

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56816; File No. SR-CBOE-2007-130)

November 19, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change to Amend its Rule 4.20 Regarding Anti-Money Laundering

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 2, 2007, the 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 CBOE. On November 9, 2007, CBOE file Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

CBOE proposes to amend CBOE Rule 4.20, codifying the Anti-Money Laundering Compliance Program (the “AML Program”), to establish: (1) independent testing for compliance be conducted at least annually by members with a public business, or every two years if no public business is conducted; and (2) clarify the persons designated to implement and monitor the Anti-Money Laundering Compliance Rule. The text of the proposed rule change is provided below. The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.org/Legal>), at the Exchange’s Office of the Secretary and at the Commission’s Public Reference Room.

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

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

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

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

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

1. Purpose

Financial institutions, including broker-dealers, must develop and implement AML Programs pursuant to the Bank Secrecy Act,<sup>3</sup> as amended by Section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (“PATRIOT Act”).<sup>4</sup> Consistent with the Department of Treasury’s (“Treasury”) regulation 31 C.F.R. 103.120 under the Bank Secrecy Act, CBOE Rule 4.20 requires that each member organization and each member not associated with a member organization develop and implement a written AML program and specifies the minimum requirements for these programs.

The AML program must include the development of internal policies, procedures and controls; the designation of a person to implement and monitor the day-to-day operations and internal controls of the program (commonly referred to as an “AML Officer”); ongoing training for appropriate persons; and an independent testing function for overall compliance.

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<sup>3</sup> 31 U.S.C. § 5311 et seq.

<sup>4</sup> Pub. L. No. 107-56, 115 Stat. 272 (2001).

In order to provide interpretive clarity to the requirements under CBOE Rule 4.20 with respect to independent testing and AML Officers, as well as to clarify references to the Bank Secrecy Act, CBOE proposes the following amendments to CBOE Rule 4.20.

#### References to Bank Secrecy Act

The proposed rule change would delete references to certain sections of the Bank Secrecy Act and a reference to USA PATRIOT Act to more clearly reflect the requirements under CBOE Rule 4.20.

#### Timeframes for Independent Testing

The proposed rule change would require that independent testing of AML programs be conducted, at a minimum, on an annual (calendar-year) basis by members or member organizations, unless the member or member organization does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers), in which case such independent testing is required every two years (on a calendar-year basis). CBOE believes these timeframes are reasonable in that they require more frequent testing of AML programs designed to monitor a business with customers from the general public, which may be more susceptible to money laundering schemes than a strictly proprietary business involving transactions with other broker-dealers. Further, the one-year time frame for testing is consistent with standard industry practice in that it is similar to generally accepted guidelines for conducting tests in the context of, for instance, general audits and branch office visits. However, the proposed rule change establishes only a minimum requirement, and makes clear that members should undertake more frequent testing when circumstances warrant

(e.g. should the business mix of the member or member organization materially change; in the event of a merger or acquisition; in light of systemic weaknesses uncovered via testing of the AML Program; or in response to any other “red flags”).

#### Qualification and Independence Standards for Testing

The proposed rule change would further require that testing be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations. Such person need not be an employee of the member or member organization since the responsibility being delegated is essentially an auditing function and, as such, it would not be unusual or ineffective for it to be performed by an independent outside party.

The proposed rule change does not preclude an employee of the member or member organization from conducting the required independent testing of the AML Program; however the proposed “independence” standard would prohibit testing from being conducted by a person who performs the functions being tested, by the designated AML Officer or by a person who reports to either.

The proposed rule change would be generally consistent with the approach taken by the NYSE and NASD, n/k/a the Financial Industry Regulatory Authority, Inc., (“FINRA”),<sup>5</sup> regarding independent testing of AML Programs, with variations where necessary to account for the differences in CBOE membership—in particular, differences in firm size, types of businesses conducted, and overall business models. It should be noted that CBOE’s membership is

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<sup>5</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007); 72 FR 42190 (Aug. 1, 2007).

comprised with an over-whelming majority of members who are broker-dealers that are not members of either NYSE or FINRA and who conduct business only with other broker-dealers. It should be further noted that CBOE conducts routine examinations of all capital computing members to test the adequacy of AML compliance programs with the objective of determining whether member firms' AML compliance programs are reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and applicable Treasury, Commission, and CBOE rules. Additionally, for all non-capital computing CBOE members, CBOE requires that each broker-dealer member file an annual attestation that identifies: 1) the designated AML Compliance Officer; 2) the broker-dealer annual training, including a list of attendees and date conducted; 3) the independent review, including date and identification of the reviewer. The attestation also includes a statement regarding broker-dealer members maintaining written documentation of the independent review conducted.

#### AML Officer

The proposed rule change would also clarify that the AML Officer(s) must be an associated person of the member. This would not prohibit a member that is part of a diversified financial institution from designating an AML Officer that is employed by the member's parent company, sister company, or other affiliate. However, if such a person is designated as a member's AML Officer, CBOE would consider that person to be an associated person of the member with respect those activities performed on behalf of the member.

#### 2. Statutory Basis

CBOE believes that the proposed rule change is consistent with Section 6 of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular, in that it is designed to

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

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. CBOE believes that the proposed rule change is designed to accomplish these ends by requiring members to conduct periodic tests of their AML compliance programs, preserve the independence of their testing personnel, and ensure the accuracy of their AML compliance person information.

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

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

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

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

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

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

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning

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<sup>7</sup> 15 U.S.C. 78f(b)(5).

the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2007-130 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2007-130. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2007-130 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).