

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50327; File No. SR-CBOE-2004-12)

September 7, 2004

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated to Require Members to Use and Maintain a Back-up Autoquote System in Hybrid Classes

On February 23, 2004, 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 adopt CBOE Rule 8.85(a)(xii) which would require CBOE members to use and maintain a back-up autoquote system in Hybrid classes. The proposed rule change was published for comment in the Federal Register on July 30, 2004.³ The Commission received no comments regarding the proposal.

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.⁴ Specifically, the Commission finds that the proposed rule change is consistent with requirements of Section 6(b)(6) of the Act.⁵ The Commission believes that requiring CBOE members to use and maintain a back-up autoquote system in Hybrid classes is reasonable and that including this requirement in the Exchange’s Minor Rule Violation Plan (“MRVP”) will strengthen the ability of the Exchange to carry out its oversight and enforcement responsibilities as a self-regulatory organization.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50055 (July 21, 2004), 69 FR 45860.

⁴ 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).

⁵ 15 U.S.C. 78f(b)(6).

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with CBOE Rule 8.85(a)(xii) and all other rules subject to the imposition of fines under the Exchange's MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that CBOE will continue to conduct surveillance with due diligence and make a determination based on its findings, whether fines of more or less than the recommended amount are appropriate for violations under the MRVP, on a case by case basis, or a violation requires formal disciplinary action.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-CBOE-2004-12) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland
Deputy Secretary

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).