CBOE EXECUTE SUCCESS™

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Via Electronic Mail
Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090
Rule-Comments@SEC.GOV

Re: Response to Comment Letter on File No. SR-CBOE-2013-032

Dear Ms. Murphy:

Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") hereby submits this letter in response to the comments submitted to the U.S. Securities and Exchange Commission ("SEC" or "Commission") by International Securities Exchange ("ISE")[1] on the above referenced filing in which CBOE proposes to implement an order router subsidy program for complex orders.

By way of background, in 2007, CBOE established the Order Router Subsidy Program ("ORS Program").[2] The ORS Program allows CBOE to enter into subsidy arrangements with CBOE Trading Permit Holders ("TPHs"), and broker-dealers that are not CBOE TPHs, which provide certain order routing functionalities to other CBOE TPHs, broker-dealers that are not CBOE TPHs and/or use such functionalities themselves. The ORS Program is applicable to simple, non-complex orders only ("simple orders"). CBOE is now simply seeking to implement a similar order router subsidy program applicable to complex orders only (referred to as the "Complex Order Router Subsidy Program" or "CORS Program"). More specifically, the CORS Program would permit CBOE to enter into subsidy arrangements with any CBOE TPH (each, a "Participating TPH") or Non-CBOE TPH broker-dealer (each a "Participating Non-CBOE TPH") that provide certain order routing functionalities with respect to complex

1 See Letter from Michael J. Simon, Secretary, ISE to Elizabeth M. Murphy, Secretary SEC (March 15, 2013) ("ISE Letter").

2 See Securities Exchange Act Release No. 55629 (April 13, 2007), 72 FR 19992 (April 20, 2007) (SR-CBOE-2007-034). The description of the program was clarified in SR-CBOE-2008-27. See Securities Exchange Act Release No. 57498 (March 14, 2008), 73 FR 15018 (March 20, 2008) (SR-CBOE-2008-27). Additionally, the Program was extended to include broker-dealers that are not CBOE Trading Permit Holders in SR-CBOE-2010-117. See Securities Exchange Act Release No. 63631 (January 3, 2011), 76 FR 1203 (January 7, 2011) (SR-CBOE-2010-117).

orders to other CBOE TPHs, Non-CBOE TPHs and/or uses such functionalities itself. (The term "Participant" as used in this letter refers to either a Participating TPH or a Participating Non-CBOE TPH). To qualify for the complex order subsidy arrangement, a Participant's order routing functionality would, among other things, have to be capable of interfacing with CBOE's API to access current CBOE trade engine functionality and must be configured to cause CBOE to be the default destination exchange for complex orders, but allow any user to manually override CBOE as the default destination on an order-by-order basis. In its comment letter, ISE raises various issues regarding the CORS Program and the above referenced rule filing. CBOE responds to each issue in turn.

Best Execution Obligations

ISE's first comment relates to the fact that Participants of the CORS Program are not required to (i) enable their system to route to other exchanges that provide complex order execution systems and (ii) make complex order data from those exchanges available to users. ISE particularly argues that CBOE does not explain how not having these two requirements is consistent with a broker-dealer's best execution obligation. ISE then correctly notes that similar features are required under the ORS Program. ISE also correctly notes that the previous filings for the ORS Program do not contain an analysis of the program by the Commission, and yet ISE nonetheless proceeds to merely presume that the inclusion of these requirements was material to whether the ORS Program was consistent with the Securities Exchange Act of 1934 (the "Act") and broker-dealers' best execution obligations. While the Exchange acknowledges these particular features were relevant to best execution obligations under the ORS Program, the Exchange reiterates its position that it does not make sense to require these two features for a subsidy program that is applicable to complex orders only. ISE itself admits that complex orders are executed pursuant to a market structure that is "*completely different*" from that of simple orders.[3] As ISE points out, "…there is no consolidated market data or NBBO for complex orders, nor intermarket trade-through protection…"[4] Therefore, while the requirement to enable one's system to route to other options exchanges and provide market data to users may ensure best execution obligations are satisfied for orders subject to the NBBO, these features do not make sense in a market structure in which no NBBO or trade-through protection exists.

CBOE also responds that nothing in the CORS Program prevents or inhibits broker-dealers from complying with their best execution obligations. First, for example, any CBOE TPH or broker-dealer that is a non-CBOE TPH has the choice of whether to use a Participant's routing functionality altogether. Indeed, market participants do not have to use a Participant's system in order to route complex orders to the Exchange. The CORS Program also requires that users conduct best execution evaluations quarterly. Additionally, the CORS Program allows users to manually override the default

3 See ISE Letter at page 4.

4 See ISE Letter at page 5.

destination on an order-by-order basis. In response to ISE's assertion that any attempt to manually change an exchange destination on a transaction-by-transaction basis is unrealistic considering the speed in which orders are entered, CBOE states that the assertion is simply untrue. The Exchange notes a user must fill in all terms of an order prior to the entry of an order. Therefore, changing the default destination is often just one more keystroke or dropdown selection for the user and is far from overly burdensome.

Lastly, the Exchange emphasizes that the CORS Program in no way *prevents* Participants from connecting to other option markets or providing complex order data to users. Rather, it merely does not require implementation of these two requirements as a condition to participate in the Program. Similarly, the CORS Program does not prevent users of a Participant's system from subscribing to other exchanges for complex order market data.

Marketable Orders

ISE next takes issue with the CORS Program allowing default routing on all orders as opposed to just marketable orders. Particularly, ISE argues that CBOE's proposal to provide a financial incentive to default route all complex orders to CBOE has not been and cannot be justified under the Act. First, CBOE notes that this is merely a conclusory statement and that ISE wholly fails to articulate why it believes this proposal is inconsistent with the Act. CBOE does not believe that it is necessary to require Participants to implement a system that default routes only marketable complex orders and is further unaware of any rule or regulation under the Act requiring such. Moreover, CBOE believes that default routing of all complex orders is consistent with the Act. CBOE reemphasizes the fact that CBOE TPHs or broker-dealers that are non-CBOE TPHs have the choice of whether or not to use a Participant's routing functionality altogether. Complex orders, whether or not marketable, may be sent to the Exchange without using any Participant's system. Additionally, the Exchange again notes that a user may override the default destination on an order-to-order basis, whether or not the order is marketable and that to do so is not overly burdensome. Finally, the Exchange believes it is consistent with the Act to incentivize the sending of both marketable and non-marketable complex orders to the Exchange, as this leads to increased liquidity and creates greater trading opportunities that benefit all market participants.

Agreement

ISE notes that the above referenced rule filing states that Participants in the CORS Program need to sign an agreement and questions whether or not there may be terms in the agreement that should have been included in the rule filing. ISE also questions whether such an agreement is required under the existing ORS Program. In response, CBOE notes that Participants in both the ORS Program and CORS Program must sign an agreement agreeing to abide by the provisions of the respective programs and that those agreements are substantially similar. CBOE also asserts that all material terms and conditions of the subsidy arrangement are set forth in the rule filing. Any terms in the agreement that are not included in the filing are generally customary contract provisions (e.g., Intellectual Property Rights, Warranties and Limitations on Liability, Amendments, etc.). ISE also expresses concern that the agreement may include terms that contractually obligate participants to default route to CBOE for a minimum time period or in a minimum number of options classes. CBOE responds that the agreement contains no such provisions. ISE next seems to suggest that the requirement to default route all complex orders effectively creates an exclusivity agreement on its face, which ISE believes would violate a broker-dealer's duty of best execution. CBOE responds that the agreement in which all Participants must sign explicitly states that the relationship described in the agreement is non-exclusive and that nothing in the agreement prohibits either party from entering into any agreement with any third party as it may determine to be appropriate.

Rule Filing Submission

ISE lastly argues that the filing was inappropriately submitted pursuant to Section 19(b)(3)(A) and Rule 19b-4(f) of the Act and that the subsidy program is not a due, fee or charge by the CBOE. Rather, ISE believes that the filing should have been submitted pursuant to Section 19b(b)(2) of the Act "[g]iven the potential market structure and best execution issues the subsidy program presents..."[5] First, CBOE reiterates that it disagrees with ISE that the subsidy program presents best execution issues for the reasons described above. Regardless, CBOE notes that the subsidy program is rightly designated as establishing a due, fee or other charge. The CORS Program simply offers a subsidy to any Participating CBOE TPH or broker-dealer that is a non-CBOE TPH to subsidize the costs associated with providing order routing functionalities that meet certain criteria.

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CBOE respectfully requests that the Commission neither reject nor suspend File No. SR-CBOE-2013-032. Should you require any further information, please do not hesitate to contact the undersigned.

Very truly yours,

Cori Klott

Corinne Klott

cc: John Ramsay (SEC)
James Burns (SEC)
Heather Seidel (SEC)
Richard Holley (SEC)

5 See ISE Letter at page 5.