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Via Electronic Mail (rule-comments@sec.gov)

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-CBOE-2013-100; Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to CBSX Trading Permit Holder Eligibility

Dear Ms. Murphy:

Virtu Financial BD, LLC (“Virtu”) appreciates the opportunity to provide the Securities and Exchange Commission (the “Commission”) with comments on the above referenced rule filing. In that filing, the Chicago Board Options Exchange (“CBOE”) proposes amendments to CBOE Stock Exchange (“CBSX”) Rule 50.4, which governs CBSX Trading Permit Holders. Virtu strongly objects to the proposed amendment for the following reasons: (1) the proposal violates Section 6(b)(2) of the Securities Exchange Act of 1934 (the “Exchange Act”); (2) the proposal is discriminatory against certain CBOE members; and (3) the proposal is an admission of the CBOE’s failure to satisfy its exchange obligations. Virtu requests that the CBOE amend its rule and satisfy its obligations as a registered securities exchange either directly or pursuant to a plan filed under Rule 17d-2.

Virtu is a registered broker dealer and a member of all of the registered securities exchanges in the US. Virtu is a CBOE member and a CBSX Trading Permit Holder. Virtu was required to obtain a CBSX Trading Permit in order to ensure compliance with Regulation NMS in connection with the CBOE’s launch of the CBSX as a protected venue under Regulation NMS.

The CBOE proposes to add CBSX Rule 50.4A which provides that a CBSX Trading Permit Holder may become or remain a CBSX Trading Permit Holder only if it is a member of a national

securities association. Through this simple amendment, the CBOE is inappropriately shifting its regulatory burden as an exchange operating a stock execution facility to the only registered securities association in the US, FINRA. Most securities exchanges in the US file plans under Rule 17d-2 to allocate their regulatory responsibilities to another self regulatory organization. However, CBOE has proposed a less costly, but seriously disruptive, method of satisfying its regulatory obligations.

Violation of Section 6(b)(2)

Section 6(b)(2) of the Exchange Act provides that

“An exchange shall not be registered as a national securities exchange unless the Commission determines that

(2) Subject to the provisions of subsection (c) of this section, the rules of the exchange provide that *any registered broker or dealer* or natural person associated with a registered broker or dealer *may become a member of such exchange* and any person may become associated with a member thereof.” (Emphasis added)

The CBOE’s proposed rule filing blatantly disregards, and clearly violates, Section 6(b)(2) of the Exchange Act. As disclosed in the CBOE’s proposed rule filing, there are 42 registered broker dealers that satisfy the explicit requirements of Section 6(b)(2). However, the CBOE somehow interprets Section 6(b)(2) to provide it the flexibility to exclude certain registered broker dealers based on their affiliation with certain other SROs. This clearly fails to satisfy what was contemplated and what is required under Section 6(b)(2).

Discriminatory Treatment of CBOE Members

Section 6(b)(5) of the Exchange Act provides that

“An exchange shall not be registered as a national securities exchange unless the Commission determines that

(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and *are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.*” (Emphasis added)

The CBOE’s proposed rule filing applies to CBSE Trading Permit Holders only. The CBOE’s amendment does not apply to CBOE Option Trading Permit Holders. The CBOE is a single exchange that operates an options facility and an equity facility. CBSX is not itself an exchange. The CBOE’s proposed rule would result in certain CBOE members that are not affiliated with a registered securities association being denied access to the CBOE exchange facility for equities. However, other CBOE members that are not registered with a registered securities association will continue to have access to the CBOE options facility. As a result, the CBOE is effectively discriminating against members that are registered broker dealers that trade equities. CBOE justifies this proposed discriminatory treatment by simply concluding that it would be too difficult to regulate members that trade equities. We believe this type of discrimination is not justified or permitted by the Exchange Act. CBOE should either satisfy its

obligations or cease operation of the CBSX equities facility until CBOE can adequately satisfy its obligations.

CBOE's Admission of Failing to satisfy its Regulatory Obligations

Section 6(b)(1) of the Exchange Act provides that

“An exchange shall not be registered as a national securities exchange unless the Commission determines that

(1) Such exchange is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, and the rules of the exchange.”

In its proposed rule filing, the CBOE writes

“The Exchange notes that as a member of the Intermarket Surveillance Group (“ISG”), the Exchange receives an equity audit trail of all equity market orders and trade information for away-trading activity. However, the equity audit trail the Exchange receives does not provide the granular level of detail to denote when a CBSX Trading Permit Holder is executing a trade as a customer through another broker dealer on an away market. Without such granular information, the Exchange is limited in the reviews it can conduct of this away activity.”¹

The CBOE justifies its proposed rule filing by concluding that it does not have adequate data to conduct its regulatory responsibility as an exchange. We would note that other exchanges that have similar memberships categories have found ways to satisfy their exchange obligations, and we believe CBOE has a variety of options that it can pursue to satisfy its regulatory responsibilities. If it fails to satisfy those responsibilities, then the CBOE's status as an exchange and its ability to operate the CBSX must be scrutinized. Again, it is not appropriate for an exchange to alter its membership requirements in order to satisfy its regulatory burden.

For the reasons discussed above, Virtu requests that CBOE amend or withdraw their proposed rule filing. In the interest of time, Virtu is submitting this comment letter in its present state. We believe there are additional flaws with the proposed rule but we are providing this letter as a summary of those most critical.

Regards,



Chris Concannon

¹ See Proposed Rule Filing footnote 6, pp.3.