

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51148; File No. SR-CBOE-2004-67)

February 8, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 thereto Relating to Split Price Priority

On October 21, 2004, the Chicago Board Options Exchange, Incorporated (“CBOE”) 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 amend its split price priority rule. On December 17, 2004, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for notice and comment in the Federal Register on January 3, 2005.³ The Commission received no comment letters on the proposal.

The proposed rule change would amend the Exchange’s rule regarding split price transactions in open outcry generally to permit a member with an order for at least 100 contracts who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield to existing customer interest in the limit order book.

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.⁴ In particular, the Commission believes that the proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50924 (December 23, 2004), 70 FR 128.

⁴ In approving this proposed rule change, the Commission has considered the proposed

consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should encourage more aggressive quoting by market makers in competition for large-sized orders, and, in turn, lead to better-priced executions. The Commission notes that the proposed rule change includes interpretive language that clarifies that floor brokers who avail themselves of the split priority rule are obligated to ensure compliance with Section 11(a) of the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-CBOE-2004-67), as amended, be hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland
Deputy Secretary

rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).