

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CBOT HOLDINGS, INC. ET AL,)
)
 Plaintiff,)
)
 v.) C.A. No. 2369-N
)
 CHICAGO BOARD OPTIONS EXCHANGE ET AL,))
)
 Defendant.)

MOTION OF MARSHALL SPIEGEL A FORMER CHICAGO BOARD OPTIONS EXCHANGE MEMBER & SECURITIES AND EXCHANGE COMMENTATOR FOR LEAVE TO INTERVENE

Marshall Spiegel, Pro Se, moves for leave to intervene as a party-plaintiff in this proceeding if this Court correctly denies or in the alternative stays Chicago Board Options Exchange's ("CBOE") Motion To Dismiss Or Stay Plaintiff's Second Amended Complaint pending Department of Justice approval of the proposed merger between plaintiff the Board of Trade of the City of Chicago's ("CBOT") and Chicago Mercantile Exchange ("CME") or the Intercontinental Exchange ("ICE") failing in its March tender offer to acquire CBOT. In support of this motion Spiegel states:

1. On April 26, 2007, as part of setting this case on an expedited schedule, this Court has set May 30 to hear both parties, CBOE's and the Board of Trade of the City of Chicago's ("CBOT") motions.
2. The underlying issues in this case parallel Spiegel's claims that CBOE's board entered *ultra vires* into various agreements, without requisite approval of its membership as required by Article Fifth(b) of CBOE's Certificate of Incorporation, with CBOT, that were validated by the Securities and Exchange Commission ("SEC") relied on in this litigation at ¶¶ 54 -55¹, ¶ 48² of CBOT's Second Amended Complaint, and page 12 of their Response To Motion To Dismiss on pages 4, 16, 17 of CBOE's Opening Brief In Support of Motion to Dismiss or Stay Plaintiffs' Second Amended Complaint. All agreements were vigorously opposed³ by Spiegel and his fellow CBOE and CBOT exercise right⁴ members.⁵

¹ SEC Release Nos. 34-50028 (69 FR 43644) (2004 WL 1618087), 34-51252 (70 FR 10442) (2005 WL 483109), 34-51568 (70 FR 20953)

² SEC Release No. 34-51733 (70 FR 30981) (2005 WL 483109)

³ See Footnotes *supra*

⁴ See ¶ 1 of CBOT's Second Amended Complaint

⁵ Former CBOE Vice Chairman and CBOT exercise right member Thomas A. Bond

3. As a result of Spiegel being disenfranchised arising from the CBOE Board's *ultra vires* actions he had suffered a diminution in value in his membership which he would have not sold had CBOE's Board not entered into the agreements with CBOT without 80% prior approval of each respective membership, CBOT Exercisers and CBOE equity members (treasury seat owners) like Spiegel.
4. On June 3, 2005 Delaware counsel Michael J. Maimone issued the attached legal advisory letter showing an actual controversy exists concerning CBOE's possible violation of Delaware Law that can only be resolved by a State Court Chancellor.
5. On February 26, 2007 former CBOT Chairman Nickolas J. Neubauer, signatory to the agreement, the subject of SEC Release No. 34-51733 admitted on page 8 of the attached letter sent to the SEC (the sister case to the instant one SR-CBOE-2006-106) which calls for the same voting requirements in the current exercise right dispute that Spiegel and his fellow members called for in 2004 and 2005 and prior.
6. If Spiegel is given permission to litigate his claims in this venue it is his intention to retain local counsel to assist him in prosecuting this case.
7. Though Spiegel has a distinct economic interest separate and apart from the parties to this case he can add a point of view and focus to better help the Court understand the issues involved after spending time pursuing these issues at the SEC and on appeal.

Wherefore Spiegel requests that this motion be granted and he be given leave to file a complaint as an intervening plaintiff in this case.

May 3, 2007

Respectfully submitted,

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Marshall Spiegel
Pro Se
Proposed Intervening Plaintiff

initiated commentary with former CBOE Vice Chairman Gary Lahey, former CBOE Board member Jeffrey T. Kaufman, and 7 other CBOE equity members (treasury seat owners) including proposed intervenor Spiegel who acted as signatories opposing the SEC rulemaking process to validate all the agreements. Fn5 Release # 34-51252