

[Release No. 34-35430; File No. SR-CBOE-94-48]

**Self-Regulatory Organizations;
Chicago Board Options Exchange,
Inc.; Order Granting Approval to
Proposed Rule Change Relating to the
Placement of CBOE Memberships Into
Trusts**

March 1, 1995.

I. Introduction

On December 1, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new Rule 3.25, which would enable an individual CBOE member to place his membership in trust for estate planning purposes, subject to certain requirements.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35220 (Jan. 11, 1995), 60 FR 3889 (Jan. 19, 1995). No comments were received on the proposal.

II. Description of the Proposals

The Exchange proposes to adopt new Rule 3.25, which would permit individual members to place their memberships into trusts under certain conditions. The proposed rule lays out the framework of a permissible trust and imposes substantive as well as procedural obligations on a member transferring his membership into a trust ("trust member").

The proposed rule provides the structure of a trust into which a member may transfer his membership. A trust member must be the sole trustee and sole beneficiary of the trust during his lifetime. The trust member must remain personally liable for all obligations and liabilities associated with the membership, which continues to be subject to the rules of the Exchange. Subject to the collateral deposit requirements of Rule 3.14(c), a membership in trust may be transferred during the lifetime of the trust member or at his death to an eligible family member who is approved for Exchange membership in accordance with Rule 3.14(c)(1) or during the lifetime of the trust member to a member organization in accordance with Rule 3.14(c)(3). A membership in trust may also be transferred back to the trust member to be held directly and not in a trust.

The proposed rule imposes substantive obligations on a member who seeks to transfer his membership by requiring that certain terms be included in the trust agreement. Specifically, a member's trust agreement must provide for a successor trustee for the purpose of transferring the membership in the event of the trust member's death, legal incompetence, or any other condition that substantially impairs the member's ability to transact ordinary business.³ A legally qualified individual or institution may be appointed as successor trustee for this purpose.⁴ A trust agreement also may provide the successor trustee with the authority to continue holding the membership in trust for the benefit of a trust member during any period of his legal incompetency or disability as long as the membership is leased during that period in accordance with Rule 3.16(b). In addition, the proposed rule requires trust agreements to exempt the Exchange from liability for any actions or inactions of the trust member or any successor trustee with respect to the administration of the trust or the management of the trust assets.

The proposed rule also contains procedural requirements in placing a membership in trust. The proposed rule requires an individual member who seeks to transfer his membership into a trust to provide the Exchange with a copy of the trust agreement with a certification by the attorney who prepared the agreement stating that it conforms to the requirements of proposed Rule 3.25. The Exchange reserves a right to disapprove the transfer if it finds that the trust agreement does not meet the requirements of the proposed rule. The Exchange will provide a member with a written notification if the proposed transfer is disapproved.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).⁵ In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an

³ A physician who has personally examined or treated the trust member must certify in writing that the trust member has become disabled.

⁴ The successor trustee must transfer the membership in accordance with the rules of the Exchange and subject to the right of the Exchange to offer the membership for sale in accordance with Rule 3.14(b)(1).

⁵ 15 U.S.C. 78f(b) (1988).

exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the new proposed Rule 3.25 achieves a reasonable balance between the Exchange's interest in providing members with the flexibility to plan their estate and its interest in regulating and protecting its membership. Under proposed Rule 3.25, a member may transfer his membership to a trust provided that the trust agreement contains certain provisions relating to (1) the applicable procedures for a subsequent transfer of the membership contained in the trust and (2) the exclusion of the CBOE from liability for certain trust actions or omissions.

Moreover, the trust agreement must be submitted to the Exchange for review and such trust agreement can be disapproved by written notice to a member if it fails to meet the above conditions or other requirements imposed by the proposed rule. The Commission believes that these conditions are an appropriate means of addressing the unique concerns in maintaining and/or transferring an exchange membership that is held in trust form. The proposed rule change does not affect the substantive requirements and duties of a member whose interest is held in trust. In particular, a "trust member" shall remain personally responsible for all obligations and liabilities associated with the membership and its use, and the membership will remain subject to all of the rules of the CBOE. Overall, this approach allows the Exchange to provide members with useful, but appropriately controlled estate planning flexibility.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-CBOE-94-48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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⁶ 15 U.S.C. 78s(b)(2) (1988).

⁷ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).