



## Regulatory Circular 20-026

**Date:** April 2, 2020

**Exchanges:** Cboe Options

**Markets:** Options

**To:** Trading Permit Holders

**Re:** Use of Conferencing Software or Other Communication Arrangements During Current Pandemic

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The Regulatory Division is issuing the following information and guidance as it relates to Trading Permit Holders' ("TPHs") use of conferencing software or other communication arrangements while the Cboe Exchange, Inc.'s (the "Exchange" or "Cboe Options") trading floor is inoperable due to the current pandemic situation. The following is subject to any local, state, or federal restrictions related to "stay-at-home" or "shelter-in-place" directives that may be applicable.

### Communication Arrangements and Screen-Based Trading

TPHs are not prohibited from using pre-existing and/or customary means to communicate with other TPHs and non-TPHs to locate liquidity. While there is no prohibition on use of conferencing software or other communication arrangements, please be aware that these arrangements are not Exchange-sponsored and are they not considered part of the Exchange's trading facilities. As a result, TPHs should be mindful that they not establish or utilize a virtual or physical communication arrangement (e.g., by use of conferencing applications, office-sharing arrangements, or otherwise) that would effectively cause it to operate in an unregistered exchange or broker-dealer capacity or without satisfying requirements under applicable Exchange Act provisions. Use of these arrangements must also be consistent with other Exchange Act provisions and Exchange Rules, as applicable.

Trading on the Exchange continues to be conducted pursuant all Exchange Rules except as provided in Cboe Options Rule 5.24(e), which relates to the operation of the Exchange in a screen-based only environment while the trading floor is inoperable. This includes, for example, requirements for systematization, processing, display, priority, execution, exposure and/or crossing on the Exchange's screen-based trading facilities (or another national securities exchange's trading facilities), and prohibitions on pre-arranged trading or trading based on knowledge of material, nonpublic information. For additional information on applicable requirements, please refer to Rule 5.24(e).<sup>1</sup> You

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<sup>1</sup> The Cboe Options Rulebook is located [here](#). Please also refer to Chapter 5 of the Rulebook (related to options trading in general) including, e.g., Cboe Options Rules 5.9 (related to order exposure), and 5.30 through 5.41 (related to electronic trading, order and quote book processing, display, priority and execution, and auction and crossing mechanism), Rule 8.1 (related to just and equitable principles of trade including, among other things, prohibitions on trading based on knowledge of imminent undisclosed solicited transactions); Rule 8.10 (related

should also refer to recent Cboe Options Rule Filings related to the Exchange's operations while the floor is inoperable due to the pandemic.<sup>2</sup>

### **TPH Policies and Procedures**

Under Cboe Options Rule 8.10, a TPH must establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such TPH's business, to prevent the misuse of material, nonpublic information by such TPH or persons associated with such TPH (including information barriers, as applicable). Rule 8.10 also provides, in part, that any TPH or associated person who becomes aware of a possible misuse of material, nonpublic information must promptly notify the Exchange's Regulatory Division. In addition, TPHs must have reasonably designed supervisory procedures as required by Cboe Options Rule 8.16 and 9.2, as applicable.

We understand that the current pandemic situation may necessitate that a TPH to implement alternate ways to conduct its business operations, including changes to their communication arrangements. TPHs should reevaluate, and modify where necessary, their policies and procedures under Rule 8.10 to address changes to their operations in consideration of the current pandemic situation. The current situation may also necessitate a TPH to modify its supervisory procedures under Rules 8.16 and 9.2 to assure that they are reasonably designed to supervise the activities of its associated persons who change their work locations, are working remotely, and/or using conferencing software or other communication arrangements.

TPHs evaluating their policies and procedures, including those related to use of conferencing software or other communication arrangements, should consider the following:

- Use should not interfere with the normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties;
- Use may not be inconsistent with the public interest, the protection of investors, or just and equitable principles of trade; and
- Use may not interfere with the obligations of the TPH to fulfill its duties under, or be used to facilitate any violation of, the Exchange Act provisions and the Exchange Rules.
- It is recommended that TPHs consider appropriate information security features and protocols for conferencing software and other communication devices being utilized (e.g., user authentication, password protection and other access and/or data transmission controls).

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to the prevention of misuse of material, nonpublic information); and Regulatory Circular [RC-004](#) (related to pre-arranged trades).

<sup>2</sup> See, e.g., Cboe Options Rule Filings SR-CBOE-2020-019, SR-CBOE-2020-023, SR-CBOE-2020-026 and SR-CBOE-2020-031. Cboe Options Rule Filings are available [here](#), and related SEC publications on the filings are available [here](#). Additional information is also included on the Exchange Notices webpage (located [here](#), see, e.g., System Status and Tradedesk Updates) and Regulatory Circulars webpage (located [here](#)).

- Use of a communication device for order routing or handling continues to be subject to applicable audit trail and record retention requirements. TPHs are reminded of requirements to maintain books and records pursuant to Cboe Options Rule 7.1 and applicable Exchange Act provisions (including but not limited to Rules 17a-3 and 17a-4 thereunder). TPHs must maintain records of the use of communication devices, including, but not limited to, (1) logs of calls placed, (2) emails, and (3) chats, for a period of not less than three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect such records pursuant to Cboe Options Rule 13.2.

The above information is not intended to be an exhaustive list of TPH policy and procedure considerations when using conferencing software or other communication arrangements, or of considerations in light of the current pandemic situation general. TPHs who have questions or would like to discuss their written policies and procedures with the Regulatory Division are encouraged to do so by contacting Regulatory Interpretations (contact information is listed below). TPHs may also submit policies and procedures for review and feedback by the Regulatory Division.

#### **Additional Information**

Please contact Regulatory Interpretations at [reginterps@cboe.com](mailto:reginterps@cboe.com) or 312.786.8141 for additional information.