

permanent basis. All of the Exchanges have submitted the requisite reports.⁶ The Exchanges believe that their experiences with the pilot programs have been positive and therefore, request that the elimination of position and exercise limits for FLEX Equity options be approved on a permanent basis.

2. Basis

The Exchanges believe that the proposal is consistent with Section 6(b) ⁷ of the Act, in general, and Section 6(b)(5) ⁸ of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange 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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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.

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.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR-Amex-99-40; SR-PCX-99-41; and SR-CBOE-99-59 and should be submitted by December 9, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 99-30090 Filed 11-17-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42111; File No. SR-CBOE-99-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Updating the Exchange's Membership Rules

November 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 12, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The CBOE filed Amendment No. 1 to the proposal on July 15, 1999,³ and

Amendment No. 2 to the proposal on November 3, 1999.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to update the Exchange's membership rules. The text of the proposed rule change is set forth below. Proposed additions are in *italics* and proposed deletions are in *brackets*.

Chicago Board Options Exchange, Incorporated Rules

CHAPTER I—Definitions

RULE 1.1—Definitions

* * * * *

Lessor

(ff) The term "lessor" means the owner of a transferable membership that has been leased to an individual or organization in accordance with the provisions of Rule 3.17 [3.16(b)], and includes any successor in interest of such owner. [A lessor shall continue as a member of the Exchange, subject to all of the provisions of the Constitution and Rules, except that for the duration of the lease arrangements with respect to that leased membership, a lessor may not conduct a public securities business as described by the provisions of Rules 3.1 and the Rules referenced therein.]

Lessee

(gg) The term "lessee" means an individual or organization that has leased a transferable membership from the owner thereof in accordance with the provisions of Rule 3.17 [3.16(b)]. For the duration of the lease agreement, a lessee shall be deemed to be a member, subject to all of the provisions of the Constitution and Rules that are applicable to the owner of an Exchange membership, except that the provisions of *the Constitution and Rules* [Rule 3.12], which concern the ownership of membership, are not applicable to a lessee.

corresponding changes in the Purpose section of the filing. See letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kenneth Rosen, Attorney, Division of Market Regulation ("Division"), SEC, dated July 14, 1999.

⁴ Amendment No. 2 makes minor technical corrections to the text of the proposed rule and deletes section 8(h) from the Exchange's Option Trading Lease Pool Procedures. See letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Yvonne Fraticelli, Special Counsel, Division, SEC, dated November 3, 1999.

⁶ Amex, PCX and CBOE submitted their reports on May 28, 1999, September 30, 1999, and June 2, 1999, respectively.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 makes numerous technical changes to the proposed rule language and

Government Securities Options Permit Holder

(hh) Deleted _____, 199__ (99-____). [The term "Government securities options permit holder" means a qualified individual or organization with an approved nominee that has been issued a nonleasable, nontransferable temporary permit for effecting transactions in Government securities options designated by the Board. Each permit holder shall be subject to the provisions of the Constitution and Rules that are applicable to the owner of a regular Exchange membership, unless exempted from such provisions by the Board; provided, however, Rule 3.12, which concerns the ownership of membership, Rule 3.13, which concerns the purchase of membership, and Section 2.6 of the Constitution, which concerns voting and other rights and powers, shall not apply to a permit holder in his or its capacity as such.]

* * * * *

Nominee

(pp) The term "nominee" means an individual who is authorized by a member organization, in accordance with Rule 3.8, to [conduct business on the floor of the Exchange and to] represent such member organization in all matters relating to the Exchange. [As long as a nominee remains effective, the nominee shall be deemed to be a member, subject to the provisions of the Constitution and Rules of the Exchange.]

* * * * *

CHAPTER III—Membership

Public Securities Business

RULE 3.1. (a) Every individual member or member organization shall have as the principal purpose of its membership the conduct of a public securities business. No individual member or member organization shall own or have registered for it more memberships than are reasonably necessary to carry on [his or its] that member's Exchange activities.

(b) A member shall be deemed to have such a purpose if and so long as

(1) the member has qualified and acts in respect of its business on the Exchange in one or more of the following capacities: (i) a member organization approved to transact business with nonaffiliated public customers in accordance with Rule 9.1 [or]; (ii) a member organization approved to clear Exchange transactions of other members in accordance with the Rules of the Clearing Corporation; (iii) a Market-Maker as defined in Rule

8.1; [(iii)iv] a Floor Broker as defined in Rule 6.70; [(iv)v] a Board Broker as defined in Rule 7.1; (vi) an order service firm as defined in Rule 6.77; [and] or

(2) [all transactions are in compliance with Section 11(a) of the Securities Exchange Act of 1934 as amended and the rules and regulations adopted thereunder; or

(3) the member is a lessor] the member is a lessor; or

(3) the member is an individual with a membership that has been registered for a member organization; or

(4) the member is a [general partner or executive officer or nominee of a member organization and his membership is registered for that] nominee of a member organization.

(c) No member [or member organization] shall utilize any scheme, device, arrangement, agreement, or understanding designed to circumvent or avoid, by reciprocal means or in any other manner, the provisions of this Rule [3.1].

Qualifications and Membership Statuses of Individual Members

RULE 3.2. (a) A person must satisfy the following requirements in order to be an individual member:

(i) the person must be at least 21 years of age;

(ii) the person must be registered as a broker or dealer pursuant to Section 15 of the Exchange Act or be associated with a member organization that is registered as a broker or dealer pursuant to Section 15 of the Exchange Act, except that an individual member who is approved to act solely as a lessor is not required to comply with this requirement; and

(iii) the person must meet the other qualification requirements for membership under the Constitution and Rules.

(b) The individual membership statuses that are approved by the Membership Committee (along with the primary Exchange Rule that provides for such approval if it is not Rule 3.9) include: (i) owner*; (ii) lessor*; (iii) lessee*; (iv) Chicago Board of Trade exerciser*; (v) sole proprietor*; (vi) individual with a membership that has been registered for a member organization*; (vii) nominee of a member organization*; (viii) Market-Maker (Rule 8.2); (ix) Floor Broker (Rule 6.71); (x) member eligible to trade securities traded pursuant to Chapter XXX (Rule 30.2); and (xi) Trust Member (Rule 3.25). The individual permit statuses that are approved by the Membership Committee are IPC Permit Exerciser* (Rule 3.26) and Options Trading Permit holder* (Rule 3.27).

Those individual membership statuses noted with an asterisk are also referred to in the Rules as membership capacity statuses.

(c) Every individual member who is a lessee, a Chicago Board of Trade exerciser, or an owner (who is not a lessor) must have an authorized floor function. An individual member is deemed to have an authorized floor function if the member is approved by the Membership Committee to act as a Market-Maker and/or Floor Broker.

[Individual memberships may be owned by a natural person who is at least 21 years of age and who, except for a lessor, is registered as a broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, or is associated with a registered broker or dealer, and who meets the qualifications for membership in accordance with these Rules.]

Interpretations and Policies:

.01 Individual membership statuses that are approved by Exchange bodies other than the Membership Committee (along with the primary Exchange Rule that provides for such approval) include: (i) DPM Designee (Rule 8.81); (ii) FLEX Appointed Market-Maker for FLEX Index Options (Rule 24A.9); (iii) FLEX Qualified Market-Maker for FLEX Equity Options (Rule 24A.9); (iv) Lead Market-Maker in OEX or DIX options (Rule 8.15); and (v) Supplemental Market-Maker in OEX or DIX options (Rule 8.15).

Qualifications and Membership Statuses of Member Organizations

RULE 3.3. (a) An organization must satisfy the following requirements in order to be a member organization:

(i) the organization must be a corporation or partnership organized under the laws of one of the states of the United States;

(ii) the organization must be registered as a broker or dealer pursuant to Section 15 of the Exchange Act, except that an organization that is approved to act solely as a lessor is not required to comply with this requirement; and

(iii) the organization must meet the other qualification requirements for membership under the Constitution and Rules.

A corporation or partnership that is not organized under the laws of one of the states of the United States must satisfy the requirements set forth in Rule 3.4, in lieu of satisfying the requirements set forth in this paragraph (a), in order to be a member organization.

(b) The member organization membership statuses that are approved

by the Membership Committee (along with the primary Exchange Rule that provides for such approval if it is not Rule 3.9) include: (i) owner*; (ii) lessor*; (iii) lessee*; (iv) member organization for which an individual member has registered his or her membership*; (v) member organization approved to transact business with the public* (Rule 9.1); (vi) Clearing Member; and (vii) order service firm* (Rule 6.77). The member organization permit statuses that are approved by the Membership Committee are IPC Permit Exerciser* (Rule 3.26) and Options Trading Permit holder* (Rule 3.27). Those individual membership statuses noted with an asterisk are also referred to in the Rules as membership capacity statuses.

(c) A member organization that is a Clearing Member or an order service firm is required to possess at least one membership for which the organization is not a lessor.

(d) A member organization that desires to become a different type of business entity permitted under the Rules must apply for membership in the name of the new entity.

[(a) Memberships may be owned or leased by or registered for a corporation organized under the laws of one of the states of the United States or under other laws as the Board shall approve, or a partnership. The corporations or partnerships must be brokers or dealers registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, except for corporations or partnerships that are lessors and that meet the qualifications for membership in accordance with these Rules.]

[(b) With respect to each membership owned or leased by a corporation or partnership, the membership organization must designate an individual nominee in accordance with Rule 3.8, and Article II, Section 2.3 of the Constitution.

(c) With respect to each membership registered for a corporation or partnership pursuant to Article II, Section 2.4 of the Constitution, the member organization shall be represented by the individual member who registered his/her membership for the organization.]

. . . Interpretations and Policies:

.01 For purposes of eligibility for membership, an entity organized as a [Limited Liability Company] *limited liability company* under the laws of one of the states of the United States [or under other such laws as the Board shall approve,] shall be deemed a corporation, *its members shall be deemed principal shareholders, and its members with management*

responsibility and its managers shall be deemed executive officers.

.02 Member organization membership statuses that are approved by Exchange bodies other than the Membership Committee (along with the primary Exchange Rule that provides for such approval) include: Designated Primary Market-Maker (Rule 8.83).

Qualifications of Foreign Member Organizations

RULE 3.4. (a) An organization that is not organized under the laws of one of the states of the United States must satisfy the following requirements in order to be a member organization:

(i) the organization must be a corporation or partnership organized under the laws of a country other than the United States;

(ii) the organization must disclose to the Exchange all persons associated with the organization and all parents of the organization, through all tiers of ownership, until the ultimate individual beneficial owners of the organization are disclosed;

(iii) the organization must maintain in English and at a location in the United States the books and records of the organization that relate to its business on the Exchange;

(iv) the organization must maintain its financial records in accordance with United States accounting standards or foreign accounting standards that are found by the Exchange to be comparable to United States accounting standards;

(v) the organization must waive any secrecy laws in the domiciliary jurisdiction of the organization;

(vi) the organization must provide to the Exchange an opinion of legal counsel of the domiciliary jurisdiction of the organization which certifies that (A) there are no secrecy laws in that jurisdiction and that the organization has effectively waived any future such laws or (B) that the organization has effectively waived any current or future secrecy laws in that jurisdiction;

(vii) the organization must agree to submit to the jurisdiction of the federal courts of the United States and the courts of Illinois and to irrevocably waive, to the fullest extent permitted by law, any objection which the organization may have based on venue or forum non conveniens with respect to any action initiated in such courts;

(viii) the organization must appoint a process agent in Illinois to receive, on the behalf of the organization, process which may be served in any legal action or proceeding;

(ix) the organization must own its Exchange membership(s);

(x) the organization must be registered as a broker or dealer pursuant to Section 15 of the Exchange Act;

(xi) the organization must satisfy the foregoing requirements in a manner and form prescribed by the Exchange and must satisfy such additional requirements that the Exchange reasonably deems appropriate; and

(xii) the organization must meet the other qualification requirements for membership under the Constitution and Rules.

. . . Interpretations and Policies:

.01 For purposes of eligibility for membership, an entity organized as a limited liability company under the laws of a country other than the United States shall be deemed a corporation, *its members shall be deemed principal shareholders, and its members with management responsibility and its managers shall be deemed executive officers.*

Denial of and Conditions to Membership and Association

RULE [3.4] 3.5 (a) *The Membership Committee shall deny membership where an applicant has failed a required membership test.*

(b) The Membership Committee may deny (or may condition) membership or may prevent a person from becoming associated (or may condition an association) with a member for the same reasons that the Securities and Exchange Commission [(SEC)] may deny or revoke a broker-dealer registration and for those reasons required or allowed under the [Securities] Exchange Act [of 1934, each as amended from time to time].

[(b) The Membership Committee shall deny membership where an applicant has failed the required test, and such an applicant must wait 30 days before taking the examination a second time, 60 days if a second attempt is failed, and 120 days if a third or subsequent attempt is failed.]

(c) The Membership Committee also may deny (or may condition) membership or may prevent a person from becoming associated (or may condition an association) with a member when the applicant: [, directly or indirectly,]

[(1)](i) [has a negative net worth,] *is a broker-dealer and (A) has a net worth (excluding personal assets) below \$25,000 if the applicant is an individual, (B) has a net worth (excluding personal assets) below \$50,000 if the applicant is an organization, (C) has financial difficulties involving an amount that is more than [five percent] 5% of the*

applicant's net worth, or (D) has a pattern of failure to pay just debts; [(whether or not such debts have been the subject of a bankruptcy action);]

[(2)](ii) is unable satisfactorily to demonstrate a capacity to adhere to all applicable Exchange, [SEC, Options Clearing Corporation] *Securities and Exchange Commission, Clearing Corporation*, and Federal Reserve Board policies, rules, and regulations, including those concerning record-keeping, reporting, finance, and trading procedures;

[(3)](iii) would bring the Exchange into disrepute; or

[(4)](iv) for such other cause as the Membership Committee reasonably may decide.

[(d) When an applicant is a subject of an investigation conducted by any self-regulatory organization or government agency and involving his fitness for membership, the Membership Committee need not act on his application until the matter has been resolved.]

[(e)d] The Membership Committee may determine not to permit a member or person associated with a member to continue in membership or association with a member or may condition such continuance in membership or association, if the member or associated person:

(i) fails to meet any of the qualification requirements for membership or association after the membership or association has been approved[.];

(ii) fails to meet any condition placed by the Membership Committee on such membership or association[.]; or

(iii) violates any agreement with the Exchange[.]. [or

(iv) becomes subject to a statutory disqualification under the Exchange Act.

(f) If a member, or person associated with a member, who becomes subject to a statutory disqualification under the Exchange Act, wants to continue in Exchange membership or association with a member, the member or associated person must, within 30 days of becoming subject to a statutory disqualification, submit an application to the Membership Committee seeking to continue in Exchange membership or association with a member notwithstanding the statutory disqualification. Failure to timely file such an application is a factor that may be taken into consideration by the Membership Committee in making determinations pursuant to Rule 3.4(e).]

(e) Any decision made by the Membership Committee pursuant to paragraph (a), (b), (c), or (d) of this Rule

must be consistent with both the provisions of this Rule and the provisions of the Exchange Act.

[(g)f] Any applicant who has been denied membership or association with a member or granted only conditional membership or association pursuant to [Rule 3.4(a), (b), or (c)] *paragraph (a), (b), or (c) of this Rule*, and any member or person associated with a member who is not permitted to continue in membership or association with a member or whose continuance in membership or association is conditioned pursuant to [Rule 3.4(e)] *paragraph (d) of this Rule*, may appeal the Membership Committee's decision under Chapter XIX. No determination of the Membership Committee to discontinue or condition a person's membership or association with a member pursuant to *paragraph (d) of this Rule* [3.4(e)] shall take effect until the review procedures under Chapter XIX have been exhausted or the time for review has expired.

Persons Associated with Member Organizations

RULE [3.5] 3.6. (a) Persons associated with member organizations shall be bound by the Constitution and Rules of the Exchange and of the Clearing Corporation. The Exchange may bar a person from becoming or continuing to be associated with a member organization if such person does not agree in writing, [on a] *in a manner and form prescribed by the Exchange*, to furnish the Exchange with information with respect to such person's relationship and dealings with the member organization[s], and information reasonably related to such person's other securities business, as may be required by the Exchange, and to permit the examination of its books and records by the Exchange to verify the accuracy of any information so supplied.

(b) *Each associated person of a member organization that is required to be disclosed on Exchange Act Form BD as a direct owner or executive officer (or, if the member organization is not required to be a registered broker-dealer, each associated person of the organization that would be required to be disclosed on Form BD as a direct owner or executive officer in the event that the organization was a registered broker-dealer) is required to submit to the Membership Department, pursuant to Rule 3.9, an application for approval to become associated with the member organization in that capacity. No person may become associated with a member organization in the capacity of a direct owner or executive officer that is (or*

would be) required to be disclosed on Form BD unless and until the Membership Committee approves that association.

[(b) Each member organization shall file with the Exchange and keep current a list and descriptive identification of those persons associated with the member organization who are its executive officers, directors, principal shareholders, general partners and limited partners. Such persons shall file with the Exchange a Uniform Application for Securities Industry Registration or Transfer (Form U-4).]

(c) A claim of any [person associated with a member organization described in the first sentence of paragraph (b) of this Rule against such organization] *associated person required to be approved by the Membership Committee pursuant to paragraph (b) of this Rule against the member organization with which that person is associated* shall be subordinate in right of payment [of] to customers and other members.

Certain Documents Required of [Applicants and] Members, Applicants, and Associated Persons

RULE [3.6] 3.7 (a) *Each member and member applicant shall promptly file the following documents with the Membership Department:*

(i) *each member organization and member organization applicant that is a corporation shall promptly file with the Membership Department a copy of the articles or certificate of incorporation of the organization, the by-laws of the organization, and all amendments to those documents;*

(ii) *each member organization and member organization applicant that is a partnership shall promptly file with the Membership Department a copy of any registration certificate of the organization, the partnership agreement of the organization, and all amendments to those documents;*

(iii) *each member organization and member organization applicant shall promptly file with the Membership Department any other documents relating to the registration, governance, capital structure, or ownership of the organization that are requested by the Exchange; and*

(iv) *each member and member applicant shall promptly file with the Membership Department any other documents requested by the Exchange that are reasonably related to that member's business on the Exchange or proposed business on the Exchange.*

(b) *Each member and member applicant shall promptly file with the Membership Department its business and residence addresses, an address*

where notices may be served, and any changes to this information.

(c) Each member shall comply with the provisions of Exchange Act Section 17(f) and Exchange Act Rule 17f-2 respecting the fingerprinting of the member and its covered employees. Each member applicant and its covered employees shall also be fingerprinted in accordance with those provisions.

[(a) Although the Exchange may request additional information, at a minimum offering circulars, private placement memoranda, the partnership agreement and all amendments thereto, in the case of a member partnership, the articles of incorporation, by-laws and all amendments thereto, in the case of a member corporation, and any lease agreement to which a membership is subject pursuant to Rule 3.16(b), shall be filed with the Membership Department and shall be subject to review by the Exchange; however, no action or failure to act by the Exchange shall be construed to mean that the Exchange has in any way passed on the investment merits of or given approval to any such document.

(b) Every member shall file with the Membership Department and keep current an address where notices may be served.

(c) In a manner and form prescribed by the Exchange, every member and every executive officer, director, principal shareholder, general partner and limited partner of a member organization shall pledge to abide by the Constitution and Rules of the Exchange, as from time to time amended, and by all circulars, notices, directives or decisions adopted pursuant to or made in accordance with the Constitution and Rules.]

(d) Each member and member applicant that is a registered broker or dealer pursuant to Section 15 of the Exchange Act shall complete Exchange Act Form BD and keep its Form BD current by promptly completing any required amendments to its Form BD. Each member or applicant that is a registered broker-dealer shall also promptly file with the Membership Department, in a manner prescribed by the Exchange, its Form BD and all required amendments thereto. Each member and member applicant that is not required to be a registered broker-dealer shall, in a manner and form prescribed by the Exchange, promptly file with the Exchange a list and descriptive identification of those associated persons of the organization that have been, and that are applying to be, approved by the Membership Committee pursuant to Rule 3.6(b) and any changes to this information.

(e) In a manner and form prescribed by the Exchange, each member, member applicant, and associated person required to be approved by the Membership Committee pursuant to Rule 3.6(b) shall pledge to abide by the Constitution and Rules of the Exchange, as from time to time amended, and by all circulars, notices, directives, or decisions adopted pursuant to or made in accordance with the Constitution and Rules.

(f) All documents filed with the Membership Department by members, applicants, and associated persons shall be subject to review by the Exchange; however, no action or failure to act by the Exchange shall be construed to mean that the Exchange has in any way passed on the investment merits of the member, applicant, or associated person, or the adequacy of disclosure given to investors by the member, applicant, or associated person, or that the Exchange has in any other way given approval to any such document.

[(d)g] [Members and member organizations] Each member shall keep and maintain a current copy of the Constitution and Rules in a readily accessible place. Member organizations that are approved to do business with the public pursuant to Rule 9.1 shall make the Constitution and Rules available for examination by customers.

. . . Interpretations and Policies

.01 For purposes of paragraph (a)(i) of this Rule, an entity organized as a limited liability company shall promptly file with the Membership Department a copy of the registration certificate of the organization, the operating agreement of the organization, and all amendments to those documents.

[Parents of Member Organizations]

RULE 3.7. Deleted June 28, 1995 (95-21).]

Nominees and Members Who Register Their Memberships for Member Organizations

RULE 3.8. (a) Each member organization that is the owner of a membership for which the member organization will not be acting as a lessor and each member organization that is a lessee of a membership shall be subject to the following provisions:

(i) the member organization must designate an individual nominee to represent the organization with respect to that membership in all matters relating to the Exchange;

(ii) if the member organization is the owner or lessee of more than one such membership, the organization must

designate a different individual to be the nominee for each of the memberships;

(iii) each nominee of a member organization designated pursuant to subparagraph (a)(i) of this Rule is required to have an authorized floor function, except that a nominee of a member organization that is approved solely to transact business with the public pursuant to Rule 9.1 is not required to comply with this requirement;

(iv) each nominee of a member organization designated pursuant to subparagraph (a)(i) of this Rule must be approved for membership in accordance with the Rules; and

(v) each nominee of a member organization designated pursuant to subparagraph (a)(i) of this Rule who is approved for membership shall be deemed to be an individual member.

(b) Each member organization that is the owner of a membership for which the member organization will be acting as a lessor shall be subject to the following provisions:

(i) the member organization must designate an individual nominee to represent the organization with respect to that membership in all matters relating to the Exchange;

(ii) if the member organization will be acting as a lessor for more than one membership, the organization must designate a single individual to act as the nominee with respect to all of those memberships;

(iii) the nominee of the member organization for the membership(s) with respect to which the organization will be acting as a lessor may not have an authorized floor function with respect to such membership(s);

(iv) the nominee of the member organization for the membership(s) with respect to which the organization will be acting as a lessor must satisfy all of the qualification requirements for membership, except for those requirements that are not applicable to lessors or that are applicable solely to members who will have an authorized floor function; and

(v) the nominee of the member organization for the membership(s) with respect to which the organization will be acting as a lessor shall be deemed to be an associated person of the organization and shall not be deemed to be an individual member by virtue of being approved to act as the nominee for such membership(s).

(c) Each individual member who owns a membership and each Chicago Board of Trade exerciser may apply to register his or her membership for a member organization. Upon approval of such an application, an individual who has

registered his or her membership for a member organization shall represent the organization in all matters relating to the Exchange in the same manner that a nominee represents a member organization. Each individual who registers his or her membership for a member organization must have an authorized floor function.

(d) A member organization represented by a nominee or by an individual who has registered his or her membership for the organization shall, in a manner and form prescribed by the Exchange:

(i) authorize that person to represent the organization with respect to all matters relating to the Exchange;

(ii) agree to be responsible for all obligations arising out of that person's representation of the member organization in all matters relating to the Exchange; and

(iii) agree to guarantee payment of all monetary disciplinary sanctions assessed against that person with respect to activity that takes place while the person is a nominee of the organization or has registered his or her membership for the organization.

The responsibility of the member organization pursuant to subparagraph (d)(ii) of this Rule shall include all obligations to the Exchange and all obligations to other members resulting from Exchange transactions or transactions in other securities made by the person on behalf of the member organization. A nominee shall not, solely by virtue of being a nominee of a member organization, have any personal liability to the Exchange or to any other member for Exchange transactions and other securities transactions made by the nominee on behalf of the member organization. Similarly, an individual shall not, solely by virtue of registering his or her membership for a member organization, have any personal liability to the Exchange or to any other member for Exchange transactions and other securities transactions made by the individual on behalf of the member organization.

(e) The following requirements shall apply to every nominee of a member organization and to every individual who has registered his or her membership for a member organization:

(i) the person must be materially involved in the daily operation of the Exchange business activities of the member organization for which the person is a nominee or has registered his or her membership;

(ii) the person may have authorized floor functions only on behalf of one member organization; and

(iii) the person may perform floor functions only on behalf of the member organization for which the person is approved by the Exchange to perform such functions and may not perform floor functions on the person's own behalf or on behalf of another member organization.

(f) Notwithstanding the provisions of subparagraph (e)(iii) of this Rule, a nominee or person who has registered his or her membership for a member organization may act as an independent Market-Maker and/or an independent Floor Broker if the following 4 requirements are satisfied:

(A) the person obtains the prior written approval to do so, in a manner and form prescribed by the Exchange, from the member organization for which the person is approved by the Exchange to perform floor functions;

(B) the member organization for which the person is approved by the Exchange to perform floor functions agrees, in a manner and form prescribed by the Exchange, to guarantee all obligations arising out of that person's activities as an independent Market-Maker and/or an independent Floor Broker;

(C) the person is registered as a broker or dealer pursuant to Section 15 of the Exchange Act; and

(D) the person obtains the prior approval to act in this capacity from the Membership Committee.

A person who is approved to act as an independent Market-Maker and/or an independent Floor Broker pursuant to this paragraph (f) shall be personally responsible for all obligations arising out of those activities, and the member organization for which the person is approved by the Exchange to perform floor functions shall guarantee these obligations.

(g) A member organization may designate one or more inactive nominees. An "inactive nominee" of a member organization is an individual who is eligible to become an effective nominee of that organization with respect to any membership for which the organization is either an owner (and not a lessor) or is a lessee. The following requirements shall apply to inactive nominees:

(i) to become an inactive nominee of a member organization, an individual must be approved for membership and become an effective nominee of the member organization, with authorized floor functions, within 90 days of the approval for membership;

(ii) an individual may be an inactive nominee of only one member organization;

(iii) an inactive nominee shall have no rights or privileges of membership and shall have no right of access to the trading floor of the Exchange, unless and until the inactive nominee becomes an effective member pursuant to Rule 3.10; and

(iv) if at any time an individual remains an inactive nominee for 6 consecutive months, the individual's eligibility for membership will be terminated and the individual must reapply for membership in order to again become eligible for inactive nominee status.

[(a)(1) Pursuant to Rule 3.3, every member organization that owns or leases a membership must authorize an individual nominee ("nominee"), as defined in Rule 1.1(pp), to represent the organization with respect to such membership in all matters relating to the Exchange.

(2) The member organization represented by a nominee shall guaranty all obligations arising out of such nominee's representation of the member organization in all matters relating to the Exchange. The guaranty shall include all obligations to the Exchange and all obligations to other members or member organizations resulting from Exchange transactions or transactions in other securities, including such transactions of the nominee as an independent Market-Maker and/or independent Floor Broker for the nominee's own account as authorized in Paragraph (a)(4)(C) of this Rule.

(3) The authorization and guaranty required in Paragraphs (a)(1) and (2) of this Rule shall be on a form or forms prescribed by the Exchange and filed with the Membership Department.

(4) The following requirements shall apply to all nominees:

(A) A nominee must be approved for membership in accordance with the Rules of the Exchange.

(B) A nominee may perform floor functions only on behalf of the member organization for which he is authorized.

(C) Notwithstanding the provisions of paragraph (B) above, a nominee, who is a registered broker/dealer, may trade as an independent Market-Maker and/or independent Floor Broker; provided that the nominee has the prior written approval of the member organization and the Exchange. Such approval shall be filed with the Membership Department.

(b)(1) A member organization may designate an individual as an "inactive nominee". The member organization shall pay a fee, as determined by the Board, for the privilege of maintaining the inactive nominee status.

(2) The following requirements shall apply to inactive nominees:

(A) To be eligible for inactive nominee status, an individual must be approved for membership in accordance with the Rules of the Exchange.

(B) An inactive nominee shall have no rights or privileges of membership and shall have no right of access to the trading floor of the Exchange, unless and until said inactive nominee becomes an effective member pursuant to Rule 3.10, and all applicable Exchange fees are paid.

(C) If an inactive nominee does not become an effective member within six (6) months of approval by the Membership Committee, or if at any time an individual remains an inactive nominee for six (6) consecutive months, the individual's eligibility for membership will be terminated. In order to again become eligible for membership or inactive nominee status, the individual must reapply for membership pursuant to Rule 3.9.]

... Interpretations and Policies:

.01 Nothing in paragraph (d) of this Rule is intended to define or limit (i) any obligations between a nominee of a member organization, or an individual who has registered his or her membership for a member organization, and the member organization itself, (ii) any responsibility such a person may have for obligations of a member organization by virtue of a contractual obligation or ownership relationship to the organization beyond merely being a nominee or individual who has registered his or her membership for the organization, or (iii) the ability of the Exchange to sanction or take other remedial action against such a person pursuant to other Exchange rules for rule violations or other activity for which remedial measures may be imposed.

Application Procedures and Approval or Disapproval

RULE 3.9. (a) Any individual or organization desiring to become a member, any applicant or member desiring to act in one or more of the membership statuses set forth in Rule 3.2(b) or 3.3(b), any associated person required to be approved by the Membership Committee pursuant to Rule 3.6(b), and any member desiring to change the Clearing Member that guarantees the member's Exchange transactions shall submit an application to the Membership Department in a form and manner prescribed by the Exchange.

(b) The Membership Committee shall establish for each type of [membership]

application a submission deadline of up to 90 days prior to the date that such an application will be considered for approval. These submission deadlines shall be published in a regulatory circular. [A membership] An application must be submitted to the Membership Department in accordance with the applicable submission deadline in order to be eligible for consideration. [All application fees must be filed with the application. Application fees are not refundable.]

(c) Any required application fees must be filed with the application and are not refundable.

(d) Each applicant shall promptly update the application materials submitted to the Membership Department if any of the information provided in these materials becomes inaccurate or incomplete after the date of submission of the application to the Membership Department and prior to any approval of the application.

(b)(e) Within a reasonable time following receipt of an application for membership, an application to change membership capacity statuses set forth in Rule 3.2(b) or 3.3(b), or an application to change Clearing Members, the name of the applicant and the application request shall be published in the Exchange Bulletin and posted on the Exchange Bulletin Board. The Membership Committee shall determine for each type of the foregoing applications the required time period that the above information must be posted on the Exchange Bulletin Board, provided that in no event shall any such required posting period be less than 10 days. Notwithstanding the foregoing, the required posting period for a member's application to change Clearing Members shall be waived if the Clearing Member(s) that will no longer be guaranteeing the member's Exchange transactions consent to such waiver in a form and manner prescribed by the Exchange. The Membership Committee may also determine to implement a posting period requirement for other types of applications submitted pursuant to paragraph (a) of this Rule. The Membership Committee may shorten or waive a required posting period for an applicant if the Membership Committee determines that doing so is warranted due to extenuating circumstances.

(f) The Membership Department shall investigate each applicant applying to be a member organization, each associated person required to be approved by the Membership Committee pursuant to Rule 3.6(b), and each applicant applying to be an individual member (with the exception of any

individual member applicant who was an individual member within 6 months prior to the date of receipt of that applicant's membership application by the Membership Department). The Membership Department may also investigate any other person or organization that submits an application pursuant to paragraph (a) of this Rule.

[(c) Before an application is approved by the Membership Committee:

(1) Every individual applicant and, in the case of applicant organizations, all persons associated with the organization, shall be investigated by the Membership Department. The applicant shall file with the Membership Department any additional documents that may be required by the Exchange.

(2) An applicant seeking trading privileges shall have completed the requirements of Rule 6.71, Registration of Floor Brokers, or Rule 8.2, Registration of Market-Makers, including attending the New Member Orientation Program and taking the Floor Member Qualification Exam.

(3) The name of the applicant shall have been posted on the Exchange Bulletin Board for at least 10 days.

(d) An applicant must be approved by the Membership Committee to perform in at least one of the recognized capacities of a member as stated in Paragraph (b) of Rule 3.1.]

(g) Any person applying pursuant to paragraph (a) of this Rule to have an authorized floor function is required to have attended the Exchange's New Member Orientation Program and to have passed the Exchange's Floor Member Qualification Exam. Additionally, any person who has attended the New Member Orientation Program and taken and passed the Floor Member Qualification Exam and who then does not possess an authorized floor function for more than 1 year is required to re-attend the New Member Orientation Program and to re-pass the Floor Member Qualification Exam in order to once again become eligible to have an authorized floor function. A person must score 75% or better on the Floor Member Qualification Exam in order to pass the Exam. Any person who fails the Floor Member Qualification Exam must wait 30 days to re-take the Exam after failing the Exam for the first time, must wait 60 days to re-take the Exam after failing the Exam for the second time, and must wait 120 days to re-take the Exam after failing the Exam for a third or subsequent time. The Exchange may not waive any of the requirements set forth in this paragraph (g).

(h) The Membership Committee may approve an application submitted pursuant to paragraph (a) of this Rule only if any applicable posting period requirement pursuant to paragraph (e) of this Rule has been satisfied, any investigation pursuant to paragraph (f) of this Rule has been completed, and any applicable orientation and exam requirements pursuant to paragraph (g) of this Rule have been satisfied.

(i) Each applicant that submits an application pursuant to paragraph (a) of this Rule and each person associated with the applicant shall submit to the Membership Department any additional information requested by the Exchange in connection with the Exchange's review of the application and may be required to appear before the Membership Committee and/or a File Review Subcommittee of the Membership Committee for an in-person interview or interviews.

([e]j) Upon completion of the application process, the Membership Committee shall consider and vote on the approval or disapproval of the application, unless there is just cause for delay. One such just cause for delay is when an applicant is the subject of an inquiry, investigation, or proceeding conducted by a self-regulatory organization or governmental authority that involves the applicant's fitness for membership. In such an instance, the Membership Committee need not act on any application submitted by that applicant until the matter has been resolved. [Individual applicants and persons associated with applicant organizations may be required to appear in person before the Membership Committee or a subcommittee thereof. The Committee may also require any member or person associated with a member organization who may possess information relevant to the applicant's suitability for membership to provide information or testimony.]

([f]k) Approval of an application requires a vote of the majority of the members of the Membership Committee then in office. Any applicant that is approved to be a member by the Membership Committee must be approved by the Membership Committee to perform in at least one of the recognized capacities of a member as stated in Rule 3.1(b). Written notice of the action of the Membership Committee, specifying in the case of disapproval of an application the grounds therefor, shall be provided to the applicant.

([g]l) If the application process is not completed within [six (6)] 6 months of the [filing] submission of the application[form] and the appropriate

fee(s), the application shall be deemed to be automatically withdrawn.

. . . Interpretations and Policies:

.01 Any member that submits an application pursuant to paragraph (a) of this Rule to change Clearing Members shall submit to the Membership Department along with the application a financial statement in a form prescribed by the Exchange which sets forth the member's assets and liabilities. The Membership Department shall provide a copy of this financial statement to the new Clearing Member designated in the application.

.02 The Membership Committee may disapprove the membership application of an organization if the Membership Committee determines that the name of the organization is confusingly similar to the name of an existing member organization. A member organization desiring to change the name of the organization shall submit an application to the Membership Department in a form and manner prescribed by the Exchange. As with member organization applicants, the Membership Committee may disapprove a name change requested by a member organization if the Membership Committee determines that the desired name is confusingly similar to the name of another member organization. For the purposes of this Interpretation and Policy .01, the name of an organization shall include both its official name and the name under which the organization conducts business.

Effectiveness of Membership [Applications] or Approved Associated Person Status

RULE 3.10. (a) Each applicant for membership, for one of the membership statuses set forth in Rule 3.2(b) or 3.3(b), or for an approved associated person status pursuant to Rule 3.6(b) must become effective in that status within 90 days of the date of the applicant's approval for that status, except that an applicant to become a lessor may become effective in that status within 6 months of the date of the applicant's approval for that status.

(b) An applicant for membership shall become an effective member upon (i) satisfying the applicable requirements to obtain a membership and (ii) release of a membership to that member by the Membership Department.

[Applicants must become effective members within 90 days of the date of approval by the Membership Committee; provided that applicants for inactive nominee status must become effective members within 6 months.

Applicants shall become effective as follows:

(a) An applicant for membership pursuant to paragraph (b) of Article Fifth of the Certificate of Incorporation upon release by the Membership Department.

(b) An individual or organizational applicant for membership upon purchase of and payment for an Exchange membership and release by the Membership Department.

(c) A lessee applicant upon the transfer of a membership to his use pursuant to Rule 3.16 and release by the Membership Department.

(d) A nominee applicant shall become effective when the member organization notifies the Membership Department in writing that the nominee should become effective on a specific date on a specific membership.]

Notice of [Membership] Effectiveness of Membership or Approved Associated Person Status

RULE 3.11. Promptly following the effectiveness of any membership, membership status pursuant to Rule 3.2(b) or 3.3(b), or associated person status pursuant to Rule 3.6(b), notice of such effectiveness shall be published in the Exchange Bulletin.

[With respect to each membership that becomes effective in accordance with Rule 3.10, the Membership Department shall promptly mail a notice thereof to all members and shall post a copy of such notice on the bulletin board of the Exchange.]

[Ownership of] Membership Rights and Restrictions on Their Transfer

RULE 3.12. (a) No rights shall be acquired by ownership of a regular membership except the right to an aliquot part of the net assets, if any, remaining after the payment of all debts and obligations of the Exchange in the event of its dissolution and winding up and, if the owner of the membership is in good standing, such rights as may be provided by the Constitution and Rules to members in good standing.

(b) Except for the rights granted to the grantee of an Authorization to Sell a membership pursuant to Rule 3.14(d) and Rule 3.15(b):

(i) The Exchange shall not recognize any interest in the property or other rights represented by a membership except that of its owner as registered with the Exchange.

(ii) No recognition or effect shall be given by the Exchange to any agreement or to any instrument entered into or executed by a member or his legal representatives which purports to transfer or assign the interest of the

member in the member's membership, or in the proceeds or any part thereof, or which purports to create any lien or other right with respect thereto, or which purports in any manner to provide for the disposition of such proceeds to a creditor of such member, nor shall payment of such proceeds be made by the Exchange on the order of such member.

[No rights shall be acquired by ownership of a regular membership except the right to an aliquot part of the net assets, if any, remaining after the payment of all debts and obligations of the Exchange in the event of its dissolution and winding up and, if the owner of the membership is in good standing, such rights as may be provided by the Constitution and Rules to members in good standing. Special members shall have no interest in or any right to share in any distribution of the property and assets of the Exchange in the event of its dissolution and winding up.]

Purchase of Membership

RULE 3.13. (a) Newly Issued Memberships. [Newly issued memberships may be purchased by approved applicants, through the Membership Department, when and as made available by the Exchange. Memberships purchased under this Paragraph (a) shall be acquired and paid for within 10 days of the applicant's receipt of the Notice of Approval issued pursuant to Rule 3.8.] *When and as made available by the Exchange, newly issued memberships may be purchased, pursuant to procedures established by the Exchange, by those approved to be an owner or lessor.*

(b) Outstanding Memberships. Outstanding transferable memberships with respect to which notices of sale have been filed under Rule 3.14(a) may be purchased [by approved applicants,] through the Membership Department and in accordance with the following procedures *by those approved to be an owner or lessor.* [All bids from approved applicants] Each membership bid must be submitted in writing to the Membership Department [of the Exchange]. *Only those approved to be an owner or lessor may submit a bid and any such bid shall be canceled at such time that the bidder is no longer approved to be an owner or lessor. Provided that a bid is not canceled pursuant to the foregoing sentence, the bid shall remain in effect for 6 months unless written revocation of the bid is received by the Membership Department.* The Membership Department will file [all bids by class of membership] *each bid* according to the

highest price and the earliest submission date. The highest bid with the earliest filing date will be posted on the Exchange [bulletin board] *Bulletin Board and published in the Exchange Bulletin.* [All bids remain in effect for six months unless written revocation thereof is received by the Membership Department.] When a bid filed in accordance with the *procedures of this [P]paragraph (b)* is matched with an offer filed in accordance with the [provisions] *procedures* of Rule 3.14(a), neither can be changed or withdrawn. [Memberships purchased under this Paragraph (b) shall be acquired and paid for within 90 days of the applicant's receipt of the Notice of Approval issued pursuant to Rule 3.8.]

(c) Payment. Not later than the second business day following the *acceptance of a bid pursuant to paragraph (a) of this Rule or the matching of [the] a bid and offer pursuant to paragraph (b) of this Rule*, the purchaser shall deliver to the Membership Department a certified or cashier's check made payable to the Exchange covering the purchase price of the membership.

Sale and Transfer of Membership

RULE 3.14. (a) Sale by Owner. The owner of a transferable membership [who] *that* desires to sell [his] *the* membership shall submit a written offer of sale to the Membership Department. *Each offer shall remain in effect for 6 months unless written revocation of the offer is received by the Membership Department.* The Membership Department will file [all such offers by class of membership] *each offer* according to the lowest price and the earliest submission date. The lowest offer with the earliest filing date will be posted on the Exchange [bulletin board] *Bulletin Board and published in the Exchange Bulletin.* [All offers remain in effect for six months unless written revocation thereof is received by the Membership Department. After] *When* an offer filed in accordance with the *procedures of this [P]paragraph (a)* is matched with a bid filed in accordance with the [provisions] *procedures* of Rule 3.13(b), neither can be changed or withdrawn. *The owner of a membership for which [A member who has filed an offer of sale shall, so long as he] an offer of sale has been matched with a bid shall, so long as the member remains in good standing and until the purchase price of the membership has been paid, continue to have all of the rights [and privileges, and shall remain subject to all of the duties and obligations,], privileges, duties, and obligations of membership.*

(b) Sale [or Cancellation] by Exchange. Whenever one or more of the following conditions exist with respect to a [transferable regular membership or a special] *member that is the owner or lessee of a transferable membership*, the Exchange may offer the membership for sale in accordance with Rule 3.14(a):

((1)*i*) An individual member has died or has been declared legally incompetent, and the *owner or the* legal representative of [such member] *the owner* has failed to consummate a transfer of the membership[(s)] within 6 months of the member's death or incompetence or within such extended time as may have been granted by the Exchange;

((2)*ii*) A member's good standing has been terminated, or has been suspended and has failed to be reinstated at the expiration of the period of suspension including any extension of such period [which] *that* may have been granted by the Exchange;

((3)*iii*) A member organization has been dissolved, formally or informally, and no transfer of its membership[(s)] has been accomplished within 6 months of the dissolution or within such extended time as may have been granted by the Exchange.

[Whenever one or more of such conditions exist with respect to a special membership and the Exchange determines not to offer such special membership for sale, the Exchange may cancel such special membership by filing a cancellation of special membership form with the Membership Department. Notice of each such cancellation shall be mailed to all members and shall be posted on the bulletin board of the Exchange. Following such cancellation, the individual or organization having its special membership cancelled shall cease to have any of the rights, privileges or obligations of membership.]

(c) Transfer by Owner. The owner of a transferable membership may transfer [such] *the* membership without adhering to the provisions contained in Rule 3.13(b) and [3.14(a)] *paragraph (a) of this Rule* so long as one of the following qualifying circumstances is applicable to and descriptive of the desired transfer and the transferee is approved [for membership in accordance with the Rules of the Exchange] *to be an owner or lessor:*

((1)*i*) The owner of a transferable membership (whether or not [such] *the* membership is registered for a member organization) requests the transfer of [such] *the* membership to [his] *the* member's spouse, brother, sister, parent, child, grandparent, or grandchild;

((2) *ii*) The owner of a transferable membership requests the transfer of [such] the membership to an organization which has succeeded, through statutory merger, exchange of stock, or acquisition of assets to the business of the transferor;

((3) *iii*) The owner of a transferable membership requests the transfer of [such] the membership to an organization in which the transferor will maintain [a substantial interest, that is,] an interest at least equal in value to the [cost or] current market price of the membership [whichever is lower]; or

((4) *iv*) The owner of a transferable membership requests the transfer of such membership to an individual or organization which is a partner or shareholder of the transferor as part or all of a liquidation distribution of the transferor.

[Notwithstanding the foregoing, transfers pursuant to this Paragraph (c) shall not become effective until there has been deposited with the Membership Department an amount equal to the last sale of a membership of the same class as the membership being transferred or an acceptable Letter of Guarantee from a Clearing Member for such amount, which amount shall be applied as though it were proceeds of the sale of a membership for the purposes of Rule 3.15.]

(d) *Authorizations to Sell.* The owner of a transferable membership may voluntarily grant to another Exchange member an Authorization to Sell the membership. Authorizations to Sell shall be subject to the following provisions:

(i) An Authorization to Sell shall be effective only if it has been executed on a form prescribed by the Exchange and filed with the Membership Department.

(ii) A membership owner may not grant an Authorization to Sell a particular membership to more than one member.

(iii) The grantee of an Authorization to Sell shall have all of the authority granted under the Constitution and Rules relating to the sale of the membership that would otherwise be vested in the membership owner, including the sole authority to determine whether and when to submit an offer to sell the membership in accordance with the provisions of paragraph (a) of this Rule.

Notwithstanding the foregoing, a grantee of an Authorization to Sell must (A) notify the membership owner in writing at least 3 business days prior to exercising the grantee's right to sell the membership of any decision by the grantee to exercise that right and (B)

provide the Membership Department with written verification in a form and manner prescribed by the Exchange that the required notice has been provided to the membership owner.

(iv) A membership owner that has granted an Authorization to Sell shall have no authority to direct the sale or transfer of the membership. An Authorization to Sell shall be irrevocable and may only be canceled if the grantee of the Authorization to Sell consents to its cancellation in a form and manner prescribed by the Exchange.

(v) When a membership owner has granted an Authorization to Sell a membership, the Exchange shall take direction solely from the grantee of the Authorization to Sell with respect to matters relating to the sale of the membership. Notwithstanding the foregoing, a membership owner and a grantee may have a written contract between them which sets forth the circumstances under which the grantee may exercise the grantee's authority to sell the membership, and any breaches of this written contract may be redressed through arbitration under Chapter XVIII of the Rules or through other means permitted by that Chapter. The membership owner and the grantee shall promptly file with the Membership Department a copy of any such contract and any amendments thereto.

(vi) In the event a grantee of an Authorization to Sell exercises the grantee's right to sell the membership by submitting an offer to sell the membership in accordance with the provisions of paragraph (a) of this Rule, the grantee may not be the purchaser of the membership and no bid submitted by the grantee pursuant to Rule 3.13(b) shall be matched with the offer to sell the membership unless the membership owner consents in a form and manner prescribed by the Exchange to having the grantee be the purchaser of the membership.

(vii) Following the receipt by the Membership Department of an Authorization to Sell that has been granted by a member, a cancellation of the Authorization to Sell, or a contract concerning the exercise of authority under the Authorization to Sell, the Membership Department shall provide a copy of the applicable document to any Clearing Member that guarantees the member's Exchange transactions.

(viii) The grant of an Authorization to Sell a membership shall include the grant of a security interest in any proceeds from the sale of the membership that the grantee of the Authorization to Sell is entitled to receive pursuant to Rule 3.15(b), and a

properly executed Authorization to Sell form that has been filed with the Membership Department shall constitute a security agreement which grants the foregoing security interest to the grantee of the Authorization to Sell. The grantee of an Authorization to Sell may act to perfect the foregoing security interest under applicable law, which may include the filing of one or more UCC-1 Financing Statements. However, failure by a grantee of an Authorization to Sell to perfect the foregoing security interest under applicable law shall not affect the rights of the grantee under the Rules. In the event of a cancellation of an Authorization to Sell pursuant to paragraph (d)(iv) of this Rule, the grantee of the Authorization to Sell shall promptly file a Termination Statement with every filing authority where UCC-1 Financing Statements were filed with respect to the Authorization to Sell. The grantee of an Authorization to Sell shall promptly file with the Membership Department a file-stamped copy of any UCC filings made with respect to the Authorization to Sell.

Proceeds from Sale of Membership

RULE 3.15. (a) In the event of a sale of a membership for which no Authorization to Sell has been granted, the Exchange shall remit the sale proceeds from the sale of the membership to the member whose membership was sold promptly following receipt of the sale proceeds by the Exchange pursuant to Rule 3.13(c).

(b) In the event of a sale of a membership for which an Authorization to Sell has been granted:

(i) The grantee of the Authorization to Sell shall have 2 business days from the date of the sale to notify the Membership Department in writing of any claims the grantee has against the member whose membership was sold. Such claims shall be limited to claims that are related to the Exchange business activities of the member whose membership was sold.

(ii) For the purposes of this Rule, claims related to Exchange business activities shall include, but not be limited to, claims associated with Exchange transactions, securities or futures transactions other than on the Exchange that are related to Exchange transactions or positions resulting from Exchange transactions, loans or guarantees of loans for the purpose of purchasing an Exchange membership, and services provided in connection with any of the foregoing. Whether a claim is related to Exchange business activities shall be determined solely by the Exchange.

(iii) The written claims notification provided by the grantee of the Authorization to Sell shall be in a form prescribed by the Exchange and shall specify the amount and nature of the claims. Promptly following its receipt by the Membership Department, the Membership Department shall provide a copy of the written claims notification to the member whose membership was sold.

(iv) The member whose membership was sold shall have 5 business days from the date of the sale to either acknowledge or contest, in a form and manner prescribed by the Exchange, the claims set forth in the written claims notification. In the event the member whose membership was sold does not contest a claim in the written claims notification within the prescribed time period and in the manner prescribed by the Exchange for doing so, the claim shall be deemed to have been acknowledged by the member whose membership was sold.

(v) Promptly following the expiration of the 5 business day period under subparagraph (b)(ii) of this Rule:

(A) The Exchange shall remit to the grantee of the Authorization to Sell that portion of the sale proceeds applicable to claims in the written claims notification that were acknowledged by the member whose membership was sold.

(B) The Exchange shall escrow that portion of the remaining sale proceeds applicable to claims in the written claims notification that were contested by the member whose membership was sold.

(C) The Exchange shall remit to the member whose membership was sold any portion of the sale proceeds remaining after the provision for any payments and escrow under the above provisions.

(vi) Any portion of the sale proceeds applicable to contested claims that has been escrowed pursuant to this Rule shall remain in escrow until the grantee of the Authorization to Sell and the member whose membership was sold resolve the claims through arbitration under Chapter XVIII of the Rules or through other means permitted by that Chapter. Notwithstanding the foregoing, the Exchange may determine to release the escrowed portion of the sale proceeds to the member whose membership was sold in the event the Exchange determines that the grantee of the Authorization to Sell is not proceeding in good faith to resolve the contested claims. Escrowed sale proceeds shall bear interest at the prevailing money market rate determined by the Exchange. The

interest on the escrowed sale proceeds shall be available to contribute toward the satisfaction of the contested claims.

(vii) Following the resolution of any contested claims for which sale proceeds have been escrowed pursuant to this Rule, the grantee of the Authorization to Sell and the member whose membership was sold shall notify the Membership Department in a form and manner prescribed by the Exchange of the resolution of the claims.

Following receipt by the Membership Department of notification of the resolution of the contested claims, the Exchange shall promptly (A) remit to the grantee of the Authorization to Sell that portion of the escrowed sale proceeds and interest thereon to which the grantee is entitled pursuant to the resolution and (B) remit to the member whose membership was sold that portion of the escrowed sale proceeds and interest thereon to which the member whose membership was sold is entitled pursuant to the resolution.

[Upon any sale of a membership pursuant to Rule 3.14, the Exchange shall hold the proceeds of the sale for a period of 20 days from the date of posting notice of the sale in the Exchange Bulletin and on the Exchange bulletin board(s), during which period claims against the proceeds may be filed by members for payment in accordance with this Rule. As soon as practicable following such 20 day period, the proceeds shall be applied by the Exchange to the following purposes and in the following order of priority:

(a) The payment of such sums as the Board shall determine are or may become due to the Exchange from the member or from the member organization on whose behalf the membership was registered.

(b) The payment of such sums as the Board shall determine are or may become due to the Clearing Corporation from the member whose membership is transferred or from the member organization on whose behalf the membership was registered.

(c) The payment of such sums as the Board shall determine are due by such member or by the member organization on whose behalf the membership was registered to other members in payment of claims made by such other members arising directly as a result of (1) Exchange transactions, (2) transactions of such member in securities other than on the Exchange which are effected or carried in an account maintained by a clearing member or (3) loans or guarantees of loans to such member or member organization for the purpose of purchasing an Exchange membership or for any purpose other than the purchase

of securities which loans were made or guaranteed by such other members. No claim asserted under this paragraph shall be considered by the Board nor shall any member asserting such a claim have any rights thereunder, unless a written statement of such claim shall have been filed with the Membership Department prior to the expiration of the 20-day period referred to in the first paragraph of this Rule. If the proceeds of the sale of a membership are insufficient to pay in full all claims allowed under this paragraph, payment shall be made pro rata upon all such allowed claims.

(d) If a claim is contingent or the amount that ultimately will be due thereon cannot, for any reason, be immediately ascertained or determined, the Board in its sole discretion may, out of the proceeds of the sale of the membership, reserve and retain for later distribution in accordance with the Rules such amount as it may deem appropriate, pending the determination of the amount due on such claim.

(e) After provision for the payment of the sums payable under paragraphs (a), (b) and (c) hereof and provision for the reserve, if any, under paragraph (d) hereof, there may, in the discretion of the Board, be deducted from the remaining proceeds and paid to the Exchange the amount of any unusual expenses incurred by the Exchange involving the disposition of such proceeds.

(f) The surplus, if any, of proceeds of the transfer of a membership, after provision for the above payments and the setting aside of the reserve under paragraph (d) hereof, shall be paid to the member whose membership is transferred, or to his or its legal representatives.

(g) No recognition or effect shall be given by the Exchange to any agreement or to any instrument entered into or executed by a member or his legal representatives which purports to transfer or assign the interest of such member in his or its membership, or in the proceeds or any part thereof, or which purports to create any lien or other right with respect thereto, or which purports in any manner to provide for the disposition of such proceeds to a creditor of such member, nor shall payment of such proceeds be made by the Exchange on the order of such member.]

. . . Interpretations and Policies:

[.01 Notwithstanding the language of paragraph (g) of the Rule and subject to the provisions in paragraphs (a) through (f) respecting disposition of proceeds of sale, the Exchange may recognize and

give effect to a valid instrument by which a member, in consideration of a loan or guarantee of a loan by another member for the purpose of purchasing a membership, has authorized the lending or guaranteeing member to sell that membership.]

.01/.02] It is the policy of the Exchange not to impose a transfer fee on the sale of an Exchange membership and not to remit to the [selling] member whose membership was sold any interest earned while the proceeds of the sale are held by the Exchange [pursuant to Rule 3.15], except as provided in subparagraphs (b)(iv) and (b)(v) of this Rule with respect to escrowed sale proceeds.

[.03 Where sums are or may become due to more than one Clearing Corporation, the priority set forth in paragraph (b) shall inure to the benefit of each such Clearing Corporation pro rata.]

Special Provisions Regarding Chicago Board of Trade Exerciser Memberships

RULE 3.16. (a) [Surrender of Memberships] *Termination of Nontransferable Memberships.* [Individuals or organizations owning nontransferable memberships acquired pursuant to paragraph] A *nontransferable membership acquired by a person pursuant to Paragraph (b) of Article Fifth of the Certificate of Incorporation* [or owning special memberships may surrender such memberships by giving notice thereof to the Membership Department, which shall terminate such membership] *shall terminate (i) upon receipt by the Membership Department of written notice from the person that the person is surrendering the membership or (ii) at such time that the person is no longer entitled to membership on the Exchange in accordance with Paragraph (b) of Article Fifth of the Certificate of Incorporation.* Notice of each such termination shall be [mailed to all members and shall be posted on the bulletin board of the Exchange] *published in the Exchange Bulletin.*

[(b) Leased Memberships. (i) The owner of a transferable regular membership in good standing may lease such membership to an individual or organization, provided the lessee is approved for membership in accordance with the Rules of the Exchange. Lease agreements, which must be approved by the Exchange in accordance with Rule 3.6, shall include provisions covering (A) the duration of the lease arrangement; (B) the consideration to be paid by the lessee; (C) the assignability of the respective interests of the lessee and lessor in such lease agreement; and

(D) as between the parties, which party shall exercise the voting rights of the membership and which party shall provide the funds necessary to satisfy all applicable Exchange dues, fees and other charges. Any division of rights and responsibilities between lessor and lessee shall not affect the obligation of the lessor to pay all amounts due the Exchange.

(ii) The Lease of a regular membership or the reversion of a previously leased membership to the lessor upon termination of the lease agreement shall not become effective until there has been deposited with the Membership Department an amount equal to the last membership sale or an acceptable Letter of Guarantee from a Clearing Member for such amount, which amount shall be applied to claims of member creditors of the previous lessee which arose in the course of that previous lease arrangement or of the lessor as though it were proceeds of the sale of a membership for the purposes of Rule 3.15 hereof.

(iii) In the event the lessor of a membership effects a sale thereof pursuant to the provisions of Rule 3.14(a), claims may be made against the proceeds from the sale of such membership in accordance with Rule 3.15 by members having claims against either the lessee or the lessor, with priority given to claims made against the lessee.

(iv) Special memberships shall not be leasable.]

(b)(c) Board of Trade Exercisers. For the purpose of entitlement to membership on the Exchange in accordance with Paragraph (b) of Article Fifth of the Certificate of Incorporation of the Exchange ("Article Fifth(b)") the term "member of the Board of Trade of the City of Chicago" (the "CBOT"), as used in Article Fifth(b), is interpreted to mean an individual who is either an "Eligible CBOT Full Member" or an "Eligible CBOT Full Member Delegate," as those terms are defined in the Agreement entered into on September 1, 1992 (the "Agreement") between the CBOT and the Exchange, and shall not mean any other person. In order to permit Eligible CBOT Full Members and Eligible CBOT Full Member Delegates to participate in an offer, distribution or redemption of the kind referred to in the last two sentences of Paragraph 3(a) of the Agreement, and solely for such purpose, the Exchange agrees to waive all membership dues, fees and other charges and all qualification requirements, other than those that may be imposed by law, that may be applicable to the application for membership on the Exchange of each

Eligible CBOT Full Member and Eligible CBOT Full Member Delegate who wishes to exercise the Exercise Right during the period commencing on the date the Exchange gives notice to the CBOT pursuant to Paragraph 3(b) of the Agreement and ending on the date such individual participates in such offer, distribution or redemption (as the case may be); provided, however, that (i) no Exerciser Member (as defined in the Agreement) for whom dues, fees and other charges and qualification requirements are waived in accordance with the foregoing shall have any rights as a member of the Exchange other than to participate in such offer, distribution or redemption, and (ii) the membership on the Exchange of each such Exerciser Member shall terminate immediately following the time such individual participates in such offer, distribution or redemption.

Leased Memberships

RULE 3.17. (a) *The owner of a transferable membership in good standing may lease the membership to an individual or organization, provided that the lessee is approved for membership in accordance with the Rules, the lease is made pursuant to a written lease agreement, and the lease is pre-approved by the Exchange. The Exchange shall bear no liability to a lessor or lessee in connection with the Exchange's review and approval of a lease agreement.*

(b) *A lessor of a membership shall not have any liability for claims against a lessee of that membership solely by virtue of being a lessor of the membership. Nothing in this paragraph (b) is intended to limit or define any responsibility a lessor may have for claims against a lessee by virtue of a contractual obligation or ownership relationship between the lessor and lessee beyond the lease of a membership from the lessor to the lessee.*

(c) *Each membership lease agreement must include such provisions as may be required by the Exchange and must also include provisions covering the following subjects: (i) the duration of the lease arrangement; (ii) the consideration to be paid by the lessee; (iii) the assignability of the respective interests of the lessee and lessor in the lease agreement; (iv) as between the parties, which party shall exercise the voting rights of the membership; and (v) as between the parties, which party shall provide the funds necessary to satisfy all applicable Exchange dues, fees, and other charges.*

(d) *The lessee under a lease shall promptly file the lease agreement and any amendments thereto with the*

Membership Department and shall promptly notify the Membership Department of any termination of the lease before the termination becomes effective.

(e) In the event a lessor sells or transfers a membership while it is being leased to a lessee, the purchaser or transferee of the membership shall be required to lease the membership to the lessee pursuant to the terms of the lessee's existing lease agreement with the lessor for a period of 20 business days following the date the membership is transferred to the purchaser or transferee. The purchaser or transferee may satisfy this requirement by making arrangements with another membership owner to permit the lessee to lease a membership from that membership owner for the required time period pursuant to the terms of the lessee's existing lease agreement. The lessee may waive the requirements of this paragraph (e) in a form and manner prescribed by the Exchange. It shall be a violation of this Rule for a lessor to circumvent the requirements of this paragraph (e) by improperly terminating a membership lease prior to the sale or transfer of the membership for the purpose of avoiding the applicability of the requirements of this paragraph (e). If the Exchange determines that such a circumvention has taken place, the Exchange may impose the requirements of this paragraph (e) upon the purchaser or transferee of the membership and/or take disciplinary action against the lessor pursuant to Chapter XVII of the Rules.

(f) In the event a lessor sells or transfers a membership while it is being leased to a lessee, the lessor shall remit to the purchaser or transferee of the membership no later than the date the membership is transferred to the purchaser or transferee any amounts paid to the lessor by the lessee under the lease agreement for any portion of the lease period, up to 20 business days from the transfer date, during which the lessor will no longer be leasing the membership to the lessee. The lessor shall also remit to the lessee by the transfer date any amounts paid to the lessor by the lessee under the lease agreement for any portion of the lease period beyond 20 business days from the transfer date. Notwithstanding the foregoing, in the event the lessee waives the requirements of paragraph (e) of this Rule, the lessor shall remit to the lessee by the transfer date all amounts paid to the lessor by the lessee under the lease agreement for any portion of the lease period during which the lessor will no longer be leasing the membership to the lessee.

Members and Associated Persons Who Are or Become Subject to a Statutory Disqualification

RULE 3.18. (a) The Exchange may determine in accordance with the provisions of this Rule not to permit a member or associated person of a member to continue in membership or association with a member, or to condition such continuance in membership or association, if the member or associated person is or becomes subject to a statutory disqualification under the Exchange Act.

(b) If a member or associated person of a member who is or becomes subject to a statutory disqualification under the Exchange Act wants to continue in Exchange membership or association with a member, the member or associated person must, within 10 days of becoming subject to a statutory disqualification, submit an application to the Membership Department, in a form and manner prescribed by the Exchange, seeking to continue in membership or association with a member notwithstanding the statutory disqualification. The application shall be accompanied by copies of all documents that are contained in the record of the underlying proceeding that triggered the statutory disqualification.

(c) Following the receipt of an application submitted pursuant to paragraph (b) of this Rule, or in the event the Exchange becomes aware that a member or associated person of a member is subject to a statutory disqualification and has failed to submit an application pursuant to paragraph (b) of this Rule within the required time period, the Chairperson of the Membership Committee shall appoint a panel composed of the Membership Committee Chairperson and two other members of the Membership Committee to conduct a hearing concerning the matter pursuant to paragraph (f) of this Rule. In the case of recusal of the Membership Committee Chairperson, the Chairperson shall appoint another member of the Membership Committee to serve on the panel in place of the Membership Committee Chairperson.

(d) Any person who is the subject of a proceeding under this Rule is entitled to be accompanied, represented, and advised by counsel at all stages of the proceeding.

(e) Any person who is the subject of a proceeding under this Rule and any member or associated person of a member shall promptly submit any information requested by the Membership Department or hearing

panel in connection with the proceeding.

(f) The hearing panel shall hold a hearing to determine whether to permit the member or associated person of a member who is the subject of a proceeding under this Rule to continue in membership or association with a member, and if so, whether to condition such continuance in membership or association. The hearing shall be held 14 or more days following the receipt of an application, or the initiation of a proceeding, pursuant to paragraph (c) of this Rule. The Exchange shall notify the subject of the proceeding in writing of the date, time, and location of the hearing. Both the subject of the proceeding and Exchange staff will be afforded an opportunity to present relevant information, arguments, and witnesses during the hearing. The hearing panel shall regulate the conduct of the hearing, and formal rules of evidence shall not apply. The subject of the proceeding shall be required to attend the hearing, and the Membership Department or hearing panel may require any member or associated person of a member to testify at the hearing. A verbatim record of the hearing shall be kept.

(g) Following the hearing, the hearing panel shall present its recommended decision to the Membership Committee, which may ratify or amend the decision. Failure to timely file an application pursuant to paragraph (b) of this Rule is a factor that may be taken into consideration in rendering the decision. The decision shall be in writing and set forth the basis for the decision. The decision shall be promptly provided to the subject of the proceeding under this Rule and to the Executive Committee. The Executive Committee may determine within 7 days after the issuance of the Membership Committee's decision to order review of the decision. If the Executive Committee does not order review of the Membership Committee's decision, the Membership Committee's decision shall become the final decision of the Exchange.

(h) If the Executive Committee orders review of the Membership Committee's decision, the review shall be conducted by the Executive Committee or a panel thereof composed of at least 3 members of the Executive Committee, whose decision must be ratified by the Executive Committee. Unless the Executive Committee shall decide to open the record for the introduction of additional information or argument, any determination to order review of the Membership Committee's decision and any review of the decision shall be

based solely on the record of the proceeding. The decision of the Executive Committee shall be in writing, shall be promptly provided to the subject of the proceeding, and shall be the final decision of the Exchange.

(i) No determination of the Membership Committee to discontinue or condition a person's membership or association with a member pursuant to this Rule shall take effect until the review procedures under paragraph (h) of this Rule have been exhausted or the time for review has expired.

. . . Interpretations and Policies:

.01 The Exchange may waive the provisions of this Rule when a proceeding is pending before another self-regulatory organization to determine whether to permit an associated person of a member to continue in membership or association with the member notwithstanding a statutory disqualification. In the event the Exchange determines to waive the provisions of this Rule with respect to an associated person, the Department of Financial and Sales Practice Compliance shall determine whether the Exchange will concur in any Exchange Act Rule 19h-1 filing made by another self-regulatory organization with respect to the associated person.

.02 If an associated person of a member is or becomes subject to a statutory disqualification under the Exchange Act, the member shall immediately provide written notice to the Membership Department of the name of the associated person, the person's capacity with the member, and the nature of the statutory disqualification.

[Death, Retirement, Withdrawal and Resignation] Termination from Membership

RULE [3.17] 3.19. The membership status of a member shall automatically terminate at such time that the member does not possess a membership through ownership, lease, or registration of a membership to the member. The membership of a member organization shall also automatically terminate at such time that the member organization has no nominee or person who has registered his or her membership for the member organization. Notwithstanding the foregoing, if the Exchange determines that there are extenuating circumstances, the Exchange may permit a member to retain the member's membership status for such period of time as the Exchange deems reasonably necessary to enable the member to obtain a membership, a substitute nominee, or a substitute person to

register his or her membership for the member, as applicable.

[Upon the death, retirement, withdrawal or resignation from a member organization of an individual member whose membership is registered for the organization, of a nominee, or of the general partner—leaving the organization without a membership or without a nominee, or without a general partner—the Exchange may permit the organization to continue to act as a member in good standing for such period as the Exchange deems reasonably necessary to enable the organization to acquire a membership, to obtain approval of a substitute nominee, or to admit a new general partner, as applicable.]

Dissolution and Liquidation of Member Organizations

RULE [3.18] 3.20. Every member organization shall promptly [notify] provide written notice to the Department of Financial and Sales Practice Compliance [in writing upon the] and to the Membership Department of any adoption of a plan of liquidation or dissolution of the member organization and of any actual liquidation or dissolution of the member organization. Upon receipt of such a notice, the member may be suspended in accordance with Chapter XVI of the Rules.

Obligations of Terminating Members

RULE [3.19] 3.21. Each terminating member shall promptly (i) return to the Exchange all Exchange badges, including trading and access badges, that were issued to the member by the Exchange with respect to that member's terminating membership status, (ii) make any outstanding filings required under Exchange rules, and (iii) pay any outstanding dues, fees, assessments, charges, fines, or other amounts due to the Exchange, the Securities and Exchange Commission, or the Securities Investor Protection Corporation.

[Every member who sells or transfers his membership pursuant to the provisions of this Chapter must be current in all filings and payments of dues, fees and charges relating to that membership, including filing fees and charges required by the Securities and Exchange Commission and the Securities Investor Protection Corporation. If a member fails to make all such filings, or to pay all such dues, fees and charges, or to turn in his trading badge and membership certificate, the Exchange may, notwithstanding the other applicable provisions of this Chapter, withhold distribution of the proceeds of sale of

said membership, or delay the effectiveness of the membership of the transferee, until such time as any such failures have been remedied.

Government Securities Options Permits

RULE 3.20 Permits issued for effecting transactions pursuant to Exchange Rules and policies in Government securities options settled by physical delivery shall be effective for one year and shall be renewable annually for a maximum duration of four years from the date of issuance. Permits which are not renewed shall be retired and shall not be reissued by the Exchange. Permits not issued by December 31, 1984 shall be withdrawn.

Privileges and Responsibilities of Permit Holders

RULE 3.21. (a) Privileges. Government securities options permits issued by the Exchange shall entitle the holders to:

- (i) be admitted to the Floor of the Exchange during business days;
- (ii) enter into principal transactions as a Market-Maker in Government securities options during the prescribed business hours and days;
- (iii) purchase a regular membership during the last month of the three-year permit period in accordance with procedures established by the Exchange;
- (iv) such other privileges as may subsequently be granted by the Board. Permit holders, however, shall have no right to petition or to vote at Exchange meetings or elections and shall have no interest in Exchange assets.

(b) Nontransferability. The foregoing privileges may not be transferred or assigned; however, an organization with an approved permit-holder nominee may, upon approval of the Exchange, substitute another permit-holder nominee.

(c) Dues and Fees. Fees for the first fifty (50) permits issued shall be ten-thousand dollars (\$10,000) per year. Permit holders shall not be charged Exchange dues, but each permit holder and applicant for a permit shall be subject to all other fees and charges established by the Board.

. . . Interpretation and Policies:

.01 The Board has entitled permit holders to enter into agency transactions as Floor Brokers in Government securities options during the prescribed business hours and days.

Procedures for Government Securities Options Permit Issuance]

RULE 3.22. *Reserved.* [Permits may be issued to qualified applicants who are either individuals or organizations with an approved nominee meeting the same

qualifications as an individual permit holder. The Membership Committee shall select the applicants who appear most qualified based on demonstrated knowledge of and experience in the securities and related industries, adequacy of financial resources and successful completion of a proficiency examination.

Additional Government Security Options Permits

RULE 3.22A. The Exchange may issue up to 20 three-year permits for effecting transactions in Government security options settled by physical delivery, since no new permits may be issued under Rule 3.20. All of these permits shall expire three years after September 14, 1987. These additional permits shall have the same terms as the old permits with the following exceptions. There is no right to purchase a regular membership. No member or member organization may hold more than two permits. A member who is a sole proprietor may employ a nominee to use a permit, with the approval of the Membership Committee. The Membership Committee may withdraw, temporarily or permanently, some or all unused permits.]

Integrated Billing System

RULE 3.23. Every member must designate a [clearing member for the payment of his] *Clearing Member for the payment of the member's* Exchange invoices by means of the Exchange's integrated billing system ("IBS"). The designated [clearing member] *Clearing Member* shall pay to the Exchange on a timely basis any amount that is not disputed pursuant to IBS procedures by the member who is directly involved. Such payments shall be drafted by the Exchange against the designated [clearing member's] *Clearing Member's* account at the Clearing Corporation. The [the] Clearing Corporation shall have no liability in connection with its forwarding to the Exchange each month a check representing the total amount that the Exchange advises the Clearing Corporation is owed to the Exchange.

Member Death Benefit

RULE 3.24. (a) Upon the death of an individual who is eligible for the Member Death Benefit, the Exchange shall pay the Member Death Benefit to the beneficiary designated by such individual in a filing made with the Membership Department in a *form and manner* prescribed by the Exchange.

(b) The following individuals shall be eligible for the Member Death Benefit:

(i) any individual who is an active member at the time of his or her death; and

(ii) any individual who (i) was an active member within 90 days prior to the date of his or her death and (ii) was an active member during at least 274 out of the 365 days preceding the date of his or her last termination from active member status.

(c) For the purposes of this Rule, the term "active member" shall mean any natural person who is a nominee of a member organization, a [CBT] *Chicago Board of Trade* exerciser, a lessee of an Exchange membership, or an owner of an Exchange membership that is not being leased to a lessee.

(d) In no event shall more than one Member Death Benefit be paid by reason of the death of an individual who is eligible to receive the Member Death Benefit.

(e) The Member Death Benefit shall be \$50,000.

(f) In the event that the Exchange pays a Member Death Benefit, the Exchange shall assess each active member at the time of the assessment an amount equal to \$50,000 divided by the number of active members at the time of the assessment.

Transfer of Individual Membership in Trust

RULE 3.25. An individual member in good standing *who owns a membership* may transfer [his] *the membership* in trust, subject to each of the following conditions:

(a) Subject to paragraph (b) [below] of *this Rule*, the member transferring [his] *a membership* in trust (the "Trust Member"), during [his] *the member's* lifetime, shall be the sole trustee and sole beneficiary of the trust. The Trust Member shall remain personally responsible for all obligations and liabilities associated with the membership and its use, and the membership shall remain subject to all of the Rules of the Exchange.

(b) *The trust must be a living trust.* The terms of the trust shall provide that in the event the Trust Member dies, is declared legally incompetent, or is in any condition that substantially impairs [his] *the Trust Member's* ability to transact ordinary business (is "disabled"), as certified in a written opinion furnished to the Exchange by the Trust Member's physician who has personally examined or treated [him] *the Trust Member*, a legally qualified individual or institution may be appointed as successor trustee for the sole purpose of transferring the membership in accordance with the Rules [of the Exchange, including the

requirements of Rule 3.15], subject to the right of the Exchange to offer the membership for sale in accordance with Rule 3.14(b)(1)(i). Notwithstanding the foregoing, the terms of the trust may authorize the successor trustee to continue to hold the membership in trust for the benefit of the Trust Member during any period when the Trust Member is declared legally incompetent or is disabled so long as the membership is leased for that period in accordance with the requirements of Rule 3.17 [3.16(b)]. Furthermore, the trust shall provide that the Exchange shall bear no liability for any actions taken or omitted by the Trust Member or any successor trustee in respect of the administration of the trust or the management of trust assets.

(c) A membership held in trust may be transferred during the lifetime of the Trust Member or at [his] *the Trust Member's* death in accordance with the provisions of Rule 3.14(c)(1)(i), and may also be transferred during the lifetime of the Trust Member in accordance with the provisions of Rule 3.14(c)(3)(iii), subject in either case to the requirements of the introductory clause and the last sentence of Rule 3.14(c). *Additionally, an Authorization to Sell may be granted with respect to a membership held in trust, in which case the provisions of Rule 3.14(d) and Rule 3.15(b) shall be applicable, and a membership held in trust may be sold in accordance with the provisions of Rule 3.14 and Rule 3.15.*

(d) A membership held in trust may also be transferred to the Trust Member to be held directly and not in trust.

(e) *A member desiring to transfer a membership into trust must submit to the Membership Department, in a form and manner prescribed by the Exchange, an application to transfer the membership into trust, a [A] copy of the trust agreement reflecting the foregoing requirements [shall be furnished to the Exchange, accompanied by], and the certification of the attorney who prepared the trust agreement that it conforms to the requirements of this Rule. The Exchange may disapprove the transfer if it finds the trust agreement fails to satisfy the requirements of this Rule by written notice of such disapproval sent to the member proposing the transfer.*

(f) *After the transfer of a membership into trust has been approved by the Exchange, the Trust Member must promptly submit to the Membership Department any amendments to the trust agreement and must promptly notify the Membership Department in writing of any changes in the information set forth in the application*

to transfer the membership into trust, any changes in successor trustee, any release of the membership out of trust, and any termination of the trust. In the event that the membership is released from the trust, the trust terminates, or the trust agreement is amended so that it no longer complies with the requirements of this Rule, the Exchange shall deem the membership to have reverted to the Trust Member to be held directly and not in trust.

IPC Permits

RULE 3.26. (a) IPC Permits. An IPC Permit shall be issued to each of the 33 persons who were members of the Bolsa Mexicana de Valores as of January 1, 1996. IPC Permits are non-transferable in any manner, whether by voluntary or involuntary sale, gift, lease or otherwise. A holder of an IPC Permit shall have either the right set forth in [sub]paragraph (b) or the right set forth in [subparagraph (c) of this Rule 3.26] paragraph (c) of this Rule.

(b) IPC Permit Exercisers. A holder of an IPC Permit may apply on its own behalf or on behalf of one of its subsidiaries to become an IPC Permit Exerciser. Such applications shall be subject to the same approval procedures as are applicable under the Rules of the Exchange to applications for membership. If the person on whose behalf the application is filed is qualified for membership on the Exchange and if the application is approved and becomes effective, the applicant shall become an IPC Permit Exerciser and shall have the rights, obligations, and limitations set forth below.

(1) Rights and Privileges. IPC Permit Exercisers shall enjoy the privileges of CBOE membership with respect to, and only with respect to, the trading of IPC Index Option Contracts. Among such privileges are (i) the right of a nominee of the IPC Permit Exerciser to access the trading floor for the purpose of executing orders upon satisfaction of all regulatory requirements and approvals that apply to membership generally; (ii) the right, through a nominee, to register and to be appointed as a Market-Maker in IPC Index Options; (iii) the right, through a nominee, to register and to act as a Floor Broker in IPC Index Options; (iv) the right to pay transaction fees to the Exchange at the member firm rate for transactions in IPC Index Options in its proprietary account; and (v) the right to use Exchange facilities in support of its trading in IPC Index Options on the same basis as other members of the Exchange. The rights of an IPC Permit Exerciser are not transferable in any manner.

(2) Obligations. IPC Permit Exercisers and their associated persons shall be obligated to comply with all of the provisions of the Rules of the Exchange and the federal securities laws to the same extent as other members of the Exchange and their associated persons. For this purpose, all references in the Exchange Rules to members shall be deemed to include IPC Permit Exercisers. Without limiting the generality of the foregoing, such obligations shall include (i) the obligation to pay all fees, dues, and other charges imposed by the Exchange, (ii) the obligation to maintain and to file with the Exchange all records required of members and their associated persons, (iii) the obligation to take all required examinations, (iv) the obligation to comply with the Exchange's business conduct and floor dealing rules, (v) the obligation, if acting as a Market-Maker, to perform the obligations of a Market-Maker, (vi) the obligation, if approved to conduct business with the public, to comply with the provisions of Chapters IX and XII of the [Exchange's] Rules, (vii) the obligation to be subject to the Exchange's disciplinary and arbitration jurisdiction under Chapters XVII and XVIII, respectively, of the [Exchange's] Rules, and (viii) the obligation to be subject to the Exchange's limitation of liability rules.

(3) Limitations. IPC Permit Exercisers shall have none of the rights of members under the laws of the State of Delaware, the Certificate of Incorporation of the Exchange, or the Constitution of the Exchange. Without limiting the generality of the foregoing, IPC Permit Exercisers shall have no interest in the property or assets of the Exchange, shall have no right to share in any distribution in the property and assets of the Exchange, shall have no right as an IPC Permit Exerciser to vote on issues submitted to the membership for vote, and shall have no right as an IPC Permit Exerciser to be elected to the Board of Directors. IPC Permit Exercisers will be deemed to be non-members in respect of transactions in Exchange products other than IPC Index Options, and registration of a nominee as a Market-Maker or Floor Broker in IPC Index Options shall not be deemed to give the nominee the right to effect transactions in such capacity in any other Exchange product. Accordingly, nominees of IPC Permit Exercisers may not while on the floor of the Exchange enter into transactions, nor flash orders to other trading posts, give verbal orders to brokers at other trading posts, or enter time-stamped orders to be executed by

other members at other trading posts, in any Exchange product other than IPC Index Options, and if an IPC Permit Exerciser enters an order through an Exchange member from off the floor in Exchange products other than IPC Index Options, that order must be treated under the Exchange's Rules as the order of a customer.

(c) Rights of Holders of IPC Permits. The Exchange transaction fees for the proprietary transactions in IPC Index Options of holders of IPC Permits that have not become IPC Permit Exercisers, either directly or through a subsidiary, shall be charged at member firm rates.

Options Trading Permits

RULE 3.27. (a) Issuance, transfer and lease. Seventy-five Options Trading Permits ("Permits") shall be distributed on or promptly following the date (herein called the "Effective Date") on which trading begins on the floor of the Exchange in NYSE Options (as hereinafter defined) pursuant to agreement between the Exchange and the New York Stock Exchange ("NYSE"), as follows:

(1) Non-specialists. Each NYSE non-specialist options firm and sole proprietor, or any successor thereto approved by the Exchange, doing business on the NYSE options trading floor on the Effective Date will be entitled to be issued the same number of Permits as that firm had valid NYSE options floor badges on December 5, 1996; provided, however, that, in order for a person to be entitled to be issued a Permit in respect of a floor badge, the holder of that badge on December 5, 1996, must personally engage in one or more of the activities specified in subparagraph (b)(2) of this Rule on the Exchange.

(2) Specialist firms. Each NYSE specialist options firm (including joint books) on the Effective Date, or any successor thereto approved by the Exchange, will be entitled to be issued the same number of Permits as that firm had valid NYSE options floor badges on December 5, 1996. Each specialist firm to which a Permit is issued shall have the right to select the person who, from time to time, shall be its nominee in respect of such Permit, subject to qualifying under the Rules of the Exchange.

(3) Creation of lease pool and distribution of proceeds. The Exchange will deposit into a "lease pool" any of the [seventy-five] 75 Permits not issued to firms in accordance with the foregoing subparagraphs (1) and (2) hereof, as well as any Permits which may be surrendered pursuant to subparagraph (4) hereof, and will

attempt to lease such Permits through an auction or other competitive process determined by the Exchange. The proceeds received by the Exchange on or before the first day of each calendar quarter from the leases will be distributed on the fifteenth day of such calendar quarter pro rata to the persons whose names and mailing address are on a list furnished to the Exchange by NYSE on or after the Effective Date as a list of the 92 persons who were (a) NYSE members using or leasing out their NYSE options trading rights ("OTRs") on September 5, 1996, or (b) holders of separated OTRs on that date, or (c) transferees on or prior to the Effective Date of such persons. The Exchange shall have no responsibility or liability for any inaccuracy or mistake in such list. [No lease of a Permit in the lease pool shall become effective until there has been deposited with the Membership Department of the Exchange an acceptable Letter of Guarantee from a Clearing Member in an amount determined in accordance with the next sentence, which amount shall be applied to the payment of claims pursuant to Rule 3.15 as though such amount were the proceeds from the sale of a membership. During the first year following the Effective Date and thereafter until there has been a sale of a Permit, the amount shall be \$50,000, and thereafter the amount shall be equal to the last sale price of a Permit.] The Exchange shall have no obligation as the lessor of a Permit to any person.

(4) Surrender of Permits. In the event a Permit is issued pursuant to subparagraph (1) hereof in respect of an NYSE options floor badge and the NYSE badgeholder, or a successor approved by the Exchange, does not engage in one or more of the activities specified in subparagraph (b)(2) of this Rule for one year following the Effective Date, then, unless the Exchange shall consent to the termination of such activities, the Permit shall be deemed to be surrendered forthwith and shall be added to the lease pool established pursuant to subparagraph (3) hereof.

(5) Transfer and lease. Permits issued pursuant to subparagraphs (1) and (2) hereof shall not be transferable (whether by sale, gift, involuntary transfer, lease, or otherwise) for one year following the Effective Date; provided that the foregoing shall not restrict the right of specialist firms to change the nominee of a Permit issued pursuant to subparagraph (2) hereof.

Notwithstanding the foregoing, the Exchange may consent to the transfer of a Permit in the event of the death of, hardship affecting, or certain successions in ownership of the holder

of such Permit. Commencing one year after the Effective Date, all Permits shall be freely transferable in accordance with the provisions of the Rules applicable to the transfer of memberships.

(b) Trading rights. Each holder of a Permit who satisfies the qualifications for membership in accordance with the Rules, or its nominee in the case of a holder who is not a natural person (each such holder or nominee is referred to herein as a "Permit holder"), shall for the term of the Permit be deemed to be a limited member of the Exchange entitled to only the following trading rights and privileges:

(1) to be admitted to the options trading facility established by the Exchange for the trading of NYSE Options during regular business days;

(2) to engage in the activities of a Market-Maker, a DPM (as that term is defined in Rule 8.80), and/or a Floor Broker in respect of NYSE Options, in each case subject to the Rules of the Exchange applicable to such activities;

(3) to trade by order as principal those classes of equity options that were dually traded on both the Exchange and the [New York Stock Exchange ("NYSE")] NYSE on the last trading day preceding the Effective Date and that continue to be traded on the Exchange;

(4) to trade by order as principal all classes of options traded on the Exchange in addition to those described in clauses (2) and (3) above, provided that a Permit holder's total contract volume in such classes of options during any calendar quarter may not exceed twenty percent (20%) of the sum of such Permit holder's total in person contract volume as principal pursuant to clause (2) above and such Permit holder's contract volume pursuant to clause (3) above during such calendar quarter; and

(5) to be admitted to the other trading facilities of the Exchange for the purpose of responding to a call of a Board Broker or Order Book Official pursuant to Rule 7.5 in respect of any class of options in which a transaction has been effected for the Permit holder's account on the day of the call.

As used in this Rule, the term "trade by order" means a trade effected on the Exchange by a member acting as Floor Broker for the account of a Permit holder, and the term "NYSE Options" means (i) those classes of options that were listed for trading on the NYSE options trading floor on last trading day preceding the Effective Date that were not then also listed for trading on the Exchange, and (ii) those additional classes of equity options designated by the Exchange as NYSE Options. During each of the seven years following the

Effective Date, the Exchange shall designate as NYSE Options classes of equity options on at least 14 underlying stocks.

(c) DPMs. The Modified Trading System established in Rule 8.80 will be employed in NYSE Options. Each specialist firm to which a Permit is issued pursuant to subparagraph (a)(2) of this Rule shall be appointed as the DPM in the same classes of NYSE Options as those for which it was designated as a specialist on NYSE. Subject to the provisions of the Rules, a Permit holder qualified to act as a DPM pursuant to the Rules shall be appointed to act as the DPM for each class of equity options designated by the Exchange pursuant to the last sentence of paragraph (b) of this Rule. Each specialist firm appointed as a DPM in a class of NYSE Options pursuant to the foregoing two sentences shall, subject to the provisions of the Rules, continue to act as such DPM during the term of the Permits and thereafter so long as it is a regular member or member organization of the Exchange.

(d) Other rights and obligations.

(1) Except as may be otherwise set forth in the Constitution, in this Rule 3.27 or in the other Rules, Permit holders shall have the same rights as other members of the Exchange; provided that a Permit shall not give an organization the right as a member to transact business with the public in options or other securities dealt in on the Exchange other than NYSE Options. Permit holders shall be subject to, and obligated to comply with, the Rules of the Exchange to the same extent as other members and their nominees, except as follows:

(A) Membership application fees shall be waived in connection with (i) the submission of an application for approval as a Permit holder or as the nominee of a Permit holder arising out of the initial issuance of a Permit pursuant to subparagraph (a)(1) or (a)(2) of this Rule (but shall not be waived in respect of applications by transferees or lessees of a Permit or by subsequent nominees), (ii) the submission of an application for approval as a member of the Exchange or as the nominee of a member of the Exchange by a person who is the initial holder of a Permit issued pursuant to subparagraph (a)(1) or (a)(2) of this Rule, and (iii) the submission of an application for approval as the nominee of a member of the Exchange by a person who at the time of such application is the nominee of a NYSE specialist firm in respect of a Permit issued pursuant to subparagraph (a)(2) of this Rule.

(B) In the event a person who is entitled to be issued a Permit files an application pursuant to Rule 3.9, the rights of such person shall be deemed to be effective for a temporary period terminating six months following the Effective Date or the date on which the Membership Committee gives written notice of its action on the application, whichever is the earlier, provided such person is not subject to a "statutory disqualification" (as defined in the Securities Exchange Act of 1934), is in good standing on the NYSE on the Effective Date, and is not a subject of an investigation conducted by any self-regulatory agency that may involve that person's fitness for membership on the Exchange.

(C) All Permit holders shall be deemed to be appointed pursuant to Rule 8.3 to all classes of NYSE Options; provided, however, that the foregoing shall not affect the power of the appropriate Market Performance Committee to suspend or terminate the appointment of any Permit holder in accordance with the Rules.

(2) Permit holders shall have the right to serve on any committee of the Exchange to which they are appointed.

(3) Permit holders shall not have the rights of members, or be subject to the assessments on members, under Rule 3.24.

Extension of Time Limits

RULE 3.28. Any time limit imposed on an applicant, member, or other person under this Chapter may be extended by the Membership Committee in the event that the Membership Committee determines that such an extension is warranted due to extenuating circumstances.

Delegation of Authority

RULE 3.29. (a) All of the authority granted to the Exchange under this Chapter may be exercised by the Membership Committee and/or the Membership Department.

(b) The Membership Committee may delegate to the Membership Department any of the authority that is granted to the Membership Committee under the Rules.

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CHAPTER VI—Doing Business on the Exchange Floor

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Limitation on Dealings

RULE 6.5. No regular member shall bid, offer, purchase or write (sell) on the Exchange any security other than an option contract that is currently open for trading in accordance with the

provisions of Chapter V. [No special member shall bid, offer, purchase, or write on the Exchange any security other than an option contract relating to one of the underlying securities listed in a guideline under this Rule 6.5 (MSE Options, as that term is defined in section 2.1(d) of the Constitution) and currently open for trading in accordance with the provisions of Chapter V.]

. . . Interpretations and Policies:

.01 Special members may bid, offer, purchase, or write on the Exchange option contracts currently open for trading only with respect to the following underlying securities:

Ameritech
Diebold, Inc.
Anadarko Petroleum Corp.
Freeport-McMoRan, Inc.
Bristol-Myers Company
General Cinema Corp.
Champion International Corp.
IC Industries, Inc.
Chrysler Corporation
Litton Industries, Inc.
Coastal Corporation
Middle South Utilities, Inc.
Computer Associates International, Inc.
Ralston Purina Company
Corning Glass Works
Rockwell International Corporation]

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RULE 6.20—Admission to and Conduct on the Trading Floor; Member Education

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. . . Interpretations and Policies:

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.03 Deleted _____, 199__ (99-____). [Rule 3.21 provides that a Government securities options permit holder is entitled to enter into principal transactions as a Market-Maker and agency transactions as a Floor Broker in Government securities options settled by physical delivery on the floor of the Exchange until his permit expires.]

* * * * *

Letters of Authorization

RULE 6.72. (a) Required of each Floor Broker. No Floor Broker shall act as such on the Exchange unless there is in effect a Letter of Authorization that has been issued for such Floor Broker by a Clearing Member and filed with the Exchange. [A Floor Broker may have more than one such letter on file with the Exchange; provided, however, that a Letter of Authorization with an earlier effective date will afford the Clearing Member issuing such letter a priority over each subsequent issuer of a Letter of Authorization for claims made pursuant to Rule 3.15 against the

proceeds from the sale of a membership by the entity covered by such Letters of Authorization. The Exchange shall notify each issuer of a Letter of Authorization of other outstanding Letters of Authorization which have been issued to the same Floor Broker.]

(b) Terms of Letter of Authorization. A Letter of Authorization shall be in a form prescribed by the Exchange and shall provide that the issuing Clearing Member accepts financial responsibility for all Exchange transactions made by the guaranteed Floor Broker.

(c) Revocation of Letter of Authorization. A Letter of Authorization filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the [Exchange and posted on the Exchange bulletin board. If such written notice has not been posted for] Membership Department. If such a written notice of revocation is not filed with the Membership Department at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day. Upon the request of the Clearing Member that files such a written notice of revocation, the Exchange shall post notice of the revocation on the Exchange Bulletin Board. A revocation shall in no way relieve a Clearing Member of responsibility for transactions guaranteed prior to the effective date of such revocation.

. . . Interpretations and Policies:

.01 Floor Brokers executing Government security options must have a separate Letter of Authorization issued by a Debt Securities Clearing Member.

.02 Floor Brokers engaging in transactions in securities subject to the rules in Chapter XXX must have a separate Letter of Authorization issued by a Clearing Member that is a member of the Clearing Corporation for the security that is the subject of any such transaction.

* * * * *

Automated Billing Process for Market-Maker Brokerage Bills

RULE 6.76A. (a) The Exchange shall administer the following automated billing process for brokerage services that are provided to Market-Makers by Floor Brokers and order service firms ("OSFs"):

(i) Each Floor Broker and OSF shall submit a written bill by the 6th day of the month to each Market-Maker customer of the Floor Broker or OSF for brokerage fees incurred by the Market-Maker during the prior month.

(ii) For the purposes of this Rule, the submission of a written bill to a Market-Maker shall be deemed to include hand delivery of the bill to the Market-Maker, hand delivery of the bill to a representative of the Market-Maker such as the Market-Maker's clerk, or delivery of the bill to the Market-Maker's Clearing Member with a written notation that the bill is for the Market-Maker.

(iii) A Market-Maker who receives a brokerage bill from a Floor Broker or OSF in accordance with this billing process shall have until the 10th day of the month to inform the Floor Broker or OSF if the Market-Maker disputes any portion of the bill. In the event the Market-Maker disputes the bill, the Floor Broker or OSF may determine to adjust the bill.

(iv) A Floor Broker or OSF that has submitted a written bill to a Market-Maker by the 6th day of the month for brokerage fees incurred by the Market-Maker during the prior month shall notify the Exchange's Accounting Department by the 12th day of the month in a form and manner prescribed by the Exchange of the amount to bill each Market-Maker customer of the Floor Broker or OSF for brokerage fees incurred by the Market-Maker during the prior month.

(v) The Exchange shall take direction solely from the Floor Broker or OSF with respect to the amount to bill a Market-Maker pursuant to this billing process. If for any reason a Market-Maker disputes the amount a Floor Broker or OSF has instructed the Exchange to bill the Market-Maker pursuant to this billing process, the Market-Maker may pursue a claim against the Floor Broker or OSF in arbitration under Chapter XVIII of the Rules or through other means permitted by that Chapter.

(vi) The Accounting Department shall prepare a monthly Market-Maker floor brokerage billing list for each Clearing Member that clears Market-Maker transactions and provide this list to each such Clearing Member by the 21st day of the month. The list shall set forth the amounts Floor Brokers and OSFs have instructed the Accounting Department to bill each Market-Maker that clears through that Clearing Member for brokerage fees incurred by the Market-Maker during the prior month.

(vii) A Clearing Member may instruct the Accounting Department in a form and manner prescribed by the Exchange not to draft the Clearing Member pursuant to this billing process for that portion of the brokerage fees billed to a Market-Maker which would cause the Market-Maker to have a negative balance in the Market-Maker's account

at the Clearing Member. Any such instruction must be provided to the Accounting Department by the 22nd day of the month. In determining whether a negative balance would result in a Market-Maker's account, a Clearing Member may take into account deductions from the account that have been accrued but which have not yet posted to the account.

(viii) On the 25th day of the month, the Exchange will draft from each Clearing Member's account at the Clearing Corporation the total amount billed pursuant to this Rule to Market-Makers that clear through that Clearing Member (with the exception of amounts the Clearing Member has instructed the Accounting Department not to draft pursuant to subparagraph (a)(vii) of this Rule). Following the draft of these funds, the Exchange shall promptly distribute the amounts drafted in a manner prescribed by the Exchange to the Floor Brokers and OSFs that provided billing instructions to the Accounting Department pursuant to this billing process.

(ix) In the event a Clearing Member instructs the Accounting Department pursuant to subparagraph (a)(vii) of this Rule not to draft a portion of the brokerage fees billed to a Market-Maker:

(A) The Exchange shall, pursuant to subparagraph (a)(viii) of this Rule, distribute on a pro rata basis to the Floor Brokers and OSFs that submitted instructions to bill the Market-Maker, the portion of the brokerage fees which were drafted from the Clearing Member for that Market-Maker. This pro rata distribution shall be allocated based on the amount that each Floor Broker and OSF instructed the Accounting Department to bill the Market-Maker.

(B) If the Market-Maker later has a positive balance in the Market-Maker's account at the Clearing Member, the Clearing Member shall deduct from the account the amount of the brokerage fees that the Clearing Member previously instructed the Accounting Department not to draft. The Clearing Member shall then promptly distribute to those Floor Brokers and OSFs who previously did not receive full payment the amounts which were previously billed but not drafted pursuant to this billing process. To the extent that any outstanding amounts that were not previously drafted have been paid to a Floor Broker or OSF, the Clearing Member shall not be required to deduct these amounts from the Market-Maker's account and distribute them to the Floor Broker or OSF.

(x) If a Floor Broker or OSF fails to submit a written bill to a Market-Maker customer by the 6th day of the month

for brokerage fees incurred by the Market-Maker during the prior month or if a Floor Broker or OSF fails to notify the Accounting Department by the 12th day of the month in the form and manner prescribed by the Exchange of the amount to bill each Market-Maker customer for brokerage fees incurred by the Market-Maker during the prior month, the Floor Broker or OSF may not bill the Market-Maker for these brokerage fees pursuant to the billing process set forth in this Rule.

Notwithstanding the foregoing, the Floor Broker or OSF shall still be permitted to bill the Market-Maker for these brokerage fees in the regular, non-automated fashion.

(xi) In the event that any of the deadlines referenced in this Rule fall on a non-business day, the deadline shall advance to the next business day.

(b) Each Clearing Member shall be authorized under this Rule (i) to deduct from a Market-Maker's account at that Clearing Member amounts drafted by the Exchange from the Clearing Member's account at the Clearing Corporation pursuant to this Rule for brokerage fees billed to that Market-Maker and (ii) to make deductions from the Market-Maker's account at the Clearing Member and distributions to Floor Brokers and OSFs of the deducted amounts in accordance with subparagraph (a)(ix)(B) of this Rule.

(c) The Clearing Corporation shall have no liability to members or associated persons in connection with the billing process under this Rule.

(d) To the extent that there is any inconsistency between the provisions of this Rule and the provisions of Rule 6.76, the provisions of this Rule shall govern with respect to the bills processed pursuant to the billing process under this Rule.

Order Service Firms

RULE 6.77. (a) An order service firm is a regular member organization that is registered with the Exchange for the purpose of taking orders for the purchase or sale of stocks or commodity futures contracts (and options thereon) from market-makers on the floor of the Exchange and forwarding such orders for execution. An applicant for registration as an order service firm shall file [its] an application [in writing] with the Membership Department [of] in a form and manner prescribed by the Exchange. Applications shall be reviewed by the Membership Committee, which shall consider an applicant's financial condition, regulatory history, and such other factors as the Membership Committee deems appropriate. After reviewing the

application, the Membership Committee shall either approve or disapprove the applicant's registration as an order service firm. Before registration, the Membership Department, [upon direction of] *if directed by the* Membership Committee, shall post the names of the applicant and its nominee(s) on the floor of the Exchange for at least three business days.

(b) An order service firm shall make available to market-maker customers upon request a statement of financial condition as disclosed by its most recent balance sheet, which shall be prepared no later than the tenth business day following each calendar month-end.

(c) A [clearing member] *Clearing Member* need not register as an order service firm in order to take orders for the purchase or sale of stocks or commodity futures contracts (and options thereon) from market-makers for which it has a currently outstanding Letter of Guarantee.

(d) An order service firm that takes orders for the purchase or sale of commodity futures contracts (and options thereon) must comply with the Commodity Exchange Act ("CEA") and the rules and regulations promulgated thereunder. Such a firm shall keep the Department of Financial and Sales Practice Compliance apprised of its registration status under the CEA on an ongoing basis, including any financial reporting or capital requirements.

Letters of Guarantee Required of Order Service Firms

RULE 6.78. (a) Prior to accepting any orders from market-makers on the floor of the Exchange, an order service firm must have on file with the [exchange] *Exchange* and in effect an Order Service Firm Letter of Guarantee issued for such service firm by a member of The Options Clearing Corporation.

(b) The Order Service Firm Letter of Guarantee shall be in a form *prescribed by* [acceptable to] the Exchange and shall provide that the issuing [clearing member] *Clearing Member* accepts financial responsibility for all orders handled by the order service firm on the floor of the Exchange and for all financial obligations of the order service firm to the Exchange.

(c) An Order Service Firm Letter of Guarantee filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the [Exchange and posted on the Exchange bulletin board. If such written notice has not been posted for] *Membership Department. If such a written notice of revocation is not filed with the Membership Department* at least one hour prior to the opening of trading on

a particular business day, such revocation shall not become effective until the close of trading on such [date] *day. Upon the request of the Clearing Member that files such a written notice of revocation, the Exchange shall post notice of the revocation on the Exchange Bulletin Board.* A revocation shall in no way relieve a [clearing member] *Clearing Member* of responsibility for transactions guaranteed prior to the effective date of such revocation.

(d) No [clearing member] *Clearing Member* shall be permitted to guarantee more than three (3) order service firms without the prior written approval of the Department of Financial and Sales Practice Compliance (the "Department"). In considering a request to guarantee more than three (3) such firms, the Department shall consider the [clearing member's] *Clearing Member's* level of excess net capital, additional financial resources, and such other factors as the Department deems appropriate.

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CHAPTER VIII—Market-Makers, Trading Crowds and Modified Trading Systems

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Letters of Guarantee

RULE 8.5. (a) Required of Each Market-Maker. No Market-Maker shall make any transaction on the floor of the Exchange unless [a Letter of Guarantee has been issued for such member by a Clearing Member and filed with the Exchange, and unless such letter has not been revoked pursuant to paragraph (c) of this Rule] *there is in effect a Letter of Guarantee that has been issued for such Market-Maker by a Clearing Member and filed with the Exchange.* [A member may file more than one such Letter with the Exchange; provided, however, that a Letter of Guarantee with an earlier effective date will afford the Clearing Member issuing such letter a priority over each subsequent issuer of a Letter of Guarantee for claims made pursuant to Rule 3.15 against the proceeds from the sale of a membership by the person covered by such Letter of Guarantee.] *If a Market-Maker desires to clear his or her transactions through more than one Clearing Member, a Letter of Guarantee is required to be issued and filed with the Exchange by each such Clearing Member to cover Exchange transactions executed by the Market-Maker through that Clearing Member. A Market-Maker may not execute Exchange transactions through a Clearing Member unless there is in effect a Letter of Guarantee that has*

been issued for such Market-Maker by the Clearing Member and filed with the Exchange. The Exchange shall notify each issuer of a Letter of Guarantee of other outstanding Letters of Guarantee [which] *that* have been issued to the same Market-Maker [and shall notify each Clearing Corporation that has approved a Letter of Guarantee for a Market-Maker of the issuance and revocation, if applicable, of all other Letters of Guarantee issued to that Market-Maker in respect of transactions subject to the rules of any other Clearing Corporation].

(b) Terms of Letter of Guarantee. A Letter of Guarantee *shall be in a form prescribed by the Exchange* and shall provide that the issuing Clearing Member accepts financial responsibility for [all] Exchange transactions made by the guaranteed [member] *Market-Maker when executing such transactions through the issuing Clearing Member.*

(c) Revocation of Letter of Guarantee.

A Letter of Guarantee filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the [Exchange and posted on the Exchange bulletin board. If such written notice has not been posted for] *Membership Department. If such a written notice of revocation is not filed with the Membership Department* at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day. *Upon the request of the Clearing Member that files such a written notice of revocation, the Exchange shall post notice of the revocation on the Exchange Bulletin Board.* A revocation shall in no way relieve a Clearing Member of responsibility for transactions guaranteed prior to the effective date of such revocation.

. . . Interpretations and Policies:

.01 Market-Makers entering into Government securities options transactions must have a separate Letter of Guarantee issued by a Debt Securities Clearing Member.

.02 Each Market-Maker must file with the Exchange one or more Letters of Guarantee for transactions cleared by The Options Clearing Corporation.

.03 A Market-Maker engaging in transactions subject to the rules in Chapter XXX may submit one or more Letters of Guarantee in respect of the securities to be traded by such Market-Maker; provided, that any such Letter of Guarantee shall specify the types of security (e.g., stocks or warrants, UIT interests) for which the Clearing Member accepts responsibility.

.04 Only those Letters of Guarantee that are required to be deposited with a Clearing Corporation will be submitted to such Clearing Corporation for its approval. *The Exchange shall notify each Clearing Corporation that has approved a Letter of Guarantee for a Market-Maker of the issuance and revocation, if applicable, of all other Letters of Guarantee issued to that Market-Maker in respect of transactions subject to the rules of any other Clearing Corporation.*

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Rule 8.9—Securities Accounts and Orders of Market-Makers

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. . . Interpretations and Policies:

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.08 *Each participant in a joint account shall be jointly and severally liable for any losses which may be incurred by the joint account; however, in the case where a participant in a joint account is a nominee of a member organization, or is an individual who has registered his or her membership for a member organization, and the participant is not acting as an independent Market-Maker pursuant to Rule 3.8(f), the member organization and not the participant shall be so liable.*

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CHAPTER IX—Doing Business With the Public

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Exchange Approval

RULE 9.1. An individual regular member [or any special member] may not transact business with the public. A regular member organization may transact business with the public after an application, submitted on a form prescribed by the Exchange, has been approved by the Membership Committee. Approval to transact business with the public shall be based on a member organization's meeting the general requirements set forth in this Chapter and the net capital requirements set forth in Chapter XIII of the Rules, and such approval may be withdrawn if any of the requirements cease to be met.

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Registration and Termination of Representatives

RULE 9.3. (a) Registration. No member organization shall be approved to transact business with the public until those persons associated with it who are designated as Representatives have been approved by and registered

with the Exchange. Persons who perform duties for the member organization which are customarily performed by sales representatives, solicitors, customers' men or branch office managers shall be designated as Representatives. In connection with their registration, Representatives shall file an application on a form prescribed by the Exchange, shall successfully complete a training course and an examination for the purpose of demonstrating an adequate knowledge of the securities business, and shall sign an agreement to abide by the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation; provided, however, that Representatives of member organizations that are members of another national securities exchange or association which has standards of approval acceptable to the Exchange may be deemed to be approved by and registered with such other exchange or association. Member organizations whose Representatives are deemed registered pursuant to the last clause of the preceding sentence shall inform their Representatives of their obligation to adhere to the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation.

(b) Termination—Filing of U-5's. The discharge or termination of employment of any registered person, together with the reasons therefor, shall be reported by a member organization immediately following the date of termination, but in no event later than thirty (30) days following termination, to the Exchange's Department of *Financial and Sale Practice* Compliance on a Uniform Termination Notice for Securities Industry Registration (Form U-5). A copy of said termination notice shall be provided concurrently to the person whose association has been terminated.

(c) Termination—Filing of amended U-5's. The member organization shall report to the Exchange, by means of an amendment to the Form U-5 filed pursuant to paragraph (b) above, in the event that the member organization learns of facts or circumstances causing any information set forth in the notice to become inaccurate or incomplete. Such amendment shall be filed with the Exchange's Department of *Financial and Sales Practice* Compliance and provided concurrently to the person whose association has been terminated no later than thirty (30) days after the member organization learns of the facts or circumstances giving rise to the amendment.

. . . Interpretations and Policies:

.01 *The application prescribed by the Exchange pursuant to paragraph (a) of this Rule is the Uniform Application for Securities Industry Registration or Transfer (Form U-4). Any person required to complete Form U-4 shall promptly file any required amendments to Form U-4.*

.0[1]2 Any filing or submission requirement under this Rule shall be deemed to be satisfied if such filing or submission is made with the North American Securities Administrators Association/National Association of Securities Dealers, Inc. Central Registration Depository (CRD) within the *applicable* time period set forth in [paragraph (b) or (c) of] this Rule.

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CHAPTER X—Closing Transactions

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Contracts of Suspended Parties

RULE 10.11. When a member or member organization is suspended pursuant to Chapter XVI of these Rules, members and organizations having contracts with the suspended member or member organization for the purchase, sale or loan of securities shall, without unnecessary delay, proceed to close such contracts on the Exchange or in the best available market, except insofar as the rules of a Clearing Corporation are applicable and provide the method of closing; provided, however, that upon any such suspension, the Board of Directors may, in its discretion, suspend the mandatory closeout provisions of this Rule and may, in its discretion, reinstate such provisions at such time as it may determine. Should such a contract not be closed when required to be closed by this Rule, the price of settlement for the purpose of Rule 3.15 shall be *determined pursuant to the claims resolution procedures provided for by that Rule, with* [fixed by the Board, having] due regard for the price current at the time

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CHAPTER XV—Records, Reports and Audits

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RULE 15.1—Maintenance, Retention and Furnishing of Books, Records and Other Information

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. . . Interpretations and Policies:

.01 The following Rules contain specific requirements with regard to the maintenance and retention of books, records and other information: Rules 3.4 [3.5], 3.6 [3.7], 8.9, 9.6, 9.7, 9.8, 9.10,

9.21, 9.23, 11.2, 12.12 and Chapter XV. In addition, the following Rules contain specific requirements with regard to the furnishing of information to the Exchange: Rules [3.6], 3.7 [3.8], 3.9, [3.14, 3.15, 3.16], 3.17, 3.18, 3.20, 3.21, 3.23, 3.25, 4.9, 4.13, 6.49, 6.51, 6.56, 6.59, 6.71, 6.72, 7.2, 7.3, 7.6, 8.2, 8.3, 8.5, 8.10, 8.11, 9.1, 9.2, 9.3, 12.11, 13.4, 14.2 and 19.2. The foregoing list is not intended to be exhaustive and members must comply with all applicable recordkeeping and reporting requirements whether or not listed above.

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CHAPTER XVIII—Arbitration

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RULE 18.2—Procedures in Member Controversies

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. . . Interpretations and Policies:

.01 *In any arbitration concerning the alleged failure to honor a trade, each party to the arbitration shall promptly provide copies of all documents filed or received in the arbitration by that party to the Clearing Member(s) that guaranteed that party's Exchange transactions when the alleged trade took place.*

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CHAPTER XXIVA—Flexible Exchange Options

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RULE 24A.15.—Letter of Guarantee or Authorization

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(a) No Market-Maker shall effect any transaction in FLEX Options unless one or more Letter(s) of Guarantee has been issued by a Clearing Member and filed with the Exchange pursuant to Rule 8.5(a) accepting financial responsibility for all FLEX transactions made by the Market-Maker and such letter has not been revoked under Rule 8.5(c). Upon approval by The Options Clearing Corporation and filing with the Exchange, an existing Letter of Guarantee may be amended specifically to include FLEX Option transactions. [In determining priority for claims made pursuant to Rules 3.15 and 8.5, the filing of an amendment to an existing Letter of Guarantee to authorize a member to engage in FLEX transactions shall not change the effective date of the existing Letter.]

(b) No Floor Broker shall act as such in respect of FLEX Option contracts unless [one or more Letters] a Letter of Authorization has been issued by a Clearing Member and filed with the Exchange under Rule 6.72(a)

specifically accepting responsibility for the clearance of FLEX Option transactions of the Floor Broker and such letter has not been revoked under Rule 6.72(c). Upon approval by the Clearing Corporation and filing with the Exchange, an existing Letter of Authorization may be amended to include FLEX Option transactions. [In determining priority or claims made pursuant to Rules 3.15 and 6.72, filing of an amendment to a Letter of Authorization shall not change the effective date of an existing Letter of Authorization.]

[This rule supplements Exchange Rule 8.5.]

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CHAPTER XXVI—Market Baskets

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RULE 26.11.—Market-Makers

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(c) Letter of Guarantee. No Market-Maker shall make any transaction on the floor of the Exchange in market basket contracts unless one or more Letters of Guarantee has been issued by a Clearing Member under Rule 8.5(a) in which the issuing Clearing Member specifically accepts financial responsibility for all market basket transactions made by the Market-Maker and such Letter has not been revoked pursuant to Rule 8.5(c). Upon approval by the Clearing Corporation and filing with the Exchange, an existing Letter of Guarantee may be amended to include market basket transactions. [For purposes of determining the priority of Clearing Members for claims made pursuant to Rules 3.15 and 8.5, the effective date of an existing Letter of Guarantee shall not be deemed modified by the filing of an amendment authorizing a member to engage in market basket transactions.]

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RULE 26.13.—Floor Broker Financial Requirements

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(b) Letter of Authorization. No Floor Broker shall act as such in respect of market basket contracts unless [one or more Letters] a Letter of Authorization has been issued by a Clearing Member under Rule 6.72(a) (and not revoked under Rule 6.72(c)) in which the issuing Clearing Member specifically accepts responsibility for the clearance of market basket transactions of the Floor Broker when the name of the Clearing Member is given up. Upon approval by the Clearing Corporation and filing with the Exchange, an existing Letter of Authorization may be amended to include market basket transactions. [For purposes of determining the priority of

Clearing Members for claims made pursuant to Rules 3.15 and 6.72, the effective date of an existing Letter of Authorization shall not be deemed modified by the filing of an amendment authorizing a member to engage in market basket transactions.]

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CHAPTER XXX—Stock, Warrant and Other Rules

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RULE 30.74.—Clearing of System Transactions

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(e) Whenever a Clearing Corporation to which a System trade has been reported excludes such System trade from the clearance procedures conducted by such Clearing Corporation, either because such Clearing Corporation ceases to act (either with respect to transactions generally or as to a particular transaction) for a member or member organization, or because of the insolvency of such member or member organization, the Exchange may, but shall not be obligated to, assume and honor any one or more or all of such excluded System trades for the account of and on behalf of the member or member organization for which the Clearing Corporation ceased to act or which is insolvent and the Exchange may take such action in the market to close out or offset its position as it may deem appropriate. In any such case, the Exchange shall have a claim against such member or member organization in the amount of the loss incurred by the Exchange as a result of such assumption of such excluded System trades. The Exchange may assert such claim against such member or member organization in any appropriate forum [and, without limiting the generality of the foregoing, in connection with the transfer of any membership by such member, or by any member who is associated with such member organization, such claim shall be entitled to priority in payment as a sum due the Exchange under the provisions of Rule 3.15.]

* * * * *

REGULATORY CIRCULAR RG 98-148 99-

Date: _____, 1999 [December 29, 1998]

To: Members and Applicants for Membership

From: Membership Department

Re: Membership Application and Other Membership Fees

[Exchange Rules 2.22 and 3.9 authorize the Board of Directors to impose fees and the Membership Department to investigate all applicants

for membership, respectively. All applicants for CBOE membership, regardless of their Designated Examining Authority or standing at other self-regulatory organizations, are investigated and assessed the appropriate fees. This includes all persons associated within applicant member organizations, i.e., general and limited partners, executive officers, principal shareholders, and LLC members and managers. Moreover, investigations are conducted and the

fees for such associated persons are assessed each time a new person of such status becomes associated with the firm, as well as at the time an initial application is filed.

In connection with this process, member organizations are reminded of their obligation under CBOE Rule 3.5(b) to file with the Exchange and keep current a list and descriptive identification of those persons associated with the member organization who are its executive

officers, directors, principal shareholders, general and limited partners, and LLC members and managers. Member organizations who have not fulfilled this obligation should do so by filing such a list with the Membership Department.

For information purposes,] *The following is a list of the Exchange's membership application fees and other membership fees, together with a brief explanation of each fee:*

List of Fees

Individual/Nominee/CBOT Exerciser/Lessee/Lessor	\$2,000
Non-member Customer Business	\$500
Order Service Firm	\$1,500
General Partner	\$250
Executive Officer	\$250
LLC Manager	\$250
Principal Shareholder	\$250
Limited Partner	\$250
LLC Member	\$250
Corporation/Partnership/LLC	\$250
Renewal/Change of Status	\$100
Orientation	\$200
Lease Fee	\$500
Amendments to [Partnership] Bylaws/Partnership Agreement/Operating Agreement	\$100
Inactive Nominee Status Change	
Submission before 4:00 p.m. on date prior to effective date	\$40
Submission after 4:00 p.m. on date prior to effective date or before 8:00 a.m. on effective date	\$75
Submission after 8:00 a.m. on effective date	\$150
Fingerprint Processing and Photograph Fee	\$35
Transfer of Membership into Trust	\$500
Inactive Nominee Status Quarterly Maintenance Fee	\$600
Applicant, Member, or Associated Person Subject to a Statutory Disqualification	\$2,500
Change in Status that, if Approved, Would Require Amended or Additional Rule 19h-1(c) Filing	\$1,500

ALL FEES ARE NON-REFUNDABLE AND MUST ACCOMPANY APPLICATIONS

Individual/Nominee/CBOT Exerciser/Lessee/Lessor—This fee is payable by each new individual applicant for membership on the Exchange.

Non-Member Customer Business—This fee is payable by applicant firms that plan to conduct a public customer business.

Order Service Firm—This fee is payable by applicant firms that plan to conduct an order service business pursuant to CBOE Rule 6.77.

General Partner—This fee is payable by each General Partner of a member firm applicant and each additional General partner who is added to such firm. General Partners must also be fingerprinted and incur the fingerprint processing fee.

Executive Officer—This fee is payable by each Executive Officer of a member firm applicant and each additional Executive Office who is added to such firm. Executive Officers must also be fingerprinted and incur the fingerprint processing fee.

LLC Manager—This fee is payable by each LLC Manager of an applicant LLC and each additional LLC Manager who is added to the LLC. LLC Managers must also be fingerprinted and incur the fingerprint processing fee.

Principal Shareholder—This fee is payable by each Shareholder that directly owns 5% or more of a class of a voting security of an applicant corporation and each additional such Shareholder who is added to the corporation.

Limited Partner—This fee is payable by each Limited Partner of an applicant partnership that has the right to receive upon dissolution, or has contributed, 5% or more of the partnership's capital and each additional such Limited Partner who is added to the partnership.

LLC Member—This fee is payable by each LLC Member of an applicant LLC that has the right to receive upon dissolution, or has contributed, 5% or more of the LLC's capital and each additional such LLC Member who is added to the LLC. LLC Members must also be fingerprinted and incur the fingerprint processing fee.

Corporation/Partnership/LLC—This fee is payable by each new firm applicant for membership on the Exchange. If a member organization changes its legal structure (e.g., from partnership to corporation or the reverse, from partnership to LLC or the reverse, or from corporation to LLC or the reverse), the firm is considered a new entity and assessed all application fees.

Renewal/Change of Status—This fee is payable by an existing individual member (including sole proprietors, nominees, CBOT exercisers, lessees, and lessors) desiring to change membership status or by a former individual member who [is reapplying] *reapplies* for membership within 6 months of his/her *membership* termination date.

Orientation—This fee (for [an Orientation Seminar and Examination] *the New Member Orientation Program and Floor Member Qualification Exam*) is payable by each applicant seeking membership as a [market maker or floor broker] *Market-Maker or Floor Broker*.

Lease Fee—The lease fee must accompany every new lease agreement filed with the Exchange.

Bylaw, Partnership Agreement, and Operating Agreement Amendments—This fee is payable each time a [partnership agreement is amended. Other applicable fees are also assessed (e.g. new General or Limited Partner fees)] *member organization's bylaws, partnership agreement, or operating agreement is amended.*

Inactive Nominee Status Change Fee—This fee is payable whenever an inactive nominee moves to active status. The amount of this fee varies in accordance with when the Membership Department receives notice of the status change via the submission of a Notification of Change in Nominee Status Form. If the Notification Form is submitted before 4:00 p.m. on the date prior to the effective date of the status change, the fee is \$40. If the Notification Form is submitted after 4:00 p.m. on the date prior to the effective date of the status change or before 8:00 a.m. on the effective date of the status change, the fee is \$75. If the Notification Form is submitted after 8:00 a.m. on the effective date of the status change, the fee is \$150. No fee shall apply to moves from active to inactive status.

Fingerprint Processing Fee—This fee is payable by all individual, nominee, *CBOT exerciser*, lessee, and lessor applicants and every General Partner, Executive Officer, LLC Member, and LLC Manager of member and applicant firms.

Transfer of Membership into Trust—This fee is payable by every individual member applying to transfer his or her membership into trust pursuant to CBOE Rule 3.25.

Inactive Nominee Status Quarterly Maintenance Fee—This fee is payable quarterly by a member firm for each inactive nominee status that the firm wishes to maintain. (E.g., a member firm desiring the ability to have 3 slots within which to designate inactive nominees would pay this fee at the beginning of each quarter for each of the 3 slots.)

Applicant, Member, or Associated Person Subject to a Statutory Disqualification—This fee is payable whenever a person or entity is subject to a statutory disqualification under the Securities Exchange Act of 1934 and: (i) is an applicant for Exchange membership, (ii) is seeking to be an associated person of an Exchange member (except where the Exchange is merely asked to concur in an SEC Rule 19h-1 filing by another self regulatory organization), or (iii) is an existing Exchange member or associated person who makes an application in accordance with Rule 3.18(b) or with respect to whom a proceeding is

initiated pursuant to Rule 3.18 [3.4(f), or (iv) is an existing Exchange member or associated person who does not make an application in accordance with Rule 3.4(f) and contests a proceeding pursuant to Rule 3.4(e)]. This fee is in addition to any other membership fees that might be applicable.

Change in Status that, if Approved, Would Require Amended or Additional SEC Rule 19h-1(c) Filing—This fee is payable whenever a person or entity on whose behalf the Exchange has filed a Rule 19h-1(c) filing that has been approved by the SEC applies for a change in status that will require the Exchange to file an amended or additional Rule 19h-1(c) filing if the Exchange approves the requested change in status. This fee is in addition to any other membership fees that might be applicable.

Any questions regarding this Regulatory Circular may be directed to Raedell Pancake, Director, Membership Department, at (312) 786-7460.

(Regulatory Circulars RG90-10, RG91-48, RG92-37, RG95-47, RG95-58, [and] RG96-03, and RG98-148 Revised).

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NYSE Options Program

Permit Lease Pool Procedures

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[8.h. No lease of a Permit in the lease pool will become effective until there has been deposited with the Membership Department of the Exchange a Letter of Guarantee from a Clearing Member in the amount equal to the last sale price of a Permit, except that during the first year of the Permits (during which no Permits may be bought or sold) the amount shall be \$50,000.]

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 these 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 aspects of such statements.

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

1. Purpose

Introduction

The purpose of this proposed rule change is to update the Exchange's rules relating to membership. The proposed rule amendments codify various procedures that have been implemented over time pursuant to the Exchange's current membership rules. Additionally, the proposed rule amendments clarify, restate, and reorganize certain of the Exchange's membership rules to make it easier for the Exchange's membership to reference and understand those provisions. Finally, the proposed rule amendments incorporate into the Exchange's membership rules various proposed improvements and enhancements, which are more fully described below.

This proposed rule change is the product of a comprehensive review and evaluation of the Exchange's current membership rules. This thorough and detailed review and evaluation was conducted by Exchange staff, the Exchange's Membership Committee, Clearing Member representatives, and the Exchange's Floor Directors Committee and involved numerous meetings and discussions by and among these groups over several years.

Set forth below is a summary of the substantive amendments proposed by this rule change.

Rule 1.1—Definitions

The definition of lessor in CBOE Rule 1.1(ff) is proposed to be amended to clarify that a member organization that is a lessor of an Exchange membership may transact business with the public provided the organization is approved to do so pursuant to CBOE Rule 9.1. Specifically, the second sentence of CBOE Rule 1.1(ff) is proposed to be deleted because the sentence is ambiguous and could be read to imply that a lessor member organization is not permitted to transact business with the public. The definition of nominee in CBOE Rule 1.1(pp) is also proposed to be amended (i) to clarify that under the amended rules not all types of nominees are required to have an authorized floor function (*i.e.*, as is more fully set forth in proposed CBOE Rules 3.8(a)(iii) and 3.8(b)(iii), nominees of member organizations approved solely to transact business with the public and of lessor member organizations are not required to have an authorized floor function) and (ii) to eliminate a

provision which provides that all nominees shall be deemed to be Exchange members since proposed Rule 3.8(b) provides that a nominee of a member organization approved to act solely as a lessor shall be deemed an associated person of the organization and not an individual member.

Rule 3.1—Public Securities Business

CBOE Rule 3.1 is proposed to be amended to clarify when the Rule is referring to an individual member, a member organization, or a member. (As is set forth in Section 1.1(b) of the CBOE Constitution, the term "member" means an individual member or a member organization.) CBOE Rule 3.1 is also proposed to be amended to delete the provision that requires compliance with Section 11(a) of the Act⁵ because compliance with the Act is required by CBOE Rule 4.2 and because CBOE Rule 3.1 is intended instead to set forth permissible membership capacities for the purpose of satisfying the requirement of Section 2.2 of the CBOE Constitution and Rule 3.1(a) that every member shall have as the principal purpose of its membership the conduct of a public securities business. Additionally, CBOE Rule 3.1 is proposed to be amended to separately refer to the membership capacity of a nominee and the membership capacity of an individual who has registered his or her membership for a member organization.

Rule 3.2—Qualifications and Membership Statuses of Individual Members

CBOE Rule 3.2 is proposed to be amended to clarify that the requirement in the Rule that an individual member is required to be 21 years of age applies to every individual member and not solely to individual members who own memberships. CBOE Rule 3.2 is also proposed to be amended to set forth in the Rule (i) all of the individual membership statuses under the Exchange's rules (including those that are approved by the Membership Committee and those that are approved by Exchange bodies other than the Membership Committee) and (ii) those individual membership capacities for which one is required to have an authorized floor function. Additionally, proposed CBOE Rule 3.2(c) codifies in the Exchange's rules the definition of an authorized floor function (*i.e.*, an individual member is deemed to have an authorized floor function if the member is approved by the Membership

Committee to act as a Market-Maker and/or a Floor Broker).

Rule 3.3—Qualifications and Membership Statuses of Member Organizations

Proposed CBOE Rule 3.3 is similar in structure to proposed CBOE Rule 3.2 and sets forth all of the membership organization membership statuses under the Exchange's rules (including those that are approved by the Membership Committee and those that are approved by Exchange bodies other than the Membership Committee). Consistent with long standing Exchange policy, CBOE Rule 3.3 also clarifies that a member organization that is a Clearing Member or an order service firm is required to possess at least one membership for which the organization is not a lessor. In addition, CBOE Rule 3.3 clarifies that a member organization that desires to become a different type of business entity must apply for membership in the name of the new entity.

Rule 3.4—Qualifications of Foreign Member Organizations

Currently, CBOE Rule 3.3 provides that an organization not organized under United States law may not become a member organization, unless the organization is organized under other laws approved by the Exchange's Board of Directors. Due to the ever-increasingly global nature of the securities markets, the Exchange has determined to amend its rules to permit foreign entities to become members of the Exchange, provided that such entities satisfy a number of requirements that are designed to eliminate potential hindrances the Exchange might encounter in regulating a foreign entity were such requirements not in place. These requirements are set forth in proposed CBOE Rule 3.4 and include, among others, the requirements that the organization must (i) maintain in English and at a location in the United States the books and records of the organization that relate to its business on the Exchange, (ii) maintain its financial records in accordance with United States accounting standards or foreign accounting standards that are found by the Exchange to be comparable to United States accounting standards, (iii) waive any secrecy laws in the domiciliary jurisdiction of the organization, and (iv) submit to the jurisdiction of the United States federal courts and the Illinois courts.

Rule 3.5—Denial of and Conditions to Membership and Association

Proposed CBOE Rule 3.5 (which is a revised version of current CBOE Rule 3.4) clarifies which criteria for denial or conditioning membership or association with a member are applicable only to broker-dealer applicants and revises one of the current grounds for denial or conditioning approval of a broker-dealer applicant. Currently, the Membership Committee may deny or condition the approval of a broker-dealer applicant if the applicant has a negative net worth. Under proposed CBOE Rule 3.5(c)(i), this ground is revised to provide that the Membership Committee may deny or condition the approval of a broker-dealer applicant if the applicant is an individual and has net worth (excluding personal assets) below \$25,000 or if the applicant is an organization and has net worth (excluding personal assets) below \$50,000. The Exchange believes that this somewhat higher standard is appropriate given the financial resources typically now required to operate as an Exchange member. In addition, any individual applicant who fails to satisfy this standard could still apply to become a non-broker-dealer nominee of a member organization and not be subject to this standard.

Proposed CBOE Rule 3.5 also clarifies that it is the Exchange's intention not to use as a ground for denial or conditioning approval of an applicant failure by the applicant to pay debts that have been discharged in bankruptcy. However, in the event an applicant has engaged in fraud in connection with a bankruptcy proceeding (such as fraudulent conveyances) or some other type of violation of just and equitable principles of trade, this clarification is not intended to limit the Exchange from considering this activity in determining whether to deny or condition approval of the applicant. A new provision is also proposed to be included in proposed CBOE Rule 3.5 which makes clear that any decision made by the Membership Committee to deny or condition approval of an applicant must be consistent with both the provisions of proposed CBOE Rule 3.5 and the provisions of the Act. Additionally, certain provisions of current CBOE Rule 3.4 are not included in proposed CBOE Rule 3.5 and instead are restated in other rules.

Rule 3.6—Persons Associated With Member Organizations

Proposed CBOE Rule 3.6 clarifies that the associated persons of a member organization which are required to be disclosed to the Exchange and approved

⁵ 15 U.S.C. 78k(a).

by the Membership Committee include those associated persons that are required to be disclosed on the organization's Form BD as direct owners or executive officers (or, if the organization is a non-broker-dealer lessor member organization, those associated persons that would be required to be disclosed on Form BD in these capacities in the event the organization was a broker-dealer). In addition, a prior reference to the completion of Form U-4 has been deleted, and CBOE Rule 9.3 has been amended to clarify which associated persons are required to complete Form U-4 (*i.e.*, persons who perform duties for member organizations approved to transact business with the public which are customarily performed by sales representatives, solicitors, customers' men, or branch office managers). Notwithstanding the foregoing, the Exchange may still require other applicants to complete Form U-4 during the application process solely as an information gathering tool.

Rule 3.7—Certain Documents Required of Members, Applicants, and Associated Persons

Proposed CBOE Rule 3.7 sets forth those documents which members are required to submit to the Membership Department. Most of the provisions of proposed CBOE Rule 3.7 are restatements of current requirements set forth in current CBOE Rule 3.6. Additionally, because current CBOE Rule 3.6 was last amended prior to when the Exchange amended its Rules to permit limited liability companies to become Exchange members, a provision is proposed to be included in proposed CBOE Rule 3.7.01 which specifies the documents that the Exchange currently requires applicants and members that are limited liability companies to file with the Membership Department. Proposed CBOE Rule 3.7 also includes provisions which refer to existing requirements under the Act (*i.e.*, the requirements under Section 17(f) of the Act⁶ respecting fingerprinting and the requirement under Section 15 of the Act⁷ that broker-dealers complete and keep current Form BD).

Rule 3.8—Nominees and Members Who Register Their Memberships for Member Organizations

CBOE Rule 3.8 is proposed to be amended to restate the current requirements that are applicable to nominees and members who register their memberships for member

organizations. For example, CBOE Rule 3.8(a) sets forth current requirements that are applicable to the designation of a nominee by a member organization that will not be acting as a lessor, and Rule 3.8(c) sets forth current requirements that are applicable to registering one's membership for a member organization. CBOE Rule 3.8 is also proposed to be amended to incorporate the following substantive changes.

Proposed CBOE Rule 3.8(b) requires each lessor member organization to designate a single nominee to represent the organization in all matters relating to the Exchange with respect to all of the memberships for which the organization is a lessor. This individual will be required to satisfy all of the qualification requirements for membership (other than the requirements which are not applicable to lessors or which are applicable solely to members who will have an authorized floor function), except that the nominee will be considered an associated person of the lessor member organization and not an individual member by virtue of being approved to act as a nominee in this capacity. The Exchange currently requires lessor member organizations to designate a representative to represent the organization with respect to the memberships for which it is a lessor, and proposed CBOE Rule 3.8(b) formalizes the process for the designation and approval of these individuals and clarifies that they are subject to the Exchange rules that are applicable to nominees generally (except those rules that are not applicable to lessors or which are applicable solely to members who will have an authorized floor function).

Proposed CBOE Rule 3.8(d) clarifies that a nominee shall not, solely by virtue of being a nominee of a member organization, have any personal liability to the Exchange or to any other member for Exchange transactions and other securities transactions made by the nominee on behalf of the member organization. Proposed CBOE Rule 3.8.01 also makes clear that nothing in CBOE Rule 3.8(d) is intended to define or limit (i) any obligations between a nominee of a member organization, or an individual who has registered his or her membership for a member organization, and the member organization itself; (ii) any responsibility such a person may have for obligations of the member organization by virtue of a contractual obligation or ownership relationship to the organization beyond merely being a nominee or individual who has

registered his or her membership for the organization; or (iii) the ability of the Exchange to sanction or take other remedial action against such a person pursuant to other Exchange rules for rule violations or other activity for which remedial measures may be imposed.

Proposed CBOE Rule 3.8(e)(i) provides that each nominee of a member organization and each individual who has registered his or her membership for a member organization is required to be materially involved in the daily operation of the Exchange business activities of the member organization. This provision is intended to eliminate the potential ability under the Exchange's current rules for an organization to qualify for membership by associating with an individual who is designated as that organization's nominee or who registers his or her membership for the organization but who has little or no involvement with the organization's Exchange business activities. The Exchange is proposing to prohibit the potential ability to have such an arrangement since such arrangements dilute the value of the membership rights of other Exchange members and result in a situation in which the person designated to represent the applicable member organization in all matters relating to the Exchange is not materially involved in the organization's Exchange business activities.

Rule 3.9—Application Procedures and Approval or Disapproval

CBOE Rule 3.9 is proposed to be amended to restate the Exchange's current membership application procedures.

For example, proposed CBOE Rule 3.9(g) restates the current provision that any individual membership applicant applying to have an authorized floor function is required to have attended the Exchange's New Member Orientation Program and to have passed the Exchange's Floor Member Qualification Exam. This provision is currently set forth in CBOE Rule 3.9(c)(2) and is proposed to be restated and moved to proposed CBOE Rule 3.9(g). Proposed CBOE Rule 3.9(g) also sets forth the procedural requirements that are related to this provision (such as the requirement that a person must score 75% or better on the Floor Member Qualification Exam in order to pass the Exam) which were previously approved by the Commission but which are not currently set forth in CBOE Rule

⁶ 15 U.S.C. 78q(f).

⁷ 15 U.S.C. 78o.

3.9.⁸ Additionally, the provisions currently set forth in Rule 3.5(b) which address when an applicant who fails the Floor Member Qualification Exam may re-take the Exam are proposed to be deleted from Rule 3.5(b) and to be included in proposed Rule 3.9(g).

The Exchange is also proposing to codify in CBOE Rule 3.9 the following current membership application procedures which are not currently set forth in CBOE Rule 3.9. First, proposed CBOE Rule 3.9(d) requires each applicant to promptly update the applicant's application materials if any of the information provided in these materials becomes inaccurate or incomplete after the date of submission of the application to the Membership Department and prior to any approval of the application. This requirement is currently set forth in the application materials themselves and is proposed to be added to Rule 3.9. Second, proposed CBOE Rule 3.9(c) clarifies that the Membership Committee may utilize a posting period for any type of membership application and that the Membership Committee may shorten or waive a required posting period for an applicant if the Membership Committee determines that doing so is warranted due to extenuating circumstances. Third, proposed CBOE Rule 3.9(f) clarifies that the Exchange typically does not investigate an individual member applicant who was an individual member within the prior 6 months since the person was recently an Exchange member. Fourth, the provisions of CBOE Rule 3.4(d), which provide that the Membership Committee need not act on a membership application when the applicant is the subject of an inquiry, investigation, or proceeding conducted by a self-regulatory organization or government agency involving the applicant's fitness for membership until the matter has been resolved, are proposed to be moved to proposed Rule 3.9(j). Fifth, proposed CBOE Rule 3.9.02 clarifies that a member organization which desires to change its name is required to submit an application to the Membership Department and that the Membership Committee may disapprove the name change application or membership application of an organization if the Membership Committee determines that the

proposed name of the organization is confusingly similar to the name of an existing member organization.

One substantive change that has been incorporated into CBOE Rule 3.9 is that any member desiring to change the Clearing Member that guarantees the member's Exchange transactions will be required to submit an application for approval to do so to the Membership Department, including a financial statement which sets forth the member's assets and liabilities. Proposed CBOE Rule 3.9 also provides that the Membership Department will provide a copy of this financial statement to the new Clearing Member designated in the application and will post notice to the membership that the application has been received (unless the Clearing Member(s) that will no longer be guaranteeing the member's Exchange transactions waive this requirement). This amendment is intended to permit the Clearing Member(s) that will no longer be clearing the member's Exchange transactions as well as other members to notify the Membership Department if the member has outstanding liabilities that bear upon the member's qualification for membership and to provide the new Clearing Member designated by the member with information regarding the member's financial standing so that the Clearing Member will have this information available to it in connection with managing the risk associated with the member's trading activities.

Rule 3.10—Effectiveness of Membership or Approved Associated Person Status

CBOE Rule 3.10 is proposed to be amended to restate the Exchange's current rule provisions regarding effectiveness of membership or approved associated person status. One substantive change that has been incorporated into CBOE Rule 3.10 is that an applicant that is approved to become a lessor will have 6 months to become effective in that status. Other types of applicants will continue to have 90 days to become effective in their approved statuses. Applicants that have been approved to become lessors will have a longer time period to become effective in that status because they generally must purchase a membership to become an effective lessor and it is often difficult for lessors to do so within 90 days.

Rule 3.11—Notice of Effectiveness of Membership or Approved Associated Person Status

CBOE Rule 3.11 is proposed to be amended to reflect the Exchange's current procedures for notifying the

membership of the effectiveness any membership, membership status, or associated person status. CBOE Rule 3.11 is also proposed to be amended to delete the requirement that such notices be posted on the Exchange Bulletin Board since these notices are included in the Exchange Bulletin (which is forwarded to all members) and since these notices relate to statuses that have already been approved (unlike notices of pending membership applications which are posted on the Exchange Bulletin Board so that members may submit comments to the Membership Department regarding an applicant's fitness for membership).

Rule 3.12—Membership Rights and Restrictions on Their Transfer

CBOE Rule 3.12 is proposed to be amended to include in proposed CBOE Rule 3.12(b)(ii) a provision currently set forth in CBOE Rule 3.15(g) regarding restrictions on the transfer of membership rights (which is proposed to be deleted from CBOE Rule 3.15) and to indicate that certain rights may be granted to the grantee of an Authorization to Sell a membership pursuant to proposed CBOE Rule 3.14(d) and proposed CBOE Rule 3.15(b) (which are more fully discussed below).

Rule 3.13—Purchase of Membership

CBOE Rule 3.13 is proposed to be amended to generally provide that any newly issued memberships may be purchased pursuant to procedures established by the Exchange. CBOE Rule 3.13 is also proposed to be amended to clarify that only those approved to be an owner or lessor may purchase a membership and that any bid to purchase an outstanding transferable membership submitted by a person or organization approved to be an owner or lessor shall be canceled at such time that the person or organization is no longer approved to be an owner or lessor. In addition, proposed CBOE Rule 3.13(c) clarifies that a purchaser must pay for a purchased membership within 2 business days of the acceptance of a bid for a newly issued membership or the matching of a bid and offer for an outstanding transferable membership.

Rule 3.14—Sale and Transfer of Membership

The Exchange's membership transfer provisions of CBOE Rule 3.14(c) are proposed to be amended to provide that if the owner of a transferable membership requests the transfer of the membership pursuant to CBOE Rule 3.14(c)(iii) to an organization in which the transferor will maintain an interest, the interest must be at least equal in

⁸ See Securities Exchange Act Release No. 32943 (September 22, 1993), 58 FR 50984 (September 29, 1993) (File No. SR-CBOE-91-38) (reflecting Commission approval of the procedural provisions related to the Exchange's requirement that individual membership applicants applying to have an authorized floor function are required to pass the Exchange's Floor Membership Qualification Exam).

value to the current market price of the membership (instead of the lower of the current market price or cost of the membership). Because the market price of a membership has increased significantly over the years, maintaining an ownership interest in an organization equal to the original cost that a member may have paid for a membership may no longer reflect a material ownership interest in that organization.

Current CBOE Rule 3.15.01 provides that the Exchange may recognize and give effect to a valid instrument by which a member, in consideration of a loan or guarantee of a loan by another member for the purpose of purchasing a membership, has authorized the lending or guaranteeing member to sell that membership. Proposed CBOE Rule 3.14(d) replaces this provision and also expands upon it by permitting the owner of a transferable membership to voluntarily grant an Authorization to Sell the membership to any other member (including, but not limited to, another member who has provided or guaranteed a loan to the membership owner for the purpose of purchasing a membership) and by specifying in more detail the provisions that are proposed to govern the grant of an Authorization to Sell and the exercise of authority thereunder.

Among the provisions under proposed CBOE Rule 3.14(d) that will apply to an Authorization to Sell are the following: (i) An Authorization to Sell shall be effective only if it has been executed on a form prescribed by the Exchange and filed with the Membership Department; (ii) a membership owner may not grant an Authorization to Sell a particular membership to more than one member; (iii) the grantee of an Authorization to Sell will have all of the authority granted under the Exchange's Constitution and rules relating to the sale of the membership that would otherwise be vested in the membership owner; (iv) a grantee of an Authorization to Sell a membership must notify the membership owner in writing at least 3 business days prior to exercising the grantee's right to sell the membership; (v) an Authorization to Sell shall be irrevocable and may only be canceled if the grantee of the Authorization to Sell consents to its cancellation; (vi) the Exchange shall take direction solely from the grantee of an Authorization to Sell a membership with respect to matters relating to the sale of the membership; (vii) notwithstanding the foregoing, a membership owner and a grantee of an Authorization to Sell a membership may have a written contract between them which sets forth

the circumstances under which the grantee may exercise the grantee's authority to sell the membership, and any breaches of this written contract may be redressed through arbitration under Chapter XVIII of the Exchange's rules or through other means permitted by that Chapter; (viii) the grantee of an Authorization to Sell a membership that exercises the grantee's right to sell the membership may not be the purchaser of the membership unless the membership owner consents; and (ix) following receipt by the Membership Department of an Authorization to Sell that has been granted by a member, a cancellation of the Authorization to Sell, or a contract concerning the exercise of authority under the Authorization to Sell, the Membership Department will provide a copy of the applicable document to the member's Clearing Member(s).

Rule 3.15—Proceeds From the Sale of Membership

Current CBOE Rule 3.15 and current provisions of CBOE Rule 3.14 and Rule 3.16 provide for a claims process whenever a membership is sold, whenever a membership is transferred without a sale, at the beginning of a membership lease, and at the end of a membership lease. During this claims process, the Exchange, the Clearing Corporation, and members may submit claims against the owner of the membership that is being sold, transferred, or leased. If the membership was leased (such as is always the case at the end of a membership lease), the Exchange, the Clearing Corporation, and members may also submit claims against the lessee of the membership (except at the beginning of a membership lease when claims may only be submitted against the membership owner). In the case of a sale, these claims (if determined to be valid by the Board of Directors) are satisfied out of the proceeds of the sale. In the case of a transfer or the beginning or end of a lease, the owner of the membership that is the subject of the transfer or lease must post cash with the Exchange in an amount equal to the last membership sale or must obtain a letter of guarantee from a Clearing Member to satisfy the payment of any valid claims.

For a number of reasons, the Exchange is proposing to modify this membership claims process so that the only permissible claimant under the process will now be the grantee of an Authorization to Sell, so that the process will only occur upon the sale of a membership, and so that lessors will no longer have liability under the claims process for the debts and liabilities of

their lessees. The primary reason for these modifications is that the Exchange no longer believes it is equitable for a lessor to be liable under the membership claims process for the debts and liabilities of a lessee, particularly when it is almost always the case that a lessor has no involvement in incurring a lessee's debts and liabilities and has no means to monitor the activities of a lessee. The Exchange also believes that these modifications to the membership claims process, when coupled with providing for the ability to grant an Authorization to Sell a membership, will result in more individuals and entities desiring to own Exchange memberships (including a greater number of individuals and entities who are engaged in trading activities on the Exchange desiring to own Exchange memberships). Additionally, these modifications will eliminate the significant administrative burden on the Exchange, Clearing Members, and other members that is a byproduct of the current membership claims process while still preserving the right of members to pursue claims against other members through the arbitration process.

Specifically, CBOE Rule 3.15 is proposed to be amended to provide for the following modified membership claims process upon the sale of a membership in place of the current membership claims process.

In the event of a sale of a membership for which no Authorization to Sell has been granted, the Exchange shall remit the sale proceeds from the sale of the membership to the member whose membership was sold promptly following receipt of the sale proceeds by the Exchange.

In the event of a sale of a membership for which an Authorization to Sell has been granted, the grantee shall have 2 business days from the date of the sale to notify the Membership Department of any claims the grantee has against the member whose membership was sold that are related to the member's Exchange business activities, and the member whose membership was sold shall have 5 business days from the date of the sale to either acknowledge or contest those claims. The Exchange shall then remit to the grantee that portion of the sale proceeds applicable to those claims that were acknowledged by the member whose membership was sold, escrow that portion of the remaining sale proceeds applicable to those claims that were contested by the member whose membership was sold, and remit to the member whose membership was sold any remaining

portion of the sale proceeds. Any portion of the sale proceeds applicable to contested claims that has been escrowed shall remain in escrow until the grantee and the member whose membership was sold resolve the claims through arbitration under Chapter XVIII of the Rules or through other means permitted by that Chapter.

Notwithstanding the foregoing, the Exchange may determine to release to the member whose membership was sold sale proceeds that have been escrowed due to contested claims if the Exchange determines that the grantee of the Authorization to Sell is not proceeding in good faith to resolve the contested claims. Following the resolution of any contested claims for which sale proceeds have been escrowed, the Exchange shall remit the escrowed proceeds to the grantee and the member whose membership was sold in accordance with the resolution of these claims.

CBOE Rule 3.15 also provides further explanation regarding the procedural aspects of this claims process, lists examples of types of claims related to Exchange business activities that may be submitted by the grantee of an Authorization to Sell under this claims process, and notes that whether a claim is related to Exchange business activities shall be determined solely by the Exchange.

Additionally, proposed CBOE Rule 3.14(d)(viii) provides that, consistent with the priority provided for under CBOE Rule 3.15(b) to claims made by the grantee of an Authorization to Sell, the Exchange will recognize a security interest of the grantee in any proceeds from the sale of a membership that the grantee is entitled to receive pursuant to CBOE Rule 3.15(b), but will not recognize any other lien or security interest in a membership or in the proceeds from the sale of a membership.

Rule 3.16—Special Provisions Regarding Chicago Board of Trade Exerciser Memberships

CBOE Rule 3.16 is proposed to be amended to clarify that a Chicago Board of Trade exerciser membership acquired by a person pursuant to Paragraph (b) of Article Fifth of the Exchange's Certificate of Incorporation terminates upon receipt by the Membership Department of written notice from the person that the person is surrendering the membership or at such time that the person is no longer entitled to membership on the Exchange in accordance with Paragraph (b) of Article Fifth. In addition, the provisions regarding leased memberships currently contained in CBOE Rule 3.16(b) have

been deleted and restated in an amended form in proposed CBOE Rule 3.17.

Rule 3.17—Leased Memberships

Proposed CBOE Rule 3.17 restates the provisions regarding leased memberships that are currently contained in CBOE Rule 3.16(b) and also incorporates the following substantive changes to those provisions.

Proposed CBOE Rule 3.17(a) clarifies that the Exchange shall bear no liability to a lessor or lessee in connection with the Exchange's review and approval of a lease agreement.

In connection with the modification of the current membership claims process to eliminate lessor liability under that process for claims against a lessee, the Exchange is proposing to include an explicit provision in proposed CBOE Rule 3.17(b) which provides that a lessor of a membership shall not have any liability for claims against a lessee of that membership solely by virtue of being a lessor of the membership. Proposed CBOE Rule 3.17(b) also clarifies that this provision is not intended to limit or define any responsibility a lessor may have for claims against a lessee by virtue of a contractual obligation or ownership relationship between the lessor and lessee beyond the lease of a membership from the lessor to the lessee. Similarly, the Exchange is proposing to eliminate the current provision of CBOE Rule 3.16(b) which provides that any division of rights and responsibilities between a lessor and lessee with respect to the satisfaction of applicable Exchange dues, fees, and other charges shall not affect a lessor's obligation to pay all amounts due the Exchange with respect to which a lessee has been delegated responsibility.

Proposed CBOE Rule 3.17(c) clarifies that the Exchange may specify that particular provisions be included in membership lease agreements in addition to those specifically designated in the Rule.

Proposed CBOE Rule 3.17(d) requires a lessee to promptly file the lease agreement and any amendments thereto with the Membership Department and to promptly notify the Membership Department of any termination of the lease before the termination becomes effective. This obligation is proposed to be placed on lessees because lessees are present at the Exchange to conduct their activities.

Proposed CBOE Rule 3.17(e) is intended to prevent the potential occurrence of a situation in which a lessor sells or transfers a membership during the term of a lease of the

membership and the lessee is left with no membership with which to conduct the lessee's Exchange business activities. Specifically, proposed CBOE Rule 3.17(e) provides that in the event a lessor sells or transfers a membership while it is being leased to a lessee, the purchaser or transferee of the membership is required to lease the membership to the lessee pursuant to the terms of the lessee's existing lease agreement with the lessor for a period of 20 business days following the date the membership is transferred to the purchaser or transferee. The purchaser or transferee may also satisfy this requirement by making arrangements with another membership owner to permit the lessee to lease a membership from that membership owner for the required time period pursuant to the terms of the lessee's existing lease agreement. Additionally, the lessee is permitted to waive this requirement if the lessee so chooses. The Exchange believes CBOE Rule 3.17(e) will prevent the disruption of business on the Exchange which can occur if a lessor sells or transfers a membership while it is being leased to a lessee by allowing the lessee a reasonable amount of time to procure the lease of another membership.

Proposed CBOE Rule 3.17(e) further provides that it shall be a rule violation for a lessor to circumvent the requirements of proposed CBOE Rule 3.17(e) by improperly terminating a membership lease prior to the sale or transfer of the membership for the purpose of avoiding the applicability of these requirements. In the event the Exchange determines that such a circumvention has taken place, proposed CBOE Rule 3.17(e) provides that the Exchange may impose the requirements of proposed CBOE Rule 3.17(e) upon the purchaser or transferee of the membership and/or take disciplinary action against the lessor.

Proposed CBOE Rule 3.17(f) clarifies that in the event a lessor sells or transfers a membership while it is being leased to a lessee, the lessor is required to remit to the purchaser or transferee of the membership any amounts paid to the lessor by the lessee under the lease agreement for any portion of the lease period, up to 20 business days, during which the lessor will no longer be leasing the membership to the lessee. The lessor is required to remit these amounts to the purchaser or transferee of the membership no later than the date the membership is transferred to the purchaser or transferee. The lessor is also required to remit to the lessee by the transfer date any remaining amounts paid to the lessor by the lessee under

the lease agreement for any portion of the lease period beyond the foregoing 20 business day period. Additionally, in the event the lessee waives the requirements of CBOE Rule 3.17(e) described above, the lessor is required to remit to the lessee by the transfer date all amounts paid to the lessor by the lessee under the lease agreement for any portion of the lease period during which the lessor will no longer be leasing the membership to the lessee.

Rule 3.18—Members and Associated Persons Who Are or Become Subject to a Statutory Disqualification

The Exchange is proposing to modify its procedures for determining, with respect to a member or associated person who is or becomes subject to a statutory disqualification, whether to permit that member or associated person to continue in membership or association with a member, and if so, whether to condition such continuance in membership or association.

Currently, the Membership Committee is authorized under current CBOE Rule 3.4, with respect to a member or associated person who is or becomes subject to a statutory disqualification, to determine not to permit that member or associated person to continue in membership or association with a member or to condition such continuance in membership or association. However, the Membership Committee must first gather the relevant information and interview the member or associated person before rendering its decision. In addition, the member or associated person has the right to appeal the Membership Committee's decision to the Exchange's Appeals Committee and to appeal the Appeals Committee's decision to the Board of Directors. Furthermore, these appeal rights must be exhausted before the Membership Committee's decision can take effect. Therefore, it is possible that a member or associated person could become subject to a statutory disqualification, such as a serious felony conviction, and still be able to continue to act in that capacity for an extended period of time while the foregoing proceedings are pending.

Accordingly, the Exchange is proposing to modify its current procedures in this regard by replacing them with a more expedited procedure which will still provide due process to the member or associated person that is or has become subject to a statutory disqualification without a right of appeal to the Appeals Committee and then to the Board of Directors. The proposed modified procedure is set

forth in proposed CBOE Rule 3.18 and has the following substantive components:

(i) If a member or associated person who is or becomes subject to a statutory disqualification wants to continue in Exchange membership or association with a member, the member or associated person is required to submit an application to the Membership Department within 10 days of becoming subject to the statutory disqualification.

(ii) Following receipt of the application, or in the event the Exchange becomes aware that a member or associated person is subject to a statutory disqualification and has failed within the required time period to submit an application to continue in membership or association, the Chairperson of the Membership Committee will appoint a panel composed of the Membership Committee Chairperson and two other members of the Membership Committee to conduct a hearing concerning the matter.

(iii) The hearing panel will hold a hearing concerning the matter 14 or more days following the receipt of the application or the initiation of the proceeding, and both the subject of the proceeding and Exchange staff will be afforded an opportunity to present relevant information, arguments, and witnesses during the hearing.

(iv) Following the hearing, the hearing panel will present its recommended decision to the Membership Committee, which may ratify or amend the decision.

(v) The Exchange's Executive Committee may determine within 7 days after the issuance of the Membership Committee's decision to order review of the decision. If the Executive Committee does not order review of the decision, the Membership Committee's decision will become the final decision of the Exchange.

(vi) If the Executive Committee orders review of the Membership Committee's decision, the review will be conducted by the Executive Committee or a panel thereof composed of at least 3 members of the Executive Committee, whose decision must be ratified by the Executive Committee, and the Executive Committee's decision will be the final decision of the Exchange.

The Executive Committee is composed of the Exchange's Chairman, Vice Chairman, and President, and at least 4 other Exchange directors and is generally authorized under Section 7.2 of the Exchange's Constitution to exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Exchange. The Exchange is

proposing to utilize the Executive Committee as the review body under proposed CBOE Rule 3.18 instead of the Board of Directors because the Executive Committee is generally able to convene more quickly than the Board because of its smaller size.

In the event that the Exchange were to determine to permit a member or associated person who is subject to a statutory disqualification to remain in membership or association, the Exchange would also submit a notice to the Commission to the extent required by Rule 19h-1 under the Act.⁹

Additionally, in order to help to ensure that the Exchange receives notice if a member or associated person becomes subject to a statutory disqualification, proposed CBOE Rule 3.18.02 provides that if an associated person of a member is or becomes subject to a statutory disqualification, the member is required to immediately provide written notice to the Membership Department of the name of the associated person, the person's capacity with the member, and the nature of the statutory disqualification.

Rule 3.19—Termination from Membership

Proposed CBOE Rule 3.19 clarifies that the membership status of a member automatically terminates if the member does not possess a membership through ownership, lease, or registration of a membership to the member and that the membership of a member organization automatically terminates if the member organization has no nominee or person who has registered his or her membership for the member organization. Proposed CBOE Rule 3.19 also restates the provision of current CBOE Rule 3.17 which permits the Exchange, if extenuating circumstances are present, to allow a member to retain the member's membership status following an event that triggers the termination of that status in order to permit the member to re-obtain a membership status.

Rule 3.20—Dissolution and Liquidation of Member Organizations

Proposed CBOE Rule 3.20 restates the provisions currently set forth in current CBOE Rule 3.18 regarding dissolution and liquidation of member organizations and amends those provisions by requiring a member organization (i) to provide notice of the adoption of a plan of liquidation or dissolution to both the Department of Financial and Sales Practice Compliance and the Membership

⁹ 17 CFR 240.19h-1.

Department and (ii) to provide notice to these Departments of any actual liquidation or dissolution.

Rule 3.21—Obligations of Terminating Members

Proposed CBOE Rule 3.21 restates requirements applicable to terminating members which are currently set forth in current CBOE Rule 3.19. In addition, in connection with the modification of the current membership claims which includes the elimination of the Exchange's ability to submit claims against the proceeds of a membership sale under that process, the Exchange is proposing to delete the provision of current CBOE Rule 3.19 which permits the Exchange to withhold the distribution of the proceeds of a sale of a membership if the seller is not current in the payment of Exchange fees or the submission of various filings.

Current Rules 3.20–3.22A—Government Securities Options Permits

All of the provisions contained in current CBOE Rules 3.20, 3.21, 3.22, and 3.22A relating to government securities options permits are proposed to be deleted due to the fact that all of these permits have expired. Similarly, CBOE Rule 1.1(hh), which sets forth the definition of a government securities options permit holder, and CBOE Rule 6.20.03, which relates to government securities options permit holders, are also proposed to be deleted.

Rule 3.25—Transfer of Individual Membership in Trust

CBOE Rule 3.25 is proposed to be amended to clarify that (i) the only type of trust into which a membership owner may transfer a membership is a living trust; (ii) a member desiring to transfer a membership in trust is required to submit an application to the Membership Department which must be approved by the Exchange; (iii) a Trust Member is required to submit to the Membership Department any amendments to the trust agreement and to notify the Membership Department of any changes in the information set forth in the application to transfer the membership in trust, any changes in successor trustee, any release of the membership out of trust, and any termination of the trust; and (iv) the Exchange shall deem a membership held in trust to have reverted to the Trust Member to be held directly and not in trust in the event the membership is released from the trust, the trust terminates, or the trust agreement is amended so that it no longer complies with the requirements of CBOE Rule 3.25.

Rule 3.27—Options Trading Permits

In connection with the modification of the current claims process that is applicable to memberships, the Exchange is also proposing to amend CBOE Rule 3.27 to make the same modifications to the corollary claims process that is applicable to Options Trading Permits.

Rule 3.28—Extension of Time Limits

Proposed CBOE Rule 3.28 clarifies that any time limit imposed on an applicant, member, or other person under Chapter III of the Exchange's rules may be extended by the Membership Committee in the event the Membership Committee determines that such an extension is warranted due to extenuating circumstances. This proposed provision is similar to CBOE Rule 17.13 which authorizes the Exchange to extend time limits provided for under Chapter XVII of the Exchange's rules.

Rule 3.29—Delegation of Authority

Proposed CBOE Rule 3.29 clarifies that all of the authority granted to the Exchange under Chapter III of the Exchange's rules may be exercised by the Membership Committee and/or the Membership Department and that the Membership Committee may delegate to the Membership Department any of the authority that is granted to the Membership Committee under the Exchange's rules. Since there are so many different types of membership-related applications and approvals provided for under Chapter III, the Membership Committee may wish to delegate to the Membership Department the authority to act on certain routine types of applications and approvals so that the Committee can focus its attention on the more significant types of membership-related applications and approvals. Proposed CBOE Rule 3.29 makes clear that this type of delegation may occur.

Rule 6.76A—Automated Billing Process for Market-Maker Brokerage Bills

In order to streamline the processing and payment of bills for brokerage services that are provided to Market-Makers by Floor Brokers and order service firms ("OSFs") and because Floor Brokers and OSFs will no longer have the ability to submit claims for outstanding brokerage bills as part of the membership claims process, the Exchange is proposing to implement an automated billing process for these bills which is proposed to be set forth in proposed CBOE Rule 6.76A. Below are the substantive components of this proposed automated billing process.

Some additional procedural aspects of this proposed automated billing process are also described in the proposed Rule.

(i) Each Floor Broker and OSF will be required to submit a written bill by the sixth day of the month to each Market-Maker customer of the Floor Broker or OSF for brokerage fees incurred by the Market-Maker during the prior month.

(ii) Submission of a written bill to a Market-Maker for these purposes shall be deemed to include hand-delivery of the bill to the Market-Maker, hand delivery of the bill to a representative of the Market-Maker, or delivery of the bill to the Market-Maker's Clearing Member with a written notation that the bill is for the Market-Maker.

(iii) A Market-Maker who receives a brokerage bill from a Floor Broker or OSF in accordance with this billing process will have until the tenth day of the month to inform the Floor Broker or OSF if the Market-Maker disputes any portion of the bill.

(iv) A Floor Broker or OSF that has submitted a bill to a Market-Maker by the sixth day of the month will notify the Exchange's Accounting Department by the twelfth day of the month of the amount to bill each Market-Maker customer of the Floor Broker or OSF for brokerage fees incurred by the Market-Maker during the prior month.

(v) The Exchange will take direction solely from the Floor Broker or OSF with respect to the amount to bill a Market-Maker pursuant to this billing process.

(vi) If for any reason a Market-Maker disputes the amount a Floor Broker or OSF has instructed the Exchange to bill the Market-Maker pursuant to this billing process, the Market-Maker may pursue a claim against the Floor Broker or OSF in arbitration under Chapter XVIII of the Rules or through other means permitted by that Chapter. In addition, in the event a Floor Broker of OSF improperly instructs the Exchange to bill a Market-Maker for brokerage fees which the Floor Broker or OSF is not entitled to receive, the Exchange may discipline the Floor Broker or OSF pursuant to Chapter XVII of the Exchange's rules for violating CBOE Rule 4.6 by submitting false statements to the Exchange.

(vii) The Accounting Department will prepare a monthly Market-Maker floor brokerage billing list for each Clearing Member that clears Market-Maker transactions and provide this list to each such Clearing Member by the twenty-first day of the month.

(viii) A Clearing Member may instruct the Accounting Department not to draft the Clearing Member pursuant to this billing process for that portion of the

brokerage fees billed to a Market-Maker which would cause the Market-Maker to have a negative balance in the Market-Maker's account at the Clearing Member.

(ix) On the twenty-fifth day of the month, the Exchange will draft from each Clearing Member's account at the Clearing Corporation the total amount billed pursuant to this billing process to Market-Makers that clear through that Clearing Member.

(x) The Exchange will then promptly distribute the amounts drafted to the applicable Floor Brokers and OSFs.

(xi) In the event a Clearing Member instructs the Accounting Department not to draft a portion of the brokerage fees billed to a Market-Maker, the Exchange will distribute on a pro rata basis to the Floor Brokers and OSFs that submitted instructions to bill the Market-Maker, the portion of the brokerage fees which were drafted from the Clearing Member for that Market-Maker.

(xii) In the event a Clearing Member instructs the Accounting Department not to draft a portion of the brokerage fees billed to a Market-Maker and the Market-Maker later has a positive balance in the Market-Maker's account at the Clearing Member, the Clearing Member will be required to deduct from the account the amount of the brokerage fees that the Clearing Member previously instructed the Accounting Department not to draft and to distribute these funds to the Floor Brokers and OSFs who previously did not receive full payment.

(xiii) If a Floor Broker or OSF fails to satisfy the submission deadlines provided for under this billing process for the billing of brokerage fees incurred by a Market-Maker during the prior month, the Floor Broker or OSF may not bill the Market-Maker for these brokerage fees pursuant to this billing process. However, the Floor Broker or OSF will still be permitted to bill the Market-Maker for these brokerage fees in the regular, non-automated fashion.

(xiv) In the event that any of the deadlines under this billing process fall on a non-business day, the deadline will advance to the next business day.

In order to contribute toward defraying the Exchange's cost of administering this automated billing process, the Exchange also proposes to assess, in a form and manner prescribed by the Exchange, (i) a \$0.50 fee to each Floor Broker and OSF for each bill of \$5.00 or more from the Floor Broker or OSF that is assessed to a Market-Maker under this billing process and (ii) a \$0.50 fee to each Market-Maker for each bill of \$5.00 or more from a Floor Broker

or OSF that is assessed to the Market-Maker under this billing process.

Rules 6.72, 6.78, and 8.5—Clearing Member Guarantees

CBOE Rules 6.72, 6.78, and 8.5 relate to guarantees provided by Clearing Members. CBOE Rule 6.72 is proposed to be amended to clarify that a Floor Broker may only have one Letter of Authorization guarantee from a Clearing Member in effect at a time. CBOE Rules 6.72, 6.78, and 8.5 are each proposed to be amended to clarify that if a Clearing Member revokes a guarantee provided under one of those Rules, the Exchange will only post notice of the revocation if requested to do so by the Clearing Member. The Exchange does not believe that it is necessary to require that all of these revocations be posted because most are routine and result because a member is terminating from membership or is changing the Clearing Member that guarantees the member's Exchange transactions. In addition, CBOE Rule 8.5 is proposed to be amended to clarify that a Market-Maker may have in effect more than one Letter of Guarantee from a Clearing Member and that each such Letter of Guarantee shall provide that the issuing Clearing Member accepts financial responsibility for Exchange transactions made by the guaranteed Market-Maker when executing transactions through the issuing Clearing Member.

Also, in order to ensure that Clearing Members receive notice of proceedings involving disputed trades, CBOE Rule 18.2 is proposed to be amended to provide that in any arbitration concerning the alleged failure to honor a trade, each party to the arbitration shall promptly provide copies of all documents filed or received in the arbitration by that party to the Clearing Member(s) that guaranteed that party's Exchange transactions when the alleged trade took place.

Rule 8.9—Securities Accounts and Orders of Market-Makers

Proposed CBOE Rule 8.9.01 clarifies that each participant in a joint account shall be jointly and severally liable for any losses which may be incurred by the joint account, except that in the case where a participant in a joint account is a nominee of a member organization, or is an individual who has registered his or her membership for a member organization, and the participant is not acting as an independent Market-Maker pursuant to CBOE Rule 3.8(f), the member organization and not the participant shall be so liable. This clarification is intended to make applicable to joint accounts the general

provision proposed to be included in proposed CBOE Rule 3.8(d) which clarifies that a nominee shall not, solely by virtue of being a nominee of a member organization, have any personal liability to the Exchange or to any other member for Exchange transactions and other securities transactions made by the nominee on behalf of the member organization.

Rule 18.2—Procedures in Member Controversies

In order to ensure that Clearing Members receive notice of proceedings involving disputed trades, CBOE Rule 18.2 is proposed to be amended to provide that in any arbitration concerning the alleged failure to honor a trade, each party to the arbitration shall promptly provide copies of all documents filed or received in the arbitration by that party to the Clearing Member(s) that guaranteed that party's Exchange transactions when the alleged trade took place.

Membership Fee Circular

The Exchange is proposing to amend its Membership Fee Circular to only include in the Circular information regarding membership fees and to delete from the Circular two introductory paragraphs regarding certain rule requirements related to membership since these requirements are now proposed to be more fully set forth in the membership rules themselves. The Exchange is also proposing to amend the description in the Membership Fee Circular of the fee that is payable by an applicant who is subject to a statutory disqualification to reflect that the rule provisions governing this situation are now proposed to be set forth in proposed CBOE Rule 3.18.

Special Members

The Exchange proposes to delete all references to special members contained in the Exchange's rules since all special memberships on the Exchange have expired. These proposed deletions are from CBOE Rules 3.12, 3.14, 3.16, 6.5, and 9.1.

Nonsubstantive Rule Changes

The Exchange is also proposing to make certain nonsubstantive wording changes to several CBOE membership rules, including CBOE Rules 3.23, 3.24, 3.27, 6.77, and 10.11.

Conforming Rule Changes

Additionally, the Exchange proposes to make conforming changes to other CBOE rules (including CBOE Rules 24A.15, 26.11, 26.13, and 30.74, and the NYSE Options Program Permit Lease

Pool Procedures¹⁰) to make them consistent with the proposed rule changes described above.

Effectiveness of Rule Change

This proposed rule change will become effective 30 days from the date of its approval by the Commission. The purpose of this 30 day time period is to provide the Exchange with an opportunity to notify the Exchange's membership of the effectiveness of this rule change and to provide those members who desire to grant or receive Authorizations to Sell with an opportunity to do so before the amended rule provisions take effect.

2. Statutory Basis

The proposed rule change will codify in the Exchange's membership rules various procedures that have been implemented over time pursuant to the Exchange's current membership rules, will clarify, restate, and reorganize certain of the Exchange's membership rules to make it easier for the Exchange's membership to reference and understand those provisions, and will incorporate into the Exchange's membership rules various proposed improvements and enhancements to those rules. Accordingly, the Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act¹¹ in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-99-15 and should be submitted by December 9, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42127; File No. SR-EMCC-99-10]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Requirements for a Class I, II, or III Director

November 10, 1999.

On September 24, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-

EMCC-99-10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on October 22, 1999.² No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

The rule change amends Article II, Section 2.2 of EMCC's by-laws to postpone until the year 2000 annual shareholders meeting the requirement that individuals elected to Class I, II, or III directorships must be an officer or partner of a shareholder or of an affiliate or subsidiary of a shareholder. Similarly, the rule change amends Section 1(A) of EMCC's amended and restated shareholder agreement to postpone until the year 2000 annual shareholders meeting the requirement that directors elected to these classes must be an officer or partner of a "participant shareholder" (i.e., a shareholder that is also an EMCC participant) or of an affiliate of a participant shareholder. EMCC's previous rules would have implemented these provisions at the 1999 annual shareholders meeting.³

The rule change also amends the amended and restated shareholders agreement's definition of "participant shareholder" to mean a shareholder that holds one or more Class A Subject shares and is also a participant or an affiliate of a participant. Previously, a "participant shareholder" was defined as a shareholder that holds one or more Class A Subject shares.

II. Discussion

Section 17A(b)(3)(C) of the Act⁴ requires that the rules of a clearing agency assure fair representation of its shareholders in the selection and administration of its affairs. For the reasons set forth below, the Commission believes that EMCC's rule change is consistent with its obligations under the Act.

EMCC's membership is not yet as large as its management had anticipated it would be at this time, and there are a number of shareholders and other

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 42016 (October 15, 1999), 64 FR 57169.

³ These amendments will allow EMCC to maintain the status quo with respect to the eligibility requirements for directors. For a description of EMCC's current rules and procedures governing EMCC's board of directors, see Securities Exchange Act Release No. 39661, International Series Release No. 1117 (February 13, 1998), 63 FR 8711.

⁴ 15 U.S.C. 78q-1(b)(3)(C).

¹⁰ See Amendment No. 2, *supra* note 4.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 17 CFR 200.30-(a)(12).