

April 4, 2017

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Notice of Meeting of Equity Market Structure Advisory Committee Meeting (File No. 265-29)

Dear Mr. Fields:

The Chicago Stock Exchange, Inc. (the “Exchange” or “CHX”) appreciates the opportunity to comment on the agenda items for the upcoming meeting (“Meeting”) of the Equity Market Structure Advisory Committee (“EMSAC”) Trading Venues Regulation Subcommittee (“Subcommittee”) on April 5, 2017. The Exchange would also like to thank the U.S. Securities Commission (“Commission”) and its staff for inviting the Exchange to participate on the Subcommittee panel.

I. Subcommittee Preliminary Recommendations

On April 3, 2017, the Subcommittee made two Preliminary Recommendations related to SRO liability limits and mitigating duplication with regulatory centralization.¹

With respect to SRO liability limits, the Subcommittee noted that most exchanges currently allow payment up to \$100,000 per member per day, with a \$250,000 aggregate limit for all members per day and a \$500,000 aggregate for all claims per month.² The Subcommittee recommended that all exchanges adopt the same framework, to the extent they do not already have it in place.³ In addition, the Subcommittee recommended that the Commission engage with SROs for further review of appropriate reserve fund limits and, specifically, recommended higher reserve fund limits for listing exchanges.⁴

With respect to mitigating duplication with regulatory centralization, the Subcommittee stated that the exchanges have unique expertise in regulating their market and, thus, it is beneficial for them to support and develop their own regulatory initiatives.⁵ The Subcommittee noted, however, that with the implementation of the Consolidated Audit Trail (“CAT”), there is a risk of significant regulatory duplication with respect to common SRO functions or obligations,

¹ Memorandum to EMSAC, from Subcommittee (April 3, 2017) (“Memorandum”).

² See Memorandum, id., at 2.

³ See id.

⁴ See id.

⁵ See id.

such as cross-market surveillance data.⁶ The Subcommittee recommended that to promote market integrity, the Commission should articulate and support minimum standards for cross-market regulation, which would be particularly useful because the SROs' overlapping responsibility for cross-market conduct creates the potential for regulatory gaps, a race to the bottom, or undesirable competition for regulatory fines.⁷ The Subcommittee also recommended that while each SRO could continue to develop and deploy cross-market surveillance patterns, the responsibility for further inquiry, investigation and enforcement should be given to a centralized regulatory.⁸ The Subcommittee added that under this approach, the exchanges would not be prevented from regulating and enforcing activity on their markets.⁹

II. SRO Rules Related to Limitation of Liability Should Not Harmonized.

The Exchange believes that the decision on whether an exchange should offer compensation to members for certain failures on its market and the amount of the corresponding liability levels is a business decision best left to the respective SROs, subject to Commission approval through the SRO rulemaking process. The ability of an exchange to compensate its members is a function of various factors, including the exchange's operational characteristics, size and cash flows; all of which may vary considerably depending on the market. If an exchange does not offer compensation to its members or adopts liability levels that are lower than other exchanges, market forces will dictate whether the exchange's business decision was a prudent one. To the extent that an exchange provides compensation to members, the Exchange agrees with the Subcommittee that efficiencies can be realized from procedural and operational consistency in its application. However, the Exchange does not believe that it would be appropriate for the Commission to increase and harmonize liability levels, much less require all exchanges to offer compensation to its members.

III. Regulatory Centralization Provides Benefits But Raises Competition Concerns.

The Exchange agrees with the Subcommittee that the exchanges are in the best position to regulate activity on their respective markets. The Exchange also agrees that the deployment of CAT presents a potential risk of inefficient regulatory duplication and its undesirable effects, and that these risks may be mitigated to a certain extent by adopting a framework based on some form of regulatory centralization.

That said, however, Exchange does not believe that the responsibility for the surveillance, investigation and enforcement of cross-market and cross-product activity should be centralized with any single SRO. Instead, the Exchange believes that the CAT offers all SROs the opportunity to enhance their regulatory programs, including the oversight of the trading activity of their members that includes a cross-market or cross-product component. By way of example, the Exchange has developed a specialized expertise in its regulation of Qualified Contingent Transactions. The Exchange's regulation of such trades, in which the

⁶ See Memorandum, supra note 1, at 3.

⁷ See id.

⁸ See id.

⁹ See Memorandum, supra note 1, at 4.

equity portion is executed on the Exchange and is exempt from compliance with Rule 611 to Regulation NMS, includes the review, investigation and, where appropriate, the prosecution of CHX Participant activity that is related to cross-market and cross-product trading. The Exchange believes that it should not be forced to abandon this expertise and abdicate this responsibility in favor of a single SRO, especially when the use of CAT data is expected to materially enhance the effectiveness of this program. Further, there are a number of other regulatory programs here at the Exchange and the other SROs that should not suffer a similar fate through EMSAC's endorsement of an inefficient and expensive regulatory monopoly for cross-market and cross-product regulation.

The Exchange would like to remind EMSAC that the SROs have worked well together for almost five years in creating and implementing the CAT NMS Plan, and continue to do so. The Exchange looks forward to continuing its coordination and collaboration with all SROs, not only in connection with the implementation, operation and use of the CAT, but also to maximize its regulatory benefits through the auspices of the CAT Operating Committee and Intermarket Surveillance Group. To be potentially forced, after dedicating the time and resources that it has to create the most sophisticated and expansive regulatory repository in history of the securities industry, to not be able to fully embrace its promise as manifested in the enhancement of its own regulatory program (especially in the context of cross-market and cross-product surveillance), is unfortunate, at best.

Simply put, the Exchange believes that competition from all SROs in the form of cross-market and cross-product regulatory offerings and services will lead to a more efficient and effective regulatory environment in a post-CAT environment. The Exchange further believes that any regulatory duplication that may result from such a competitive framework could be effectively minimized by leveraging the current regulatory framework for cooperation among the various SROs, as discussed above. Given that the CAT will provide all SROs with the necessary data to effectively surveil the cross-market and cross-product trading activity of all market participants, the Exchange believes that the existing competitive regulatory framework is desirable and fully achievable with Commission guidance concerning minimum regulatory standards.

* * *

The Exchange looks forward to discussing these and other issues in more detail with the Commission, its staff and other market participants.

Sincerely,



John K. Kerin