

SECURITIES AND EXCHANGE COMMISSION

Release No. [34-69807]; File No. SR-CBOE-2013-043

June 20, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to Exchange Rule 9.21

I. Introduction

On April 25, 2013, Chicago Board Options Exchange, Incorporated (the “Exchange”) filed with the Securities and Exchange Commission (the “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 May 14, 2013.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to update Exchange Rule 9.21, “Options Communications,” to conform with changes recently made by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to its corresponding rule.⁴ The proposed changes to Exchange Rule 9.21 are designed to alert Trading Permit Holders (“TPHs”) to their requirements with respect to Options Communications while further regulating all

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 69535 (May 14, 2013), 78 FR 28262 (May 14, 2013) (“Notice”).

⁴ See Securities Exchange Act Release No. 68650 (January 14, 2013), 78 FR 4182 (January 18, 2013) (Notice of Immediate Effectiveness of SR-FINRA-2013-001). The Exchange also proposed certain changes in Rule 9.21 to conform with aspects of the FINRA rule that predated the recent FINRA amendment and were not changed by that amendment.

communications for compliance with Exchange Rules and the Securities Exchange Act of 1934 (the “Act”).

First, the proposed rule change amends Exchange Rule 9.21(a) to reduce the number of defined categories of communication from six (in the current rule) to three. The proposed three categories of communications are: retail communications, correspondence, and institutional communications. Current definitions of “sales literature,” “advertisement,” and “independently prepared reprint” are combined into a single category of “retail communications.” Thus, the Exchange proposed to define “retail communication” as “any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.” The Exchange also proposed to update the definition of “correspondence” to “any written (including electronic) communication distributed or made available by a Trading Permit Holder to 25 or fewer retail customers within any 30 calendar-day period.” Finally, the Exchange proposed to define “institutional communication” to include written (including electronic) communications that are distributed or made available only to institutional investors.

Second, the Exchange proposed to amend Rule 9.21(b), “Approval by Registered Options Principal”, to replace the phrase “advertisements, sales literature, and independently prepared reprints” in Rule 9.21(b)(i) with the new proposed term, “retail communications.”

Under proposed rule 9.21(b)(ii), correspondence would “need not be approved by a Registered Options Principal prior to use” but would be subject to the supervision and review requirements of Exchange Rule 9.8. The Exchange proposed to delete the

requirement for principal approval of correspondence that is distributed to 25 or more existing retail customers within a 30 calendar-day period that makes any financial or investment recommendation or otherwise promotes the product or service of a TPH. Under the proposed Rule 9.21(b), such communications would be considered retail communications and therefore would be subject to the principal approval requirement. As such, the proposed change would not substantively change the scope of options communications that would require principal approval.

Third, the Exchange proposed to modify the required approvals of “Institutional communications” by adding that a TPH shall “establish written procedures that are appropriate to its business, size, structure, and customers for review by a Registered Options Principal of institutional communications used by the Trading Permit Holder or TPH organization.”

Fourth, the Exchange proposed to amend Rule 9.21(c) to replace the phrase “advertisements, sales literature, and independently prepared reprints” with the new proposed term “retail communications.” The Exchange also proposed to further exempt options disclosure documents and prospectuses from Exchange review as other requirements apply to these documents under the Securities Act of 1933.

Fifth, the Exchange proposed to specify in Rule 9.21(d) that TPHs may not use any options communications that “constitute a prospectus” unless the communications meet the requirements of the Securities Act of 1933. Finally, the Exchange proposed to move and slightly modify Rule 9.21(d) to state that any statement made referring to “potential opportunities or advantages presented by options” must also be accompanied by a statement identifying the potential risks posed.

III. Discussion

As noted above, the Commission received no comments on the proposed rule change. The Commission has carefully reviewed the proposed rule change and finds that it is generally consistent with the Act and the rules and regulations thereunder applicable to the Exchange⁵ and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ which requires that the rules of a national securities exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Commission believes the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁵ 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).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ Id.

In particular, the Commission believes that the proposed rule change will help TPHs that are also members of FINRA to comply with their obligations regarding options communications by better aligning the Exchange's requirements with those of FINRA. In addition, the Commission believes that the proposed rule change will help protect investors from potentially false or misleading communications with the public distributed by Exchange TPHs.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁹ that the proposed rule change (SR-69535) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).