



400 S. La Salle
Chicago, IL 60605

Regulatory Circular RG09-123

To: Members
From: Regulatory Services & Trading Operation Divisions
Date: November 6, 2009
Re: Proposed Rule Change Regarding Professional Orders

CBOE has filed a proposed rule change, SR-CBOE-2009-078, which proposes to adopt a new order type as detailed below. To give members sufficient time to assess whether the proposed adoption of the new order type will require them to make any changes to their systems and/or compliance procedures, and to implement any such changes, the Exchange is issuing this circular to advise members that it intends to implement the new order type on January 4, 2010, pending SEC approval of the rule change.

Professional Order Designation

The compliance obligations of members with respect to representing orders as agent on the Exchange as proposed in SR-CBOE-2009-078 are described below.

The Exchange is proposing to adopt a new category for agency orders known as a Professional order. As proposed, a “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Under the proposed rule change, a Professional will be treated in the same manner as a broker or dealer in securities for purposes of Rules 6.2A, 6.2B, 6.8C, 6.9, 6.13A, 6.13B, 6.45, 6.45A (except for Interpretation and Policy .02), 6.45B (except for Interpretation and Policy .02), 6.53C(c)(ii), 6.53C(d)(v), subparagraphs (b) and (c) under Interpretation and Policy .06 to Rule 6.53C, 6.74 (except Professional orders may be considered public customer orders subject to facilitation under paragraphs (b) and (d)), 6.74A (except Professional orders may be considered customer Agency Orders or solicited orders under Interpretation and Policy .09), 6.74B, 8.13, 8.15B, 8.87, 24.19, 43.1, 44.4 and 44.14. The Professional designation will not be available in Hybrid 3.0 classes.

The use of this proposed new term for purposes of the above-referenced execution rules will result in Professional account holders participating in CBOE’s allocation process on equal terms with broker-dealer orders. The proposed rule change will not otherwise affect non-broker-dealer individuals or entities under CBOE rules and, in particular, all public customer orders will continue to be treated equally for purposes of the linkage-related rules. For example, under the proposed rule change, CBOE will provide the same away-market protection for all public

customer orders, including non-broker-dealer orders that are included in the definition of “Professional” orders.

In order to properly represent orders entered on the Exchange according to the proposed new definition, members will be required to indicate whether public customer orders are “Professional” orders using the order origin code W.¹ To comply with this proposed requirement, members will be required to review their customers’ activity on at least a quarterly basis to determine whether orders that are not for the account of a broker or dealer should be represented as customer orders (using order origin code C) or as Professional orders (using order origin code W). Under the proposed rule change:

- Members will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter.
- While members only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as public customer orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the member and the member will be required to change the manner in which it is representing the customer’s orders within five days.

Implementation Date

SR-CBOE-2009-078 must be approved by the SEC before the Professional order type can be implemented. Subject to SEC approval of SR-CBOE-2009-078, the Exchange intends to implement the Professional order category starting with the 1st quarter 2010. Thus, members will need to mark orders as Professional starting with the 1st quarter 2010 based upon trading activity that occurred during the 4th quarter 2009. Members will be given five business days from the end of the 4th quarter 2009, which is January 8th, to make any necessary changes to properly identify Professional orders.

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For further information, please refer to the pending rule change filing, which is located at www.cboe.org/legal. Additional questions may be directed to Eric Frait at (312) 786-7747, Anthony Montesano at (312) 786-7365, or Linda Gerdes at (312) 786-7844.

¹ The W order origin code is the same code that is also used for Voluntary Professional orders (see CBOE Rule 1.1(fff)).