

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62977; File No. SR-CBOE-2010-084)

September 22, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change Regarding Registration and Qualification Requirements

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 September 10, 2010, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been 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 amend its rules regarding qualification and registration of individual Trading Permit Holders and associated persons. The text of the rule proposal is available on the Exchange’s website (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, on the Commission’s website (<http://www.sec.gov>), and at the Commission.

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 self-regulatory organization 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

CBOE is proposing to amend its rules regarding qualification, registration and continuing education of individual Trading Permit Holders and individual associated persons.³ Specifically, in response to a request by the Division of Trading and Markets of the U.S. Securities and Exchange Commission and in light of recent market events, the Exchange is proposing to expand its registration and qualification requirements to include additional types of individual Trading Permit Holders and individual associated persons. The revised requirements apply to both CBOE and CBOE Stock Exchange (“CBSX”) Trading Permit Holders and their associated persons. CBOE is also proposing to clarify that certain requirements throughout Rule 3.6A, including proposed Rule 3.6A(a), 3.6A(b) and Interpretation and Policy .03 to 3.6A, apply to both Trading Permit Holders and TPH organizations.⁴ The Exchange believes the proposed rule changes are consistent with Rule 15b7-1,⁵ promulgated under the Securities Exchange Act of

³ CBOE Rule 1.1(qq) provides “The term ‘Associated Person’ or ‘Person Associated with a Trading Permit Holder’ means any partner, officer, director or branch manager of a Trading Permit Holder (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Trading Permit Holder, or any employee of a Trading Permit Holder.” This filing refers specifically to the classification of “individual associated persons” as an organization could fall within the scope of CBOE Rule 1.1(qq) and it is not CBOE’s intention to require registration by an organization.

⁴ Section 1.1 of CBOE’s By-Laws provides: “The term ‘Trading Permit Holder’ means any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit. If a Trading Permit Holder is an individual, the Trading Permit Holder may also be referred to as an ‘individual Trading Permit Holder.’ If a Trading Permit Holder is not an individual, the Trading Permit Holder may also be referred to as a ‘TPH organization.’ A Trading Permit Holder is a ‘member’ solely for purposes of the Act; however, one’s status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange.”

⁵ 17 CFR 240.15b7-1.

1934, as amended (“Exchange Act”),⁶ which provides: “No registered broker or dealer shall effect any transaction in...any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards...established by the rules of any national securities exchange...”

CBOE Rule 3.6A establishes the qualification and registration requirements for associated persons of TPH organizations. This rule currently establishes registration requirements for a Financial/Operations Principal for each Trading Permit Holder and TPH organization subject to the Exchange Act Rule 15c3-1.⁷ Rule 3.6A also references the registration requirements set forth in Chapter IX of the Exchange’s Rulebook for associated persons of TPH organizations that conduct a public customer business.

The Exchange is proposing to require additional Trading Permit Holders and associated persons to submit the appropriate application for registration online through the Central Registration Depository system (“Web CRD”), which is operated by the Financial Industry Regulatory Authority, Incorporated (“FINRA”), successfully complete any qualification examination(s) as prescribed by the Exchange and submit any required registration and examination fees. Specifically, the Exchange is proposing to move the existing Rule 3.6A(a), governing registration requirements for Financial and Operations Principals to 3.6A(b). CBOE is proposing to add Rule 3.6A(a)(1) that will require registration and qualification by individual Trading Permit Holders and individual associated persons engaged or to be engaged in the securities business of a Trading Permit Holder or TPH organization.⁸

⁶ 15 U.S.C. 78a et seq.

⁷ 17 CFR 240.15c3-1.

⁸ An individual with an indirect ownership interest in a Trading Permit Holder or TPH

CBOE is also proposing to adopt Interpretation and Policy .06 to define what it means to be “engaged in the securities business of a Trading Permit Holder or TPH organization” for purposes of this rule. Specifically, an individual Trading Permit Holder or individual associated person shall be considered to be a person engaged in the securities business of a Trading Permit Holder or TPH organization if (i) the individual Trading Permit Holder or associated person conducts proprietary trading, acts as a market-maker, effects transactions on behalf of a broker-dealer account, supervises or monitors proprietary trading, market-making or brokerage activities on behalf of the broker-dealer, supervises or conducts training for those engaged in proprietary trading, market-making or brokerage activities on behalf of a broker-dealer account; or (ii) the individual Trading Permit Holder or associated person engages in the management of any individual Trading Permit Holder or individual associated person identified in (i) above as an officer, partner or director.⁹

Web CRD has been enhanced by FINRA to allow for general registration of applicable Trading Permit Holders and associated persons. CBOE will require that all applicable Trading Permit Holders and individual associated persons that are not already registered in Web CRD, that are required to register under proposed Rule 3.6A, to register within 60 days of the approval date of this filing by the U.S. Securities and Exchange Commission. CBOE is currently working with the Division of Trading and Markets of the U.S. Securities and Exchange Commission to identify a reasonable time period for which compliance with the additional examination

organization, that is engaged in the securities business of such Trading Permit Holder or TPH organization, is required to register under proposed Rule 3.6A(a)(1).

⁹ With the exception of its application to sole proprietors (as registration of sole proprietors at CBOE is required under proposed subparagraph (a) of Interpretation and Policy .06 to Rule 3.6A), this requirement is consistent with FINRA’s registration requirement for Principals (as defined in NASD Rule 1021). CBOE is declining to adopt the term “Principal” in the Exchange Rulebook to avoid confusion with existing terms, such as “Option Principal.”

requirements will be required. The availability of the appropriate category on Web CRD for any new qualification examinations recognized by the Exchange may be subject to the timing for any required systems development on Web CRD.

CBOE is considering various alternatives for an appropriate qualification examination(s) for Trading Permit Holders and associated persons required to register under proposed Rule 3.6A(a). These alternatives include, but are not limited to, the successful completion of CBOE's Trading Permit Holder Qualification Examination or the development of a new qualification examination.¹⁰ The Exchange will notify its Trading Permit Holders and TPH organizations via regulatory circular what qualification examination(s) will be acceptable for compliance with the requirements proposed in Rule 3.6A(a)(1). Individual Trading Permit Holders or individual associated persons acting in the capacity of a sole proprietor, officer, partner, director or Chief Compliance Officer will be subject to heightened qualification requirements. In addition, an individual Trading Permit Holder or individual associated person that is engaged in the supervision or monitoring of proprietary trading, market-making or brokerage activities and/or

¹⁰ CBOE has represented to Commission staff that it intends to develop, within six months of the approval date of this filing, the appropriate qualification examination(s) for the individual Trading Permit Holders and associated persons that will be required to register following the approval of this filing. Once the development of an examination(s) has been completed, the implementation and effective date will be subject to approval by the Commission and any necessary systems development schedules to implement the examination. If the Exchange does not complete development of the examination(s) within six months of the approval date of this filing, the Exchange will establish a deadline for qualification based on the existing categories of registration and qualification examinations available on Web CRD, until such time as the development and implementation of an alternative examination(s) has been completed. The referenced categories of registration available on Web CRD include, but may not be limited to, the General Securities Representative (GS) and General Securities Principal (GP), as applicable to the type of business activities conducted. The accompanying qualification examination for the General Securities Representative is the Series 7 and the accompanying qualification examination for the General Securities Principal is the Series 24.

that is engaged in the supervision or training of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities will be subject to heightened qualification requirements. The Exchange believes that the heightened qualification requirements should enhance the supervisory structure for Trading Permit Holders and TPH organizations that do not conduct a public customer business.

The Exchange is also proposing to add Rule 3.6A(a)(2) to identify several categories of persons that are exempt from these additional registration requirements. The categories of individual Trading Permit Holders and associated persons that are exempt from the registration requirements set forth in Rule 3.6A(a)(1) include (i) individual associated persons functioning solely and exclusively in a clerical or ministerial capacity; (ii) individual Trading Permit Holders and individual associated persons that are not actively engaged in the securities business, (iii) individual Trading Permit Holders and individual associated persons functioning solely and exclusively to meet a Trading Permit Holder's or TPH organization's need for nominal corporate officers or for capital participation; and (iv) individual associated persons whose functions are solely and exclusively related to transactions in commodities, transactions in security futures and/or effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange. The Exchange believes these registration exemptions are appropriate because CBOE would not consider individuals that fall into the exemptions to be actively engaged in securities business unless they are registered as floor members on another national securities exchange, in which case, they are already registered as floor members and not required to register at CBOE.¹¹ CBOE believes incorporating these exemptions into the rule provides additional clarity to individual Trading Permit Holders and

¹¹ The Commission notes that these firms must comply with Section 15(b)(8) of the Act.

individual associated persons as to who will or will not be required to register under the proposed rule. Any applicable FINRA registration requirements would continue to apply to Trading Permit Holders and TPH organizations that are also members of FINRA.

The Exchange is proposing to move the existing Rule 3.6A(b), referencing the types of associated persons required to register under Chapter IX of CBOE's Rules, to Rule 3.6A(d). CBOE is also proposing to clarify the language in this section to make it clear that individual associated persons, including Registered Options Principals and Registered Representatives, are also subject to the registration requirements set forth in Chapter IX of CBOE's Rules. Chapter IX is generally applicable to TPH organizations that conduct a public customer business.

The Exchange is also proposing to adopt Rule 3.6A(c) to require the designation of a Chief Compliance Officer by Trading Permit Holders and TPH organizations that are registered broker-dealers, which designation shall be updated on Schedule A of Form BD. Under the proposed rule, the Chief Compliance Officer shall be required to register and pass the appropriate qualification examination as prescribed by the Exchange.¹² This is consistent with FINRA Rule 3130 requiring designation of at least one Chief Compliance Officer on Schedule A of Form BD. In addition, NASD Rule 1022 requires registration by each person designated as Chief Compliance Officer on Schedule A of Form BD. CBOE is also proposing to implement a limited exemption from the requirement to pass the appropriate qualification examination by a Chief Compliance Officer. Specifically, a person that has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to any statutory

¹² The appropriate qualification examination for a Chief Compliance Officer is the Series 14 (Compliance Official). CBOE is working with FINRA to establish this category of registration and make the accompanying qualification examination available at CBOE on Web CRD.

disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a \$5,000 or more fine for a violation(s) of any provision of any securities law or regulation, or any agreement with, rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such self-regulatory organization in connection with a disciplinary proceeding, shall be required to register in the category of registration appropriate to the function to be performed as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

The Exchange is proposing to adopt Rule 3.6A(e) to set forth the requirements for examinations where there is a lapse in registration. Specifically, an individual Trading Permit Holder or individual associated person shall be required to pass the appropriate qualification examination for the category of registration if the individual Trading Permit Holder's or individual associated person's registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for a period of two or more years.

The Exchange is proposing to move the language in the existing Interpretation and Policy .01 to Interpretation and Policy .02. The Exchange is proposing to add language to Interpretation and Policy .01 requiring each individual Trading Permit Holder or individual associated person subject to the registration requirements in Rule 3.6A to electronically file a Uniform Application for Securities Industry Registration through Web CRD.

The Exchange is also proposing to move the existing Interpretation and Policies .02 and .03 to Interpretation and Policies .03 and .04, respectively. The Exchange is also proposing to modify the proposed Interpretation and Policies .02, .03 and .04 to remove the existing references to those with "an associated person status" enumerated under paragraph (a) or (b) of

the current Rule 3.6A and extend the applicability to all individual Trading Permit Holders or individual associated persons subject to the registration requirements in Rule 3.6A.

The Exchange is also proposing to adopt Interpretation and Policy .05 to Rule 3.6A. This will enable the Exchange to waive the qualification examination requirement where good cause is shown. Similar rules are in place at the New York Stock Exchange, Inc. (“NYSE”) and FINRA.¹³ In determining whether a waiver shall be granted, the Exchange shall consider, among other things, previous industry employment, training and/or the successful completion of similar qualification examinations of other self-regulatory organizations.

In addition, the Exchange is proposing to add Interpretation and Policy .07 that will require registration and successful completion of a heightened qualification examination by at least two individuals that are each an officer, partner or director of each Trading Permit Holder or TPH organization that is a registered broker-dealer and has trading privileges on the Exchange.¹⁴ However, please note that all individuals who engage in supervisory functions of the Trading Permit Holder’s or TPH organization’s securities business shall be required to register and pass the appropriate heightened qualification examination(s) relevant to the particular category of registration. Trading Permit Holders that are sole proprietors are exempt from this requirement. In addition, the Exchange may waive the requirement to have two officers, partners and/or directors registered if a Trading Permit Holder or TPH organization conclusively demonstrates that only one officer, partner or director should be required to register. For example, a TPH organization could conclusively demonstrate that only one individual is

¹³ See NASD Rule 1070 – Qualification Examinations and Waiver of Requirements and NYSE Rule 345 – Employees – Registration, Approval, Records.

¹⁴ With the exception of its application to sole proprietors, this requirement is consistent with the registration requirement set forth in NASD Rule 1021 addressing registration of two Principals (as defined in NASD Rule 1021).

required to register if such TPH organization is owned by one individual (such as a single member limited liability company), such individual acts as the only trader on behalf of the TPH organization, and the TPH organization employs only one other individual who functions only in a clerical capacity. The ability to waive this registration requirement is consistent with similar FINRA rules regarding principal registration.¹⁵

CBOE is also proposing to allow a Trading Permit Holder or TPH organization that conducts proprietary trading only and has 25 or fewer registered persons to have only one officer or partner registered under this section rather than two. This exception is similar to that of several other exchanges and reflects that such Trading Permit Holders or TPH organizations do not necessitate the same level of supervisory structure as those Trading Permit Holders or TPH organizations that have customers or are larger in size. For purposes of this Interpretation and Policy .07 to Rule 3.6A, a Trading Permit Holder or TPH organization shall be considered to conduct only proprietary trading if it has the following characteristics: (i) the Trading Permit Holder or TPH organization is not required by Section 15(b)(8) of the Exchange Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Exchange Act; (ii) all funds used or proposed to be used by the Trading Permit Holder or TPH organization are the Trading Permit Holder's or TPH organization's own capital, traded through the Trading Permit Holder's or TPH organization's own accounts; (iii) the Trading Permit Holder or TPH organization does not, and will not, have customers; and (iv) all persons registered on behalf of the Trading Permit Holder or TPH organization acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Trading Permit Holder or TPH organization. The description of what constitutes proprietary trading for

¹⁵ See NASD Rule 1021(e).

purposes of this Interpretation and Policy .07 to Rule 3.6A is appropriate in that it provides additional clarity for Trading Permit Holders and individual associated persons to evaluate whether two individuals are required to register.

In conjunction with the additional registration requirements, the Exchange is proposing to delete a reference in Interpretation and Policy .01 to Rule 9.3A that excludes those people whose activities are limited solely to the transaction of business on the Floor with Trading Permit Holders or registered broker-dealers from the definition of “registered person” for purposes of Rule 9.3A. The changes proposed to Interpretation and Policy .04 of Rule 3.6A would subject individual Trading Permit Holders and individual associated persons whose activities are limited solely to the transaction of business on the Floor with Trading Permit Holders or registered broker dealers to the continuing education requirements set forth in Rule 9.3A or any other continuing education requirements as prescribed by the Exchange.

This filing also proposes to make several technical and/or non-substantive changes. First, the Exchange is proposing to modify the title of Rule 3.6A to delete the term “Certain” and to clarify that the registration requirements set forth in Rule 3.6A also apply to specified Trading Permit Holders. The Exchange is also proposing to make a technical change to proposed Rule 3.6A(b) that will 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. In addition, the Exchange is proposing to replace the two references in this section to “in a form and manner prescribed by the Exchange” with “as prescribed by the Exchange” for consistency throughout Rule 3.6A. The Exchange is also proposing to amend several references in CBOE Rules 3.6A, 9.2 and 9.3. Specifically, these rules currently reference “NASD’s Web CRD System.” Since NASD is now known as FINRA, CBOE is proposing to change this

reference to “Web CRD.” The Exchange is proposing to clarify Rule 9.3(c) relating to amended Form U-5 to provide “the facts or circumstances giving rise to the need for the amendment” rather than “facts and circumstances giving rise to the amendment.” Finally, CBOE is proposing to replace language relating to “said termination notice” in Rule 9.3(b) and “notice” in Rule 9.3(c) with “Form U-5” for specificity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ 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. Specifically, the enhanced registration and qualification requirements will provide additional protection to investors and further promote the public interest.

In addition, the Exchange believes that the proposed rule change is consistent with Section 6(c) of the Act,¹⁸ in general, and furthers the objectives of Section 6(c)(3)(B) of the Act,¹⁹ which provides, among other things, that a national securities exchange may bar a natural person from becoming associated with a member if such natural person does not meet the standards of training, experience and competence as prescribed by the rules of the national securities exchange. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(c)(3)(C) of the Act,²⁰ which provides, among other things, that a national

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78f(c).

¹⁹ 15 U.S.C. 78f(c)(3)(B).

²⁰ 15 U.S.C. 78f(c)(3)(C).

securities exchange may bar any person from becoming associated with a member if such person does not agree to supply the exchange with such information with respect to its dealings with the member as may be specified by the rules of the exchange and to permit the examination of its books and records to verify the accuracy of any information so supplied.

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

The Exchange neither solicited nor received comments on the proposal.

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 self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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 No. SR-CBOE-2010-084 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 No. SR-CBOE-2010-084. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,²¹ 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 such filing also will 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

²¹ The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov>.

you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2010-084 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.²²

Florence E. Harmon
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).