

November 11, 2003

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: File No. SR-CBOE-2003-51; Russell Index Options

Dear Mr. Katz:

The International Securities Exchange, Inc. ("ISE") appreciates the opportunity to offer preliminary comments on the proposal of the Chicago Board Options Exchange ("CBOE") to list options on three Russell indices (the "Filing"). Although the Commission has not yet published the Filing for comment, we believe it is necessary to offer these preliminary comments to help ensure that there is a full opportunity for public comment on the Filing prior to Commission action. In this regard, the Filing fails to mention that the CBOE has entered into an exclusive license agreement to trade the subject indices. The CBOE further requests accelerated approval of the Filing, and the Commission previously has granted accelerated approval to a similar filing.¹ The purpose of this letter is to alert the Commission to the proposed exclusive nature of these licensing arrangements and to urge the Commission to reject the filing because it does not meet the requirements of the Securities Exchange Act of 1934 ("Exchange Act").

Over the last year we have filed a number of letters with the Commission detailing the anticompetitive effects of exclusive index licenses. Just over a year ago we filed a petition seeking rulemaking to prohibit exclusive license arrangements.² In addition, and most directly related to this Filing, we filed a comment letter objecting to the grant of accelerated approval to the Prior Russell Filing, which authorized the CBOE to list options on 11 other Russell indices on an exclusive basis.³ We similarly have filed a comment letter objecting to the proposal by the Philadelphia Stock Exchange to list

¹ File No. SR-CBOE-2003-17; Release No. 34-48591 ("Prior Russell Filing")

² Letter dated November 1, 2002 from David Krell, President and Chief Executive Officer, ISE, to Jonathan G. Katz, Secretary, Commission. See also letter dated September 16, 2003, from David Krell, President and Chief Executive Officer, ISE, to Jonathan G. Katz, Secretary, Commission, supporting a petition by the Pacific Exchange to impose a moratorium on new exclusive license arrangements pending Commission consideration of our petition.

³ Letter dated October 15, 2003 from Michael J. Simon, Secretary, ISE, to Jonathan G. Katz, Secretary, Commission on File No. SR-CBOE-2003-17.

options – on an exclusive basis – on the Nasdaq Composite Index.⁴ A number of broker-dealer firms have filed letters supporting our petition.

We remain extremely concerned that rule filings proposing exclusive licenses do not adequately describe the competitive implications of these arrangements. The Exchange Act and the rules and forms thereunder require a self-regulatory organization to discuss the competitive implications of its proposed rule changes. In this regard, the CBOE's current Filing does not mention the exclusivity arrangements. Moreover, the CBOE's "Statement on the Burden on Competition" provides only that: "CBOE does not believe that the proposed rule change will impose any burden on competition." Remarkably, this statement differs from the usual boilerplate, which states that the filing does not impose an "inappropriate" burden on competition. The CBOE apparently believes that there is *nothing* anticompetitive about an exclusive license, notwithstanding the fact that the very nature of the license will prevent any other market from competing in the product!

Because the Filing fails to discuss the competitive implications of its proposal, we believe that the Filing is deficient on its face and we urge the Commission to reject the Filing for failure to comply with the requirements under the Exchange Act. If the Commission does decide to consider the Filing, we urge the Commission to publish the Filing for comment prior to taking any action on the proposal.

If you have any questions on our comments, please do not hesitate to call.

Sincerely,

Michael J. Simon
Senior Vice President and Secretary

cc: Annette Nazareth

⁴ Letter dated November 10, 2003 from Michael J. Simon, Secretary, ISE, to Jonathan G. Katz, Secretary, Commission on File No. SR-Phlx-2003-66.