

## OMB APPROVAL

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Page 1 of 28

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. SR - 2007 - 99

Amendment No. 

Proposed Rule Change by Chicago Board Options Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
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Rule

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action <input type="checkbox"/>	Date Expires <input type="text"/>
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<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Exhibit 2 Sent As Paper Document  
☐Exhibit 3 Sent As Paper Document  
☐**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposes to create a delta hedging exemption from equity options position limits.

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	Jaime	Last Name	Galvan
Title	Assistant Secretary		
E-mail	galvanj@cboe.com		
Telephone	(312) 786-7058	Fax	(312) 786-7919

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 08/21/2007

By Jaime Galvan

(Name)

Assistant Secretary

(Title)

NOTE: Clicking the button at right will digitally sign and lock  
this form. A digital signature is as legally binding as a physical  
signature, and once signed, this form cannot be changed.



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to create a delta hedging exemption from equity options position limits. The text of the proposed rule change is attached as Exhibit 5.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Exchange's Office of the Chairman, pursuant to delegated authority, on July 16, 2007. No further action is required. CBOE will announce the effective date of the proposed rule change in a regulatory circular to be published no later than 60 days after Commission approval. The effective date shall be no later than 30 days after publication of the regulatory circular.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

All options traded on the Exchange are subject to position and exercise limits, as provided under CBOE Rules 4.11 and 4.12.<sup>1</sup> Position limits are imposed, generally, to maintain fair and orderly markets for options and other securities by limiting the amount of control one or more affiliated persons or entities may have over one particular options class or the security or securities that underlie that options class. Exchange rules also contain various hedge exemptions to allow certain hedged positions in excess of the applicable standard position limit.<sup>2</sup>

Over the years, CBOE has increased the size of options position and exercise limits, as well as the size and scope of available hedge exemptions to the applicable position limits.<sup>3</sup> These hedge exemptions generally require a one-to-one hedge (*i.e.*, one stock option contract must be

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<sup>1</sup> Position limits for index options are provided separately under Rules 24.4, 24.4A, and 24.4B.

<sup>2</sup> See Interpretation and Policy .04 to Rule 4.11.

<sup>3</sup> See, *e.g.*, Securities Exchange Act Release No. 55176 (January 25, 2007); 72 FR 4741 (February 1, 2007); Securities Exchange Act Release No. 51244 (February 23, 2005); 70 FR 10010 (March 1, 2005); and Securities Exchange Act Release No. 45603 (March 20, 2002); 67 FR 14751 (March 27, 2002).

hedged by the number of shares underlying the options contract, typically 100 shares). In practice, however, many firms do not hedge their options positions in this manner. Instead, these firms engage in what is commonly known as "delta hedging." Delta hedging varies the number of shares of the underlying security used to hedge an options position based upon the relative sensitivity of the value of the option contract to a change in the price of the underlying security.<sup>4</sup> Delta hedging is a widely accepted method for risk management.

**Delta Neutral-Based Hedge Exemption.** The Exchange proposes to adopt a new exemption from equity options position and exercise limits<sup>5</sup> for positions held by CBOE members and certain of their affiliates that are "delta neutral"<sup>6</sup> under a "permitted pricing model" (as defined below), subject to certain conditions ("Exemption"). The proposed Exemption would apply only to equity (stock) options.<sup>7</sup>

Any equity option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the "option contract equivalent of the net delta" of such position would be subject to the appropriate position limit.<sup>8</sup>

Only financial instruments relating to the security underlying an equity options position could be included in any determination of an equity options position's net delta or whether the options position is delta neutral. In addition, members could not use the same equity or other

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<sup>4</sup> To illustrate, a stock option contract with a delta of .5 will move \$0.50 for every \$1.00 move in the underlying stock.

<sup>5</sup> Exchange Rule 4.12 establishes exercise limits for an option at the same level as the option's position limit under Rule 4.11, therefore no changes are proposed to Rule 4.12.

<sup>6</sup> The term "delta neutral" is defined in proposed Rule 4.11.04(c)(A) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change in response to incremental changes in the price of the security underlying the option position.

<sup>7</sup> The Exchange intends to submit a separate proposed rule change to adopt a delta neutral-based hedge exemption for index options and options on exchange-traded funds.

<sup>8</sup> Under proposed Rule 4.11.04(c)(B), the term "options contract equivalent of the net delta" is defined as the net delta divided by the number of shares underlying the option contract, and the term "net delta" is defined as, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change in response to incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

financial instrument position in connection with more than one hedge exemption. Therefore, a stock position used as part of a delta hedging strategy could not also serve as the basis for any other equity hedge exemption.

**Permitted Pricing Model.** Under the proposed rule, the calculation of the delta for any equity option position, and the determination of whether a particular equity option position is delta neutral, must be made using a permitted pricing model. A "permitted pricing model" is defined in proposed Rule 4.11.04(c)(C) to mean the pricing model maintained and operated by The Options Clearing Corporation ("OCC") and the pricing models used by (i) a member or its affiliate subject to consolidated supervision by the SEC pursuant to Appendix E of SEC Rule 15c3-1; (ii) a financial holding company ("FHC") or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision;<sup>9</sup> (iii) an SEC registered OTC derivatives dealer;<sup>10</sup> and (iv) a national bank.<sup>11</sup>

**Aggregation of Accounts.** Members and non-member affiliates relying on the Exemption would be required to ensure that the permitted pricing model is applied to all positions

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<sup>9</sup> The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) the requirements of the Board of Governors of the Federal Reserve System ("Fed"), as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Fed, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company – where "principal regulator" means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company – provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group. See subparagraph (C)(3) of proposed Rule 4.11.04(c).

<sup>10</sup> The pricing model of an SEC registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to SEC Rule 15c3-1 and SEC Rule 15c3-4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. See subparagraph (C)(4) of proposed Rule 4.11.04(c).

<sup>11</sup> The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. See subparagraph (C)(5) of proposed Rule 4.11.04(c).

in or relating to the security or securities underlying the relevant options position that are owned or controlled by the member, or its affiliates.

However, the net delta of an options position held by an entity entitled to rely on the Exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in or relating to the security or securities underlying the option position held by an affiliated entity or by another trading unit within the same entity, provided that: (i) the entity demonstrates to the Exchange's satisfaction that no control relationship, as defined in Rule 4.11.03, exists between such affiliates or trading units, and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Exemption.<sup>12</sup>

The Exchange has set forth in Regulatory Circular RG04-45 ("Aggregation Circular") the conditions under which it will deem no control relationship to exist between affiliated broker-dealers and between separate and distinct trading units within the same broker-dealer. The Exchange proposes to amend the Aggregation Circular to include affiliated entities, not only affiliated broker-dealers as in the current version. The proposed regulatory circular is attached as part of Exhibit 5.

Any member or non-member affiliate relying on the Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such member or non-member affiliate relying on the Exemption for purposes of compliance with Exchange position or exercise limits.<sup>13</sup>

**Obligations of Members and Affiliates.** Any member relying on the Exemption would be required to provide a written certification to the Exchange that it is using a permitted pricing

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<sup>12</sup> See subparagraph (D) of proposed Rule 4.11.04(c).

<sup>13</sup> See proposed Rule 4.11.04(c)(D)(3).

model as defined in the rule for purposes of the Exemption. In addition, by such reliance, such member would authorize any other person carrying for such member an account including, or with whom such member has entered into, a position in or relating to a security underlying the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption.<sup>14</sup>

The options positions of a non-member affiliate relying on the Exemption must be carried by a member with which it is affiliated. A member carrying an account that includes an equity option position for a non-member affiliate that intends to rely on the Exemption would be required to obtain from such non-member affiliate a written certification sufficient that it is using a permitted pricing model as defined in the rule for purposes of the Exemption.<sup>15</sup>

**Reporting.** Under proposed Rule 4.11.04(c)(F), each member relying on the Exemption would be required to report, in accordance with Rule 4.13,<sup>16</sup> (i) all equity option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to Rule 4.11.04(c)(D), for each such account that holds an equity option position subject to the Exemption in excess of the levels specified in Rule 4.11, the net delta and the options contract equivalent of the net delta of such position.

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<sup>14</sup> See subparagraph (E) of proposed Rule 4.11.04(c).

<sup>15</sup> In addition, the member would be required to obtain from such non-member affiliate a written statement confirming that such non-member affiliate: (a) is relying on the Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Exemption; (c) will promptly notify the member if it ceases to rely on the Exemption; (d) authorizes the member to provide to the Exchange or the OCC such information regarding positions of the non-member affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Exemption; and (e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. See subparagraph (E)(3) of proposed Rule 4.11.04(c).

<sup>16</sup> Exchange Rule 4.13 requires, among other things, that members report to the Exchange aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of options contracts dealt in on the Exchange.

The Exchange and other self-regulatory organizations are working on modifying the Large Options Position Report ("LOPR") system and/or OCC reports to allow a member to indicate that an equity options position is delta neutral.

**Records.** Under proposed Rule 4.11.04(c)(G), each member and non-member affiliate relying on the Exemption and using a permitted pricing model to calculate the net delta of its equity options positions would be required to retain and produce to the Exchange upon request a list of the options, securities and other instruments underlying each options position net delta calculation reported to the Exchange hereunder.

**Reliance on Federal Oversight.** As provided under proposed Rule 4.11.04(c)(C), a permitted pricing model includes proprietary pricing models used by members and affiliates that have been approved by the SEC, the Fed or another federal financial regulator. In adopting the proposed Exemption the Exchange would be relying upon the rigorous approval processes and ongoing oversight of a federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether a member's or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

The Exchange will announce the effective date of the proposed rule change in a regulatory circular to be published no later than 60 days after Commission approval. The effective date shall be no later than 30 days after publication of the regulatory circular.

\* \* \* \* \*

#### Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")<sup>17</sup>, in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed delta neutral-based hedge exemption from equity options position and exercise limits is appropriate in that it is based on a widely accepted risk management method used in options trading. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.<sup>19</sup>

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Act for Commission consideration of the proposed rule change.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not Applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or the Commission

This proposed rule change is similar to a proposed rule change recently filed by the NASD (SR-NASD-2007-44).

Item 9. Exhibits

Exhibit 1. Form of Notice of Proposed Rule Change for publication in the Federal Register.

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<sup>19</sup> See Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (adopting rules relating to OTC Derivatives Dealers).

Exhibit 5. Text of Proposed Rule Change and Proposed Regulatory Circular.

## EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-CBOE-2007-99)

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to a Delta Hedging Exemption From Equity Options Position Limits.**

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Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on \_\_\_\_\_, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to create a delta hedging exemption from equity options position limits. The text of the proposed rule change is available on the Exchange's website (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places

specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change**

All options traded on the Exchange are subject to position and exercise limits, as provided under CBOE Rules 4.11 and 4.12.<sup>1</sup> Position limits are imposed, generally, to maintain fair and orderly markets for options and other securities by limiting the amount of control one or more affiliated persons or entities may have over one particular options class or the security or securities that underlie that options class. Exchange rules also contain various hedge exemptions to allow certain hedged positions in excess of the applicable standard position limit.<sup>2</sup>

Over the years, CBOE has increased the size of options position and exercise limits, as well as the size and scope of available hedge exemptions to the applicable position limits.<sup>3</sup> These hedge exemptions generally require a one-to-one hedge (*i.e.*, one stock option contract must be hedged by the number of shares underlying the options contract, typically 100 shares). In practice, however, many firms do not hedge their options positions in this manner. Instead, these firms engage in what is commonly known as “delta hedging.” Delta hedging varies the number of shares of the underlying security used to hedge an options position based upon the relative sensitivity of the value

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<sup>1</sup> Position limits for index options are provided separately under Rules 24.4, 24.4A, and 24.4B.

<sup>2</sup> See Interpretation and Policy .04 to Rule 4.11.

<sup>3</sup> See, e.g., Securities Exchange Act Release No. 55176 (January 25, 2007); 72 FR 4741 (February 1, 2007); Securities Exchange Act Release No. 51244 (February 23, 2005); 70 FR 10010 (March 1, 2005); and Securities Exchange Act Release No. 45603 (March 20, 2002); 67 FR 14751 (March 27, 2002).

of the option contract to a change in the price of the underlying security.<sup>4</sup> Delta hedging is a widely accepted method for risk management.

**Delta Neutral-Based Hedge Exemption.** The Exchange proposes to adopt a new exemption from equity options position and exercise limits<sup>5</sup> for positions held by CBOE members and certain of their affiliates that are "delta neutral"<sup>6</sup> under a "permitted pricing model" (as defined below), subject to certain conditions ("Exemption"). The proposed Exemption would apply only to equity (stock) options.<sup>7</sup>

Any equity option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the "option contract equivalent of the net delta" of such position would be subject to the appropriate position limit.<sup>8</sup>

Only financial instruments relating to the security underlying an equity options position could be included in any determination of an equity options position's net delta or whether the options position is delta neutral. In addition, members could not use the same equity or other financial instrument position in connection with more than one

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<sup>4</sup> To illustrate, a stock option contract with a delta of .5 will move \$0.50 for every \$1.00 move in the underlying stock.

<sup>5</sup> Exchange Rule 4.12 establishes exercise limits for an option at the same level as the option's position limit under Rule 4.11, therefore no changes are proposed to Rule 4.12.

<sup>6</sup> The term "delta neutral" is defined in proposed Rule 4.11.04(c)(A) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change in response to incremental changes in the price of the security underlying the option position.

<sup>7</sup> The Exchange intends to submit a separate proposed rule change to adopt a delta neutral-based hedge exemption for index options and options on exchange-traded funds.

<sup>8</sup> Under proposed Rule 4.11.04(c)(B), the term "options contract equivalent of the net delta" is defined as the net delta divided by the number of shares underlying the option contract, and the term "net delta" is defined as, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change in response to incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

hedge exemption. Therefore, a stock position used as part of a delta hedging strategy could not also serve as the basis for any other equity hedge exemption.

**Permitted Pricing Model.** Under the proposed rule, the calculation of the delta for any equity option position, and the determination of whether a particular equity option position is delta neutral, must be made using a permitted pricing model. A "permitted pricing model" is defined in proposed Rule 4.11.04(c)(C) to mean the pricing model maintained and operated by The Options Clearing Corporation ("OCC") and the pricing models used by (i) a member or its affiliate subject to consolidated supervision by the SEC pursuant to Appendix E of SEC Rule 15c3-1; (ii) a financial holding company ("FHC") or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision;<sup>9</sup> (iii) an SEC registered OTC derivatives dealer;<sup>10</sup> and (iv) a national bank.<sup>11</sup>

<sup>9</sup> The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) the requirements of the Board of Governors of the Federal Reserve System ("Fed"), as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Fed, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company – where "principal regulator" means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company – provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group. See subparagraph (C)(3) of proposed Rule 4.11.04(c).

<sup>10</sup> The pricing model of an SEC registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to SEC Rule 15c3-1 and SEC Rule 15c3-4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. See subparagraph (C)(4) of proposed Rule 4.11.04(c).

<sup>11</sup> The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. See subparagraph (C)(5) of proposed Rule 4.11.04(c).

**Aggregation of Accounts.** Members and non-member affiliates relying on the Exemption would be required to ensure that the permitted pricing model is applied to all positions in or relating to the security or securities underlying the relevant options position that are owned or controlled by the member, or its affiliates.

However, the net delta of an options position held by an entity entitled to rely on the Exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in or relating to the security or securities underlying the option position held by an affiliated entity or by another trading unit within the same entity, provided that: (i) the entity demonstrates to the Exchange's satisfaction that no control relationship, as defined in Rule 4.11.03, exists between such affiliates or trading units, and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Exemption.<sup>12</sup>

The Exchange has set forth in Regulatory Circular RG04-45 ("Aggregation Circular") the conditions under which it will deem no control relationship to exist between affiliated broker-dealers and between separate and distinct trading units within the same broker-dealer. The Exchange proposes to amend the Aggregation Circular to include affiliated entities, not only affiliated broker-dealers as in the current version. The proposed regulatory circular is attached as part of Exhibit 5.

Any member or non-member affiliate relying on the Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options

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<sup>12</sup> See subparagraph (D) of proposed Rule 4.11.04(c).

positions are required by Exchange rules to be aggregated with the options positions of such member or non-member affiliate relying on the Exemption for purposes of compliance with Exchange position or exercise limits.<sup>13</sup>

**Obligations of Members and Affiliates.** Any member relying on the Exemption would be required to provide a written certification to the Exchange that it is using a permitted pricing model as defined in the rule for purposes of the Exemption. In addition, by such reliance, such member would authorize any other person carrying for such member an account including, or with whom such member has entered into, a position in or relating to a security underlying the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption.<sup>14</sup>

The options positions of a non-member affiliate relying on the Exemption must be carried by a member with which it is affiliated. A member carrying an account that includes an equity option position for a non-member affiliate that intends to rely on the Exemption would be required to obtain from such non-member affiliate a written certification sufficient that it is using a permitted pricing model as defined in the rule for purposes of the Exemption.<sup>15</sup>

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<sup>13</sup> See proposed Rule 4.11.04(c)(D)(3).

<sup>14</sup> See subparagraph (E) of proposed Rule 4.11.04(c).

<sup>15</sup> In addition, the member would be required to obtain from such non-member affiliate a written statement confirming that such non-member affiliate: (a) is relying on the Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Exemption; (c) will promptly notify the member if it ceases to rely on the Exemption; (d) authorizes the member to provide to the Exchange or the OCC such information regarding positions of the non-member affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Exemption; and (e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may

**Reporting.** Under proposed Rule 4.11.04(c)(F), each member relying on the Exemption would be required to report, in accordance with Rule 4.13,<sup>16</sup> (i) all equity option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to Rule 4.11.04(c)(D), for each such account that holds an equity option position subject to the Exemption in excess of the levels specified in Rule 4.11, the net delta and the options contract equivalent of the net delta of such position.

The Exchange and other self-regulatory organizations are working on modifying the Large Options Position Report ("LOPR") system and/or OCC reports to allow a member to indicate that an equity options position is delta neutral.

**Records.** Under proposed Rule 4.11.04(c)(G), each member and non-member affiliate relying on the Exemption and using a permitted pricing model to calculate the net delta of its equity options positions would be required to retain and produce to the Exchange upon request a list of the options, securities and other instruments underlying each options position net delta calculation reported to the Exchange hereunder.

**Reliance on Federal Oversight.** As provided under proposed Rule 4.11.04(c)(C), a permitted pricing model includes proprietary pricing models used by members and affiliates that have been approved by the SEC, the Fed or another federal financial regulator. In adopting the proposed Exemption the Exchange would be relying upon the rigorous approval processes and ongoing oversight of a federal financial regulator. The Exchange notes that it would not be under any obligation to verify

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require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. See subparagraph (E)(3) of proposed Rule 4.11.04(c).

whether a member's or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

CBOE will announce the effective date of the proposed rule change in a regulatory circular to be published no later than 60 days after Commission approval. The effective date shall be no later than 30 days after publication of the regulatory circular.

\* \* \* \* \*

### Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")<sup>17</sup>, in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed delta neutral-based hedge exemption from equity options position and exercise limits is appropriate in that it is based on a widely accepted risk management method used in options trading. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.<sup>19</sup>

### **B. Self-Regulatory Organization's Statement on Burden on Competition**

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<sup>16</sup> Exchange Rule 4.13 requires, among other things, that members report to the Exchange aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of options contracts dealt in on the Exchange.

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (adopting rules relating to OTC Derivatives Dealers).

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

**Electronic comments:**

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2007-99 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-CBOE-2007-99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2007-99 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Nancy M. Morris  
Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5 TO SR-CBOE-2007-99**

(Underlining indicates material to be added and brackets [ ] indicate material to be deleted.)

**Chicago Board Options Exchange, Inc.  
Rules**

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**CHAPTER IV**

**BUSINESS CONDUCT**

\* \* \* \* \*

**Rule 4.11 - Position Limits**

Rule 4.11. Except with the prior permission of the President or his designee, to be confirmed in writing, no member shall make, for any account in which it has an interest or for the account of any customer, an opening transaction on any exchange if the member has reason to believe that as a result of such transaction the member or its customer would, acting alone or in concert with others, directly or indirectly, (a) control an aggregate position in an option contract dealt in on the Exchange in excess of 13,500 or 22,500 or 31,500 or 60,000 or 75,000 option contracts (whether long or short), except that for a pilot program period of 6 months ("Rule 4.11 Pilot Program Period") from March 2, 2007 through September 1, 2007, the position limits shall be 25,000 or 50,000 or 75,000 or 200,000 or 250,000 option contracts (whether long or short), of the put type and the call type on the same side of the market respecting the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options, or such other number of option contracts as may be fixed from time to time by the Exchange as the position limit for one or more classes or series of options, or (b) exceed the applicable position limit fixed from time to time by another exchange for an option contract not dealt in on the Exchange, when the member is not a member of the other exchange on which the transaction was effected. In addition, should a member have reason to believe that a position in any account in which it has an interest or for the account of any customer is in excess of the applicable limit, such member shall promptly take the action necessary to bring the position into compliance. Reasonable notice shall be given of each new position limit fixed by the Exchange, by publicly posting notice thereof. Limits shall be determined in the manner described in Interpretations .02 and .04 below.

***... Interpretations and Policies:***

**.01 - .03** No change.

**.04** Equity Hedge Exemptions

(a) – (b) No change.

(c) Delta-Based Equity Hedge Exemption

The Delta-Based Equity Hedge Exemption is in addition to the standard limit and other exemptions available under Exchange rules, interpretations and policies. An equity option position of a member or non-member affiliate of a member that is delta neutral shall be exempt from established position limits as prescribed under Interpretation .02 above, subject to the following:

- (A) The term “delta neutral” refers to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change in response to incremental changes in the price of the security underlying the option position.
- (B) An equity option position that is not delta neutral shall be subject to position limits in accordance with this Rule 4.11 (subject to the availability of other position limit exemptions). Only the option contract equivalent of the net delta of such position shall be subject to the appropriate position limit. The “options contract equivalent of the net delta” is the net delta divided by the number of shares underlying the option contract. The term “net delta” means, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change in response to incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.
- (C) A “permitted pricing model” means -
- (1) A pricing model maintained and operated by the Clearing Corporation (“OCC Model”);
  - (2) A pricing model maintained and used by a member subject to consolidated supervision by the Commission pursuant to Appendix E of Commission Rule 15c3-1, or by an affiliate that is part of such member’s consolidated supervised holding company group, in accordance with its internal risk management control system and consistent with the requirements of Appendices E or G, as applicable, to SEC Rule 15c3-1 and SEC Rule 15c3-4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital or capital allowances for market risk thereunder, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such member’s consolidated supervised holding company group;
  - (3) A pricing model maintained and used by a financial holding company or a company treated as a financial holding company under the Bank Holding Company Act of 1956, or by an affiliate that is part of either such company’s consolidated supervised holding company group, in accordance with its internal risk management control system and consistent with:
    - (i) the requirements of the Board of Governors of the Federal Reserve System, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Board of Governors of the Federal Reserve System, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company’s consolidated supervised holding company group; or
    - (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company’s principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such

company – where “principal regulator” means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company – provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company’s consolidated supervised holding company group;

- (4) A pricing model maintained and used by an OTC derivatives dealer registered with the SEC pursuant to SEC Rule 15c3-1(a)(5) in accordance with its internal risk management control system and consistent with the requirements of Appendix F to SEC Rule 15c3-1 and SEC Rule 15c3-4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder, provided that only such OTC derivatives dealer and no other affiliated entity (including a member) may rely on this subparagraph (C)(4); or
- (5) A pricing model used by a national bank under the National Bank Act maintained and used in accordance with its internal risk management control system and consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency, provided that only such national bank and no other affiliated entity (including a member) may rely on this subparagraph (C)(5).

(D) Effect on Aggregation of Accounts

- (1) Members and non-member affiliates who rely on this exemption must ensure that the permitted pricing model is applied to all positions in or relating to the security(ies) underlying the relevant option position that are owned or controlled by such member or non-member affiliate.
- (2) Notwithstanding subparagraph (D)(1), the net delta of an option position held by an entity entitled to rely on this exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in or relating to the security(ies) underlying the option position held by an affiliated entity or by another trading unit within the same entity, provided that:
  - (i) the entity demonstrates to the Exchange’s satisfaction that no control relationship, as defined in Interpretation .03 above, exists between such affiliates or trading units\*; and
  - (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of this exemption.

\* Note: The Exchange has set forth in Regulatory Circular RG07-XX the conditions under which it will deem no control relationship to exist between affiliates and between separate and distinct trading units within the same entity.

- (3) Notwithstanding subparagraph (D)(1) or (D)(2), a member or non-member affiliate who relies on this exemption shall designate, by prior written notice to

the Exchange, each trading unit or entity whose option positions are required under Exchange Rules to be aggregated with the option positions of such member or non-member affiliate that is relying on this exemption for purposes of compliance with Exchange position limits or exercise limits. In any such case:

(i) the permitted pricing model shall be applied, for purposes of calculating such member's or affiliate's net delta, only to the positions in or relating to the security(ies) underlying any relevant option position owned and controlled by those entities and trading units who are relying on this exemption; and

(ii) the net delta of the positions owned or controlled by the entities and trading units who are relying on this exemption shall be aggregated with the non-exempt option positions of all other entities and trading units whose options positions are required under Exchange Rules to be aggregated with the option positions of such member or affiliate.

(E) Obligations of Members and Affiliates

(1) A member that relies on this exemption for a proprietary equity options position:

(i) must provide a written certification to the Exchange that it is using a permitted pricing model pursuant to subparagraph (C) above; and

(ii) by such reliance authorizes any other person carrying for such member an account including, or with whom such member has entered into, a position in or relating to a security underlying the relevant option position to provide to the Exchange or the Clearing Corporation such information regarding such account or position as the Exchange or Clearing Corporation may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption.

(2) The equity option positions of a non-member relying on this exemption must be carried by a member with which it is affiliated.

(3) A member carrying an account that includes an equity option position for a non-member affiliate that intends to rely on this exemption must obtain from such non-member:

(i) a written certification to the Exchange that it is using a permitted pricing model pursuant to subparagraph (C) above; and

(ii) a written statement confirming that such non-member affiliate :

(a) is relying on this exemption;

(b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of this exemption;

(c) will promptly notify the member if it ceases to rely on this exemption;

(d) authorizes the member to provide to the Exchange or the Clearing Corporation such information regarding positions of the non-member affiliate as the Exchange or Clearing Corporation may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption; and

(e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on this exemption.

(F) Reporting.

Each member that holds or carries an account that relies on this exemption shall report, in accordance with Rule 4.13, all equity option positions (including those that are delta neutral) that are reportable thereunder. Each such member on its own behalf or on behalf of a designated aggregation unit pursuant to Rule 4.11.04(c)(D) shall also report, in accordance with Rule 4.13, for each such account that holds an equity option position subject to this exemption in excess of the levels specified in this Rule 4.11, the net delta and the options contract equivalent of the net delta of such position.

(G) Records.

Each member and non-member affiliate relying on this exemption and using a permitted pricing model to calculate the net delta of its equity option positions shall retain and produce to the Exchange upon request a list of the options, securities and other instruments underlying each option position net delta calculation reported to the Exchange hereunder.

.05 - .07 No change.

**EXHIBIT 5 TO SR-CBOE-2007-99 (continued)**

(Underlining indicates material to be added and brackets [ ] indicate material to be deleted.)

Regulatory Circular RG[04-45]\_\_\_\_<sup>1</sup>

DATE: [April 1, 2004]\_\_\_\_\_

TO: Members and Member Firms

FROM: Regulatory Services Division

RE: Aggregation of Accounts for Position and Exercise Limit Purposes

**Aggregation of Accounts**

The purpose of this memorandum is to summarize the provisions of Exchange rules with respect to the aggregation of accounts for position and exercise limit purposes. Exchange Rules 4.11 and 4.12 require that positions maintained in accounts directly or indirectly controlled by the same individual or entity be aggregated for position and exercise limit purposes. Pursuant to Rule 4.11, control exists when an individual or entity makes investment decisions for an account or accounts, or materially influences directly or indirectly the actions of any person who makes investment decisions. Control is also presumed in the following circumstances: a) among all participants of a joint account who have authority to act on behalf of the account; b) among all general partners to a partnership account; c) when an individual or entity holds an ownership interest of 10% or more in an entity, or shares in 10% or more of profits and/or losses of an account; d) when accounts have common directors or management; and e) where an individual or entity has authority to execute transactions in an account.

**Non-aggregation of Accounts**

Demonstrating that control does not exist can rebut the presumption of control. The rebuttal proof must be submitted to the Exchange by affidavit and other documentation as may be appropriate. The decision to grant non-aggregation is not retroactive and is handled on a case-by-case basis. The Exchange has granted non-aggregation between the following accounts: between a market-maker's individual account and his joint account in which the market maker's participation in the joint account is limited to providing financial backing to the other member of the account; and between affiliated broker-dealers.

In situations involving requests for non-aggregation treatment between ([i]1) affiliated broker-dealers, (2) broker-dealers and their non-broker-dealer affiliates and ([ii]3) separate and distinct trading units within the same broker-dealer, the Exchange requires, at a minimum, the broker-dealer(s) to satisfy the following conditions:

- (i) Establish that the trading unit(s) requesting non-aggregation operates independently of other trading units of the broker-dealer, which must include the disclosure of the trading unit's trading objective;

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<sup>1</sup> This regulatory circular was filed with the SEC in connection with SR-CBOE-[2003-35]2007-99.

- (ii) Create internal firewalls and information barriers to segregate the trading unit(s) receiving non-aggregation treatment from other trading units controlled by the broker-dealer that also have trading accounts;<sup>2</sup>
- (iii) Maintain all trading activity of the trading unit(s) requesting non-aggregation in a segregated account, which shall be reported to the Exchange as such; and
- (iv) Maintain regulatory compliance oversight and internal controls and procedures.

If the Exchange determines that the broker-dealer that requests non-aggregation treatment has successfully rebutted the presumption of control and grants non-aggregation status, the broker-dealer must, at a minimum, comply with the following requirements:

- (i) Retain written records of information concerning the non-aggregated account, including, but not limited to, trading personnel, names of personnel making trading decisions, unusual trading activities, disciplinary action resulting from a breach of the broker-dealer's systems firewalls and information-sharing policies, and the transfer of securities between [the broker-dealer's] non-aggregated accounts, which information shall be promptly made available to the Exchange upon its request;
- (ii) Promptly provide to the Exchange a written report at such time there is any material change with respect to the non-aggregated account, at which point the Exchange will reexamine the bases for its determination of non-aggregation;<sup>3</sup> and
- (iii) Provide an acknowledgement to the effect that the Exchange reserves the right to impose additional restrictions and conditions with respect to the granting and removal of non-aggregation as the circumstances warrant.

This memorandum is not intended to be a comprehensive description of all of the rules and requirements relating to the aggregation of accounts for position and exercise limit purposes. For a more detailed description of these rules and requirements members are advised to refer to Exchange Rule 4.11 and the Interpretations and Policies thereunder. Questions pertaining to this memorandum may be directed to \_\_\_\_\_ at (312) 786-\_\_\_\_\_.

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<sup>2</sup> The Exchange will review this category on a case-by-case basis. With respect to physical separation, the presumption of control becomes easier to rebut as the physical separation between the trading units increases. At the minimum, the Exchange will require trading units located on the same floor to be physically isolated from each other to the extent that the Exchange is assured that no communication will take place between individuals staffed in the applicable trading units. In addition, the Exchange will require system firewalls to be in place in order to prevent the flow of information (e.g., trades, positions, trading strategies) between the trading unit(s) that receives non-aggregation treatment and other trading units controlled by the broker-dealer.

<sup>3</sup> The Exchange reserves the right to freeze any position above the standard aggregation limit if the Exchange determines that aggregation is then appropriate due to changed circumstances.