

EXECUTE SUCCESS™

July 14, 2014

**U.S. Mail and email to oneillk@sec.gov**

Mr. Kevin M. O'Neill  
Deputy Secretary  
United States Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: CBSX April 2014 Invoice to WallachBeth Capital LLC**

Dear Mr. O'Neill:

I am writing as general counsel for Chicago Board Options Exchange ("CBOE") in response to the letter to you, dated July 9, 2014 (copy attached), from Steven D. Oppenheim on behalf of WallachBeth Capital LLC ("WallachBeth"), complaining because CBOE will not refund fees duly charged by the CBOE Stock Exchange ("CBSX") pursuant to an effective rule.

In a July 3, 2014 letter to Mr. Oppenheim (copy attached), CBOE fully responded to all of the arguments made in WallachBeth's letter to you. The fees in question were assessed starting on April 1, 2014, pursuant to SR-CBOE-2014-028, which went into effect upon filing. WallachBeth's main complaint concerns the notice CBOE gave about the proposed fee change, but WallachBeth's complaint is baseless. As explained in CBOE's July 3 letter, CBOE fully complied with the notice requirements under the Exchange Act and Commission rules. In particular, CBOE filed the proposed fee change with the Commission, and the Commission duly published it. CBOE also posted a copy of the proposed fee change on CBOE's website, in full conformity with Rule 19b-4. Contrary to WallachBeth's characterization, there was nothing "buried" about the disclosure by these methods. Instead, the disclosure was fully transparent and complied with all Exchange Act and Commission requirements. Accordingly, there can be no valid complaint about the quality of the notice concerning the proposed fee change.

Moreover, WallachBeth cannot credibly assert that there was something unusual about providing notice in these ways, given that those methods fully complied with all legal requirements. Trading permit holders are well aware that it is their responsibility to monitor these sources for information about proposed fee changes.

Although Commission notice and CBOE website posting satisfied all of CBOE's notice obligations regarding the proposed fee change, CBOE did more. On March 27, 2014, CBOE emailed a circular (IC14-029, copy attached) to all trading permit holders, including

WallachBeth, that personally alerted them about the proposed fee change. Although CBOE was not required to give this additional notice, the fact that CBOE did so makes WallachBeth's claim of surprise particularly disingenuous.

Lastly, WallachBeth appears to claim that the fee change was substantively improper because CBSX expected to cease its operations by the end of April. First, WallachBeth was obligated to raise any such objections during the comment period, but it failed to do so. The plan to close down CBSX was well-known, having been the subject of at least two circulars, more than a month before, and only days after, the proposed rule change was filed (IC-14-011 and RG-14-046, copies attached). It is too late for WallachBeth now to raise substantive objections to the fee change, particularly objections based upon the plan to close CBSX.

In any event, whether CBSX would soon be closing down operations had nothing to do with what CBSX's fees should be while it was still operating. As explained in the July 3 letter, CBOE could not know with certainty how long CBSX would remain in operation, and CBSX was entitled to adjust its fees for so long as it remained in operation – whether that turned out to be one month or many months. The fact that the fee probably would be in effect for only one month is irrelevant to whether the fee change was proper under the Exchange Act.

We trust that this letter adequately responds to all issues raised by WallachBeth's letter. Please feel free to contact me if you or anyone else has any questions or needs additional information.

Sincerely,

  
Joanne Moffic-Silver

cc:

Steven D. Oppenheim  
Faust Oppenheim LLP  
(By email to: [REDACTED])

Michael A. Macchiaroli  
Associate Director  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
(By email to [REDACTED])

**FAUST OPPENHEIM LLP**

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July 9, 2014

**Sent via Email ([oneillk@sec.gov](mailto:oneillk@sec.gov)) and Certified Mail**

Mr. Kevin M. O'Neill  
Deputy Secretary, Division of Trading and Markets  
United States Securities and Exchange Commission  
100 F Street, N.E. Washington, DC 20549-1090

**Re: CBSX April 2014 Invoice to WallachBeth Capital LLC**

Dear Mr. O'Neill:

We write to you to draw your attention to recent correspondence between us, as counsel to WallachBeth Capital LLC, and Ms. Joanne Moffic-Silver, General Counsel and Corporate Secretary of the Chicago Board Options Exchange ("CBOE").

As you know the CBOE proposed an amendment to the CBSX fee schedule (File No. SR-CBOE-2014-028) and, within days, filed a proposal to amend Rule 51.2 to permit it to cease trading on CBSX (File No. SR-CBOE-2014-036). Both of these proposals were noticed by you on behalf of the SEC. WallachBeth which may have been the largest customer using the CBSX had objected to a fee change in past discussions with CBOE personnel. We are appalled that the CBOE would take the position that the "fee change was proper in all respects" when the proposal failed to provide any notice of the impending close of the business (even though its stated purpose was to "assist in funding CBSX's operational, regulatory and administrative costs" – which it clearly was not) and failed to provide adequate notice to its largest user who had objected to such a rate change in the past. This lack of full disclosure is disingenuous, particularly by an organization which is required to enforce the rules which require transparency of and full disclosure by its members pursuant to SEC Rules and Regulations, the Commodity Exchange Act, etc.

WallachBeth is unaware of any March 27, 2014 "warning... in writing" of the fee increase, and the CBOE is unable to provide proof of such "formal and individualized notice about this fee increase". We note that it was just three business days prior to the effective date which is not adequate notice to implement an alternative operational plan if WallachBeth had actually received any notice.

**FAUST OPPENHEIM LLP**

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Furthermore, we do not agree that a post on the CBOE's website just prior to the change is sufficient notice of material information as a matter of law. At best, it is "buried disclosure" and therefore insufficient. A disclosure of a proposed fee increase to cover costs when the business is to be immediately shut down is not merely disingenuous but intentionally false and misleading.

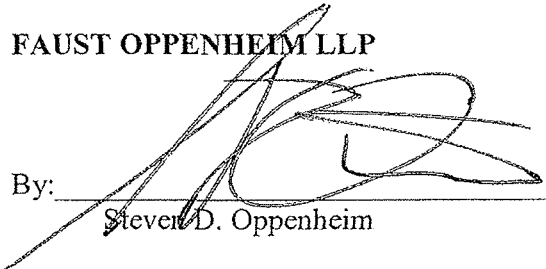
As you see in the attached response by the CBOE it has no intention of refunding the exorbitant fees it charged to WallachBeth based on its misleading filings.

We respectfully request that the SEC pursue the matter against the CBOE as regards misleading both the SEC and the CBSX customers in its filings to amend the fee schedule. We believe that if any member of FINRA and/or the CBOE acted in such a manner, it would be in violation of SEC, CFTC and NFA Rules and Regulations.

Very truly yours,

**FAUST OPPENHEIM LLP**

By: \_\_\_\_\_

  
Steven D. Oppenheim

Encls (2)

Cc:

Joanne Moffic-Silver, Executive Vice President, General Counsel and Corporate Secretary  
Chicago Board Options Exchange (via email [mofficj@cboe.com](mailto:mofficj@cboe.com))

Michael A. Macchiaroli, Associate Director, Division of Trading and Markets, Securities and  
Exchange Commission (via email [macchiarolim@sec.gov](mailto:macchiarolim@sec.gov))

## Information Circular IC14-029

**Date:** March 27, 2014

**To:** Trading Permit Holders  
**From:** CBOE Stock Exchange ("CBSX")  
**RE:** CBSX Transaction Fee Change

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Effective Tuesday April 1, 2014, CBSX will charge \$0.0010 per share for cross trades that are not part of stock option trades for transactions in securities priced \$1 or greater, and a fee of 0.10% of the dollar value of the transaction for cross trades that are not part of stock option trades for transactions in securities priced less than \$1. These fees apply to all portions of cross trades that are not part of stock option trades and are not covered by another specific fee listed on the CBSX Fees Schedule.

### Additional Information

Please contact the CBSX Helpdesk at [cbsxhelpdesk@cboe.com](mailto:cbsxhelpdesk@cboe.com) and/or 1-866-458-CBSX 1-866-458-2279 for additional information.

## Information Circular IC14-011

**Date:** February 20, 2014

**To:** Trading Permit Holders

**From:** CBOE Stock Exchange ("CBSX")

**RE:** CBSX Transaction Fee Pricing Adopted by the National Stock Exchange

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### Overview

Effective Tuesday, February 18, 2014, the National Stock Exchange, a wholly owned subsidiary of CBSX, adopted CBSX's fee schedule—a fee schedule that pays the "taker" \$0.0015 to remove liquidity equal to or above \$1. **CBSX will maintain its current pricing through the end of February 2014.**

Subject to necessary approvals, it is anticipated that beginning Monday, March 3, 2014, CBSX will change its fee schedule, charging \$0.0030 for each share traded equal to or above \$1, and 0.30% of the trade value for transactions below \$1. These rates will apply for both adding and removing liquidity. In addition, CBSX will remove its Inactivity Fee. All other fees will remain unchanged.

It is further anticipated, subject to necessary approvals, that CBSX will cease market operations at a date to be determined. An announcement will be distributed with further details once such a date has been identified.

Trading Permit Holders are advised to please direct any requests to change CBSX network systems connectivity or login ports to the CBOE API Group at [api@cboe.com](mailto:api@cboe.com), and New Logins Group at [newlogins@cboe.com](mailto:newlogins@cboe.com) respectively.

### Additional Information

Please contact the CBSX Helpdesk at [cbsxhelpdesk@cboe.com](mailto:cbsxhelpdesk@cboe.com) and/or 1-866-458-CBSX 1-866-458-2279 for additional information.

For questions about the National Stock Exchange, please contact Client Services at [nsxtrading@nsx.com](mailto:nsxtrading@nsx.com) and 1-800-THE-EXCH, or please visit [www.nsx.com](http://www.nsx.com).

## Regulatory Circular RG14-046

**Date:** April 2, 2014

**To:** Trading Permit Holders

**From:** CBOE Stock Exchange (CBSX)

**Re:** End of CBSX Trading Operations – April 30

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### Updates Information Circular IC14-011

CBSX recently announced that it intended to cease market operations. CBSX anticipates that its last day of trading will be **Wednesday, April 30, 2014**. Please note that CBSX Trading Permit Holder status will not automatically terminate on April 30. As such, CBSX Trading Permit Holders are encouraged to terminate as soon as possible after CBSX market operations cease or sooner if desired (CBOE will terminate the status of any remaining CBSX Trading Permit Holders on August 7, 2014). Prior to April 30, CBSX will distribute additional information regarding the end of CBSX trading operations as it becomes available.

**Additional Information:**

Please contact the Registration Services Department at [registration@cboe.com](mailto:registration@cboe.com) or 312-786-7449 for additional information regarding the process to terminate CBSX Trading Permit Holder status, or Angelo Evangelou, CBOE Legal Division, at [evangelou@cboe.com](mailto:evangelou@cboe.com) or 312-786-7464 with general questions regarding this circular.

Please see rule filing SR-CBOE-2014-036 for additional information regarding the end of trading on CBSX.