CBOE
CHICAGO BOARD OPTIONS EXCHANGE

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December 3, 2009

VIA FACSIMILE AND FEDERAL EXPRESS

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

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OFFICE OF THE SECRETARY

Re: SR-ISE-2009-35, Securities Exchange Release No. 60584
Statement in Opposition to Staff Approval

Dear Ms. Murphy:

I am writing as General Counsel for Chicago Board Options Exchange, Incorporated ("CBOE"). Enclosed please find the original and three copies of CBOE's statement in opposition to the decision of the Division of Trading and Markets (the "Division") of the Securities and Exchange Commission (the "Commission" or "SEC") to approve the rule filing in SR-ISE-2009-35 (the "QCC Rule Filing"). Pursuant to Rule 154(c) of the Securities and Exchange Commission's Rules of Practice, I certify that the enclosed statement does not exceed 7,000 words. This statement was sent via facsimile to telephone number 202-772-9324 and via first-class mail on December 3, 2009. Also enclosed, please find a Certificate of Service and a facsimile confirmation sheet.

Any questions concerning this matter can be directed to me at:

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Sincerely,

Joanne Moffic-Silver

Joanne Moffic-Silver
General Counsel and Corporate Secretary for
Chicago Board Options Exchange, Incorporated

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Petition of:	)	
	)	File No. SR-ISE-2009-35
Chicago Board Options Exchange, Incorporated	)	
	)	
	)	

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STATEMENT OF CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED IN OPPOSITION TO THE DIVISION OF TRADING AND MARKETS APPROVAL OF RULE UNDER DELEGATED AUTHORITY

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Petition of:	)	
	)	File No. SR-ISE-2009-35
Chicago Board Options Exchange, Incorporated	)	
	)	
	)	

STATEMENT OF CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED IN OPPOSITION TO THE DIVISION OF TRADING AND MARKETS APPROVAL OF RULE UNDER DELEGATED AUTHORITY

Chicago Board Options Exchange, Incorporated ("CBOE") submits this statement in opposition to the decision of the Division of Trading and Markets (the "Division") of the Securities and Exchange Commission (the "Commission" or "SEC") to approve the rule filing in SR-ISE-2009-35 (the "QCC Rule Filing") pursuant to delegated authority and requests that the QCC Rule Filing be disapproved.

INTRODUCTION

A. The QCC Rule Filing.

On June 15, 2009, the International Securities Exchange, LLC ("ISE") filed the QCC Rule Filing with the Commission. The QCC Rule Filing sought Commission approval of a new method to cross option orders named the Qualified Contingent Cross or "QCC." If approved, the QCC order mechanism would allow an ISE member to cross the options leg of a Qualified Contingent Trade ("QCT") on ISE immediately upon entry without exposure and ahead of public customer interest if the order is: (1) for at least 500 contracts; (2) part of a QCT; and (3) executed at a price at or between the national best bid or offer (the "NBBO").[1]

[1] *See* Exchange Act Release No. 60584 (August 28, 2009), 74 FR 45663 (September 3, 2009) (the "QCC Approval Order") at 45663-64.

B. The Comment Letters Filed By CBOE and Susquehanna International Group.

CBOE and Susquehanna International Group, LLP ("SIG") both filed comment letters opposing the QCC Rule Filing.[2] In its July 17, 2009, comment letter, CBOE questioned the justifications asserted by ISE in support of the QCC Rule Filing and CBOE also noted that the QCC Rule Filing represented the first time that an options market would be allowed to permit unfettered crossing of orders without any exposure to the marketplace and ahead of resting customer orders on that exchange, thereby sending the options markets down a dangerous path toward uncompetitive and non-transparent markets.[3] CBOE also emphasized its concern that, because orders executed pursuant to the QCC Rule Filing would never be exposed to ISE's auction market, those orders would not have the opportunity to obtain a better price as a result of market competition and price discovery.[4] SIG's August 10, 2009 comment letter raised similar concerns that the OCC Rule Filing would permit "clean" crosses without yielding priority to orders resting on ISE's book and that the lack of exposure to ISE's market before the cross might result in the crossed orders being filled at non-competitive prices.[5]

C. The QCC Approval Order.

On August 28, 2009, the Division, acting pursuant to delegated authority, approved the QCC Rule Filing. Significantly, the Division stated

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[2] *See* Letter from Angelo Evangelou, Assistant General Counsel, CBOE, to Elizabeth Murphy, Secretary, Commission, dated July 16, 2009 (the "CBOE Comment Letter"); Letter from Gerald D. O'Connell, Chief Compliance Officer, Susquehanna International Group, to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009 (the "SIG Comment Letter").

[3] *See* CBOE Comment Letter at 3-4.

[4] *Id.* at 1.

[5] *See* SIG Comment Letter at 1-3.

> that [ISE's] proposal would represent a change in certain long-held principles in the options markets because it would permit the execution of a cross order without requiring exposure or customer priority. The Commission continues to believe that exposure and customer priority play an important role in ensuring competition and price discovery in the options markets.[6]

Nonetheless, the Division concluded that "the limited exception to priority and exposure principles is consistent with the Act" and approved the QCC Rule Filing because it

> will allow [ISE] members to retain the flexibility needed to utilize the Commission's NMS QCT Exemption for qualified stock-options transactions that are not presented as a package on an options exchange, but instead where the options and stock components are executed on separate markets.[7]

In other words, the QCC Approval Order appeared to hinge on the Division's belief that customers wishing to execute stock-option orders needed QCC in order to execute their strategies and that the Commission's Qualified Contingent Trade exemption would not be as meaningful an exemption without the QCC mechanism.[8]

D. <u>CBOE's Petition for Review.</u>

On September 14, 2009, CBOE filed its Petition for Review, explaining why it believed that the Commission should review and set aside the QCC Approval Order.[9] CBOE's Petition discussed the structure of the options markets and the key role played by options market-makers in providing liquidity where it would otherwise not exist.[10] CBOE also discussed the limitations that have been historically imposed on brokers who wish to cross options orders in their custody,

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[6] *See* QCC Approval Order at 45665.

[7] *Id.* at 45666.

[8] *Id.* at 45665-66.

[9] *See* CBOE's Petition for Review, File No. SR-ISE-2009-35, dated September 14, 2009 ("CBOE's Petition").

[10] *Id.* at 4.

including (1) the percentage limitations on how much of an order a broker can cross ahead of existing market interest at the execution price, (2) the requirement that the order be exposed to the market before crossing to provide an opportunity for price improvement, (3) the requirement that customer orders be afforded priority before any guaranteed participation entitlement percentages are applied and (4) the requirement that the execution price not cause an impermissible inter-market trade-through in the option.[11]

CBOE's Petition also provided background on the two ways that a stock-option strategy can be fulfilled, with the first being a situation where the stock option strategy is "legged into" by submitting separate stock and option orders directly into two different marketplaces.[12] If the investor "legs into" a stock-option position, no trade-though exemptions should apply and both the stock and option orders are subject to the regular trading, priority and price discovery rules and processes of the market on which each order is executed.[13]

The second way to execute a stock-option strategy is by submitting a singular stock-option order to an exchange (typically an options exchange) where that stock-option order can be represented and auctioned at a net price.[14] Once the net execution price for the stock-option order is negotiated and determined on an exchange – a process that might lead to a better price for the investor due to the price discovery process – the components of the trade are immediately broken apart and executed on stock and options exchanges.[15] The execution of the stock

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[11] *Id.* at 5-6.

[12] *Id.* at 7.

[13] *Id.*

[14] *Id.* at 8.

[15] *Id.*

component qualifies for the Qualified Contingent Trade exemption from Regulation NMS for the stock leg and the options component qualifies for the Complex Trade exemption found in the new (and the old) options linkage plan.[16] Importantly, the original stock-option order is exposed to the marketplace. Further, for all stock-option orders, the Commission has consistently required that the options component trade at a price that is equal to or better than the exchange's best bid or offer and yield to any resting public customer interest at the same price for that options series.[17]

CBOE's Petition also discussed the policies and principles established by the Commission over many years regarding exchange order exposure and auction requirements and the limits placed on participation guarantee entitlements.[18] As the QCC Approval Order recognized, the existence of the Commission's historic policies requiring market exposure and customer priority before orders are permitted to be crossed is undisputed.[19]

CBOE's Petition also demonstrated that the QCC Rule Filing is inconsistent with Sections 11A and 6 of the Exchange Act, 15 U.S.C. §§ 78k1 and 78f, because it would unfairly place CBOE at a competitive disadvantage. In particular, CBOE recognized that upstairs firms that wanted to arrange stock-options transactions might utilize the QCC order mechanism and send their orders to the ISE, rather than CBOE, to avoid having to expose them to the market.[20] In addition, CBOE argued that the QCC Rule Filing would be (1) unfair to customers of the

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[16] *Id.* at 9.

[17] *Id.*

[18] *Id.* at 9-10.

[19] *See* QCC Approval Order at 45665.

[20] *See* CBOE's Petition at 12.

brokers sending a QCC trade to ISE because those customers would lose the opportunity for price improvement, (2) unfair to customers with resting limit orders at the cross price because their orders would be bypassed and (3) create a disincentive for market-makers to post vital liquidity because they would lose the opportunity to participate in trades effected utilizing the QCC order mechanism.[21]

CBOE's Petition also examined in detail the negative policy implications of approving the QCC Rule Filing, including (1) the problems associated with allowing options crossing without either market exposure or public customer yielding, (2) the fact that the QCC Rule Filing includes an unprecedented 100% crossing entitlement, and (3) the fact that the QCC mechanism is inconsistent with the Commission's longstanding requirement that public customer orders be afforded priority even in circumstances where the stock-option strategy is "legged into."[22] Finally, CBOE's Petition asserted that the justifications offered by the ISE in support of the QCC Rule Filing do not withstand scrutiny and CBOE disputed the Division's assertion that the QCC Rule filing represented a "limited" exception to the longstanding priority and exposure principles.[23]

E. <u>The Commission Grants CBOE's Petition for Review.</u>

On November 12, 2009, the Commission instituted proceedings to review the QCC Approval Order.[24] CBOE now submits this statement to supplement the arguments made in its

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[21] *Id.* at 13.

[22] *Id.* at 15-20.

[23] *Id.* at 20-23.

[24] See Securities Exchange Act Release No. 60989 (November 12, 2009), (File No. SR-ISE-2009-35).

Petition and to emphasize the primary reasons why it believes that the QCC Rule Filing should be disapproved.[25]

ARGUMENT

I. THE QCC RULE FILING WOULD ELIMINATE THE BENEFITS ARISING WHEN ORDERS ARE EXPOSED TO THE MARKET.

As discussed above, in its QCC Approval Order, the Division recognized that the QCC Rule Filing represents the first time that an options exchange would be allowed to execute a cross order without first requiring that the order be exposed to the exchange's market.[26] As CBOE's Petition explained, exposure of an options order (regardless of whether the order is a "simple" order or part of a "complex" order) to the market facilitates several important policy goals.

As an initial matter, the Commission's historic policy of requiring that all options orders be exposed to the market serves the obvious goal of providing the customer with the opportunity to obtain price improvement when market participants interact with those orders. Because the QCC Rule Filing would eliminate the requirement of market exposure, it raises the specter that the customer whose order is submitted through the ISE's QCC mechanism might receive a fill at a price that is inferior to the price that the customer would have received if the full package or even the options component had been represented to the market. Simply put, while the QCC Rule Filing provides that the options leg of a QCC order must be executed at a price that is either at or between the NBBO, the customer is deprived of the opportunity to have the entire package represented in an auction market and to have that competitive market determine whether it can

[25] The following entities filed letters urging that the Commission grant CBOE's Petition: NASDAQ OMX PHLX, Inc., SIG, Wolverine Trading, LLC, NYSE Euronext, Group One Trading, L.P., LiquidPoint, LLC, and the Security Traders Association of New York, Inc.

[26] QCC Approval Order at 45665.

improve on the stock-option order's limit price. Further, the customer is deprived, with respect to the options leg, of potential improvement over prices reflected in the NBBO. In essence, the QCC Rule Filing would convert ISE from an auction market where orders interact with market participants into a "print facility" for large options orders where the price received by the customer is determined without input from or interaction with the marketplace. The filing is completely at odds with recent Commission proposals to address issues involving so-called dark pools in the equities markets and the Commission's concern with what it views as the increasing lack of transparency and order interaction in the stock markets.

The requirement that all options orders be exposed to the market before execution also serves to enhance the liquidity available in the options marketplace. Unlike the stock market, the options market depends heavily on market-makers to provide liquidity because there are not enough customer orders to establish a liquid market for the hundreds of thousands of options series listed in the options market. Market-makers, in turn, are willing to provide that liquidity because they historically have been provided with an opportunity to participate on trades when orders are represented in the marketplace.

The QCC Rule Filing, however, could dramatically and negatively affect the level of liquidity currently provided by market-makers because the proposal provides for a 100% participation guarantee for the firm executing the QCC order. If market-makers are no longer able to compete for significant orders as a result of the QCC Rule Filing (a situation that could snowball if other options exchanges are forced to adopt similar rules for competitive purposes), market-maker liquidity may diminish. The loss of market-maker liquidity, in turn, will inevitably lead to a situation where the lack of competition on exchanges will result in wider spreads and poorer execution prices for investors.

II. THE QCC RULE FILING WOULD HARM PUBLIC CUSTOMERS BECAUSE IT WOULD ELIMINATE PUBLIC CUSTOMER PRIORITY.

While not required by the Exchange Act, the Commission has historically protected public customer orders by requiring that public customer interest must be afforded priority whenever two orders are crossed. Indeed, to our knowledge, the Commission has never allowed an execution entitlement – much less a 100% entitlement as contemplated by the QCC Rule Filing – without first yielding to resting public customer interest.

The QCC Rule Filing, however, represents a stark departure from the Commission's policy of protection of public customer orders because it would represent the first time that two orders could be crossed without exposure and without affording priority to customers whose orders are resting on ISE's book. Under that scenario, a QCC cross would be granted special priority to avoid yielding to public customer interest, while public customers who have a limit order resting on ISE's book could be harmed because their orders might never be filled.

III. THE ISE HAS OFFERED NO LEGITIMATE JUSTIFICATION TO SUPPORT THE QCC RULE FILING.

Because the QCC Rule Filing indisputably would reverse the Commission's long held principles requiring that cross orders be exposed to the market and yield to public customer interest, the ISE should bear the burden of establishing why the Commission should depart from those principles and approve the filing. To date, however, the ISE has offered no legitimate reasons as to why the QCC Rule Filing is necessary or explained how it will serve a legitimate market interest.

In the QCC Rule Filing (and in ISE's submissions requesting that the Commission lift the stay imposed by Rule 431(e) of the Rules of Practice), ISE states that QCC is necessary to facilitate the execution of stock-option orders. While ISE states that conclusion with frequency, it never explains why adoption of the QCC mechanism is important to stock-option customers.

Indeed, CBOE does not believe that QCC offers stock-option customers any benefits. The following example illustrates the existing alternatives available to customers seeking stock-option order executions and how the QCC mechanism provides no benefits to customers over alternatives that already exist.

Assume a customer seeks to buy 50,000 shares of stock and sell 500 calls on that stock (a buy-write trade). That customer will be interested in ascertaining a net price for the entire transaction (*i.e.*, the total cost to buy the stock minus the amount received from selling the calls). Because the customer wants to control the net price of the entire transaction (like putting a limit price on a regular straight order), the customer views the cumulative components of the transaction as a single package and seeks a net execution price. The customer wants to ensure that the stock and option executions are contingent on one-another.[27]

In today's marketplace, without the QCC mechanism, there are numerous ways to execute the hypothetical customer's stock-option order:

> **Alternative 1.** The customer's stock-option order could be submitted to an exchange's electronic complex order mechanism. Both ISE and CBOE have such mechanisms (and both accept stock-option orders). These mechanisms accept one-sided complex orders (like the buy-write order in this example) and electronically auction those orders to exchange members who submit responses to trade against the auctioned orders at their net limit price or better. Members submit responses to auction messages at net prices with the best price "winning" the auction and trading against the customer order. Importantly, the customer's stock-option order is exposed to the marketplace. The system ensures that the components are executable and trades the option portion on the receiving options exchange and submits the stock portion to a stock venue for execution. These executions are contingent on one-another (e.g., if all the components cannot be

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[27] CBOE believes that the stock and option trade should receive the special trade-through relief that flows to contingent stock and option trades only if they, at some point, were represented as a package to the marketplace (hence the names "Qualified Contingent Trade" and "Complex Trade"). ISE disagrees with CBOE's view. *See* QCC Approval Order at 45664-65.

executed, then no components will be executed) and are generally eligible for the Qualified Contingent Trade exemption to the stock NBBO requirements and the Complex Trade exemption to the option NBBO requirements. These executions remain subject to the individual markets' BBO requirements for complex orders.

Alternative 2. The stock-option order could be sent to an exchange trading floor for representation and execution. A floor broker would represent the stock-option package to the trading crowd and negotiate the best possible net price for the customer. Once a net execution price is determined, the option trade between the customer and the crowd members is effected on the floor and the stock trade is transmitted to a stock venue for execution. Importantly, once again, the stock-option order is exposed to the marketplace. These executions are contingent on one-another and are generally eligible for the Qualified Contingent Trade exemption to the stock NBBO requirements and the Complex Trade exemption to the option NBBO requirements. These executions remain subject to the individual markets' BBO requirements for complex orders.

Alternative 3. The customer's broker might desire or agree to "internalize" the customer stock-option order with a firm facilitation order (or the broker could solicit a contra party for the trade). In this scenario, the broker has two orders it wishes to cross and it has brokered an anticipated cross price. The broker can then submit the orders to electronic crossing mechanisms that accept stock-option orders (again, both ISE and CBOE employ such mechanisms). The crossing mechanisms expose the proposed cross to a price improvement auction (with any price improvement accruing to the customer's side of the trade). Generally, these mechanisms allow the facilitation (or solicited) side of the cross a guaranteed participation if that side matches the best price at the conclusion of the electronic auction (however, the guarantee generally cannot exceed 40% of the customer order). Importantly, the proposed cross again is exposed to the marketplace. Once the auction is complete, the options portion is executed electronically and the stock portion is executed on a stock venue. The resulting stock and option executions are contingent on one-another and are generally eligible for the Qualified Contingent Trade exemption to the stock NBBO requirements and the Complex Trade exemption to the option NBBO requirements. These executions remain subject to the individual markets' BBO requirements for complex orders.

Alternative 4. If the customer's broker desires or agrees to "internalize" the customer stock-option order with a firm facilitation order (or the broker solicits a contra party for the trade) the broker could submit the proposed cross to a floor broker for execution on a trading floor. The floor broker would then engage in price discovery with the trading crowd and attempt to cross the orders. Crowd members may improve on the cross price and fully or partially participate in the execution (the 40% guarantee applies to the trading floor too, but only if the contra-side equals the best price in the crowd). Again, any price improvement accrues to the customer side of the trade and the proposed cross is exposed to the marketplace. Once a final net price is determined, the options are priced and traded in the crowd and the stock is crossed on a stock venue. Like the alternatives discussed above, the resulting stock and option executions are contingent on one-another and are generally eligible for the Qualified Contingent Trade exemption for stock NBBO requirements and the Complex Trade exemption for option NBBO requirements. The executions also remain subject to the individual markets' BBO requirements for complex orders.

Alternative 5. Finally, although it is not likely due to the risks that the strategy might not be successfully executed, the customer could attempt to "leg" the stock-option trade by submitting an order to buy 50,000 shares into the stock market, separately submitting an order to sell 500 calls into the option market and hope for the best. Even this alternative still exposes both transactions to the marketplace. In CBOE's view, however, neither resulting execution should be eligible for the Qualified Contingent Trade exemption or the Complex Trade exemption. The executions also would remain subject to the individual markets' BBO requirements for simple orders.

The key thread running through all of these alternatives is that the customer's order is exposed for potential price improvement and the transaction maintains a level of transparency in the marketplace. The ISE QCC Rule Filing does the exact opposite. The QCC mechanism would allow the options to cross without any exposure or opportunity for price improvement *and* without the larger package ever having been exposed to the marketplace. CBOE cannot fathom how such a scenario benefits the customer. Instead, the only benefit accrues to internalizers who are seeking to trade as much as possible against selected customer orders. CBOE does not object to these firms wanting to capitalize on trading opportunities, however, it is vital for the marketplace to have an opportunity to participate as well.

While CBOE cannot see any benefits to customers, it is obvious how crossing networks like Ballista Securities ("Ballista") – an "options ATS" that is owned in part by ISE – would benefit from the QCC mechanism.[28] Those networks attempt to match customer orders with trading interest from liquidity providing subscribers. A customer order is discreetly exposed off-exchange to a subscriber list. If a match is secured, these networks desire to cross as much as possible without exchange "interference" so that subscribers are getting their money's worth.

At the end of the day, ISE has never explained why a new mechanism (especially one that contradicts long-held Commission policies) is necessary to facilitate the execution of stock-option orders. ISE argued in the QCC Rule Filing that QCC was necessary because the new options linkage structure does not contain a so-called Block Trade exemption for simple option orders. It appears that ISE members may have used the old Block Trade exemption (which allowed simple option trades over 500 contracts and a premium value of at least $150,000 to trade through other markets) to effect the option portion of stock-option strategies that were never exposed to the market as a package. Because the package was "legged," CBOE believes that ISE members would not have been permitted to rely on the Qualified Contingent Trade exemption to execute the stock portion of the strategy. Either way, the options Block Trade exemption only provided those block trades with *NBBO trade-through* relief, not *exposure* relief (*i.e.*, there was no relief from the requirement that a block order be exposed before it was crossed).

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[28] *See* June 9, 2009 Ballista Securities Press Release, http://www.ballistasecurities.com/press/index.html (last visited Dec. 1, 2009) (announcing ISE's investment in Ballista).

At this point, the options exchanges have been operating under the new linkage plan (without the Block Trade exemption) for several months and there is no evidence that ISE and stock-option trading customers are suffering any harm in the absence of the QCC mechanism. The execution statistics posted by Ballista on its website also indicate that the percentage of participation by Ballista subscribers on these stock-option trades "without exchange participation (step-in)" has not changed significantly. In June, July and August of 2009, the "[p]ercentage of Ballista liquidity provider trades executed without exchange participation" as described by Ballista was 92.06%.[29] In September and October (under the first months under the new linkage structure) the average percentage was 80.33%.[30] In other words, Ballista currently achieves its goal of fully matching orders without "interference" from exchange auction processes and the marketplace more than 8 out of 10 times. Why then is QCC vital? To boost that 80% statistic to 100%? While a boost to 100% might benefit Ballista and the value of ISE's investment in that entity, CBOE fails to see how such a boost would benefit customers. Those statistics indicate that ISE's existing crossing mechanisms offer far less "interference" than CBOE's trading floor.

ISE also argued to the Commission and in various communications to trading firms that QCC merely allows ISE to "level the playing field" with floor-based exchanges because floor-based trading practices allow option crosses to be executed with no intervention. That claim is false. First, when an order is *represented* on a trading floor it is, by definition, exposed for potential price improvement. On floor-based exchanges, trades cannot take place without order

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[29] *See* Ballista ATS Monthly Statistics Reports for June, July and August 2009, http://www.ballistasecurities.com/ats/product_page4.html (last visited Dec. 1, 2009) (stating that the June percentage was 92.31%, the July percentage was 95.45% and the August percentage was 88.41%).

[30] *See* Ballista ATS Monthly Statistics Reports for September and October 2009, http://www.ballistasecurities.com/ats/product_page4.html (last visited Dec. 1, 2009) (stating that the September percentage was 79.66% and the October percentage was 81%).

representation and price discovery occurring first. Moreover, a facilitation (or solicited order) is not entitled to a 100% cross (there is a longstanding 40% guarantee cap on all such option orders). Even if an exchange had just one market maker on its trading floor, that market maker could price improve on any order represented on that exchange's floor. Under the QCC mechanism, it is *impossible* for any other participants to price improve or participate on a QCC trade and the marketplace only becomes aware of the trade after is has occurred when it is "printed" on ISE.

Second, based on a recent analysis of manual executions on CBOE's trading floor, orders of 500 contracts or greater executed in open outcry on CBOE's trading floor involve more than one contra-party (i.e. receive trading crowd participation) over 48% of the time. In fact, over 18% of the time, there are six or more contra-parties. This highlights that trading crowd market makers meaningfully compete for order participation and, in fact, do participate on almost half of all larger orders represented on the floor. Simply put, the QCC mechanism does not copy what happens on CBOE's trading floor and instead it represents an attempt to bypass the market altogether.

Since its inception, ISE has complained (unjustifiably in our view) that it is at a disadvantage to floor-based exchanges or that it needs to have an accommodation to put its wholly electronic market on par with the floor-based exchanges. We do not believe that such complaints should enable ISE to discard the key transparency, order interaction, and customer order protection tenets that are the hallmark of an exchange. ISE should not be able to cloak an uncompetitive path toward turning options exchanges into print mechanisms through an unsupportable claim that it is attempting to replicate electronically what happens on the exchange trading floors. The QCC Rule Filing is contrary to the Exchange Act provisions of

Sections 6 and 11A, inconsistent with long-held SEC staff positions on the importance of order exposure, order interaction and customer order protection on exchanges, and is unnecessary to provide for the efficient execution of QCTs.

CONCLUSION

For the foregoing reasons, and for the reasons asserted in its July 16, 2009 comment letter and in its September 14, 2009 Petition for Review, CBOE requests that the Commission disapprove the QCC Rule Filing.

Dated: December 3, 2009.

Respectfully submitted,

Joanne Moffic-Silver

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CERTIFICATE OF SERVICE

I, Joanne Moffic-Silver, General Counsel for Chicago Board Options Exchange, Incorporated, hereby certify that on December 3, 2009, I served copies of the attached statement in opposition to the approval of SR-ISE-2009-35 (Securities Exchange Act Release No. 60584) by way of facsimile, and that the original was sent that day by U.S. first-class mail to:

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

Michael J. Simon
Secretary and General Counsel
International Securities Exchange, LLC
60 Broad Street
New York, NY 10004

December 3, 2009
Date

Joanne Moffic-Silver
Joanne Moffic-Silver
General Counsel and Corporate Secretary for
Chicago Board Options Exchange, Incorporated