SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64725; File No. SR-CBOE-2011-044)

June 22, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Reduce the Minimum Size of the Nominating and Governance Committee

I. Introduction

On April 27, 2011, 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 reduce the minimum size of the Nominating and Governance Committee ("NGC") from seven to five. On May 18, 2011, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the Federal Register on May 10, 2011.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

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

2 17 CFR 240.19b-4.

3 At the time CBOE submitted the original proposed rule change, it had not yet obtained formal approval from its Board of Directors for the specific Bylaw changes set forth in this proposed rule change. CBOE stated that once that approval was obtained, it would file a technical amendment to its proposed rule change to reflect that approval. In Amendment No. 1, the Exchange notes that the CBOE Board of Directors approved the specific Bylaw changes set forth in SR-CBOE-2011-044 on May 17, 2011 and stated that no further action was necessary in connection with its proposal. Because Amendment No. 1 is technical in nature, the Commission is not required to publish it for public comment.

4 See Securities Exchange Act Release No. 64395 (May 4, 2011), 76 FR 27125 ("Notice").

II. Description of the Proposal

CBOE is proposing to reduce the minimum size of its NGC from seven to five directors. Section 4.4 of the Second Amended and Restated Bylaws of CBOE ("Bylaws") currently provides, in pertinent part, that the NGC shall consist of at least seven directors, including both Industry and Non-Industry Directors; that a majority of the directors on the Committee shall be Non-Industry Directors; and that the exact number of members on the Committee shall be determined from time to time by CBOE's Board of Directors (the "Board" or "CBOE Board"). Pursuant to the proposed rule change, Section 4.4 of the Bylaws would be amended to provide that the NGC shall consist of at least five directors. The other provisions of Section 4.4 of the Bylaws would remain unchanged.[5]

In outlining the purpose behind its proposal, the Exchange noted that the size of its Board declined from its initial size of twenty-three to nineteen directors in 2009 and again to sixteen directors in 2011.[6] As the size of its Board has declined, the Exchange noted that it has become more challenging to populate larger-size Board committees since there are fewer directors to serve on a multitude of committees.[7] The Exchange's proposal to reduce the minimum size of the NGC is intended to help address this issue.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules

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5 Additionally, the title of the Bylaws would be changed to the Third Amended and Restated Bylaws of CBOE.

6 Section 3.1 of the Bylaws provides that the CBOE Board shall consist of not less than eleven and not more than twenty-three directors, with the exact size determined by the Board.

7 See Notice, supra note 4, at 27125-26.

and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,[9] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, as well as Section 6(b)(5) of the Act,[10] 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. While the Exchange has proposed to reduce the minimum size of the NGC, it has not proposed any other changes to the composition of the committee or the scope or exercise of its responsibilities. In its filing, the Exchange affirmatively represented that the NGC "will continue to be able to appropriately perform its functions" despite the reduction in minimum required size.[11] The Commission further finds that the proposal, as modified by Amendment No. 1, is consistent with the requirements of Section 6(b)(3) of the Act,[12] which requires that one or more directors of an exchange shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer.

In particular, the Commission notes that the Exchange will continue to provide for the fair representation of CBOE Trading Permit Holders in the selection of directors and the

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

9 15 U.S.C. 78f(b)(1).

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

11 See Notice, supra note 4, at 27126.

12 15 U.S.C. 78f(b)(3).

administration of the Exchange consistent with Section 6(b)(3) of the Act[13] following this rule change. Specifically, the CBOE Bylaws will continue to require that at least thirty percent of the directors on the Board be Industry Directors and that at least twenty percent of CBOE's directors be Representative Directors elected by permit holders.[14] Further, the NGC will continue to include both Industry and Non-Industry Directors (including a majority Non-Industry Directors) and have an Industry-Director Subcommittee that is composed of all of the Industry Directors serving on the Committee. Representative Directors will continue to be nominated (or otherwise selected through a petition process) by the Industry-Director Subcommittee. Additionally, CBOE Trading Permit Holders will continue to be able to nominate alternative Representative Director candidates to those nominated by the Industry Director Subcommittee, in which case a Run-off Election will be held in which CBOE's Trading Permit Holders vote to determine which candidates will be elected to the Board to serve as Representative Directors. Furthermore, the Commission notes that the Exchange's proposal to reduce the minimum size of its NGC is consistent with a proposal that the Commission previously approved for another self-regulatory organization in which that self-regulatory organization reduced the minimum size of its nominating and governance committee from six to four members.[15]

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13 15 U.S.C. 78f(b)(3).

14 See Section 3.2 of the CBOE Bylaws (defining "Representative Director").

15 See Securities Exchange Act Release No. 54494 (September 25, 2006), 71 FR 58023 (October 2, 2006) (SR-CHX-2006-23) (approving reduction of the Chicago Stock Exchange's Nominating and Governance Committee from six directors to four directors). See also Article II, Section 3 of the Bylaws of the Chicago Stock Exchange, Inc. (providing for a Nominating and Governance Committee with four directors).

Finally, the Exchange has represented that, although the proposed rule change would permit the Exchange to appoint a five-person NGC and the Exchange may elect to do so in the future, it is the current intention of the Exchange to appoint a six-person NGC.[16]

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR-CBOE-2011-044), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Cathy H. Ahn
Deputy Secretary

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16 See Notice, supra note 4, at 27126.

17 15 U.S.C. 78s(b)(2).

18 17 CFR 200.30-3(a)(12).