



Regulatory Circular RG07-39

To: Members

From: Legal Division

Date: March 28, 2007

Re: SEC Approval of Off-Floor DPM Rule Filing

The SEC has approved CBOE rule filing SR-CBOE-2006-94, which allows a DPM to operate remotely away from CBOE's trading floor. As a result, DPMs have the flexibility to operate on CBOE's trading floor ("On-Floor DPM") or remotely away from CBOE's trading floor ("Off-Floor DPM"). A copy of the rule filings and the SEC's approval order is available on CBOE's website at www.cboe.org/Legal. A summary of the rule filing is provided below.

- Submit Request to Allocation Committee. To operate away from CBOE's trading floor, a DPM (new or current) can request that the Allocation Committee authorize it to operate as an Off-Floor DPM on a class-by-class basis. In determining whether to allow a DPM to operate as an Off-Floor DPM, the Allocation Committee will consider the factors specified in Rule 8.83(b). A DPM can operate as an Off-Floor DPM only in equity option classes traded on the Hybrid Trading System.
- DPM Participation Entitlement. If a DPM is approved to operate as an Off-Floor DPM, Rule 8.83 provides that the Off-Floor DPM can have a DPM Designee trade in open outcry in the option classes allocated to the Off-Floor DPM. However, the Off-Floor DPM shall not receive a participation entitlement under Rule 8.87 with respect to orders represented in open outcry.¹
 - Please note that an Off-Floor DPM is not eligible to receive a second "A" component under UMA; instead, as described below, the Off-Floor DPM can have an affiliated market-maker quoting and trading in open outcry in the Off-Floor DPM's appointed classes under the same Pilot Program that is in effect for e-DPMs. (See amended Rule 6.45A(a)(C).)
- DPM Obligations. CBOE also amended certain DPM obligations contained in Rule 8.85. Specifically, CBOE amended Rule 8.85(a)(iv) to state that an Off-Floor DPM shall assure that the number of DPM Designees and support personnel continuously overseeing the DPM's activities is not less than the minimum required by the appropriate Exchange committee. Additionally, an Off-Floor DPM shall provide members with telephone access to a DPM Designee at all times during market hours for purposes of resolving problems involving trading on the Exchange.

¹ Rule 8.87 was amended to explicitly state that an Off-Floor DPM shall not receive a participation entitlement with respect to orders represented in open outcry on CBOE's trading floor.

- Affiliated Market-Maker. Rule 8.85(a)(iv), which states a DPM shall trade in all securities allocated to the DPM only in the capacity of a DPM and not in any other capacity, was also amended to incorporate an existing pilot program applicable to e-DPMs.² Specifically, an Off-Floor DPM can have not more than one Market-Maker affiliated with the Off-Floor DPM trade on CBOE's trading floor in any specific option class allocated to the Off-Floor DPM, provided such Market-Maker is trading on a separate membership.³ The affiliated Market-Maker would also have to comply with the “Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs,” set forth in Rule 8.91.
 - Absent the pilot program, an Off-Floor DPM may not allow any Market-Makers affiliated with the Off-Floor DPM to trade on CBOE's trading floor in any class allocated to the Off-Floor DPM.
 - If the Off-Floor DPM has an affiliated Market-Maker trade on CBOE's trading floor in any specific option class allocated to the Off-Floor DPM pursuant to the pilot program, Rule 8.85(a)(v) provides that the Off-Floor DPM can not also have a DPM Designee trading in open outcry in the option classes allocated to the Off-Floor DPM.
- Off-Floor DPM Nominees. CBOE amended Interpretation .02 of Rule 3.8 to allow an Off-Floor DPM to appoint one individual to be the nominee for all memberships utilized by the organization in an Off-Floor DPM capacity, like an RMM or e-DPM organization can. This is an exception to the general requirement of Rule 3.8(a)(ii), which provides that “if a member organization is the owner or lessee of more than one membership, the organization must designate a different individual to be the nominee for each of the memberships.”

If a current DPM or member organization would like to apply to operate as an Off-Floor DPM, please contact Allison Kile at kilea@cboe.com or (312) 786-7210. For questions relating to the rule filing, please contact Patrick Sexton at sexton@cboe.com or (312) 786-7467, or Jennifer Lamie at lamie@cboe.com or (312) 786-7576.

² See CBOE Rule 8.93(vii). The Pilot Program was recently extended to March 14, 2008.

³ CBOE also made a corresponding change to the “Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs”. See Guidelines, Paragraph (b)(viii).