

May 14, 2015

Brent J. Fields, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

Re: File Number SR-CBOE-2015-030

Ladies and Gentlemen:

The Chicago Board Options Exchange, Inc. has submitted a proposal to adopt new Rule 6.79 to codify requirements applicable to floor brokers at the exchange. Rule 6.79 addresses floor broker errors and the liquidation of error account positions. Rule 6.79 is slated for immediate effectiveness, which is appropriate. The Rule is a long overdue update and clarification to a 1995 regulatory circular, RG 95-49, issued by the CBOE to address brokers disadvantaging customers when liquidating errors by trading against orders they are holding. The Commission should take this opportunity to examine why the CBOE failed to timely update guidance from 1995.

As early as 2011, the CBOE reviewed broker error account handling. At that time, the CBOE determined to proceed against brokers for alleged violations of the outdated regulatory circular. After many years of remaining silent on the topic, it determined to bring no less than three enforcement actions based on its outdated guidance. In the interim, the CBOE staff would not provide updated guidance as to how a floor broker should address certain situations.

The CBOE's approach did not further the mission of protecting customers or conform requirements to the existing markets. It raised money through enforcement proceedings and later corrected the outdated 1995 circular upon which it based the enforcement proceedings.

The CBOE's approach is nearly certain to provide income to the exchange. Broker-dealers have obvious incentives to settle with SROs. Small firms simply have less manpower and funds to expend and large firms can more easily allocate funds to resolving matters. Situations that involve small firms or small penalties relative to the size of the firm are likely to settle. The likelihood of settlement permits the examination and enforcement staffs of the SROs to further the SRO's over-riding mission of securing profits for its shareholders, without critically analyzing whether the approach furthers the regulatory purpose that the SRO is intended to serve.

Going forward, since the CBOE pays FINRA for outsourced regulatory services, CBOE and FINRA will continue to have an inherent conflict and remain biased in favor of recommending enforcement actions rather than promptly and efficiently addressing their own regulatory gaps (legal and operational). For SROs, examinations now guarantee income.

FINRA, conducting examinations for multiple exchanges, has an even greater conflict. A finding or alleged violation detected during an exam or inquiry that previously could have been corrected without the need for an enforcement action can now serve as the basis for enforcement actions by multiple SROs rather than just one.

Furthermore, SROs have decreased incentives to assist their participants by providing services that would prevent deficiencies. Even if an SRO compounds a problem, it may still bring an enforcement action. And where an SRO compounds a problem or fails to take reasonable actions to prevent deficiencies, there are no repercussions to the SRO. Its divisions can coordinate their actions, such as delaying corrections, so as not to undermine the revenue making ability of the SRO examination and enforcement staff.

Examination deficiencies are normal. It is only theoretically possible for a firm to be perfectly compliant. The markets change, new rules and situations arise and the vast majority of firms work diligently to run their business while conforming to a dizzying set of laws, regulations, rules and standards. These apply to all aspects of operations and they typically apply regardless of the size of the firm or its business model. Compliance lapses and outright failures are the reality and should not be ignored, but the extent of the failure, the effects of the failure, other circumstances and contributing factors should be taken into consideration in determining whether to bring an enforcement action.

Yet an SRO has nothing to gain if it evaluates these important considerations. An SRO answers to its shareholders and the Commission. As a result, for the examiners, the enforcement staff and the reviewing body (such as the CBOE's Business Conduct Committee), the path of least resistance is to approve an enforcement proceeding. They appear to fulfill the SRO's regulatory mission while they undoubtedly fulfill the SRO's profit seeking mission. There is no need to act independently, to exercise discretion or to evaluate the circumstances to determine if there is any deterrent or other effect served by a proceeding because a proceeding and the resulting fines are viewed favorably. The routine resolution of matters and the announcements of fines suggest the SROs are performing their regulatory mission.

Whether SROs can adequately perform their regulatory mission in light of the conflict with their business goals is highly questionable. For example, multiple settlements relating to the same issue should not be lauded, but evaluated as to why multiple firms encountered the same issues.

As the CBOE's delayed promulgation of Rule 6.79 illustrates, the regulatory mission actually may take a backseat to the profit making mission. The CBOE failed to keep its rules and guidance current, and it did not reflect the existing market place. It did not prioritize regulation other than through enforcement. The markets and floor brokers did not benefit from the CBOE's inordinate delay in updating its 1995 guidance; the CBOE's shareholders did. Its protected status as an exchange and SRO permitted the CBOE to generate revenue from its regulatory role regardless of effectiveness.

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No longer member driven organizations, SROs effectively answer to only one body, the Commission. Indeed, the Commission has expanded the SRO's profit making ability by approving rules that further limit SRO's liability to the users of their services. It is long past time to address the outdated market structure. The conflicts of interest that impede quality regulation and the flawed self-regulatory scheme need immediate attention.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Zordani". The signature is written in a cursive, flowing style.

Jennifer Zordani

c: The Honorable Mary Jo White  
The Honorable Luis A. Aguilar  
The Honorable Daniel M. Gallagher  
The Honorable Kara M. Stein  
The Honorable Michael S. Piwowar  
Joanne Moffic-Silver, Esq.