

## ATTACHMENT—THIRD FAIR ACT RELEASE FY 2004—Continued

American Battle Monuments Commission .....	Mr. Alan Gregory, (703) 696-6868; <a href="http://www.abmc.gov">http://www.abmc.gov</a> .
Department of Commerce .....	Mrs. Maile Arthur, (202) 482-1574; <a href="http://www.doc.gov">http://www.doc.gov</a> .
Department of the Interior .....	Ms. Donna Kalvels, (202) 219-0727; <a href="http://www.doi.gov">http://www.doi.gov</a> .
Department of the Interior (IG) .....	Mr. Roy Kime, (202) 208-6232; <a href="http://www.oig.doi.gov">http://www.oig.doi.gov</a> .
Department of Justice .....	Mr. Larry Silvis, (202) 616-3754; <a href="http://www.usdoj.gov/jmd/pe/preface.htm">http://www.usdoj.gov/jmd/pe/preface.htm</a> .
Department of Labor .....	Mr. Al Stewart, (202) 693-4028; <a href="http://www.dol.gov">http://www.dol.gov</a> .
Department of Labor (IG) .....	Mr. David LeDoux, (202) 693-5100; <a href="http://www.dol.gov">http://www.dol.gov</a> .
Federal Election Commission .....	Mr. John O'Brien, (202) 694-1216; <a href="http://www.fec.gov">http://www.fec.gov</a> .
Federal Labor Relations Authority .....	Mr. David Smith, (202) 218-7999; <a href="http://www.flra.gov">http://www.flra.gov</a> .
Federal Retirement Thrift Investment Board .....	Mr. Richard White, (202) 942-1633; <a href="http://www.frtib.gov">http://www.frtib.gov</a> .
National Transportation Safety Board .....	Ms. Barbara Czech, (202) 314-6169; <a href="http://www.nts.gov">http://www.nts.gov</a> .
Office of Government Ethics .....	Mr. Sean Donohue (202) 482-9231; <a href="http://www.usoge.gov">http://www.usoge.gov</a> .
Office of National Drug Control Policy .....	Mr. Daniel Petersen, (202) 395-6745; <a href="http://www.whitehousedrugpolicy.gov">http://www.whitehousedrugpolicy.gov</a> .
U.S. Agency for International Development .....	Ms. Deborah Lewis, (202) 712-0936; <a href="http://www.usaid.gov">http://www.usaid.gov</a> .
U.S. Agency for International Development (IG) .....	Mr. Robert S. Ross, (202) 712-0010; <a href="http://www.usaid.gov/oig/">http://www.usaid.gov/oig/</a> .
U.S. Commission on Civil Rights .....	Ms. Tina Louise Martin, (202) 376-8364; <a href="http://www.usccr.gov">http://www.usccr.gov</a> .
Woodrow Wilson Center .....	Ms. Ronnie Dempsey, (202) 691-4216; <a href="http://wwics.si.edu">http://wwics.si.edu</a> .

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**OFFICE OF MANAGEMENT AND BUDGET****Public Availability of Fiscal Year 2004 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105-270) ("FAIR Act")****AGENCY:** Office of Management and Budget; Executive Office of the President.**ACTION:** Notice of public availability of agency inventory of activities that are not inherently governmental and of activities that are inherently governmental.

**SUMMARY:** In accordance with the FAIR Act, agency inventories of activities that are not inherently governmental are now available to the public from the agencies listed below. The FAIR Act requires that OMB publish an announcement of public availability of agency inventories of activities that are not inherently governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. After review and consultation with OMB, agencies make their inventories available to the public, and these inventories also include activities that are inherently governmental. This is the third release of the FAIR Act inventories for FY 2004.

Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the list of activities that are not inherently governmental within 30 working days and, if not satisfied with this review, may demand a higher agency review/appeal.

The Office of Federal Procurement Policy has made available a FAIR Act User's Guide through its Internet site: <http://www.whitehouse.gov/omb/procurement/fair-index.html>. This User's Guide will help interested parties review FY 2004 FAIR Act inventories, and gain access to agency inventories through agency Web-site addresses.

**Joshua B. Bolten,**  
Director.

## THIRD FAIR ACT RELEASE FY 2004

African Development Foundation .....	Mr. Larry Bevan, (202) 673-3948; <a href="http://www.adf.gov">www.adf.gov</a> .
American Battle Monuments Commission .....	Mr. Alan Gregory, (703) 696-6868; <a href="http://www.abmc.gov">www.abmc.gov</a> .
Department of Commerce .....	Mrs. Maile Arthur, (202) 482-1574; <a href="http://www.doc.gov">www.doc.gov</a> .
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Woodrow Wilson Center .....	Ms. Ronnie Dempsey, (202) 691-4216; <a href="http://wwics.si.edu">wwics.si.edu</a> .

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51303; File No. SR-CHX-2005-05]

### Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Relating to Transactions in Certain Exchange-Traded Funds

March 2, 2005.

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> notice is hereby given that on March 2, 2005, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") a request for reinstatement and extension of a pilot rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the rule change effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposal from interested persons.

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

In its submission, the Exchange requested extension of a pilot rule change to CHX Article XX, Rule 37(a), which governs manual execution of eligible market and marketable limit orders. The pilot rule change, which will remain in effect for an additional 60-day pilot period, permits a CHX specialist, acting in its principal capacity, to manually execute an incoming market or marketable limit order in one of three exchange-traded funds at a price other than the national best bid or offer.

#### 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 CHX included statements concerning

the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

On August 28, 2002, the Commission issued an order granting a *de minimis* exemption ("Exemption") for transactions in certain exchange-traded funds ("Exempt ETFs")<sup>6</sup> from the trade-through provisions of the Intermarket Trading System ("ITS") Plan.<sup>7</sup>

As stated by both Commission staff and Commissioners at an open meeting on August 27, 2002, rapid-fire quotations and executions in Exempt ETFs occur consistently throughout the trading day within a range around the NBBO, rendering it extremely difficult, if not impossible, to access liquidity at an exact NBBO price point. Compounding the "flickering" noted by the Commission, the Exchange has noted a marked increase in the incidence of locked and crossed markets in Exempt ETFs.

CHX Article XX, Rule 37(a), commonly referred to as the Exchange's "Best Rule," requires that with respect to any market or marketable limit order not executed automatically, a CHX specialist must " \* \* \* either (a) manually execute such order at a price and size equal to the NBBO price and size the time the order was received; or (b) act as agent for such order in seeking to obtain the best available price for such order on a marketplace other than the Exchange, using order routing systems where appropriate."

Given the unique environment in which the ETFs are traded, and the difficulty that CHX specialists often encounter in accessing NBBO price points, the Exchange's Department of Market Regulation ("Department") believes that its enforcement of the Best

Rule must take the ETF trading environment into account when the Department evaluates the execution prices of eligible market and marketable limit orders for Exempt ETFs. The Department believes that in certain instances, execution of an order in an Exempt ETF at a price other than the NBBO may nonetheless be consistent with the specialist's best execution obligation, in light of the unique environment that characterizes trading in Exempt ETFs. The Exchange believes that the current version of the BEST Rule contains sufficient latitude with respect to an order executed by a CHX specialist acting as agent for the order,<sup>8</sup> but does not contemplate any flexibility for specialists acting in their principal capacity.<sup>9</sup> Accordingly, the Exchange obtained pilot approval of the attached rule change, which permits a CHX specialist, acting in its principal capacity, to manually execute an incoming market or marketable limit order in an Exempt ETF at a price other than the NBBO.<sup>10</sup> The pilot expired on February 24, 2005.<sup>11</sup> Accordingly, the Exchange requests reinstatement and a sixty-day extension of the pilot rule change; the pilot rule text incorporated into this submission as Exhibit 5 does not differ in any respect from the existing pilot rule provisions.

Significantly, the pilot rule change does not excuse a CHX specialist from their best execution obligations with respect to manually-executed orders. Moreover, the pilot rule change only relates to orders that are executed manually, when a CHX specialist's ability to obtain liquidity at an exact NBBO price point is extremely limited. Orders that are executed automatically will continue to be executed by the Exchange's MAX<sup>®</sup> automated execution system at the NBBO in effect at the time the order is received.

<sup>8</sup> The Best Rule provision governing manual agency executions obligates the CHX specialist to seek " \* \* \* the best available price." CHX Article XX, Rule 37(a)(2).

<sup>9</sup> The Best Rule provision governing manual principal executions obligates the CHX specialist to execute the order at the " \* \* \* NBBO price and size at the time the order was received." CHX Article XX, Rule 37(a)(2).

<sup>10</sup> This rule change is closely analogous to the Exchange's previously submitted interpretation regarding execution of resting limit orders in Exempt ETFs. Under the limit order interpretation, CHX specialists need not provide execution guarantees for Exempt ETFs, based on trade-throughs by other markets, that CHX specialists typically provide to all other listed issues. See Securities Exchange Act Release No. 46557 (September 26, 2002), 67 FR 61941 (October 2, 2002).

<sup>11</sup> See Securities Exchange Act Release No. 50935 (December 27, 2004), 70 FR 414 (January 4, 2005).

<sup>6</sup> The three affected Exempt ETFs are the exchange-traded funds tracking the Nasdaq-100 Index ("QQQ"), the Dow Jones Industrial Average ("DIAMONDS") and the Standard & Poor's 500 Index ("SPDRs").

<sup>7</sup> See Securities Exchange Act Release No. 46428 (August 28, 2002). At present, the Exemption extends to transactions that are "executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS."

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> The Commission waived the 5-day pre-filing notice requirement.