

Regulatory Circular RG04-11

To: Financial and Operations Principals
Members and Member Organizations

From: Division of Regulatory Services

Re: Responsibilities of Financial and Operations Principals

Date: February 4, 2004

The purpose of this Regulatory Circular is to remind Financial and Operations Principals ("FinOps") and the members and member organizations they are associated with that their responsibilities go beyond the preparation and submission of FOCUS reports. On May 12, 2000, the SEC approved CBOE Rule 3.6A, Qualification and Registration of Certain Associated Persons, to require members and member organizations that are subject to Section 15(c) of the Securities and Exchange Act of 1934 ("Act") and Rule 15c3-1 ("net capital rule") to designate an individual who has successfully completed the Financial and Operations Principal Examination ("Series 27") and to register the individual as a FinOp with the CBOE. The duties of a FinOp shall include taking appropriate actions to assure that the member complies with applicable financial and operational requirements under Exchange rules and the Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. Since the enactment of this rule, concerns have been expressed that some FinOps may not be clear as to the nature and extent of their responsibilities.

Key Responsibilities

Key responsibilities of a FinOp include, but are not necessarily limited to, the following:

- To take appropriate action(s) to ensure that the member is in compliance at all times with the provisions of the net capital rule, which includes operating above the minimum net capital requirement and ensuring that all capital additions/withdrawals are not subject to any limitations and to ensure that proper and timely notification has been sent.
- To ensure that required financial reports are accurate and submitted to the Exchange on a timely basis.
- To supervise individuals who assist in preparation of such reports.
- To supervise and be responsible for individuals who are involved in the maintenance of the member's books and records for which such reports are derived.

- To ensure that the member's books and records are accurate and maintained in accordance with the rules of the Exchange and the Act.

The above responsibilities may be performed by individuals other than the FinOp, and when that is the case, it is imperative that the delegation of such responsibilities be set forth in the written supervisory procedures of the member or member organization. The procedures should specify which responsibilities have been delegated and the name and title of the individual to whom such responsibilities have been delegated. Further, the procedures should detail the manner and frequency of supervision extended by the FinOp to delegated individuals. The delegation of duties does not relieve the FinOp of his or her responsibilities or obligations.

Failure to Perform Responsibilities

Failure to reasonably perform the responsibilities of a FinOp may subject the FinOp and the member or member organization with which the FinOp is associated to disciplinary action involving sanctions including fines, suspensions, and undertakings, as well as any other fitting sanction.

For example, the Exchange's Business Conduct Committee recently imposed a disciplinary action against an Exchange member organization and its FinOp and imposed a sanction in the amount of a \$12,500 joint and several fine and a censure of each respondent. The conduct involved operating below the minimum net capital requirements, filing an inaccurate FOCUS report and failing to adequately monitor the firm's net capital.¹ Your attention is also directed to a recent Securities and Exchange Commission decision in the matter of Daniel L. Springate, Securities and Exchange Act of 1934, Release No. 47640, April 7, 2003, Administrative Proceedings File No. 3-11083 (copy available at www.sec.gov).

Questions concerning this Regulatory Circular may be directed to the following individuals in the Division of Regulatory Services:

Department of Financial and Sales Practice Compliance:

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(Regulatory Circular RG02-48 revised)

¹ Recent disciplinary decisions are available at www.cboe.com.