equal-weighted formula.[5] Second, because the composition of trading crowds varies by product, it is highly likely that some index/ETF option crowds may consist of more larger capitalized market-making organizations than do other crowds, thus increasing the possibility that a ''deep pocketed'' market maker could ''size out'' his smaller counterparts, thereby reducing their incentive to quote competitively. Varying the weightings by product would allow the IFPC to take into account this factor and adjust the weightings accordingly so as to enhance competition. A third reason involves the trading characteristics of the index/ETF option product. In less liquid products, the IFPC may determine that increasing the weighting of Component B serves to enhance better quoting competition. Finally, index prices can be much higher and fluctuate far more on the index/ETF option side, which can significantly affect a trader's risk profile. For example, the NDX index level (as of Mid December) was approximately 1400. Strike prices on the NDX ranged from $500–1800 (in $25 and/or $50 increments).[6] The ability to vary the weightings of Components A and B will allow the IFPC to take into account the potential for tremendous swings in notional value due to the fluctuations in the indexes and the risk such swings can pose to traders.

The proposed rule requires that each time it changes the final weightings of UMA on a per product basis, it will provide at least one-day's advance notice to the membership via Regulatory Circular. This precludes intra-days adjustments and serves to ensure sufficient advance notice to affected parties.[7]

2. Statutory Basis

The Exchange believes that allowing the IFPC to establish weightings for Components A and B of the UMA calculation at different levels for different index options and ETF option products will help to ensure optimal liquidity in each of these products under its jurisdiction. For this reason, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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

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

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

The Exchange neither solicited nor received comments on the proposal.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2004–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–2004–01 and should be submitted by February 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1759 Filed 1–27–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49111; File No. SR–CBOE–2003–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options on Certain Russell Indexes

January 21, 2004.

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 October 30, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On November 25, 2003, the Exchange filed an amendment to the proposed rule

[5] For example, less active indexes, such as the S&P Small Cap 600, may have trading crowds consisting of less than five market makers. More active indexes, such as the QQQ, may have as many as 20 market makers in the trading crowd. A ''one-size-fits-all'' weighting methodology for UMA may not produce optimal results in indexes with such disparate sized trading crowds.

[6] The premium for the 775 DEC call was bid at $615.

[7] In this respect, the Exchange has not changed the UMA weighting percentages for Components A and B on the equity side since implementation of trading on Hybrid.

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

[9] 15 U.S.C. 78(f)(b)(5).

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

change.[3] On January 6, 2004, the Exhange filed another amendment to the proposed rule change.[4] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to amend certain rules to provide for the listing and trading on the Exchange of options on the following broad-based indexes:

Russell Top 200® Index
Russell Top 200® Growth Index
Russell Top 200® Value Index

The Exhange represents that options on these indexes will be cash-settled and will have European-style exercise provisions.

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 CBOE included statements concerning the purpose of and basis for the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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 purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style, stock index options on the Russell Top 200'' Index, Russell Top 200® Growth Index and Russell Top 200® Value Index (''Russell 200 Indexes''). Each Russell 200 Index is a capitalization-weighted index containing various groups of stocks drawn from the 200 largest companies in the Russell 1000 Index, which is drawn from the largest 3,000 companies incorporated in the U.S. and its territories. These 3,000 companies represent approximately 98% of the investable U.S. equity market. The Exchange represents that all index components are traded on the New York Stock Exchange (''NYSE''), the American Stock Exchange (''AMEX''), or the NASDAQ and are ''reported securities'' as defined in Rule 11Aa3–1 of the Act. CBOE currently is approved to trade options on the following Russell Indexes.[5]

Russell 2000® Index
Russell 2000® Growth Index
Russell 2000® Value Index
Russell 1000® Index
Russell 1000® Growth Index
Russell 1000® Value Index
Russell 3000® Index
Russell 3000® Growth Index
Russell 3000® Value Index
Russell MidCap® Index
Russell MidCap® Growth Index
Russell MidCap® Value Index

Index Design

Each of the three Russell 200 Indexes is designed to be a comprehensive representation of the Large Cap sector of the investable United States equity market. These indexes are capitalization-weighted and include only common stocks belonging to corporations domiciled in the United States and its territories and that are traded on the NYSE, NASDAQ or the AMEX. Stocks are weighted by their ''available'' market capitalization, which is calculated by multiplying the primary market price by the ''available'' shares; that is, total shares outstanding less corporate cross-owned shares, ESOP and LESOP-owned[6] shares comprising 10% or more of shares outstanding, unlisted share classes and shares held by an individual, a group of individuals acting together, or a corporation not in the index that owns 10% or more of the shares outstanding. Below is a brief description of each index:

Russell Top 200® Index.	Measures the performance of the 200 largest companies in the Russell 1000 Index, which represents approximately 74% of the total market capitalization of the Russell 1000 Index.
Russell Top 200® Growth Index.	Measures the performance of those Russell Top 200 companies with higher price-to-book ratios and higher forecasted growth values. The stocks are also members of the Russell 1000 Growth index.
Russell Top 200® Value Index.	Measures the performance of those Russell Top 200 companies with lower price-to-book ratios and lower forecasted growth values. The stocks are also members of the Russell 1000 Value index.

All companies listed on the NYSE, AMEX or NASDAQ are considered for inclusion in the universe of stocks that comprise the Russell 200 Indexes with the following exceptions: (1) Stocks trading less than $1.00 per share on May 31; (2) Non-U.S. incorporated companies; and (3) preferred and convertible preferred stock, redeemable shares, participating preferred stock, warrants and rights, trust receipts, royalty trusts, limited liability companies, bulletin board, pink sheet stocks, closed-end investment companies, limited partnerships, and foreign stocks.

The Russell Top 200 Growth Index and the Russell Top 200 Value Index are both subsets of the Russell Top 200 Index, which itself is a subset of the Russell 1000 and Russell 3000 Indexes. These Growth and Value versions of the Russell Top 200 Index may contain common components, but the capitalization of those components is apportioned so that the sum of the total capitalization of the Russell Top 200 Growth and Russell Top 200 Value indexes equals the total capitalization of the Russell Top 200 Index. The CBOE represents that as of September 30, 2003, the Russell Top 200 Growth Index and the Russell Top 200 Value Index have 129 and 140 components, respectively.

According to the CBOE, on September 30, 2003, the stocks comprising the Russell Top 200 Index, Russell Top 200 Growth Index, and Russell Top 200 Value Index had an average market capitalization of $35.7 billion ranging from a high of $298 billion (General Electric Co.) to a low of $4.9 billion (FOX Entertainment Group, Inc.).[7] The number of available shares outstanding ranged from a high of 9.99 billion (General Electric Co.) to a low of 66.7 million (M & T Bank Corp.), and averaged 1.04 billion shares. The six-month average daily trading volume for Russell Top 200 Index components was

[3] *See* Letter from James M. Flynn, Attorney, Legal Division, CBOE, to Kelly Riley, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 21, 2003 (''Amendment No. 1''). In Amendment No. 1, CBOE expands its Statement on Burden on Competition in response to Item 4 of the Form 19b–4.

[4] *See* Letter from James M. Flynn, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Special Counsel, Division, dated January 6, 2004 (''Amendment No. 2''). In Amendment No. 2, CBOE expands its Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others in response to Item 5 of the Form 19b–4.

[5] *See* Securities Exchange Act Release Nos. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (SR–CBOE–92–02) and 48591 (October 2, 2003), 68 FR 58728 (SR–CBOE–2003–17).

[6] ESOP and LESOP-owned shares represent, generally, those shares of a corporation that are owned through employee stock ownership plans.

[7] *See* Exhibit B to the Form 19b–4.

5.68 million shares per day, ranging from a high of 59.96 million shares per day (Intel Corp.) to a low of 314,000 shares per day (M & T Bank Corp.). The CBOE represents that as of September 30, 2003, all of the Russell Top 200 Index components satisfied CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3.

The Russell Top 200 Index has a total capitalization of $7.2 trillion and the total capitalization of the Russell Top 200 Growth and Russell Top 200 Value Indexes is $3.9 trillion and $3.3 trillion, respectively. All of the components of the Russell Top 200 Index, the Russell Top 200 Growth Index, and the Russell Top 200 Value Index are options-eligible.

Calculation

The values of each Index are currently being calculated by Reuters on behalf of the Frank Russell Company and will be disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via the Options Price Reporting Authority (''OPRA'').

The CBOE notes that the methodology used to calculate the value of each of the Russell 200 Indexes is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes. The level of each index reflects the total market value of the component stocks relative to a particular base period and is computed by dividing the total market value of the companies in each index by its respective index divisor. The divisor is adjusted periodically to maintain consistent measurement of each index. The following is a table of base dates and the respective index levels as of September 30, 2003:

Index	Base date/Base index value	9/30/03 index value
Russell Top 200® Index	3/16/00 / 400.00	249.51
Russell Top 200® Growth Index	3/16/00 / 400.00	191.94
Russell Top 200® Value Index	3/16/00 / 400.00	324.72

Index Option Trading

According to the CBOE, options on these indexes shall be A.M.-settled. In addition to regular index options, the Exchange may provide for the listing of long-term index option series (''LEAPS®'') in accordance with CBOE Rule 24.9.

For options on each index, strike prices will be set to bracket the respective index in 2.5-point increments for strikes below $200 and 5 point increments for strikes at or above $200. The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The trading hours for options on all of the indexes will be from 8:30 a.m. to 3:15 p.m. Chicago time. The proposed contract specifications for the Russell 200 Index Options is set forth in Exhibit C to the Form 19b–4.

Maintenance

The CBOE represents that the Russell 200 Indexes will be monitored and maintained by the Frank Russell Company. The Frank Russell Company will be responsible for making all necessary adjustments to the indexes to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, require simple changes to the available shares outstanding and the stock prices of the underlying components. Other corporate actions, such as share issuances and changes in the market value of an index would require the use of an index divisor to effect adjustments.

The Exchange represents that the Russell 200 Indexes are re-constituted annually on June 30 and such reconstitution is based on prices and available shares outstanding as of the preceding May 31. New index components are added only as part of the annual re-constitution and, after which, should a stock be removed from an index for any reason, it cannot be replaced until the next re-constitution.

Although CBOE is not involved in the maintenance of any of the Russell 200 Indexes, the Exchange represents that it will monitor each Russell 200 Index on an annual basis, at which point the Exchange will notify the Commission if: (1) The number of securities in each index drops by ⅓ or more; (2) 10% or more of the weight of each index is represented by component securities having a market value of less than $75 million; (3) less than 80% of the weight of each Index is represented by component securities that are eligible for options trading pursuant to CBOE Rule 5.3; (4) 10% or more of the weight of each index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of each index or the largest five components in the aggregate account for more than 50% of the weight of each index.

Surveillance

The Exchange represents that CBOE's surveillance procedures are adequate to monitor the trading in options and LEAPS on the Russell 200 Indexes. Further, the Exchange shall have complete access to the information regarding the trading activity of the underlying securities.

Exercise and Settlement

The proposed options on each index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of each index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of each index at option expiration will be calculated by Reuters on behalf of the Frank Russell Company based on the opening prices of the component securities on the last business day prior to expiration. If a component security fails to open for trading, the exercise settlement value will be determined in accordance with CBOE Rules 24.7(e) and 24.9(a)(4). When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of index options at expiration will be determined at the opening of regular trading on Thursday.

Position Limits

The Exchange proposes to establish position limits for options on the Russell 200 Indexes at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are identical to the limits applicable to options on the Russell 2000 Index as specified under Rule 24.4(a).

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will govern the trading of options on the aforementioned Russell 200 Indexes on the Exchange. Additionally, CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of the Russell 200 Index options. CBOE also has been informed that OPRA has the capacity to support such new series.[8]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular in that it will permit trading in options on a broad range of indexes pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

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

The CBOE notes that it is proposing to trade options on the Russell 200 Indexes pursuant to a license granted to the CBOE by Frank Russell Company (''Russell'') on December 30, 2002 (the ''Russell License''). By its terms, the Russell License is exclusive in respect of cash-settled, U.S. dollar-denominated index options for the duration of its term (which extends until December 31, 2004, unless renewed), unless the CBOE fails to achieve specified levels of trading activity in which event Russell is able to cause the license to become nonexclusive.

The CBOE represents that it does not believe its proposal to trade options on the Russell 200 Indexes will impose any burden on competition, notwithstanding the exclusivity provisions of the Russell License. To the contrary, the CBOE believes that its proposal to trade options on the Russell 200 Indexes should be viewed as enhancing competition in the market for broad-based index options by providing for the trading on the CBOE of new classes of options that will compete with other broad-based index options and other indexed derivatives traded on the CBOE and in other markets.

The CBOE believes that Russell, like many other developers of broad-based securities indexes, has chosen to license its indexes for option trading on an exclusive basis because it believes its ability to realize the value of the indexes it owns is enhanced by licensing these properties on an exclusive, rather than on a non-exclusive, basis. Accordingly, the CBOE believes that such exclusivity gives Russell an incentive to develop and license additional indexes for derivatives trading, expanding the range of competing indexed derivative products available to investors. Reflecting this, the CBOE notes that the active competition that currently exists among indexed derivative products (including index options, index futures, options and futures on exchange-traded funds, etc.) and among the markets that trade these products (including securities exchanges, futures exchanges, the over-the-counter market, etc.) will be made even more vigorous by the introduction of trading on the CBOE in options on the Russell 200 indexes as proposed herein.

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

Following submission of this proposed rule change to the Commission, the International Securities Exchange (''ISE'') submitted a comment letter to the Commission regarding the proposed rule change on November 13, 2003. The CBOE responded to that comment letter through the submission of Amendment No. 1 to this proposed rule change, which amended Item 4 of the Form 19b–4, and a letter to the Commission, dated December 12, 2003. Each of these letters also cited and included previous CBOE submissions to the Commission with respect to the subject of ISE's comments.[11]

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2003–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 CBOE. All submissions should refer to File No. SR–CBOE–2003–51 and should be submitted by February 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1761 Filed 1–27–04; 8:45 am]

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[8] *See* Letter from Joe Corrigan, Executive Director, OPRA, to William Speth, Director of Research, CBOE, dated October 21, 2003.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] The Commission notes that CBOE's Amendments and submissions are included in the public file and are available for review at the Commission and the CBOE.

[12] 17 CFR 200.30–3(a)(12).