

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73698 / November 26, 2014

Admin. Proc. File No. 3-16285

In the Matter of the Application of
ELECTRONIC TRANSACTION CLEARING, INC.

c/o Ivan P. Harris
Morgan, Lewis & Bockius LLP
200 S. Biscayne Boulevard, Suite 5300
Miami, Florida 33131

For Review of Disciplinary Action Taken by
Chicago Board Options Exchange, Inc.

ORDER GRANTING STAY

Pursuant to Rule 401 of our Rules of Practice,¹ Applicants Electronic Transaction Clearing, Inc. ("ETC"), Kevin Murphy, and Harvey C. Cloyd, Jr., move for a stay of sanctions imposed by a decision of the Chicago Board Options Exchange, Inc.² CBOE opposes Applicants' motion. For the reasons explained below, Applicants' motion is granted and the referenced sanctions stayed.

On October 29, 2014, the Board of Directors of CBOE issued a decision affirming, in its entirety, a CBOE Business Conduct Committee decision dated March 4, 2014, which found that Applicants had violated multiple CBOE rules.³ In so doing, the CBOE Board sustained the

¹ 17 C.F.R. § 201.401.

² See *Electronic Transaction Clearing, Inc.*, Dec. No. 14 BD 01 (Oct. 29, 2014), *affirming* Amended Dec. and Order of CBOE Business Conduct Committee, File No. 111-0009 (Mar. 4, 2014), *each available at* <https://www.cboe.com/publish/DisDecision/11-0009%20ETC.pdf>.

³ The Business Conduct Committee found that ETC violated CBOE Rules 4.1 (Just and Equitable Principles of Trade), 4.2 (Adherence to Law), 4.20 (Anti-Money Laundering Compliance Program), 12.3(j) (Margin Requirements), 2.4(i) (Portfolio Margin), and 15.1 (Maintenance, Retention and Furnishing of Books, Records and Other Information); as well as Regulation SHO under the Securities Exchange Act of 1934 and Exchange Act Rule 204 (Close-Out Requirement). The BCC also found that Murphy and Cloyd violated CBOE Rule 4.2.

sanctions imposed by the Business Conduct Committee: (1) a censure of all Applicants, (2) a \$1,000,000 joint and several fine as to all Applicants, and (3) as to Murphy and Cloyd, six-month all-capacities suspensions from acting as a CBOE Trading Permit Holder and from association with any CBOE TPH or TPH organization. The CBOE Board ordered that those sanctions would become effective on November 29, 2014.

On November 21, 2014, Applicants filed an application for Commission review of CBOE's decision, identifying with particularity eight alleged errors in CBOE's determination. Applicants also moved to stay enforcement of the sanctions pending Commission review of the matter.

Generally, the Commission may grant a stay if it finds that "justice so requires."⁴ The Commission considers four factors in determining whether a stay is warranted: (1) whether the applicants have shown a strong likelihood that they will prevail on the merits of the appeal; (2) whether the applicants have shown that they will be irreparably harmed if the stay is not granted; (3) whether the granting of a stay would result in substantial harm to other parties; and (4) whether the issuance of a stay would likely serve the public interest.⁵ Each criterion is not accorded equal weight.⁶ For example, a stay may be granted where there is a high probability of irreparable harm but a lower probability of success on the merits, or vice versa.⁷

Consistent with this standard, the Commission has granted stays where, as here, the sanction imposed is of a short-term nature and requiring applicants to comply with the sanctions during the pendency of their Commission appeal would put them in jeopardy of losing the benefit of a successful appeal.⁸

Under the circumstances, a stay is appropriate in this case. Although CBOE found that Applicants violated Exchange rules, it did not deem their conduct so troubling as to necessitate a permanent bar. Instead, the relatively short suspensions suggest that granting the stay will not result in substantial harm to other parties and will serve the public interest. Moreover, if Applicants ultimately succeed in their appeal, ordering them to pay the fine and comply with the six-month suspensions now could denigrate the benefits of that success. Given the potential harm to Applicants, combined with the lack of substantial harm to other parties and our public

⁴ *David C. Ho*, Admin. Proc. File No. 3-12206 (Feb. 22, 2006), at 2 (citation omitted).

⁵ *Stephen Michael Sohmer*, Admin. Proc. File No. 3-11101 (May 22, 2003), at 2 (citing *Cuomo v. U.S. Nuclear Regulatory Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1988)).

⁶ *Sohmer*, at 2.

⁷ *Id.*

⁸ *See, e.g., Scattered Corp.*, 52 SEC 1314, 1321 (Apr. 28, 1997) (staying suspensions and fines imposed on applicants by Chicago Stock Exchange); *Pasquale Schettino*, Admin. Proc. File No. 3-9921 (July 9, 1999), at 4 (granting applicant's request for stay of censure and fine imposed by American Stock Exchange); *see also Sohmer*, at 3 ("Consistent with [its] precedent [setting forth the four-part stay test], the Commission has stayed SRO-imposed suspensions or time-limited bars pending its resolution of an appeal from disciplinary action.").

interest determination, it is appropriate to place less weight on whether Applicants are likely to prevail on the merits of their appeal.⁹

Accordingly, IT IS ORDERED that the request of Electronic Transaction Clearing, Inc., Kevin Murphy, and Harvey C. Cloyd, Jr., for a stay of the sanctions imposed on them by the Chicago Board Options Exchange, Inc., in its Board of Directors decision dated October 29, 2014, pending the Commission's consideration of their appeal be, and it hereby is, granted.¹⁰

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields
Secretary

⁹ *See Ho*, at 3 (granting stay of CBOE suspension, fine, and censure pending the Commission's consideration of applicant's appeal and collecting supporting authority); *see also Sohmer*, at 3 (finding it appropriate to stay NYSE disciplinary suspension pursuant to four-part standard in light of, among other things, importance of statutory right of appeal, fundamental nature of Commission review under statutory scheme, potential loss of benefit of successful appeal, and need to preserve value of de novo review of self-regulatory organization action).

¹⁰ CBOE has failed adequately to support its request that Applicants be required to establish an escrow account to assure that sufficient funds will be available to pay the monetary sanction. CBOE's request is therefore declined.