CBOE
CHICAGO BOARD OPTIONS EXCHANGE

Angelo Evangelou
Assistant General Counsel
Legal Division

Phone: 312-786-7464
Fax: 312-786-7919
evangelou@cboe.com

January 20, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: SR-ISE-2009-35 (Qualified Contingent Cross)

Dear Ms. Murphy:

The Chicago Board Options Exchange, Incorporated ("CBOE") submits this letter in connection with the captioned matter. On December 3, 2009, CBOE submitted its Statement in Opposition to the Division of Trading and Markets approval of an International Securities Exchange ("ISE") rule filing to adopt a Qualified Contingent Cross ("QCC") under delegated authority. ISE submitted a letter on December 3, 2009 in support of the QCC proposal. On December 16, 2009, ISE submitted another letter to the Commission calling into question a statement made by CBOE in its December 3, 2009 Statement. This letter responds to ISE's December 16, 2009 letter and also briefly addresses a regulatory allegation made by ISE in its December 3, 2009 letter.

In our December 3, 2009 Statement, we stated that "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." We included that statistic in our Statement because it clearly refutes ISE's numerous erroneous public statements regarding participation on trading floors and to refute what we believe is ISE's frequently stated justification for QCC and many other ISE proposals: that trading floors are devoid of competition. The 48% statistic is clearly explained and defined in our Statement and is an entirely appropriate response to ISE's criticisms of trading floors.

Nevertheless, ISE, in its December 16, 2009 letter claims that our 48% statistic is "extremely misleading and cannot stand uncontested." We respond to ISE's accusations point by point below.

1. Trading Crowd Participation. ISE, in addition to calling our description of the 48% statistic "false", implies that when we refer to contra-parties it includes interest "arranged

upstairs" that was brought to the floor as part of an intended cross. That is not the case. When we say that 48% of the time there is more than one contra-party, we only include contra interest that results from exposing the order on the floor (*i.e.* from crowd members and the book).

2. Price Improvement. ISE states that CBOE offers no evidence that exposure on our floor results in price improvement to customers. However, if just one stock-option order received price improvement on our floor, it is more price improvement than QCC could *ever* offer to customers. In reality, many stock-option orders receive price improvement on our trading floor, and importantly, exposure results in transparency. QCC offers no potential for price improvement and zero transparency. The recent Commission concept release on market structure seems to indicate concern with increased dark liquidity and diminished transparency in today's markets- approval of QCC only promotes reduced transparency and dark liquidity.

3. Scope of CBOE's statistic. ISE complains that CBOE's 48% statistic is misleading because it includes proprietary CBOE products and is not limited to only stock-option orders. Interestingly, QCC trades on ISE only involve option orders. An actual stock-option order is never represented or exposed anywhere pursuant to the QCC process. It seems that ISE users for years have crossed options that were supposedly tied to stock via an ISE crossing mechanism without ever divulging to ISE or anyone that there was actually a stock component connected to the option order (despite that lack of transparency these users apparently also utilized the stock Qualified Contingent Trade exemption to facilitate the "related" stock executions). Thus, we are not convinced that including non-stock-option orders in our 48% statistic is problematic.

Nevertheless, we performed a new analysis of recent open outcry trades of 500 contracts or greater and only included stock-option orders represented on our floor in multiply-listed classes.[1] Using the modified framework outlined by ISE, 78.73% of these executions did not involve multiple contras. While that is not as robust a figure as our broader option order statistic, it validates that crowd participation is real, and it is still better than the most recent averages available for Ballista Securities. In our Statement, we looked at execution statistics posted by Ballista on its website detailing the percentage of participation by Ballista subscribers on stock-option trades "without exchange participation (step-in)". In June, July and August of 2009, the average percentage of Ballista liquidity provider trades executed without exchange participation was 92.06%. In September and October (under the first months of the new linkage structure without the Block Exemption) the average percentage was 80.33%. The recently posted statistics for November and December 2009 are 92.18% and 92.98% respectively.[2] Thus, we do not see how ISE is at a "disadvantage" to trading floors. Further, ISE has never explained why it is beneficial to customers to improve Ballista's percentage to 100% - which is the only thing QCC would accomplish.

---

[1] We note that brokers seeking to execute large orders manually may do so at several different exchanges.

[2] *See* Ballista ATS Monthly Statistics Reports for November and December 2009, http://www.ballistasecurities.com/ats/product_page4.html (last visited January 19, 2010).

In its December 23, 2009 QCC letter, ISE implied that almost 8 percent of the trades of 5000 contracts or more on CBOE from September 1, 2009 to November 18, 2009 (the first months under the new linkage plan) were illegal trade-throughs. That assertion is wrong. Most of the activity noted by ISE represents what ISE surely knows-fluctuations in the NBBO between the time of execution and the time the trade was reported. We are prepared to share greater details with the appropriate Commission staff if desired, but not in this letter or as part of the public QCC process. As with many of ISE's comments in this matter, ISE continuously attempts to change the subject by throwing out allegations and misrepresentations instead of attempting to explain how QCC benefits the marketplace.

We hope the Commission recognizes that ISE's letters do nothing to illuminate why approval of QCC is beneficial to investors and that the Commission disapproves the QCC filing. If you have any questions, please contact me at 312-786-7464.

Sincerely,

Angelo Evangelou

Angelo Evangelou

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Elisse B. Walter, Commissioner
Robert W. Cook, Division of Trading and Markets
James A. Brigagliano, Division of Trading and Markets
Elizabeth K. King, Division of Trading and Markets
William J. Brodsky
Edward J. Joyce
Edward T. Tilly
Joanne Moffic-Silver