

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53872; File No. SR-CBOE-2006-45)

May 25, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding Its Board Review Authority

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 5, 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. 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

The Exchange proposes to amend its rules to clarify the authority of its Board of Directors (“Board”) with respect to actions or inactions of committees of CBOE and CBOE staff. The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in [brackets].

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Chicago Board Options Exchange, Incorporated

Rules

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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CHAPTER II Organization and Administration (Rules 2.1-2.40)

Part A—Committees (Rule 2.1)

Rule 2.1. Committees of the Exchange

(a) – (c) No change.

(d) General Duties and Powers of Committees. Each committee shall administer the provisions of the Constitution and the rules of the Exchange pertaining to matters within its jurisdiction. In addition to any powers and duties specifically granted in the Constitution or Rules, e[E]ach committee shall have only such other powers and duties as may be delegated to it by the Board of Directors. Each committee is subject to the control and supervision of the Board of Directors.

Part B—Board Review (Rule 2.2)

Rule 2.2. Power of the Board to Review Exchange Decisions.

In connection with any delegation to a committee or committees pursuant to Article EIGHTH of the Certificate of Incorporation, the Board retains the power and authority to review, affirm, modify, suspend or overrule any and all actions or inactions of committees and of all officers, representatives or designees of the Exchange; provided, however, that such power and authority shall not apply to (a) actions taken (or inactions) pursuant to Chapters XVII, XVIII and XIX of the Rules, unless specifically provided for in those Rules, or (b) actions taken by (or inactions of) the Nominating Committee or Executive Committee pursuant to Article IV of the Constitution.

Part [B]C—Departments (Rule 2.15)

No change.

Part [C]D—Dues, Fees and Other Charges (Rules 2.20-2.40)

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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 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

CBOE’s Certificate of Incorporation provides that the Board shall manage the business and affairs of the Exchange except to the extent that the authority, powers, and duties of such management shall be delegated to a committee or committees of the Exchange that are established pursuant to the Exchange’s Constitution. The Certificate of Incorporation and Constitution of CBOE also provide that the Board may establish one or more committees, each of which shall have the authority, power, and duties as may be prescribed in the Exchange’s Constitution or Rules, or by resolution of the Board.<sup>3</sup>

Over time the Board has established various committees, several of which have specific authorities described in the Exchange’s Constitution or Rules. Though CBOE Rule 2.1, Committees of the Exchange, currently provides that each committee “is subject to the control

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<sup>3</sup> See Article EIGHTH of the CBOE Certificate of Incorporation and Section 7.6 of the CBOE Constitution.

and supervision of the Board,” this supervisory power alone does not make explicit the power of the Board to directly modify or overrule the action (or inaction) of a committee when the decision-making authority with respect to the action has been delegated to the committee in the Exchange’s Rules. The proposed rule change will address this by explicitly reserving the Board’s review authority over all actions taken by (or inactions of) committees of CBOE, as well as CBOE staff. Specifically, this proposed rule change seeks to adopt CBOE Rule 2.2, Power of the Board to Review Exchange Decisions, which clarifies that the Board retains the power and authority to review, affirm, modify, suspend, or overrule any and all actions or inactions of committees of CBOE and of CBOE officers, representatives, or designees. Proposed CBOE Rule 2.2 would not apply to actions taken (or inactions) pursuant to Chapters XVII (Discipline), XVIII (Arbitration), and XIX (Hearings and Review) of the Exchange’s Rules, unless specifically provided for in those Rules, or to actions taken by (or inactions of) the Nominating Committee or Executive Committee relating to the nominating process pursuant to Article IV of the Exchange’s Constitution. The proposed rule change also seeks to amend CBOE Rule 2.1 to make clear that committees will only have such powers and duties as are specifically granted in the Exchange’s Constitution or Rules and only such other powers and duties as may be delegated to them by the Board.

## 2. Statutory Basis

The Exchange believes that, because it clarifies the Board’s authority, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>4</sup> which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing,

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<sup>4</sup> 15 U.S.C. 78f(b)(5).

settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is consistent with the requirements of Section 6(b)(1) of the Act,<sup>5</sup> which requires that an exchange be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d)<sup>6</sup> or 19(g)(2)<sup>7</sup> of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

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

CBOE 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

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

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 the Exchange consents, the Commission shall:

- (A) by order approve such proposed rule change, or

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<sup>5</sup> 15 U.S.C. 78f(b)(1).

<sup>6</sup> 15 U.S.C. 78q(d).

<sup>7</sup> 15 U.S.C. 78s(g)(2).

- (B) institute proceedings to determine whether the proposed rule change 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 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](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2006-45 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-2006-45. 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 available publicly. All submissions should refer to File Number SR-CBOE-2006-45 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Nancy M. Morris  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).