



January 19, 2011

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

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

Re: Release No. 34-63554; File No. SR-ISE-2010-115; Proposed Registration and Qualification Requirements

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the referenced proposal, in which the International Securities Exchange, LLC (“ISE”) seeks the Securities and Exchange Commission’s (“SEC” or “Commission”) approval to expand its rules regarding qualification, registration, and continuing education of individual associated persons to include additional types of individual associated persons, as well as to introduce a new options trader examination.²

As an initial matter, we recognize that the Commission has approved a similar proposal by the Chicago Board Options Exchange, Inc. (“CBOE”)³ and we understand in speaking with the CBOE staff that other exchanges likely will be filing similar proposals in the near future. SIFMA fully understands the need for appropriate qualification, registration and

¹ The Securities Industry and Financial Markets Association (“SIFMA”) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (“GFMA”). For more information, visit www.sifma.org.

² Securities Exchange Act Release No. 63554 (December 15, 2010), 75 Federal Register 80091 (December 21, 2010) (hereinafter, the “Proposal”).

³ Securities Exchange Act Release No. 63314 (November 12, 2010), 75 Federal Register 70957 (November 19, 2010).

continuing education requirements for individuals engaged in the securities business of its member firms and supports “closing gaps” in such requirements. In particular, we support imposing such requirements on those individuals engaging in proprietary trading activity on options exchanges. However, we believe the scope of both the CBOE and ISE registration requirements are unclear and there remains much uncertainty among Trading Permit Holders (“TPHs”) and Member Firms about their application, particularly with respect to the scope of the contemplated options trader examination.

Although we understand the CBOE staff is preparing additional written guidance on the application of the new rules, for firms that are members (or TPHs) of multiple options exchanges, having differing interpretative standards that apply from self-regulatory organization (“SRO”) to SRO will lead to confusion, inconsistent application of the rules and exam requirements, and additional costs. SIFMA respectfully requests that the SROs and Commission staff work together to develop consistent and clear standards that will apply to all exchanges adopting the new registration requirements and extend the compliance date until such time as the SROs issue additional guidance and firms are provided a reasonable timeframe to analyze such guidance and implement the requirements.

I. Request for Guidance

We understand that the original focus of these proposals was to impose a registration requirement on individuals engaged in exchange proprietary trading activity. However, the rules approved for the CBOE and proposed by the ISE appear to capture a much broader universe of associated persons.⁴

SIFMA member firms have raised a number of significant interpretive issues related to the new requirements. We request guidance on the application of these rules through the use of the following four examples:

Example 1

Many SIFMA member firms employ principals who have no direct responsibility for the firm’s proprietary trading business conducted on an exchange. Rather, such principals are engaged in and/or supervise other aspects of the member’s securities business, such as facilitating customer trading, fixed income, or “back office” operations. We wish to

⁴ Under the CBOE Rules and the ISE Proposal, an individual associated person would be considered to be a person “engaged in the securities business” of a Member (and thus required to register under the new registration category) if (i) the individual associated person conducts proprietary trading, acts as a market maker, effects transactions on behalf of a broker-dealer account, supervises or monitors proprietary trading, market making or brokerage activities on behalf of a broker-dealer account; or (ii) the individual associated person engages in the management of any individual associated person identified in (i) above as an officer, partner or director.

clarify that the new requirements, particularly the new exam requirement, do not apply to principals who are not engaged in proprietary trading activity on the relevant exchange. For a firm employing principals with no direct relationship to the firm's proprietary trading business, registration would seem unnecessary, and potentially costly, although the costs are unclear from the proposal. In large firms, many principals review consolidated options position and trading information as part of their risk oversight functions. These principals are already licensed as Series 24s, and are unlikely to benefit from a new options traders examination.

Example 2

We understand the CBOE takes the position that firm "risk managers" would be required to register under the new requirements (although we are not aware that the CBOE has communicated this position broadly). If this is accurate, this is a very open-ended requirement and it is not clear from the rule text what specific roles and activities would define such individual. We also note that, depending on the scope of the requirement, it may overlap with FINRA's "Operations Professional" licensing proposal.⁵

Example 3

We understand from our discussion with the CBOE staff that these rules are not intended to cover registration of those associated persons who interface with customers and are already required to be licensed (*e.g.*, Series 7). We note, however, that this would seem inconsistent with CBOE Rule 3.6A(d), which requires individual associated persons of a TPH organization that conduct a public securities business to *also comply* with the CBOE registration requirements set forth in Chapter IX of the CBOE's rules.⁶ We therefore seek to confirm that individual associated persons taking options orders from public customers and merely routing such orders for execution would not be required to register in the new category. We further seek to clarify that the new registration category instead would be applicable to persons responsible for proprietary trading on the exchange (*i.e.*, committing capital of the member firm) and those persons processing orders on behalf of other firms or for customers are not in scope.

Example 4

We also learned through our discussion with the CBOE staff that the registration requirement would apply to anyone at the TPH to whom access to the CBOE "has not been specifically prohibited" or persons at the firm that review reports and other output from the CBOE. Again, this position is not articulated in the public record or any of the public

⁵ See FINRA Regulatory Notice 10-25 (May 2010).

⁶ See also proposed ISE Rule 313(d).

documents related to the new rules and the industry has not been afforded sufficient opportunity to comment on this aspect of the proposal, if this is indeed what is intended.

II. The Qualification Examination

As noted above, SIFMA supports “closing gaps” in registration requirements for those individuals engaged in the securities business of member firms. SIFMA is concerned, however, about SROs imposing redundant and unnecessary qualification examination requirements on member firm personnel. We believe the CBOE and ISE, and any other options exchange adopting similar requirements, should recognize the existing qualification, registration, and continuing education requirements that apply for many of the individuals that would be required to register separately under these rules.

For example, the apparent requirement from the ISE Proposal and the CBOE rule filing that Chief Compliance Officers (“CCOs”) of Members and TPHs may qualify only by passing the Series 14 examination ignores the well-established requirement for FINRA-only members (*i.e.*, members that are not also members of the New York Stock Exchange), which permits CCOs to qualify by passing the Series 24 examination. We believe that CCOs of ISE Members and CBOE TPHs should be permitted to qualify by passing the Series 24 examination, unless and until FINRA’s rules are amended to require a different qualification exam for FINRA-only member firms. This would help ensure a consistent and uniform approach to CCO qualification requirements across all SROs.

Alternatively, if the CBOE and ISE (and/or the SEC) are unwilling to accept the Series 24 as an “appropriate qualification examination” for CCOs, we urge the SROs to provide an exemption from the Series 14 examination requirement for CCOs with no regulatory history and holding the Series 24 license for a minimum of three years.

In addition, SIFMA believes that individuals with no regulatory history and the following qualification credentials should be specifically exempted from having to take the new trading exam (for registration with the ISE, CBOE or any other options exchange proposing to adopt the new exam requirement in the future):

- Individuals holding the Series 7 and either the Series 9/10 or the Series 4, for a minimum of three years; or
- Individuals holding the Series 24 and either the Series 9/10 or the Series 4, for a minimum of three years.

We realize that the new rules permit the SROs to waive the qualification examination requirement on a case-by-case basis where “good cause” is shown. SIFMA respectfully submits, however, that an individual waiver process is cumbersome and impractical for a change in registration requirements of this magnitude, and likely to result in thousands of waiver requests. A standard exemption for individual associated persons maintaining the

above qualification credentials would provide transparency and promote industry-wide standards.

We also understand from conversations with the CBOE staff that the existing principal examinations – the Series 24 and the Series 9/10 – are viewed as sufficient by the CBOE and that the new examination currently under development will be a prerequisite. The ISE Proposal, however, is not clear. Specifically, it is unclear whether the new examination will serve as a prerequisite to existing supervisory examinations and/or whether there will be any prerequisite exams required before taking the new options traders exam.

In addition, the text makes no mention of the time frame for those that meet the criteria to complete the new examination. SIFMA respectfully suggests that any upcoming guidance include the required costs and timeframes on the completion of the examination. At a minimum, SROs should provide a phase-in period for individuals who are currently registered in some capacity, but who are not exempt from the new examination requirement.

Finally, SIFMA notes that firms will need a general estimate of the registration/examination costs in order to allow them to assess their alternatives.

III. Insufficient Opportunity to Comment

For the reasons stated above, SIFMA is concerned about the lack of an opportunity to comment on the qualification requirements for the new rules. The ISE states in its Form 19b-4 filing that, with respect to the examination requirement, the ISE is working with other SROs to develop an additional examination for associated persons who previously may not have been required to register under applicable SRO rules (*e.g.*, proprietary options traders) that may be used as an *alternative* to the existing categories of registration. The ISE states that it will notify its members via a regulatory circular what qualification examination(s) will be acceptable for compliance with the requirements proposed in Rule 313. SIFMA is concerned that this does not provide member firms with an opportunity to comment, which is particularly troublesome for firms that are members of more than one options SRO.

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Elizabeth M. Murphy
September 19, 2010
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SIFMA appreciates the opportunity to provide comments on FINRA's proposal regarding reporting requirements. We would be pleased to discuss the proposed Rule and our comments in greater detail with the SEC and its staff. If you have any comments or questions, please do not hesitate to contact me at (202) 962-7386 or jmchale@sifma.org.

Sincerely,

/S/

James T. McHale
Managing Director and Associate General Counsel

cc: Katherine England, Division of Trading Markets, SEC
Katherine Simmons, ISE
Larry Bresnahan, CBOE