CBOE
CHICAGO BOARD OPTIONS EXCHANGE

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May 24, 2004

Mr. Jonathan G. Katz
Secretary
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450 Fifth Street, N.W.
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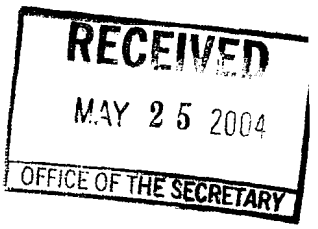


Re: File No. SR-CBOE-2004-16

Dear Mr. Katz:

This letter is submitted on behalf of the Chicago Board Options Exchange ("CBOE") in response to the letter (the "Comment Letter") to you dated April 28, 2004, from ten CBOE members commenting on two proposed rule changes filed by CBOE pursuant to Rule 19b-4 under the Securities Exchange Act of 1934. The filings addressed in the Comment Letter are designated as SR-CBOE-2002-01 and SR-CBOE-2004-16, respectively. These rule change filings pertain to proposed interpretations of paragraph (b) of Article Fifth of CBOE's Certificate of Incorporation (sometimes referred to as "Article Fifth(b)"), which describes the right of members of the Chicago Board of Trade ("CBOT") to become members of CBOE without having to acquire a separate CBOE membership. (This right is referred to as the "Exercise Right".)

At the outset, we must point out that of the two proposed rule change filings addressed in the Comment Letter, only the most recent filing (SR-CBOE-2004-16) is currently before the Commission, and it is the only proposed rule change that has been published for comment. The earlier filing (SR-CBOE-2002-01) was filed with the Commission on January 4, 2002, but at CBOE's request was never published for comment and was withdrawn by CBOE on April 6, 2004. That earlier filing reflected an interpretation of the Exercise Right in response to a proposed corporate restructuring of CBOT that was under consideration in late 2001 and early 2002. Because the terms of CBOT's restructuring remained subject to change by CBOT and because the proposed restructuring of CBOT was the subject of litigation that made it uncertain whether and on what terms the proposed restructuring would be implemented, CBOE asked the Commission to delay publication of that filing. Thereafter, based on an adverse court determination in the pending litigation, progress on CBOT's restructuring came to a halt. Although SR-CBOE-2002-01 remained on file at the Commission for over two years, it was never published for comment and the Commission never took any action on it.

In early 2004, when it remained uncertain whether the CBOT would go forward with its restructuring, CBOE formally withdrew SR-CBOE-2002-01, and that filing is no

longer pending at the Commission. Concurrently with our withdrawing that filing, we filed another proposed interpretation of the Exercise Right in SR-CBOE-2004-16, but that proposed interpretation did not address CBOT's proposed restructuring. Instead, that filing reflected an interpretation of the Exercise Right to address the situation presented by CBOT's recent proposal to issue to its full members, upon their request, separate transferable interests representing the Exercise Right component of their CBOT memberships. (These interests are referred to as "Exercise Right Privileges".) CBOE's interpretation concerning the effect on the Exercise Right of the issuance of Exercise Right Privileges was agreed to by CBOT in an agreement between the two exchanges dated December 17, 2003 (referred to as the "2003 Agreement"), which was filed as an exhibit to File No. SR-CBOE-2004-16. Although the issuance of a similar interest was one of the features of CBOT's proposed restructuring in 2001, CBOT's more recent proposal to issue Exercise Right Privileges does not involve the restructuring of CBOT. Accordingly, there is no reason for us now to address the comments in the Comment Letter that are directed to SR-CBOE-2002-01 or to the general subject of CBOT's proposed restructuring, and we will not do so.

The Comment Letter purports to present eight reasons why its proponents believe SR-CBOE-2004-16 should not be approved by the Commission. Each of these reasons refers specifically to changes in the structure or governance of CBOT that would result from the demutualization or other restructuring of that exchange, which, as noted, is not a circumstance addressed by the CBOE rule change filing currently before the Commission. Accordingly, none of these reasons is relevant to the question whether SR-CBOE-2004-16 should be approved.

Notwithstanding that the Comment Letter seems only to address the restructuring of CBOT, which is not at issue in SR-CBOE-2004-16, reason 4 of the Comment Letter (which by its terms refers to the demutualization of CBOT) may be read to contend that the issuance of transferable Exercise Right Privileges would amount to allowing the Exercise Right itself to be transferable in violation of the original intent of Article Fifth(b). However, any such contention would be incorrect. As described in SR-CBOE-2004-16 and in the 2003 Agreement, although an Exercise Right Privilege is transferable to the extent that the CBOT Full Member to whom it is issued may sell it or lease it to another person, the transferee of an Exercise Right Privilege by itself would have no right to become a CBOE member by exercise. Instead, in order to be able to exercise, a transferee of an Exercise Right Privilege must also possess a CBOT Full Membership. In other words, under the interpretation reflected in the 2003 Agreement and in SR-CBOE-2003-16, only a person who is a CBOT Full Member and who also possesses an Exercise Right Privilege (or a person who possesses a CBOT Full Membership as to which a separate Exercise Right Privilege was never issued) may exercise under the 2003 Agreement. Therefore, the transfer of an Exercise Right Privilege does not amount to a transfer of the Exercise Right itself.

The only purpose for creating a transferable Exercise Right Privilege was to create an interest that CBOE (or others) might offer to buy as a way to reduce the number of outstanding Exercise Rights, and to give CBOT members a way to realize the value of

the Exercise Right without having to sell their entire CBOT membership. It was not intended to, and does not, provide a means for the transfer of the Exercise Right separate and apart from a transfer of the other rights represented by a CBOT full membership.

This interpretation is entirely consistent with the language of Article Fifth(b) to the effect that the Exercise Right is available to a person only "so long as he remains a member of [CBOT]." It is also consistent with a basic principle of the earlier interpretation of the Exercise Right embodied in the 1992 Agreement between CBOE and CBOT that was approved by the Commission as referred to in SR-CBOE-2004-16 to the effect that if a CBOT Full Membership is divided into separate parts, a person must hold all of the parts in order to be able to exercise.

Finally, any contention in the Comment Letter that the interpretation of the Exercise Right embodied in the 2003 Agreement and reflected in SR-CBOE-2004-16 amounts to an amendment to paragraph (b) of Article Fifth of CBOE's Certificate of Incorporation that should have been approved by an 80% class vote of CBOE members is also mistaken. Although the Comment Letter does not make this assertion in respect of the pending filing, it repeatedly makes it in objecting to SR-CBOE-2002-01 and to the 2001 Agreement that embodied the interpretation that was the subject of that filing. We firmly believe the Comment Letter is mistaken in objecting to the 2001 Agreement and to SR-CBOE-2002-01 on this ground (even though, as noted above, that filing is not now before the Commission), and any objection to the 2003 Agreement and to SR-CBOE-2004-16 on this same ground would similarly be without merit.

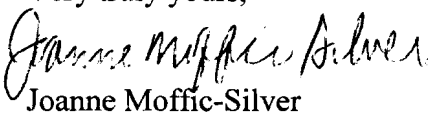
The interpretation of Article Fifth(b) reflected in the 2003 Agreement and in SR-CBOE-2004-16 does not amend either the language or operation of Article Fifth(b). Instead, it describes how that Article would apply under circumstances that were not contemplated at the time Article Fifth(b) was originally adopted in 1973 and are not addressed in the terms of that Article. In this respect, the 2003 Agreement and the pending filing just as much embody an interpretation of Article Fifth(b) as did the 1992 Agreement and the filing that was made and approved in respect of that interpretation. In the case of the 1992 Agreement, the unanticipated circumstances necessitating an interpretation of Article Fifth(b) concerned the introduction of seat-leasing at CBOT and the possibility that the rights represented by CBOT memberships might be divided into separate parts. Now, the unanticipated circumstance involves the issuance of Exercise Right Privileges, which may be viewed as an example of the broader issue addressed in 1992 concerning the possible subdivision of CBOT memberships. The interpretation of Article Fifth(b) in response to the issuance of Exercise Right Privileges is consistent with the general principle reflected in the 1992 Agreement; namely, that in order to exercise the right to become a CBOE member a person must be in possession of all of the rights and interests represented by a CBOT full membership.

Unlike an amendment to Article Fifth(b), which, if not approved, would leave the original terms of that Article in effect unchanged, in this instance there is no way to avoid having to interpret Article Fifth(b) to deal with the circumstance presented by the issuance of Exercise Right Privileges. While there may be more than one way to

interpret Article Fifth(b) in this situation, the fundamental question of how that Article should apply under a circumstance not addressed in the express terms of Article Fifth(b) must be answered. As is often the case with "constitutional" documents that speak in broad and general terms (for example, the United States Constitution), it is often necessary to interpret how the provisions of these documents should apply in circumstances not envisioned by their framers. We have been advised by our Delaware counsel that under Delaware law it is within the general authority of CBOE's Board of Directors to interpret CBOE's governing documents when questions arise as to their application in these types of circumstances, so long as the interpretation adopted by the Board is consistent with the terms of the governing documents themselves. Such interpretations do not constitute amendments to the governing documents, and thus are not subject to the procedures that would apply if they were actually being amended. As interpretations of provisions that fall within the definition of "rules" of the Exchange, they do, however, constitute "proposed rule changes" within the scope of Section 19(b) of the Exchange Act and Rule 19b-4 thereunder, which is why they have been filed for approval by the Commission under that Section and Rule.

We trust the foregoing responds in full to the comments made in the Comment Letter. If the Commission or its Staff have any questions concerning the pending filing, I would be pleased to respond to them.

Very truly yours,



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cc: Elizabeth King
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