

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60106; File No. SR-CBOE-2009-033)

June 12, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Statutory Disqualification Procedures

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Exchange Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on May 26, 2009, the Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) filed with the Securities and Exchange Commission (the “SEC” or “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 is proposing to amend its rule regarding members and associated persons who are or become subject to a statutory disqualification. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), 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 those statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Item IV below. The Exchange 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

Exchange Rule 3.18(a) provides that the Exchange may determine not to permit a member or an associated person of a member who is or becomes subject to a statutory disqualification under the Exchange Act,⁴ to continue in membership or in association with a member. Under Rule 3.18(b), a member or an associated person who is or becomes subject to a statutory disqualification and wishes to continue in membership or in association with a member must submit an application to the Exchange to do so. When the Exchange receives such an application, or otherwise becomes aware that a member or an associated person is subject to a statutory disqualification, the Exchange is required to appoint a panel to conduct a hearing under the procedures set forth in Rule 3.18 to determine whether to allow the member or associated person to continue in membership or in association with a member. The purpose of this rule filing is to expand the ability of the Exchange to waive the requirement to conduct a hearing under Rule 3.18 if the Exchange intends to grant a member's application for continued membership or an associated person's application for continued association with a member.

Exchange Act Rule 19h-1⁵ prescribes the form and content of, and establishes the mechanism by which the Commission reviews, proposals submitted by self-regulatory organizations ("SROs"), such as the Exchange, to allow a member or associated person subject to a statutory disqualification to become or remain a member or associated with a member.

⁴ 15 U.S.C. 78a et seq.

⁵ 17 CFR 240.19h-1.

Among other things, Exchange Act Rule 19h-1 provides for Commission review of notices filed by SROs proposing to admit any person to, or continue any person in, membership or association with a member, notwithstanding a statutory disqualification. However, Exchange Act Rule 19h-1(a)(2)⁶ and Exchange Act Rule 19h-1(a)(3)⁷ provide that for certain persons, and in limited circumstances, a notice does not need to be filed.

Interpretation and Policy .03 to Rule 3.18 currently permits the Exchange to waive the hearing provisions of Rule 3.18 when the Exchange intends to grant an associated person's application for continued association and the Exchange is not required to make a notice filing with the Commission under Exchange Act Rule 19h-1(a)(2).⁸ The Exchange is proposing to expand its ability to waive the hearing provisions of Rule 3.18 to when the Exchange intends to grant a member's or associated person's application for continued membership or association and the Exchange is not required to make a notice filing with the Commission under Exchange Act Rule 19h-1(a)(3).

The Exchange is also proposing to waive the hearing provisions of Rule 3.18 when the Exchange determines to allow a member to continue in membership, or an associated person to continue in association with a member, and the Exchange determines that it is otherwise appropriate to waive the hearing provisions of Rule 3.18 under the circumstances. For example,

⁶ Exchange Act Rule 19h-1(a)(2), 17 CFR 240.19h-1(a)(2), provides that a notice need not be filed with the Commission, pursuant to Exchange Act Rule 19h-1, regarding an associated person subject to a statutory disqualification if the person's activities with respect to the member are solely clerical or ministerial in nature and such person does not have access to funds, securities, or books and records.

⁷ Exchange Act Rule 19h-1(a)(3), 17 CFR 240.19h-1(a)(3), provides that a notice need not be filed with the Commission, pursuant to Exchange Act Rule 19h-1, regarding a person or member subject to a statutory disqualification if the person or member proposed for continued association or membership, respectively, satisfies the requirements of Exchange Act Rule 19h-1(a)(3)(i)-(vi).

⁸ See Securities Exchange Act Release No. 56614 (October 4, 2007), 72 FR 58132 (October 12, 2007) (SR-CBOE-2007-14).

a settlement agreement for a disciplinary matter involving CBOE and multiple regulators or SROs could fully address statutory disqualification issues, obviating the need for a CBOE hearing on those same issues. The Exchange might also choose to exercise this waiver authority when no regulatory purpose would be served by conducting a hearing under Rule 3.18, such as when the Commission initiated the proceeding regarding the underlying conduct that resulted in the statutory disqualification and the sanction imposed in the matter does not inhibit the applicable party's ability to continue as an Exchange member or associated person.

Interpretation and Policy .01 to Rule 3.18 (“Rule 3.18.01”) provides that the Exchange may waive the provisions of Rule 3.18 when a proceeding is pending before another SRO to determine whether to permit a member or an associated person to continue in membership or association with the member notwithstanding a statutory disqualification. When the Exchange exercises this waiver authority, Rule 3.18.01 currently provides that the Exchange Department of Financial and Sales Practice Compliance shall determine whether the Exchange will concur in any the Exchange Act Rule 19h-1 filing made by another SRO. The Exchange is proposing to make two clarifying changes to this provision. First, the Exchange proposes to replace the reference to the “Department of Financial and Sales Practice Compliance” with the “Exchange” because the Exchange no longer has a department by that name. The Exchange is also proposing to include the words “member or” in the last sentence of Rule 3.18.01 to clarify that the Exchange may concur in any Exchange Act Rule 19h-1 filing made by another SRO with respect to a member or an associated person. This change is consistent with the rest of Rule 3.18.01.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the

Exchange Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,¹⁰ which requires, among other things, that the Exchange's rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that the proposed rule change would better enable the Exchange to streamline the administration of its statutory disqualification program and better protect investors and the public interest by focusing Exchange resources on circumstances sufficient to warrant a statutory disqualification hearing.

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 Exchange 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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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 Exchange 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-2009-033 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-2009-033. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing will also be available for inspection and copying at the principal office

of 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-2009-033 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).