

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50725; File No. SR-CBOE-2004-25)

November 23, 2004

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Relating to Designated Primary Market-Makers Obligations.

On April 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 amend its rules to clarify that CBOE Designated Primary Market Makers (“DPMs”) are required to make competitive markets on the Exchange and to otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the classes they trade. On September 30, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.³

The proposed rule change, as amended, was published for comment in the Federal Register on October 21, 2004.⁴ The Commission received no comments on the amended proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the CBOE’s original 19b-4 filing in its entirety.

⁴ See Securities Exchange Act Release No. 50548 (October 15, 2004), 69 FR 61881.

national securities exchange⁵ and, in particular, the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act⁷ in that it is designed to promote just and equitable principles of trade, 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 the CBOE is amending the language used to describe its DPMs' current obligation under CBOE Rule 8.85(c)(ii) by using specific language that was more recently approved by the Commission to describe a similar obligation applicable to electronic DPMs ("e-DPMs") under CBOE Rule 8.93(vi). The Commission further notes that proposed rule change, as amended, is simply making a clarifying change and will not in any way change the substance of the DPMs' current obligation. The Commission believes that the proposed rule change, as amended, will conform the language used to describe the same current DPM and e-DPM obligations, and therefore finds the proposal to be consistent with the Act.

⁵ In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁸, that the proposed rule change (File No. SR-CBOE-2004-25), as amended, be, and it hereby is, approved.

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

Margaret H. McFarland
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).