

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54475; File No. SR-CBOE-2005-103)

September 20, 2006

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

I. Introduction

On December 5, 2005, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² to amend CBOE rules relating to the Electronic Designated Primary Market Maker Program (“e-DPM Program”). On August 11, 2006, CBOE amended the proposed rule change.³ The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on August 18, 2006.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange’s e-DPM Program allows e-DPMs to operate remotely as competing DPMs by entering bids and offers electronically from locations other than the trading floor. Exchange rules provide that the Exchange will determine which option classes to include in the e-DPM Program and, accordingly, which classes to allocate to each respective e-DPM. The proposed rule change would give the Exchange the corresponding authority to remove any e-DPM option class from the e-DPM Program if certain factors no longer warranted the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original proposal in its entirety.

⁴ See Securities Exchange Act Release No. 54311 (August 11, 2006), 71 FR 47834.

continued inclusion of that option class in the e-DPM Program. The factors used in making this determination would relate to the option class itself and would include only 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 would consider any one or all of these factors in determining whether to remove an option class from the e-DPM Program. Persons who are aggrieved by the removal of an option class from the e-DPM Program would be permitted to appeal the decision in accordance with the Exchange's standard procedures on review of Exchange actions, as set forth in Chapter XIX of the Exchange's rules.

III. Discussion

After careful consideration, 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.⁵ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁶ 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. The Commission also finds that the proposal is consistent with Section 6(b)(7) of the Act,⁷ in that it provides a fair procedure for the limitation by the Exchange of any person with respect to access to services offered by the Exchange.

The proposed rule change permits the Exchange to remove option classes from the e-DPM Program only if certain factors no longer warrant the continued inclusion of that class in the program. The Commission notes that the factors to be considered by the Exchange (i.e.,

⁵ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(7).

market share, number of exchanges trading the product, trading volume, and liquidity) are objective and would limit the Exchange's ability to act in this area. The proposed factors to be considered by the Exchange in determining whether to remove an option class from the e-DPM Program, coupled with the right to appeal the Exchange's determination, should help to protect persons from an unfair limitation of access to services offered by the Exchange, while permitting the Exchange to further the competitive goals of the e-DPM Program. Accordingly, the Commission believes that the amended proposal is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-2005-103), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris
Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).