CHX
Chicago Stock Exchange

December 3, 2013

VIA ELECTRONIC MAIL (rule-comments@sec.gov)

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
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:

The Chicago Stock Exchange, Inc. (the "Exchange" or "CHX") respectfully submits this comment letter in connection with the Securities and Exchange Commission's (the "SEC" or "Commission") solicitation of comments to the above-referenced rule filing (the "proposed rule filing"), through which the Chicago Board Options Exchange ("CBOE") proposes to require all future and current CBSX Trading Permit Holders to be members of a national securities association, as a condition to become and remain CBSX Trading Permit Holders (the "proposed rule").[1]

The Exchange is concerned with the precedent that will be set if the proposed rule filing is approved: a self-regulatory organization ("SRO") being permitted to adopt rules that will unilaterally shift some of its responsibilities to another SRO. Specifically, CBOE proposes to shift significant regulatory risk to FINRA outside of the existing and well-established regulatory framework. For this reason, the Exchange believes that the proposed rule is overreaching and undermines the Securities Exchange Act of 1934 (the "Act") and the rules thereunder, as discussed in detail below.

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[1] CBOE proposes to adopt CBSX Rule 50.4A, which will provide 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." See Exchange Act Release No. 70806 (November 5, 2013), 78 FR 67424 (November 12, 2013) (SR-CBOE-2013-100) ("Notice of Filing of a Proposed Rule Change Relating to CBSX Trading Permit Holder Eligibility"). Currently, the Financial Industry Regulatory Authority ("FINRA") is the only registered national securities association. CBOE also noted that "the termination of the Trading Permit Holder status of a CBSX Trading Permit Holder, that is also a CBOE Trading Permit Holder, in accordance with proposed Rule 50.4A, will not affect that CBSX Trading Holder's status as a CBOE Trading Permit Holder." Id.

Section 15(b)(8) of the Act and Rule 15b9-1 thereunder:

Section 15(b)(8) of the Act provides the following:

> It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member.[2]

However, Rule 15b9-1(a) under the Act provides the following:

> Any broker or dealer required by section 15(b)(8) of the Act to become a member of a registered national securities association shall be exempt from such requirement if it: (1) Is a member of a national securities exchange, (2) carries no customer accounts, and (3) has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than $ 1,000.[3]

The proposed rule conflicts with section 15(b)(8) and Rule 15b9-1 because it would require all CBSX Trading Permit Holders to become members of FINRA, including those CBSX Trading Permit Holders that would qualify for the Rule 15b9-1 exemption. Thus, the proposed rule directly contradicts Rule 15b9-1, which recognizes that certain broker-dealers should not be required to become members of a national securities association. The Exchange submits that any attempt by an SRO to abrogate or modify sections of the Act or rules thereunder is inappropriate, as only the Commission may promulgate changes or exemptions to SEC rules pursuant to its broad statutory authority.

Section 6(b)(8) of the Act:

The Exchange also submits that the proposed rule filing does not satisfy the requirements of section 6(b)(8) of the Act, which provides, in pertinent part, the following:

> An exchange shall not be registered as a national securities exchange unless the Commission determines that -- […] (8) the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of title. [4]

Contrary to CBOE's statement on the burden on competition,[5] the proposed rule imposes a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule will

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2 15 USCS § 78o.

3 17 CFR 240.15b9-1(a).

4 15 USCS § 78f(b)(8).

5 See Exchange Act Release No. 70806 (November 5, 2013), 78 FR 67424 (November 12, 2013) (SR-CBOE-2013-100) ("Notice") at p.8.

make it prohibitively expensive for some CBSX Trading Permit Holders to continue to hold CBSX Trading Permits or to become members of other exchanges. Consequently, the proposed rule would effectively prevent some CBSX Trading Permit Holders from becoming members of other exchanges.[6] In addition, CBSX Trading Permit Holders that are proprietary trading firms that do not carry public customer accounts would be required to bear the same costs of FINRA membership as CBSX Trading Permit Holders that carry public customer accounts.

Section 17(d) of the Act and Rule 17d-2 thereunder:

The Exchange submits that the aforementioned burdens on competition are not appropriate because section 17(d) of the Act[7] provides the mechanism through which an SRO could share certain regulatory responsibilities with other SROs, subject to approval by the Commission (e.g., a plan filed through Rule 17d-2 under the Act[8]).

The Exchange notes that the use of Rule 17d-2 plans is part of the existing and well-established regulatory framework that depends on the cooperation of all SROs. It is common practice for SROs to enter into, and withdraw from, Rule 17d-2 plans.[9] The Exchange, for instance, operates under numerous Rule 17d-2 plans, which are designed to prevent redundant regulatory oversight of our Participants. Thus, the use of Rule 17d-2 plans are well-established to address the regulatory concerns that CBOE states in its proposed rule filing.

As a final matter, the Exchange echoes the concerns of other comment letters that the proposed rule will discriminate against CBSX-only Trading Permit Holders, which is in violation of sections 6(b)(2)[10] and (5)[11] of the Act.[12] Specifically, as CBOE is one national securities exchange that operates an option facility and an equity facility (i.e., CBSX), we agree that the disparate treatment between CBOE/CBSX and CBSX-only Trading Permit Holders is impermissible under the Act.[13]

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6 The Exchange does not have a dual membership requirement for our Participants. In addition, BATS Exchange, Inc. Rule 2.3, which requires BATS members to be members of any other national securities exchange or association, does not impose a similar burden on competition because it permits membership with any other national securities exchange or association to the exclusion of none.

7 15 USCS §78q(d).

8 17 CFR 240.17d-2

9 See Letter from Martin H. Kaplan, Gusrae Kaplan Nusbaum PLLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2013.

10 15 USCS § 78f(b)(2).

11 15 USCS § 78f(b)(5).

12 See Letter from Chris Concannon, Virtu Financial BD, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 11, 2013.

13 Id.

For the reasons stated above, the Exchange respectfully requests that CBOE withdraw or amend the proposed rule filing.

Sincerely,

James Ongena
General Counsel, CHX