Mr. Jonathan G. Katz
Secretary
U.S .Securities and Exchange Commission
459 Fifth Street, N.W.
Washington, D.C. 20549-06069

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OFFICE OF THE SECRETARY

April 28, 2004

RE: Chicago Board Options Exchange – Exercise Right Rules Filings
File No.: SR-CBOE-2002-01
SR-CBOE-2004-16

Dear Mr. Katz:

The undersigned, members of the Chicago Board Options Exchange (CBOE), appreciate the opportunity to comment on the CBOE rule filings Numbers SR-CBOE-2002-01 and SR-CBOE-2004-16 concerning agreements between the CBOE and the Chicago Board of Trade (CBOT). We believe that the SEC should not approve these rule filings for reasons which are elaborated below:

HISTORY AND BACKGROUND

When the CBOE was incorporated in 1972, its Certificate of Incorporation included an Article Fifth paragraph (b) which granted a "member of the Board of Trade of the City of Chicago" the right to become a member of the CBOE "so long as he remains a member of the Chicago Board of Trade" i.e. the exercise right. This Article also states that "No amendment may be made with respect to this paragraph (b) of Article Fifth without the prior approval of not less than 80% of (i) the members of the Corporation (CBOE) admitted pursuant to this paragraph (b) and (ii) the members of the Corporation (CBOE) admitted other than pursuant to this paragraph (b), each such category of members voting as a separate class." This Certificate of Incorporation was approved be the SEC.

In 1982, litigation was brought against the CBOE concerning the exercise right (Buckley v.CBOE) which resulted in the state court deferring to the SEC on the basis of federal preemption given the existence of an overall regulatory scheme determined to be preferable to state court interpretation. Since that time, at least two other state court cases concerning the exercise right have been dismissed or deferred in deference to the SEC based on the state court judge's findings in accord with the Buckley v. CBOE case rational. In addition, the CBOE with the approval of the SEC has implemented rules which limit or prevent a CBOE member from bringing suit against the CBOE. (CBOE rules 2.24 and 6.7A ). As a result of these precedents and rules, minority members of the CBOE must look to the SEC to resolve member rights.

In 1992, the SEC approved CBOE rule 3.16(b) which interpreted Article 5(b) to further define and clarify but not change the definition of the "member of Board of Trade".

REASONS FOR DISAPPROVAL

Listed below are our reasons why the SEC should not approve these rule filings. If the CBOT wants to proceed with its demutualization, then the CBOE should hold a membership vote under Article 5(b) procedures to determine the effect on the exercise right.

1. The CBOT wishes to "demutualize" its membership structure as disclosed in its Registration Statement on Form S-4 with the SEC. We believe that the CBOT's proposed changes to its corporate structure is an amendment to Article 5(b) in that the CBOT will be demutualized and no longer be a membership organization. The SEC and security laws require organizations to file documents such as S-4 when they demutualize because these are changes to the organization that investors and regulators should be informed about. This is what the CBOT is doing with its S-4. We do not agree with the CBOE that this change is an interpretation to Article 5(b) but that it is an amendment and should be subject to an Article 5(b) vote.

2. Under the proposed rule changes, certain disputes concerning definitions of what constitutes a member of the CBOT will be subject to arbitration. This proposal is an amendment to Article 5(b) in that an arbitration procedure is being added, the effect of which is to remove the membership process under Article 5(b) from deciding on amendments to the definition of a member of the CBOT and giving it to an arbitration panel.

3. When the CBOE was created in 1972 , the equity of the CBOT was only contained in the "member of the Board of Trade". Subsequently, the CBOT created minor memberships (i.e. Associate members, IDEMS, COMS) which had fractional voting rights but no equity rights. According to the CBOT's registration statement, the full members of the CBOT would receive approximately 77% of the equity in the new holding company. This is another factor where the definition of a "member of the Board of Trade" is being amended and should be subject to an Article 5(b) vote.

4. In 1992, the SEC approved a CBOE rule 3.16(b) which interpreted Article 5(b) to further define and clarify but not change the definition of a "member of the Board of Trade". This rule refers to a 1992 agreement between the CBOE and the CBOT which states that a CBOT's "exercise member shall not have the right to transfer (whether by sale, lease, gift, bequest, or otherwise) their CBOE regular memberships or any other trading rights and privileges appurtenant thereto." This section limits and further defines what a CBOT member must do to maintain the exercise right in that he cannot separate the CBOE exercise right from the CBOT membership. Under the new proposed 2002-01 and 2004-16 rule filings, rather than limit what a CBOT member can do, instead it allows the CBOT to demutualize into A,B,and C shares which can be split and sold

separately. These changes are amendments and not interpretations to Article 5(b).

5. Changing from a membership structure to a demutualized stock corporation affects how the governance and operations of the entity will operate. Under existing membership structure of the CBOT, the CBOE and its members have knowledge and information on CBOT actions that affect the exercise right and the number of exercisers. With the proposed changes, committee structures, petition processes, and representation on the board of directors will all be changed which again point out why approval of these changes should be subject to an Article 5(b) vote.

6. In an exchange membership organization, the voting rights are joined with the trading rights and equity interests because these parts can not be separated. When this organization is demutualized, these parts are separated and consequently the parties owning the voting rights may be different and have different agendas than the parties having the trading rights.

7. After the August 7, 2001 agreement between the CBOE and CBOT, the CBOT sent a letter dated October 24, 2001 in which the CBOT will create a holding company (CBOT Holdings Inc.) which will issue class A shares and will hold the "Board of trade of Chicago", the registered commodity exchange as a subsidiary. As we understand it, the holding company would not be a registered commodity exchange. According to the 1992 agreement paragraph 3(d), "in the event the CBOT merges or consolidates with or is acquired by or acquires another entity" and the surviving entity is not an exchange, then "Article 5(b) shall not apply to any other merger or consolidation of CBOT with, or acquisition of CBOT by another entity". Therefore we would conclude that if this transaction does transpire, the CBOE can negate the exercise right.

8. Paragraph 2(b) of the 1992 agreement which is part of the existing CBOE rule 3.16 states "that in the event the CBOT splits or otherwise divides CBOT Full Memberships into two or more parts, all such parts, and the trading rights and privileges appurtenant thereto, shall be deemed to be part of the trading rights and privileges appurtenant to such CBOT Full Memberships and must be in possession of an individual as either an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate in order for that individual to be eligible to be an Exercise Member". Our interpretation of this paragraph would require that all equity and all trading rights would have to be assembled in order to exercise if the demutualization were to occur. The equity required to exercise should be a prorating of 100% of the CBOT equity divided by 1402 members and not 77% of the CBOT equity.

CONCLUSIONS

In conclusion, the CBOE member who purchased a CBOE treasury issued membership did so with the knowledge of the existence of potential CBOT exercise memberships as defined in Article 5(b). Over the past 30 years, the CBOT has or has attempted to change the definition or structure of the "member of the Board of Trade of the City of Chicago" on more than one occasion. The CBOE's response has been either to fail to respond, temporarily and selectively to extinguish the exercise right, to go to court, and/or to file interpretive CBOE rule 3.16. We believe that Article 5(b) was established (also approved by the SEC) to provide a mechanism for the BOTH CLASSES of CBOE members (i) to decide whether changes in definition or structure of a "member of the Board of Trade" affect the exercise right and (ii) to protect one class of member from adversely affecting the other. We would urge the SEC not to approve these rule filings and instead require these amendments be subject to the voting requirements under Article 5(b).

If you have any questions or need further clarification or information, please do not hesitate to contact us.

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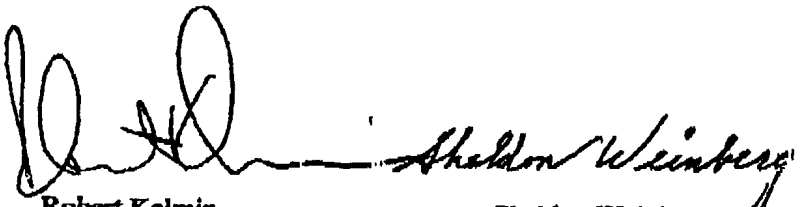

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