

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53175; File No. SR-CBOE-2005-101)

January 25, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Membership Rules

I. Introduction

On November 29, 2005, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), 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 seeking to modify CBOE Rule 3.9, relating to investigation of membership applicants.

The proposed rule change was published in the Federal Register on December 22, 2005.<sup>3</sup> The Commission received no comments on the proposed rule change. On January 23, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the proposed rule change, as amended by Amendment No 1.

II. Description

The Exchange is proposing to amend CBOE Rule 3.9 ("Application Procedures and Approval or Disapproval") subsection (f), which currently requires CBOE's Membership Department to investigate each applicant applying to be a member organization, each associated

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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. 52952 (December 14, 2005), 70 FR 76087.

<sup>4</sup> In Amendment No. 1, the Exchange proposed an additional modification to CBOE Rule 3.9(f). Specifically, the Exchange proposed a change so that, as amended, the proposed rule would permit the Exchange to rely on the results of a fingerprint-based criminal records check of an applicant conducted by the Exchange itself, in addition to a check conducted by another self-regulatory organization ("SRO"), within the prior year. Amendment No. 1 is a technical amendment and therefore not subject to notice and comment.

person required to be approved by the Membership Committee pursuant to CBOE Rule 3.6(b), and each applicant applying to be an individual member (collectively “Membership Applicants”). As part of the current application process, Membership Applicants are required to submit fingerprints to the Exchange,<sup>5</sup> which CBOE then forwards to the Federal Bureau of Investigation.

The Exchange currently requires Membership Applicants to submit new fingerprints to the Exchange for processing, as part of the investigation process pursuant to CBOE Rule 3.9(f), even if the Membership Applicant was recently fingerprinted at the Exchange or another SRO. The proposed rule change would change this requirement to permit the Exchange to accept the results of a fingerprint-based criminal records check of the Membership Applicant conducted by the Exchange or another SRO within the prior year pursuant to that investigation process.

### III. Discussion

After careful review, 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>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

In approving this proposed rule change, the Commission notes that as part of the application process, in addition to a fingerprint-based criminal records check, CBOE requires

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<sup>5</sup> See CBOE Rule 3.7(c).

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

that a Membership Applicant also submit a Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Form U-4 requires disclosure of events that would constitute a statutory disqualification under the Act. Because the Exchange obtains this information as part of the application process, and because CBOE Rule 3.9(d) requires Membership Applicants to promptly update membership application materials if the information provided in the materials becomes inaccurate or incomplete after the date of submission, the Commission believes that it is reasonable for the Exchange to expect that its Membership Department would have access to information that would reveal whether a Membership Applicant became subject to a statutory disqualification subsequent to the date of the results of a fingerprint-based criminal records check conducted either by the Exchange or by another SRO on which CBOE would be relying.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-2005-101) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Nancy M. Morris  
Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).