

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51542; File No. SR-CBOE-2005-22)

April 14, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval to a Proposed Rule Change to Adopt an Inactivity Fee to be Charged Against Remote Market-Makers that Fail to Commence Quoting in Their Appointed Classes

On March 15, 2005, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt an inactivity fee to be charged against Remote Market-Makers (“RMMs”) that fail to commence quoting in their appointed classes.

The proposed rule change was published for comment in the Federal Register on March 21, 2005.<sup>3</sup> The Commission received no comments on the proposal.

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<sup>4</sup> and, in particular, the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>6</sup> in that it is designed to

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 51370 (March 15, 2005), 70 FR 13559.

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the proposal is published for comment in the Federal Register pursuant to Section 19(b)(2) of the Act.<sup>7</sup> The Commission believes that accelerating approval of the proposal is necessary to accommodate the rollout of CBOE's RMM program. In particular, the Commission notes that accelerated approval of the proposal would enable CBOE to commence its RMM program with the inactivity fee in place, which should help to ensure that RMMs are aware that they will be subject to fees if they fail to submit quotations in their appointed classes. The Commission further notes that the proposal should help to prevent an RMM that obtains an electronic appointment in a product from not initiating quoting in that product. In addition, the Commission notes that the proposed inactivity fee is similar to a fee imposed by the International Securities Exchange ("ISE").<sup>8</sup> The Commission therefore believes that accelerated approval of the proposed rule change is appropriate and finds that it is consistent with the Act.

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<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> See Securities Exchange Act Release 46272 (July 26, 2002), 67 FR 50497 (August 2, 2002); see also ISE Regulatory Information Circulars 2002-04 and 2002-09.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2005-22) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).