

## **Regulatory Circular RG98-71**

**To: Members**

**From: Membership Committee**

**Re: Trading by Nominees and Persons Who Have  
Registered Their Memberships for Member Organizations**

**Date: June 24, 1998**

The Exchange recently has received some questions from members concerning CBOE Rule 3.8 and how its provisions apply to trading by nominees and persons who have registered their memberships for member organizations. In response to these questions, the Exchange has filed a rule filing to clarify these provisions, and the Membership Committee is issuing this explanatory circular concerning these provisions.

### Requirements of Rule 3.8(a)(4)(B)

Rule 3.8(a)(4)(B) provides that a nominee may perform floor functions only on behalf of the member organization for which the nominee is authorized.

Accordingly, unless one of the exceptions to Rule 3.8(a)(4)(B) described below is applicable, a nominee may not perform floor functions on the nominee's own behalf or on behalf of a member organization other than the member organization for which the nominee is registered with the Exchange. This means that a nominee may not act as an independent Market-Maker and/or as an independent Floor Broker. This also means that a nominee must receive his or her compensation from, must be supervised by, and must report to the member organization for which the nominee is registered with the Exchange (and not any other member organization).

However, Rule 3.8(a)(4)(B) 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 registered with the Exchange.

### Exceptions to Rule 3.8(a)(4)(B)

There are only two exceptions to Rule 3.8(a)(4)(B).

The first exception to Rule 3.8(a)(4)(B) is that, under Rule 3.8(a)(4)(C), a nominee may

trade as an independent Market-Maker and/or as an independent Floor Broker if the following 3 requirements are satisfied: (i) the nominee is a registered broker-dealer, (ii) the nominee has the prior written approval of the nominee's member organization to trade as an independent Market-Maker and/or as an independent Floor Broker, and (iii) the nominee has the prior written approval of the Exchange to trade as an independent Market-Maker and/or as an independent Floor Broker.

In addition, it should be noted that Rule 3.8(a)(2) requires a nominee's member organization to guaranty all obligations arising out of the nominee's representation of the member organization and that this guaranty also applies to transactions of the nominee as an independent Market-Maker and/or Floor Broker as authorized pursuant to Rule 3.8(a)(4)(C).

Application forms for use by nominees to request approval under Rule 3.8(a)(4)(C) 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(a)(4)(C) 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(a)(4)(C) a designation of which of these capacities the Exchange has approved.

However, notwithstanding any Exchange approval granted under Rule 3.8(a)(4)(C), 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.

The second exception to Rule 3.8(a)(4)(B) is that the MTS Appointments Committee may approve a member to act on behalf of a DPM, in its capacity as a DPM, pursuant to Rule 8.80.

#### Persons Who Have Registered Their Memberships for Member Organizations

The provisions of Rule 3.8(a)(4)(B) and of Rule 3.8(a)(4)(C) 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). Thus, a person who has registered his or her membership for a member organization is also required to comply with the provisions of Rule 3.8(a)(4)(B) and Rule 3.8(a)(4)(C) to the same extent that a nominee is required to comply with those provisions.

Any questions regarding this circular may be directed to RaeDell Pancake of the Membership Department at (312) 786-7460 or to Patricia Cerny of the Department of Market Regulation at (312) 786-7722.