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May 12, 2008

Ms. Nancy M. Morris  
Secretary, Securities and Exchange Commission  
100 F. Street, NE  
Washington, DC 20549-1090

**Re: File No. SR-CBOE-2008-40**

Dear Ms. Morris:

The Chicago Board Options Exchange (“CBOE” or the “Exchange”) is pleased to respond to the comment letter (the “Comment Letter”) that Lawrence Blum and Michael Mondrus, lessor members of the Exchange, submitted to the Commission in opposition to the permit plan (the “Permit Plan”) described in the above-referenced rule filing (the “Rule Filing”). The Permit Plan would authorize the Exchange to issue up to fifty trading permits, in return for which permit holders would pay a monthly access fee to the Exchange. CBOE’s Board has duly approved the Permit Plan and has recommended its adoption to the CBOE membership, which is scheduled to vote on the proposal by May 19, 2008.

By characterizing the Permit Plan as an “unwarranted ‘taking,’” the commenters may be suggesting that the Exchange lacks the legal authority to adopt the Permit Plan. In fact, Section 2.1(a) of CBOE’s Constitution expressly grants the Exchange that authority. The trading permits to be issued under the Permit Plan constitute Exchange memberships under the Exchange Act, and Section 2.1(a) provides,

Membership in the Exchange shall be made available by the Exchange at such times, under such terms and in such number as shall be proposed by the Board and approved by the affirmative vote of the majority of voting members present in person or represented by proxy at a regular or special meeting of the membership.

Accordingly, the Exchange has the authority to adopt the Permit Plan as long as the Permit Plan was proposed by the Board, which it was, and as long as a majority of the participating voting members of CBOE vote to approve the Permit Plan, which they soon will have an opportunity to do.<sup>1</sup>

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<sup>1</sup>In fact, the Commission recently approved a permit plan that was adopted by the Exchange pursuant to the provisions of Section 2.1(a) of CBOE’s Constitution, the same provisions under which the Permit Plan is to be adopted. See Securities Exchange Act Release

The commenters agree that there is a need for more trading access at the Exchange. They expressly state that “there is a current need for more access to the exchange.” Instead, the commenters’ objection appears to be that it is unfair for the Exchange to receive the fees for the new permits. The commenters contend that such a structure will “reduce the value of memberships by creating more available access,” and the commenters suggest that there are alternate ways to increase access without “diluting ownership.”

The Exchange disagrees and believes that the proposal fairly balances the long-term value to the Exchange and the short-term interests of some members. Even if the commenters disagree with that judgment, they cannot reasonably characterize that decision as a “taking” or as a “corporate money grab,” because the ultimate beneficiaries of the Permit Plan will be the owners of the Exchange – namely, its members. Moreover, in order to ensure that additional access would be provided fairly, the Exchange ensured that the concerns of members – including the concerns addressed by the commenters – were fully considered and that the solution for dealing with those concerns was widely supported by members. In particular, the Exchange consulted with the Exchange’s Lessors Committee and addressed with them both the eventual Permit Plan and various alternative ways for providing additional trading access. As fellow lessors, the members of the Lessors Committee share key interests with the commenters, and the Lessors Committee ultimately endorsed the Permit Plan.

The Exchange recognizes that it is legitimate to debate the best way to provide the additional access that all recognize is necessary. That is precisely why the Exchange’s Constitution requires a vote of the membership before any additional access may be offered. Accordingly, the proper forum for debating the fairness of the Permit Plan is through the membership vote on that proposal. The Exchange has taken steps to ensure that its members will be fully informed when they make their decision, including by issuing a detailed membership circular that fully explains the Permit Plan and by holding a meeting of the membership to brief members even more fully on the Permit Plan. The commenters are free to raise all of their concerns as reasons why the membership should vote down the Permit Plan. The membership should have an opportunity to weigh those arguments against the reasons why CBOE’s Board believes the Permit Plan is a fair way to increase trading access. If the members do not approve the Permit Plan, it cannot and will not be put into effect. On the other hand, if a majority of the members vote in favor of the Permit Plan, that result necessarily will mean that a majority of the members have determined that the Permit Plan is fair. In that situation, it would be unnecessary and inappropriate for the Commission to overrule the members’ own determination of whether the Permit Plan is fair.

By framing their concerns as objections to the Commission’s approval of the Permit Plan, the commenters essentially are asking the Commission to take away from CBOE’s membership the power to make a decision about the fairness of the Permit Plan. However, the only issue before the Commission under Section 19(b)(1) of the Exchange Act is whether the Permit Plan conforms with the requirements of both the Exchange Act and the Exchange’s rules. The

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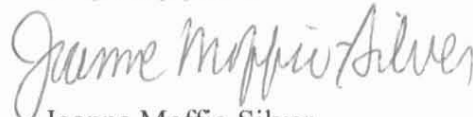
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commenters nowhere argue that the Permit Plan somehow is inconsistent with the Exchange Act. In addition, the adoption of the Permit Plan upon approval by CBOE's membership would be consistent with the Exchange rules that govern the creation of new memberships, including trading permits that grant holders the right to enter into securities transactions at the Exchange – namely, Section 2.1(a) of the Exchange's Constitution. It also is consistent with the requirements of the Exchange Act, as set forth in the Rule Filing, and with the prior precedent described in footnote 1. Accordingly, the Permit Plan satisfies the requirements of Section 19(b)(1).

Assuming that the CBOE membership approves the Permit Plan, CBOE respectfully urges the Commission, for the reasons set forth above and for the additional reasons set forth in the Rule Filing, to approve SR-CBOE-2008-40 as soon as possible after such membership approval, in order to address the current need for increased trading access that even the commenters acknowledge.

Very truly yours,

A handwritten signature in cursive script that reads "Joanne Moffic-Silver". The signature is written in dark ink and is positioned above the printed name.

Joanne Moffic-Silver