

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59104; File No. SR-CBOE-2008-117)

December 15, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to Amend Exchange Rule 4.21 Relating to Third Party Deposits

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 December 2, 2008, Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend CBOE Rule 4.21 – Third Party Deposits Prohibited, to add an interpretation that includes certain permissive deposits. The text of the proposed rule change is available on the Exchange's website (<http://www.cboe.com/Legal>), at the Exchange's Office of the Secretary, and at the Commission.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

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

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

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

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

1. Purpose

The proposed amendment to Exchange Rule 4.21 would expand the permissive deposits to checks or funds transfers for deposit to a broker-dealer's account (i) that constitute an award or settlement paid as the result of the resolution of litigation or arbitration which arose in connection with the broker-dealer's securities or futures business; (ii) that are drawn on an account of the government of the United States; or (iii) are drawn on the account of another broker-dealer for satisfaction of the resolution of transaction disputes. This rule filing has been undertaken as a result of recommendations by the Exchange's Member Firm community.

The rule was intended to prohibit member organizations that are engaged in the business of clearing and carrying the accounts of options market-makers ("Clearing Firm") from accepting for deposit into an account cleared or carried by the Clearing Firm a check or funds transfer drawn on the account of a third party. Pursuant to Exchange Rule 4.21, Clearing Firms are prohibited (with certain exceptions) from accepting a check or funds transfer if the name on the account from which the funds are drawn is different (i.e., "third party") from the name on the account cleared or carried by the Clearing Firm. In addition to checks or funds transfers from third parties, the rule also prohibits (with certain exceptions) Clearing Firms from accepting deposits or transfers of securities in the name of third parties.

The Exchange believes that the proposed exceptions do not present any concerns or business risks to the clearing firm that the original rule was intended to address. While Clearing Firms make a reasonable effort to confirm that funds deposited via a third party's check are the

property of the market-maker or market-making entity, and the transaction exhibits no obvious improprieties, repercussions can arise later. However, the exceptions set forth in the proposed Interpretation and Policy .03, are such that demonstrate a legal entitlement to a broker-dealer to receive the check or fund transfer. For example, a floor broker that is registered as a broker-dealer may be required to reimburse another broker-dealer as a result of a trading error. This proposed rule amendment would enable a broker-dealer to deposit these funds directly into the broker-dealer's account at the clearing firm.

Finally, while each Clearing Firm could make a business decision to refuse to accept third party checks, funds transfers and securities, the Exchange continues to believe that this rule establishes a uniform, safe practice.

## 2. Statutory Basis

Exchange Rule 4.21 is intended to promote a greater level of financial safety and soundness across Clearing Firms. The proposed amendment will allow clearing firms some flexibility in complying with these requirements to facilitate routine business transactions. The Exchange believes that the proposed rule changes will strengthen its ability to carry out its oversight responsibilities as a self-regulatory organization and reinforce its surveillance and enforcement functions. The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup>, in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>4</sup>, in particular, in that it would promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.

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

<sup>4</sup> 15 U.S.C. 78f(b)(6).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change

should be disapproved.

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-117 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-2008-117. 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 the filing will also 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-2008-117 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.<sup>5</sup>

Florence E. Harmon  
Acting Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).