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June 10, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-0609

Re: Exchange Act Release No. 34-74581; File No. S7-05-15

Dear Mr. Fields:

The Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") is submitting this comment letter on the proposal ("Proposal")[1] by the Securities and Exchange Commission ("SEC" or "Commission") to amend Rule 15b9-1 under the Securities Exchange of 1934 ("Act"). Section 15(b)(9) of the Act and Rule 15b9-1 collectively provide an exemption from Section 15(b)(8) of the Act, which requires broker-dealers to be a member of a registered national securities association ("FINRA"). The Proposal would significantly limit the exemption currently available to certain broker-dealers executing transactions off-exchange[2] or on exchanges at which the broker-dealer is not a member ("away exchanges").

CBOE supports the objective of the Proposal insofar as the rulemaking seeks to require FINRA membership of proprietary trading firms whose primary business is executing transactions off-exchange. We believe it is reasonable to require entities that join a national securities exchange but primarily conduct business on other venues, where they have no membership, to become FINRA members. However, CBOE believes the Proposal may inadvertently require FINRA membership of broker-dealers that are members of an exchange, or multiple exchanges, and whose primary business involves executing transactions on the exchange(s) of which the broker-dealers are members ("home exchange(s)"). This would needlessly impact numerous exchange members without furthering the aims of Section 15(b)(9) of the Act or Rule 15b9-1. Accordingly, CBOE urges modifications to the Proposal as set forth below.

Key Provisions of the Proposal

As noted above, Sections 15(b)(8) and (9) of the Act require broker-dealers to be a member of FINRA unless exemptive relief is provided by the Commission. Rule 15b9-1

[1] Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036 (April 2, 2015).
[2] *See id.*, at FN 3 (defining "off-exchange" for the purposes of the Proposal as any securities transaction in an exchange-listed security that is not effected, directly or indirectly, on a national securities exchange).

currently provides that a dealer may receive exemptive relief from the requirement of FINRA membership for effecting transactions off-exchange or on an away exchange if the dealer's off-exchange or away exchange activity is effected for the dealer's own account and with or through another broker-dealer. However, the Proposal modifies the exemption to provide that a dealer will receive exemptive relief from FINRA membership for effecting transactions off-exchange or on an away exchange when a dealer's off-exchange or away exchange activity is effected for the dealer's own account, with or through another broker-dealer, *and* "solely for the purpose of hedging the risks of [the dealer's] floor-based activities[.]" This appears to imply that exemptive relief for hedging activity is only available for activity conducted on a physical trading floor and not other activity on the same exchange.[3] Further, how compliance with the exemption works when a broker-dealer has multiple home exchanges is less than clear.[4]

Rule 15b9-1 also currently provides exemptive relief from FINRA membership for brokers that are members of an exchange, hold no customer accounts, and receive no more than $1,000 annual gross income from off-exchange or away exchange activity ("*de minimis* exception").[5] The Proposal eliminates the *de minimis* exception, but it does provide exemptive relief for brokers-dealers that route orders through the broker-dealers' home exchange(s) for the purposes of preventing trade-throughs under SEC Rule 611 (replacing the language in current Rule 15b9-1(b)(2) that provides exemptive relief for broker-dealers that route orders through the Intermarket Trading System).

Floor-Based Activity

As mentioned above, the Proposal implies that exemptive relief for off-exchange hedging activity is only available in relation to activity conducted on a physical trading floor.[6] CBOE believes a physical presence on the floor of an exchange should have no bearing on whether a dealer qualifies for the hedging exemption. Today's marketplace is a hybrid of exchange matching engines and physical trading floors, and a dealer on the physical floor of an exchange is fundamentally no different from a dealer streaming electronic quotes to an exchange for purposes of this rulemaking.[7] Each provides liquidity on its home exchanges and receives executions on those exchanges, and each will likely execute similar hedging transactions.

[3] *See id*., at 18046 (noting that currently, NYSE Arca Options, NYSE Amex Options, NASDAQ OMX Phlx, CBOE, NYSE, and NYSE MKT have physical exchange floors).
[4] *See id*., at FN 121 (recognizing that a broker-dealer may operate a floor-based business on one or more options exchanges). The Proposed Rule implies that a dealer with multiple home exchanges will be required to become a FINRA member if it hedges activity conducted on one if its home exchanges that doesn't happen to have a physical trading floor. Similarly, the Proposed Rule implies that a dealer who is solely a member of an exchange without a physical trading floor will be required to become a FINRA member if that dealer hedges their home exchange activity on any other trading venue.
[5] *See* Rule 15b9-1(a)(3).
[6] *See id*., at 18046 and Proposed Rule 15b9-1(c)(1).
[7] As noted in the Proposal, the last substantive update to Rule 15b9-1 was in 1983. *See id*., at 18037. In 1983 transactions on an exchange were largely executed via open outcry on the physical floor of an exchange.

Therefore, in order to properly apply the hedging exemption to similarly situated dealers (i.e., dealers that are market-makers who conduct most of their market-making business on home exchanges- whether physically located on the trading floor, streaming quotes electronically, or both), CBOE believes Rule 15b9-1 should exempt dealers if their off-exchange or away exchange activity is for the purpose of hedging the risk of its home exchange activities, whether those activities are floor-based or not.

As previously noted, focusing on a physical presence on the floor of an exchange does not adequately take into account today's hybrid marketplace where similarly situated dealers are performing similar services, but may or may not have a physical floor presence. Further, many trading permit holders making markets on a physical trading floor also make electronic markets on that same exchange in the same or different products. The Proposal, as written, would result in an awkward situation where physical floor trades could be hedged off-exchange or on away exchanges in accordance with the exemption, but none of the other trades by that same participant could be hedged off-exchange pursuant to the exemption, effectively making it unavailable to the trading permit holder.

The Exchange notes that CBOE's approach would not affect the objective of the Proposal because firms that do not primarily conduct a business on their home exchange(s) are not executing transactions off-exchange *for the purpose of hedging*; rather, their off-exchange or away exchange activity is their primary trading activity. Thus, these firms would be subjected to FINRA membership, but firms that primarily trade on their home exchange(s) (electronically or otherwise) and hedge on other venues would not be subjected to FINRA membership.

De Minimis Exception

CBOE believes the Commission should revise, but not entirely remove, the *de minimis* exception of Rule 15b9-1(a)(3) for brokers.[8] Although the Proposal indicates that the *de minimis* exception was intended to permit exchange specialists and other floor members to receive a nominal amount of commissions on occasional off-exchange transactions for accounts referred to other members,[9] the Proposal does not recognize that option brokers (floor-based or not) execute complex orders that may contain a stock component. It is reasonable for a broker handling a stock-option order to receive a commission for handling the order which includes routing the stock portion of the order to a non-options exchange venue for execution. However, the Proposal, as currently written, implies that all brokers must become members of FINRA if they collect any commission for executing complex orders with a stock component where that component is executed on a venue of which the broker is not a member.

Thus, the Exchange believes the Proposal should be revised to provide clarity to the broker community that handling complex orders with a stock component would not require the broker to become a FINRA member or a member of a venue at which a stock component of a complex order is executed. Additionally, the Exchange suggests that the *de minimis* exception

[8] *See* Rule 15b9-1(a)(3).
[9] *See* Proposal at 18040.

be retained; however, as the $1,000 *de minimis* standard was instituted in 1965[10] the Exchange believes that the *de minimis* amount should be significantly increased to facilitate the ability of these floor brokers to provide meaningful services to their customers in handling and managing large and complex order executions of cross product strategies.

Linkage

As noted above, the Proposal provides an exemption for a broker or dealer that effects a transaction on an away exchange as a result of the broker or dealer's order being routed to the away exchange *by the home exchange* for the purposes of preventing a trade-through consistent with Rule 611 under Regulation NMS. CBOE suggests that this provision be expressly expanded to include option orders routed to away exchanges pursuant to the Options Intermarket Linkage Plan.[11] Rule 611 is generally considered applicable to NMS stocks,[12] but the proposed exemption should also cover listed options.

In addition, the Proposal does not recognize the fact that brokers or dealers need not utilize an exchange's routing mechanism to route orders to away exchanges. Brokers or dealers often choose to send orders through other broker-dealers (without utilizing the home exchange's routing mechanism) to away exchanges to access the National Best Bid or Offer in order to prevent a trade-through on the home exchange under Rule 611 or the Exchange's rules.[13]

Thus, the Exchange believes the Proposal should be modified to provide additional relief for those brokers or dealers that utilize linkage routing mechanisms offered by home *options* exchanges, as well as those brokers or dealers that route orders to away exchanges without utilizing the linkage routing mechanisms offered by a home exchange.

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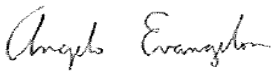
The Exchange supports the objective of the Proposal but urges the Commission to consider the above suggested modifications. The Exchange believes retooling the Proposal in the manner described will have no effect on the objective of this rulemaking but will remove unintentional adverse effects on non-FINRA broker-dealers that primarily conduct business on their home exchanges. CBOE appreciates the opportunity to comment on this Proposal. If you have any questions, or if we can provide further information or justification for the suggested

[10] *Id.*
[11] *See* Securities Exchange Act Release 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000)(Approval Order)(approving the Options Intermarket Linkage Plan).
[12] *See* 17CFR 242.600 (defining "NMS stock" as any NMS security other than an option) and 17 CFR 242.611 (requiring policies and procedures designed to prevent trade-throughs in "NMS stocks").
[13] *See, e.g.*, CBOE Rule 6.81.

revisions to the Proposal, please contact Angelo Evangelou at 312-786-7464 or Kyle Edwards at 312-786-7304.

Sincerely,



Angelo Evangelou

cc: Mary Jo White, Chair
Luis A. Aguilar, Commissioner
Daniel M. Gallagher, Commissioner
Michael S. Piwowar, Commissioner
Kara M. Stein, Commissioner
Stephen Luparello, Director, Division of Trading and Markets
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