

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53260; File No. SR-CBOE-2006-04)

February 9, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend CBOE Membership Rules Relating to Membership Sale Process

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 9, 2006, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission.⁵ 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

CBOE proposes to revise Exchange membership rules related to the membership sale process. The text of the proposed rule change is available on CBOE’s Web site, <http://www.cboe.com>, at CBOE’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The CBOE provided the Commission with written notice of its intent to file the proposed rule change on December 7, 2005. CBOE asked the Commission to waive the 30-day operative delay. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(1), 17 CFR 240.19b-4(f)(6)(iii).

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 IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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 revising CBOE Rules 3.13(b) and 3.14(a) to implement new provisions that would take effect in the event of a “crossed” membership market. Specifically, the proposed rule change would provide that (i) when a bid is submitted that exceeds the best offer posted on the Exchange, a seat sale transaction will occur at the best offer posted on the Exchange, and (ii) when an offer is submitted that is less than the best bid posted on the Exchange, a seat sale transaction will occur at the best bid posted on the Exchange. For example, if the seat market is a \$500,000 bid and a \$525,000 offer, and subsequently a properly submitted bid is received by the CBOE Membership Department for \$530,000, a seat sale transaction will occur at the posted offer of \$525,000. Likewise, if the seat market is a \$500,000 bid and a \$525,000 offer, and thereafter a properly submitted offer is received by the CBOE Membership Department for \$495,000, a seat sale transaction will occur at the posted bid of \$500,000. The Exchange expects this rule would be used rarely since the Exchange provides prompt updates of all properly submitted bids and offers on the Exchange Bulletin Board, the Exchange “seat market” telephone hotline, and the Exchange’s Web site. However, it is possible for a bid or offer to be submitted

that “crosses” the current membership market. Current CBOE Rules 3.13 and 3.14 only explicitly address what occurs in the event that the bid and offer are matched with the same price. The Exchange believes that this rule filing will improve those rules by explicitly addressing what shall occur when a bid is submitted that exceeds the best offer or an offer is submitted that is less than the best bid.

The proposed rule change also makes clear that bids and offers must be submitted in writing during seat market hours.⁶ The purpose of this proposed rule change is to ensure that all bids and offers are received by the Membership Department and processed in an orderly manner. The Exchange will issue an information circular to the Exchange’s membership to inform them of the hours that will constitute seat market hours.

The Exchange notes that the proposed rule change was reviewed and endorsed by the Exchange’s Membership Committee, which is comprised of a cross-section of Exchange members and representatives of member organizations.

2. Statutory Basis

The Exchange states that the proposed rule change is designed to improve the operation of the CBOE seat market thereby benefiting both the Exchange and its members. Therefore, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is 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.

⁶ Seat market hours, as specified on the forms for submitting a bid or offer for membership purchase, are currently 7:00 a.m. to 4:00 p.m. Central time.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,⁹ the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6) under the Act¹² normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission

⁹ As required under Rule 19b-4(f)(6)(iii) under the Act, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposal.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay, which would make the rule change operative immediately. The Commission believes that such waiver is consistent with the protection of investors and the public interest, for it will allow the CBOE to clarify CBOE Rules 3.13 and 3.14 to address what shall occur with respect to trading in CBOE memberships in the event of a “crossed” membership market. In addition, the proposed rule change clarifies that bids and offers for CBOE memberships must be submitted in writing during CBOE’s seat market hours. For these reasons, the Commission designates that the proposal become operative immediately.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁵

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>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2006-04 on the subject line.

¹⁴ For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ See 15 U.S.C. 78s(b)(3)(C).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-04. 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 the 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-2006-04 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.¹⁶

Nancy M. Morris
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).