

## General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 5th day of November, 2004.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50630; File No. SR-CBOE-2004-62]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 9.3A Relating to Continuing Education for Registered Persons

November 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 6, 2004, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The CBOE has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to amend CBOE Rule 9.3A relating to Continuing Education for Registered Persons. The proposed rule change would eliminate all exemptions from the requirement to complete the Regulatory Element of the Continuing Education Program. Below is the text of the proposed rule change. Proposed new language is in *italics*. Deletions are in [brackets].

#### Chapter IX

#### Rule 9.3A. Continuing Education for Registered Persons

(a) Regulatory Element—No member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of Section (a) of this Rule.

Each registered person shall complete the Regulatory Element of the continuing education program beginning with the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within one hundred twenty days after the person’s registration anniversary date. A person’s initial registration date, *also known as the “base date”*, shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the Rule.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

[(1) Persons who have been continuously registered for more than ten years as of the effective date of this Rule are exempt from the requirements of this rule relative to participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subsection (a)(3)(i)–(ii) of this Rule. However, persons delegated supervisory responsibility or authority pursuant to Rule 9.8 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than 10 years as of the effective date of this rule and provided that such supervisory person has not been subject to any disciplinary action under subsection (a)(3)(i)–(ii) of this rule. In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsection (a)(3)(i)–(ii), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person’s initial registration anniversary date.]

(1) [(2)] Failure to complete—Unless otherwise determined by the Exchange, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

(2) [(3) Re-entry into program] Disciplinary Actions—Unless otherwise determined by the Exchange, a registered person will be required to [re-enter] *re-take* the Regulatory Element and satisfy all of its requirements in the event such person:

(i) Becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;

(ii) Becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental

agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(ii) Is ordered as a sanction in a disciplinary action to [re-enter] *re-take* the [continuing education program] *Regulatory Element* by any securities governmental agency or securities self-regulatory organization.

[Re-entry into the program] *A re-taking of the Regulatory Element* shall commence with [initial] participation within one hundred twenty days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the disciplinary action becoming final, in the case of (ii) or (iii) above. *The date that the disciplinary action becomes final will be deemed the person's new base date for purposes of this Rule.*

(b)-(c) Unchanged.

\* \* \* Interpretations and Policies:

.01-.04 Unchanged.

[.05 the effective date of this rule, for purposes of determining whether a registered person is exempt from participation in the Regulatory Element is July 1, 1998.]

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

In its filing with the Commission, the Exchange include 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 sections A, B, and C below, of the most significant parts of such statements.

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

#### 1. Purpose<sup>5</sup>

CBOE Rule 9.3A specifies the Continuing Education ("CE") requirement for registered persons subsequent to their initial qualification and registration with the CBOE. The requirements consist of a Regulatory

Element and a Firm Element.<sup>6</sup> The Regulatory Element is a computer-based education program administered by National Association of Securities Dealers, Inc. ("NASD") to help ensure that registered persons are kept up to date on regulatory, compliance and sales practice matters in the industry.<sup>7</sup> Unless exempt, each registered person is required to complete the Regulatory Element initially within 120 days after the person's second anniversary date and, thereafter, within 120 days after every third registration anniversary date.<sup>8</sup> There are three Regulatory Element programs: The S201 Supervisor Program for registered principals and supervisors; The S106 Series 6 Program for Series 6 registered persons; and the S101 General Program for Series 7 and all other registrations.

Approximately 135,000 registered persons currently are exempt from the Regulatory Element. These include registered persons who, when the CE Program was adopted in 1995, had been registered for at least ten years and who did not have a significant disciplinary action<sup>9</sup> in their CRD record from the previous ten years ("grandfathered persons"). These also include those persons who had "graduated" from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when CBOE Rule 9.3A was amended and the graduation provision eliminated and did not have a significant disciplinary action in their CRD record for the previous ten years.<sup>10</sup>

<sup>6</sup> The Firm Element of the CE Program applies to any person registered with a CBOE member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons (collectively called "covered registered persons"). The requirement stipulates that each member firm must maintain a continuing education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

<sup>7</sup> CBOE Rule 9.3A permits a member firm to deliver the Regulatory Element to registered persons on firm premises ("In-Firm Delivery") as an option to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, CBOE Rule 9.3A requires that persons serving as proctors for the purposes of In-Firm Delivery must be registered.

<sup>8</sup> This is the current Regulatory Element schedule, as amended in 1998.

<sup>9</sup> For purposes of CBOE Rule 9.3A, a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of \$5,000 or more, or being subject to an order from a securities regulator to re-enter the Regulatory Element. See CBOE Rule 9.3A(a)(3).

<sup>10</sup> When CBOE Rule 9.3A was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education ("Council")<sup>11</sup> discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view that there is great value in exposing all industry participants to the benefits of the Regulatory Element, in part because of the significant regulatory issues that have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as new products and trading strategies. Exempt persons presently do not have the benefit of this material.

In addition, the Council will introduce a new content module to the Regulatory Element programs that will specifically address ethics and will require participants to recognize ethical issues in given situations. Participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidelines from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

Consistent with the Council's recommendation, the proposed rule change would eliminate the current Regulatory Element exemptions. The other SRO members of the Council also support eliminating the exemptions and

on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was "graduated" from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

<sup>11</sup> As of the date of this rule filing, the Council consists of 17 individuals, six representing self-regulatory organizations ("SROs") (the American Stock Exchange LLC, CBOE, the Municipal Securities Rulemaking Board, the NASD, the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange) and 11 representing the industry. The Council was organized in 1995 to facilitate cooperative industry/regulatory coordination of the CE Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping to develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, developing and updating information about the program for industry-wide dissemination, and maintaining the program on a revenue neutral basis while assuring adequate financial reserves.

<sup>5</sup> The CBOE requested that the Division of Market Regulation ("Division") staff make minor modifications to language in the purpose section. Telephone discussions between Jamie Galvan, Attorney, CBOE and Mia C. Zur, Attorney, Division, Commission (October 19 and 26, and November 2, 2004).

are pursuing amendments to their respective rules.

CBOE will announce the effective date of the proposed rule change in a Regulatory Circular to be published no later than 30 days following the proposed rule becoming operative. The effective date will be (1) not more than 30 days following the implementation of necessary changes to Web Central Registration Depository (Web CRD®) administered by the NASD, or (2) April 4, 2005, whichever date is the latest to occur.

Following the effective date of the proposed rule change, implementation will be based on the application of the existing requirements of the Regulatory Element to all registered persons. The way in which CRD applies these requirements is as follows. CRD establishes a “base date” for each registered person and calculates anniversaries from that date. Usually, the base date is the person’s initial securities registration. However, the base date may be revised to be the effective date of a significant disciplinary action in accordance with

CBOE Rule 9.3A or the date on which a formerly registered person re-qualifies for association with a CBOE member by qualification exam. Using the base date, CRD creates a Regulatory Element requirement on the second anniversary of the base date and then every three years thereafter. Registered persons formerly exempt from the Regulatory Element requirement must satisfy this requirement that occurs on an anniversary on or after the effective date of the proposed rule change (see examples in the Table below).

Registered person	Initial registration date	First regulatory element requirement of a registered person formerly exempt from the regulatory element (assuming an effective date of April 4, 2005)
A .....	12/4/85	4/4/05
B .....	7/1/83	7/1/06
C .....	8/1/84	8/1/07
D .....	4/3/85	4/3/08

It is noted that a person’s base date may be revised to be the effective date of a significant disciplinary action in accordance with proposed CBOE Rule 9.3A(2).<sup>13</sup> Proposed CBOE Rule 9.3A(2) has been amended to clarify that a person subject to a significant disciplinary action would be required to “re-take” rather than “re-enter” the Regulatory Element.<sup>14</sup> A person’s base date may also be revised to be the date on which a formerly registered person re-qualifies for association with a member or member organization.

2. Statutory Basis

CBOE believes that the proposed rule is consistent with the provisions of Section 6(b) of the Act, in general and furthers, the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, which requires, among other things, that CBOE’s rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. CBOE believes that the proposed rule change is designed to accomplish these ends by ensuring that all registered

persons are kept up to date on industry rules, regulations, and practices.

*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 not necessary or appropriate in furtherance of the 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**

The CBOE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup> Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the

public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup> This proposed rule change will not become operative until 30 days after the date of filing with the Commission. Furthermore, the Commission notes that CBOE designates the effective date of the proposed rule change to be the latest to occur of: (1) Not more than 30 days following the implementation of necessary changes to Web Central Registration Depository (Web CRD) administered by the NASD, or (2) April 4, 2005. At any time within 60 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 of the purposes of the Act.<sup>20</sup>

**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:

<sup>12</sup> A registered person with an initial registration date of April 4, 1985 will have a Regulatory Element anniversary date on April 4 of 1987, 1990, 1993, 1996, 1999, 2002 and 2005.

<sup>13</sup> CBOE Rule 9.3A(3) is proposed to be renumbered as CBOE Rule 9.3A(2).

<sup>14</sup> The SEC notes that this requirement would apply to all registered persons that are subject of a significant disciplinary action, and not only to currently exempt persons.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange had satisfied the pre-filing five-day notice requirement.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> See Section 19b(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-62 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-2004-62. 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. Copies of the filing also will be available for inspection and copying at the principal offices of the CBOE. 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-2004-62 and should be submitted on or before December 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 04-25066 Filed 11-9-04; 8:45 am]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50628; File No. SR-CHX-2004-35]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating To Transfer of CHX Memberships**

November 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 26, 2004, the Chicago Stock Exchange, Inc. ("CHX" or "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 the Exchange. On October 28, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The CHX filed the proposed rule change, as amended, pursuant to Section 19(b)(3)(A)(i) of the Act,<sup>4</sup> and Rule 19b-4(f)(1) thereunder,<sup>5</sup> as constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The proposed rule change, which would add Interpretation and Policy .04 to CHX Article I, Rule 10, "Transfers of Memberships," would effectively prohibit the transfer of CHX memberships to certain newly approved lessors. The text of the proposed rule change appears below. Proposed new language is *italicized*.

\* \* \* \* \*

**ARTICLE I**

**Membership**

**Transfers of Memberships**

Rule 10. No change.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Commission, dated October 27, 2004 ("Amendment No. 1"). In Amendment No. 1, CHX revised the text of the proposed rule to indicate that the rule is effective as of October 26, 2004.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>5</sup> 17 CFR 240.19b-4(f)(1).

Interpretations and Policies:

.01-.03 No change.

.04 *No approval of new approved lessors. Effective October 26, 2004, the Exchange will not approve the transfer of a membership to a person or firm who seeks to become an approved lessor, but who is not already the owner of a CHX membership, unless that person or firm qualifies as an accredited investor. This policy will end if and when the Exchange determines that it will not seek approval of the demutualization transaction.*

\* \* \* \* \*

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

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

On August 5, 2004, the Exchange's Board of Governors voted unanimously to present a demutualization plan to the Exchange's members for approval.<sup>6</sup> The proposed transaction involves the private offering of securities using the safe harbor provided by Rule 506 of Regulation D under the Securities Act of 1933.<sup>7</sup> Under Rule 506, an offering of securities is not a public offering if there are no more than, or if the issuer reasonably believes that there are no more than, 35 "purchasers" of

<sup>6</sup> As with other similar demutualization transactions previously approved by the Commission, the Exchange's proposed demutualization transaction contemplates a change in the Exchange's organizational structure. In this proposed demutualization transaction, the CHX will change from a not-for-profit, non-stock corporation owned by its members to a wholly-owned subsidiary of a holding company, CHX Holdings, Inc., which is to be organized as a for-profit, stock corporation owned by its stockholders. The members of CHX at the time of the proposed demutualization transaction will receive shares of common stock of the new holding company in exchange for their CHX memberships, and thus will become the stockholders of the new holding company. Members who are qualified to trade on the Exchange will receive trading permits that give them continued access to the Exchange's trading facilities.

<sup>7</sup> 17 CFR 230.506.

<sup>21</sup> 17 CFR 200.30-3(a)(12).