

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54311; File No. SR-CBOE-2005-103)

August 11, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend CBOE Rules Relating to the Electronic Designated Primary Market Maker Program

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 December 5, 2005, 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 August 11, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. 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

The Exchange proposes to amend CBOE rules relating to the Electronic Designated Primary Market Maker (“e-DPM”) Program. The text of the proposed rule change is set forth below. Proposed additions are underlined, and proposed deletions are in brackets.

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Rule 8.92. Electronic DPM Program

(a) - (b) No change.

(c) Allocation of Option Classes. The Board of Directors or a committee designated by the Board of Directors shall grant e-DPMs allocations in option classes. Factors to be considered in granting allocations include performance, capacity, performance commitments, efficiency, competitiveness, and operational factors. In addition, the following shall apply:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(i) - (iv) No change.

(v) An e-DPM may not be allocated an option class for which the e-DPM organization serves as DPM on the trading floor, [.]

(vi) The Exchange may remove any option class from the e-DPM Program at any time if certain factors no longer warrant its inclusion in the program. Factors to be considered in removing an option class include any of the following: market share, number of exchanges trading the product, average daily trading volume, and liquidity in the product. The Exchange shall give prior notice of any removal of an option class to the e-DPMs trading in that option class.

(d) - (e) No change.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE's e-DPM Program was created, generally, to enhance the liquidity base of the CBOE Hybrid Trading System and to increase the Exchange's market share in overall options trading by allowing member organizations, e-DPMs, to operate remotely as competing DPMs in the same option classes.³ The Exchange, through its designees, determines which option classes

³ See CBOE Rules 8.92 through 8.94 and Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43028 (July 19, 2004) (Order approving SR-CBOE-2004-24).

to include in the e-DPM Program and, accordingly, which classes to allocate to each respective e-DPM.⁴

This rule change proposes to clarify that the Exchange should also have the authority to remove any e-DPM option class from the e-DPM Program if certain factors no longer warrant the continued inclusion of that option class in the e-DPM Program. The factors used in making such a determination would relate to the option class itself and will include any of the following: (i) market share, (ii) number of exchanges trading the product, (iii) average daily trading volume, and (iv) liquidity in the product. The Exchange will consider any one or all of these factors in determining whether to remove an option class from the e-DPM Program. Such factors will be considered by the Exchange in removing any option class(es) from the e-DPM Program, including those option classes that are the top classes trading on the Exchange and those option classes that are the bottom classes trading on the Exchange.⁵ The ability to remove and limit the number of e-DPM option classes is necessary to further the competitive goals of the e-DPM Program.

The purpose of the e-DPM Program is to create, among other things, greater market share, volume and liquidity. For certain option classes that have been in the e-DPM Program, there may no longer be a need to have such option classes in the program since at the present time, those classes have consistently maintained a level of greater market share, higher volume and/or greater liquidity. In reviewing these factors, the Exchange may determine that such class(es) no longer need to be in the e-DPM Program and can therefore be removed from the

e-DPMs operate remotely as specialists by entering bids and offers electronically from locations other than the trading floor.

⁴ Id.

⁵ Based on the National Average Daily Volume.

e-DPM Program, since that class meets the levels that the Exchange deems appropriate. In addition, the Exchange may wish to remove an option class from the e-DPM Program for the opposite reason. Certain option classes that are in the e-DPM Program may not have increased in market share, volume and/or liquidity, or may have even gone down in total market share, volume and/or liquidity. Since being in the e-DPM Program did not increase these factors, the Exchange may wish to remove such option class(es) from the program since they have not benefited from being in the program. Prior to removing any option class from the e-DPM Program, the Exchange would notify the e-DPMs trading in that option class that such class is being removed from the program. Persons aggrieved by the removal of an option class from the e-DPM Program may appeal such decision to the Exchange's Appeals Committee pursuant to Chapter XIX of the rules of the Exchange.

By being able to review these proposed factors for all option classes in the e-DPM Program and in making a determination on whether an option class(es) should be included in the e-DPM Program, the Exchange believes it will have the flexibility to ultimately enhance the overall market share and volume of all option classes trading on the Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁶ in general, and Sections 6(b)(5) and 6(b)(7) of the Act,⁷ in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and provides a fair

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5) and 78f(b)(7).

procedure for the limitation by the Exchange of any person with respect to access to services offered by the Exchange.

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 did not solicit or receive any written comments 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 self-regulatory organization consents, the Commission will:

- A. by order approve the proposed rule change, or
- 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. Please include File Number SR-CBOE-2005-103 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-2005-103. 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 the Exchange. 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-2005-103 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.⁸

Nancy M. Morris
Secretary

⁸ 17 CFR 200.30-3(a)(12).