

## **Rule 9**

### **Conducting Business with the Public** [CONDUCTING BUSINESS WITH THE PUBLIC]

#### **Section 1. Conducting Business with the Public**

##### **Register with the Corporation [Exchange]**

Rule 9.1(a). Each office of an OTP Firm and OTP Holder [member or member firm] shall be registered with the Exchange.

##### **Joint Quarters**

Rule 9.1(b). OTP Holders and OTP Firms [Members and member firms] may not occupy joint quarters with anyone other than another OTP Holder or OTP Firm [member or member firm] without the prior and continuing approval of the Exchange.

##### **Office Supervision**

Rule 9.1(c)(1). Each office of an OTP Firm or OTP Holder [member firm] shall be under the supervision and control of such OTP Firm or OTP Holder [member or member firm] to assure compliance with applicable securities laws and regulations and rules of the Exchange.

(2) The OTP Firms and OTP Holders [members] and allied persons [members] of each OTP Firm and OTP Holder [member firm] shall designate from among their group a person or persons to assume authority and responsibility for supervision of the firm's activities and establishment and maintenance of appropriate procedures and follow-up and review to determine that such control and supervision is maintained.

Rule 9.1(d). OTP Holders [Members] and OTP Firms [member firms] shall at all times have responsibility for the proper supervision and control of their registered employees and as provided in Rule 9.1(c) shall designate a principal of the firm to be responsible for the execution of such supervisory procedures.

##### **Guarantees**

Rule 9.1(e)(1). No registered employee shall guarantee the payment of the debit balance in a customer's account to his employer or to any other creditor carrying such account without the prior consent of the Exchange.

(2) No registered employee shall represent to any customer that he will personally guarantee the account of such customer.

(3) No registered employee shall guarantee any customer against losses in his account, or in any way represent to any customer that he or his employer will guarantee the customer against such losses.

### **Sharing Profits—Losses**

Rule 9.1(f). No registered employee shall directly or indirectly take or receive a share in the profits of any customer's account or share in any losses sustained in any such account.

### **Compensation Rebate**

Rule 9.1(g). No registered employee shall directly or indirectly, rebate to any person, firm or corporation any part of the compensation he may receive as a registered employee; nor shall he pay such compensation or any part thereof, directly or indirectly, to any person, firm, or corporation, as a bonus, commission, fee or other consideration, for business sought or produced for him or any OTP Holder [member] of the Exchange or OTP F[f]irm registered thereon.

### **OTP Firm and OTP Holder [member] Compensation Only**

Rule 9.1(h). No registered employee shall, directly or indirectly, take, accept or receive, from any person, firm, corporation or association, other than the OTP Holder [member] or OTP Firm [member firm] with whom he is registered, compensation of any nature, as a bonus, commission fee, gratuity or other consideration, in connection with any securities transactions, unless the provisions of Rule 2.23(b) [4.3(b)] have been previously complied with.

### **Diligence As To Accounts**

Rule 9.2(a). Every OTP Firm and OTP Holder [member and member firm], through a general partner, a principal executive officer or a designated authorized person shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such OTP Firm or OTP Holder [member or member firm] and every person holding power of attorney over any account accepted or carried by such OTP Firm or OTP Holder [member or member firm].

### **Account Supervision**

Rule 9.2(b). Every OTP Firm and OTP Holder [member and member firm] shall supervise diligently all accounts accepted or carried by such firm and shall exercise diligence in supervising the business practices of its registered persons and otherwise licensed persons. An OTP Firm or OTP Holder [member or member firm] shall adopt appropriate procedures for the opening and the maintaining of accounts, including the

maintaining of records prescribed by the Bylaws [Constitution] and Rules of the Exchange and by the rules and regulations of the Securities and Exchange Commission, which shall include:

- (1) Maintaining adequate records to provide for the supervision of accounts;
- (2) Approval of all new accounts by an individual designated for such purpose;
- (3) Approving all transactions and correspondence with or for any account of the registered employee to be evidenced in writing as a permanent record of the firm;
- (4) Reviewing accounts periodically for any irregularities or abuses;
- (5) Following up and reviewing the activities of all offices, including at least an annual inspection of each office of the firm.

### **Customer Records**

Rule 9.2(c). [The] OTP Firms and OTP Holders [member or member firm] shall keep and preserve records concerning all accounts of customers in such form and substance as to disclose at least the following information:

- (1) Name and address of customer;
- (2) If customer is a natural person:
  - (A) [(a)] Occupation of customer and name of employer,
  - (B) [(b)] Age of customer (or approximate age),
  - (C) [(c)] Citizenship of customer;
- (3) Taxpayer ID Number;
- (4) Signature of registered employee introducing the customer;
- (5) Signature of a general partner, a principal executive officer or an authorized person who approved the opening of the account prior to or promptly after the completion of any transaction for the account of or with a customer; provided, however, that in the case of branch offices, the opening of an account for a customer may be approved by the manager of such branch office but the action of such branch office manager shall within a reasonable time be approved by a general partner, a principal executive officer or an authorized person designated as having such authority by the general partner or by the principal executive officer who has the overall authority and responsibility for account supervision and control. The general partner, principal executive officer or authorized person approving the opening of the account shall, prior to giving his approval, be personally informed as to the essential facts relative to the customer and to the nature of and the investment objectives of the proposed account and shall indicate his approval in writing.

*Commentary:*

.01 In the case of a margin account carried by an OTP Firm or OTP Holder [member firm] for a non-OTP [member] corporation, definite knowledge should be had to the effect that the non-OTP [member] corporation has the right under its charter and by-laws to engage in margin transactions for its own account and that the persons from whom orders and instructions are accepted have been duly authorized by the corporation to act on its behalf. It is advisable in each such case for the carrying firm to have in its possession a copy of the corporate Charter, By-laws and authorizations. Where it is not possible to obtain such documents, an [member or] allied person [member in] of the OTP Firm or OTP Holder [member firm] carrying the account should prepare and sign a memorandum for its files indicating the basis upon which he believes that the corporation may properly engage in margin transactions and that the persons acting for the corporation have been duly authorized to do so.

In the case of a cash account carried for a non-OTP [member] corporation, the carrying OTP Firm or an OTP Holder [member firm] should assure itself through a general partner or an officer who is a holder of voting stock that persons entering orders and issuing instructions with respect to the account do so upon the proper authority.

.02 When an agency account is carried by an OTP Firm or OTP Holder [member firm] its files should contain the name of the principal for whom the agent is acting and written evidence of the agent's authority.

.03 When Estate and Trustee accounts are involved an OTP Firm or OTP Holder [member firm] should obtain counsel's advice as to the documents which should be obtained.

### **Employee Accounts**

Rule 9.3(a). No OTP Holder [member] or OTP Firm [member firm] shall, without the prior consent of the employer, make:

(1) [(a)] A cash or margin transaction or carry a margin account in securities or in commodities in which an employee of the Exchange, or of any OTP Holder [member] or OTP Firm [member firm], is directly or indirectly interested. Duplicate reports and statements shall be sent promptly to the employer.

(2) (b) A margin transaction or carry a margin account in securities or in commodities in which an employee of a bank, trust company, savings institution, insurance company or any individual or firm engaged in the business of dealing in securities, is directly or indirectly interested.

This rule applies to all employees of insurance companies regardless of whether they are compensated on a salary or commission basis. However, it is not considered applicable to independent insurance agents.

A person who is clearly designated by the Charter or By-Laws of a bank, trust company, insurance company, etc., as an officer of such institution is not considered an “employee” for the purpose of this Rule.

[¶5793]                    **OTP Firm, OTP Holder [member] and Allied Person**  
**[Member] Accounts**

Rule 9.3(b). No OTP Firm or OTP Holder [member or member firm] shall carry an account for an OTP Holder [member] or allied person [member] of another OTP Firm [member firm] without the prior written consent of another person who is an OTP Firm or OTP Holder [member] or allied person [member] of such other firm.

Duplicate reports and statements shall be sent to such general partner or an officer who is a holder of voting stock designated in such consent unless their submission is waived in writing and a permanent record of such waiver is retained by both the carrying firm and the consenting firm.

**Proxies Voting**

Rule 9.4. No OTP Holder [member] or OTP Firm [member firm] shall sign or give a proxy to vote any stock registered in the name or under control of such OTP Holder [member] or OTP Firm [member firm] unless (a) the OTP Holder [member] or OTP Firm [member firm] is the actual owner thereof, (b) pursuant to the written instructions of such actual owner, or (c) pursuant to the rules of another national securities exchange to which he or his firm is responsible.

**Solicitation Expense**

Rule 9.5. Any expense incident to the securing of proxy instructions shall be charged by the OTP Holder [member] or OTP Firm [member firm] to the party or parties requesting their solicitation.

**Discretion as to Customers' Accounts**

Rule 9.6(a). No OTP Holder [member] or OTP Firm [member firm] shall permit any person employed by such OTP Holder [member] or OTP Firm [member firm] or by any other OTP Holder [member] or OTP Firm [member firm] to exercise discretion in the handling of a transaction for a customer of such OTP Holder [member] or OTP Firm [member firm], and no OTP Holder [member] or OTP Firm [member firm] or any participant therein shall delegate to any such employee any discretionary power vested by a customer in such OTP Holder [member] or OTP Firm [member firm] unless in either case the prior written authorization of the customer has been received; and if such discretionary authority runs, directly or by redelegation, to an employee of another OTP Holder [member] or OTP Firm [member firm], the carrying OTP Firm [member firm]

must obtain the prior written consent of the employer of the individual authorized to exercise discretion. An OTP Holder [member] or allied person [member] of the carrying OTP Firm [member firm] shall approve and initial each discretionary order entered by an employee of such OTP Firm [member firm] or of another OTP Firm [member firm] on the day the order is entered. The provisions of this Rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

### **Records of Discretionary Accounts**

Rule 9.6(b). [The] OTP Firms and OTP Holders [member or member firm] shall keep and preserve records of all customer discretionary accounts pursuant to the provisions of this rule which shall include the signature of the individual who may exercise discretion in handling the account. All such accounts shall be reviewed by a general partner or principal executive officer at frequent intervals.

### **Marking Discretionary Orders**

Rule 9.6(c). Every OTP Firm and OTP Holder [member organization] shall identify each discretionary order by appropriately marking each discretionary order accordingly.

### **Pledging Customer Securities**

Rule 9.7(a). An agreement between an OTP Firm or OTP Holder [member or member firm] and a customer authorizing the OTP Firm or OTP Holder [member or member firm] to pledge securities carried for the account of a customer or to lend such securities does not justify pledging or loaning more of such securities than is fair and reasonable in view of the indebtedness of said customer to said OTP Firm or OTP Holder [member or member firm].

### **Use of Customer Securities**

Rule 9.7(b). The improper use of customer fully-paid and excess margin securities is inconsistent with just and equitable principles of trade, and no form of general agreement between an OTP Firm or OTP Holder [member or member firm] and a customer shall warrant the use or lending of such securities by the OTP Firm or OTP Holder [member or member firm].

### **Customer Protection—Reserves and Custody of Securities**

Rule 9.7(c). An OTP Firm or OTP Holder [member or member firm] shall obtain custody and control of securities and maintain reserves as prescribed by Rule 15c3-3 promulgated under the Securities Exchange Act of 1934.

### **Agreements for Use of Customer Securities**

Rule 9.7(d). No OTP Firm or OTP Holder [member or member firm] shall lend, either to itself as a broker-dealer or to others, securities which are held on margin for a customer and which are eligible to be pledged or loaned, unless such OTP Firm or OTP Holder [member or member firm] shall first have obtained a separate written authorization from such customer permitting the loaning of such securities by the OTP Firm or OTP Holder [member or member firm].

### **Business Connections**

Rule 9.8. No OTP Firm or OTP Holder [member] shall be directly or indirectly interested in or associated in business with, or have his office directly or indirectly connected by public or private wire or other method or contrivance with, or transact any business directly or indirectly with or for

- (a) Any bucket shop; or
- (b) Any organization, firm or individual making a practice of dealing in market quotations; or
- (c) Any organization, firm or individual engaged in purchasing or selling securities for customers making a practice of taking the side of the market opposite to the side taken by customers.

### **Margin Agreements**

Rule 9.9. No OTP Firm or OTP Holder [member or member firm] shall hypothecate or re-hypothecate customer securities unless such OTP Firm or OTP Holder [member or member firm] has obtained from its customer an executed margin agreement in a form satisfactory to the Exchange.

### **Assuming Losses**

Rule 9.10. No OTP Firm or OTP Holder [member] shall assume for his own account or for the account of his firm, a contract made for a customer after a loss to the customer has been established or ascertained, unless the contract was made by mistake or unless approval of the Exchange has first been obtained.

### **Confirmations**

Rule 9.11. No OTP Firm or OTP Holder [member firm] shall address confirmations, statements or other communications to a non-OTP [member] customer in care of a person holding power of attorney over the customers' account unless either (a) the customer has instructed the OTP Firm or OTP Holder [member firm] in writing to send such confirmations, statements or other communications in care of such person, or (b) duplicate copies are sent to the customer at some other address designated in writing by him, or at the address of any OTP Firm or OTP Holder [member firm], or in care of a partner or employee of any firm.

Upon written request, the Exchange may waive these requirements.

### **COD Orders—Partial Delivery**

Rule 9.12(a). No OTP Firm or OTP Holder [member organization] shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless all of the following procedures are complied with:

(1) The OTP Firm or OTP Holder [member or member organization] shall have received from the customer prior to or at the time of accepting the order, the name and address of the agent and the name and account number of the customer on file with the agent;

(2) Each order accepted from the customer pursuant to such an arrangement has noted thereon the fact that it is a payment on delivery (POD) or collect on delivery (COD) transaction;

(3) The OTP Firm or OTP Holder [member organization] delivers to the customer a confirmation, or all relevant data customarily contained in a confirmation with respect to the execution of the order, in whole or in part, not later than the close of business on the next business day after any such execution; and

(4) The OTP Firm or OTP Holder [member organization] has obtained an agreement from the customer that the customer will furnish his agent instructions with respect to the receipt or delivery of the securities involved in the transaction promptly upon receipt by the customer of each confirmation, or the relevant data as to each execution, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and that in any event the customer will assure that such instructions are delivered to his agent no later than:

(A) In the case of a purchase by the customer where the agent is to receive the securities against payment (COD), the close of business on the second business day after the date of execution of the trade as to which the particular confirmation relates; or



(B) In the case of a sale by the customer where the agent is to deliver the securities against payment (POD), the close of business on the first business day after the date of execution of the trade as to which the particular confirmation relates.

(5) The facilities of a Clearing Agency must be utilized for the book-entry settlement of all Depository Eligible Transactions except for transactions that are to be settled outside the United States. The facilities of either a Clearing Agency or a Qualified Vendor must be utilized for the electronic confirmation and affirmation of all Depository Eligible Transactions.

(A) For the purpose of this rule "securities depository" means a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act.

(B) For the purpose of this rule, "depository eligible transactions" means transactions in those securities for which confirmation, affirmation, and book entry settlement can be performed through the facilities of a securities depository as defined in Rule 9.12(a)(5)(i).

(C) For the purpose of this rule "Clearing Agency" means a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act or that has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation/affirmation services.

(D) "Qualified Vendor" means a vendor of electronic confirmation and affirmation services that:

(i) will, for each transaction subject to this rule: (a) deliver a trade record to a Clearing Agency in the Clearing Agency's format; (b) obtain a control number for the trade record from the Clearing Agency; (c) cross-reference the control number to the confirmation and subsequent affirmation of the trade; and (d) include the control number when delivering the affirmation of the trade to the Clearing Agency;

(ii) certifies to its customers: (a) with respect to its electronic trade confirmation/affirmation system, that it has a capacity requirements, evaluation, and monitoring processes that allow the vendor to formulate current and anticipated estimated capacity requirements; (b) that its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data

that it reasonably anticipates to be entered into its electronic trade confirmation/affirmation service during the upcoming year; (c) that its electronic trade confirmation/affirmation system has formal contingency procedures, that the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and that the contingency protocols are reviewed and updated on a regular basis; (d) that its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures, and its procedures designed to protect against security breaches are followed; and (e) that its current assets exceed its current liabilities by at least five hundred thousand dollars;

(iii) has submitted and will continue to submit on an annual basis, an Auditor's Report to the Exchange and to the Commission Staff which is not deemed unacceptable by the Commission Staff. An Auditor's Report will be deemed unacceptable if it contains any findings of material weakness;

(iv) notifies the Exchange and the Commission Staff immediately in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation systems including, without limitation, changes that: (a) affect or potentially affect the capacity or security of its electronic trade confirmation/affirmation system; (b) rely on new or substantially different technology; or (c) provide a new service to the Qualified Vendors' electronic trade confirmation/ affirmation system; and

(v) immediately notify the Exchange and Commission Staff, in writing, if it intends to cease providing services;

(vi) provide the Exchange with copies of any submissions to the Commission staff made pursuant to Sections (a)(5)(D)(ii), (iii), (iv) or (v) of this Rule within ten business days;

(vii) supplies supplemental information regarding their electronic trade confirmation/affirmation services as requested by the Exchange or the Commission Staff.

(E) "Auditor's Report" means a written report that is prepared by competent, independent, external audit personnel in accordance with the standards of the American Institute of Certified Public Accountants and the Information Systems Audit and Control Association and that (i) verifies the certifications contained in subsection (a)(5)(D)(ii) above; (ii) contains a risk analysis of all aspects of the entity's information technology systems

including, without limitation, computer operations, telecommunications, data security, systems development, capacity planning and testing, and contingency planning and testing; and (iii) contains the written response of the entity's management to the information provided pursuant to (i) and (ii) above.

(b) The following transactions shall be exempt from the provisions of paragraph (a)(5) of this rule:

- (1) Transactions that are to be settled outside of the United States;
- (2) Transactions wherein both an OTP Firm or OTP Holder [member organization] and its agent are not participants in a securities depository;
- (3) Transactions wherein both a customer and its agent are not participants in a securities depository; and

[(c) Rule 9.12(a)(5), shall become effective January 1, 1983.]

### **Long Sales**

Rule 9.13(a). For the purposes of effecting delivery within the time period required under regular settlement procedures:

(1) Any sale of a security for a customer which is designated as a “long” sale may be effected only if:

(A) [A.] The customer is “long,” in good deliverable form, the security to be sold on the books on the selling OTP Firm or OTP Holder [member organization], or

(B) [B.] The selling OTP Firm or OTP Holder [member organization] notes on the order ticket that

(i) [(1)] it has received from the customer assurance that the security to be sold is placed or deposited, in good deliverable form, in such a manner as to be obtainable only by the customer by physical means other than the giving of instructions, and that the customer may be bought in with respect to the security within a time period which is reasonable in view of the circumstances, or

(ii) [(2)] such security is on deposit, in good deliverable form, with a member of a registered securities exchange, a member of the NASD, any broker-dealer registered with the Securities and Exchange Commission or any organization subject to state or federal banking regulations and that instructions have been or are being forwarded to such depository to deliver such security against payment, or

(2) [C.] the selling firm has available such security to lend to or has arranged to borrow such security for the customer, or

(3) [D.] the customer presents to the selling OTP Firm or OTP Holder [member organization], with proper instructions, a security convertible into or exchangeable for, or an option, warrant or right which entitles him to purchase, together with the necessary funds, prior to settlement date, the security to be sold.

### **Account Designation**

Rule 9.14. Before any order for a customer of an OTP Firm or OTP Holder [member firm] is executed, including the case where an order is to be executed by the issuance from the Floor of a commitment to trade through ITS or any other Application of the System, there shall be placed upon the order slip or other record the name or designation of the account for which such order is to be executed. No change in such account name or designation shall be made unless the change has been authorized by the OTP Firm or OTP Holder [member] or a partner, who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.

### **Statements of Account to Customers**

Rule 9.15. Except with the permission of the Exchange, OTP Firms and OTP Holders [member firms] shall send their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. (See also SEC R[r]ule 15c3-2 concerning quarterly notices of free credit balances on statements.)

### **Statement or Notice on Interest**

Rule 9.16. Each customer's statement or a separate notice enclosed with such statement shall disclose the annual rate of interest and the amount of interest charged as shown on such statement.

### **Books and Records**

Rule 9.17. OTP Holders [Members] and OTP Firms [member firms] shall make and retain all the books and records prescribed by the Bylaws [Constitution] and Rules of the Exchange, the rules and regulations of the Securities and Exchange Commission and the constitution, rules and regulations of other regulatory or governmental bodies to which such OTP Holders [members] and OTP Firms [member firms] are subject. Such books and records shall be retained for periods as prescribed and shall be made available for inspection by the Exchange.

### **Doing A Public Business In Options**

Rule 9.18. Rule 9.18 shall be applicable to OTP Firms and OTP Holders [member organizations] transacting business with the public in option contracts issued by the Options Clearing Corporation. Except to the extent that specific provisions of Rule 9.18 govern, or unless the context otherwise requires, the provisions of all other sections of this rule shall be applicable to the conduct of accounts.

#### **(a) Registration of Principals and Representatives**

No OTP Firm or OTP Holder [member organization] shall be approved to transact business with the public in option contracts, unless those persons associated with the OTP Firm or OTP Holder [member organization] who are designated as Options Principals or who are designated as Registered Representatives have been approved by and registered with the Exchange as such, pursuant to the provisions of Rule 9.26 and Rule 9.27, as appropriate.

#### **(b) Opening of Accounts**

No OTP Firm or OTP Holder [member organization] shall accept an order from a customer for the purchase or sale (writing) of an option contract unless the customer's account has been approved for options trading in accordance with the provisions of Rule 9.18.

(1) Diligence in Opening Account—In approving a customer's account for options transactions, an OTP Firm or OTP Holder [member organization] shall exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation, and shall make a record of such information which shall be retained in accordance with Rule 9.18(d). Based upon such information, [(a)] the branch office manager or other Registered Options Principal shall approve in writing the customer's account for options transactions; provided, that if the branch office manager is not a Registered Options Principal, his approval shall within a reasonable time be confirmed by a Registered Options Principal.

(2) Disclosure—At or prior to the time a customer's account is approved for options trading, the OTP Firm or OTP Holder [member organization] shall deliver to the customer a current Options Disclosure Document in accordance with the requirements of paragraph (g) of this Section.

(3) Account Agreement—Within 15 days after a customer's account has been approved for options transactions an OTP Firm or OTP Holder [member organization] shall obtain from the customer a written agreement that (A) [(i)] the customer is aware of and agrees to be bound by the Rules of the Exchange applicable to the trading of option contracts and the Rules of the Options Clearing Corporation and (B) [(ii)] the customer agrees not to violate, either alone or in concert with others, the position limits or the exercise limits established by the Exchange.

(4) Verification of Customer Background and Financial Information—The background and financial information upon which the account of every new customer that is a natural person has been approved for options trading, unless the information is included in the customer's account agreement, shall be sent to the customer for verification within fifteen (15) days after the customer's account has been approved for options transactions. A copy of the background and financial information on file with the OTP Firm or OTP Holder [member organization] shall also be sent to the customer for verification within fifteen (15) days after the OTP Firm or OTP Holder [member organization] becomes aware of any material change in the customer's financial situation.

(5) Options Disclosure Document to be Furnished—At or prior to the time a customer's account is approved for options transactions, an OTP Firm or OTP Holder [member organization] shall furnish the customer with a current Options Disclosure Document in accordance with the requirements of Rule 9.18(g).

(6) Every OTP Firm and OTP Holder [member or member organization] transacting business with the public in uncovered options contracts shall develop, implement, and maintain specific written procedures governing the conduct of such business which shall include, but not be limited to, the following:

(A) [1.] Specific criteria and standards to be used in evaluating the suitability of uncovered short options transactions for a particular customer;

(B) [2.] Specific procedures for approval of accounts engaged in writing uncovered short option contracts, including written approval of such accounts by a Registered Options Principal;

(C) [3.] Designation of the Senior Registered Options Principal and/or Compliance Registered Options Principal as the person responsible for approving accounts which do not meet the specific criteria and standard for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved;

(D) [4.] Establishment of specific minimum net equity requirements for initial approval and maintenance of customer uncovered option accounts; and

(E) [5.] Requirements that customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short option transactions at or prior to the initial uncovered short options transaction. See Rule 9.18(g)(3).

*Commentary:*

.01 In fulfilling its obligations pursuant to paragraph (b)(1) of Rule 9.18 with respect to options customers that are natural persons, an OTP Firm or OTP Holder [member organization] shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

1. Investment objectives (e.g., safety of principal, income, growth, trading profits, speculation)

2. Employment status (name of employer, self-employed or retired)
3. Estimated annual income from all sources
4. Estimated net worth (exclusive of family residence)
5. Estimated liquid net worth (cash, securities, other)
6. Marital status; number of dependents
7. Age
8. Investment experience and knowledge (e.g., number of years, size, frequency and type of transaction) for options, stocks and bonds, commodities, other.

In addition, the customer's account records shall contain the following information, if applicable:

- a. Source or sources of background and financial information (including estimates) concerning the customer
- b. Discretionary trading authorization: agreement on file name, relationship to customer and experience of person holding trading authority
- c. Date Options Disclosure Document furnished to customer
- d. Nature and type of transaction for which account is approved (e.g., buying, covered writing, uncovered writing, spreading, discretionary transactions)
- e. Name of registered representative
- f. Name of ROP approving account; date of approval
- g. Dates of verification of currency of account information.

The OTP Firm or OTP Holder [member organization] should consider utilizing a standard account approval form so as to ensure the receipt of all the required information.

.02 Refusal of a customer to provide any of the information called for in Commentary .01 shall be so noted on the customer's records at the time the account is opened. Information provided shall be considered together with other information available in determining whether and to what extent to approve the account for options transactions.

.03 The requirement of paragraph (b)(4) of Rule 9.18 for the initial and subsequent verification of customer background and financial information may be satisfied by sending to the customer the information required in Items 1 through 6 of Commentary .01 above as contained in the OTP Firm's or OTP Holder's [member's] records and providing the customer with an opportunity to correct or complete the information. In all cases, absent from the customer to the contrary, the information will be deemed to be verified.

.04 Before approving an account of a trust, pension fund, profit sharing plan or other fiduciary for options trading, an OTP Firm or OTP Holder [member organization] shall be satisfied that the instruments under which the fiduciary is acting permit options trading.

.05 Before approving an account with respect to which trading authorization has been granted to a third person who is not an employee of the OTP Firm or OTP Holder [member organization] for options trading, the OTP Firm or OTP Holder [member organization] shall obtain written evidence of the agent's authority to act and that such authority specifically includes options trading.

.06 Before approving an account of an investment partnership or an investment club for options trading, the OTP Firm or OTP Holder [member organization] shall obtain written evidence of the authority of the person signing the agreement required by this paragraph to sign such agreement on behalf of such partnership or club, as the case may be, and that such authority specifically includes options trading. Information shall also be obtained with respect to any current long or short option positions of the respective partners or member of the partnership or investment club.

.07 For purposes of Rule 9.18(b) (Opening of Accounts), Rule 9.18(d) (Supervision of Account), and Rule 9.18(g) (Delivery of Options Disclosure Document and Prospectus), the term “writing uncovered short option positions” shall include orders involving combinations and any transactions which involve naked writing.

(c) Suitability

(1) No OTP Firm, OTP Holder [member, member organization,] or registered person thereof shall recommend to any customer any transaction for the purchase or sale (writing) of an option contract, currency warrant, or an index warrant unless such OTP Firm, OTP Holder [member, member organization] or registered person has reasonable grounds to believe that the entire recommended transaction is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs and any other information known by such OTP Firm, OTP Holder [member, member organization] or registered person.

(2) No OTP Firm, OTP Holder [member], Registered Options Principal or Registered Representative shall recommend to a customer an opening transaction in any option contract, currency warrant, or index warrant unless the person making the recommendation has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract, currency warrant, or index warrant.

(d) Supervision of Accounts



Every OTP Firm and OTP Holder [member organization] shall comply with the provisions of Rule 9.1(b) in exercising its supervisory responsibilities. In addition to such provisions, every OTP Firm and OTP Holder [member organization] shall comply with the following provisions as they relate to its options business.

(1) Senior Registered Options Principal—Every OTP Firm and OTP Holder [member organization] shall develop and implement a written program for the review of the organization's non-OTP [member] customer accounts and all orders in such accounts, insofar as such accounts and orders relate to option contracts. This program shall be under the supervision of a designated Senior Registered Options Principal (“Senior ROP”) who is an officer (in the case of a corporation) or general partner (in the case of a partnership) of the OTP Firm or OTP Holder [member organization] who is specifically identified to the Exchange as the senior ROP.

(2) Compliance Registered Options Principal—OTP Firms and OTP Holders [Member organizations] shall designate and specifically identify to the Exchange a Compliance Registered Options Principal, (who may be the Senior Registered Options Principal), who shall have no sales functions and shall be responsible to review and to propose appropriate action to secure the OTP Firm’s or OTP Holder’s [member organization's] compliance with securities laws and regulations and Exchange rules in respect of its options business. The Compliance Registered Options Principal shall regularly furnish reports directly to the compliance officer (if the Compliance Registered Options Principal is not himself the compliance officer) and to other senior management of the OTP Firm or OTP Holder [member organization]. The requirement that the Compliance Registered Options Principal shall have no sales functions does not apply to an OTP Firm or OTP Holder [member organization] that has received less than \$1,000,000 in gross commissions on options business as reflected in its FOCUS Report for either of the preceding two fiscal years or that currently has 10 or fewer Registered Options Representatives.

(3) Maintenance of Customer Records—Background and financial information of customers who have been approved for options transactions shall be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that branch. Copies of account statements of options customers shall be maintained at both the branch office supervising the accounts and the principal supervisory office having jurisdiction over that branch for the most recent six-month period. With respect solely to the above-noted record retention requirements applicable to principal supervisory offices, however, the customer information and account statements may be maintained at a location other than the principal supervisory office if such documents and information are readily accessible and promptly retrievable. Other records necessary to the proper supervision of accounts will be maintained at a place easily accessible both to the branch office servicing the customer's account and to the principal supervisory office having jurisdiction over that branch office.

(4) Each OTP Firm and OTP Holder [member organization] shall maintain at the principal supervisory office having jurisdiction over the office servicing the customer's account, or have readily accessible and promptly retrievable, information to permit review of each customer's options account, on a timely basis to determine (i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (ii) the size and frequency of options transactions; (iii) commission activity in the account; (iv) profit or loss in the account; (v) undue concentration in any options class or classes, and (vi) compliance with the provisions of Regulation T of the Federal Reserve Board.

*Commentary:*

.01 The Senior Registered Options Principal may delegate to qualified employees the responsibility and authority for the supervision and control of customer accounts and orders required by the provisions of this paragraph, provided that the Senior Registered Options Principal shall have overall authority and responsibility for establishing appropriate procedures of supervision and control over such employees.

.02 Every OTP Firm and OTP Holder [member organization] shall establish, maintain and enforce written procedures which detail the methods used to supervise exchange options transactions. These procedures should also detail the methods used to supervise all non-OTP [member] customer accounts including all orders in such accounts, insofar as such accounts and orders relate to option contracts.

.03 Every OTP Firm and OTP Holder [member organization] shall also develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short (written) option positions and specifically providing for frequent supervisory review of such accounts.

[Amended: January 30, 1995.]

(e) Discretionary Accounts

(1) Authorization and Approval Required—No OTP Firm or OTP Holder [member organization] shall exercise any discretionary power with respect to trading in option contracts, currency warrants, or index warrants in a customer's account, or accept orders for currency warrants, index warrants or option contracts for an account from a person other than the customer, except in compliance with the provisions of Rule 9.6(a) and in addition (i) the written authorization of the customer required by Rule 9.6(a) shall specifically authorize options trading in the account; (ii) the account shall have been accepted in writing by a Registered Options Principal. The Senior Registered Options Principal shall review the acceptance of each discretionary account to determine that the Registered Options Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed, and he shall maintain a record of the basis for his determination. Each discretionary order shall be approved and initialed on the

day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, his approval shall be confirmed within a reasonable time by a Registered Options Principal. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by the Compliance Registered Options Principal. The provisions of this subparagraph shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed.

(2) Prohibited Transactions—No OTP Firm or OTP Holder [member organization] having discretionary power over a customer's account shall, in the exercise of such discretion, execute or cause to be executed therein any purchases or sales of option contracts, currency warrants, or index warrants which are excessive in size or frequency in view of the financial resources in such account.

(3) Record of Transactions—A record shall be made of every transaction in option contracts, currency warrants, or index warrants in respect to which an OTP Firm or OTP Holder [member organization] has exercised discretionary authority, clearly reflecting such fact and indicating the name of the customer, the designation and number of the option contracts, currency warrants, or index warrants the premium and the date and time when such transaction was effected.

(4) Options Programs—Where the discretionary account utilizes options programs involving the systematic use of one or more options strategies, the customer shall be furnished with a written explanation, meeting the requirements of Rule 9.28, of the nature and risks of such strategies.

[Amended: August 16, 1991.]

*Commentary:*

.01 No transactions shall be executed in a discretionary account which would result in an uncovered short position in option contracts or in the uncovering of any existing short position in option contracts unless the person for whom the account is maintained has specifically authorized, in writing, transactions of this nature and such transactions are effected with due regard to the provisions of this paragraph (d).

(f) Confirmations

Every OTP Firm and OTP Holder [member and member firm] shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying stock, the expiration month, the exercise price, the number of option contracts, the premium, commissions, the transaction and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, and whether the transaction was effected on a principal or agency basis. The confirmation shall by appropriate symbols distinguish between

exchange option transactions and other transactions in option contracts and between such transactions and transactions in other options.

(g) Delivery of Current Options Disclosure Document and Prospectus

(1) Options Disclosure Documents. Every OTP Firm and OTP Holder [member organization] shall deliver a current Options Disclosure Document (the formal title of which is “Understanding the Risks and Uses of Listed Options”) to each customer at or prior to the time each customer's account is approved for options trading. Thereafter, each amended Options Disclosure Document shall be distributed to every customer having an account approved for options trading, or, in the alternative, shall be distributed not later than the time a confirmation of a transaction is delivered to each customer who enters into an options transaction. The term “current Options Disclosure Document” means, as to any category of underlying security, the most recent edition of such document that meets the requirements of Rule 9b-1 under the Securities Exchange Act of 1934.

(2) Prospectus. Every OTP Firm and OTP Holder [member and member organization] shall deliver a copy of the current prospectus of the Options Clearing Corporation to each customer who requests one. The Exchange will advise OTP Firms and OTP Holders [members] when a new prospectus is available. The term “current prospectus of the Options Clearing Corporation” means the prospectus portion of Form S-20 which then meets the delivery requirements of Rule 153(b) of the Securities Act of 1933.

(3) The written description of risks required by Rule 9.18(b)(6) shall be in a format prescribed by the Exchange or in a format developed by the OTP Firm or OTP Holder [member organization], provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

*Commentary:*

.01 Where the customer of an OTP Firm or OTP Holder [member or member firm] is a broker or dealer entering his orders with the OTP Firm or OTP Holder [member or member firm] in a single omnibus account, such OTP Firm or OTP Holder [member or member firm] shall take reasonable steps to assure that the broker or dealer is furnished reasonable quantities of current Options Disclosure Documents, as requested by him in order to enable him to comply with the requirements of this paragraph (g).

.02 Where a broker or dealer enters orders for his customers with, or clears transactions through, an OTP Firm or OTP Holder [member firm] on a fully disclosed basis and such OTP Firm or OTP Holder [member firm] carries the accounts of such customers, the responsibility for delivering a current Options Disclosure Document as provided herein shall rest with the carrying OTP Firm or OTP Holder [member firm]. However, such OTP Firm or OTP Holder [member firm] may rely upon the good faith

representation of the introducing broker or dealer that a current Options Disclosure Document has been delivered in compliance with this paragraph (g).

(h) Transactions with Issuers

No OTP Firm or OTP Holder [member or member firm] shall accept an order for the account of any corporation which is the issuer of an underlying stock for the sale (writing) of an option contract with respect to that underlying stock.

(i) Restricted Stock

For the purposes of: (i) covering a short position in a call option contract, or (ii) delivery pursuant to the exercise of a put option contract, or (iii) satisfying an exercise notice assigned in respect of a call option contract, no OTP Firm or OTP Holder [member or member organization] shall accept shares of an underlying stock, which may not be sold by the holder thereof except upon registration pursuant to the provisions of the Securities Act of 1933 or pursuant to SEC rules promulgated under the Securities Act of 1933, unless, at the time such securities are accepted and at any later time such securities are delivered, applicable provisions of the Securities Act of 1933 and the rules thereunder have been complied with by the holder of such securities.

(j) Statement of Accounts

Every OTP Firm and OTP Holder [member organization] shall send to its customers statements of account showing security and money positions entries, interest charges and any special charges that have been assessed against such account during the period covered by the statement; provided, however, that such charges need not be specifically delineated on the statement if they are otherwise accounted for on the statement and have been itemized on transaction confirmations. With respect to options customers having a general (margin) account, such statement shall also provide the mark-to-market price and market value of each options position and other security position in the general (margin) account, the total market value of all positions in the account, the outstanding debit balance in the account, and the general (margin) account equity. The statement shall bear a legend stating that further information with respect to commissions and other charges related to the execution of listed option transactions has been included in confirmations of such transactions previously furnished to the customer, and that such information will be made available to the customer promptly upon request.

Statements of account shall be sent at least quarterly to all accounts having a money or a security position during the preceding quarter and not less frequently than once every month to each customer in whose account there has been an entry during the preceding month with respect to an option contract.

The statement shall also bear a legend requesting the customer to promptly advise the OTP Firm or OTP Holder [member] of any material change in the customer's investment objectives or financial situation.

*Commentary:*

.01 For purposes of the foregoing Section, general (margin) account equity shall be computed by subtracting the total of the “short” security values and any debit balance from the total of the “long” security values and any credit balance.

(k) Doing Business with the Public

An individual OTP Firm or OTP Holder [member] may not transact business with the public, unless such OTP Firm or OTP Holder [member] receives prior written approval from the Exchange. To qualify to transact business with the public, the individual OTP Firm or OTP Holder [member] shall demonstrate compliance with the general requirements of the Exchange as prescribed by the Bylaws, [Constitution and] Rules and procedures of the Exchange.

(l) Customer Complaints.

(1) Every OTP Firm and OTP Holder [member organization] conducting a non-OTP [member] customer business shall make and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved. The term “options-related complaint” shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance arising out of or in connection with listed options. The central file shall be located at the principal place of business of the OTP Firm or OTP Holder [member organization] or such other principal office as shall be designated by the OTP Firm or OTP Holder [member organization]. At a minimum, the central file shall include: (1) identification of complainant, (ii) date complaint was received, (iii) identification of Registered Representative servicing the account, (iv) a general description of the matter complained of, and (v) a record of what action, if any, has been taken by the OTP Firm or OTP Holder [member organization] with respect to the complaint. Each options-related complaint received by a branch office of an OTP Firm or OTP Holder [member organization] shall be forwarded to the office in which the separate, central file is located not later than thirty days after receipt by the branch office. A copy of every options-related complaint shall be maintained at the branch office that is the subject of the complaint.

(m) Branch Offices of OTP Firms and OTP Holders [Member Organizations].

No branch office of an OTP Firm or OTP Holder [member organization] shall transact options business with the public unless the manager of such branch office has been qualified as a Registered Options Principal; provided, that this requirement shall not apply to branch offices in which not more than three Registered Representatives are located so long as the OTP Firm or OTP Holder [member organization] can demonstrate that the options activities of such branch offices are appropriately supervised by a Registered Options Principal.

### **Transfer of Accounts**

Rule 9.19. Every OTP Firm and OTP Holder [member or member firm] shall, upon written request of a customer, expedite the transfer of a customer's account pursuant to such customer's instructions.

### **Transactions for Public Customers**

Rule 9.20(a). Where an OTP Firm or OTP Holder [member organization] is doing business with the public in accordance with these Rules and is also associated with a Market Maker, such OTP Firm or OTP Holder [member organization] shall file such reports as the Exchange may require of transactions for customers in classes of option contracts to which such Market Maker has been appointed pursuant to Rule 6.35.

### **Telemarketing**

Rule 9.20(b). No OTP Firm, OTP Holder [member, member organization], or [person] associated person of and OTP Firm or OTP Holder [with a member or member organization] may:

(1) Make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person; or

(2) Make an outbound telephone call to any person for the purpose of soliciting the purchase of securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:

(A) the identity of the caller and the OTP Firm or OTP Holder [member firm];

(B) the telephone number or address at which the caller may be contacted; and

(C) that the purpose of the call is to solicit the purchase of securities or related services.

(3) The prohibitions of subsections (b)(1) and (b)(2), above, do not apply to telephone calls by any person associated with an OTP Firm or OTP Holder

[member or member organization], or another associated person acting at the direction of such person for the purpose of maintaining and servicing an account of an existing customer of the OTP Firm or OTP Holder [member or member organization] under the control of or assigned to such associated person if such person places such calls:

(A) to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or deposit, was under the control of or assigned to, such associated person;

(B) to an existing customer who has previously effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or deposit, was under the control of or assigned to, such associated person, provided that such customer's account has earned interest or dividend income during the preceding twelve months; or

(C) to a broker or dealer.

The scope of this Rule 9.20(b) is limited to the telemarketing calls described herein. The terms of this Rule do not otherwise expressly or by implication impose on OTP Firms and OTP Holders [Members] or participants any additional requirements with respect to the relationship between an OTP Firm or OTP Holder [member] or participant and a customer or between a person associated with an OTP Firm or OTP Holder [member] or participant organization and a customer. For the purposes of subsection (b)(3), the term “existing customer” means a customer for whom the broker or dealer, or a clearing broker or dealer on behalf of such broker or dealer, carries an account.

(c) Each OTP Firm and OTP Holder [member and member organization] shall make and maintain a centralized list of persons who have informed the OTP Firm or OTP Holder [member, member organization] or any employee thereof, that they do not wish to receive telephone solicitations, and shall refrain from engaging in telephone solicitations of persons named on that list.

(d) No OTP Firm, OTP Holder [member, member organization,] or person associated with an OTP Firm or OTP Holder [member or member organization], may obtain from a customer or submit for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument. Each OTP Firm or OTP Holder [member or member organization] shall maintain the authorization required by this subsection (d) for a period of three years.

*Commentary:*

.01 OTP Firms and OTP Holders [Members and member organizations] that engage in telephone solicitation to market their products and services (“telemarketing” or “cold calling”) are subject to the requirements of the rules of the Federal Communications Commission and the Securities and Exchange Commission relating to telemarketing practices and the rights of telephone users. This includes, but is not limited



to, the requirement to make and maintain a list of persons who do not want to receive telephone solicitations (a “do-not-call” list).

[Approved: October 30, 1996; Amended: November 5, 1997.]

## **Section 2. Advertising and Sales Literature** **[ADVERTISING AND SALES LITERATURE]**

### **Policy**

Rule 9.21(a). It shall be considered conduct inconsistent with just and equitable principals of trade for an OTP Firm or OTP Holder [member], directly or indirectly, to publish, circulate or distribute any advertisement, sales literature or market letter that the OTP Firm or OTP Holder [member] knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

### **Exemptions**

Rule 9.21(b). The following rules shall apply to all OTP Firms and OTP Holders [member firms] of the Exchange unless the OTP Firm or OTP Holder [member firm] is subject to the jurisdiction of another national securities exchange or association designated by the Board as having comparable standards.

### **Advertisements**

Rule 9.22(a). All advertisements prior to publication shall be submitted to the Exchange for approval as to form and presentation, except such routine advertisements as (1) business cards or so-called tombstone ads, (2) announcements that specific securities are bought, sold or quoted, (3) offering literature concerning a specific security or securities, (4) announcements relating to changes in an OTP Firm or OTP Holder [member organization], (5) inclusion of an OTP Firm's or OTP Holder's [member firm's] name in an underwriting advertisement, or (6) advertisements complying with any rule or regulations of the Securities and Exchange Commission under the Securities Act of 1933, or Securities Exchange Act of 1934. Copies of all ads should be retained by the OTP Firm or OTP Holder [member firm] for at least 3 years.

### **Refer to Pacific Exchange**

Rule 9.22(b). Advertisements by OTP Firms and OTP Holders [member firms] for insertion in local papers or other media should refer to the Pacific Exchange, Inc. when reference is made to membership in any securities exchange.

### **Sales Literature—Market Letters**

Rule 9.23. Each market letter, research report and all sales literature prepared and issued by an OTP Firm or OTP Holder [member firm] for general distribution to customers or the public shall be approved in advance by a principal of the firm who has been designated such authority. Market letters, research reports and sales literature that refer to the market or to companies or securities, listed or unlisted, must be retained by the issuing OTP Firm or OTP Holder [member firm] for at least 3 years. The copies retained must contain the name of the individual approving its issuance and will be subject to delivery upon request to the Exchange and must at all times within the 3 year period be readily available. For purposes of this Rule, scripts that are used for telemarketing calls as described in Rule 9.20(b), are deemed to be “sales literature.”

[Amended: November 5, 1997.]

### **Radio, Television, Telephone and Other Reports**

Rule 9.24. OTP Firms and OTP Holders [Members and Member Organizations] for which the Exchange is the designated examining authority (“DEA”) desiring to broadcast Exchange quotations on radio or television programs, or in public telephone market reports, or to make use of radio or television broadcasts for any business purpose, or to make use of the Internet for the purpose of providing market quotations or advertising to the general public, must first obtain the consent of the Exchange by submitting an outline of the program to the Exchange.

The text of all commercials and program material (except lists of market quotations) about securities or investing sponsored by OTP Firms or OTP Holders [Members or Member Organizations] on radio, television or public telephone market reports, or the Internet, or program material supplied to these media must be sent to the Exchange promptly following the program in which it is used.

[Amended: July 3, 1997.]

### **Standards**

Rule 9.25. The Exchange cannot be responsible for the accuracy and completeness of factual information, nor the opinions of OTP Firms and OTP Holders [member firms] in advertisements, sales literature or radio or television broadcasts. However, general policy to be followed in written communications with the public should be substantially as follows:

(a) In making recommendations there should be a reasonable basis for the recommendation and the following facts disclosed:

- (1) The price at time of original recommendation;
- (2) Whether or not the firm makes a market in the issue;
- (3) If (2) applies, whether OTP Firm or OTP Holder [member] intends to buy or sell the securities recommended for his own account;
- (4) Ownership, if any, of options, rights or warrants to purchase any security recommended, unless extent of ownership is merely nominal;
- (5) Offer to provide or furnish upon request available investment information supporting the recommendations;
- (6) If material issued refers to past recommendations, all such recommendations as to the same type, kind, grade or classification of securities made by an OTP Firm or OTP Holder [member] within the last year should be set forth. Longer periods of years may be covered if they are consecutive and include the most recent year. The material must name each security recommended, the date and nature of recommendation (buy or sell), the price at the time, the price range within which to act upon, and if the period was one of generally rising or falling markets;
- (7) Material that makes no recommendations, but offers to furnish a list of all recommendations made by an OTP Firm or OTP Holder [member] within the past year or over a longer period of consecutive years shall contain same information as stated in item (6) above.

(b) Claims and opinions must not contain:

- (1) Promises of specific results;
- (2) Exaggerated or unwarranted claims or unwarranted superlatives;
- (3) Opinions with no reasonable basis;
- (4) Forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;
- (5) References to past specific recommendations which state or imply that the recommendations were or would have been profitable and that these are indicative of the general quality of the firm's recommendations.

(c) Testimonials must make clear:

(1) That with respect to any advice, analysis, report or other investment or related service rendered, such experience is not necessarily indicative of future performance or results obtained by others;

(2) Whether any compensation has been paid to the maker directly or indirectly;

(3) The qualifications of the maker of the testimonial if they imply an experienced or specialized opinion.

(d) Offers of free service:

If a statement is made that any report, analysis or other service will be furnished entirely free and without any condition or obligation, such statements must be upheld.

(e) Claims for research:

No claim or implication may be made for research or other facilities beyond those which the OTP Firm or OTP Holder [member] actually possesses or has reasonable capacity to provide.

(f) Hedge clauses:

No hedge clauses may be used if they could mislead the reader or are inconsistent with the content of the material.

(g) Recruiting advertising:

Advertising in connection with recruitment of sale personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business.

### **Registration of Options Principals**

Rule 9.26. No OTP Firm or OTP Holder [member organization] shall transact any business with the public in option contracts unless those persons engaged in the management of the OTP Firm's or OTP Holder's [member organization's] business pertaining to option contracts are registered with and approved by the Corporation [Exchange] as Options Principals. No individual OTP Firm or OTP Holder [member] shall transact any business directly with the public in option contracts unless he is registered with and approved by the Exchange as an Options Principal. In connection with their registration, Options Principals shall file an application with the [Department of Member Organizations of the] Exchange on a form prescribed by the Exchange and shall be required to successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of options trading generally, the Rules of the Exchange applicable to trading of option contracts and the Rules of the Options Clearing Corporation. In the event the employment of any Registered Options Principal is terminated or any Registered Options Principal ceases to act in such capacity,

such fact shall be reported promptly to the [Department of Member Organizations of the] Exchange together with a brief statement of the reason therefore.

*Commentary:*

.01 Each OTP Firm and OTP Holder [member organization] shall be required to designate a Registered Options Principal who is a general partner or officer as the person responsible for overall supervision and training in areas relating to transactions in option contracts.

.02 The Exchange may waive the examination prescribed by this Section if the applicant previously had passed an examination and had been approved as a Registered Options Principal by another exchange or association having standards of approval acceptable to the Exchange.

### **Registration of Representatives**

Rule 9.27(a). *General.* No OTP Firm or OTP Holder [member organization] shall be approved to transact business with the public until those persons associated with it who are designated as Representatives have been registered with and approved by the Exchange pursuant to the provisions of Rule 2.23(a) [1.26(a)] through Rule 2.23(d) [1.26(d)]. Persons who perform duties for the OTP Firm or OTP Holder [member organization] which are customarily performed by sales representatives, solicitors, customers' men or branch office managers shall be designated as Representatives.

(b) *Registered Options Representatives.* No person associated with an OTP Firm or OTP Holder [member organization] shall transact any business with the public in option contracts, unless those persons are registered with and approved by the Exchange pursuant to the provisions of paragraph (a) of this Section and are registered with and approved by the Exchange as Options Representatives. In connection with their registration as Options Representatives, such persons shall file an application with the Exchange [Department of Member Organizations] on a form prescribed by the Exchange, shall successfully complete a training course and an examination for the purpose of demonstrating adequate knowledge in the trading of option contracts, and shall sign an agreement to abide by the Bylaws, [Constitution and] Rules and procedures of the Exchange and the Rules of the Options Clearing Corporation; provided, however, that representatives of an OTP Firm or OTP Holder [member organization] which is a member of another national securities exchange or association which has standards of approval acceptable to the Exchange may be deemed to be registered with and approved by the Exchange, so long as such representatives are registered with and approved by such other exchange or association. An OTP Firm or OTP Holder [member organization] whose representatives are deemed registered and approved pursuant to the last clause of the preceding sentence shall inform their representatives of their obligation to adhere to the Bylaws, [Constitution and] Rules and procedures of the Exchange and the Rules of

the Options Clearing Corporation. Termination of employment or affiliation of any Registered Options Representative in such capacity shall be reported promptly to the Department of Member Organizations of the Exchange together with a brief statement of the reason for such termination, pursuant to Rule 2.23(g).

*Commentary:*

.01 The Exchange considers the Uniform Registered Representative Examination, Series 7 [VII], as adequate in measuring an applicant's knowledge of the securities industry and satisfies the examination requirements prescribed under paragraphs (a) and (b) of this Section.

.02 Persons designated as representatives who had been previously registered with an exchange or association would be required to requalify with the Exchange as Registered Options Representatives, if such persons had not successfully completed the Series 7 VII Examination or some other examination which adequately measures an applicant's knowledge in the trading of option contracts. To qualify as a Registered Options Representative the applicant shall successfully complete a training course in options and pass a special options examination approved or prescribed by the Exchange.

.03 Registered persons who have not re-qualified with the Exchange as Registered Options Representatives shall not solicit or conduct a public business in option contracts.

[Amended: September 26, 1996.]

### **Regulatory Element**

Rule 9.27(c). No OTP Firm or OTP Holder [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 this Rule 9.27(c).

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 shall establish the cycle 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.

(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 (c)(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 (c)(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 (c)(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.

(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 shall be 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.

(3) *Re-entry into Program*—Unless otherwise determined by the SRO, a registered person will be required to re-enter the Regulatory Element and satisfy all of its requirements in the event such person:

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

(B) [(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 of 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

(C) [(iii)] is ordered as a sanction in a disciplinary action to re-enter the continuing education program by any securities governmental agency or securities self-regulatory organization.

Re-entry into the program shall commence with the initial participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (A)[(i)] above, or the disciplinary action becoming final, in the case of (B)[(ii)] or (C)[(iii)] above.

(d) *Firm Element*

(1) *Persons Subject to the Firm Element*—The requirements of this Rule 9.27(d) shall apply to any registered person who has direct contact with customers in the conduct of the OTP Firm’s or OTP Holder’s [member's or member organization's] securities sales, trading or investment banking activities, and to the immediate supervisors of such persons (collectively, “covered registered persons”).

(2) *Standards*

(A) [(i)] Each OTP Firm and OTP Holder [member and member organization] must maintain a continuing and current education program for its covered registered person to enhance their securities knowledge, skills and professionalism. At a minimum, each OTP Firm and OTP Holder [member and member organization] shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the OTP Firm’s or OTP Holder’s [member's or member organization's] size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element. If an OTP Holder [member] or OTP Firm’s [member organization’s] analysis determines a need for supervisory training for persons with supervisory responsibilities such training must be included in the OTP Holder [member] or OTP Firm’s [member organization’s] training plan.

(B) [(ii)] *Minimum Standards for Training Programs*—Programs used to implement an OTP Firm’s or OTP Holder’s [member's or member organization's] training plan must be appropriate for the business of the OTP Firm or OTP Holder [member or member organization] and, at a minimum, must cover the following matters concerning securities products, services and strategies offered by the OTP Firm or OTP Holder [member or member organization]:

(i) [(A)] General investment features and associated risk factors;

(ii) [(B)] Suitability and sales practice considerations; and



(iii) [(C)]Applicable regulatory requirements.

(C) [(iii)] *Administration of Continuing Education Program*—Each OTP Firm and OTP Holder [member and member organization] must administer its continuing education program in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by covered registered persons.

(3) *Participation in the Firm Element*—Covered registered persons included in an OTP Firm’s or OTP Holder’s [member's or member organization's] plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the OTP Firm or OTP Holder [member or member organization].

(4) *Specific Training Requirements*—The Exchange may require an OTP Firm or OTP Holder [member or member organization], either individually or as part of a larger group, to provide specific training to its covered registered persons in such areas that the Exchange deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content,

*Commentary:*

.01 For purposes of this Rule, the term “registered person” means any OTP Firm or OTP Holder [member], A[allied Person] [member], registered representative or other person registered or required to be registered under Exchange rules, but does not include any such person whose activities are limited solely to the transaction of business on the facilities of the Exchange [Floor with members or registered broker-dealers].

.02 For purposes of this Rule, the term “customer” means any natural person or any organization, other than a registered broker or dealer, executing transactions in securities or other similar instruments with or through, or receiving investment banking services from, an OTP Firm or OTP Holder [member or member organization].

.03 Any registered person who has terminated association with a registered broker or dealer and who has, within two years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element of the continuing education program at such intervals that apply (second registration anniversary and every three years thereafter) based on the initial registration anniversary date, rather than based on the date of reassociation in a registered capacity. Any former registered person who becomes reassociated in a registered capacity with a registered broker or dealer more than two years after termination as such will be required to satisfy the program’s requirements in their entirety based on the most recent registration date.

.04 Any registration that is deemed inactive for a period of two calendar years pursuant to section (c)(2) of this Rule for failure of a registered person to complete the Regulatory Element, shall be terminated. A person whose registration is so terminated may become registered only by reapplying for registration and satisfying applicable registration and qualification requirements of Exchange rules.

.05 The effective date of this Rule, for the purposes of determining whether a registered person is exempt from participation in the Regulatory Element is September 14, 2000.

[Adopted: February 8, 1995.]

### **Advertisements, Market Letters and Sales Literature Relating to Options**

Rule 9.28(a). General Rule. No OTP Firm or OTP Holder [Firm member or member organization], or person associated therewith shall utilize any advertisement, educational material, sales literature or other communications to any customer or member of the public concerning options which:

(1) [(i)] Contains any untrue statement or omission of material fact or is otherwise false or misleading;

(2) [(ii)] contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

(3) [(iii)] contains hedge clauses or disclaimers which are not legible, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such communications; or

(4) [(iv)] would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.

(b) Approval by Compliance Registered Option Principal. All advertisements, sales literature (except completed worksheets), and educational material issued by an OTP Firm or OTP Holder [member or member organization] pertaining to options shall be approved in advance by the Compliance Registered Options Principal or designee. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the OTP Firm or OTP Holder [member or member organization] and be kept at an easily accessible place for examination by the exchange for a period of three years.

(c) Exchange Approval Required for Options Advertisements. In addition to the approval required by paragraph (b) of this Rule, every advertisement of an OTP Firm or OTP Holder [member or member organization] pertaining to options shall be submitted to the Compliance Department of the Exchange at least ten days prior to use (or such shorter period as the Department may allow in particular instances) for approval and, if changed or expressly disapproved by the Exchange, shall be withheld from circulation until any changes specified by the Exchange have been made or, in the event of disapproval, until the advertisement has been resubmitted for, and has received, Exchange approval. The requirements of this paragraph shall not be applicable to:

(1) [(i)] advertisements submitted to another self-regulatory organization having comparable standards pertaining to advertisements; and

(2) [(ii)] advertisements in which the only reference to options is contained in a listing of the services of an OTP Firm or OTP Holder [member organization].

(d) Except as otherwise provided in the Commentary hereunder, no written materials respecting options may be disseminated to any person who has not previously or contemporaneously received a current Options Disclosure Document, as defined in Rule 9.18(g).

(e) Definitions. For purposes of this Rule, the following definitions shall apply:

(1) [(i)] The term “advertisement” shall include any sales material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video devices, telecommunications device, billboards, signs, or through written, communications to customers or the public not required to be accompanied or preceded by a current Clearing Corporation prospectus.

(2) [(ii)] The term “sales literature” shall include any written communication (not defined as an “advertisement”) distributed or made available to customers or the public that contains any analysis, performance report, projection or recommendation with respect to options, underlying securities or market conditions, any standard forms of worksheets, or any seminar text which pertains to options which is communicated to customers or the public at seminars, lectures or similar such events, or any Exchange-produced materials pertaining to options.

[Amended: September 13, 1991.]

*Commentary:*

.01 The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement, educational

material or sales literature which discusses the uses or advantages of options. Such communications shall include a warning to the effect that options are not suitable for all investors. In the preparation of written communications respecting options, the following guidelines should be observed:

A. Any statement referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as “with options, an investor has an opportunity to earn profits while limiting his risk of loss”, should be balanced by a statement such as “of course, an options investor may lose the entire amount committed to options in a relatively short period of time.”

B. It shall not be suggested that options are suitable for all investors.

C. Statements that guarantee the certain availability of a secondary market for options shall not be made.

.02 Advertisements pertaining to options shall conform to the following standards:

A. Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received a Options Disclosure Document) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current Options Disclosure Document may be obtained. Such advertisements may have the following characteristics:

(i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is the Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of the Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);

(ii) The advertisement may include any statement required by any state law or administrative authority;

(iii) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

B. The use of recommendations or of past or projected performance figures, including annualized rates of return, is not permitted in any advertisement pertaining to options.

.03 Written communications (other than advertisements) pertaining to options shall conform to the following standards:

A. Sales literature shall state that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data will be supplied upon request.

B. Such communications may contain projected performance figures (including projected annualized rates of return) provided that:

(i) no suggestion of certainty of future performance is made;

(ii) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(iii) all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) are disclosed;

(iv) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(v) all material assumptions made in such calculations are clearly identified e.g., “assume option expires”, “assume option unexercised”, “assume option exercised”, etc.);

(vi) the risks involved in the proposed transactions are also discussed;

(vii) in communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

C. Such communications may feature records and statistics which portray the performance of past recommendations or of actual transactions, provided that:

(i) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific “universe” that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(ii) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(iii) such communications disclose all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) and, whenever annualized rates of return are used, all material assumptions used in the process of annualization;

(iv) an indication is provided of the general market condition during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(v) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(vi) a Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

D. In the case of an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

E. Options worksheets utilized by OTP Firms, OTP Holders [members, member organizations], or [their] associated persons, must comply with the requirements applicable to sales literature.

F. Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.