

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53869; File No. SR-CBOE-2006-38)

May 25, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Regarding Transfer of Designated Primary Market Maker Appointments

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 April 17, 2006, 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. On May 11, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules relating to the transfer of Designated Primary Market Maker (“DPM”) appointments. The text of the proposed rule change, as amended, 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³ Amendment No. 1 replaced and superseded the original filing in its entirety. In Amendment No. 1, CBOE corrected a reference in the rule text and elaborated on the purpose of and rationale for the proposed rule change.

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 proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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 proposes to amend Exchange rules applicable to the transfer of DPM appointments between CBOE members, which is governed by CBOE Rule 8.89. Generally, any DPM proposing a sale, transfer, or assignment of any ownership interest or a change to the DPM's capital structure, voting authority, or distribution of profits or losses (collectively, a "transfer proposal") must provide the appropriate Exchange committee with the specifics and terms of the transfer proposal in a form and manner specified under CBOE Rule 8.89(c). The appropriate Exchange committee then will undergo a review process, which includes a publication of notice of the transfer proposal and a subsequent publication of the notice of the decision by the committee on the transfer proposal.⁴ Currently, the appropriate Exchange committee that reviews transfer proposals under CBOE Rule 8.89 is the Allocation Committee.

The Exchange proposes to eliminate section (f) of CBOE Rule 8.89, which subjects any transfer proposal decision made by the appropriate Exchange committee ("transfer proposal

⁴ See CBOE Rules 8.89(d) and (e).

decision”) to a 10-day review period in which any transfer proposal decision may be directly reviewed by the Board of Directors upon: (1) a written application by a party claiming to be aggrieved⁵ by the DPM transfer decision, or (2) a request for review by any five Directors.

The Exchange believes that, with the expiration of the DPM appointment transfer fee in June 2004⁶ and the fact that DPM transfers, in general, have become more routine, the Board review process under CBOE Rule 8.89(f) is no longer necessary. The Exchange also believes that the elimination of CBOE Rule 8.89(f) will improve the efficiency of the Exchange's decision-making processes. Currently, because of the review process under CBOE Rule 8.89(f), a memo is forwarded to the Board of Directors after each decision regarding a transfer proposal is made. This requires Directors to take time to review each of these matters so that they can determine whether to make a request for review of the decision by the Board. Because transfer proposal decisions have become more routine, the Exchange no longer sees a need to have Directors devote special attention to these decisions or for there to be a special review process for these decisions that is different from the review processes and procedures that are generally applicable to other Exchange decisions.

Further, any member aggrieved by a decision regarding a transfer proposal decision could still seek a review of the decision through the hearing and review process provided for under Chapter XIX of CBOE's rules.⁷ In any such appeal proceeding under Chapter XIX, the decision

⁵ Under CBOE Rule 8.89, a person must be “aggrieved” as described in Chapter XIX of Exchange Rules.

⁶ Until it expired on June 30, 2004, Interpretation and Policy .02 of CBOE Rule 8.89 applied a transfer fee to certain types of DPM transfers.

⁷ Chapter XIX of CBOE Rules governs the process by which persons, including members, claiming to be economically aggrieved by Exchange action may seek a review of such a decision.

regarding a transfer proposal by the appropriate Exchange committee under CBOE Rule 8.89 would be subject to review by the CBOE Appeals Committee. Additionally, the Appeals Committee decision in the matter would be subject to review by the CBOE Board of Directors on its own motion, or could be appealed to the Board of Directors, pursuant to CBOE Rule 19.5.

Finally, as a matter of housekeeping, the Exchange proposes to delete Interpretation and Policy .02 of CBOE Rule 8.89, which provided for the application of a transfer fee on any DPM appointment transfer. As this provision expired on June 30, 2004, continued inclusion in CBOE Rules is unnecessary.

2. Statutory Basis

Because it believes that the proposed rule change, as amended, will make the review process for DPM appointment transfer proposals more efficient, the Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

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

CBOE does not believe that the proposed rule change, as amended, 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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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

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 if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which CBOE consents, the Commission will:

- (A) by order approve such proposed rule change, as amended; or
- (B) institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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-2006-38 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2006-38. 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 such 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 publicly available. All submissions should refer to File Number SR-CBOE-2006-38 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.¹⁰

Nancy M. Morris
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).