



September 20, 2013

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

Re: SR-CBOE-2013-076

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.

FIA PTG seeks to comment on the rule change, filed by CBOE with the Securities and Exchange Commission (the “Commission”) on July 22, 2013, concerning the Continuing Education (“CE”) Program for Proprietary Traders registered with CBOE. While FIA PTG supports part of CBOE’s proposal, for the reasons outlined below, FIA PTG believes that the Commission should suspend the portion of CBOE’s rule change that modifies CBOE Rule 9.3A(c)(1).

### **Background**

The submitted change to CBOE Rule 9.3A (the “Rule”) was filed with the Commission as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b-4(f)(6) thereunder. Under this process, the change to the Rule was effective upon filing with the Commission.

The change to the Rule consists of two operative parts: (i) the addition of language to Rule 9.3A setting forth the CE program a registered person is required to take and (ii) the addition of language to Rule 9.3A(c) that requires registered persons with a Series 56 registration to complete the Firm Element of the CE requirement.

The revised Rule that requires registered persons with a Series 56 registration to complete the Firm Element of the CE requirement means that Trading Permit Holders (“TPHs”), even if they do not have customers, must now conduct the Firm Element. The imposition of the Firm Element on TPHs is a new obligation for TPHs that do not transact customer business and is not required under the rules of other exchanges and FINRA.<sup>1</sup> For this reason, FIA PTG believes that the Commission, pursuant to Section 19(b)(3)(C) of the Act should temporarily suspend CBOE’s change to the Rule.

**A. CBOE’s rule change imposes new and distinct obligations on TPHs**

In its rule change filing the CBOE states that the change to the Rule is non-controversial because it merely changes the CE requirements and does not impose any additional obligations on TPHs. However, the Firm Element portion of the change to the Rule adds new obligations for those TPHs that do not transact customer business and have personnel who solely possess the Series 56 registration. In particular, TPHs that are proprietary trading firms had not, until the change to the Rule, been required to perform the Firm Element of CE. In fact, member firms that do not transact business with customers are exempt from the Firm Element of CE under the rules of other exchanges

Under FINRA and exchange rules, most TPHs are required to conduct appropriate annual compliance training with all of their associated persons, not only registered persons. There are meaningful differences between the annual compliance meeting requirement and the CBOE’s Firm Element requirement. The annual compliance meeting requirement focuses on compliance matters relevant to the persons attending the meeting. The Firm Element, according to CBOE Rule 9.3A(c)(2)(ii), must cover “general investment features and associated risk factors; suitability and sales practice considerations; and applicable regulatory requirements” of the securities products, services and strategies offered by the TPH. Additionally, as part of the Firm Element requirement, Rule 9.3A(c)(2)(i) requires TPHs to develop a written training plan and prioritize its training needs, neither of which are required as part of the annual compliance meeting requirement of FINRA or other exchanges. Accordingly, adding the Firm Element requirement increases a TPHs costs, as TPHs would have to either allocate resources or turn to

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<sup>1</sup> See NASDAQ Rule 1120, NASDAQ OMX PHLX Rule 640, NASDAQ OMX BX Rule 1120, NYSE Arca Rule 2.23, NYSE Arca Equities Rule 2.21, Chicago Stock Exchange Rule 11.

third-party providers to fulfill the Firm Element requirement. CBOE has not explained the purpose of this new burden on TPHs that do not transact business with customers.

**B. The guidelines to establish, and minimum requirements of, the Firm Element make little sense for TPHs who do not transact customer business**

CBOE provides no appropriate guidance on how proprietary, non-customer TPHs should develop and administer the Firm Element. Instead, Rule 9.3A(c)(2), which purports to provide standards and minimum standards when developing the Firm Element, is tailored to the types of firms that traditionally have had to administer the Firm Element of CE (i.e., firms that transact customer business).

The minimum standards set forth in Rule 9.3A(c)(2) state that a TPH's Firm Element *must* cover the following topics: (i) general investment features and associated risk factors; (ii) suitability and sales practice considerations; and (iii) applicable regulatory requirements.

The CBOE has not explained the benefits to the registered persons of a TPH who does not transact business with customers of meeting the Firm Element requirement that covers "general investment features and associated risk factors" and "suitability and sales practice considerations." Moreover, the absence of guidance or analysis leaves FIA PTG members uncertain about CBOE's expectations for TPHs or the goals it is attempting to accomplish with this Firm Element requirement.

At a minimum, CBOE should clarify its expectations under the proposal with respect to Firm Element CE before imposing any new obligations on TPHs. More appropriately, however, CBOE should amend the filing to remove the Firm Element requirement for TPHs that do not transact any customer business. As an alternative, the CBOE could seek to formalize a requirement for an annual compliance meeting, consistent with other exchanges and with FINRA rules.

**C. The rule change was improperly submitted pursuant to Section 19(b)(3)(A) of the Act and should be made available for comment prior to implementation.**

In order to self-certify a rule under Section 19(b)(3)(A) of the Act, a proposed rule must, generally: (i) constitute a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of an exchange; (ii) establish a due, fee, or other charge imposed by the exchange; or (iii) be concerned solely with the administration of the exchange. The Firm Element CE portion of the change to the Rule was not properly filed under Section 19(b)(3)(A) of the Act and should be made available for public comment under Section (19(b)(2) of the Act.

CBOE justified the filing under Section 19(b)(3)(A) of the Act because “the changes proposing [sic] to codify the exiting CE requirement do not impose any additional obligations to Trading Permit Holders...and that [t]he introduction [of] the Proprietary Trading Continuing Education Program merely changes the CE requirement but does not change the obligation that all registered person complete the CE...” This statement is incorrect with respect to the Firm Element requirement. As was stated above, the change to the Firm Element requirement of the Rule does impose an additional and new obligation on certain TPHs, and it does change both the TPHs’ and registered persons’ CE obligations. For this reason the Firm Element portion of the rule change was not properly filed under Section 19(b)(3)(A) of the Act and should therefore be withdrawn. In the alternative, the Commission should temporarily suspend the change to the Rule.

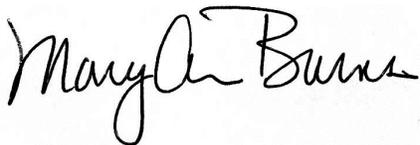
**Conclusion**

The FIA PTG would like to thank the Commission for the opportunity to provide our thoughts on the rule change. 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



Mary Ann Burns  
Chief Operating Officer  
Futures Industry Association

cc: Mary Jo White, Chairman  
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