

**CBOE Regulatory Circular RG13-166
C2 Regulatory Circular RG13-068****Date:** December 31, 2013**To:** CBOE and C2 Trading Permit Holders
From: Regulatory Services Division
RE: Treatment of Non-Market-Maker Transactions

Rule 15c3-1 under the Securities Exchange Act of 1934 (the “Exchange Act”) requires that every registered broker-dealer shall at all times maintain a minimum level of net capital. Paragraph (b)(1) of the Rule sets for an exemptive clause that provides that certain options market makers are not required to comply with the minimum net capital requirement (commonly referred to as the “(b)(1) exemption” or the “options market maker exemption”). The (b)(1) exemption is only available to an options market maker (i) whose securities business, **except for an occasional non-specialist related securities transaction for its own account**, is limited to that of acting as an options market maker on a national securities exchange; (ii) that is a member in good standing and subject to the capital requirements of a national securities exchange; (iii) that does not transact a business in securities with other than a broker-dealer registered with the SEC under section 15 or 15C of the Exchange Act or a member of a national securities exchange; and (iv) that is not a member of The Options Clearing Corporation and whose securities transactions are effected through and carried by another broker-dealer registered with the SEC under section 15 of the Exchange Act.

Trading Permit Holders are reminded that SEC guidelines permit market-makers to engage in hedging transactions if they are directly related to their market-making activity; however, market-makers are prohibited from trading in non-market-maker securities, except for an occasional investment account transaction. SEC Staff guidance clarifies the meaning of “occasional” as **no more than 10 investment account transactions per year**. (Previously the Exchange had viewed the determination of what is “occasional” as a matter of judgment applied on a case-by-case basis.)

Please note that active trading in non-market-maker securities, whether affected in an options market-maker account or the related customer sub-account carried at the market-maker clearing firm, would not be considered occasional. However, SEC Staff guidance provides that excess funds may be invested in reverse purchase agreement transactions as often as necessary, and not be counted as occasional investment transactions. In addition, SEC Staff guidance provides that a market-maker operating under the (b)(1) exemption will not lose the exemption solely through trading in commodity futures.¹

Should a market-maker initiate more than an occasional non-market-maker related transaction, the market-maker would lose the (b)(1) exemption. This would cause the market-maker to be subject to, among other things, maintenance of a minimum net capital, the filing with the Exchange of monthly FOCUS reports, an annual audit of financial statements prepared by an independent accounting firm, and restrictions on capital withdrawals. Engaging in non-market-making activity without also complying with all applicable financial responsibility requirements would be a serious matter subject to disciplinary action by the Exchange or the SEC.

Additional Information:

Please contact the Regulatory Interpretations and Guidance team at RegInterps@cboe.com or (312) 786-8141 for additional information.

¹ See <http://www.finra.org/web/groups/industry/@ip/@reg/@rules/documents/interpretationsfor/p037763.pdf> (a reproduction of Rule 15c3-1 incorporating SEC Staff guidance).