SEPARATE STATEMENT OF CHICAGO BOARD OPTIONS EXCHANGE TO BE APPENDED TO REPORT OF THE SEC ADVISORY COMMITTEE ON MARKET INFORMATION

Although the Chicago Board Options Exchange agrees with many of the conclusions and recommendations of the Advisory Committee as expressed in its final Report, we have such a fundamental disagreement with two of them that we feel compelled to state our position on these issues in this separate statement, and ask that it be appended to the Committee's Report. The two issues where we disagree with what is characterized in the Report as the view of a majority of the Committee concern, first, the recommendation for competing consolidators in both the equities and options markets, and, second, the suggestion that the dissemination of a consolidated NBBO in the options market should be delayed until an effective linkage among the options exchanges is established. We shall address each of these issues in turn.

Single vs. Multiple Consolidators. CBOE believes that the "single consolidator" model has demonstrated over more than twenty-five years of serving the U.S. equities and options markets, that it is an effective and efficient means for furnishing current consolidated securities market information to investors and other market participants. Given this record of success, and given the serious problems that we believe would result from abandoning this model in favor of a "multiple consolidators" model, we believe that any such move would be unwarranted, ill-advised and dangerous.

The risks of abandoning the single consolidator model, as the Committee's Report itself acknowledges, are real and significant. Foremost among them is an increased likelihood of investor confusion, as different consolidators show different "best" bids and offers for the same security at the same time as a result of differences in message sequencing, differences in system capacity or design, or the existence of systems or communications problems affecting certain consolidators and not others. Confusion will also occur to the extent that different consolidators use different symbology and message formats. The use of multiple consolidators is also likely to result in higher costs, less available system capacity, and an overall reduction in efficiency, as a consequence of having to build, operate and administer separate consolidation systems, rather than having all markets share a single, large, centrally administered system.

While we believe our objections to a multiple consolidator model are equally valid in both the equities and options markets, we have special concern over the impact of such a model on the capacity available for consolidation systems in the options market. As the Report of the Committee points out, the volume of message traffic in the options market is many times greater than in the equities market, which makes it even more important in the options market than in the equities market to be able to realize the efficiencies of a single consolidator model.

Furthermore, any move to a multiple consolidator model will not eliminate issues of undue market power that some have found objectionable in the single consolidator model. Instead, depending upon whether or not a "Display Rule" would apply in a multiple consolidator environment (requiring the inclusion of data from all markets in any consolidated transmission), the same degree of market power that is currently held by a single consolidator will be held either by each of the separate markets whose data is required to be included, or it will be held by any dominant market whose data, simply as a result of its dominance, must be included. In either case, the answer offered by those members of the Committee who favor competing consolidators is that the Commission will be expected to use its oversight authority to assure that no single market or group of markets is able to take unfair advantage of whatever market power it may have. This, of course, is precisely the same answer that applies under the single consolidator model to allay any concern that a single consolidator may be able to take unfair advantage of its monopoly position. The 1975 Act Amendments to the Securities Exchange Act of 1934 dealt with this problem by requiring the registration of any consolidator that functions as an exclusive securities information processor, and gave the Commission special utility-type regulatory authority over them. In our view, the Commission is better able to exercise this authority over a single consolidator than over all of the separate markets that may have significant power to extract monopoly-type payments from each of the multiple consolidators, especially if a Display Rule requires each consolidator to include market information from each market.

As against the many problems presented by multiple consolidators, all of the arguments in favor of multiple consolidators seem to us to boil down to the truism that with multiple consolidators there is a potential for competition among consolidators that, by definition, is not possible where there is only one consolidator. To this we would point out, as the Commission itself has recognized on many prior occasions, that the Commission is not required to adopt the least anticompetitive means of in achieving the objectives of the 1975 Act Amendments, including those pertaining to the development of national market system facilities. Instead, the Senate Report to S.249, which became the 1975 Act Amendments, used the following language in describing the Commission's obligation to balance interests in fashioning regulatory policies under the Exchange Act:

> "This explicit obligation to balance, against other regulatory criteria and considerations, the competitive implications of self-regulatory and Commission action should not be viewed as requiring the Commission to justify that such actions be the least anti-competitive manner of achieving a regulatory objective. Rather, the Commission's obligation is to weigh competitive impact in reaching regulatory conclusions." [S. Rep. No. 94-75, 94th Cong. 1st Sess. 13 (1975)

The Report goes on to state,

> "[T]he Commission's responsibility would be to balance the perceived anti-competitive effects of the regulatory policy or decision at issue against the purposes of the Exchange Act that would be advanced thereby and the costs of doing so. Competition would not thereby become paramount to the great purposes of the Exchange Act, but the need for and effectiveness of regulatory actions in achieving those purposes would have to be weighed against any detrimental impact on competition." Id. at 13-14.

We would apply this concept to the issue of single vs. multiple consolidators by observing that if the cost of achieving greater competition by moving to a multiple consolidator model is less transparent markets, higher costs, less efficient administration and inadequate capacity, then greater competition does not come close to providing sufficient justification for such a move under the standards of the Exchange Act.

Options Linkages and an Options NBBO. The Advisory Committee Report states that while the members of the Committee unanimously agree that an options NBBO calculated at the consolidator level would be useful information and may even reduce capacity needs at certain levels by allowing for a reduced data transmission to market participants who do not require the full quotation stream, a "significant majority" of the Committee believes that, "the centralized production of an [options] NBBO should not be mandated until "effective access to, or linkage among, the options exchanges is established." We disagree, and instead believe that an options NBBO at the consolidator level (i.e., calculated by or on behalf of OPRA) should be made available as soon as the necessary development work can be completed. In stating our position, it should be understood that CBOE supports both an options NBBO and a linkage among options markets. We do not, however, believe that these two independent concepts should be tied together. We also note that the idea of associating an options NBBO and an options linkage was not an issue ever submitted to the Committee itself, but rather arose only out of a comment made by two of the participants.

OPRA itself has recently proposed to develop an NBBO to reduce downstream traffic to vendors and subscribers who merely need an indication of the best price and size and do not need full quotation information. It is also the case that although an options linkage among all exchanges is not yet in place, an interim linkage plan currently exists on four of the five options markets even in the absence of an OPRA NBBO. Although many Internet brokers currently calculate and display their own options NBBO, having OPRA calculate and disseminate an NBBO would standardize this practice and provide an NBBO to all vendors and their customers, including customers of vendors who do not have the resources to perform the calculation of an NBBO themselves. The primary audience for such an NBBO would not be exchange specialists, who are the only persons that could make direct use of a linkage to access other markets. Instead, the NBBO would be directed at investors and other market participants for whom an NBBO would provide useful information as to the state of the market in particular series of options. In fact, in equities markets where there is a consolidated NBBO and where ITS provides a form of linkage among markets, the NBBO is not especially useful to a specialist in connection with his order routing decisions through ITS. For example, an NBBO that shows a best bid or offer with a size of 100 shares would not be of any use to a specialist having a larger order in deciding where to route that order over ITS. Instead, such a specialist would have to be able to see quotes from all markets before being able to make a routing decision.

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