

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54097; File No. SR-CBOE-2006-38)

July 5, 2006

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

On April 17, 2006, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Exchange rules relating to the transfer of Designated Primary Market Maker (“DPM”) appointments. On May 11, 2006, CBOE submitted Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as amended, for comment in the Federal Register on June 1, 2006.<sup>3</sup> The Commission received no comments on the proposed rule change, as amended.

Specifically, the Exchange proposes to eliminate section (f) of CBOE Rule 8.89, which subjects any DPM transfer proposal decision made by the appropriate Exchange committee (“transfer proposal decision”)<sup>4</sup> to a 10-day review period during which any transfer proposal decision may be directly reviewed by the Board of Directors of the Exchange (“Board”) upon:

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

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

<sup>3</sup> See Securities Exchange Act Release No. 53869 (May 25, 2006), 71 FR 31239.

<sup>4</sup> See CBOE Rule 8.89(c), (d), and (e) for a description of the scope of a transfer proposal and the committee decision process.

(1) a written application by a party claiming to be aggrieved<sup>5</sup> by the DPM transfer decision, or (2) a request for review by any five Directors. The Exchange notes that any member aggrieved by a transfer proposal decision can still seek a review of the decision through the hearing and review process provided for under Chapter XIX of CBOE's rules.<sup>6</sup> In any such appeal proceeding under Chapter XIX, the 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. In addition, the Appeals Committee decision in the matter would be subject to review by the Board on its own motion, or could be appealed to the Board, pursuant to CBOE Rule 19.5. The Exchange believes that the special review process for transfer proposal decisions in CBOE Rule 8.89(f) is no longer necessary, given the more routine nature of DPM transfers, and that the elimination of the special process will improve the overall efficiency of the review process.<sup>7</sup>

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> In

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<sup>5</sup> Under CBOE Rule 8.89, a person must be "aggrieved" as described in Chapter XIX of Exchange Rules.

<sup>6</sup> 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.

<sup>7</sup> The Exchange also 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, because it expired on June 30, 2004.

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

particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires among other things, that the rules of the Exchange be designed 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 system, and, in general, to protect investors and the public interest. Specifically, the Commission believes it is consistent with the Act for the Exchange to eliminate the special review process for DPM transfer proposal decisions, which the Exchange believes could improve efficiency of the review process for such decisions. The Commission notes that such decisions would continue to be subject to a hearing and review process at the Exchange under Chapter XIX, which provides for review by the Appeals Committee and the Board. The Commission also believes it is consistent with the Act for CBOE to remove, as a matter of housekeeping, Interpretation and Policy .02 of CBOE Rule 8.89 from its rules, as the provision relating to a transfer fee has currently expired.

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2006-38) and Amendment No. 1 thereto be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris  
Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).