

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52234; File No. SR-CBOE-2005-40)

August 10, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Hybrid Opening System

On May 16, 2005, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to allow the Hybrid Opening System (“HOSS”) to open an option series as long as any market participant,³ not just the Designated Primary Market-Maker (“DPM”), has submitted an opening quote that complies with the legal width quote requirements.⁴ The proposal would also change the method for determining the acceptable range the opening price must be in before the series may open to use the highest bid and the lowest offer. The Exchange submitted Amendment No. 1 on June 24, 2005.⁵

The proposed rule change was published for comment in the Federal Register on July 6, 2005.⁶ The Commission received no comments on the proposal.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This includes a quote from a DPM, e-DPM, market maker, or a remote market maker. See CBOE Rule 6.45A.

⁴ Even though HOSS can open a series without a DPM’s quote, DPMs, as well as electronic DPMs, remain obligated under CBOE rules to timely submit opening quotes.

⁵ Amendment No. 1 revised the rule text to reflect language recently approved in another filing.

⁶ See Securities Exchange Act Release No. 51938 (June 29, 2005), 70 FR 39537.

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 exchange⁷ and, in particular, the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁹ in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal should help to ensure that all options series are promptly opened on CBOE, and may help to provide for a tighter opening price range.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2005-40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).