

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52779; File No. SR-CBOE-2004-37)

November 16, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Deletion of Interpretation and Policy .01(e) to CBOE Rule 5.4

On July 1, 2004, the Chicago Board Options Exchange, Incorporated (“Exchange” or “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 delete Interpretation and Policy .01(e) to CBOE Rule 5.4 (“Interpretation .01(e”). The proposal would permit the opening of new option series on an underlying security previously approved for CBOE option transactions when the issuer of the underlying security has failed to timely file reports required by the Act and has not corrected such failure within 30 days after the due date of the report. On September 21, 2005, CBOE amended the proposal to replace the term “national market system security” with the term “NMS stock” in its rules for consistency with Regulation NMS.³ The proposed rule change, as amended, was published for comment in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, which replaced the original filing in its entirety, the Exchange conformed the definition of “NMS security” in CBOE Rules 5.3(a)(1) and Interpretation .01(f) of Rule 5.4 to that found in Regulation NMS. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

the Federal Register on October 12, 2005.⁴ The Commission received no comments on the proposal.

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange.⁵ The Commission believes that the elimination of Interpretation .01(e) is consistent with Section 6(b)(5) of the Act,⁶ which requires that rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments 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 currently, when an issuer of a security has failed to timely file its reports required under the Act, the issuer's security may continue to trade on the primary market for a period of time. Notwithstanding the fact that the underlying security may continue to trade, Interpretation .01(e) prevents CBOE from opening new series of options on the underlying security of the delinquent filer. This treatment potentially denies investors the opportunity to trade at strike prices that more accurately reflect the current market in the underlying security. Moreover, the Commission believes that elimination Interpretation .01(e) could help reduce investor confusion arising from inconsistent treatment of the underlying

⁴ See Securities Exchange Act Release No. 52562 (October 4, 2005), 70 FR 59382.

⁵ The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

security and option. The Commission notes that, pursuant to CBOE rules, the underlying security will not be deemed to meet CBOE's requirements for continued listing if such underlying security is not subject to an effective transaction reporting plan, and other requirements that address the liquidity and pricing of the underlying security.⁷ Finally, the Commission notes that CBOE has stated that it will monitor the listing status of the underlying security and, pursuant to Interpretation and Policy .01(f) to CBOE Rule 5.4, no longer approve an underlying security for the listing of new option series when the issue is delisted from trading. The Commission expects CBOE to diligently execute its oversight responsibilities with respect to the listing status of the underlying security, and, in the event of such a delisting, to promptly take the appropriate actions with respect to any options on such security.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-2004-37), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz
Secretary

⁷ See Interpretation and Policy .01 to CBOE Rule 5.4.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).