

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51993; File No. SR-CBOE-2005-29)

July 7, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to the Composition of the CBOE's Modified Trading System Appointments Committee

On April 19, 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”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CBOE Rule 8.82 to provide that the members of the Exchange’s Modified Trading System Appointments Committee (“MTS Committee”)³ will be appointed in accordance with CBOE Rule 2.1 (Committees of the Exchange). The proposed rule change was published for comment in the Federal Register on May 25, 2005.⁴ The Commission received no comments on the proposal.

The Exchange proposes to revise CBOE Rule 8.82 to delete provisions relating to the composition of and election procedures for the MTS Committee and to establish that the selection of MTS Committee members and the determination of the MTS Committee’s

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Securities Exchange Act Release No. 51704 (May 18, 2005), 70 FR 30156.

composition shall be made in accordance with CBOE Rule 2.1.⁵ CBOE Rule 2.1 provides, in part, that the Vice Chairman of the CBOE Board of Directors (“Vice Chairman”), with the approval of the Board of Directors (“Board”), shall appoint the chairmen and members of certain committees provided for in CBOE Rule 2.1, or any other committees established in accordance with the Exchange’s Constitution. 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. Further, CBOE Rule 2.1 requires the Vice Chairman to consider having, where appropriate, a cross section of the membership represented on each committee and also provides that the MTS Committee is subject to the control and supervision of the Board.

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 exchange⁶ and, in particular, the requirements of Section 6(b) of the Act⁷ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act⁸ in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments

⁵ Among other things, CBOE Rule 8.82 specified that members of the MTS Committee were elected to serve on the MTS Committee by the Exchange’s membership at the Exchange’s annual election and that MTS Committee candidates were to be nominated by the Exchange’s Nominating Committee (or by petition). CBOE Rule 8.82 also had requirements regarding the MTS Committee’s composition.

⁶ 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).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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.

The Commission notes that the proposal is designed to provide the Exchange with greater flexibility with respect to the appointment of members of the MTS Committee by no longer mandating the composition of and election procedures for the MTS Committee and, instead, utilizing the process set forth in CBOE Rule 2.1.

In the Commission's view, because CBOE Rule 2.1 provides that the Vice Chairman must consider having, where appropriate, a cross section of the membership represented on each committee; the Board must approve the Vice Chairman's committee appointments, which would now include appointments to the MTS Committee; and ultimately, the MTS Committee is subject to the control and supervision of the Board, the proposal is consistent with the requirements of Section 6(b)(5) of the Act.⁹

⁹ 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2005-29) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

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Assistant Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).