



October 15, 2003

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

Re: File No. SR-CBOE-2003-17; Release No. 34-48591; Russell Index Options

Dear Mr. Katz:

The International Securities Exchange, Inc. ("ISE") appreciates the opportunity to comment on the above-referenced filing ("Filing") of the Chicago Board Options Exchange ("CBOE") in which the CBOE proposes to list options on various Russell indices. We are concerned both with the substance of the Filing and the procedure employed by the Commission in approving the proposal. We recognize that the proposal now has been approved and that there is no practical way to address our concerns regarding this Filing. Rather, the purpose of this letter is to reiterate our opposition to exclusive index licenses and to urge the Commission to revise the manner in which it processes proposals to list index options on an exclusive basis.

The Commission has approved the CBOE's listing of options on 11 Russell indices. While not specified in the Filing, the license between the CBOE and Russell grants the CBOE exclusive rights to trade options on these indices. Although the CBOE filed this rule on May 5, 2003, the Commission did not publish the Filing for comment prior to approving the proposal in October. Rather, the Commission simultaneously published the Filing for comment and granted accelerated approval of the proposal. Thus, there are now 11 additional index options subject to exclusive license arrangements that will deny investors the benefits of multiple trading.

Almost a year ago we submitted a petition asking that the Commission prohibit exclusive license arrangements for index options.¹ The Pacific Exchange ("PCX") subsequently requested that the Commission place a moratorium on new exclusive listings pending consideration of our Petition,² and we filed a letter in support of that request.³ To date, the Commission has not acted on either of these requests. While we

¹ Letter dated November 1, 2002 from David Krell, President and Chief Executive Officer, ISE, to Jonathan G. Katz, Secretary, Commission (the "Petition").

² Letter dated September 2, 2003, from Philip D. DeFeo, Chairman and Chief Executive Officer, PCX, to Annette Nazareth, Director, Division of Market Regulation.

³ Letter dated September 16, 2003 from David Krell, President and Chief Executive Officer, ISE, to Jonathan G. Katz, Secretary, Commission.

appreciate the complexity of the issues these petitions raise, we also note that every day that passes without Commission action results in increased investor costs. Moreover, each new exclusive listing compounds these costs.

In the few weeks that have passed since we filed our letter in support of the PCX's petition, the ISE has commenced trading in its first index product, options on the S&P 600 Index, the "SML." While trading in this index option has historically been modest, our experience to date strongly supports our contention that multiple trading can bring the same benefits to index options trading that it has brought to the trading of options on individual equities. Until the ISE began trading the SML on October 3rd, average daily industry volume in the product (which was solely listed on the CBOE) was 24 contracts. In the first six days of multiple trading, industry volume has been over 440 contracts, and the ISE's average spread has been \$0.24, compared to \$0.34 on the CBOE.

As to the procedural issues, not only did the Commission approve this expansion of exclusive listings, but it did so on an accelerated basis, without first seeking public comment on the proposal. The Commission supported the grant of accelerated approval based as follows:

The Commission believes that the trading of options on the Russell Indexes does not raise novel regulatory issues that were not addressed in previous filings regarding the listing and trading of similar instruments on the CBOE. The Commission further believes that the options on the Russell Indexes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading these index options promptly.

We are concerned with both stated reasons. First, in light of the ISE's Petition and the PCX's request for a moratorium on exclusive listings pending consideration of that Petition, we believe that approving an index subject to an exclusive license does raise "novel regulatory issues." There has not yet been a formal opportunity for public comment on either our Petition or the PCX's request for a moratorium. Notwithstanding the lack of a formal comment period, a significant number of securities firms have written to the Commission supporting our request. Thus, extending the scope of exclusivity in light of this history does raise important policy issues.

As to the benefits to investors of "additional investment choice," that rationale does not consider the countervailing costs to investors faced with a monopoly trading market. An opportunity to comment on the proposal before approval at least would have provided commentators the ability to raise these issues for Commission consideration.

We believe that these concerns are sufficient to support Commission disapproval of the Filing. However, because the Commission already has approved the proposal we recognize that there is no practical way to achieve that result. Rather, we urge the Commission not to approve any further rule filings permitting the trading of index options subject to exclusive license arrangements pending consideration of our Petition. At a minimum, we urge the Commission to seek comment on any such proposal *prior* to approving any such rule filing. We further request that the Commission consider our Petition as promptly as possible to bring the full benefits of multiple trading to investors trading index options.

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

The Honorable William H. Donaldson
The Honorable Paul S. Atkins
The Honorable Roel S. Campos
The Honorable Cynthia A. Glassman
The Honorable Harvey J. Goldschmid