



Regulatory Circular RG08-133

To: Members

From: Membership Department

Re: Rule 3.8 - Trading by Nominees and Persons Who Have Registered Their Memberships for Member Organizations

Date: October 16, 2008

Key Points

- Rule 3.8(e)(i) provides that a nominee must be materially involved in the daily operation of the Exchange business activities of the member organization for which the person is a nominee.
- Rule 3.8(e)(ii) provides that a nominee may perform trading functions only on behalf of the member organization for which the nominee is authorized.
- However, Rule 3.8(e)(ii) does not preclude a nominee Floor Broker from representing orders that are placed with the nominee's member organization by another member organization, provided that (i) there is an arms length customer relationship between the member organization that placed the orders and the nominee's member organization and (ii) the nominee continues to receive his or her compensation from, be supervised by, and report to the member organization for which the nominee is approved by the Exchange.
- Rule 3.8(e)(iii) states that a nominee may not perform trading functions on the nominee's own behalf or on behalf of a member organization other than the member organization for which the nominee is approved by the Exchange.

Exceptions to Rule 3.8(e)(iii)

Notwithstanding the provisions of Rule 3.8(e)(iii), a nominee may trade as an independent Market-Maker and/or as an independent Floor Broker under Rule 3.8(f) if certain requirements are satisfied. For further information regarding Rule 3.8(f) please contact the Department of Market Regulation at (312) 786-7043.

Application forms for use by nominees to request approval under Rule 3.8(f) to trade as an independent Market-Maker and/or as an independent Floor Broker are available from, and must be filed with, the Membership Department. A nominee's member

organization is required to designate on the application form whether the organization is authorizing the nominee to trade under Rule 3.8(f) as (i) solely an independent Market-Maker, (ii) solely an independent Floor Broker, or (iii) both an independent Market-Maker and an independent Floor Broker. Similarly, the Exchange will include in any Exchange approval granted under Rule 3.8(f) a designation of which of these capacities the Exchange has approved.

However, notwithstanding the Exchange approval granted under Rule 3.8(f), CBOE Rule 8.8 generally provides that a member may not act as an independent Market-Maker and as an independent Floor Broker in the same trading station on the same business day.

Discussion

Frequently asked questions concerning the permissibility of a nominee's functions under Rule 3.8 are given below along with answers to those questions.

1. I am a nominee of Firm A registered as a Floor Broker, but I work on behalf of Firm B as a Floor Broker. I am supervised and compensated by Firm B. The orders that I execute are on behalf of Firm B. Am I in compliance under Rule 3.8?

No. If you are a nominee of Firm A registered as a Floor Broker, then you must execute orders on behalf of Firm A, be compensated by Firm A, and be supervised by Firm A.

2. I am a nominee of Firm A registered as a Floor Broker. Firm B uses the execution services of Firm A. I execute a majority of Firm B's orders on behalf of Firm A. I am supervised and compensated by Firm A. Am I in compliance under Rule 3.8?

Yes. As a nominee Floor Broker for Firm A, you can execute orders on behalf of Firm A's clients. Firm B is merely using the execution services of Firm A, but your compensation and supervision still comes from Firm A, the firm of which you are a nominee.

3. I am a nominee of Firm A. I am also registered with and approved by the Exchange to act as an independent Floor Broker. I execute orders on behalf of Firms B, C, D, and E. My compensation is commission based and determined by the fees I charge Firms B, C, D and E for my services. Am I in compliance under rule 3.8?

Yes. Under the provisions of rule 3.8(f), since you are registered with and approved by the Exchange to act as an independent Floor Broker, you may execute orders on behalf of any firm.

Persons Who Have Registered Their Memberships for Member Organizations

The provisions of Rule 3.8(e) and of Rule 3.8(f), which are applicable to nominees, are also applicable to persons who have registered their memberships for member organizations (since, under Section 2.4 of the CBOE Constitution, such a person represents a member organization in lieu of a nominee).

Any questions regarding this circular may be directed to Stan Leimer, Director, Membership Department at (312) 786-7299, to Regina Millison, Manager, Membership Department, at (312) 786-7452 or to Ji Min Kim, Manager, Department of Market Regulation at (312) 786-7043.

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