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March 14, 2017

Via Electronic Mail
Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-0609
rule-comments@sec.gov

Re: Response to Comment Letter on File No. SR-CBOE-2016-082

Dear Mr. Fields:

The Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") submits this letter in response to the comments submitted to the U.S. Securities and Exchange Commission ("SEC" or "Commission") by the Nasdaq Stock Market LLC ("Nasdaq")[1] on the above referenced rule filing. In the rule filing, CBOE proposes to specify that when an open outcry transaction occurs between a Floor Broker and a Market-Maker, compliance with priority and national best bid and offer ("NBBO") Trade-Through requirements will be enforced against the "initiator" of the transaction, which would generally be the Floor Broker (the "Proposal"). There are no other changes being proposed.

As an initial matter, CBOE encourages the Commission to consider the comment letter about and in support of the Proposal, which was submitted to the Commission on behalf of nine market participants.[2] The Nasdaq letter, on the other hand, should have no bearing on the Commission's deliberations on this Proposal as the letter makes clear that Nasdaq neither supports nor opposes the Proposal. Further, Nasdaq's comments are entirely unrelated to the specifics of the Proposal (which relates only to identifying the party responsible for compliance with the applicable requirements for open outcry transactions between a Floor Broker and Market-Maker) and are instead general comments regarding open outcry trading procedures and requirements that are not changing as a result of the Proposal. Thus, while this letter explains

[1] *See* Letter dated December 22, 2016 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Brent J. Fields, Secretary, Securities and Exchange Commission.
[2] *See* Letter dated February 16, 2017 from Steve Crutchfield, Head of Market Structure, CTC Trading Group, LLC, Keven Coleman, Chief Compliance Officer, Belvedere Trading LLC, Scott Kloin, Chief Compliance Officer, Citadel Securities LLC, Steven Gaston, Chief Compliance Officer, Consolidated Trading LLC and Lamberson Capital LLC, Rob Armour, Chief Compliance Officer, DRW Securities, LLC, John Kinahan, Chief Executive Officer, Group One Trading L.P., Daniel Overmyer, Chief Compliance Officer, IMC Financial Markets, Patrick Hickey, Head of Market Structure, Optiver US LLC, to Brent J. Fields, Secretary, Securities and Exchange Commission.

why CBOE disagrees with much of the Nasdaq letter, as noted above, we do not believe the discussion should have any bearing on the approval of the Proposal.

Nasdaq's Comments

In Nasdaq's comment letter to the Proposal, Nasdaq requests the Commission clarify aspects of priority provisions and Trade-Through prohibitions as they relate to open outcry trading procedures and requirements. The letter also identifies Nasdaq's preferred method of systematically rejecting an open outcry execution if, at the time the execution is reported to the exchange trading system, the execution price is not within the prevailing market as determined at the time the execution is reported (as opposed to when there is a verbal trade). In addition, Nasdaq states that the Proposal should provide more information regarding the manner in which the Exchange's Public Automatic Routing System ("PAR") operates (and specifically which time CBOE utilizes to validate a trade for purposes of priority and Trade-Through rules and the specific manner in which CBOE's surveillances review transactions for violations of CBOE rules). Finally, Nasdaq claims that CBOE applies a different standard to floor trading as compared to its electronic market in the enforcement of Trade-Throughs and that such differential treatment creates intramarket and intermarket competition.

CBOE's Response to Nasdaq's Comments

Importantly, the Proposal will not, in any way, change priority or Trade-Through requirements. The Exchange will continue to enforce priority provisions and Trade-Through prohibitions in the same manner as it does today. The Proposal simply amends CBOE rules to provide that when an open outcry transaction occurs between a Floor Broker and a Market-Maker, the responsibility for compliance with existing priority provisions and Trade-Through prohibitions belongs to the party responsible for initiating the transaction, which, as previously noted, will generally be the Floor Broker—whom is in a good position to ensure compliance.

Consistent with longstanding Commission-approved standards and rules, the time at which the verbal trade is reached in the CBOE trading crowd is the execution time of a trade. Nasdaq's letter, however—while noting the verbal agreement (which creates a binding contract between the parties) and reporting of a transaction to an exchange do not occur in tandem for open outcry transactions—indicates that Nasdaq considers the time a transaction is reported to the exchange to be the execution time and thus the time at which the trade is validated against the market for purposes of determining compliance with priority provisions and Trade-Through prohibitions.

CBOE neither supports nor opposes Nasdaq's treatment of the report time as the execution time. CBOE believes that because each exchange has different trading rules and market structures, each exchange is in the best position to regulate its market and enforce its rules. CBOE does not treat the report time as execution time because it is not the execution time. CBOE enforces these rules consistent with longstanding, Commission-approved standards and rules. As such, we firmly believe the manner and means through which compliance with priority provisions and Trade-Through requirements is achieved on CBOE is reasonable, appropriate and consistent with the requirements of the Securities Exchange Act of 1934 (the “Act”).

Contrary to Nasdaq’s comments, CBOE applies the same standard to both floor and electronic trading in the enforcement of its priority and Trade-Through requirements, which standard uses the execution time to determine whether a potential priority or Trade-Through violation occurred. CBOE merely applies the same standard in a different manner to account for the differences between open outcry and electronic trading. In the case of open outcry trading, CBOE rules require Trading Permit Holders to timestamp orders at systematization, representation, execution and reporting, which permits CBOE’s regulatory surveillances to determine whether a transaction was executed in accordance with priority and Trade-Through rules.

Nasdaq states that “[i]t is unclear from CBOE’s proposal the manner in which PAR operates and specifically which time CBOE utilizes to validate a trade for purposes of regulating priority and Trade-Through rules.” The Proposal does not describe such items because the Proposal does not change either of those items and simply proposes that CBOE will enforce priority and Trade-Through requirements for an open outcry transaction between a Floor Broker and a Market-Maker against the “initiator” of the transaction. Additionally, CBOE rules already describe PAR functionality and priority and Trade-Through requirements.

Nasdaq claims that Phlx’s Floor Broker Management System (“FBMS”) “does not allow any Floor Broker to execute a transaction that would violate priority and Trade Through (sic) rules[,]” because after there is a verbal agreement in the trading crowd, the trade is reported to the matching engine and rejected if the trade violates priority or Trade-Through requirements based on the market existing at the time the trade is received by the matching engine. While this is interesting, on the CBOE market (which predates the Nasdaq construct) an execution occurs in open outcry upon a verbal trade, and CBOE enforces compliance with its priority and Trade-Through rules through regulatory surveillance processes rather than with systematic execution blocks that do not correspond to the time of the verbal trade.

Finally, CBOE does not believe the Proposal has any competitive or regulatory impact on other markets or imposes a burden on intermarket competition because the Proposal relates solely to how CBOE enforces compliance with its existing open outcry trading rules. Similarly, as noted in the rule filing, CBOE does not believe the Proposal will impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act, because it applies equally to all market participants that initiate transactions on the CBOE trading floor.

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CBOE respectfully requests that the Commission approve the proposed rule filing. If you have any questions please contact the undersigned at [redacted].

Sincerely,

cc: Heather Seidel, SEC Division of Trading and Markets
Gary Goldsholle, SEC Division of Trading and Markets
David S. Shillman, SEC Division of Trading and Markets
John Roeser, SEC Division of Trading and Markets