

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53355; File No. SR-CBOE-2005-105)

February 23, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to the Membership Rules for Foreign Member Organizations

I. Introduction

On December 7, 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 amend CBOE Rule 3.4, “Qualifications of Foreign Member Organizations,” to provide that a member organization that is not organized under the laws of one of the states of the United States (a “foreign member organization”), and that is approved by the Exchange to act solely as a lessor, need not register as a broker or dealer pursuant to Section 15 of the Act.³ The proposed rule change was published for comment in the Federal Register on January 18, 2006.⁴ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78o.

⁴ Securities Exchange Act Release No. 53092 (January 10, 2006), 71 FR 2963 (“Notice”). The Commission published an amended Notice to indicate that the correct date of the Notice is January 10, 2006, rather than January 10, 2005. See Securities Exchange Act Release No. 53092A (January 19, 2006), 71 FR 4391 (January 26, 2006).

II. Description of the Proposal

An organization that is not organized under the laws of one of the states of the United States ("foreign member organization"), among other things, must satisfy the requirements in CBOE Rule 3.4 in order to become a CBOE member. Under CBOE Rule 3.4, a foreign member organization that is approved by the Exchange to act solely as a lessor must be registered as a broker-dealer pursuant to Section 15 of the Act⁵ and must maintain in English at a location in the United States any books and records that an organization registered as a broker-dealer is required to maintain at a location in the United States.⁶ In contrast, CBOE Rule 3.3(a)(ii) exempts a U.S. member organization, if it is approved to act solely as a lessor, from the requirement in CBOE Rule 3.3 that such an organization be registered as a broker-dealer under Section 15 of the Act.

The Exchange proposes to amend CBOE Rule 3.4 to exempt a foreign member organization that is approved by the Exchange to act solely as a lessor from certain requirements set forth in the rule. In particular, the Exchange proposes to exempt such a foreign member organization from: (i) CBOE Rule 3.4(a)(xii), which requires a foreign member organization to be registered as a broker or dealer pursuant to Section 15 of the Act; and (ii) CBOE Rule 3.4(a)(iii)(B), which requires a foreign member organization to maintain, in English and at a location in the United States, any books and records of the foreign member organization that an organization registered as a broker or dealer pursuant to Section 15 of the Act is required to maintain.

According to CBOE, a member organization approved to act solely as a lessor has no trading functions on the Exchange, and the sole business function of such a member is to lease its

⁵ See CBOE Rule 3.4(a)(xii).

⁶ See CBOE Rule 3.4(a)(iii)(B).

CBOE membership to another CBOE member. CBOE represents that, since a foreign member organization approved to act solely as a lessor conducts no activities on the Exchange that otherwise would require it to register as a broker-dealer, it is appropriate not to require such registration. The Exchange also asserts that, if the only activities conducted by the foreign member organization on the Exchange relate to its lease activities, the provisions set forth in Rule 3.4(a)(iii)(A), which require the foreign member organization to maintain in English and at a location in the United States the books and records of the organization that relate to its business on the Exchange, should ensure that the Exchange will have the ability to have access to adequate information with respect to the foreign member organization.

The Exchange notes that a foreign member organization approved to act solely as a lessor would remain subject to CBOE qualification and application rules for member organizations. In this regard, CBOE notes the additional application requirements set forth in CBOE Rule 3.4 for foreign member organizations would provide it with both access to the information it would need to review the foreign member organization's application for membership and, if necessary, the requisite jurisdiction to litigate matters related to the foreign member organization's business on the Exchange. In addition, CBOE states that it would investigate a foreign organization applying for membership in a lessor-only capacity in accordance with the requirements of CBOE Rule 3.9, "Application Procedures and Approval or Disapproval." CBOE further notes that, through the associated person application process set forth in CBOE Rule 3.6, "Persons Associated with Member Organizations," the Exchange would have the ability to examine the direct owners and executive officers of a foreign member organization to ensure that those persons who are not

qualified under CBOE rules and the Act to be associated with a CBOE member are not associated with the foreign member organization.⁷

III. Discussion

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 and, in particular, with Section 6(b)(5) of the Act,⁸ 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 remove impediments to, and perfect the mechanism of, a free and open market and a national market

⁷ For an entity not required to register as a broker-dealer, CBOE Rule 3.6(b) provides that each associated person of the organization that would be required to be disclosed on Form BD as a direct owner or executive officer must submit to CBOE's Membership Department, pursuant to CBOE Rule 3.9, an application for approval to become associated with the member organization in that capacity. Under CBOE Rule 3.6(b), no person may become associated with a member organization in the capacity of a direct owner or executive officer that would be required to be disclosed on Form BD unless and until CBOE's Membership Committee approves that association.

⁸ 15 U.S.C. 78f(b)(5).

system and, in general, to protect investors and the public interest.⁹

Under CBOE Rule 3.3(a)(ii), a CBOE member organization organized under the laws of one of the states of the United States and approved by CBOE to act solely as a lessor need not register as a broker or dealer pursuant to Section 15 of the Act. The proposal amends CBOE Rule 3.4 to provide the same treatment under the Exchange's rules for foreign member organizations that are approved by the Exchange to act solely as lessors. The Commission believes that it is reasonable for the Exchange to extend the same treatment to a foreign member organization approved to act solely as a lessor that is accorded to such lessor U.S. member organizations with respect to the broker-dealer registration requirement.

Further, under the proposal, although foreign member organizations approved to act solely as lessors no longer would be required to maintain the books and records that an organization registered as a broker or dealer pursuant to Section 15 of the Act would be required to keep, such foreign member organizations would continue to be required to comply with CBOE Rule 3.4(a)(iii)(A), which requires foreign member organizations to maintain in English and at a location in the United States the books and records of the organization that relate to its business on the Exchange. The Commission believes that the recordkeeping requirement of CBOE Rule 3.4(a)(iii)(A) should help to ensure that the Exchange will have access to adequate information with respect to a foreign member organization approved to act solely as a lessor. The Commission notes that the proposal does not alter the remaining provisions of CBOE Rule 3.4 or any other CBOE application, qualification and membership rules that a foreign member

⁹ 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).

organization that intends to act solely as a lessor must satisfy to be approved as a CBOE member organization.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2005-105) is approved.

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

Nancy M. Morris
Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).