Andrew Rothlein
Investor/Owner
NYSE Options Trading Rights

July 11, 2013

Ms. Mary Jo White, Chairman
Ms. Elisse Walter B. Walter, Commissioner
Mr. Luis A. Aguilar, Commissioner
Mr. Troy A. Paredes, Commissioner
Mr. Daniel M. Gallagher, Commissioner

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: SR-NYSEMKT-2013-42

Dear Honorable Commissioners,

Investor-owners of NYSE Separated Option Trading Rights (OTR's) are grateful to the Commission for considering the information set forth in this letter before it prematurely allows the Exchange to be acquired. As one of approximately 50 current stake holders in this class, it should be noted that the Commenter does not oppose the acquisition in principle but rather seeks equitable resolution of the OTR issue before approval is granted. Understood is that the OTR issue may not be directly before the Commission at this time, however the issue of the Exchange's assets is, therefore rendering any matter that relates to their rightful ownership relevant. To be sure, any one of the points/links presented below would alone be sufficient to warrant SEC follow-up but when examined and judged together will, with all due respect, compel the Commission to assert its authority, motivated by its mission to protect investors.

* The proposed acquisition of the NYSE involves the transfer of assets by the Exchange that it does not fully own, including the approximately 50 permanent licenses (OTR'S) to trade option products under its auspices;

* OTR's were purchased by long- term investors in an open, public, NYSE-facilitated marketplace that was active continuously from 1982 until 2005, when it was halted by the Exchange;

* The Exchange announced it was exiting the option business in 1997 *"The Exchange conducted a careful assessments and review of its options business and determined that it no longer wished*

to continue this business. There is nothing in the Act that compels the NYSE to continue to trade a particular product line." 4/23/97). Although the Exchange did not conduct an option business from 1997 until 2005, it facilitated a public market place in OTR's so that holders of equity memberships whose OTR's had been voluntarily separated could bid for them back if they contemplated NYSE option business re-entry or other investors could invest in them anew for the same reason;

* In 1997 the 92 owner-investors of usage-activated Separated and Non-Separated Options Trading Rights were offered temporary "Green Room" lease pool participation on the CBOE as fractional compensation for the long term NYSE option potential but only investor-owners of Separated Options Trading Rights were asked to surrender their OTR's as a condition of CBOE participation;

* Separated OTR owner-investors, who recognized the potential of the long term NYSE investments when/if re-entry occurred and the inevitability of that re-entry, would not be disenfranchised by a temporary lease pool on another exchange (a quick check of the numbers from that participation as compared to other CBOE "Green Room" leases confirmed the correctness of their position on another level, as well) and did not surrender;

* The Exchange subsequently withdrew its "surrender" condition (April, 1997);

* Like OTR investors, who declined to sell their trading rights on the Exchange-facilitated, public market due to the likelihood of the Exchange's re-entry into the option business and their being able to fully use their rights again, the NYSE apparently never surrendered its option exchange registration with the Commission after 1997 nor did it abolish the option rules on its books, presumably due to the same likelihood;

* Members of the NYSE senior management team of 1997 seemed to signal in 1997 that their exit from the options business at the time may have been temporary thereby voiding their already insufficiently justified reasoning for the Exchange's decision in 2005 to not restore OTR's to their full trading permanency and inclusiveness when re-entry occurred; and nullifying attempts to "extinguish" OTR's on the also already tenuous justification as contended by President Thain in a 5/26/05 memo, *"OTR's have conferred no trading privileges since the NYSE closed its option trading floor in 1997.";*

* OTR's found their way from unwilling investor-owners to the Exchange itself in 2006 after the Exchange announced it was re-entering the option business;

* "Troubling" was the word used by the court to describe proposed efforts by the Board of Directors of another exchange to effect a member to member trading rights transfer in a related case, even though less self-serving to that board/exchange by comparison;

* NYSE current claims to the contrary about its responsibility-releasing, merger-created, new identity *(February 7, 2006 NYSE Letter to the SEC, Section 8)*, an issuer-investor implied contract with from whatever the pre-merged NYSE evolved, continues to exist. Noteworthy is that the NYSE Constitution makes no provision for the appropriation of trading rights, including by the Exchange itself;

* The NYSE Constitution allowed the OTR holder or his designee to "maintain facilities on the trading floor for the execution of orders to buy and sell options that are from time to time admitted to the Exchange" (thereby permitting OTR holders to trade any Exchange option product with the prerogative of maintaining floor facilities if desired);

* The value of OTR's was on February 26, 1997, stated by the Exchange to be too "speculative" to be held by anyone but a "regular member or the Exchange itself", while on May 26, 2005 declared by the Exchange to "have no value" …. yet in 2012, the Exchange reported operating income from Derivatives, including leasing out the licenses to buy and sell its option products to be $910,000,000;

* Whether or not it was the original intention of the 1997 NYSE to exit the option business permanently or to get a fresh start later in a growing business unencumbered by NYSE Option Trading Rights investors/owners, the Exchange's exit and reentry cannot and does not negate or restrict the permanency/inclusiveness of the licenses it had voluntarily issued prior to its exit;

* The Exchange may be out of compliance with the Act of 1934, which mandates that it *"promote fair and equitable principles of trade .... and, in general, to protect investors"* ..... since that requirement applies to all transactions which it oversees, including the ones it executes itself.

Upon examination of the developments in this matter, ample latitude can already be derived for the Commission to reassess any previously approved rule changes regarding OTR's but should consider the Exchange's expressed position, as well. In a 2/7/06 letter to the Commission it attempted to justify its efforts to appropriate OTR's into what eventually became its own account by asserting that, *"…. no options are currently traded on the NYSE and no options will be traded on NYSE Market immediately after the merger."* That options are now traded on the entity from which the NYSE evolved and in which OTR owners invested in the 1980's and 1990's, is beyond debate. Their permanency and full inclusiveness did not vaporize because it happened to have been economically advantageous for the issuer or because that issuer evolved into something different than its original configuration.

Also, the Exchange's reliance *(footnote # 21, 2/7/06 letter to SEC)* on its Board having the authority to *"…. adopt, amend and repeal such rules as it may deem necessary or proper relating to options trading rights*

holders …", (NYSE Constitution, Article II, Section 8) hardly implies the seeking of economic advantage for its own account by deeming appropriation of its investors assets necessary or proper. Wouldn't that effort alone be overtly inconsistent with the Act to *"promote fair and equitable principles of trade …. and, in general, to protect investors"*? The state court too, as observed above, had serious doubts about another Board's assets transfer plan, despite its less self-serving purpose. It asked how that Board/exchange could be "*isolated from the reach of fiduciary duty law …." (4/7/07 Delaware Chancery Court),* and questioned the absoluteness of the rule change procedure with regard to asset transfer in general and challenged the validity of the unilaterally proposed trading rights transfer specifically "*…… merely by filing with the SEC …."*

In light of developments that were unknown to the Commission previously then, the SEC will not find itself restricted by previous rulings, especially when the relevant information is as clear as it is and perception of the financial establishment is at stake. When a firm attempts to appropriate assets away from unwilling investors into what ultimately becomes its own account, conspicuous legitimacy concerns are created. When that firm happens to be the New York Stock Exchange, perceptions about the entire system can become tainted. Although the possibility of misstep due to the confusion caused by the change in NYSE administrations and ownership nature at the time of re-entry is ceded, the matter is not irreversible either by the Exchange or if necessary, the Commission. Unchecked attempts by an institution that has heretofore earned worldwide respect as a leader in ethical standards, to serve itself at the expense of its smallest investors tends to undermine the trust upon which it and the entire market system depend and should be addressed for that reason, as well.

Even in a best case scenario where the Exchange actually intended to exit the option industry permanently in 1997 for business reasons rather than as a temporary, circumventing means of unencumbered re-entry, investments in permanent NYSE Option Trading Rights were fully sanctioned by both the Exchange and the Commission and were/are not subject to the issuer's late recognition of their value and subsequent, unwelcome, attempted appropriation thereof. The SEC is therefore asked to use this internationally visible forum to choose from among the various, possibly semi-conflicting functions it serves on this issue, its role as protector of small investors without regard to the identity of the contra party, to transcend the enormous political pressure with which it will undoubtedly have to contend, and to withhold approval for NYSE acquisition, including the rights that it does not fully own, until the matter of Option Trading Rights is equitably resolved.

Respectfully,

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http://www.sec.gov/rules/sro/nyse/nyse200577/cl122305.pdf pages 17, 18
http://www.sec.gov/rules/sro/nyse/nyse200577/cl122305.pdf page 61
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