Kyle A. Reed

February 20, 2007

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Attn: Nancy M. Morris, Secretary

RE: File No.: SR-CBOE-2006-1006

I am writing as a full member of the Chicago Board of Trade to express my opposition to the proposed rule change SR-CBOE-2006-106 (the "Proposed Rule Change"), filed on December 12, 2006 on behalf of the Chicago Board Options Exchange, Incorporated ("CBOE"). Capitalized terms used herein and not otherwise defined shall be deemed to have the meanings ascribed thereto in the Proposed Rule Change.

The subject of the Proposed Rule Change is the right of full members of CBOT ("CBOT Full Members") to become members of CBOE without purchasing a separate CBOE membership and to share equally in distributions made to other CBOE members (the "Exercise Right"). Such right, granted in recognition for and as consideration for CBOT's role as the founder and primary financial backer of CBOE in 1972, is embodied in the CBOE Certificate of Incorporation (the "CBOE Charter") in Section (b) of Article Fifth ("Article Fifth(b)") and has been the subject of numerous subsequent agreements between the CBOT and CBOE as these institutions have evolved and adapted to the marketplace. At every step of the way, CBOE has sought to eliminate, restrict, limit or otherwise reduce the value of the rights in order to avoid dilution of their ownership in their exchange despite the presence of Article Fifth(b) in their Charter. It is therefore no surprise that CBOE has now taken the proposed merger between the Chicago Mercantile Exchange Holdings, Inc. ("CME") and CBOT (the "Merger") as its latest justification for its avoidance of its corporate and contractual obligations to full members of CBOT ("CBOT Full Members") with respect to the Exercise Right.

The Proposed Rule Change, however, does not merit the Commission's approval for several reasons, which are set forth as follows:

1) the Proposed Rule Change is premature as it is predicated on a proposed transaction– the Merger – that may be consummated at some time in the future, subject to several milestones that have yet to be completed and under terms that remain subject to change in material respects;
2) the subject matter of the Proposed Rule Change involves significant issues of state law that are currently before the Delaware Court of Chancery and that should be resolved prior to action by the Commission;

3) the Proposed Rule Change represents interpretations of certain private agreements and is not an interpretation of the CBOE Certificate of Incorporation as it purports;
4) the Proposed Rule Change involves an amendment of the CBOE Charter and is therefore subject to certain voting requirements, which have not been met; and
5) the Proposed Rule Change is entirely inconsistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act").

DISCUSSION

1. The Proposed Rule Change is Premature.

On December 12, 2006, CBOE filed the Proposed Rule Change in response to the announcement of the Merger. The parties to the Merger noted that the expected closing date was in mid-2007, subject to regulatory and shareholder approval, as well as other customary closing conditions. If the Merger does not proceed or if the structure of the Merger changes prior to closing, then the Proposed Rule Change will be meaningless, and CBOE will have to submit a new proposal to the Commission in its quest to extinguish the Exercise Right. The Proposed Rule Change implicitly acknowledges the lack of finality in the announced Merger, conditioning its arguments in numerous places upon the closing of the Merger "as proposed." If CBOE believes that the technical structure of the Merger negates the Exercise Right, then the appropriate time to seek a ruling from the Commission is upon or after the consummation of the Merger when the structure and terms are final and their effect on the viability of the Exercise Right, if any, are clear. As it stands, the Proposed Rule Change serves only to utilize scarce and valuable Commission time and resources in deciding a matter that is not final.

2. The Proposed Rule Change Involves State Law Issues Under Adjudication.

The issues raised by the Proposed Rule Change are presently before the Delaware Court of Chancery by means of a lawsuit filed by CBOT against CBOE (*CBOT Holdings, Inc.et al. vs Chicago Board Options Exchange, Inc., et al., CA-23-69-N*, also the "Delaware Action"). The suit seeks to address issues of corporate governance, fiduciary duty and contract rights that arise under the laws of the states of Delaware, the state of incorporation of both CBOE and CBOT, and Illinois, whose law governs certain agreements between CBOT and CBOE, including the 1992 Agreement. While the Commission undoubtedly has the authority to review CBOE's interpretations of its Charter and rules, in this case, the purported interpretation sought by the Proposed Rule Change involves more than an interpretation of CBOE's Charter. The positions taken by CBOE and reflected in its Proposed Rule Change necessarily require the interpretation of contracts governed by state law, as well as the resolution of additional issues of corporate governance and fiduciary duty under Delaware law. For example, the entire basis for CBOE's request rests squarely upon its contentions that (a) the Merger is a change of ownership not contemplated by the CBOT Restructuring Transactions (as defined in the Letter Agreement, dated October 7,

2004, between CBOT and CBOE) and that (b) upon consummation of the Merger, CBOT will not meet three conditions for continued viability of the Exercise Right that are set forth in Section 3(d) of the 1992 Agreement. The interpretation and construction of these contractual provisions are entirely matters of state law that are currently pending in the Delaware Action. The outcome of that litigation could very well affect the interpretation presented in the Proposed Rule Change, again making action on the Proposed Rule Change untimely. It is therefore entirely inappropriate to take action on the Proposed Rule Change prior to the resolution of the state law issues in the Delaware Action

It is worth noting that, in prior instances where the Commission has approved rule changes relating to interpretations of Article Fifth(b), those interpretations have been connected with mutually-agreed, contractual understandings regarding such interpretations between CBOE and CBOT where no disputed issues of state law existed. In this case, CBOE is asking the Commission to approve its own self-serving and unilateral "interpretations" involving disputed matters of state law – interpretations that will allow CBOE to transfer potentially more than one billion dollars in value from CBOT Full Members to its own members, officers and directors. It is an unprecedented step that should not be condoned by the Commission.

CBOE's contention that the issues raised by the Proposed Rule Change did not appear in the Delaware Action until after CBOE filed the Proposed Rule Change is both inaccurate and immaterial. Their position stems from an incorrect view of the Delaware Action, as reflected in the comment letter from a CBOE attorney, dated January 12, 2007, with respect to the Proposed Rule Change. In that letter, attorney Michael Meyer states that the issues addressed in the original complaint in the Delaware Action are simply "valuation issues" that are not implicated by the Proposed Rule Change (and which, they note, ironically, will be moot once they extinguish the Exercise Right). This position mischaracterizes the current dispute between the parties, as the Delaware Action does not involve valuation issues, i.e. how much equity CBOT members would receive for their Exercise Rights. The original complaint in the Delaware Action sought a declaration that, based on Article Fifth(b), the various prior agreements between the parties and state corporate law, CBOT members had a right to participate equally with other CBOE members in any demutualization without regard to any valuation issues. Those same state law issues are now raised by the Proposed Rule Change, and the Delaware Action will involve the resolution of the same issues of state corporate law and will require the interpretation of the same agreements between the parties whether viewed as originally filed or in light of the amended complaint submitted by CBOT on the same day that CBOE filed its Proposed Rule Change (not January 4, 2007, as CBOE would have you believe), specifically to bring the issue of the effect on the Exercise Right, if any, of the proposed Merger before the Delaware court. CBOE's contention that the Proposed Rule Change predates the amended complaint is therefore irrelevant and only serves to distract the Commission from the real issues in this matter.

The Proposed Rule Change is an obvious attempt by CBOE to use the federal regulatory process to unburden itself of the fiduciary and contractual obligations imposed on it by state law and the agreements it made thereunder. CBOE's federal obligations to comply with its own rules and the Act do not relieve the exchange of complying with its obligations and contracts under state law. The Commission should not allow CBOE to manipulate the federal regulatory scheme in this manner and should allow the Delaware Court to decide the state law issues prior to addressing the Proposed Rule Change.

3. <u>The Proposed Rule Change Is Not An Interpretation of an SRO Rule.</u>

The Proposed Rule Change relies on the Commission's statutory authority to approve any interpretation of the rules of a self-regulatory organization. In this case, however, the Proposed Rule Change contains an interpretation not of any rule of CBOE but rather addresses an interpretation of provisions of private contracts that do not constitute rules of CBOE. Section 3(a)(27) of the Act defines the "rules of an exchange" to be its "constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing…" and "such of the stated policies, practices and interpretations of such exchange…as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange…."

In keeping with CBOE's misuse of its SRO authority for private gain, they claim to be interpreting the CBOE Charter and the term "member" of CBOT as used in Article Fifth(b) therein in order to fit within the Commission's statutory jurisdiction. In fact, this matter rests not on an interpretation of the CBOE Charter or any provision therein but on the interpretation of private contracts and questions of fiduciary duty, both issues of state law. In earlier instances where the Commission has approved CBOE rule changes related to Article Fifth(b), the Commission merely approved interpretations of the term "member" of the CBOT as embodied in certain agreements between CBOE and CBOT. The Commission was not called upon to interpret any provisions of the agreements themselves. As stated in the Commission's Release No. 34-51252 (cited by CBOE in support of the Commission's jurisdiction in this matter), the Commission has never approved the agreements themselves or any interpretation thereof.

In this case, however, CBOE seeks the Commission's approval not of an interpretation embodied in a contract but an interpretation a contract itself. The Proposed Rule Change requires the Commission to agree with CBOE's interpretations of disputed provisions of the 1992 Agreement such as Section 3(d) thereof, which enumerates conditions for the continued existence of the Exercise Right in the event of an merger or acquisition of CBOT. This is an exercise that the Commission has rightly declined to perform in the past because it exceeds the scope of the Commission's statutory mandate to approve changes in the rules of a self-regulatory organization.

4. The Proposed Rule Change Represents an Amendment, not an Interpretation, of its Charter.

Previous rule changes regarding Article Fifth(b) have been approved by the Commission on the basis that they constituted permissible interpretations of the CBOE charter rather than amendments. In this case, however, the effect of the Proposed Rule Change would be to completely and permanently eliminate the Exercise Right. Under CBOE's "interpretation," following the consummation of the CBOT-CME Merger, no person would then or ever satisfy the requirements of Article Fifth(b) as it relates to the Exercise Right, and such right would cease to exist. While the Proposed Rule Change states that no changes are required to the text of its rules, it effectively and irrevocably eliminates Article Fifth(b) from the CBOE charter. CBOE urges the Commission to approve its Proposed Rule Change as a legitimate interpretation of its charter, yet allowing CBOE to essentially remove the provision from its charter wholesale removes all meaning from the term "interpretation." The Proposed Rule Change is undoubtedly an amendment rather than an interpretation of Article Fifth(b) and should therefore be subject to the voting requirements contained therein. In the absence of an affirmative vote of 80% of CBOE Exerciser Members, any amendment to Article Fifth(b) would be in contravention to CBOE's Certificate of Incorporation.

5. The Proposed Rule Change Is Not Consistent with the Requirements of the Act.

Section 19(b)(2) of the Act states that approval of a proposed rule change may come only after a finding by the Commission that such change is consistent with the requirements of the Act. Beyond CBOE's boilerplate recitation that its proposal is "consistent with Section 6(b) of the Act, in particular, in that it is a reasonable interpretation of existing rules of the Exchange that is designed to promote just and equitable principles of trade, to protect the mechanism of a free and open market, and, in general, to protect investors and the public interest," there is little to suggest that the Proposed Rule Change will further, or is even intended to further, those lofty purposes. Instead, the evidence does suggest that CBOE is instead engaged in an end run around the Delaware court system in order to further the financial interests of its own members at the expense of CBOT Full Members. The Proposed Rule Change is merely a disingenuous attempt to gain through the federal regulatory scheme what CBOE is unlikely to receive through the more appropriate forum for the underlying dispute, the Delaware Court of Chancery, where the issues addressed in the Proposed Rule Change are currently pending. Its purpose is wholly and transparently unrelated to the protection of the integrity of the markets and is simply an abuse of the self-regulatory authority vested in CBOE designed to enrich CBOE members by effecting an unprecedented expropriation of the property interests of CBOT Full Members. As such, the Proposed Rule Change should not receive the approval of the Commission.

In its earlier release No. 34-50028, the Commission noted that CBOE's own general counsel opined that it was appropriate for CBOE to interpret Article Fifth(b) so long as

such interpretation was "made in good faith, consistent with the terms of the governing documents themselves, and not for an inequitable purpose." The interpretation in the current Proposed Rule Change cannot be said to be in good faith and appears to be for the sole inequitable purpose of achieving CBOE's longstanding goal of avoiding the ownership dilution resulting from the Exercise Right. Evidence of the bad faith of CBOE in this matter includes its conduct in the Delaware Action. As recently as November of 2006, the CBOE argued before the Chancery Court in Delaware that the suit filed by the CBOT to enforce the rights of CBOT full members with respect to the Exercise Right was premature because there was no action threatened by CBOE that would prejudice those rights. This argument was made more than two weeks after the announcement of the proposed merger between the CBOT and the Chicago Mercantile Exchange. Barely a month after that representation to the Delaware court, the CBOE filed the Proposed Rule Change with the Commission in an effort to completely and permanently prejudice the rights of CBOT Full Members. Additional evidence of CBOE's intentions comes from its long history of attempts to extricate itself from the consequences of the existence of the Exercise Right.

Additional evidence of the inequitable purpose and bad faith of CBOE in this matter involves the arbitrary selection of December 11, 2006 as the cutoff date for the termination of certain rights associated with the Exercise Right. CBOT Full Members who had become exerciser members of CBOE prior to this date will be allowed to maintain their exerciser member status for some unspecified interim period after the closing of the Merger. CBOT Full Members who become exerciser members after this date will lose all rights associated with the Exercise Right immediately upon the closing of the Merger and will not be entitled to continue trading under or leasing their exerciser membership at CBOE during the interim period CBOE has described. This position essentially divides CBOT Full Members into two classes as of December 11, 2006, with different economic values, despite the fact that the legal position of all CBOT Full Members, absent CBOE's unilateral action, was no different on that day than on the previous day. If CBOE's arguments are correct, the Exercise Right will be extinguished *upon the consummation of the Merger*, which, if it occurs, will take place some months from the date hereof, yet CBOE has already taken a property interest from some CBOT Full Members without compensation. The Proposed Rule Change in its entirety fails to satisfy the test of consistency with the Act, but this particular situation highlights the inequitable purpose and bad faith of CBOE and provides further reason to deny the Proposed Rule Change.

CONCLUSION

It must be noted that CBOE came into existence not through the vision, effort and investment of CBOE traders. The CBOE was conceived of, funded and incubated by CBOT and its members. The Exercise Right is a direct result of the contributions of capital, both financial and intellectual, by CBOT Full Members in founding CBOE. Such contributions were made in the face of considerable market risks and with no guarantee of a return on the investment, as the success of an exchange for the trading of a new class of securities - listed options - was anything but assured in 1972. The CBOE Charter

recognized and rewarded the contributions made and the risks taken by CBOT Full Members by providing that CBOT Full Members may become members of CBOE with the purchase of a CBOE membership. The CBOE Charter further allowed CBOT Full Members to share equally in any distributions made by CBOE to its members. The Exercise Right was therefore contemplated from its origins as an equity interest in CBOE to be owned by the holders of the 1,402 CBOT full memberships then in existence and by all future holders of those memberships. CBOE is now misusing the federal regulatory process in order to unlawfully appropriate the property interests of CBOT Full Members, property interests with a potential value in excess of one billion dollars ($1,000,000,000).

For all the reasons discussed above, I urge the Committee to deny the Proposed Rule Change, or in the alternative, to take no action on such proposal until such time as the underlying state law issues have been fully and finally resolved by the Delaware courts.

I appreciate your consideration of my views. If you require any additional information or if you have any questions, I may be contacted at (312) 505-0021.

Respectfully,

/s/
Kyle A. Reed