

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

## **INTERVENOR COMPLAINT**

Intervening Plaintiff, Marshall Spiegel (“Spiegel”) hereby alleges against Defendant Chicago Board Options Exchange Inc. (“CBOE”) and the individual defendants as follows:

1. From November 2000 until July 19, 2005, when he sold his membership, Spiegel was an equity member (treasury seatholder) of the CBOE. Prior to that he was an equity member of the Chicago Mercantile Exchange commencing in July 1983.
  2. During his tenure at CBOE, and over the vigorous objections of Spiegel and many of his fellow CBOE members, including Chicago Board of Trade (“CBOT”) exercisers, then current and former CBOE board members and vice-chairmen, the named CBOE defendants in this case entered into agreements with the CBOT that were approved by CBOE’s Board *ultra vires* according to the legal advisory letter issued by Gordon Fournis&Mamerella.(exhibit1)
  3. These agreements changed the definitions of what a full CBOT member is and amended CBOE’s Articles of Incorporation with regard to full CBOT members utilization of their exercise rights without the requisite approval of 80% of each respective class of membership, 931 CBOE members and all CBOT exercisers {"Article V(b)"}.
    4. As a consequence of the defendants actions and stripping Spiegel of his right to vote, he sold his seat at a substantially diminished value.

## **BREACH OF CONTRACT**

5. That as a result of CBOE's Board amending the Articles of Incorporation *ultra vires* and deciding to veil such changes by calling them "interpretations" and bypass the voting rights of Spiegel and his fellow members as outlined in the (attached as exhibit #3) March 7, 2005 legal memorandum issued by Spiegel's SEC legal counsel Kirkpatrick and Lockhart, CBOE bypassed Delaware Law as it is attempting to do in this litigation with CBOT's claims.

6. CBOE has adopted Spiegel's position in this litigation that CBOT forfeited their rights.

7. As a result Spiegel has been damaged in excess of \$200,000 because CBOE continued to recognize CBOT's 300+ exercisers that would have extinguished after CBOT restructured.

#### **BREACH OF FIDUCIARY DUTY**

8. Defendants, CBOE'S Board, owes a fiduciary duty to Spiegel, not only as an equity member in protecting his voting interests, but also as a potential member of a minority class of seat owners that were envisioned to be protected by CBOE's Article V(b) by requiring an 80% supermajority of each respective class of members of CBOE and CBOT exercisers.

9. By now adopting Spiegel's position that CBOT Holdings is no longer a membership organization or successor futures exchange as prescribed by Article V(b) and a subsequent agreement entered into in 1992 with CBOT, CBOE's Board has breached its fiduciary duty to Spiegel by not complying with his attached demands of April 26, 2005, and not undoing their actions at risk to their personal liability, thus placing their interests ahead of Spiegel's.

Wherefore, Spiegel asks that as a matter of law because CBOE had acted *ultra vires*, that he be entitled to attorneys fees, a trial for damages and any relief this court deems just.

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Respectfully submitted,  
Marshall Spiegel, Pro Se