

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58414; File No. SR-CBOE-2008-87)

August 22, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Foreign Members

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, notice is hereby given that on August 20, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

CBOE proposes to adopt a new rule regarding foreign members in place of its current rule regarding qualifications of foreign member organizations. The text of the proposed rule change is available on the Exchange's website (<http://www.cboe.org/Legal/>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in

¹ 15 U.S.C. 78s(b)(1).

sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to adopt a new rule regarding foreign members in place of CBOE's current rule regarding qualifications of foreign member organizations. CBOE's current rule regarding qualifications of foreign member organizations is set forth in CBOE Rule 3.4. The new rule regarding foreign members is proposed to be included in Rule 3.4 in place of the current provisions of that Rule.

Under the new rule, a CBOE member² that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Securities and Exchange Commission ("Commission") and the Exchange would be required to: (i) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars; (ii) reimburse the Exchange for any expense incurred in connection with examination of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States; and (iii) ensure the availability of an individual fluent in English knowledgeable in securities and financial matters to assist the representatives of the Exchange during examinations.

² Under Section 1.1(b) of the CBOE Constitution, the term "member" includes both an individual member and a member organization.

The foregoing requirements would take the place of the current provisions of Rule 3.4 relating to qualifications of foreign member organizations.³ The Exchange believes that

³ Current Rule 3.4 provides that an organization that is not organized under the laws of one of the states of the United States must satisfy the following requirements in order to be a member organization: (i) the organization must be a corporation or partnership organized under the laws of a country other than the United States with respect to which an information sharing agreement, memorandum of understanding, or treaty is in effect that provides the Commission with access to information concerning securities trading activity in that country; (ii) the organization must disclose to the Exchange all persons associated with the organization and all parents of the organization, through all tiers of ownership, until the ultimate individual beneficial owners of the organization are disclosed; (iii) the organization must maintain in English and at a location in the United States (A) the books and records of the organization that relate to its business on the Exchange, including, but not limited to, any trading records relating to trading activity on the Exchange and (B) any other books and records of the organization that an organization registered as a broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78o) is required to maintain at a location in the United States; (iv) the organization must maintain its financial records in accordance with United States accounting standards; (v) the organization must agree to permit inspections by the Exchange and the Commission of the foreign operations of the organization related to its securities business; (vi) the organization must waive any applicable secrecy laws and be exempted from any applicable blocking statutes in the domiciliary jurisdiction of the organization; (vii) the organization must provide to the Exchange an opinion of legal counsel of the domiciliary jurisdiction of the organization which certifies that (A) there are no applicable secrecy laws or blocking statutes in that jurisdiction or (B) that the organization has effectively waived any applicable secrecy laws or is exempted from any applicable blocking statutes in that jurisdiction; (viii) any customer of the organization that utilizes the organization to execute orders on the Exchange must have waived any applicable secrecy laws and be exempted from any applicable blocking statutes in the domiciliary jurisdiction of the organization; (ix) the organization must agree to submit to the jurisdiction of the federal courts of the United States and the courts of Illinois and to irrevocably waive, to the fullest extent permitted by law, any objection which the organization may have based on venue or forum non conveniens with respect to any action initiated in such courts; (x) the organization must appoint a process agent in Illinois to receive, on the behalf of the organization, process which may be served in any legal action or proceeding; (xi) the organization must own its Exchange membership(s); (xii) the organization must be registered as a broker or dealer pursuant to Section 15 of the Act (15 U.S.C. 78o); (xiii) the organization must satisfy the foregoing requirements in a manner and form prescribed by the Exchange and must satisfy such additional requirements that the Exchange reasonably deems appropriate; and (xiv) the

it has and will continue to have adequate regulatory jurisdiction over foreign members by virtue of the CBOE rule provisions that are generally applicable to all CBOE members and does not believe that the existing additional requirements in Rule 3.4 for foreign member organizations are necessary for the effective regulation of those organizations.

For example, each CBOE member organization is required under CBOE Rule 3.7(e) to execute a consent to jurisdiction pledging to abide by the Constitution and Rules of the Exchange, as from time to time amended, and by all circulars, notices, directives, or decisions adopted pursuant to or made in accordance with the Constitution and Rules. Similarly, direct owners and executive officers of each member organization are also required pursuant to CBOE Rules 3.6(b) and 3.7(e) to execute such a consent to jurisdiction.

In addition, CBOE Rule 3.6(a) subjects all associated persons of a member organization to the Constitution and Rules of the Exchange. Rule 3.6(a) also requires associated persons to provide information to the Exchange with respect to their relationship and dealings with their associated member organization and securities business and to permit the Exchange to examine their books and records in this regard.

The authority of the Exchange over member organizations and their associated persons is further enlarged by CBOE Rule 17.1, which subjects members and associated persons to the disciplinary jurisdiction of the Exchange. Specifically, pursuant to Rule 17.1, any member organization or person associated with a member organization that is alleged to have violated or aided and abetted a violation of any provision of the Act⁴, the rules and

organization must meet the other qualification requirements for membership under the Constitution and Rules (except that a foreign member organization that is approved to act solely as a lessor is not required to comply with items (iii)(B) and (xii) above).

⁴ 15 U.S.C. 78a *et seq.*

regulations promulgated thereunder, any constitutional provision, bylaw, or rule of the Exchange, or any interpretation thereof or resolution of the CBOE Board of Directors regulating the conduct of business on the Exchange is subject to the disciplinary jurisdiction of the Exchange.

Additionally, if there are issues of concern with respect to a particular foreign applicant for Exchange membership, the Exchange has broad authority in granting or denying Exchange membership and association with an Exchange member. In particular, under CBOE Rule 3.5(b), the Exchange may deny (or may condition) membership or may prevent a person from becoming associated (or may condition an association) with a member for the same reasons that the Commission may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act.⁵ The Exchange may also deny or condition membership or association for various reasons under CBOE Rule 3.5(c), including, among other reasons, if the applicant is unable to satisfactorily demonstrate a capacity to adhere to all applicable Exchange, Commission, Options Clearing Corporation, and Federal Reserve Board policies, rules, and regulations, including those concerning record-keeping, reporting, finance, and trading procedures.

The Exchange believes that the proposed new provisions of Rule 3.4 will further enhance this existing authority by helping to facilitate examinations of foreign members. In particular, the Exchange believes that it and its representatives will be better able to conduct such examinations because foreign members will be required to maintain records in English and U.S. dollars, to have available during such examinations a knowledgeable person who

⁵ 15 U.S.C. 78a *et seq.*

speaks English, and to cover the incremental cost of such examinations beyond what it would cost to conduct an examination within the continental United States.

The Exchange also notes that this approach is consistent with the approach taken in this regard by various other self-regulatory organizations ("SROs") which do not have rule provisions like those set forth in current CBOE Rule 3.4 and which instead have rule provisions which are substantially the same as the new provisions of Rule 3.4 proposed by this rule change.⁶

In this era of increased internationalization of the securities markets when foreign participation in the U.S. securities markets has become more and more prevalent, the Exchange does not believe that its rules should create undue barriers to member participation on the Exchange by foreign organizations. However, the Exchange has found that the existing extensive requirements in Rule 3.4 have tended to either discourage foreign organizations from becoming members of the Exchange or made it more difficult for them to do so. The Exchange believes that the proposed rule change will enhance competition on

⁶ See International Securities Exchange ("ISE") Rule 301(b), Boston Options Exchange ("BOX") Section 2(g), NASD Rule 1090 of the Financial Industry Regulatory Authority ("FINRA") Rules, and Chicago Stock Exchange ("CHX") Rule 1(f). The proposed rule change uses the formulation of these rules utilized by ISE and BOX. The FINRA and CHX rules are equivalent to the ISE and BOX rules in this regard, except that the FINRA and CHX rules have an additional provision which requires a foreign member to utilize, directly or indirectly, the services of a broker-dealer registered with the Commission, a bank, or clearing agency registered with the Commission located in the United States in clearing all transactions involving members of FINRA or CHX, as applicable, except where both parties to a transaction agree otherwise. CBOE is not proposing to include a similar provision in Rule 3.4 because CBOE already has rules that impose a similar requirement, in that all CBOE members are required to clear their CBOE transactions through a CBOE Clearing Member and through The Options Clearing Corporation (which is a clearing agency that is registered with the Commission and that is located in the United States). (See, e.g., CBOE Rules 3.28 and 6.50.)

the Exchange and between SROs by facilitating foreign member participation on the Exchange, which in turn will inure to the benefit of the securities markets, while at the same time maintaining broad regulatory authority over foreign members, consistent with the authority in this regard possessed by other SROs.

In addition to the proposed changes to Rule 3.4, the Exchange is proposing to make conforming changes to CBOE Rule 3.3. Rule 3.3 addresses qualifications of member organizations and its applicability is currently limited to U.S. organizations because current Rule 3.4 separately addresses qualifications of foreign member organizations. Rule 3.3 is proposed to be revised to eliminate all references that limit its current applicability to U.S. organizations. Accordingly, going forward both U.S. and foreign organizations would need to satisfy the qualification requirements under Rule 3.3, and in addition, foreign members would be required to comply with the new requirements of Rule 3.4 as described above.

2. Statutory Basis

In light of the extensive regulatory authority of the Exchange over all Exchange members, that Exchange members are subject to the comprehensive regulation under Exchange rules and federal and state securities laws, and that the proposed rule change will enhance this authority and regulation by helping to facilitate the examination of foreign members, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Sections 6(b)(2) and 6(b)(5) in particular, by facilitating member participation on the Exchange by foreign organizations and by removing impediments to a free and open market, without diminishing the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for thirty days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2008-87 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-87. 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 Room 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and

3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-87, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Acting Secretary

⁹ 17 CFR 200.30-3(a)(12).