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June 5, 2013

Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609

Re: SR-CBOE-2013-045

Dear Ms. Murphy:

The Futures Industry Association Principal Traders Group (“FIA PTG”) appreciates the opportunity to comment on the above referenced proposed rule filing by the Chicago Board Options Exchange, Incorporated (“CBOE”). FIA PTG is composed of firms that trade their own capital on the exchange-traded markets, including the equity options markets. Our members engage in manual, automated, and hybrid methods of trading and are active in a variety of asset classes, such as foreign exchange, commodities, fixed income, and equities. We are a critical source of liquidity in the exchange-traded markets, allowing those who use these markets to manage their business risks to enter and exit the markets efficiently.

Although FIA PTG strongly supports the principles underlying the CBOE’s proposal, for the reasons outlined below, FIA PTG does not believe that the Commission should approve CBOE’s proposal without further clarification of what the rule will require of CBOE members and an analysis of the costs and benefits of such requirements.

**Background**

CBOE proposes to amend its Rule 4.3 to require Trading Permit Holders (“TPHs”) to create and maintain a Business Continuity Plan (“BCP”). Like FINRA’s Rule 4370, CBOE’s proposal would require TPHs to create and maintain a written BCP identifying procedures reasonably designed to enable the TPH to meet its existing obligations to customers. In addition, such procedures must address the TPH’s existing relationships with other broker-dealers and third parties. Furthermore, the CBOE’s proposal would require TPHs to conduct an annual documented review of its BCP to determine whether any modifications are necessary in light of changes to the TPH’s operations, structure, business, or location and to designate a member of senior management to approve the plan and be responsible for conducting the required annual review.

CBOE's proposal also includes a requirement not included in FINRA's Rule 4370. Specifically, CBOE's proposal would require a risk assessment, an annual test of all mission critical systems (including financing lines), and full documentation related to the test.

FIA PTG does not believe that the Commission should approve CBOE's proposal without further clarification of what the rule will require of CBOE members and an analysis of the costs and benefits of such requirements. In particular, CBOE's proposal differs from FINRA's Rule 4370 in how it would apply to firms without customers (e.g., options market makers), and in its testing and certification requirements. Moreover, because the policy issues raised by CBOE's proposal overlap with the issues raised by the Commission's proposed Regulation SCI, FIA PTG requests that the Commission defer approval of CBOE's proposal until the comment period for Regulation SCI ends and the Commission has an opportunity to review the comments submitted.

**A. CBOE's proposal is unclear in how it would apply to firms who do not have customers**

It is not clear what CBOE's proposal would require of TPHs that do not have customers, such as equity options market makers, and therefore FIA PTG cannot adequately comment on the impact of the proposal on its members. Specifically, it is unclear whether market makers would be required to have fully redundant connectivity to CBOE's disaster recovery site. The costs of full redundancy that would be needed in order for market makers to fulfill their market-making obligations would be substantial. CBOE should clarify whether such redundancy is required under the proposal and if so evaluate the costs to TPHs of such a requirement.

CBOE's statement that its proposed rule is similar to other exchange rules<sup>1</sup> and its citation to FINRA Rule 4370 is inadequate and unclear. The impact of CBOE's proposal on firms' non-customer business would be different from the impact of FINRA's rule on FINRA members. Unlike FINRA members, many CBOE TPHs are options market makers and do not have customers. CBOE's proposal does not recognize or evaluate the way its TPHs make markets on CBOE or the potential impact on CBOE's market if TPHs were required to operate from a disaster recovery site. The absence of such description or analysis leaves FIA PTG members uncertain about CBOE's expectations for TPHs or the goals it is attempting to accomplish with the proposal. Thus, although we support the underlying principles of this proposal,<sup>2</sup> the lack of clarity regarding CBOE's expectations makes it nearly impossible for FIA PTG firms to assess the proposal's impact on their businesses. At a minimum, CBOE must clarify its expectations under the proposal with respect to TPHs that have no customer business before the Commission can determine whether the proposal is consistent with securities laws.<sup>3</sup>

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<sup>1</sup> While other equity options exchanges have rules relating to emergency situations, they relate generally to the systems of the exchanges rather than to those of members.

<sup>2</sup> Namely, to ensure TPHs are prepared in the event of an emergency or other disruption to their business.

<sup>3</sup> The Commission also has an obligation under Section 3(f) of the Securities Exchange Act of 1934 ("Exchange Act") in reviewing SRO rules to consider or determine whether an

Moreover, and just as importantly, the issues and concerns raised by CBOE's proposal are also raised in the Commission's proposed Regulation SCI. In particular, CBOE's proposed rule would appear to impose similar requirements on TPHs as would be required indirectly by proposed Regulation SCI.<sup>4</sup> It is premature, therefore, to approve CBOE's proposal before the Commission has had the opportunity to fully consider the public comments regarding Regulation SCI.

**B. The Commission should require CBOE to consider the costs and benefits of the proposal and assess its impact on competition before approval**

As described above, FIA PTG is unclear what CBOE's proposal would require of TPHs that are market makers. It is equally unclear what CBOE estimates the costs and burdens would be of its proposal on TPHs that are non-market makers. FIA PTG believes that, prior to approving CBOE's proposed rule change, the Commission should require CBOE to clarify and evaluate the costs to TPHs imposed by its proposed rule, particularly any requirement to be able to trade on CBOE in the event that CBOE's primary site is unavailable. These costs of such requirement should be weighed against the value to investors and the securities market.

CBOE states in its filing that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. The CBOE's basis for this conclusion is solely that activity on the CBOE will not change because the proposal will require TPHs to have a plan to function as they normally do in the event of an emergency or other severe business disruption.

FIA PTG respectfully disagrees. Because CBOE has not fully explained its expectations under the proposal, it has failed to explain why any potential cost increases are "necessary or appropriate in furtherance of the purposes of the Exchange Act." FIA PTG believes CBOE must be required to evaluate and allow for public comment on why it is necessary or appropriate to impose potentially substantial costs on its members.<sup>5</sup>

Should CBOE intend to require all TPHs to have fully redundant capabilities, FIA PTG would question the benefit of such a requirement. The current competitive equity market structure, while complex, is also highly redundant. With the exception of exclusively-listed equity options, all securities trade on multiple venues. While there are many costs imposed on the industry by the proliferation of exchanges, one of the benefits is that, with respect to multiply listed options, each provides a back-up facility of the other exchanges. This redundancy is a positive byproduct

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action is necessary or appropriate in the public interest and to consider whether the action will promote efficiency, competition, and capital formation.

<sup>4</sup> Reg SCI: 17 CFR Parts 242 and 249; Release No. 34-69077 (Please refer to Pages 154-165 and particularly Question 147 on pages 161-162.)

<sup>5</sup> FIA PTG notes that many TPHs are not FINRA members and CBOE's proposed rule would represent a new requirement and not a harmonization as the CBOE asserts. CBOE's rule would, therefore, impose new costs on members that should be evaluated against the benefits.

of the multiple, competing markets facilitated and encouraged by the Commission's regulatory policy over the last 40 years. This redundancy also reduces the need for, and relative benefits of, individual exchange redundancy. As a consequence, the value to firms of supporting connectivity to a particular exchange's redundancy site is minimal, yet the costs are quite high.

**C. CBOE proposal differs from FINRA Rule 4370 by imposing a significant new requirement of testing and certification of continuity practices**

CBOE's proposal requires a risk assessment, an annual test of all mission critical systems (including financing lines), and full documentation related to the test. This requirement is not present in FINRA's Rule 4370 to which CBOE compares its proposal. The standard for CBOE's proposed testing requirement is vague and could create significant burdens on TPHs as well as competitive differences between different members and between exchanges. As a practical matter, it appears, at a minimum, that each member would need to arrange tests with financing counterparties, many or most of which are not CBOE TPHs and have no requirement to participate in a test. Moreover, the proposal is vague as to the nature of any financing test and it seemingly leaves it to TPHs to define such test. This is all the more vexing as most financial lines are a matter of some form of contract which governs the allocation or revocation of funding. Thus, it is quite difficult to understand how a TPH could test such financing as part of their obligations under the proposal.

This testing requirement also is similar to that proposed by the Commission in Regulation SCI. Because the comment period for Regulation SCI is not completed and the Commission has not yet had an opportunity to review those comments, approval of a similar CBOE rule would be premature.

**Conclusion**

Thank you again for the opportunity to provide you our thoughts on the Proposed Rule. We look forward to playing a constructive role in helping the Commission achieve its regulatory goals in the most effective manner.

Please contact Mary Ann Burns ([maburns@futuresindustry.org](mailto:maburns@futuresindustry.org)) if you have any questions regarding this request.

Respectfully,

Futures Industry Association Principal Traders Group



Walt Lukken  
President and Chief Executive Officer  
Futures Industry Association

U.S. Securities and Exchange Commission

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cc: Mary Jo White, Chairman  
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Daniel M. Gallagher, Commissioner  
Troy A. Paredes, Commissioner  
Elisse B. Walter, Commissioner  
John Ramsey, Acting Director, Division of Trading & Markets  
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