

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52952; File No. SR-CBOE-2005-101)

December 14, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Membership Rules

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 November 29, 2005, the Chicago Board Options Exchange, Incorporated (“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 CBOE. The Commission is publishing this notice 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 Exchange proposes to revise a CBOE membership rule that relates to CBOE’s investigation of membership applicants. The text of the proposed rule change is available on CBOE’s Web site ([www.cboe.com](http://www.cboe.com)), at CBOE’s Office of the Secretary, and at the Commission’s public reference room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item

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

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

IV below. 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 Exchange is proposing to revise CBOE Rule 3.9(f), which currently provides that the Membership Department shall investigate each applicant applying to be a member organization, each associated person required to be approved by the Membership Committee pursuant to CBOE Rule 3.6(b)<sup>3</sup>, and each applicant applying to be an individual member (collectively, “Membership Applicants”). As part of the current application process, Membership Applicants are required to submit fingerprints to the Exchange, which then forwards the fingerprints to the Federal Bureau of Investigation.

To conduct its investigation, CBOE’s Membership Department currently accepts fingerprints from Membership Applicants in two forms: electronic fingerprints that are taken at the Exchange and fingerprints that are taken manually on Exchange hardcopy fingerprints cards at a location other than the Exchange. The Exchange currently requires Membership Applicants to submit new fingerprints to the Exchange for processing pursuant to the investigation process under Rule 3.9(f) even if the Membership Applicant was recently fingerprinted at another self-regulatory organization (“SRO”).

The proposed rule change would permit the Exchange to accept the results of a fingerprint-based criminal records check of the Membership Applicant conducted by another SRO within the prior year pursuant to that investigation process. The Exchange

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<sup>3</sup> Pursuant to CBOE Rule 3.6(b), the Membership Committee generally investigates all persons who are listed on Form BD as a direct owner or executive officer of a CBOE member organization.

believes that the proposed rule change will lessen the administrative burden imposed on Membership Applicants having to obtain fingerprints on multiple occasions within a relatively short time period, while still preserving the Exchange's ability to conduct a thorough investigation of the Membership Applicant.

The Exchange notes that, in addition to a fingerprint-based criminal records check, a Form U-4 (Uniform Application for Securities Industry Registration or Transfer) is required to be submitted to the Exchange by Membership Applicants as part of the application process solely for informational purposes. Form U-4 contains disclosure questions that ask whether the Membership Applicant is subject to events that would constitute a statutory disqualification. Since the Exchange obtains this information as part of the application process, and since CBOE Rule 3.9(d)<sup>4</sup> requires Membership Applicants to promptly update membership application materials if the information provided in the materials becomes inaccurate or incomplete after the date of submission, the Exchange believes that the Membership Department would still receive notice if a Membership Applicant became subject to a statutory disqualification subsequent to the date of the results of the fingerprint-based criminal records check conducted by another SRO.

## 2. Statutory Basis

The Exchange believes that the proposed rule change improves the Exchange's investigation process by streamlining the fingerprinting portion of the process, and

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<sup>4</sup> CBOE Rule 3.9(d) states as follows: "Each applicant shall promptly update the application materials submitted to the Membership Department if any of the information provided in these materials becomes inaccurate or incomplete after the date of submission of the application to the Membership Department and prior to any approval of the application."

therefore reducing the administrative burdens on Membership Applicants, while still allowing for the Exchange to obtain the information it needs to determine whether the Exchange's qualification criteria under its membership rules are satisfied. Therefore, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> 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

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### **Electronic comments:**

- Use the Commission's Internet comment form  
[\(http://www.sec.gov/rules/sro.shtml\)](http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-101 on the subject line.

##### **Paper comments:**

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-101. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-101 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Jonathan G. Katz,  
Secretary

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<sup>7</sup> 17 CFR 200.30–3(a)(12).