

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51704; File No. SR-CBOE-2005-29)

May 18, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to the Composition of the Exchange's Modified Trading System Appointments Committee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 19, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend CBOE Rule 8.82 relating to the composition of the Exchange's Modified Trading System Appointments Committee ("MTS Committee" or "Committee"). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

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CHAPTER VIII

Market-Makers, Trading Crowds and Modified Trading Systems

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Section C: Designated Primary Market Makers

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Rule 8.82 - MTS Committee

[(a)] The selection of MTS Committee members and the determination of the composition of the MTS Committee shall be made in accordance with Rule 2.1. [consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine persons elected by the membership of the Exchange.

(b) The nine elected MTS Committee members shall include: three members whose primary business is as a Market-Maker; three members whose primary business is as a Market-Maker or as a DPM Designee; and three members whose primary business is as a Floor Broker, at least two of whom represent public customer orders in the course of their activities as a Floor Broker. One of the nine elected positions on the MTS Committee may instead be filled by a person (i) who directly or indirectly owns and controls a membership with respect to which the person acts as a lessor, (ii) whose primary business is not as a Market-Maker, DPM Designee, or Floor Broker, and (iii) whose primary residence is located within 80 miles of the Exchange's trading floor. No elected member of the MTS Committee may be affiliated (as defined under Rule 1.1(j)) with any other elected member of the MTS Committee. The nine elected MTS Committee members shall have three-year terms, three of which shall expire each year.

(c) The election procedures for the nine elected MTS Committee members shall be the same as the election procedures for elected Directors that are set forth in Article IV and Article V of the Exchange Constitution. Accordingly, the following shall occur as part of these procedures: The Nominating Committee shall select nominees to fill expiring terms and vacancies on the MTS Committee. Nominations may also be made by petition, signed by not less than 100 voting

members and filed with the Secretary of the Exchange no later than 5:00 p.m. (Chicago time) on the Monday preceding the 1st Friday in November, or the first business day thereafter in the event that Monday occurs on a holiday. The election to fill the expiring terms and vacancies on the MTS Committee shall be held as part of the annual election. The term of office of each MTS Committee member elected at an annual election meeting shall commence at the time of the first regular Board of Directors meeting of the calendar year following that annual election meeting and shall continue until the first regular Board meeting of the third succeeding calendar year. Elected MTS Committee members shall hold office for the terms for which they are elected and until their successors are duly elected and qualified or until their earlier death, resignation, or removal.

(d) Candidates for election to the MTS Committee, whether nominated by the Nominating Committee or by petition, shall be eligible for election in any of the categories for which they qualify both at the time of their nomination and at the time of their election. The sole judge of whether a candidate satisfies the applicable qualifications for election to the MTS Committee in a designated category shall be the Nominating Committee in the case of candidates nominated by the Nominating Committee, and shall be the Executive Committee in the case of candidates nominated by petition, and the decision of the respective committee shall be final. In the event a person's status changes following election to the MTS Committee, the sole judge of whether the person continues to satisfy the applicable qualifications for service on the MTS Committee shall be the Board of Directors.

(e) In the event of the refusal, failure, neglect, or inability of any MTS Committee member to discharge that person's duties, or for any cause affecting the best interests of the Exchange, the sufficiency of which the Board of Directors shall be the sole judge, the Board shall have the

power, by the affirmative vote of at least two-thirds of the Directors then in office, to remove that MTS Committee member from the Committee.

(f) Any vacancy occurring among the members of the MTS Committee may be filled by a qualified person appointed by the Vice Chairman of the Board with the approval of the Board of Directors. The term of any MTS Committee member so chosen shall be from the date of appointment until the first regular Board meeting of the calendar year following the next annual election meeting and until the person's successor is duly elected and qualified, or until the person's earlier death, resignation, or removal. The remaining portion of the unexpired term of an MTS Committee member, if any, shall be served by a person elected at the next annual election meeting.]

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise the manner in which the members of the Exchange's

MTS Committee³ are chosen, as governed by existing CBOE Rule 8.82. Currently, members of the MTS Committee are elected to serve on the Committee by the Exchange's membership at the Exchange's annual election.⁴ Committee candidates are nominated by the Exchange's Nominating Committee (or by petition).⁵ The Committee's composition, terms of the Committee's members, procedures for filling vacancies on the Committee and other matters relating to the Committee's structure also are specifically provided for in CBOE Rule 8.82.

The Exchange asserts that in the interest of efficiency and uniformity, the Exchange now proposes to amend CBOE Rule 8.82 to provide that the members of the MTS Committee should be appointed in a manner consistent with other Exchange committees, specifically, in accordance with CBOE Rule 2.1 (Committees of the Exchange). CBOE Rule 2.1 provides, in part, that the Vice Chairman of the Board of Directors ("Vice Chairman"), with the approval of the Board of Directors, shall appoint the chairmen and members of certain committees provided for in CBOE Rule 2.1, or any other committee established in accordance with the Exchange's Constitution, to serve for terms expiring at the first regular meeting of the Board of Directors in each calendar year. CBOE Rule 2.1 also provides that the Vice Chairman has the authority to remove any member of such committees and to fill any vacancies for the remainder of the pertinent committee term. This rule change proposes to have the appointment of MTS Committee members covered under the provisions of CBOE Rule 2.1.

³ Generally, under CBOE rules, the MTS Committee is assigned the authority to make determinations concerning whether to grant or withdraw the approval to act as a designated primary market maker ("DPM"), among other things. See, specifically, CBOE Rule 8.80 and, generally, CBOE Rules 8.80 through 8.94, which provide the scope of the MTS Committee's authority over DPMs.

⁴ See Articles IV and V (Conduct of Annual Election) of the Exchange's Constitution.

⁵ See CBOE Rule 8.82.

Additionally, other than the MTS Committee, the Nominating Committee and the Board-level committees, the Exchange's rules do not define the composition of the Exchange's committees. Consistent with that approach, CBOE Rule 8.82 would no longer mandate a particular composition for the MTS Committee and, instead, would provide that the MTS Committee's composition shall also be determined in accordance with CBOE Rule 2.1.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular, in that the proposal should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

such longer period to be appropriate and publishes its reasons for so findings or (ii) as to which the Exchange consents, the Commission will:

- (a) by order approve such proposed rule change; or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2005-29 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2005-29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from

the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-29 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).