



Regulatory Circular RG02-65

Date: August 6, 2002
To: Members and Member Organizations
From: Modified Trading System Appointments Committee
Re: Repeal of Restriction on Floor Brokers from Trading in Crowd of Affiliated DPMs

The SEC recently approved a rule change that repeals CBOE Rule 8.91(d). (*See* below for rule change text). Rule 8.91(d) prohibited members affiliated with a DPM from acting as a floor broker in any trading crowd in which the DPM acted as DPM. Pursuant to this SEC order, generally, CBOE members acting as floor brokers are now free to trade in the same crowd as an affiliated DPM. However, CBOE members are reminded that the repeal of this restriction does not relieve DPMs from their obligations under other Exchange rules.

At the time it was adopted, Rule 8.91(d) sought to inhibit a DPM from purposely using an affiliated floor broker(s) to circumvent the DPM's obligation to: (1) place in the public order book orders eligible for entry into the book; (2) accord priority to any public customer order which the DPM represents as agent over the DPM's principal transactions; (3) not charge any brokerage commission with respect to the execution of any order for which the DPM acts as both agent and principal; and (4) not represent discretionary orders. Rule 8.91(d) was not recently repealed in order to allow a DPM to avoid these obligations, but to encourage legitimate competition on the CBOE.

To that end, please note that, despite the deletion of Rule 8.91(d), any DPM organization that directly or indirectly engages in the above practices still may be found in violation of CBOE Rule 8.85, which establishes a member's obligations and restrictions (including the aforementioned practices) when acting as a DPM, and Rule 4.1 regarding just and equitable principles of trade. Similarly, a floor broker affiliated with a DPM is bound by the general rules of conduct applicable to all CBOE members.

Any questions regarding this rule change may be directed to Karen Charleston, Market Monitoring, at (312) 786-7724, or Jim Flynn, Legal Division, at (312) 786-7070.

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Limitations on Dealings of DPMs and Affiliated Persons of DPMs

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Rule 8.91 (a) – (c) (No Change)

(d) ~~Deleted. No member affiliated with a DPM may act as Floor Broker in any trading crowd in which the DPM acts as a DPM. This paragraph (d) shall not apply to a DPM Designee of a DPM acting on behalf of the DPM in its capacity as a DPM.~~

(e) (No Change)