

December 20, 2013

Via Electronic Mail

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Rule-Comments@SEC.GOV

Re: Response to Comment Letters on File No. SR-CBOE-2013-100

Dear Ms. Murphy:

Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) submits this letter in response to comments submitted to the U.S. Securities and Exchange Commission (“Commission”) on the above referenced filing,¹ in which CBOE proposes to require a broker-dealer that chooses to become or remain a CBOE Stock Exchange, LLC (“CBSX”) Trading Permit Holder (“TPH”) to also be a member of a national securities association.² The Commission received comment letters on the Proposal from each of Virtu Financial BD, LLC (“Virtu Letter”),³ Gusrae Kaplan Nusbaum PLLC (“Gusrae Letter”),⁴ the Futures Industry Association Principal Traders Group (FIA PTG Letter),⁵ and the Chicago Stock Exchange, Inc. (“CHX Letter,”⁶ and collectively with the Virtu Letter, the Gusrae Letter and the FIA PTG Letter, the “Comment Letters”). The Exchange responds to the comments on the Proposal below.

¹ See Securities Exchange Act Release No. 70806 (November 5, 2013), 78 FR 67424 (November 12, 2013) (SR-CBOE-2013-100) (the “Proposal”).

² Currently, the Financial Industry Regulatory Authority (“FINRA”) is the only registered national securities association.

³ See letter from Chris Concannon, Virtu Financial BD, LLC, to Elizabeth M. Murphy, Secretary, Commission (November 11, 2013).

⁴ See letter from Martin H. Kaplan, Gusrae Kaplan Nusbaum PLLC, to Elizabeth M. Murphy, Secretary, Commission (November 18, 2013).

⁵ See letter from Mary Ann Burns, Chief Operating Officer, Futures Industry Association, to Elizabeth M. Murphy, Secretary, Commission (December 3, 2013).

⁶ See letter from James Ongena, General Counsel, Chicago Stock Exchange, Inc., to Elizabeth M. Murphy, Secretary, Commission (December 3, 2013).

I. The Proposal

The Proposal would add new CBSX Rule 50.4A to require 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” (i.e., currently FINRA). A CBSX TPH that failed to meet this requirement would be terminated upon written notice. The Proposal would grant broker-dealers that are CBSX TPHs as of the approval date of the Proposal six months to become FINRA members, if they are not already members. Within seven days of Commission approval of the Proposal, the Exchange would announce the date by which CBSX TPHs must become FINRA members (“Compliance Date”) in a Regulatory Circular. However, as stated in the Proposal, “if the Exchange determines that there are extenuating circumstances which result in a CBSX [TPH] not being able to comply with the Proposal by the Compliance Date, the Exchange may permit a CBSX [TPH] to retain its CBSX [TPH] status beyond the Compliance Date for such period of time as the Exchange deems reasonably necessary to enable the CBSX [TPH] to become a member of FINRA.”⁷

CBOE notes that the Proposal is intended to further compliance with Undertaking O of the June 11, 2013 Order Instituting Administrative and a Cease-and-Desist Proceedings involving CBOE and its affiliated exchange, C2 Options Exchange, Incorporated (“Undertaking O”).⁸ Undertaking O requires CBOE to enhance its regulation of CBSX-only TPHs (i.e., TPHs that are not either CBOE TPHs or members of another national securities exchange).

II. Comment Letters

None of the Comments Letters provides a basis for Commission disapproval of the Proposal under Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”). Section 19(b)(2)(C) of the Exchange Act provides that the Commission “shall approve a proposed rule change of a self-regulatory organization if it finds such proposed rule change is consistent with the requirements of [the Exchange Act] and the rules and regulations issued under [the Exchange Act] that are applicable to such organization.” Because, as discussed below in response to specific comments, the Proposal meets the standard for approval under Section 19(b)(2)(C) of the Exchange Act, the Commission should approve the Proposal.

The comments provided in the Comment Letters generally fall within the following broad categories, each of which will be addressed separately. Specifically, one or more of the Comment Letters argues that: (1) the Proposal is inconsistent with Section 6(b)(2) of the Exchange Act; (2) the Proposal is inconsistent with Section 15(b)(8) of the Exchange Act and Rule 15b9-1 thereunder; (3) the Proposal is discriminatory against certain CBOE members in

⁷ See Proposal, note 1, supra, at 67425. As of the date of this letter, 38 CBSX TPHs are not also FINRA members.

⁸ Securities Exchange Act Release No. 69726 (June 11, 2013).

violation of Section 6(b)(5) of the Exchange Act; (4) the Proposal is an admission of CBOE's failure to satisfy its regulatory obligations under Section 6(b)(1) of the Exchange Act; and (5) the Proposal would: (a) impose significant costs on CBSX TPHs that are not otherwise required to be FINRA members, when there are less expensive alternatives available, and (b) as a related matter, impose a burden on competition in violation of Section 6(b)(8) of the Exchange Act. As discussed below, each of these arguments is either flatly incorrect or at a minimum not sufficiently supported by facts to warrant Commission disapproval of the Proposal. The Commission should therefore approve the Proposal as filed.

A. Proposal's Consistency with Section 6(b)(2) of the Exchange Act

Each of the Virtu Letter and the FIA PTG Letter argues incorrectly that the Proposal is inconsistent with Section 6(b)(2) of the Exchange Act. 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:⁹

"Subject to the provisions of subsection 6(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."

Section 6(c), in turn, provides the three enumerated statutory exclusions from exchange membership: (1) failure to register as a broker-dealer; (2) statutory disqualification; and (3) failure to meet standards of financial responsibility or operational capacity, or a showing that the party has or that there is a reasonable likelihood that they may engage in acts or practices inconsistent with just and equitable principles of trade.¹⁰

Each of the Virtu and FIA PTG Comment Letters incorrectly infers from these statutory provisions that any person meeting the general requirements of Section 6(b)(5) and who does not fall within any of the categories of persons enumerated in Section 6(c) of the Exchange Act is always entitled to exchange membership. That of course is incorrect. Exchange rules virtually always provide bases for denial of membership in addition to those enumerated in Exchange Act Section 6(c).¹¹ Moreover, as each of the CHX Letter and the Proposal states, other exchanges currently require membership on one or more additional national securities exchanges as a condition to membership. For example, NYSE Rule 2(b)(i) states that the term "member

⁹ 17 U.S.C. 78f(b)(2).

¹⁰ 15 U.S.C. 78f(c).

¹¹ See, e.g., NYSE Rule 311 (Formation and Approval of Member Organizations); NASDAQ OMX PHLX Rule 901 (Denial of Membership).

organization” means a registered broker or dealer (unless exempt pursuant to the [Exchange Act]) that is a member of [FINRA] or another registered securities exchange. Member organizations that conduct business with public customers or on the Floor of the [NYSE] shall at all times be members of FINRA.” Similarly, Rule 2.5 (a)(4) of each of BATS Exchange, Inc., BATS-Y Exchange, Inc., EDGA Exchange, Inc. and EDGX Exchange, Inc. provide that “[n]o person may become a Member or continue as a Member in any capacity on the [applicable exchange] where:...(4)... such person is not a member of another registered national securities exchange or association.”

Perhaps most significant is the fact that, as the Proposal states, former NYSE Rule 2(b), adopted in 2007,¹² also required membership in FINRA as a condition precedent to becoming or remaining a member organization of that exchange (that earlier version of NYSE Rule 2(b) was amended in 2009 to require membership in either another national securities exchange or FINRA as a condition to NYSE membership).¹³ In its order approving that proposed rule change, the Commission explicitly found that the proposed rule change was consistent with the requirements of Section 6 of the Exchange Act,¹⁴ thereby clearly indicating that this statutory provision does not prevent exchanges from requiring membership in FINRA as a condition to exchange membership.

B. Proposal’s Consistency with Section 15(b)(8) of the Exchange Act

The CHX Letter argues that the Proposal is inconsistent with Section 15(b)(8) of the Exchange Act, which provides that:

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.¹⁵

¹² See Securities Exchange Act Release No. 56654 (October 12, 2007), 72 FR 59129 (October 18, 2007) (SR-NYSE-2007-67) (order approving proposed rule change relating to NYSE Rule 2) (“2007 NYSE Order”).

¹³ See Securities Exchange Act Release No. 60318 (July 16, 2009), 74 FR 36797 (July 24, 2009) (SR-NYSE-2009-63). As noted above, however, NYSE member organizations that conduct business with public customers or on the NYSE floor are still required to be FINRA members.

¹⁴ See note 12, *supra*.

¹⁵ 15 U.S.C. 78o(b)(8).

The CHX Letter notes further that the Commission has, by rule, provided an exception to Section 15(b)(8), in Rule 15b9-1 under the Exchange Act. That rule provides that:

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 \$1,000.¹⁶

The CHX Letter argues that in light of the exception from the requirements of Section 15(b)(8) contained in Rule 15b9-1, requiring CBSX TPHs to become FINRA members would constitute an abrogation or modification of the Exchange Act or Commission rules thereunder by CBOE.

The unspoken premise of the CHX Letter's argument is that an exchange cannot impose stricter membership requirements than the requirements of Section 15(b)(8) and Commission Rule 15b9-1. That assumption is incorrect. Rule 15b9-1 deals only with whether a broker-dealer is "required by Section 15(b)(8) of the Exchange Act" to become a member of a registered national securities association. Rule 15b9-1 has no application if the requirement to become a member of a registered national securities association is required not "by Section 15(b)(8) of the Exchange Act," but by some other authority, such as an exchange rule. Neither Section 15(b)(8) nor Rule 15b9-1 precludes a national securities exchange from adopting a more restrictive rule concerning when a member of that exchange must become a member of a national securities association. In fact, exchanges often impose requirements on their members that are stricter than those specifically enumerated in the Exchange Act and Commission rules.¹⁷ In this regard, the Commission has stated that "to the extent that the rules of the NYSE, or any self-regulatory organization, conflict with the Commission's stated policy, the more restrictive requirement would govern."¹⁸ As previously stated, in the 2007 NYSE Order, the Commission approved a proposed NYSE rule that, once adopted, required FINRA membership of all NYSE member organizations.¹⁹ Because CBOE is relying on its own rule adopted pursuant to Sections 6(b)(5) and 19(b) of the Exchange Act, rather than Section 15(b)(8) of the Exchange Act, Rule 15b9-1 does not preclude approval of the Proposal.

¹⁶ 17 CFR 240.15b9-1.

¹⁷ See, e.g., NYSE Rules 387 (COD Orders) and 472 (Approval of Communications with the Public).

¹⁸ See Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612 (November 17, 1994) (Confirmations of Securities Transactions), at fn. 36.

¹⁹ See note 12, *supra*.

C. The Proposal Does not Discriminate Among CBOE Members in Violation of Section 6(b)(5) of the Exchange Act

Each of the Virtu Letter and the CHX Letter argues that the Proposal would discriminate unfairly against TPHs that are members of both CBOE and CBSX because it would not require TPHs that are members only of CBOE ("CBOE-only TPHs") to become FINRA members. Section 6(b)(5) of the Exchange Act requires, in relevant part, that the rules of a national securities exchange "are not designed to permit unfair discrimination between customers, issuers, brokers or dealers."²⁰

However, Section 6(b)(5) of the Exchange Act requires only that exchange rules be designed not to permit unfair discrimination between customers, issuers, brokers or dealers (emphasis added). That section does not prohibit an exchange from imposing additional requirements on a subgroup of members who elect to avail themselves of specified exchange services or who conduct specified types of business, but not on other members who choose not to use such services or conduct such types of business, or otherwise where such additional requirements would serve a valid regulatory purpose.²¹

Under the Proposal, only those CBOE TPHs who elect to be CBSX TPHs are required to become FINRA members. This requirement is justified by the need for greater regulatory oversight of the away-trading activity (defined below) of CBSX TPHs. As stated in the Proposal, CBSX TPHs may act as customers and use executing brokers to submit orders to be executed on trading venues other than CBSX ("away-trading activity"). Because away-trading activity does not occur on the CBSX market, CBOE does not have access to all of the necessary order and trade information for this trading activity with which to directly conduct systematic surveillance reviews relating to this trading activity.²²

Because, as stated in the Proposal, FINRA rules require each FINRA member to submit order data for its trading activity on all trading venues (including member away-trading

²⁰ 17 U.S.C. 78b(b)(5).

²¹ For example, exchange rules may require member firms that carry customer accounts to comply with an extensive array of exchange rules that do not apply to member firms not carrying customer accounts. Similarly, exchange rules may require member firms that effect transactions in certain products (e.g., options contracts) to employ persons licensed to effect transactions in such products or supervise such persons.

²² CBOE noted in the Proposal that, as a member of the Intermarket Surveillance Group ("ISG"), CBOE receives an equity audit trail of all equity market orders and trade information for away-trading activity. However, the equity audit trail the CBOE receives does not provide the necessary granular level of detail to denote when a CBSX TPH is executing a trade as a customer through another broker-dealer on an away market. Without such granular information, CBOE is limited in the reviews it can conduct of this activity.

activities) on a regular basis, FINRA has greater access to the off-exchange trading conducted by its members than do national securities exchanges, including CBOE. The Proposal is reasonably designed to enhance regulatory oversight of CBSX TPHs, an important regulatory objective, so it does not unfairly discriminate among CBOE TPHs. Instead, the Proposal merely imposes a reasonable additional obligation on those CBOE TPHs who choose to be CBSX TPHs as well.

D. Proposal is a Reasonable Method of Achieving CBOE's Requirements as a National Securities Exchange

The Virtu Letter states that the Proposal is an inherent admission by CBOE of its failure to meet the requirements of Section 6(b)(1) of the Exchange Act. Section 6(b)(1) of the Exchange Act requires that in order to register a national securities exchange, the Commission must find that the:

“[E]xchange 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 78(s)(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.”

Similarly, the Gusrae Letter states that the Proposal “is an inefficient attempt by the CBOE to remedy a fundamental break down in its regulatory structure, as identified by the Commission.” (citations omitted).

In fact, the Proposal is designed to enhance regulation of CBSX and to comply with Undertaking O in an efficient manner. As stated in the Proposal, “[b]ecause away-trading activity does not occur on the CBSX market, CBOE does not have access to all of the necessary order and trade information for this trading activity, as it does for trading activity done directly on CBSX, from which it can directly conduct systematic surveillance reviews. The Proposal addresses this limitation on CBOE’s ability to oversee away-trading activity, and thereby furthers CBOE’s compliance with Undertaking O.”²³

Each of the Comment Letters suggests that instead of requiring CBSX TPHs to become FINRA members, CBOE should instead enter into an agreement pursuant to Rule 17d-2 under the Exchange Act (“Rule 17d-2 Agreement”) with FINRA, allocating to FINRA regulatory responsibility to surveil trading activity by CBSX TPHs. This argument in each Comment Letter recognizes that exchanges may allocate regulatory responsibilities to other self-regulatory organizations (“SROs”) in accordance with the Exchange Act, including Exchange Act Section 6(b)(1). Rule 17d-2 Agreements, however, are available only with respect to broker-dealers that are members of each SRO that is a party to the agreement. By definition, the Proposal, addresses

²³ See note 8, supra.

the situation in which CBSX TPHs are not now FINRA members, so a Rule 17d-2 Agreement is not possible to address the away-trading of CBSX TPHs.

Several of the Comment Letters argue that there are other ways in which CBOE could accomplish its regulatory goal. For example, the Gusrae Letter suggests that CBOE could simply adopt a rule requiring its members to send all trading activity information to FINRA. The Gusrae Letter states as well that as an alternative to the Proposal, the CBOE could enter into a regulatory services agreement with FINRA, under which FINRA would collect trading data from CBOE members and surveil for violations. Although such alternatives may be possible, CBOE has determined that the Proposal is a reasonable method of achieving an important regulatory purpose and complying with Undertaking O, consistent with Section 6(b)(5) of the Exchange Act. As stated above, Section 19(b)(2)(C) of the Exchange Act provides that the Commission “shall approve a proposed rule change of a self-regulatory organization if it finds such proposed rule change is consistent with the requirements of [the Exchange Act] and the rules and regulations issued under [the Exchange Act] that are applicable to such organization.” For the reasons set forth above, the Exchange reiterates its position that the proposed rule change is consistent with the Exchange Act and notes that this is further evidenced by the fact that the Commission has previously approved exchange rules requiring their members to be members of at least one other SRO.²⁴ Because the Proposal meets the Section 19(b)(2)(C) standard, the alternatives suggested by the Gusrae Letter, or by the other Comment Letters, should not affect the Commission determination to approve the Proposal.²⁵

E. Proposal Imposes a Reasonable Burden on CBSX TPHs to Achieve a Basic Regulatory Purpose

Each of the FIA PTG Letter and the Gusrae Letter states that the Proposal would impose a cost on CBSX TPHs that is not reasonable as there are other, less burdensome, alternatives available. The CHX Letter makes a similar argument, stating that the high cost of FINRA membership would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.²⁶

²⁴ See discussion in Section II.A., supra.

²⁵ This fact also demonstrates the fallacy in the argument that the Proposal represents an admission that CBOE has not met the requirements of Section 6(b)(1) of the Exchange Act. Because other exchanges also require their members to be members of at least one other SRO, it is evident that this requirement does not reflect that an exchange is in violation of Section 6(b)(1).

²⁶ Section 6(b)(8) of the Exchange Act requires that the Commission determine that “the rules of the exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of this title.” 15 U.S.C. 78f(b)(8).

The flaw in this argument is that any CBSX TPH that finds it burdensome to become a FINRA member has a ready alternative that would alleviate any burden – it could resign its CBSX membership and instead join any other national securities exchange whose rules do not currently require FINRA membership and become subject to that exchange’s regulatory oversight. There are any number of national securities exchanges that would provide the alternative, so the Proposal imposes no burden on competition that a CBSX TPH cannot easily eliminate if it chooses.²⁷

1. Gusrae Letter’s Specific Comments

The Gusrae Letter states that the burdens of dual registration on both exchange members and the overall SRO regulatory structure are in contrast to the views expressed in the Commission’s 2004 Concept Release Concerning Self-Regulation (“Concept Release”).²⁸ The Gusrae Letter cites the Commission’s concerns, expressed in the Concept Release, about the “inefficiencies of multiple SROs,” and cites approvingly the merger of member firm regulation by the NYSE and the National Association of Securities Dealers, Inc. (“NASD”) in 2007, to form FINRA.

Contrary to the Gusrae Letter’s argument that the Proposal is inconsistent with the views on multiple SROs stated in the Concept Release, there have been multiple occasions since 2004 when the Commission has approved exchange rules requiring membership in an additional SRO.²⁹ Moreover, any registered broker-dealer that carries customer accounts or effects transactions other than on the floor of a national securities exchange on which it is registered, generally must become a FINRA member firm.³⁰ The concern raised by the Gusrae Letter is therefore applicable solely to a small number of registered broker-dealers, largely proprietary

²⁷ As noted in note 7, supra, as of the date of this letter, only 38 CBSX TPHs are not currently FINRA members.

²⁸ See Securities Exchange Act Release No. 50700 (November 28, 2004), 69 FR 71256 (December 8, 2004).

²⁹ See, e.g., Securities Exchange Act Release Nos. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and 10-196) (In the Matter of the Applications of EDGX Exchange, Inc. and EGDA Exchange, Inc. as National Securities Exchanges) (“EDGX Order”); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10-198) (In the Matter of the Application of BATS-Y Exchange, Inc., as a National Securities Exchange) (“BATS Order”).

³⁰ See Exchange Act Section 15(b)(8), 15 U.S.C. 780(b)(8); see, also, Rule 15b9-1 for the limited exception to this requirement.

trading firms that are CBSX TPHs.³¹ The requirement of such firms to become members of more than one SRO, including FINRA, was not specifically addressed in the Concept Release.

As stated above, the Gusrae Letter also suggests that CBOE could simply adopt a rule requiring its members to send all trading activity information to FINRA or in the alternative, enter into a regulatory services agreement with FINRA, under which FINRA would collect trading data from CBOE members and surveil for violations. CBOE again notes in response to these arguments that although such alternatives may be possible, CBOE has chosen the Proposal as its method to reasonably achieve an important regulatory purpose and compliance with Undertaking O, consistent with Section 6(b)(5) of the Exchange Act. That CBOE could have chosen an alternative route to achieve these objectives should not be relevant to the Commission's determination of whether the Proposal is consistent with the requirements of the Exchange Act and rules issued thereunder.

2. Response to FIA PTG Letter's Specific Comments

The FIA PTG Letter states that FINRA membership "is a significant, time-consuming, and expensive exercise." It states further that the membership application process can take over six months and that the majority of FINRA rules are not applicable to CBSX TPHs that do not carry customer accounts or effect transactions in the over-the-counter markets, other than as customers of a broker-dealer. As stated above, the Proposal would permit CBOE, if it determines that there are extenuating circumstances which result in a CBSX TPH not being able to comply with the Proposal by the Compliance Date, to permit a CBSX TPH to retain its CBSX TPH status for such time as CBOE deems reasonably necessary to enable a CBSX TPH to become a member of FINRA.³²

The Exchange also notes that the FIA PTG Letter does not offer any good alternative to the Proposal. As discussed above, a Rule 17d-2 Agreement with FINRA is available solely with respect to joint CBOE-FINRA member firms. The alternative of requiring membership in any other SRO, which was proposed by the FIA PTG Letter and other letters, would not adequately address the away-trading issue. As stated in the Proposal, "requiring CBSX Trading Permit Holders to be a member of FINRA but not providing the option of becoming a member of another national securities exchange is appropriate to ensure that the CBSX Trading Permit Holders' away-trading activity is subject to appropriate regulatory review. As is the case with CBSX, other national securities exchanges may not have direct access to the order and transaction information related to the away-trading activity of its members and therefore would not be in a position to review the activity for potential violations of the federal securities laws, rules and regulations."³³ Moreover, as stated above, the Commission has previously approved

³¹ See note 7, supra, regarding the number of CBSX TPHs that are not currently FINRA members.

³² See Proposal, note 1, supra, at 67425.

³³ Id.

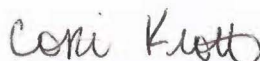
rules of other exchanges requiring membership in another SRO, including in a registered national securities association as a condition to exchange membership, in each case determining that such rules would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.³⁴

The FIA PTG Letter points out additional FINRA requirements that CBSX TPHs would be subject to as a result of FINRA membership. In this regard, CBSX TPHs would be subject solely to those FINRA rules applicable to the business those CBSX TPHs conduct. For example, if they do not carry customer accounts or effect transactions on behalf of public customers, FINRA rules governing such activity, including fidelity bonds, would not apply to their business.³⁵ The FIA PTG Letter also stated that because FINRA does not recognize the Series 56 license, individuals associated with CBSX TPHs who currently hold a Series 56 “may” need to complete the Series 7 also. The letter also states that principals of CBSX TPHs who obtained the Series 24 based on a prerequisite Series 56 would no longer possess a valid Series 24. As the FIA PTG Letter indicates through its use of the word “may” in describing the future licensing requirements of persons associated with CBSX TPHs, it would be FINRA’s decision whether to require a Series 7. CBOE notes that FINRA rules permit FINRA to waive such requirements “and accept other standards as evidence of an applicant’s qualifications for registration.”³⁶

* * * * *

CBOE appreciates the opportunity to provide these comments. Should you require any further information, please contact Joanne Moffic-Silver, General Counsel and Corporate Secretary, at 312-786-7462 or me at 312-786-7793.

Sincerely,



Corinne Klott

³⁴ See 2007 NYSE Order, note 12, supra; EDGX Order and BATS Order, note 29, supra.

³⁵ See e.g., FINRA Rule 4360(f).

³⁶ See NASD Rule 1070(b).