

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52319; File No. SR-CBOE-2005-28)

August 23, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to DPM Obligations for Maintaining Backup Autoquote Systems

On April 1, 2005, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder,² a proposed rule change to amend Rules 8.85(a)(xi) and (xii) to remove the requirement that Designated Primary Market-Makers (“DPMs”) maintain a back-up quoting system for Hybrid and non-Hybrid option classes. The Exchange proposes a corresponding amendment to its Minor Rule Plan to remove references to Rules 8.85(a)(xi) and 8.85(a)(xii). The proposed rule change was published for comment in the Federal Register on July 22, 2005.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act,⁴ applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposal is consistent with Sections 6(b)(5) and 6(b)(7) of the Act,⁶ which require, among other things, that an exchange have rules designed to promote just

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 52044 (July 15, 2005), 70 FR 42397 (“Notice”).

⁴ See 15 U.S.C. 78f.

⁵ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5) and 78f(b)(7).

and equitable principles of trade, protect investors and the public interest, and enhance the effectiveness and fairness of the Exchange's disciplinary procedures. The Commission believes that CBOE's proposed rule changes should help to improve the efficiency of CBOE's market by eliminating unnecessary costs now borne by the Exchange's DPMs relating to the maintenance of back-up quotation systems.

As set forth in the Notice, CBOE Rules 8.85(a)(xi) and (xii) both impose an obligation on DPMs to maintain independent backup autoquote systems that can be employed in the event that a DPM's proprietary autoquote system should fail or be otherwise unavailable. Rule 8.85(a)(xi) governs non-CBOE Hybrid System ("non-Hybrid") classes, while Rule 8.85(a)(xii) governs CBOE Hybrid System ("Hybrid") classes.

With regard to CBOE Rule 8.85(a)(xi), the Commission notes that the Exchange has converted all of its DPM option classes to the CBOE Hybrid System. Thus, because non-Hybrid option classes no longer exist, CBOE Rule 8.85(a)(xi) has no applicability. Its repeal will have no impact on market participants.

As regards CBOE Rule 8.85(a)(xii), which requires DPMs to maintain an independent backup autoquote system that it may employ in the event its proprietary autoquote system fails, the Commission believes that the CBOE has made a reasonable determination that the backup obligation is no longer necessary. The Commission has no basis at this time to disagree with the CBOE's assessment that the recent adoption and implementation of the electronic DPM ("e-DPM") program⁷ on the Exchange should provide a more appropriate and cost effective safeguard against a DPM's inability to generate quotes in such option classes. Pursuant to the

⁷ See Exchange Act Release Nos. 49577 (April 19, 2004), 69 FR 22576 (April 26, 2004) (order approving the process for approving e-DPMs on the Exchange); 50003 (July 12, 2004), 69 FR 25647 (July 19, 2004) (order approving e-DPM trading rules).

Exchange's rules governing the program, CBOE may allocate an option class that is already allocated to a DPM to one or more e-DPMs.⁸ Such e-DPMs provide competing quotations accessible by CBOE market participants.

Thus, the Commission believes that, given the CBOE's current trading environment, the exchange has made a reasonable determination that the requirement to maintain a backup quotation system is unnecessary and unduly burdensome on DPMs. The proposed rule changes appear to be reasonably designed to help to put DPMs on a more equal competitive footing other market participants, including electronic DPMs, which do not have a backup quotation system maintenance requirement. Moreover, the Commission notes that deletion of the backup autoquote rules would not affect a DPM's separate obligation to provide continuous market quotations for each of its allocated classes and respective series.⁹

Finally, the Commission approves CBOE's proposal to remove references to Rules 8.85(a)(xi) and 8.85(a)(xii) in its Minor Rule Violations Plan.¹⁰

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CBOE-2005-28) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland
Deputy Secretary

⁸ See CBOE Rules 8.92 and 8.93.

⁹ See CBOE Rule 8.85(a)(i).

¹⁰ See CBOE Rule 17.50(g)(10).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).