

OMB APPROVAL

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

File No. SR - 2007 - 30
Amendment No. 1

Proposed Rule Change by Chicago Board Options Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

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

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 Last Name
Title
E-mail
Telephone Fax

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

By

(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 EFFS 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

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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

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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.

Item 1. Text of the Proposed Rules Changes

(a) Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") is proposing to remove or otherwise amend elements of CBOE Rule 9.21 ("Communications to Customers") that incorporate provisions of the Securities Act of 1933 (the "Securities Act")¹ because options traded on CBOE consist solely of standardized options issued by the Options Clearing Corporation ("OCC"), a registered clearing agency, that are exempt under Rule 238 of the Securities Act from all provisions of the Securities Act except the antifraud provisions of Section 17. Additionally, the proposed amendments expand the types of communications governed by Rule 9.21 to include independently prepared reprints and other communications between a member or member organization and a customer. The proposed amendments also exempt certain options communications from the pre-approval requirement by a Registered Options Principal ("ROP"). The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

The proposed rules changes were approved by the Office of the Chairman pursuant to delegated authority on March 13, 2007. No further action is required.

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

1. Purpose

On December 23, 2002, the Securities and Exchange Commission published final rules that exempt standardized options, as defined in Rule 9b-1² of the Securities Exchange Act of

¹ 15 U.S.C. 77a et seq.

² 17 CFR 240.9b-1.

1934 (“Act” or “Exchange Act”)³, that are issued by a registered clearing agency and traded on a national securities exchange or on a registered national securities association, from all provisions of the Securities Act (other than the anti-fraud provisions) and the registration requirements of the Exchange Act.⁴ Because the Securities Act and the rules thereunder (other than the anti-fraud provisions) are no longer applicable to such standardized options, CBOE proposes to remove elements of the Securities Act that are embedded in CBOE Rule 9.21. In particular, CBOE proposes to remove all references to a “prospectus” from Rule 9.21. Prospectuses are no longer required for such standardized options, and the OCC has, in fact, ceased publication of a prospectus.⁵ In addition, the proposed amendments will update and reorganize Rule 9.21. The proposed amendments are similar to amendments filed with the Commission by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and the New York Stock Exchange, LLC (“NYSE”) and, if adopted, would provide a more uniform approach to communications to customers regarding standardized options.⁶

a. Deletion of Certain Provisions

As noted above, CBOE Rule 9.21 contains a number of references to a prospectus and other Securities Act requirements. The Exchange proposes to delete the following from Rule 9.21:

- 1) Rule 9.21(a)(iv), which references the Securities Act definition of prospectus,
- 2) Rule 9.21(d), which incorporates Securities Act principles in that it prohibits written material concerning options from being furnished to any person who has not previously or contemporaneously received the ODD,

³ 15 U.S.C. 78a et seq.

⁴ See “Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Final Rule”, Securities Act Release No. 8171 and Exchange Act Release No. 47082 (December 23, 2002), 68 FR 188 (January 2, 2003).

⁵ The options disclosure document (“ODD”) prepared in accordance with Rule 9b-1 under the Exchange Act is not deemed to be a prospectus. 17 CFR 230.135b. See, e.g., Securities Act Release No. 8049 (December 21, 2001).

⁶ See SR-FINRA-2008-13 and SR-NYSE-2006-50

- 3) Rule 9.21(e)(ii), which defines the term “educational material”,⁷
- 4) Interpretation and Policy .02A of Rule 9.21, which outlines what is permitted in an “advertisement”,⁸ and
- 5) Interpretation and Policy .03 of Rule 9.21, which concerns educational material.⁹

b. Redesignation of Rule 9.21(a) to Proposed Rule 9.21(d) and Related Amendments

Rule 9.21(a) currently contains an outline of the “General Rule” for options communications. CBOE proposes to redesignate paragraph (a) as paragraph (d), and to incorporate limitations on the use of options communications contained in Interpretations and Policies .01 of Rule 9.21 into proposed Rule 9.21(d). In addition, proposed Rule 9.21(d)(iii) would amend Rule 9.21(a)(iii) by clarifying the types of cautionary statements and caveats that are prohibited. Also, as previously noted, CBOE proposes to delete Rule 9.21(a)(iv).

c. Proposed Amendments to Rule 9.21(b)

CBOE proposes to amend Rule 9.21(b) to include the types of communications proposed to be added to the definition of “Options Communications” in proposed Rule 9.21(a). Proposed Rules 9.21(b)(ii) and (b)(iii) would also amend the current requirements to obtain advanced approval by a ROP for most options communications by exempting certain options communications, defined as “Correspondence” and “Institutional Sales Material”. Specifically, proposed Rule 9.21(b)(ii) would exempt Correspondence from the pre-approval requirement unless the Correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the member. Proposed Rule 9.21(b)(iii) would exempt

⁷ This paragraph essentially incorporates language of Securities Act Rule 134a. While this amendment would eliminate the separate educational material category, as discussed below the Exchange also proposes to revise the definition of Sales Literature to include educational material.

⁸ This paragraph essentially incorporates language of Securities Act Rule 134.

⁹ See note 9, *supra*.

Institutional Sales Material from the pre-approval requirement if the material is distributed to “qualified investors” (as defined in Section 3(a)(54)¹⁰ of the Exchange Act).

Pre-approval by a ROP would, however, be required with respect to independently prepared reprints. In addition, Proposed Rule 9.21(b)(iv) would require that firms retain options communications in accordance with the record-keeping requirements of Rule 17a-4 under the Exchange Act.¹¹ The proposed rule would also require that firms retain other related documents in the form and for the time periods required for options communications by Rule 17a-4.

d. Proposed Amendments to Rule 9.21(c)

Rule 9.21(c) currently requires members to obtain approval for every advertisement and all educational material from the Exchange’s Department of Compliance. This requirement applies regardless of whether the options communications are used before or after the delivery of a current ODD. CBOE proposes to amend this provision to require approval by the Exchange only with respect to options communications used prior to the delivery of a current ODD. The Exchange pre-approval requirement for options communications used subsequent to the delivery of the ODD is being eliminated because the ODD should help alert the customer to the characteristics and risks associated with trading in options and because Rule 9.21(b) requires the Registered Options Principal of a member organization to pre-approve options communications (with certain exceptions for “Correspondence” and “Institutional Sales Material”). Rule 9.21(c) would also be amended to include the types of communications added to the definition of “Options Communications” in proposed Rule 9.21(a).

e. Redesignation of Rule 9.21(e) to Proposed Rule 9.21(a) and Related Amendments

¹⁰ 15 U.S.C. 78c(a)(54).

¹¹ 17 CFR 240.17a-4. More specifically, Rule 17a-4(b)(4) requires that a broker-dealer retain “originals of all communications received and copies of all communications sent...including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public.”

Rule 9.21(e) currently defines terms used in Rule 9.21. CBOE proposes to redesignate paragraph (e) as paragraph (a). CBOE also proposes to amend the definition of “options communications” in proposed Rule 9.21(a) to expand the types of communications governed by Rule 9.21 to include independently prepared reprints and other communications between a member or member organization and a customer. The Exchange proposes to amend the definitions of “Advertisement” and “Sales Literature;” and define “Correspondence”, “Institutional Sales Material,” “Public Appearances,” and “Independently Prepared Reprints;” to clarify the rule. In addition, as previously noted, CBOE proposes to delete the definition of “Educational Material”.

f. Proposed Rule 9.21(e)

Proposed Rule 9.21(e) would set forth (i) required standards for options communications that are not preceded or accompanied by an ODD and (ii) standards for options communications used prior to delivery of an ODD. These requirements generally clarify and restate the requirements contained in the current Interpretations and Policies .02 of Rule 9.21.

g. Interpretations and Policies

Proposed Rule 9.21(e)(i)(B) requires options communications to contain contact information for obtaining a copy of the ODD. Proposed Interpretation and Policy .01 would include the provisions found in current Interpretation and Policy .02A regarding how this requirement may be satisfied. In addition, as noted above, the provisions of Interpretation and Policy .01 regarding limitations on the use of options communications are proposed to be incorporated into proposed Rule 9.21(d).

As previously noted, the provisions of Interpretation and Policy .02 that outline what is permitted in an advertisement are proposed to be deleted and the provisions relating to standards for options communications used prior to delivery of the ODD are proposed to be incorporated into proposed Rule 9.21(e)(ii).

Interpretation and Policy .03, which concerns educational material, is proposed to be deleted as noted above.

Interpretation and Policy .04 sets forth the standards applicable to Sales Literature. Interpretation and Policy .04A sets forth the requirement that Sales Literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics or other technical data, will be supplied upon request. The Exchange proposes to redesignate Interpretation and Policy .04A as proposed Rule 9.21(d)(vii).

Section B of Interpretation and Policy .04 pertains to standards for Sales Literature that contains projected performance figures. Section C of Interpretation and Policy .04 pertains to standards for Sales Literature that contains historical performance figures. The Exchange proposes to redesignate Section B of Interpretation and Policy .04 as proposed Interpretation and Policy .02 and Section C of Interpretation and Policy .04 as proposed Interpretation and Policy .03.

Rule 9.21 currently requires that a copy of the ODD precede or accompany options related sales literature. The Exchange is proposing to modify the ODD delivery requirement applicable to sales literature to provide that an ODD must precede or accompany any communication that conveys past or projected performance figures involving options or constitutes a recommendation pertaining to options.¹²

A notice providing the name and address of a person from whom the ODD may be obtained would be required in sales literature that does not contain a recommendation or past or projected performance figures. Because CBOE is proposing to merge educational material into the sales literature category,¹³ this amendment would continue to allow communications that are educational in nature to be disseminated without being preceded or accompanied by a copy of the ODD.

¹² See proposed Rule 9.21(e)(i)(C) and proposed Interpretation and Policies .02 and .03

The Exchange proposes to redesignate Section D of Interpretation and Policy .04 as proposed Interpretation and Policy .04. The Exchange proposes to delete Sections E and F of Interpretation and Policy .04. The Exchange believes Section E is unnecessary because worksheets are included in the definition of Sales Literature. The Exchange believes Section F is no longer necessary because the Exchange is proposing to clarify the record-keeping requirements applicable to options communications in proposed Rule 9.21(b)(iv).

2. Statutory Basis

The proposed amendments to Exchange Rule 9.21 would reflect the exemption from the provisions of the Securities Act (other than the anti-fraud provisions) for standardized options that are traded on a registered national securities exchange or on a registered national securities association, and would update and reorganize the rule. The proposed amendments to Exchange Rule 9.21 thus are consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5)¹⁴ of the Act in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, by providing the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between CBOE's and other SRO's options communications rules.

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

CBOE does not believe that the proposed rule change will result in 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 and Others

¹³ See Proposed Rule 9.21(a)(ii).

¹⁴ 15 U.S.C. 78f(b)(5).

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

Item 6. Extension of Time for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

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

The proposed amendments are similar to amendments filed by FINRA (SR-FINRA-2008-13) and NYSE (SR-NYSE-2006-50).

Item 9. Exhibits

Exhibit 1	Form of Notice of Proposed Rule Change for publication in the <u>Federal Register</u>
Exhibit 2.	Not applicable.
Exhibit 3.	Not applicable.
Exhibit 4.	Not applicable.
Exhibit 5.	Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-CBOE-2007-30)

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated;
Notice of Filing of Proposed Rule Change Relating to Amendments to Rule 9.21
("Communications to Customers").**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")¹, and Rule 19b-4 thereunder², notice is hereby given that on March 19, 2007, 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 substantially 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

The Exchange is proposing to remove or otherwise amend elements of CBOE Rule 9.21 ("Communications to Customers") that incorporate provisions of the Securities Act of 1933 (the "Securities Act")³ because options traded on CBOE consist solely of standardized options issued by the Options Clearing Corporation ("OCC"), a registered clearing agency, that are exempt under Rule 238 of the Securities Act from all provisions of the Securities Act except the antifraud provisions of Section 17. Additionally, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 77a et seq.

proposed amendments expand the types of communications governed by Rule 9.21 to include independently prepared reprints and other communications between a member or member organization and a customer. The proposed amendments also exempt certain options communications from the pre-approval requirement by a Registered Options Principal (“ROP”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room and <http://www.cboe.org/legal>.

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

1. Purpose

On December 23, 2002, the Securities and Exchange Commission published final rules that exempt standardized options, as defined in Rule 9b-14 of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)⁴, that are issued by a registered clearing agency and traded on a national securities exchange or on a registered national securities association, from all provisions of the Securities Act (other than the anti-fraud

⁴ 17 CFR 240.9b-1.

⁵ 15 U.S.C. 78a et seq.

provisions) and the registration requirements of the Exchange Act.⁶ Because the Securities Act and the rules thereunder (other than the anti-fraud provisions) are no longer applicable to such standardized options, CBOE proposes to remove elements of the Securities Act that are embedded in CBOE Rule 9.21. In particular, CBOE proposes to remove all references to a “prospectus” from Rule 9.21. Prospectuses are no longer required for such standardized options, and the OCC has, in fact, ceased publication of a prospectus.⁷ In addition, the proposed amendments will update and reorganize Rule 9.21. The proposed amendments are similar to amendments filed with the Commission by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and the New York Stock Exchange, LLC (“NYSE”) and, if adopted, would provide a more uniform approach to communications to customers regarding standardized options.⁸

a. Deletion of Certain Provisions

As noted above, CBOE Rule 9.21 contains a number of references to a prospectus and other Securities Act requirements. The Exchange proposes to delete the following from Rule 9.21:

- 1) Rule 9.21(a)(iv), which references the Securities Act definition of prospectus,
- 2) Rule 9.21(d), which incorporates Securities Act principles in that it prohibits written material concerning options from being furnished to any person who has not previously or contemporaneously received the ODD,

⁶ See “Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Final Rule”, Securities Act Release No. 8171 and Exchange Act Release No. 47082 (December 23, 2002), 68 FR 188 (January 2, 2003).

⁷ The options disclosure document (“ODD”) prepared in accordance with Rule 9b-1 under the Exchange Act is not deemed to be a prospectus. 17 CFR 230.135b. See, e.g., Securities Act Release No. 8049 (December 21, 2001).

⁸ See SR-FINRA-2008-13 and SR-NYSE-2006-50

- 3) Rule 9.21(e)(ii), which defines the term “educational material”,⁹
- 4) Interpretation and Policy .02A of Rule 9.21, which outlines what is permitted in an “advertisement”,¹⁰ and
- 5) Interpretation and Policy .03 of Rule 9.21, which concerns educational material.¹¹

b. Redesignation of Rule 9.21(a) to Proposed Rule 9.21(d) and Related Amendments

Rule 9.21(a) currently contains an outline of the “General Rule” for options communications. CBOE proposes to redesignate paragraph (a) as paragraph (d), and to incorporate limitations on the use of options communications contained in Interpretations and Policies .01 of Rule 9.21 into proposed Rule 9.21(d). In addition, proposed Rule 9.21(d)(iii) would amend Rule 9.21(a)(iii) by clarifying the types of cautionary statements and caveats that are prohibited. Also, as previously noted, CBOE proposes to delete Rule 9.21(a)(iv).

c. Proposed Amendments to Rule 9.21(b)

CBOE proposes to amend Rule 9.21(b) to include the types of communications proposed to be added to the definition of “Options Communications” in proposed Rule 9.21(a). Proposed Rules 9.21(b)(ii) and (b)(iii) would also amend the current requirements to obtain advanced approval by a ROP for most options communications by exempting certain options communications, defined as “Correspondence” and “Institutional Sales Material”. Specifically, proposed Rule 9.21(b)(ii) would exempt

⁹ This paragraph essentially incorporates language of Securities Act Rule 134a. While this amendment would eliminate the separate educational material category, as discussed below the Exchange also proposes to revise the definition of Sales Literature to include educational material.

¹⁰ This paragraph essentially incorporates language of Securities Act Rule 134.

Correspondence from the pre-approval requirement unless the Correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the member. Proposed Rule 9.21(b)(iii) would exempt Institutional Sales Material from the pre-approval requirement if the material is distributed to “qualified investors” (as defined in Section 3(a)(54)¹² of the Exchange Act).

Pre-approval by a ROP would, however, be required with respect to independently prepared reprints. In addition, Proposed Rule 9.21(b)(iv) would require that firms retain options communications in accordance with the record-keeping requirements of Rule 17a-4 under the Exchange Act.¹³ The proposed rule would also require that firms retain other related documents in the form and for the time periods required for options communications by Rule 17a-4.

d. Proposed Amendments to Rule 9.21(c)

Rule 9.21(c) currently requires members to obtain approval for every advertisement and all educational material from the Exchange’s Department of Compliance. This requirement applies regardless of whether the options communications are used before or after the delivery of a current ODD. CBOE proposes to amend this provision to require approval by the Exchange only with respect to options communications used prior to the delivery of a current ODD. The Exchange pre-approval requirement for options communications used subsequent to the delivery of the

¹¹ See note 9, *supra*.

¹² 15 U.S.C. 78c(a)(54).

¹³ 17 CFR 240.17a-4. More specifically, Rule 17a-4(b)(4) requires that a broker-dealer retain “originals of all communications received and copies of all communications sent...including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public.”

ODD is being eliminated because the ODD should help alert the customer to the characteristics and risks associated with trading in options and because Rule 9.21(b) requires the Registered Options Principal of a member organization to pre-approve options communications (with certain exceptions for “Correspondence” and “Institutional Sales Material”). Rule 9.21(c) would also be amended to include the types of communications added to the definition of “Options Communications” in proposed Rule 9.21(a).

e. Redesignation of Rule 9.21(e) to Proposed Rule 9.21(a) and Related Amendments

Rule 9.21(e) currently defines terms used in Rule 9.21. CBOE proposes to redesignate paragraph (e) as paragraph (a). CBOE also proposes to amend the definition of “options communications” in proposed Rule 9.21(a) to expand the types of communications governed by Rule 9.21 to include independently prepared reprints and other communications between a member or member organization and a customer. The Exchange proposes to amend the definitions of “Advertisement” and “Sales Literature;” and define “Correspondence,” “Institutional Sales Material,” “Public Appearances,” and “Independently Prepared Reprints;” to clarify the rule. In addition, as previously noted, CBOE proposes to delete the definition of “Educational Material”.

f. Proposed Rule 9.21(e)

Proposed Rule 9.21(e) would set forth (i) required standards for options communications that are not preceded or accompanied by an ODD and (ii) standards for options communications used prior to delivery of an ODD. These requirements generally

clarify and restate the requirements contained in the current Interpretations and Policies .02 of Rule 9.21.

g. Interpretations and Policies

Proposed Rule 9.21(e)(i)(B) requires options communications to contain contact information for obtaining a copy of the ODD. Proposed Interpretation and Policy .01 would include the provisions found in current Interpretation and Policy .02A regarding how this requirement may be satisfied. In addition, as noted above, the provisions of Interpretation and Policy .01 regarding limitations on the use of options communications are proposed to be incorporated into proposed Rule 9.21(d).

As previously noted, the provisions of Interpretation and Policy .02 that outline what is permitted in an advertisement are proposed to be deleted and the provisions relating to standards for options communications used prior to delivery of the ODD are proposed to be incorporated into proposed Rule 9.21(e)(ii).

Interpretation and Policy .03, which concerns educational material, is proposed to be deleted as noted above.

Interpretation and Policy .04 sets forth the standards applicable to Sales Literature. Interpretation and Policy .04A sets forth the requirement that Sales Literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics or other technical data, will be supplied upon request. The Exchange proposes to redesignate Interpretation and Policy .04A as proposed Rule 9.21(d)(vii).

Section B of Interpretation and Policy .04 pertains to standards for Sales Literature that contains projected performance figures. Section C of Interpretation and Policy .04 pertains to standards for Sales Literature that contains historical performance

figures. The Exchange proposes to redesignate Section B of Interpretation and Policy .04 as proposed Interpretation and Policy .02 and Section C of Interpretation and Policy .04 as proposed Interpretation and Policy .03.

Rule 9.21 currently requires that a copy of the ODD precede or accompany options related sales literature. The Exchange is proposing to modify the ODD delivery requirement applicable to sales literature to provide that an ODD must precede or accompany any communication that conveys past or projected performance figures involving options or constitutes a recommendation pertaining to options.¹⁴

A notice providing the name and address of a person from whom the ODD may be obtained would be required in sales literature that does not contain a recommendation or past or projected performance figures. Because CBOE is proposing to merge educational material into the sales literature category,¹⁵ this amendment would continue to allow communications that are educational in nature to be disseminated without being preceded or accompanied by a copy of the ODD.

The Exchange proposes to redesignate Section D of Interpretation and Policy .04 as proposed Interpretation and Policy .04. The Exchange proposes to delete Sections E and F of Interpretation and Policy .04. The Exchange believes Section E is unnecessary because worksheets are included in the definition of Sales Literature. The Exchange believes Section F is no longer necessary because the Exchange is proposing to clarify the record-keeping requirements applicable to options communications in proposed Rule 9.21(b)(iv).

¹⁴ See proposed Rule 9.21(e)(i)(C) and proposed Interpretation and Policies .02 and .03

¹⁵ See Proposed Rule 9.21(a)(ii).

Statutory Basis.

The proposed amendments to Exchange Rule 9.21 would reflect the exemption from the provisions of the Securities Act (other than the anti-fraud provisions) for standardized options that are traded on a registered national securities exchange or on a registered national securities association, and would update and reorganize the rule. The proposed amendments to Exchange Rule 9.21 thus are consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5)¹⁶ of the Act in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, by providing the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between CBOE's and other SRO's options communications rules.

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

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. Please include File Number SR-CBOE-2007-30 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, D.C. 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-30. 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

¹⁶ 15 U.S.C. 78f(b)(5).

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 Room, 100 F Street, NE, Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2007-30 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.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

SR-CBOE-2007-30
Exhibit 5

(Changes are indicated by underlining additions and [bracketing deletions].)

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

CHAPTER IX

Doing Business with the Public

Rule 9.21. Options Communications [to Customers]

[(a) *General Rule.* No member or member organization or person associated with a member shall utilize any advertisement, educational material, sales literature or other communications to any customer or member of the public concerning options which:

- (i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;
- (ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;
- (iii) contains hedge clauses or disclaimers which are not legible, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such communication; or
- (iv) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.]

(a) *Definitions.* For purposes of this Rule and any interpretation thereof, "options communications" consist of:

(i) Advertisements. The term "advertisements" shall include any material concerning options, other than an independently prepared reprint and institutional sales material, that is published, or used in any electronic or other public media, including any website, newspaper, magazine or other periodical, radio, television, telephone or tape recording, video tape display, motion picture, billboards, signs or telephone directories (other than routine listings).

(ii) Sales Literature. The term "sales literature" shall include any written or electronic communication concerning options other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally available to customers or the public, including circulars, research reports, market letters, performance reports or summaries, worksheets, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article and press release concerning a member's products or services.

(iii) Correspondence. The term "correspondence" shall include any written letter or electronic mail message distributed by a member to: (A) one of more of its existing retail customers; and (B) fewer than 25 prospective retail customers within any 30 calendar-day period.

(iv) Institutional Sales Material. The term "institutional sales material" shall include any communication concerning options that is distributed or made available only to institutional investors. The term institutional investor shall mean any qualified investor as defined in Section 3(a)(54) of the Securities Exchange Act of 1934.

(v) Public Appearances. The term "public appearance" shall include any participation in a seminar, forum (including an interactive electronic forum), radio, television or print media interview, or other public speaking activity, or the writing of a print media article, concerning options.

(vi) Independently Prepared Reprints. The term "independently prepared reprints" shall include any reprint or excerpt of an article issued by a publisher concerning options, provided that: the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint or excerpt that the member is promoting; neither the member using the reprint or excerpt nor any underwriter or issuer of a security mentioned in the reprint or excerpt has commissioned the reprint or excerpted article; and the member using the reprint or excerpt has not materially altered its contents except as necessary to make the reprint or excerpt consistent with applicable regulatory standards or to correct factual errors.

(b) Approval by Registered Options Principal.

(i) All advertisements, sales literature (except completed worksheets), and [educational material] independently prepared reprints issued by a member or member organization pertaining to options shall be approved in advance by a Registered Options Principal designated by the member or member organization's written supervisory procedures. [Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the member or member organization and be kept at an easily accessible place for examination by the Exchange for a period of three years.]

(ii) Correspondence need not be approved by a Registered Options Principal prior to use, unless such correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the member. All correspondence is subject to the supervision and review requirements of Rule 9.8.

(iii) Institutional sales material relating to options need not be approved by a Registered Options Principal prior to use, but is subject to the supervision and review requirements as set forth in the written supervisory procedures of the member or member organization.

(iv) Copies of the options communications shall be retained by the member or member organization in accordance with Rule 17a-4 under the Securities Exchange Act of 1934. The names of the persons who prepared the options communications, the names of the

persons who approved the options communications, and the source of any recommendations contained therein shall be retained by the member or member organization and kept in the form and for the time periods required for options communications by Rule 17a-4.

(c) *Exchange Approval Required [for Options Advertisements and Educational Material]*. In addition to the approval required by paragraph (b) of this Rule, [every] all advertisements, [and all educational material] sales literature and independently prepared reprints of a member or member organization pertaining to standardized options that is not accompanied or preceded by the applicable current options disclosure document ("ODD") shall be submitted to the [Department of Compliance of the] Exchange at least ten calendar days prior to use (or such shorter period as the [Department]Exchange may allow in particular instances) for approval and, if changed or expressly disapproved by the Exchange, shall be withheld from circulation until any changes specified by the Exchange have been made or, in the event of disapproval, until the communication[advertisement or educational material] has been resubmitted for, and has received, Exchange approval. The requirements of this paragraph shall not be applicable to:

(i) [advertisements or educational material] options communications submitted to another self-regulatory organization having comparable standards pertaining to such [advertisements or educational material] communications and

(ii) [advertisements] communications in which the only reference to options is contained in a listing of the services of [a] the member organization.

[(d) Except as otherwise provided in the Interpretations and Policies hereunder, no written materials respecting options may be disseminated to any person who has not previously or contemporaneously received one or more current options disclosure documents.]

(d) General Rule. No member or member organization or associated person shall use any options communication which:

(i) Contains any untrue statement or omission of a material fact or is otherwise false or misleading.

(ii) Contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts.

(iii) Contains cautionary statements or caveats that are not legible, are misleading, or are inconsistent with the content of the materials.

(iv) Contains statements suggesting the certain availability of a secondary market for options.

(v) Fails to reflect the risks attendant to options transactions and the complexities of certain options investment strategies. Any statement referring to the potential opportunities presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities must be avoided.

(vi) Fails to include a warning to the effect that options are not suitable for all investors or contains suggestions to the contrary.

(vii) Fails to include a statement that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics, or other technical data, will be supplied upon request.

Paragraphs (vi) and (vii) shall not apply to institutional sales material as defined in this Rule 9.21.

[(e) Definitions. For purposes of this Rule, the following definitions shall apply:

(i) The term "advertisement" shall include any sales material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video device, telecommunications device, billboards, signs or through written sales communications to customers or the public that are not required to be accompanied or preceded by one or more current options disclosure documents.

(ii) the term "educational material" shall include any explanatory material distributed or made generally available to customers or the public that is limited to information describing the general nature of the standardized options markets or one or more strategies.

(iii) The term "sales literature" shall include any written communication (not defined as an "advertisement" or as "educational material") distributed or made generally available to customers or the public that contains any analysis, performance report, projection or recommendation with respect to options, underlying securities or market conditions, any form of worksheets, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures or similar such events. "Sales literature" also includes telemarketing scripts.]

(e) Standards Applicable to Options Communications

(i) Unless preceded or accompanied by the ODD, options communications shall:

(A) Be limited to general descriptions of the options being discussed.

(B) Contain contact information for obtaining a copy of the ODD.

(C) Not contain recommendations or past or projected performance figures, including annualized rates of return, or names of specific securities.

(ii) Options communications used prior to ODD delivery may:

(A) Contain a brief description of options, including a statement that identifies registered clearing agencies for options. The text may also contain a brief description of the general attributes and method of operation of the exchanges on which options are traded, including a discussion of how an option is priced.

(B) Include any statement required by any state law or administrative authority.

(C) Include advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics, provided such material is not misleading.

... Interpretations and Policies:

.01 The Rule 9.21(e)(i)(B) requirement to include contact information for obtaining a copy of the ODD may be satisfied by providing a name and address or one or more telephone numbers from which the current options disclosure document may be obtained; directing existing clients to contact their registered representative; or including a response card through which a current options disclosure document may be obtained. An internet address may also be used, however, such an address must be accompanied by either a telephone number or mailing address for use by those investors who do not have access to the internet. [The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement, educational material or sales literature which discusses the uses or advantages of options. Such communications shall include a warning to the effect that options are not suitable for all investors. In the preparation of written communications respecting options, the following guidelines shall be observed:

A. Any statement referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as "with options, an investor has an opportunity to earn profits while limiting his risk of loss", should be balanced by a statement such as "of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

B. It shall not be suggested that options are suitable for all investors.

C. Statements suggesting the certain availability of a secondary market for options shall not be made.]

[.02 Advertisements pertaining to options shall conform to the following standards:

A. Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received one or more options disclosure documents) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current options disclosure document(s) may be obtained. (In addition to providing an address, this requirement may be satisfied if the advertisement provides one or more telephone numbers from which the current options disclosure document may be obtained, directs existing clients to contact their registered representative, or includes a response card through which a current options disclosure document may be obtained. An internet address may also be used, however, such an address must be accompanied by either a telephone number or mailing address for use by those investors who do not have access to the internet.) Advertisements conforming to these standards may have the following characteristics:

(i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is the Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of the Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);

(ii) The advertisement may include any statement required by any state law or administrative

authority;

(iii) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

B. The use of recommendations or of past or projected performance figures, including annualized rates of return, is not permitted in any advertisement pertaining to options.]

[.03 Educational material, including advertisements, pertaining to options may be used if the material meets the requirements of Rule 134a under the Securities Act of 1933; those requirements are as follows:

(i) The potential risks related to options trading generally and to each strategy addressed are explained;

(ii) No past or projected performance figures, including annualized rates of return are used;

(iii) No recommendation to purchase or sell any option contract is made;

(iv) No specific security is identified other than

(a) a security which is exempt from registration under the Act, or an option on such exempt security, or

(b) an index option, including the component securities of the index; or

(c) a foreign currency option; and

(v) The material contains the name and address of a person or persons from whom the appropriate current Options Disclosure Document(s), as defined in Rule 9b-1 of the Securities Exchange Act of 1934, may be obtained. In addition to providing an address, this requirement may be satisfied if the educational material provides one or more telephone numbers from which the current options disclosure document may be obtained, directs existing clients to contact their registered representative, or includes a response card through which a current options disclosure document may be obtained. An internet address may also be used, however, such an address must be accompanied by either a telephone number or mailing address for use by those investors who do not have access to the internet.]

[.04].02 Projections. [Sales literature pertaining to options shall conform to the following standards:

A. Sales literature shall state that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.]

[B.] Options [Such]communications may contain projected performance figures (including projected annualized rates of return), provided that:

(i) All such communications are accompanied or preceded by the ODD.

(ii) [(i) n]No suggestion of certainty of future performance is made.[]]

(iii) [(ii) p] Parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.).[;]

(iv) [(iii) a] All relevant costs, including commissions, fees and interest charges ([if] as applicable[with regard to margin transactions]) are disclosed.[;]

(v) [(iv) s] Such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation.[;]

(vi) [(v) a] All material assumptions made in such calculations are clearly identified (e.g., "assume option expires", "assume option unexercised", "assume option exercised," etc.).[;]

(vii) [(vi) t] The risks involved in the proposed transactions are also discussed.[;]

(viii) [(vii) i] In communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

.03[C.] Historical Performance

[Such] Options communications may feature records and statistics which portray the performance of past recommendations or of actual transactions, provided that:

(i) All such communications are accompanied or preceded by the ODD.

(ii) [(i) a] Any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period.[;]

(iii) [(ii) s] Such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request.[;]

(iv) [(iii) such communications disclose a] All relevant costs, including commissions, fees, and interest charges ([if] as applicable[with regard to margin transactions]) are disclosed and,].

(v) [w] Whenever such communications contain annualized rates of return[are used], all material assumptions used in the process of annualization are disclosed.[;]

(vi) [(iv) a] An indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid.[;]

(vii) [(v) s]Such communications state that the results presented should not and cannot be viewed as an indicator of future performance.[]; and]

(viii) [(vi) a]A Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

[D.] .04 Options Programs. In [the case of] communications regarding an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

[E. Options worksheets utilized by a member or its associated persons, must comply with the requirements applicable to sales literature.

F. Communications that portray performance of past performance or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.]