

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60370; File No. SR-CBOE-2009-033)

July 23, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Regarding Statutory Disqualification Procedures

I. Introduction

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”) a proposed rule change pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on June 22, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Exchange Act Rule 19h-1⁴ prescribes the form and content of, and establishes the mechanism by which the Commission reviews, proposals submitted by self-regulatory organizations (“SROs”), such as CBOE, to allow a member or associated person subject to a statutory disqualification to become or remain a member or associated with a member. Among other things, 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,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60106 (June 12, 2009), 74 FR 29525 (June 22, 2009) (“Notice”).

⁴ 17 CFR 240.19h-1.

notwithstanding a statutory disqualification. However, Exchange Act Rule 19h-1(a)(2)⁵ and Exchange Act Rule 19h-1(a)(3)⁶ provide that for certain persons, and in limited circumstances, a notice does not need to be filed.

CBOE Rule 3.18(a) provides that CBOE 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,⁷ 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.

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

⁵ 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.

⁶ 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).

⁷ 15 U.S.C. 78a et seq.

with the Commission under Exchange Act Rule 19h-1(a)(2).⁸ The Exchange proposed to expand its ability to waive the hearing provisions of Rule 3.18 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).

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

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

any the Exchange Act Rule 19h-1 filing made by another SRO. The Exchange proposed to make two clarifying changes to this provision. First, the Exchange proposed 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. Second, the Exchange proposed 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.

III. Discussion

The Commission has carefully reviewed the proposed rule change and finds that it is generally consistent with Section 6(b)⁹ of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Exchange Act,¹¹ which requires the rules of a national securities exchange to, among other things, be designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investor and the public interest. The Commission believes that the proposed rule change will enable CBOE to more efficiently administer its statutory disqualification program while at the same time protecting investors and the public interest by allowing CBOE to reallocate resources that would otherwise be spent on unnecessary statutory disqualification hearings.

⁹ 15 U.S.C. 78f.

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,¹² that the proposed rule change (SR-CBOE-2009-033) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).