

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50907; File No. SR-CBOE-2004-04)

December 22, 2004

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto to Amend the Exchange's Guaranteed Participation Rule Relating to Facilitation and Crossing Transactions

On January 16, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 amend CBOE Rule 6.74, Crossing Orders, relating to facilitation and crossing transactions. On November 3, 2004, CBOE submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the Federal Register on November 18, 2004.⁴ The Commission received no comments on the proposal.

CBOE proposes to amend Exchange Rule 6.74 with respect to the guaranteed participation to which a floor broker is entitled when seeking to execute crossing and facilitation transactions. Under the current rule, after requesting a market from the trading crowd, a floor broker seeking to cross an order he or she is holding with another order, or, in the case of a public customer order, with a facilitation order from the firm

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Stephen Youhn, Legal Division, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 2, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 50655(November 10, 2004), 69 FR 67614.

from which the public customer order originated, is entitled to a guaranteed participation of 20% when the order trades at a price that matches the price given by the trading crowd in response to the initial request for a market, and 40% when the order trades at a price that improves upon that price. The proposed rule change would entitle the floor broker to a 40% guarantee in both cases.⁵

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁶ and, in particular, the requirements of Section 6(b)(5) of the Act.⁷ The Commission has found with respect to participation guarantees in other contexts that a maximum guarantee of 40% is not inconsistent with statutory standards of competition and free and open markets.⁸

⁵ These guaranteed percentages apply after all public customer orders that were on the limit order book and represented in the trading crowd at the time the market was established have been satisfied. The proposal would also amend CBOE Rule 6.74(d)(v) to make corresponding changes to the DPM participation entitlement as it pertains to facilitation and crossing orders. Specifically, the rule would be amended to state that DPMs are not entitled to any guaranteed participation for trades occurring pursuant to CBOE Rule 6.74(d) unless the floor broker crosses less than its guaranteed 40%, in which case the DPMs guarantee would be a percentage that, when combined with the firm's percentage, does not exceed 40% of the order. The intent of the provision is that the aggregate of the guarantees may not exceed 40% of the remainder of the order after public customer orders have been satisfied. Telephone conversation between Stephen Youhn, Legal Division, CBOE, and Ira Brandriss, Assistant Director, Division, Commission, on December 17, 2004.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See, e.g., Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96-99 and accompanying text.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁹, that the proposed rule change (File No. SR-CBOE-2004-04), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).