

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55326; File No. SR-CBOE-2006-107)

February 21, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Regarding a Permit Program for CBSX

I. Introduction

On December 18, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a permit program for CBSX, the Exchange’s proposed stock-trading facility (“Permit Program”). The proposed rule change was published for comment in the Federal Register on December 29, 2006.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

CBSX will be a facility of the Exchange and will serve as the Exchange’s vehicle for trading non-option securities. The Exchange proposed to modify its Constitution and Rules to establish the Permit Program and thereby allow non-CBOE seat holders access to CBSX. The Exchange noted that expanding access to CBSX beyond CBOE’s options user base would enhance liquidity on CBSX and make it a more attractive stock trading venue. The principal features of the Permit Program are as follows:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54987 (December 20, 2006), 71 FR 78481.

- The permits may only be used for trading stock on CBSX. A Permit does not entitle the holder to trade options on CBOE or to physically enter an option trading post on the trading floor;

- Up to 100 permits may be issued;

- The Permit Program could be terminated by the Exchange pursuant to a rule filing approved by the Commission. This provision is incorporated in the Exchange's Constitution to allow the CBSX Permit Program to be terminated without a corresponding membership vote (i.e., the Exchange's membership has already approved the notion that a future termination of the Permit Program could occur without another membership vote);

- Permit holders would be deemed statutory members of CBOE. Accordingly, they would have the same petition and voting rights as regular members except for matters relating to Exchange ownership (specifically, matters relating to demutualization, mergers, consolidations, dissolution, liquidation, transfer, or conversion of assets of the Exchange), and except for matters relating the Chicago Board of Trade exercise right;

- Permit holders would have no interest in the assets or property of CBOE and would have no right to share in any distribution by the Exchange;

- Permit holders (or an executive officer of a Permit holder) would be eligible to run for an at-large director position and a Nominating Committee position;

- Permit holders would have to be registered broker-dealers;

- Permits would not be transferable; and

- All Permits would expire every October and would be eligible for renewal.

If there are fewer available CBSX Permits than qualified applicants, the Exchange will determine which of the applicants to approve by lot. Applicants that are affiliated will be

deemed one applicant in cases where there are fewer available CBSX Permits than qualified applicants.

A Permit holder and its associated persons must comply with and be subject to CBOE Rules to the same extent that Exchange members and their associated persons are obligated to comply with and are subject to Exchange Rules. A Permit holder and its associated persons shall also be subject to the disciplinary, appeals, and arbitration jurisdiction and rules of the Exchange and entitled to the procedural rights under those rules to the same extent that Exchange members and their associated persons are subject to such jurisdiction and rules and entitled to such procedural rights.

III. Discussion

The Commission finds that the Exchange's proposal relating to CBSX Permits is consistent with Section 6(b)(3) of the Act,⁴ which requires that the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission notes that, for purposes of the Act, Permit holders would be considered members of CBOE. Permit holders would be eligible to be nominated for an at-large position on CBOE's Board of Directors and to serve on the Exchange's Nominating Committee and would have the same petition and voting rights as CBOE members except for matters relating to Exchange ownership (specifically, matters relating to demutualization, mergers, consolidations, dissolution, liquidation, transfer, or conversion of assets of the Exchange), and except for matters relating to the Chicago Board of

⁴ 15 U.S.C. 78f(b)(3).

Trade exercise right.⁵

The Commission also finds that the Exchange's proposal relating to the Permit Program is consistent with Section 6(b)(5) of the Act,⁶ which requires that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange has imposed various requirements and limitations in connection with the issuance of CBSX Permits. In this regard, the Commission notes that although the number of Permits to be issued is limited to a maximum of 100 Permits, the Exchange will allocate Permits by lot if demand for them exceeds 100 Permits.⁷

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the

⁵ Further, the Exchange has represented that Permit holders would be eligible to sit on disciplinary panels and on any committee(s) that develop trading rules. Telephone conversation between Angelo Evangelou, Assistant General Counsel, CBOE and David Michehl, Special Counsel, Commission, Division of Market Regulation, on February 16, 2007.

⁶ 15 U.S.C. 78f(b)(5).

⁷ In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-CBOE-2006-107) is hereby approved.

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

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).