

registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before October 24, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48587; File No. SR-ISE-2003-18]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by International Securities Exchange, Inc., Relating to Trading Options on the S&P Small Cap 600 Index**

October 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 29, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On September 26, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing

this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

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

The Exchange is proposing to amend ISE Rules 2001, 2004, 2006 and 2009, to enable the Exchange to trade options on the S&P Small Cap 600. The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

*Rule 2001. Definitions*

(l) The term "reporting authority" with respect to a particular index means the institution or reporting service designated by the Exchange as the official source for (1) calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and (2) reporting such level. The reporting authority for each index approved for options trading on the Exchange [shall be Specified (as provided in Rule 2000)] is specified in Supplementary Material .01 to this Rule 2001.

\* \* \* \* \*

*Supplementary Material to Rule 2001*

.01 *The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below.*

<i>Underlying index</i>	<i>Reporting authority</i>
<i>S&amp;P SmallCap 600 Index.</i>	<i>Standard &amp; Poor's.</i>

*Rule 2004. Position Limits for Broad-Based Index Options*

(a) Rule 412 generally shall govern position limits for broad-based index options, as modified by the Rule 2004. There may be no position limits for certain Specified (as provided in Rule 2000) broad-based index options

represented that it would notify Commission staff if the character of the Index should change from the basic description provided in the instant proposed rule change. The Exchange also represented that it believed its surveillance procedures were adequate to monitor trading in options on the Index. The ISE also provided additional information about the membership of the Intermarket Surveillance Group ("ISG"). In addition, the ISE provided statistics about the median average daily trading volume and about the percentage of securities in the Index that would meet the listing standards applicable to underlying securities for the Exchange's stock options.

contracts. All other Broad-based index options contracts shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits [Specified (as provided in Rule 2000) in this paragraph] *provided in the chart below.*

<i>Broad-based underlying index</i>	<i>Standard limit (on the same side of the market)</i>	<i>Restrictions</i>
<i>S&amp;P SmallCap 600 Index.</i>	<i>100,000 contracts.</i>	<i>No more than 60,000 near-term.</i>

\* \* \* \* \*

*Rule 2006. Exemptions from Position Limits*

(a) Broad-based Index Hedge Exemption. The broad-based index hedge exemption is in addition to the other exemptions available under Exchange Rules, interpretations and policies. The following procedures and criteria must be satisfied to qualify for a broad-based index hedge exemption:

\* \* \* \* \*

(5) Positions in broad-based index options that are traded on the Exchange are exempt from the standard limits up to 75,000 contracts (in addition to standard limit) unless otherwise [to the extent] Specified (as provided in Rule 2000) in this subparagraph (a)(5).

\* \* \* \* \*

*Rule 2009. Terms of Index Options Contracts*

(a) General.

\* \* \* \* \*

(4) "European-Style Exercise." [Specified (as provided in Rule 2000) *The following* European-style index options, some of which may be A.M.-settled as provided in paragraph (a)(5), [may be] are approved for trading on the Exchange[.]:

(i) *S&P SmallCap 600 Index.*

(5) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(i) In the event that the primary market for an underlying security does

<sup>4</sup> 15 U.S.C. 78J(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

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

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

<sup>3</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 25, 2003 ("Amendment No. 1"). In Amendment No. 1, the ISE represented that it would monitor the Standard and Poor's Small Cap 600 Index ("S&P Small Cap 600" or "Index") for the Index's adherence to certain parameters. The ISE

not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 2008(g), unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and

(ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.

The following A.M.-settled index options [that] are approved for trading on the Exchange: [shall be Specified (as provided in Rule 2000) in this subparagraph (a)(5).]

(i) *S&P SmallCap 600 Index.*

(b) Long-Term Index Options Series.

\* \* \* \* \*

(2) Reduced Value Long Term Options Series.

(i) Reduced-value long term options series [may be approved for trading on Specified (as provided in Rule 2000) indices.] on the following stock indices are approved for trading on the Exchange:

(A) *S&P SmallCap 600 Index.*

\* \* \* \* \*

(c) Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Rule 504, as amended by the following:

(1) The interval between strike prices will be no less than \$5.00; provided, that in the case of the following [the certain Specified (as provided in Rule 2000)] classes of index options, the interval between strike prices will be no less than \$2.50[.]:

(i) *S&P SmallCap 600 Index, if the strike price is less than \$200.00.*

\* \* \* \* \*

## 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 III 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 proposes to amend its rules to provide for the listing and trading on the Exchange of cash-settled, European-style index options on the S&P SmallCap 600. Options on this index are currently trading on the Chicago Board Options Exchange ("CBOE").<sup>4</sup> The proposed rule changes adopt the same standards that are currently applied for Index options traded on the CBOE.

##### a. Index Design.

The S&P SmallCap 600 Index is designed to measure the performance of small capitalization stocks. The Index is a capitalization-weighted index of U.S. stocks with each stock affecting the Index in proportion to its market capitalization.

As of August 21, 2003, the 600 component stocks ranged in capitalization from approximately \$3 billion to \$56 million, and the market capitalization of the Index totaled \$397 billion. The largest stock accounted for 0.74% of the total weighting of the Index, while the smallest accounted for 0.01%. The median capitalization of the components in the Index was \$517 million. A breakdown of the component stocks by trading markets shows that Nasdaq is the primary market for 43% of the weight of the Index (277 issues), the New York Stock Exchange ("NYSE") represents 56% (317 issues), and the American Stock Exchange ("AMEX") represents 1% (6 issues).

A total of 10 major industry sectors are represented in the Index. Those sectors and their weights are as follows: (1) Consumer Discretionary (20.2%); (2) Industrials (19.0%); (3) Information Technology (16.6%); (4) Financials (13.9%); (5) Health Care (12.9%); (6) Energy (5.4%); (7) Materials (4.4%); (8) Utilities (3.8%); (9) Consumer Staples (3.6%); and (10) Telecommunications Services (0.2%). During the period from March through August 2003, the average daily trading volume for the Index component stocks ranged from 8,468 to 4.3 million shares. As of September 25, 2003, a significant majority of the stocks are relatively actively traded, as indicated by an Index component median average daily trading volume of 139,002 shares. The top 100 stocks account for 34.14% of the Index, while

the bottom 100 stocks account for 4.12% of the Index. The prices for each of the components ranged from \$2.10 to \$410.60. The average price was \$23.18. The shares outstanding for each of the Index component stocks ranged from approximately 4.96 million to 138.64 million with an average of 29.12 million.

S&P relies on several criteria to add or delete Index component stocks. Among other things, stocks must trade on the NYSE or Amex, or be Nasdaq NMS securities; stocks must have adequate liquidity and reasonable price evidenced by a 0.3 ratio of annual dollar value traded to market capitalization; the companies must have market capitalization between \$250 million and \$900 million; companies must have financial viability, measured as four consecutive quarters of positive as-reported earnings; companies must have public float of at least 40% of the stock; and companies must be operating companies, and not closed-end funds, holding companies, partnerships, investment vehicles or royalty trusts.<sup>5</sup>

##### b. Calculation.

The value of the Index is determined by Standard and Poor's by adding the price of each stock times the number of shares outstanding. This sum is then divided by an index divisor ("Index Divisor"), which gives the Index a value of 100 on its base date of December 31, 1993. The Index Divisor is adjusted by Standard & Poor's for pertinent changes in the component stocks. The Index had a closing value of 215.54 on May 31, 2003.

##### c. Maintenance.

The S&P Small Cap 600 is maintained by Standard and Poor's and ISE has represented that it will not influence any S&P decisions concerning the maintenance of the Index.<sup>6</sup> To maintain continuity of the Index, Standard and Poor's adjusts the Index Divisor to reflect certain events relating to the component stocks. These events include, but are not limited to, adjustments for company additions and deletions, share changes, stock splits, stock dividends, and stock price adjustments due to company restructurings or spinoffs. Some corporate actions, such as stock splits and stock dividends, require simple

<sup>5</sup> Should the character of the Index change from the basic description contained in the rule filing, ISE will so notify the Commission staff. Such a change could require filing a proposed rule change pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder. See Amendment No. 1, *supra* note 3.

<sup>6</sup> Telephone conference between Katherine Simmons, Vice President and Associate General Counsel, ISE, and Florence Harmon, Senior Special Counsel, Division, Commission, on October 1, 2003.

<sup>4</sup> See Securities Exchange Act Release No. 35532 (March 24, 1995), 60 FR 16518 (March 30, 1995) (SR-CBOE-94-43) (Order approving the listing and trading of the S&P 600 on the CBOE).

changes in the common shares outstanding and the stock prices of the companies in the Index. Other corporate actions, such as share issuances, change the market value of the Index and require an Index Divisor adjustment as well.

Although ISE is not involved in the maintenance of the Index, it represents that it will monitor the Index semi-annually and will notify Commission staff in the event that (1) 10% of the capitalization of the Index is comprised of securities with a market capitalization of less than \$100 million; (2) 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; or (3) non-U.S. component securities (common stock or ADRs) that are not subject to a comprehensive surveillance agreement in the aggregate represent more than 20% of the weight of the Index's aggregate market capitalization.

#### d. Index Options Trading.

In addition to regular Index options, the Exchange may provide for the listing of long-term (up to three years expiration) index options series and reduced-value long-term index options on the Index. For reduced-value long-term index options, the underlying value would be computed at one-tenth of the Index level. The current and closing index value of any such reduced-value long-term index option will, after such initial computation, be rounded to the nearest one-hundredth.

The Exchange seeks to have the discretion to list series in 2½ point intervals when the Index level falls below 200. The minimum tick size (trading interval) for series trading below \$3 will be \$.05 (\$5.00) and for series trading above \$3 will be \$.10 (\$10.00). The trading hours for options on the Index will be from 9:30 a.m. to 4:15 p.m. Eastern time.<sup>7</sup>

#### e. Exercise and Settlement.

The options on the Index will be European-style index options that expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 4:15 p.m. Eastern time on the immediately preceding Thursday.<sup>8</sup> The Index multiplier will be

<sup>7</sup> Telephone conference between Katherine Simmons, Vice President and Associate General Counsel, ISE, and Florence Harmon, Senior Special Counsel, Division, Commission, on October 1, 2003.

<sup>8</sup> When the last trading day is moved because of Exchange holidays (such as when ISE 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 Thursday trading.

100. The exercise settlement value of the Index at option expiration will be calculated by Standard & Poor's based on the opening prices of the component securities on the business day prior to expiration ("A.M. Settlement"). If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the index.

#### f. Position Limits.

The Exchange proposes to establish position limits for options on the S&P Small Cap 600 at 100,000 contracts on either side of the market, and no more than 60,000 of such contracts may be in the series in the nearest expiration month. The hedge exemption for this broad-based Index will be an additional 75,000 contracts.

#### g. Exchange Rules Applicable.

As modified herein, the Exchange Rules in Chapter 20 will be applicable to S&P Small Cap 600 options.

#### h. Surveillance.

The Exchange conducts routine surveillance for trading of equity options and has, where appropriate, incorporated all index options into its program. In addition, the Exchange has developed surveillance procedures specific to index options, which have been provided to the Commission. The ISE believes these procedures are adequate to properly monitor trading in options on the S&P Small Cap 600.<sup>9</sup> For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the underlying securities. In addition, the Intermarket Surveillance Group Agreement ("ISG Agreement"), dated June 20, 1994, will be applicable to the trading of options on the Index.<sup>10</sup>

#### i. Capacity.

ISE believes it has the necessary systems capacity to support new series that will result from the introduction of S&P Small Cap 600 index options. ISE has also been informed that the Options Price Reporting Authority ("OPRA")

<sup>9</sup> See Amendment No. 1, *supra* note 3.

<sup>10</sup> The ISE is a member of the Intermarket Surveillance Group ("ISG") under the ISG Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets: the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange ("BSE"), the Chicago Board of Options Exchange ("CBOE"), the Chicago Stock Exchange ("CHX"), the Cincinnati Stock Exchange ("CSE"), the National Association of Securities Dealers ("NASD"), the New York Stock Exchange, Inc. ("NYSE") the Pacific Stock Exchange ("PCX") and the Philadelphia Stock Exchange ("Phlx"). The ISE members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. See Amendment No. 1, *supra* note 3.

believes that it has the capacity to support such new series.<sup>11</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of section 6(b)(5),<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

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

The Exchange did not receive any written comments on the proposed rule change, as amended.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 the File No. SR-ISE-2003-18 and should be submitted by October 29, 2003.

<sup>11</sup> See letter from Joseph P. Corrigan, Executive Director, OPRA to Kathy Simmons, Vice President, Legal & Regulatory, ISE, dated August 28, 2003.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, 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,<sup>14</sup> and, in particular, with the requirements of section 6(b) of the Act<sup>15</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest consistent with the Act.

The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 600 securities on which the Index is based. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes S&P Small Cap 600 options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the small-capitalization range of U.S. equity securities. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of S&P Small Cap 600 options will serve to protect investors, promote the public interest, and contribute to remove impediments to a free and open market.<sup>17</sup>

<sup>14</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options or warrants on the S&P Small Cap 600 Index will provide investors with a hedging vehicle that should reflect the overall movement of

The trading of S&P Small Cap 600 options, however, raises several issues, including issues related to index design, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the ISE has adequately addressed these issues.

##### a. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and therefore to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the U.S. equities market, in general, and small-capitalization securities in particular. First, the Index consists of 600 relatively actively traded,<sup>18</sup> small-capitalization domestic securities. Second, the total capitalization of the Index, as of August 21, 2003, was \$397 billion, with the market capitalizations of the individual stocks in the Index ranging from a \$3 billion to \$56 million, with a median value of \$517 million. Third, the Index includes stocks of companies from a broad range of industry sectors, and no industry sector comprises more than 20.2% of the Index's total value. Fourth, as of August 21, 2003, no single stock comprised more than 0.74% of the Index's total value, and the percentage weighting of the 100 largest issues in the Index accounted for only 34.14% of the Index. Fifth, the Commission believes that the Index selection and maintenance criteria will serve to ensure that the Index maintains its broad representative sample of stocks in the small-capitalization range of U.S. equity securities. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.<sup>19</sup> Should the

the small-capitalization stock universe. The Commission also believes that these options will provide investors with a means by which to make investment decisions in the small-capitalization equity market, allowing them to establish positions or increase existing positions in small-capitalized stocks in a cost effective manner.

<sup>18</sup> A significant majority of the stocks are relatively actively traded, as indicated by an Index component stock median Average Daily Trading Volume of 139,002 shares. See Amendment No. 1, *supra* note 3.

<sup>19</sup> The Commission notes that an index purportedly representing high capitalization stocks might not be deemed to have actively traded stocks if the component stocks' median Average Daily Trading Volume was only 139,002 shares. With regard to a small capitalization index, where almost by their nature the most active stocks will likely not be included, a median average daily trading volume less than that for existing broad based indexes could be acceptable, depending upon the index's other features. For the S&P Small Cap 600, the

character of the Index change from the basic description contained in the rule filing, ISE will so notify the Commission staff. Such a change could require a filing pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder.<sup>20</sup>

The Commission believes that the general broad diversification, capitalizations, and relatively liquid markets of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of domestic small capitalization stocks, with no single industry group or stock dominating the Index. Second, the majority of the stocks that comprise the Index are relatively actively traded.<sup>21</sup> Third, the Commission believes that the Index selection and maintenance criteria will serve to ensure that the Index will not be dominated by low-priced stocks with small capitalizations, floats, and trading volumes.<sup>22</sup> Fourth, the ISE will monitor the Index semi-annually, and will notify staff of the Commission in the event that (1) ten percent of the capitalization of the Index is comprised of securities with a market capitalization of less than \$100 million; (2) ten percent of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; or (3) non-U.S. component securities (common stock or ADRs) that are not subject to a comprehensive surveillance agreement in the aggregate represent more than twenty percent weight of the Index's aggregate market

median average daily trading volume is acceptable given the large number of component stocks and the inclusion of criteria designed to exclude inactively traded stocks from being selected. See Amendment No. 1, *supra* note 3.

<sup>20</sup> See Amendment No. 1, *supra* note 3.

<sup>21</sup> See *supra* note 18.

<sup>22</sup> Currently, 61% of the Index is accounted for by stocks meeting the ISE's options listing standards. These standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be of at least 7 million shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least \$3.00 for the previous five consecutive business days if the security is a "covered security," as defined under section 18(b)(1)(A) of the Securities Act of 1933, or \$7.50 for a majority of the business days during the preceding three calendar months if the security is not a "covered security." See ISE Rule 502.

As a general matter, for broad-based index options, the Commission prefers that at least 50% of an index's components continue to be options-eligible. Given the broad diversity of the Small Cap 600 Index and the selection and maintenance criteria, together with the fact that 61% of the Index's components are options eligible, the Commission believes that the Index will not be readily susceptible to manipulation.

capitalization.<sup>23</sup> Fifth, the Exchange has proposed reasonable position and exercise limits for the Index options that will serve to minimize potential manipulation and other market impact concerns. Although a position and exercise limit of 100,000 contracts is high by traditional standards, in dollar value it represents \$2,155,400,000 (based on the May 31, 2003 Index closing value of 215.54), which the Commission believes is small enough to render it unlikely that attempted manipulations of the prices of the Index components would affect significantly the Index's value.<sup>24</sup>

#### b. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options traded on the ISE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options.

#### c. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.<sup>25</sup> In this regard, the

NYSE, Amex, and the NASD are all members of ISG.<sup>26</sup>

#### d. Market Impact

The Commission believes that the listing and trading of S&P Small Cap 600 Index Options on the ISE will not adversely affect the underlying securities markets.<sup>27</sup> First, as described above, the Index is broad-based and comprised of 600 stocks with no one stock or industry group dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, existing ISE stock index options rules and surveillance procedures will apply to S&P Small Cap 600 options. Fourth, the position limits of 100,000 contracts on either side of the market, with no more than 60,000 of such contracts in a series in the nearest month expiration month, will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring S&P Small Cap 600 options based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Index.<sup>28</sup>

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>29</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that, the trading of these options on the Exchange will introduce price competition to the benefit of public investors, by providing investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the options promptly. In

<sup>26</sup> See *supra* note 10.

<sup>27</sup> The ISE has stated that it has the necessary systems capacity to support new series that would result from the introduction of the S&P Small Cap 600 options. In addition, the OPRA has represented that additional traffic generated by options on the S&P Small Cap 600 Index is within OPRA's capacity. See *supra* note 11.

<sup>28</sup> See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR-CBOE-92-09).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

addition, the proposed rule change, as amended, reflects the listing and trading standards currently applied by the CBOE to enable their members to trade the S&P Small Cap 600.<sup>30</sup> Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) and 19(b)(2) of the Act,<sup>31</sup> to approve the proposed rule change, as amended, on an accelerated basis.

#### V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the act,<sup>32</sup> that the proposed rule change (SR-ISE-2003-18), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-25513 Filed 10-7-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3549]

#### State of Delaware (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 29, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 29, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 19, 2003, and for economic injury the deadline is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 2, 2003.

**Herbert L. Mitchell,**  
*Associate Administrator for Disaster Assistance.*

[FR Doc. 03-25473 Filed 10-7-03; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3545]

#### State of North Carolina (Amendment #2)

In accordance with a notice received from the Department of Homeland

<sup>30</sup> See *supra* note 4.

<sup>31</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

<sup>23</sup> See Amendment No. 1, *supra* note 3.

<sup>24</sup> The Commission would not be inclined to approve such a high position limit if the position limit dollar equivalent amount were substantially higher than as currently proposed.

<sup>25</sup> See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (SR-CBOE-91-51).