

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75317; File No. SR-CBOE-2015-012)

June 26, 2015

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Relating to Trading Permit Holder Qualifications

I. Introduction

On May 4, 2015, Chicago Board Options Exchange Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “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 amend its rules related to Trading Permit Holder requirements and direct access to the Exchange’s Hybrid Trading System (“System”). The proposed rule change was published for comment in the Federal Register on May 20, 2015.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The Exchange proposes to amend its rules by (i) adopting new CBOE Rule 3.4A (Additional Trading Permit Holder Qualifications) to add additional qualification requirements for persons seeking to become and remain Trading Permit Holders, (ii) adding a requirement regarding access by Sponsored Users in CBOE Rule 6.20A (Sponsored Users), (iii) adding a requirement regarding access to the System in CBOE Rule 6.23A (Trading Permit Holder Connectivity), and (iv) making nonsubstantive changes to renumber the paragraphs in CBOE Rule 3.4 (Foreign Trading Permit Holders). The Exchange states that the proposed rule change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 74963 (May 14, 2015), 80 FR 29131 (May 20, 2015) (“Notice”).

is intended to accommodate the potential interest of non-U.S. persons or organizations in becoming Trading Permit Holders or accessing the System from foreign jurisdictions following the launch of Extended Trading Hours on the Exchange.⁴

Trading Permit Holder Requirements

The Exchange proposes to add additional requirements that will be applicable to all Trading Permit Holders through new proposed CBOE Rule 3.4A. Currently, CBOE Rules 3.2 (Qualifications of Individual Trading Permit Holders) and 3.3 (Qualifications of TPH Organizations) set forth the requirements for individuals and organizations, respectively, to become and remain Trading Permit Holders. For an individual to become and remain a Trading Permit Holder, CBOE Rule 3.2 requires the individual to (i) to be at least 21 years of age, (ii) be registered as a broker or dealer pursuant to Section 15 of the Act, or be associated with a Trading Permit Holder organization that is registered as a broker or dealer pursuant to Section 15 of the Act, and (iii) meet the qualification requirements to be a Trading Permit Holder under the Exchange's bylaws and rules. Similarly, for an organization to become and remain a Trading Permit Holder, CBOE Rule 3.3 requires the organization to (i) be a corporation, partnership, or limited liability company, (ii) be registered as a broker or dealer pursuant to Section 15 of the Act, and (iii) meet the qualification requirements to be a Trading Permit Holder under the Exchange's bylaws and rules.

Further, CBOE Rule 3.4 imposes additional qualifications on Trading Permit Holders that do not maintain an office in the United States that prepares and maintains financial and other reports required to be filed with the Commission and the Exchange. These foreign Trading Permit Holders must (i) prepare all such reports, and maintain a general ledger chart of account

⁴ See Securities Exchange Act Release No. 73704 (November 28, 2014), 79 FR 72044 (December 4, 2014).

and any description thereof, in English and U.S. Dollars, (ii) reimburse the Exchange for any expense incurred in connection with examinations of the Trading Permit Holder to the extent that such expenses exceed the cost of examining a Trading Permit Holder located within the United States, and (iii) ensure the availability of an individual fluent in English knowledgeable in securities and financial matters to assist the representatives of the Exchange during examinations.⁵

Proposed CBOE Rule 3.4A(a) provides that, in addition to the requirements set forth in CBOE Rules 3.2 through 3.4, a Trading Permit Holder applicant must satisfy several new requirements. First, proposed CBOE Rule 3.4A(a)(i) provides that a Trading Permit Holder applicant must be domiciled in (with respect to individuals), or organized under the laws of (with respect to organizations), a jurisdiction expressly approved by the Exchange. The proposed rule provides that when determining whether to approve a jurisdiction, the Exchange will consider whether: (i) the applicant will be able to supply the Exchange with such information with respect to the applicant's dealings with the Exchange as set forth in CBOE's rules, (ii) the Exchange will be able to examine the applicant's books and records to verify the accuracy of any information so supplied, (iii) approval of such application will comply with all applicable laws, rules, and regulations, and (iv) other factors that the Exchange reasonably and objectively determines may impact the applicant's ability to comply with the Exchange's rules and the Act or the Exchange's ability to accept Trading Permit Holders from the applicable jurisdiction. The proposed rule also provides that this approval may be limited to one or more specified categories of Trading Permit Holders or Trading Permit Holder activities in a jurisdiction or be contingent

⁵ The proposed rule change makes nonsubstantive formatting changes to CBOE Rule 3.4 to revise the numbering of the paragraphs.

upon the satisfaction of specified conditions by all applicants from a jurisdiction to the extent such limits or conditions are necessary to satisfy clauses (i) through (iv).

Second, proposed CBOE Rule 3.4(a)(ii) provides that a Trading Permit Holder applicant must be subject to the jurisdiction of the federal courts of the United States and the courts of the state of Illinois.

Finally, proposed CBOE Rule 3.4(a)(iii) provides that a Trading Permit Holder applicant, prior to acting as agent for a customer, must be able to provide information regarding the customer and the customer's trading activities to the Exchange in response to a regulatory request for information pursuant to the CBOE's rules. To the extent an individual or organization is required by an applicable law, rule, or regulation to obtain written consent from a customer to permit the provision of this information to the Exchange, the applicant must obtain such consent.⁶

The Exchange intends to provide a list of approved jurisdictions and notify market participants, both initially and when updated, in a Regulatory Circular.⁷ Additionally, the Exchange intends to have a website that lists currently approved jurisdictions.

Proposed CBOE Rule 3.4A(b) allows the Exchange to determine at any time that a Trading Permit Holder can no longer comply with proposed CBOE Rule 3.4A. For example, this

⁶ The Exchange also proposes to amend Rule 6.20A pertaining to Sponsoring Trading Permit Holders. The Exchange asserts that it needs the same information from Sponsored Users as it does from Trading Permit Holders. See Notice, supra note 3, at n. 7. Proposed new paragraph (c) under Rule 6.20A requires Sponsored Users to satisfy the requirements of CBOE Rule 3.4A(a) and only access the System from an approved jurisdiction.

⁷ Regulatory Circulars are publicly available on the Exchange's website. The Exchange states that it will issue a Regulatory Circular notifying market participants if it no longer intends to issue a Regulatory Circular to announce changes to the list of approved jurisdictions and only update the website. See Notice, supra note 3, at 29132. See also Regulatory Circular RG15-014 (question #5 includes a current list of approved jurisdictions, subject to Commission approval of this proposed rule change).

scenario could arise if the laws in the Trading Permit Holder's jurisdiction change in a manner that prevents compliance with CBOE Rule 3.4A. If the Exchange determines that the Trading Permit Holder is not in compliance with CBOE Rule 3.4A, then the Trading Permit Holder will have three months following the date of this determination to come into compliance. If the Trading Permit Holder does not come into compliance during that time period, the Exchange may terminate the Trading Permit Holder's status as a Trading Permit Holder.⁸

The Exchange states that these proposed requirements will enhance the Exchange's regulatory oversight of its Trading Permit Holders' activity and its ability to monitor Trading Permit Holders' compliance with Exchange rules and the Act.⁹ While the proposed changes apply to all Trading Permit Holders, the Exchange indicates that certain jurisdictions may limit market participants' ability to share or access certain information.¹⁰ The Exchange states that the additional requirements are intended to assure the Exchange that it will be able to obtain the information necessary to perform its self-regulatory obligations and to comply with the applicable regulatory requirements in jurisdictions in which Trading Permit Holders are located.¹¹

⁸ The Exchange asserts that this rule change is consistent with CBOE Rule 3.5(d), which among other things, permits the Exchange to determine not to permit a Trading Permit Holder to continue being a Trading Permit Holder if it fails to meet any qualification requirements for being a Trading Permit Holder after approval as a Trading Permit Holder. See Notice, supra note 3, at n. 5.

⁹ See id. at 29133.

¹⁰ See id.

¹¹ See id.

System Access and Sponsored Users

The Exchange proposes to amend CBOE Rule 6.23A to provide that Trading Permit Holders, persons associated with Trading Permit Holders, and Sponsored Users with authorized access may only directly access the System from a jurisdiction expressly approved by the Exchange pursuant to CBOE Rule 3.4A(a).¹² The Exchange asserts that the laws, rules, and regulations of a jurisdiction relating to exchange membership apply in the same manner to persons or entities accessing the System from such jurisdiction.¹³ For example, restrictions on supplying an exchange with certain information or providing access to books and records would apply whether the Trading Permit Holder was domiciled in such jurisdiction or was directly accessing the System from such jurisdiction. Accordingly, the Exchange asserts that direct access should only be permitted from approved jurisdictions for the same reasons discussed above.¹⁴

The Exchange also proposes to amend CBOE Rule 6.20A to require Sponsoring Trading Permit Holders to ensure that a Sponsored User satisfies the requirements of CBOE Rule 3.4A(a) and only directly accesses the System from an approved jurisdiction as set forth in CBOE Rule 6.23A(d). The Exchange asserts it would need the same information from Sponsored Users as it does from Trading Permit Holders and therefore the same requirements should apply.¹⁵

¹² The Exchange asserts that it currently has similar authority under CBOE Rule 6.23A(e) to prescribe technical specifications regarding the establishment of an electronic connection to the System, arguing proposed CBOE Rule 6.23A(c) is similar to a “specification” because the location requirement will be part of the same process which the Trading Permit Holder must comply when establishing a connection to the Exchange. See id. at 29134.

¹³ See id. at 29133.

¹⁴ See id. at 29133-34.

¹⁵ See id. at n. 7.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and 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 also finds that the proposal is designed to not permit unfair discrimination between customers, issuers, brokers, or dealers pursuant to Section 6(b)(5) of the Act.¹⁸ Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,¹⁹ which provides that an exchange must be so organized and have the capacity to be able to carry out the purposes of this Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange.

The Commission believes that the additional requirements prescribed by CBOE Rules 3.4A, 6.20A, and 6.23A are reasonably designed to assure the Exchange that it will be able to obtain the information necessary to perform its self-regulatory obligations. In this regard, the

¹⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ Id.

¹⁹ 15 U.S.C. 78f(b)(1).

Commission notes that certain foreign jurisdictions may have laws, rules, or regulations that prohibit or restrict the sharing of certain information that would be necessary for the Exchange to adequately oversee the trading activity of Trading Permit Holders from such jurisdictions.

Accordingly, the Commission believes that it is appropriate and consistent with the Act for the Exchange to require Trading Permit Holders to be domiciled in, or only directly access the System from, jurisdictions that would not impede the Exchange's ability to carry out its regulatory responsibilities, and that Trading Permit Holders are otherwise able to provide to CBOE pertinent information regarding their customers and their customers' trading activities in response to a regulatory request.

The Commission believes that these new CBOE requirements will help facilitate the Exchange's surveillance, examinations, and inspections of Trading Permit Holders by helping to ensure that the Exchange has access to information necessary for it to enforce compliance by all Trading Permit Holders with CBOE's rules and the federal securities laws, consistent with the Act.²⁰ With unencumbered access to the same level of information from each member, without regard to whether such members are located within or outside the U.S., the proposal is designed to support CBOE's ability to fulfil its regulatory mandate to prevent fraudulent and manipulative

²⁰ 15 U.S.C. 78f(b). In this regard, as noted above, the Rule provides that in approving a given jurisdiction, among other things, the Exchange will consider whether: the applicant will be able to supply the Exchange with such information with respect to its dealings on the Exchange, the Exchange will be able to examine the applicant's books and records to verify the accuracy of any information so supplied, and other factors that the Exchange reasonably and objectively determines may impact the applicant's ability to comply with the Exchange's rules and the Act. See CBOE Rule 3.4A(a)(i). Further, it requires that a Trading Permit Holder, prior to acting as agent for a customer, must be able to provide information regarding the customer and the customer's trading activities to the Exchange in response to a regulatory request for information. To the extent that an individual or organization is required by an applicable, law, rule, or regulation to obtain written consent from a customer to permit the provision of this information to the Exchange, the applicant must obtain such consent. See CBOE Rule 3.4A(a)(iii).

acts and practices, promote just and equitable principles of trade, and protect investors and the public interest, consistent with Section 6(b)(5) of the Act.²¹

The Commission believes that the factors enumerated in CBOE Rule 3.4A(a)(i) for determining whether to approve a jurisdiction are objective and reasonably designed to achieve the purposes discussed above. Further, the Commission notes that the Exchange represents that it will consider all of the factors for all of the jurisdictions in the same manner and that such consideration will include reviews of the applicable laws, rules, and regulations of a jurisdiction to determine whether the factors enumerated in the Rule can be satisfied.²² In addition, while the Rule allows the Exchange to limit approval to specified categories of Trading Permit Holders or activities in a jurisdiction or impose other specified conditions, this provision provides CBOE with limited discretion as any such conditions must be imposed on all applicants from a given jurisdiction and only to the extent that such limits or conditions are necessary to satisfy the factors of CBOE Rule 3.4A(a)(i)(A)-(D). For example, the Exchange notes that a foreign jurisdiction may permit only certain activities on the Exchange by market participants in that jurisdiction.²³ This provision would allow the Exchange to permit Trading Permit Holders from such a jurisdiction, subject to certain conditions that enable the Exchange to comply with the laws, rules, or regulations of such jurisdiction. The Commission also notes that the Exchange represents that it will determine in the same manner for all jurisdictions whether to impose any such limits or conditions on Trading Permit Holders.²⁴ The Commission therefore believes that the proposed rule is not designed to permit CBOE to apply the new requirements in an arbitrary

²¹ 15 U.S.C. 78f(b)(5).

²² See Notice, supra note 3, at 29133.

²³ See id.

²⁴ See id.

or discriminatory manner and similarly situated applicants should therefore be treated consistently.

Further, the Commission notes that the Exchange will publish a list of approved jurisdictions in a Regulatory Circular and on a dedicated website. Making the jurisdictional determinations available publicly will provide transparency to CBOE's determinations under the proposed Rule, as well as provide notice to market participants and prospective Trading Permit Holders of the approved jurisdictions.

Finally, the Commission believes that the requirement in CBOE Rule 3.4A(a)(ii) that an applicant be subject to the jurisdiction of the federal courts of the United States and the courts of the state of Illinois is reasonable. Among other things, this provision could be useful to a U.S. person involved in a dispute with a Trading Permit Holder or Sponsored User as it may provide a forum in which such aggrieved party could pursue any available legal or equitable remedies against such party.

IV. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-CBOE-2015-012) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Robert W. Errett
Deputy Secretary

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).