

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-69535; File No. SR-CBOE-2013-043

May 8, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Exchange Rule 9.21

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 25, 2013, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to update Exchange Rule 9.21, “Options Communications.” The text of the proposed rule change is provided below. (additions are italicized; deletions are [bracketed])

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Chicago Board Options Exchange, Incorporated
Rules

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Rule 9.21. Options Communications

(a) Definitions. For purposes of this Rule and any interpretation thereof, "options communications" consist of:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(i) [Advertisements. The term "advertisements" shall include any material concerning options, other than an independently prepared reprint and institutional sales material, that is published, or used in any electronic or other public media, including any website, newspaper, magazine or other periodical, radio, television, telephone or tape recording, video tape display, motion picture, billboards, signs or telephone directories (other than routine listings).

(ii) Sales Literature. The term "sales literature" shall include any written or electronic communication concerning options other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally available to customers or the public, including circulars, research reports, performance reports or summaries, worksheets, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article and press release concerning a Trading Permit Holder's products or services.

(iii)] Correspondence. The term "correspondence" shall include any written [letter,] (including electronic) [mail message or market letter] communication distributed or made available [by a Trading Permit Holder] to[: (A) one of more of its existing retail customers; and (B)] 25 or fewer [than 25 prospective] retail customers within any 30 calendar-day period.

[(iv)] (ii) Institutional Communication [Sales Material]. The term "institutional communication [sales material]" shall include any written (including electronic) communication concerning options that is distributed or made available only to institutional investors, but does not include a Trading Permit Holder's internal communications. The term institutional investor shall mean any qualified investor as defined in Section 3(a)(54) of the Securities Exchange Act of 1934.

(iii) Retail Communication. The term "retail communication" means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.

[(v) Public Appearances. The term "public appearance" shall include any participation in a seminar, forum (including an interactive electronic forum), radio, television or print media interview, or other public speaking activity, or the writing of a print media article, concerning options.

(vi) Independently Prepared Reprints. The term "independently prepared reprints" shall include any reprint or excerpt of an article issued by a publisher concerning options, provided that: the publisher is not an affiliate of the Trading Permit Holder using the reprint or any underwriter or issuer of a security mentioned in the reprint or excerpt that the Trading Permit Holder is promoting; neither the Trading Permit Holder using the reprint or excerpt nor any underwriter or issuer of a security mentioned in the reprint or excerpt has commissioned the reprint or excerpted article; and the Trading Permit Holder using the reprint or excerpt has not materially altered its contents except as necessary to make the

reprint or excerpt consistent with applicable regulatory standards or to correct factual errors.]

(b) Approval by Registered Options Principal.

(i) All retail communications [advertisements, sales literature] (except completed worksheets) [and independently prepared reprints] issued by a Trading Permit Holder or TPH organization pertaining to options shall be approved in advance by a Registered Options Principal designated by the Trading Permit Holder or TPH organization's written supervisory procedures.

(ii) Correspondence need not be approved by a Registered Options Principal prior to use[, unless such correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the Trading Permit Holder]. All correspondence is subject to the supervision and review requirements of Rule 9.8.

(iii) Institutional communications. Each Trading Permit Holder or TPH organization shall establish written procedures that are appropriate to its business, size, structure, and customers for review by a Registered Options Principal of institutional communications used by[sales material relating to options need not be approved by a Registered Options Principal prior to use, but is subject to the supervision and review requirements as set forth in the written supervisory procedures of] the Trading Permit Holder or TPH organization.

(iv) No change.

(c) Exchange Approval Required. In addition to the approval required by paragraph (b) of this Rule, [all advertisements, sales literature and independently prepared reprints] retail communications of a Trading Permit Holder or TPH organization pertaining to standardized options that is not accompanied or preceded by the applicable current options disclosure document ("ODD") shall be submitted to the Exchange at least ten calendar days prior to use (or such shorter period as the Exchange 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 communication has been resubmitted for, and has received, Exchange approval. The requirements of this paragraph shall not be applicable to:

(i) options communications submitted to another self-regulatory organization having comparable standards pertaining to such communications and

(ii) communications in which the only reference to options is contained in a listing of the services of the TPH organization[.];

(iii) the ODD; and

(iv) the prospectus.

(d) General Rule. No Trading Permit Holder or member organization or associated person shall use any options communication which:

(i) – (iv) No change.

(v) Fails to reflect the risks attendant to options transactions and the complexities of certain options investment strategies. [Any statement referring to the potential opportunities 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 must be avoided.]

(vi-vii) No change.

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

Paragraphs (vi) and (vii) shall not apply to institutional communications [sales material] as defined in this Rule 9.21. Any statement in any options communications 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 must be avoided.

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The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange is proposing to update Rule 9.21, "Options Communications," to conform with changes recently made by the Financial Industry Regulatory Authority, Inc. ("FINRA") to its corresponding rule.³ The proposed rule change would make changes to the Exchange Rule 9.21, "Options Communications." The Exchange believes the proposed changes will alert Trading Permit Holders ("TPHs") to their requirements with respect to Options Communications while further regulating all communications for compliance with Exchange Rules and the Securities Exchange Act of 1934 (the "Act"). In addition, the Exchange believes that the proposed rule change will help ensure that investors are protected from potentially false or misleading communications with the public distributed by Exchange TPHs.

First, the proposed rule change would amend the language in Exchange Rule 9.21(a). Specifically, the proposed rule change would reduce the number of defined categories of communication from six (in the current rule) to three. The proposed three categories of communications are: retail communications, correspondence, and institutional communications. Current definitions of "sales literature," "advertisement," and "independently prepared reprint" would be combined into a single category of "retail communications." Thus, the Exchange is proposing to define "retail communication" as "any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period." The Exchange will

³ See Securities and Exchange Act Release No. 34-68650 (January 14, 2013), 78 FR 4182 (January 18, 2013)(Notice of Immediate Effectiveness of SR-FINRA-2013-001).

also update the current definition of “correspondence” to “any written (including electronic) communication distributed or made available by a Trading Permit Holder to 25 or fewer retail customers within any 30 calendar-day period.” Finally, in the proposed rule filing, “institutional communication” would include written (including electronic) communications that are distributed or made available only to institutional investors. The Exchange believes the proposed changes to the definitions in Rule 9.21(a) to create a more concise and descriptive rule which benefits investors by clarifying the terms.

Next, the Exchange is proposing to amend Rule 9.21(b), “Approval by Registered Options Principal.” More specifically, the Exchange is proposing to replace the phrase “advertisements, sales literature, and independently prepared reprints” in Rule 9.21(b)(i) with the new proposed term, “retail communications.” This proposed change will make the Rule more consistent with the other proposed changes.

Under proposed rule 9.21(b)(ii), correspondence would “need not be approved by a Registered Options Principal prior to use” but would be subject to the supervision and review requirements of Rule 9.8. The Exchange is proposing to delete the requirement for principal approval of correspondence that is distributed to 25 or more existing retail customers within a 30 calendar-day period that makes any financial or investment recommendation or otherwise promotes the product or service of a TPH. Under the proposed Rule 9.21(b), such communications would be considered retail communications and therefore subject to the principal approval requirement. As such, the proposed change does not substantively change the scope of options communications that would require principal approval.

Next, the Exchange is proposing to modify the required approvals of “Institutional communications.” More specifically, the Exchange is proposing to add that a TPH shall “establish written procedures that are appropriate to its business, size, structure, and customers for review by a Registered Options Principal of institutional communications used by the Trading Permit Holder or TPH organization.” The Exchange is proposing these changes to conform its rule with the current FINRA rule.

The Exchange is also proposing to amend Rule 9.21(c). More specifically, the Exchange is proposing to, again, replace the phrase “advertisements, sales literature, and independently prepared reprints” with the new proposed term “retail communications.” The Exchange is also proposing to further exempt options disclosure documents and prospectuses from Exchange review as these documents have other further requirements under the Securities Act of 1933. The Exchange is proposing these changes to conform its rule with the current FINRA rule.

The Exchange is proposing to specify in Rule 9.21(d) that Exchange TPHs may not use any options communications that “constitute a prospectus” unless such communications would meet the requirements of the Securities Act of 1933. The Exchange believes this change will put TPHs on notice that all documents that may constitute a prospectus will be required to comply with the Securities Act of 1933 as such. Finally, the Exchange is proposing to move and slightly modify Rule 9.21(d) to state that any statement made referring to “potential opportunities or advantages presented by options” must also be accompanied by a statement identifying the potential risks posed. The Exchange believes that moving the language to the end of paragraph (d) will alert the public of potential risks associated with options, as well as the advantages,

which will create more awareness of the potential harms that may arise in the participation of such securities. The Exchange is proposing these changes to conform its rule with the current FINRA rule. The Exchange believes the proposed rule changes will provide greater clarity to TPHs and the public regarding the Exchange's rules. In addition, the Exchange believes that the proposed rule change will help ensure that investors are protected from potentially false or misleading communications with the public distributed by Exchange TPHs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers .

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ Id.

In particular, the Exchange believes the proposed rule changes will provide greater clarity to TPHs and the public regarding the Exchange's rules. In addition, the Exchange believes that the proposed rule change will help ensure that investors are protected from potentially false or misleading communications with the public distributed by Exchange TPHs.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposed rule change will bring clarity and consistency to Exchange Rules. The Exchange does not believe the proposed rule change will impose any burden on any intramarket competition as it applies to all TPHs. In addition, the Exchange does not believe the proposed rule filing will bring any unnecessary burden on intermarket competition as it is consistent with the FINRA "Options Communications" rule.⁷

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

⁷ See FINRA Rule 2220.

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-043 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2013-043. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you

wish to make available publicly. All submissions should refer to File Number SR-CBOE-2013-043 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill
Deputy Secretary

Action as set forth or recommended herein
APPROVED pursuant to authority delegated by
the Commission under Public Law 87-592.

For the Division of Trading and Markets

by:_____

date:_____

⁸ 17 CFR 200.30-3(a)(12).