

purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(i) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(A) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(B) A foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(C) A foreign sovereign debt security;

(D) An asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(E) An asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or

(ii) The reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i).

(2) "ICE Clear Europe Clearing Member" shall mean any clearing member of ICE Clear Europe that submits Cleared CDS to ICE Clear Europe for clearance and settlement exclusively (i) for its own account or (ii) for the account of an affiliate that controls, is controlled by, or is under common control with the clearing member of ICE Clear Europe.

By the Commission.

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60370; File No. SR-CBOE-2009-033]

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

July 23, 2009.

#### I. Introduction

On May 26, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission (the "SEC" or

"Commission") a proposed rule change pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the **Federal Register** on June 22, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Exchange Act Rule 19h-1 <sup>4</sup> prescribes the form and content of, and establishes the mechanism by which the Commission reviews, proposals submitted by self-regulatory organizations ("SROs"), such as CBOE, to allow a member or associated person subject to a statutory disqualification to become or remain a member or associated with a member. Among other things, Rule 19h-1 provides for Commission review of notices filed by SROs proposing to admit any person to, or continue any person in, membership or association with a member, notwithstanding a statutory disqualification. However, Exchange Act Rule 19h-1(a)(2) <sup>5</sup> and Exchange Act Rule 19h-1(a)(3) <sup>6</sup> provide that for certain persons, and in limited circumstances, a notice does not need to be filed.

CBOE Rule 3.18(a) provides that CBOE may determine not to permit a member or an associated person of a member who is or becomes subject to a statutory disqualification under the Exchange Act,<sup>7</sup> to continue in membership or in association with a member. Under Rule 3.18(b), a member or an associated person who is or becomes subject to a statutory disqualification and wishes to continue in membership or in association with a member must submit an application to

the Exchange to do so. When the Exchange receives such an application, or otherwise becomes aware that a member or an associated person is subject to a statutory disqualification, the Exchange is required to appoint a panel to conduct a hearing under the procedures set forth in Rule 3.18 to determine whether to allow the member or associated person to continue in membership or in association with a member.

Interpretation and Policy .03 to Rule 3.18 currently permits the Exchange to waive the hearing provisions of Rule 3.18 when the Exchange intends to grant an associated person's application for continued association and the Exchange is not required to make a notice filing with the Commission under Exchange Act Rule 19h-1(a)(2).<sup>8</sup> The Exchange proposed to expand its ability to waive the hearing provisions of Rule 3.18 when the Exchange intends to grant a member's or associated person's application for continued membership or association and the Exchange is not required to make a notice filing with the Commission under Exchange Act Rule 19h-1(a)(3).

CBOE also proposed to waive the hearing provisions of Rule 3.18 when it determines to allow a member to continue in membership, or an associated person to continue in association with a member, and CBOE determines that it is otherwise appropriate to waive the hearing provisions of Rule 3.18 under the circumstances. For example, a settlement agreement for a disciplinary matter involving CBOE and multiple regulators or SROs could fully address statutory disqualification issues, obviating the need for a CBOE hearing on those same issues. The Exchange might also choose to exercise this waiver authority when no regulatory purpose would be served by conducting a hearing under Rule 3.18, such as when the Commission initiated the proceeding regarding the underlying conduct that resulted in the statutory disqualification and the sanction imposed in the matter does not inhibit the applicable party's ability to continue as an Exchange member or associated person.

Interpretation and Policy .01 to Rule 3.18 ("Rule 3.18.01") provides that the Exchange may waive the provisions of Rule 3.18 when a proceeding is pending before another SRO to determine whether to permit a member or an associated person to continue in

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 60106 (June 12, 2009), 74 FR 29525 (June 22, 2009) ("Notice").

<sup>4</sup> 17 CFR 240.19h-1.

<sup>5</sup> Exchange Act Rule 19h-1(a)(2), 17 CFR 240.19h-1(a)(2), provides that a notice need not be filed with the Commission, pursuant to Exchange Act Rule 19h-1, regarding an associated person subject to a statutory disqualification if the person's activities with respect to the member are solely clerical or ministerial in nature and such person does not have access to funds, securities, or books and records.

<sup>6</sup> Exchange Act Rule 19h-1(a)(3), 17 CFR 240.19h-1(a)(3), provides that a notice need not be filed with the Commission, pursuant to Exchange Act Rule 19h-1, regarding a person or member subject to a statutory disqualification if the person or member proposed for continued association or membership, respectively, satisfies the requirements of Exchange Act Rule 19h-1(a)(3)(i)-(vi).

<sup>7</sup> 15 U.S.C. 78a *et seq.*

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

membership or association with the member notwithstanding a statutory disqualification. When the Exchange exercises this waiver authority, Rule 3.18.01 currently provides that the Exchange Department of Financial and Sales Practice Compliance shall determine whether the Exchange will concur in any the Exchange Act Rule 19h-1 filing made by another SRO. The Exchange proposed to make two clarifying changes to this provision. First, the Exchange proposed to replace the reference to the "Department of Financial and Sales Practice Compliance" with the "Exchange" because the Exchange no longer has a department by that name. Second, the Exchange proposed to include the words "member or" in the last sentence of Rule 3.18.01 to clarify that the Exchange may concur in any Exchange Act Rule 19h-1 filing made by another SRO with respect to a member or an associated person. This change is consistent with the rest of Rule 3.18.01.

### III. Discussion

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

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>12</sup> that the proposed rule change (SR-CBOE-2009-033) be, and hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Request for Comments Concerning Free Trade Agreement With the Republic of Colombia

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice and request for comments.

**SUMMARY:** The United States Trade Representative (USTR) is conducting a review of labor-related issues in the context of the free trade agreement (FTA) between the United States and the Republic of Colombia (Colombia) signed on November 22, 2006, and amended on June 28, 2007. The FTA has not yet entered into effect. As part of that review, the interagency Trade Policy Staff Committee (TPSC) seeks comment from the public to assist the USTR in working with the Colombian government to secure continued progress in ensuring that Colombia's workers can fully exercise their fundamental labor rights.

**DATES:** Written comments are due by noon, September 15, 2009.

**ADDRESSES:** Comments should be submitted electronically via the Internet at <http://www.regulations.gov>. For alternatives to on-line submissions please contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-3475.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning written comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-3475. All other questions should be directed to Bennett Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395-9446.

**SUPPLEMENTARY INFORMATION:** On November 18, 2003, in accordance with section 2104(a)(1) of the Trade Act of 2002, the USTR notified Congress of the President's intent to enter into negotiations on an FTA with Colombia, identified specific objectives for the negotiations, and solicited comment from interested persons on matters relevant to the FTA. 69 FR 7532. On June 23, 2004, the U.S. Department of Labor with the USTR and U.S.

Department of State, issued a request for comments from the public regarding labor rights in Andean countries, including Colombia. 69 FR No. 120. On August 24, 2006, the President notified Congress of his intent to enter into an FTA with Colombia, and representatives of the two governments signed the FTA on November 22, 2006. On June 28, 2007, the Parties amended the FTA to reflect the provisions of the May 10, 2007 Congressional-Executive Agreement on Trade Policy. The full text of the FTA is available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/colombia-fta/final-text>.

Issues have been raised about the extent to which Colombians are able to exercise their fundamental labor rights, as referenced in the FTA. In that light, the President has asked the USTR to assess what steps can be taken, along with the government of Colombia, to secure continued progress in ensuring that Colombia's workers can exercise their fundamental labor rights. To assist the USTR in fulfilling this task, the Chairman of the TPSC invites interested persons to provide written comments on these questions and requests. Specific questions for comment are:

(1) Are there gaps in Colombia's labor law regime, including its enforcement mechanisms, with respect to providing for the fundamental labor rights of its citizens? If there are gaps, please identify them and provide specific suggestions for improvement.

(2) Is the Colombian government taking adequate steps to protect Colombia's workers from acts of intimidation or violence that impede the exercise of their fundamental labor rights? If there are gaps, please identify them and provide specific suggestions for improvement.

(3) Has the government of Colombia made sufficient progress in its efforts to prosecute the perpetrators of violence and intimidation against unionists exercising their fundamental labor rights? If there are gaps, please identify them and provide specific suggestions for improvement.

The public is also invited to comment on other issues they believe relevant to the FTA, including the potential benefits of the agreement.

Interested persons may submit written comments by noon, September 15, 2009 (see requirements for submission below). Written comments should be submitted in English and must state clearly the position taken and describe with particularity the supporting rationale.

**Public Comment: Requirements for Submissions:** To ensure the most timely

<sup>9</sup> 15 U.S.C. 78f.

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

<sup>11</sup> 15 U.S.C. 78f(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).