

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49877; File No. SR-CBOE-2004-05)

June 16, 2004

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 thereto by the Chicago Board Options Exchange, Inc. Relating to the Relocation of an Entire Trading Station's Securities to Another Trading Station

I. Introduction

On January 28, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 Rules 8.84 and 8.95 to transfer the authority to approve the relocation of an entire trading station's securities to another trading station that is operated by the same DPM organization to the MTS Committee from the Allocation Committee. CBOE filed Amendment No. 1 and 2 on March 15, 2004,³ and May 6, 2004,⁴ respectively. The proposed rule change and Amendments Nos. 1 and 2 were published for comment in the Federal Register on May 19, 2004.⁵ CBOE filed Amendment No. 3 on May

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division of Market Regulation ("Division"), Commission, dated March 12, 2004 ("Amendment No. 1").

⁴ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated May 5, 2004 ("Amendment No. 2").

⁵ See Securities Exchange Act Release No. 49687 (May 12, 2004), 69 FR 28959.

19, 2004.⁶ No comments were received on the proposed rule change and Amendments Nos. 1 and 2. This order approves the proposed rule change and Amendments Nos. 1 and 2 on an accelerated basis and issues notice of filing and approves Amendment No. 3 on an accelerated basis.

II. Description of the Proposal

CBOE proposed to amend CBOE Rules 8.84 and 8.95 to transfer the authority to approve the relocation of an entire trading station's securities to another trading station that is operated by the same DPM organization to the MTS Committee from the Allocation Committee.

Specifically, CBOE proposed to add a new interpretation to CBOE Rule 8.84 which states that it shall be the responsibility of the MTS Committee to determine whether to relocate all of the securities traded at a trading station operated by a DPM organization to another trading station operated by the same DPM. Interpretation .01 to CBOE Rule 8.84 also states that in making such a determination, the MTS Committee should evaluate whether the change is in the best interest of the Exchange, and that the Committee may consider any information that it believes will be of assistance to it. Factors to be considered include, but are not limited to, any one or more of the following: performance, operational capacity of the Exchange or the DPM, efficiency, number and experience of personnel of the DPM who will be performing functions related to the trading of the applicable securities, number of securities involved in the relocation, number of market-makers affected by the relocation of the securities, and trading volume of the

⁶ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated May 18, 2004 ("Amendment No. 3"). In Amendment No. 3, CBOE amended CBOE Rule 8.84 to clarify that the MTS Committee may determine whether to relocate an entire trading station's securities to another trading station that is operated by the same DPM, pursuant to a request from a DPM organization or on the Committee's own initiative. CBOE also requested that the Commission approve the proposed rule change on an accelerated basis.

securities.

Under Interpretation .01(b) to CBOE Rule 8.84, before the MTS Committee decides whether to relocate all of a trading station's securities pursuant to Interpretation .01(a) to CBOE Rule 8.85, it must notify the DPM organization and trading crowds that may be affected. Interpretation .01(b) also states that the MTS Committee shall convene one or more informal meetings with the affected DPM and trading crowds to discuss the matter, or provide the interested DPM and trading crowds with the opportunity to submit a written statement to the MTS Committee. Under Interpretation .01(a) to CBOE Rule 8.84, the MTS Committee may forego notice to the interested DPM and trading crowds only if expeditious action is required. Expeditious action may be required during unusual circumstances such as, for example, extreme market volatility. Expeditious action may also occur if there is another situation that would similarly require urgent action.

Finally, DPMs and members of the trading crowd retain the right to appeal, if economically aggrieved by a MTS Committee decision under this proposed rule change. The appeal process is also available if the MTS Committee takes expeditious action.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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-2004-05 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-2004-05. 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 the Exchange. 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-2004-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. 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.⁷ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ 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. Specifically, the Commission believes it is reasonable to transfer the authority to determine the relocation of all of the securities traded at a particular trading station operated by a DPM organization to another trading station operated by the same DPM organization from the Exchange's Allocation Committee to the MTS Committee. The Commission believes that such determinations are properly within the MTS Committee's authority because they may impact the operational performance and market performance of the DPM.

The Commission believes that the factors to be considered by the MTS Committee in making DPM consolidation decisions, set forth in Interpretation .01(a) to CBOE Rule 8.84, are consistent with the Act. The Commission notes that these factors are intended to relate to, and be more descriptive of, the factors that the Allocation Committee considered in making similar decisions. The Commission believes that the proposed rule change gives the MTS Committee the flexibility to consider the appropriate factors for a determination to consolidate a DPM's trading location and alerts the CBOE membership of the factors that are considered important in making such a determination.

The Commission notes that CBOE has established procedural safeguards for its members.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

For example, Interpretation .01(a) to CBOE Rule 8.24 requires that the MTS Committee provide notice to the DPM and trading crowds potentially affected by the relocation of securities, and provide them the opportunity to participate in an informal meeting with the MTS Committee or submit a written statement concerning the matter. The Commission also notes that any person economically aggrieved by a decision made under Interpretation .01 to CBOE Rule 8.84 has the right to a formal hearing, with the assistance of counsel, before CBOE's Appeals Committee. Moreover, decisions of the Appeals Committee may be appealed to the CBOE's Board of Directors.⁹

The Commission notes that CBOE believes that MTS Committee determinations to consolidate DPM trading locations should have a positive impact on the DPM trading those options classes, the trading crowds, and other market participants. In addition, CBOE has represented that CBOE trading crowd members, including market makers, should continue to be able to move freely among the trading crowds to which they are appointed on the CBOE trading floor. Therefore, members of the trading crowd should continue to be able to trade their assigned option classes even if those options classes are moved to another trading station due to the consolidation of a DPM's options classes.¹⁰ Further, the Commission notes that the trading crowd would retain appeal rights under Chapter XIX of the CBOE Rules if they were economically aggrieved by an MTS Committee decision.

The Commission finds good cause for accelerating approval of the proposed rule change

⁹ See Chapter XIX of the CBOE's Rules.

¹⁰ Specifically, CBOE market makers are able to move freely around the trading floor, if the market makers execute at least 75% of their total contract volume in their appointed classes. See Interpretation .03A to CBOE Rule 8.7.

and Amendment Nos. 1, 2, and 3 thereto prior to the thirtieth day after publication in the Federal Register. The Commission notes that the proposed rule change and Amendment Nos. 1 and 2 thereto were noticed for the full comment period and that no comments were received. The Commission also notes that the amendments merely provided additional description and detail to the proposed rule change. The Commission believes that accelerated approval will permit the MTS Committee to begin to consider pending requests to relocate an entire trading station's securities to another trading station that is operated by the same DPM organization in a timelier manner. For these reasons, the Commission finds good cause exists, consistent with Sections 6(b)(5)¹¹ and 19(b)(2) of the Act,¹² to approve the proposed rule change and Amendment Nos. 1, 2, and 3 thereto on an accelerated basis.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

V. Conclusion

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

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-2004-05) and Amendment Nos. 1, 2, and 3 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland
Deputy Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).