



Regulatory Circular RG03-115

To: Membership

From: Index Floor Procedure Committee
SPX Floor Procedure Committee

Re: Index Crowd Space Dispute Resolution Procedures

On December 4, 2003, the SEC approved new CBOE Rule 24.21 – *Index Crowd Space Dispute Resolution Procedures*, which gives the Chairman of the appropriate Floor Procedure Committee ("FPC") the authority to mediate, and if necessary, to convene hearing panels of members to resolve space disputes in index option trading crowds.¹ The text of Rule 24.21 is attached. Below is a summary of the Rule.

Application of the Rule

Rule 24.21 applies only to members who trade OEX, SPX, DJX and DIA options on the floor of the Exchange. The appropriate FPC may decide to extend application of the Rule to members who trade in another index option crowd not located at a station shared with equity options. The appropriate FPC will issue a regulatory circular announcing any such decision.

Mediation by the FPC Chairman

A member may request the assistance of the Exchange in resolving a crowd space dispute by contacting the Office of the Secretary, which shall promptly refer the request to the Chairman of the appropriate FPC. The Rule is designed to encourage amicable, mediated settlements, as opposed to hearings, by requiring mediation first by the FPC Chairman (or his designee) before members may resort to the hearing process provided for under the Rule. [Rule 24.21(a), (b) and (c)].

The Rule provides for immediate temporary resolutions of crowd space disputes pending the outcome of further proceedings under the Rule. [Rule 24.21(d)].

Initiation of Hearings

If mediation by the FPC Chairman is unsuccessful, a member may initiate a hearing by completing and submitting a Hearing Request form to the Office of the Secretary along with the payment of a Hearing Fee, which initially shall be one thousand dollars (**\$1,000**) per member. [Rule 24.21(e)].

The Hearing Fee will escalate for those members who frequently use the hearing process to resolve such disputes. [Rule 24.21(e)]. Repetitive, meritless claims involving the same parties are prohibited. [Rule 24.21(f)].

¹ See, Securities Exchange Act Release No. 48879 (December 4, 2003), 68 FR 69096 (December 11, 2003), approving SR-CBOE-2003-36.

Hearing Panel

The FPC Chairman shall select a Hearing Panel composed of seven (7) Exchange members to hear and resolve the dispute. The Panel shall be composed as follows: two (2) members who are members of the Chairman's FPC (other than the Chairman himself), four (4) members who are not members of the Chairman's FPC (two of the latter four members of the Panel shall be members who trade in the trading station where the dispute has arisen and two shall be members who do not trade in the trading station where the dispute has arisen), and the Chairman of the Floor Officials Committee or his designee (who must be a member of the Floor Officials Committee) [Rule 24.21(g)].

The Exchange's recusal rules and policies shall apply with respect to participation by the Chairman, Panel members, and others in the crowd space dispute resolution process under the Rule. [Rule 24.21(h)].

Guidelines for Resolving Disputes

In resolving a crowd space dispute, the Panel's guiding principles shall be: **(i)** to determine what shall "best promote a liquid and competitive market", **(ii)** to give no preference to market-makers, floor brokers, or representatives of DPMs merely because of their status as such, and **(iii)** to recognize and apply the principles that no member has any ownership 'rights' in any crowd space, and that no member may sell or assign any supposed 'right' to use a particular space in a trading crowd. [Rule 24.21(j)].

The Panel will examine eight factors (set forth in Subsection (j)) and determine, in the Panel's sole judgment, how each relates to each of the parties competing for the space.

Procedures for Hearings

The procedures for hearings are set forth in paragraph (i) of the Rule. The Panel Chairman shall communicate the Panel's decision to the FPC Chairman and all parties to the dispute. The Panel decision shall take effect on the first trading day after all parties have been notified of the decision by the Panel Chairman. The Panel shall also promptly provide a written Statement of Decision explaining the reason(s) for its decision. [Rule 24.21(k)].

Any party may appeal the decision of the Panel to the Appeals Committee pursuant to Chapter XIX of Exchange Rules. [Rule 24.21(l)].

Any member or person associated with a member who fails to comply with a decision reached through Rule 24.21, or who otherwise fails to comply with any provision of the Rule, may be subject to disciplinary proceedings. [Rule 24.21(m)].

Any questions regarding this circular may be directed to Richard Tobin, Chairman, Index Floor Procedure Committee, Richard Marneris, Chairman, SPX Floor Procedure Committee, or Jaime Galvan, Legal Division, at (312) 786-7058.

CHAPTER XXIV
Index Options

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Index Crowd Space Dispute Resolution Procedures

Rule 24.21

This Rule applies only to members who trade OEX, SPX, DJX and DIA options on the floor of the Exchange, or who trade any other index option not located at a station shared with equity options as determined by the appropriate Floor Procedure Committee.

- (a) **Crowd Space Disputes Subject to Resolution.** A member may request the assistance of the Exchange to resolve a dispute over the ability to use a trading space in an index option trading crowd where the space is currently being occupied by another member, or where the space has been abandoned or unoccupied, and more than one member now wish to trade there.
- (b) **Requesting the Assistance of the Exchange.** A member shall request the assistance of the Exchange in resolving a crowd space dispute by calling the Office of the Secretary of the Exchange, which shall promptly refer the request in writing to the Chairman of the appropriate Floor Procedure Committee that governs trading in the trading station where the dispute has arisen (hereafter “**the Chairman**”).
- (c) **Mediation by the Chairman.** When the Chairman receives the request from the Office of the Secretary, the Chairman or an individual designated by the Chairman (hereafter “**the Chairman’s designee**”) shall attempt to mediate an amicable resolution of the dispute among the members involved. All members involved in the dispute shall cooperate with the Chairman or the Chairman's designee in his efforts to mediate.
- (d) **Temporary Resolution.** If the Chairman, the Chairman's designee, or two Floor Officials determine that the maintenance of a fair and orderly market requires an immediate temporary resolution of a crowd space dispute, the Chairman, the Chairman's designee, or two Floor Officials in consultation with the Chairman or the Chairman's designee may instruct the parties to the dispute on where to stand until the outcome of further proceedings under this Rule. This temporary resolution may be revised by the individual(s) issuing it, but is otherwise not subject to appeal.
- (e) **Hearing Requests and Hearing Fee.** If the Chairman or the Chairman's designee is unable to mediate an amicable resolution of the dispute among the members involved, any of them may request a hearing in the dispute by completing and submitting a Hearing Request form to the Office of the Secretary along with the payment of a Hearing Fee. The amount of the Hearing Fee shall be a minimum of one thousand dollars (\$1,000) per member, and may be greater under certain circumstances set forth in this subsection. The Exchange may increase the Minimum Hearing Fee periodically pursuant to Exchange Rule 2.22 in order to maintain the Minimum Hearing Fee at a level that the Exchange deems sufficient to encourage amicable resolution of crowd space disputes. Upon receipt of the Hearing Request form and Hearing Fee, the Office of the Secretary shall instruct the Exchange to collect the appropriate Hearing Fee from each additional party to the dispute pursuant to Exchange Rule 3.23. For any party who has previously been a party to a crowd dispute resolution hearing within the past twelve months, the

Hearing Fee that party will pay for being a party to a subsequent hearing within twelve months of the last hearing will be twice the Hearing Fee that party paid for the previous hearing. After the hearing on the dispute is held and all rights of appeal are exhausted, only the prevailing party in the dispute shall obtain a refund of the Hearing Fee from the Exchange. A prevailing party who becomes a party in a subsequent hearing within twelve months of the hearing in which he prevailed shall not pay a higher Hearing Fee because of the hearing in which he prevailed.

- (f) **Limitations on Hearing Requests.** No member may request a hearing involving the same parties that participated in a prior hearing unless the requesting member makes an adequate preliminary showing in his subsequent hearing request that new circumstances warrant another hearing involving the same parties, based upon the Crowd Dispute Resolution Guidelines contained in this Rule. The Chairman shall exercise sole and final judgment as to the adequacy of this preliminary showing.
- (g) **CSDR Panel.** After the Petitioner submits his Hearing Fee to the Office of the Secretary, the Chairman shall select a Crowd Space Dispute Resolution Panel ("Panel") composed of seven Exchange members to hear and resolve the dispute. The Chairman shall select two members of the Panel from members of the Chairman's Floor Procedure Committee (other than the Chairman himself), and four members of the Panel from members of the Exchange who are not members of the Chairman's Floor Procedure Committee. Two of the latter four members of the Panel shall be members who trade in the trading station where the dispute has arisen and two shall be members who do not trade in the trading station where the dispute has arisen. In selecting the Panel members who are not members of the Chairman's Floor Procedure Committee, preference will be given to members who serve on another Floor Procedure Committee or a Market Performance Committee. Notwithstanding such preference, the selection of all Panel members will be according to the sole discretion of the Chairman. The seventh Panel member shall be the Chairman of the Floor Officials Committee, or another member of the Floor Officials Committee designated by the Chairman of the Floor Officials Committee. The Chairman shall also designate the Panel member who shall serve as the Panel Chairman. In the event the Chairman must recuse himself from the dispute (see subsection (h) below), then the Vice Chairman of the Chairman's Committee will designate the Panel and the Panel Chairman. If the Vice-Chairman of the Chairman's Committee must also recuse himself, then the Vice-Chairman of the Exchange will designate the Panel and the Panel Chairman.
- (h) **Recusals and Challenges of Panel Members.** The Exchange's recusal rules and policies shall apply with respect to participation by the Chairman, Panel members, and others in the crowd space dispute resolution process pursuant to this Rule. Parties to the dispute shall be informed of the composition of the Panel, as well as the date, time, and place of the hearing, at least 72 hours prior to the scheduled hearing in the matter by the Chairman. A Party may challenge the selection of one or more Panel members no later than 48 hours prior to the scheduled hearing in the matter by providing to the Chairman or the Panel Chairman a brief written statement explaining why the challenged Panel member has a conflict of interest or any other reason that would make the Panel member unable to participate in a fair and impartial manner. Notice of any replacement Panel member will be provided to the parties no later than 24 hours prior to the scheduled hearing. A Party may challenge the selection of any replacement Panel member no later than 8 hours prior to the scheduled hearing. The Chairman shall have sole and final authority to rule on any challenge and replace any Panel member.
- (i) **Hearings.** The hearing shall be held at such time and place as may be designated by the Panel. In hearings before the Panel, the Parties to the dispute will be allowed to present witnesses and/or documentary evidence to argue their claim, provided that they have furnished a list of all

such witnesses and a copy of all such documents to the Panel Members and to all opposing parties at least 48 hours prior to the date of the hearing. The legal counsel to the Chairman's Committee, or another attorney designated by the legal counsel to the Chairman's Committee, shall act as legal counsel to the Panel. The Panel shall determine all questions concerning admissibility of evidence, and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The Panel shall decide any issues of fact based on the evidence admitted at the hearing, and shall apply the Crowd Space Dispute Resolution Guidelines set forth below to each dispute. The party receiving at least a majority vote by the panel will prevail.

- (j) **Crowd Space Dispute Resolution Guidelines.** In resolving a Crowd space dispute, the Panel's guiding principles shall be: (i) to determine what shall "best promote a liquid and competitive market", (ii) to give no preference to market-makers, floor brokers, or representatives of DPMs merely because of their status as such, and (iii) to recognize and apply the principles that no member has any ownership 'rights' in any crowd space, and that no member may sell or assign any supposed 'right' to use a particular space in a trading crowd. The Panel shall examine the following factors and determine, in the Panel's sole judgment, how each relates to each of the parties competing for the space (the numerical ranking of the factors does not necessarily indicate the relative importance to be given to any particular factors in any particular case):

1. Quality and Quantity of Business:

The Panel shall review the quality and quantity of business that each party to the dispute conducts. Evidence of the quality and quantity of each party's business shall include, but is not limited to, evidence of the average daily number of contracts traded, the percentage of transactions that are traded in-person, participation on RAES, and the typical size of markets made by each party.

2. Tenure in the trading crowd:

"Tenure" refers to the length of time each party has spent in the trading crowd where the space in dispute is located.

3. Association/affiliation with a member firm that has occupied the space:

If a nominee or employee of a member firm has had to leave a space, then the Panel will consider to what extent there will be a negative impact on the trading in the crowd if another nominee of the member firm is or is not permitted to continue to use the space.

4. Need for accommodation:

The Panel will consider to what extent each party's existing business is already satisfied by their existing space or whether the new space is needed to facilitate either existing or anticipated new business.

5. Proximity of competing parties:

The Panel will give consideration to whether any party stood near the spot in question, or whether any party occupied the space in the past.

6. Sight lines or Access:

The Panel will consider to what extent each party needs sight lines or access to other parts of the crowd or the trading floor.

7. Technology considerations:

The Panel will consider to what extent each party's needs may be satisfied by trading technology or communication technology.

8. Equitable considerations:

In addition to the above factors, the Panel will consider any other factor it deems relevant in order to achieve a fair and equitable resolution.

(k) Panel Decision. The Panel Chairman shall communicate the Panel's decision to the Chairman and all parties to the dispute. The Panel decision shall take effect on the first trading day after all parties have been notified of the decision by the Panel Chairman. The Panel shall also promptly provide a written Statement of Decision explaining the reason(s) for its decision. However, the effective date of the Panel's decision shall not be postponed until the release of the Statement of Decision. If the Panel makes its decision about a party's right to use a space contingent upon that party's satisfaction of certain conditions, those conditions shall be set forth in the Statement of Decision.

(l) Appeal. Any party may appeal the decision of the Panel to the Appeals Committee pursuant to Chapter XIX of the Exchange Rules by filing an Application pursuant to CBOE Rule 19.2(a) within thirty days after the date of release of the Panel's Statement of Decision. The Panel decision, however, shall remain in effect during any such appeal.

(m) Failure to Comply. Any member or person associated with a member who fails to comply with a decision reached through these Crowd Space Dispute Resolution Procedures, or who otherwise fails to comply with any provision of this CBOE Rule 24.21, may be subject to disciplinary proceedings in accordance with Chapter 17 of the CBOE Rules for violation of this rule and Rule 4.1 ("Just and Equitable Principles of Trade").