

**Regulatory Circular RG95-98****Date: November 15, 1995****To: CBOE Membership****From: Regulatory Services Division****Re: CBOE Rule 6.9 "Solicited Transactions" (effective November 9, 1994 and amended effective 8/25/95)**

Staff has prepared this Regulatory Circular to assist the membership in understanding CBOE ("Exchange") Rule 6.9- Solicited Transactions. Exchange Rule 6.9 was approved by the Securities and Exchange Commission and became effective November 9, 1994. The following is a brief summary of the purpose of the rule followed by a listing of key points to remember. This circular is not all inclusive. Conduct not specifically described in this circular may violate CBOE Rule 6.9. If you have any further questions or comments on this matter, please contact Karen Calvin at (312) 786-7759 or Ann Grady at (312) 786-7733.

**PURPOSE**

The purpose of this new rule is two-fold: **first** to establish priority of "solicited transactions in **options**" and **second**, to prohibit members who have knowledge of all of the terms of an original order and a matching solicited order, the execution of which are imminent, from buying or selling options of the class covered by the orders, or any related financial instruments, based on such knowledge, until all of the terms of the original order have been disclosed to the trading crowd or until execution of a transaction is no longer imminent.

**I. EASY REFERENCE REGARDING PRIORITY:**

**If all terms and conditions are disclosed in the trading crowd and the original order is continuously represented in the pit; then priority is as follows (except for orders represented by the Public Limit Order Book):**

- A. If the solicited order matches the original order's limit and improves the best bid or offer in the trading crowd; then the solicited order has priority over all non-solicited market makers and discretionary orders held by floor brokers;**
- B. If the solicited order improves the market and later the original order changes its limit to match the solicited order's bid or offer; then priority is afforded to the best bid or offer in the sequence in which they are made (see CBOE Rule 6.45 -"Priority of Bids and Offers;")**

Note: CBOE Rule 6.9 does not give the original order any priority over other bids/offers which may be present in the crowd during the time the original order is represented in the trading crowd. (See section III., paragraph C on page 2 of this memo for

instances involving an original order that is subject to the Crossing/Facilitation Rule, 6.74 (b)).

- C. If the **solicited order matches the crowd's market**, then the trading crowd has priority over the solicited order.
- D. If all the terms and conditions of the original order are not disclosed to the trading crowd prior to solicitation; then the trading crowd (non-solicited parties) has priority.

## II. EASY REFERENCE REGARDING TRADING BASED ON KNOWLEDGE OF AN IMMINENT UNDISCLOSED SOLICITED TRANSACTION:

Paragraph 6.9 (e) states that members are precluded from entering transactions in the same class (i.e. stock, married puts, or other related instruments) as an option that is the subject of a solicitation until and only if:

- 1) they know all the material terms, including price(s) of the original order,
- 2) the original order has not been disclosed to the trading crowd and represented in the crowd throughout the solicitation, and
- 3) the transaction can reasonably be considered imminent under the circumstances.

Further, trades not based on undisclosed knowledge of a solicitation are not restricted under this rule. However, be advised that solicitations or activity involving the misuse of non-public information concerning an imminent transaction in an **underlying security** is restricted under Exchange Rule 4.1 - "Just & Equitable Principles of Trade," as described in Regulatory Circular 92-29 - "Frontrunning of Blocks." Given the limited circumstances in which trading restrictions apply, there should be no adverse impact on the ability of market makers to meet their market making obligations.

## III. KEY POINTS TO REMEMBER

- A. General solicitations of interest that do not specify all material terms, or other solicitations that do not result in express or tacit agreement on all material terms of a trade, including price, do not give rise to trading restrictions under Exchange Rule 6.9. However, orders which are solicited by a floor broker who is aware of and discloses all the material terms, but does not represent an original order are subject to Exchange Rule 6.9.
- B. The word "terms" refers to volume (entered on order given to floor; unless, greater volume was disclosed to the solicited party), price, any contingencies, and any components related to the order (i.e. stock, options, futures or other related transactions).

- C. CBOE Rule 6.74 (b) ["Crossing/Facilitation Rule"] gives the order referred to as the "original order" in CBOE Rule 6.9 priority at same bid or offer as the crowd if the original order improves the market when represented as being "subject to facilitation," is for the account of a public customer, and all components of the original order are disclosed to the trading crowd.

CBOE Rule 6.9(a) gives the solicited order absolute priority over the crowd if solicitation follows the time that the original order is disclosed to the trading crowd, and the solicited order improves the market and matches the original order's bid or offer.

NO Exchange Rule gives absolute priority at the same time to both the original order and the solicited order or solicited/facilitation order as that would violate CBOE's cross-only restriction.

- D. Unlike 6.74 (b), Rule 6.9 includes broker dealer orders as original orders. Note 6.74 (b) is only applicable to non-broker-dealer customer orders that are subject to "facilitation."

