

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59300; File No. SR-CBOE-2008-117)

January 27, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change to Amend Exchange Rule 4.21 Relating to Third Party Deposits

I. Introduction

On December 2, 2008, the Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 4.21 relating to third party deposits. The proposed rule change was published for comment in the Federal Register on December 23, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Under current CBOE Rule 4.21, member organizations engaged in the business of clearing and carrying the accounts of options market makers (“Clearing Firms”) are prohibited (with certain exceptions) from accepting a check or funds transfer if the name on the account from which the funds are drawn is different (i.e., is from a “third party”) from the name on the account cleared or carried by the Clearing Firm.

CBOE proposes to amend the rule to permit Clearing Firms to accept for deposit to a broker-dealer account checks and funds transfers that: (i) constitute an award or settlement paid

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59104 (December 15, 2008), 73 FR 78862 (the “Notice”).

as the result of the resolution of litigation or arbitration which arose in connection with the broker-dealer's securities or futures business; (ii) are drawn on an account of the government of the United States; or (iii) are drawn on the account of another broker-dealer for satisfaction of the resolution of transaction disputes.⁴ The Exchange also proposes to clarify that documents evidencing that a deposit qualifies for acceptance under Rule 4.21, as well as documents authorizing transfers between two accounts under Rule 4.21, must be retained by the Clearing Firm. The Exchange believes that the proposed exceptions do not present any of the concerns or business risks to the Clearing Firm that the rule was originally intended to address.⁵

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires that an exchange have rules designed 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.

The Commission believes that permitting Clearing Firms to accept for deposit these specific types of checks and fund transfers should streamline inter-member dealings without exposing Clearing Firms to the types of risks that the rule was designed to mitigate. Further, the

⁴ The Exchange also notes that Clearing Firms, as a matter of business judgment, may still refuse to accept checks and/or funds transfers from third parties. See id. at 78863.

⁵ See id.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

proposed amendments to Interpretation and Policy .06 to Rule 4.21 are designed to ensure that Clearing Firms retain supporting documentation to evidence compliance with the rule.

Accordingly, the Commission finds the proposed amendments to Rule 4.21 to be consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-2008-117) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).