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October 29, 2014

Ms. Joanne Moffic-Silver  
Executive Vice President, General Counsel and Corporate Secretary  
CBOE Holdings, Inc.  
400 South LaSalle Street  
Chicago, IL 60605

RE: CBOE Regulatory Circular RG14-139; C2 Regulatory Circular  
RG14-040 (collectively, "the Regulatory Circulars")

Dear Ms. Moffic-Silver:

The Securities Industry and Financial Markets Association ("SIFMA")<sup>1</sup> appreciates the opportunity to take part in a continued dialogue with the Chicago Board Options Exchange Incorporated ("CBOE") on a variety of regulatory and compliance issues. While SIFMA supports CBOE's efforts to enhance their regulatory and investigation efforts, the requirements described in the Regulatory Circulars are largely new and therefore require a notice and comment period. In addition, the Regulatory Circulars create an untenable January 5, 2015 deadline by which Trading Permit Holders ("TPHs") must be able to provide data in a new standardized format through a new submission process.

As you know, all new and substantive rules must go through a notice and comment period and obtain Securities and Exchange Commission ("SEC") approval before becoming effective.<sup>2</sup> Any requirements by a self-regulatory organization ("SRO") that create new duties that go beyond interpretations of current rules should follow the Administrative Procedure Act's notice and comment period process.

The Regulatory Circulars require new duties of Trading Permit Holders ("TPHs") that go beyond those reasonably contemplated under Rule 17.2, Interpretation and Policy .04 (the "Rule") by creating three new substantive categories of data collection and storage not even mentioned in the Rule. The Rule requires that, "each TPH or TPH

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<sup>1</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the regional member of the Global Financial Markets Association. For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> See *In re Century Offshore Management Corp.*, 11 F.3d 443, 453 (7<sup>th</sup> Cir.1997) (noting that the APA requires a notice and comment period when a rule goes beyond "interpretive issues.") See also *Fiero v. Financial Industry Regulatory Authority*, 660 F.3d 569, 579 (2<sup>nd</sup> Cir.2011) (explaining that all new substantive rules or rule modifications of existing SROs must: (1) engage in a notice and comment period; and (2) obtain SEC approval. Furthermore, the decision describes a substantive rule as one that creates new rights and duties, which the Regulatory Circulars do.)

organization shall furnish upon request, in the manner and standard electronic format prescribed by the Exchange, data concerning orders, transactions, and positions, including related hedges and offsets, in relation to a regulatory review conducted by the Regulatory staff.” On September 30, 2014, almost two years after filing a general interpretive rule change to 17.2, the CBOE issued a data layout component of the Regulatory Circulars, titled “Regulatory Services Division TPH Data Transmission File Layouts for Submission on Request Basis” (“Data Layout”), which requires TPHs to submit new data associated with: (i) the assignment of or exercise of options on securities or options on futures; (ii) quote records; and (iii) bond position data. With respect to exercise and assignment records, the detailed records the Regulatory Circulars would therefore require are not standard data fields normally stored within a TPH’s formal books and records. The quote record category requires TPHs to store market-maker quote data for longer periods of time than is the current industry practice.<sup>3</sup> Although the Rule notes that it may require position data, it does not note that it would require bond position records. By creating a separate “Bond Position Records” collection category, which is distinct from its “Position Records” category, even the Data Layout acknowledges that bond positions are a new category of data collection. These new requirements do not represent mere interpretations of the Rule. They create complicated, costly and burdensome new data storage and submissions responsibilities not contemplated by TPHs during the rulemaking process. Had these specific categories been proposed during the rulemaking process for this Rule, members would have provided extensive commentary on the compliance burdens that providing and storing such data would entail. Therefore, the CBOE must provide a new notice and comment period before imposing them on TPHs.

Furthermore, the Regulatory Circulars require TPHs to submit data pursuant to a timeline that presents serious implementation challenges. Requiring such firms to collect, format and successfully complete the necessary end-to-end tests with the CBOE for all of the over one-hundred-seventy-five data fields by January 5, 2015 would be unrealistic. TPHs would have to meet these new requirements by mid-December because of the standard end of year technology freeze periods that make it impossible to implement any new technology programs for approximately thirty days from when this period has begun. In many cases, implementing new data collection, storage and submission programs requires potential overhaul of how TPHs collect and store virtually all of their data and records. Member firms estimate that it will take up to 18 months to comply with the Regulatory Circulars. Asking firms to complete this process by January 5, 2015 is unreasonable given the scope of requirements therein.<sup>4</sup>

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<sup>3</sup> Furthermore, the SROs recently requested exemptive relief with respect to market-makers submitting duplicative quotes to the CAT; the market-maker industry seeks clarity as to why the CBOE is now making quotes part of their record layout.

<sup>4</sup> As the CBOE and C2 ask for storage and submission of such significant new information in the Regulatory Circulars, the SEC’s proposed Consolidated Audit Trail (“CAT”) is in the process of being published, approved and implemented. CAT will require FINRA and exchanges (including CBOE and C2) to store securities quote and order information into a newly created data repository. All of this reported data must be tagged and stored in a linked manner, which will enable regulators to track the entire lifecycle of an order. When describing CAT in the “Chairman’s Address” at the *SEC Speaks* (February 21, 2014) SEC Chair Mary Jo White said that CAT “...should result in a sea change in the data currently available, collecting in one place every order, cancellation, modification, and trade

The Regulatory Circulars indicate a goal to, “ultimately lessen the burden on a TPH with regard to requests for additional information,” but they instead have an opposite effect. To comply with the SRO rulemaking process, and to devise a viable plan of action to improve its complaints and investigation process, the CBOE should file a proposed rule change with the SEC, pursuant to Section 19(b) of the Securities Exchange Act of 1934 or file a new rule. This process would allow the industry and regulators to consider both the impact of other data collection mechanisms proposed by the SEC and the Financial Industry Regulatory Authority (i.e. CAT), potential realistic implementation timelines that best serve the goals of the CBOE, and any other concerns involved with creation and implementation of such a far-reaching data collection and storage effort by an SRO. SIFMA and its member firms stand ready to work collaboratively to implement a well-reasoned and practical mechanism to enhance the complaint and investigations process at the CBOE and C2.

SIFMA greatly appreciates the CBOE’s consideration of SIFMA comments in reference to the above. If you have questions, please do not hesitate to contact me at (212) 313-1287 or [egreene@sifma.org](mailto:egreene@sifma.org).

Respectfully Submitted,



Ellen Greene  
Vice President  
Financial Services Operations

cc: Timothy Thompson, Chief Regulatory Officer, CBOE Holdings, Inc.  
Heather Seidel, Associate Director, Division of Trading and Markets, SEC  
Richard Holley, Assistant Director, Division of Trading and Markets, SEC  
Ira Hammerman, Executive Vice President and General Counsel, SIFMA  
Thomas Price, Managing Director, SIFMA

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execution for all exchange listed equities and equity options across all U.S. markets.” (available at: <http://www.sec.gov/News/Speech/Detail/Speech/1370540822127#.VExTWmd0xdg>) CAT will require SROs, including the CBOE and C2, to collect and classify data in a way that would overlap with the new requirements in the Regulatory Circulars.