by the Frank Russell Company.

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 Exchange 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. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to add to the list of options of Select Sector SPDR Funds and exchange traded funds based on indexes developed by the Frank Russell Company that will be subject to the $.10 surcharge on the Exchange's Schedule of Fees. The Exchange's Schedule of Fees currently lists three (3) Select Sector SPDR Funds and five (5) exchange traded funds based on indexes developed by the Frank Russell Company that are subject to the surcharge.[3] The Exchange is proposing to add options on four (4) more Select Sector SPDR Funds [4] and five (5) more exchange traded funds based on the indexes developed by the Frank Russell Company [5] that will be subject to the surcharge. These additional options are listed in the Schedule of Fees.

The purpose of the fee for trading in these options is to defray the licensing costs. The ISE believes that charging the participants that trade in options on these instruments is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customers, we propose to exclude Public Customer Orders (as defined in Exchange Rule 100) from this additional fee. This additional fee will only be charged with respect to non-Public Customer Orders.[6]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge

[3] *See* Securities Exchange Act Release Nos. 47075 (December 20, 2002), 67 FR 79673 (December 30, 2002)(SR–ISE–2002–29) and 47243 (January 23, 2003), 68 FR 5066 (January 31, 2003)(SR–ISE–2003–01).

[4] Pursuant to this proposed rule change, the proposed fee will apply to options on the Health Care Select Sector SPDR Fund, Industrial Select Sector SPDR Fund, Consumer Discretionary Select SPDR Fund and Materials Select Sector SPDR Fund.

[5] Pursuant to this proposed rule change, the proposed fee will apply to options on the following exchange traded funds: Russell Midcap Index Fund iShares, Russell 3000 Value Index Fund iShares, Russell 3000 Growth Index Fund iShares, Russell Midcap Growth Index Fund iShares, and Russell Midcap Value Index Fund iShares.

[6] Under Exchange Rule 100, a ''Public Customer'' is a person that is not a broker or dealer in securities, and a ''Public Customer Order'' is an order for the account of a Public Customer. Accordingly, the execution of orders for the account of a ''non-broker-dealer'' will not be subject to the proposed $.10 surcharge fee. All other orders, *i.e.*, orders for the account of a broker-dealer, will be subject to the proposed $.10 surcharge fee. Telephone conversation between Joseph Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on March 18, 2003.

[7] 15 U.S.C. 78f(b)(4).