

Regulatory Circular RG98-47

Date: May 5, 1998

To: Membership

From: Operations Planning Division

Re: Proposed Rules pertaining to the operation and oversight of DPMs and guidelines pertaining to transfers of interests in DPM appointments

Members should take notice within this Exchange Bulletin of the publication of proposed rules concerning the operation and oversight of Designated Primary Market Makers and a related set of guidelines addressing the subject of transfer of interest in DPM appointments.

The current rule that governs the operation of the DPM system (Rule 8.80 - Modified Trading System) was written and approved in 1987, prior to the beginning of the DPM program. A set of twelve rules have been proposed which are intended to address and clarify various issues pertaining to the administration and operation of the DPM system as it has evolved over the years that the program has existed. In rewriting the rules pertaining to the DPM system, particular attention was paid to the issue of sale, transfer, or assignment of interest in DPM appointments. Members should note proposed Rule 8.89 - Transfer of DPM Appointments and the related memorandum from the Board of Directors to the Modified Trading System Appointments Committee entitled "Guidelines Pertaining to Transfers of Interests in DPM Appointments Under New Rule 8.89".

Under current Rule 8.80, a DPM is obligated to promptly inform the MTS Appointments Committee of any material change in the financial or operational condition of the DPM or of a change in the DPM personnel. Furthermore, under the existing rule, a DPM appointment may not be transferred without the approval of the MTS Appointments Committee.

In the eleven years that the DPM system has operated at the CBOE, various material changes in the structure of DPM organizations have been proposed and approved. Examples of such changes include the reorganization of DPM organizations from corporate entities into limited partnerships or limited liability company (LLC) structures; recapitalizations through debt and equity financing (with equity recapitalizations resulting in material changes in makeup of the partners, shareholders or LLC members of DPM organizations); mergers; acquisitions; and joint ventures between DPM organizations.

Proposed Rule 8.89 recognizes that some changes to DPM organizations are inevitable and sets forth the administrative process that a DPM must follow in proposing any sale, transfer or assignment of any significant share of the ownership of a DPM organization. The related guidelines, while recognizing that there are various circumstances which may warrant the approval of the transfer of an interest in a DPM appointment, reinforce that proposed Rule 8.89 is not intended to change the long-standing policy that does not generally view a DPM's appointment as constituting a transferable property interest owned by the DPM and that a DPM's franchise in his appointed classes is not a transferable property interest owned by the DPM.

Finally, in its guidelines the Board has directed the MTS Appointments Committee to consider the best interests of the Exchange and its members, as well as what if any alternatives to a requested transfer are available when evaluating transfer requests.