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VIA Electronic Mail

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

Re: Release No. 34-62580; File No. SR-NYSEArca-2010-69

Dear Ms. Murphy:

The Chicago Board Options Exchange, Inc. ("CBOE") is submitting this comment letter in response to a rule change submitted by NYSE Arca, Inc. ("Arca") to amend its rules to describe new procedures for executing non-facilitation (regular way) cross transactions (Securities Exchange Act Release No. 62580 (July 28, 2010), 75 FR 45683 (August 3, 2010)(SR-NYSEArca-2010-69). CBOE believes that the proposed rule change is inconsistent with policy and precedent on crossing orders and it should not be approved.

Summary of the Proposal

Arca Rule 6.47, "Crossing" Orders – OX, contains procedures for crossing orders in open outcry for various scenarios. Through SR-NYSEArca-2010-69, Arca is proposing to amend its non-facilitation (regular way) cross procedure contained in Rule 6.47(a). Currently, Rule 6.47(a) imposes specific order exposure and price improvement requirements on Floor Brokers seeking to cross buy orders with sell orders. In particular, a Floor Broker must proceed in the following manner: First, the Floor Broker must request bids and offers from the trading crowd. Second, after providing an opportunity for such bids and offers, the Floor Broker must bid above the highest bid or offer below the lowest offer by at least the minimum price variation. Third, the trading crowd must have an opportunity to accept such higher bid (lower offer) made by the Floor Broker. Fourth, if the higher bid (lower offer) is not taken by the trading crowd, the Floor

Broker may cross the orders (or any remaining balance) at such higher bid (lower offer) by announcing in open outcry he is crossing the orders and giving the quantity and price, provided the execution price is equal to or better than the NBBO and the Floor Broker does not trade through any bids or offers on the Arca book. Under this provision, if the crowd does not want to participate on a trade, the Floor Broker can proceed with the cross. If the crowd wants to take any part of the order, however, the crowd has precedence and the Floor Broker may cross only that amount remaining after the crowd trades its portion. If the crowd wants to take the entire order, the Floor Broker will not be able to cross any part of the order.

In its proposal, Arca indicated that Market Makers, after being informed of a potential cross, should provide their best bid and best offer, but not be allowed to participate with subsequently disclosed trading interest. Arca stated that it intends for Market Makers to make markets and not prevent better priced trading interests from interacting with each other. Therefore, Arca is proposing to amend Rule 6.47(a) to instead allow a Floor Broker to request - without revealing the size (or side or price) of the orders - a final quote for a cross from the trading crowd, and then to execute the cross in its entirety at a price above the highest bid (below the lowest offer). If the cross would happen to take place at the same price provided by the trading crowd (which could only happen in two limited scenarios, *i.e.*, when the final quote is in the minimum provide variation ("MPV") or when the final quote would violate one of the order's limit), then the Floor Broker would be obligated to trade with the trading crowd interest prior to crossing the orders. As with Arca's existing procedure, the cross would be required to be within the NBBO and would also be obligated to satisfy any bids or offers in Arca's book equal to or better than the crossing price. Additionally, Arca proposes to allow the cross procedure to be used with an order that has been solicited prior to transmittal to the floor, but would not allow the new procedures to be used to circumvent limitations on principal transactions or to solicit a contra order from an Arca Market Maker assigned to the class. Arca also proposes to provide that it would be a violation of a Floor Broker's duty for best execution to cancel an agency order to avoid execution at a better price.

Comments by CBOE

All the options exchanges have rules that address crossing scenarios. The rules are generally designed to balance the desire to permit crosses with the preservation of important order exposure principles. If orders are not exposed in a meaningful way and the trading crowd is disadvantaged in competing for an option order in the auction process, it may result in less competition and worse prices for customers. This inequitable outcome is avoided by providing the options trading crowd with a fair and full opportunity to make informed trading decisions and to compete on filling options orders with the Floor Brokers representing the orders to be crossed.

As it stands currently, Arca Rule 6.47(a) is consistent with policy and precedent on crossing transactions in that it permits a cross only if the Floor Broker complies with the order exposure and price improvement provisions, and only if the higher bid (lower offer) is not taken by the trading crowd once the quantity and price are disclosed by the Floor Broker. However, Arca's proposal to eliminate some of the safeguards provided in Rule 6.47(a) would render the provision inconsistent with policy and precedent.

First, our primary concern is that there would not be adequate exposure of the orders under the proposed procedure. We believe it is appropriate to permit solicitations and the resulting solicited transactions can enhance liquidity and depth by bringing to an exchange orders that might otherwise be difficult to execute. However, if the orders that comprise a solicited transaction are not suitably exposed to the trading crowd, the execution of those orders would not be consistent with exchange rules that are designed to promote order interaction.

Arca's proposed crossing procedure fails in this regard. As proposed, an Arca Floor Broker would simply be required to ask for a final quote from the crowd for a cross before crossing the orders. The Floor Broker would not be required to disclose the size (or side or price) of the original non-solicited order(s) prior to crossing or to give the crowd an opportunity to join the market once this information is revealed. There would be no meaningful exposure of the order(s) and opportunity for price improvement to allow the trading crowd to provide markets and participate fairly and fully in the execution. It is unreasonable and counterproductive to allow the solicited party to participate on a trade with full knowledge of the terms of the order while expecting Market Makers who have no knowledge of any terms of the order to compete on equal footing.

Second, there would be little or no opportunity for the crowd to actually participate on an execution as the procedure requires the Floor Broker to cross the two orders he holds against each other unless the final quote is one MPV wide or the final quote would violate one of the order's limit. While we understand the desire to create a procedure that gives a Floor Broker greater certainty in the execution, the proposed procedure goes too far and places the Floor Broker in a preferred position over the trading crowd. The proposal amounts to allowing an Arca Floor Broker to execute a "clean cross" inside the quoted market without meaningful exposure or opportunity for price improvement, a practice that has not been permitted in the options markets and should not be permitted now.¹

Third, we question whether or not the proposed procedure should say that a Floor Broker shall be obligated (as opposed to may) to proceed with an execution once he receives a final quote from the trading crowd. It is not clear from the proposal whether a Floor Broker has the flexibility to trade on another market at the best price provided from the trading crowd (or at the improved price at which the Floor Broker would be obligated to execute the cross). In the case where the Floor Broker decides to trade on another market, the order itself is not being cancelled.

¹ Currently, the only limited exception involves a public customer to public customer cross – since public customers have traditionally maintained order priority over all other market participants, there is a justification to not expose the cross to other participants who would not have priority over public customers anyway. Importantly, these customer-to-customer crosses are only permitted long as, among other things, the orders are priced in the standard increment and will not trade through the NBBO or at the same price ahead of resting public customer orders. We note that, apart from the instant Arca proposal, the International Securities Exchange ("ISE") has submitted two rule changes to introduce a clean cross, without any exposure whatsoever, for the options leg of a qualified contingent trade, which ISE refers to as the "qualified contingent cross" or "QCC." CBOE has submitted separate comment letters objecting to the ISE proposals, primarily noting that the lack of exposure is inconsistent with policy and precedent and the potential detrimental impact such a proposal would have on the options markets. See SR-ISE-2010-73 and SR-ISE-2009-35 and related CBOE comment letters.

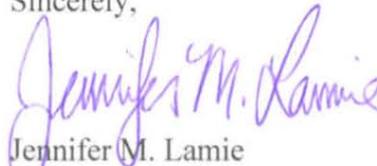
Fourth, we are concerned that Arca's proposed rule could potentially be used for every options solicitation (and other regular way crosses), which would be detrimental to options market competition, price discovery and customers. Execution entitlements in the options industry have generally been limited by the SEC to a maximum of 40% when there is other trading interest at the proposed execution price (and only after exposure). Any crossing procedure such as Arca's proposal that would allow for a 100% crossing entitlement, if even permitted at all, should be carefully considered. To the extent that any crossing entitlements have been permitted in options industry, they have generally contained limitations on order size, required Floor Brokers to stand ready to execute the entire size of the order within certain price parameters, imposed exposure requirements that provided opportunities for price improvement and trading crowd participation, and other conditions and requirements. By contrast, Arca's proposal – which would shut out the trading crowd and permit a clean cross for any sized order – does not contain many of these conditions and requirements nor does it provide adequate explanation or justification for doing so.

The SEC should seriously consider the harmful impact this proposal could have on the options markets. The inability to participate on crossing transactions could work as a disincentive to quote competitively and provide liquidity. This would be harmful to the market because it would remove a valuable incentive for dedicated liquidity provider participation – something that is increasingly viewed by most as critical in light of market events of May 6, 2010. We are concerned that the proposed rule change could have an adverse impact on competition and liquidity for all order sizes, whether represented inside or outside the crossing procedure. We are also concerned the proposed rule change could impose an unreasonable burden on intermarket competition and that CBOE and other options markets – both open outcry and electronic - will be forced to respond with similar programs, which ultimately could be detrimental to options market competition, price discovery and customers.

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We respectfully request that the Commission not approve Arca's proposed rule change. Should you have any questions regarding this letter, please contact me at 312-786-7576.

Sincerely,



Jennifer M. Lamie
Assistant General Counsel

cc: Robert W. Cook, Division of Trading and Markets
James A. Brigagliano, Division of Trading and Markets
Heather Seidel, Division of Trading and Markets