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July 9, 2007

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

Attn: Nancy M. Morris, Secretary

Re: File Number: SR-CBOE-2006-106

Ladies and Gentlemen:

On behalf of CBOT Holdings, Inc. ("CBOT Holdings") and its wholly-owned subsidiary, the Board of Trade of the City of Chicago, Inc. (together, "CBOT"), we write to respond to the letter submitted on June 15, 2007, by the Chicago Board Options Exchange, Incorporated ("CBOE") concerning SR-CBOE-2006-106, a proposed rule change (the "Proposed Rule Change") filed with the Securities and Exchange Commission ("SEC" or "Commission") by CBOE. Notwithstanding the closing of the comment period on the Proposed Rule Change, we ask that you consider this letter in your deliberations on the Proposed Rule Change.

CBOE's curiously-timed June 15 letter (filed almost 4 months after the close of the Proposed Rule Change comment period) makes a number of arguments that are either incomplete, simply wrong, or fail to support CBOE's propositions. These arguments do not refute the fundamental fact that the Proposed Rule Change is an improper use of CBOE's self-regulatory authority in an attempt to resolve in its favor a private ownership dispute that belongs and is being litigated in the Delaware courts, and is not consistent with the Exchange Act, as more fully explained in our letter of February 27, 2007 ("February Letter").[1] Accordingly, CBOT respectfully reiterates its request that the Commission institute proceedings under Section 19(b)(2)(B) of the Exchange Act, including a public evidentiary hearing, to disapprove the Proposed Rule Change.

A recent development in this ongoing controversy plainly shows that the Proposed Rule Change is nothing more than part of the CBOE Board's continuing scheme to expropriate the property of one group of shareholders (the Exerciser Members) and give it to the other shareholders, including members of the CBOE Board. This development is the agreement that CBOE recently reached with the IntercontinentalExchange ("ICE") in the latter's efforts to

[1] All capitalized terms used herein that are not defined in this letter have the meanings assigned to them in the February Letter.

merge with CBOT Holdings ("ICE Agreement").[2] In the ICE Agreement, CBOE and ICE agree jointly to pay $665.5 million as compensation to Eligible CBOT Full Members if CBOT Holdings merges with ICE on substantially the same terms as the proposed merger between CBOT Holdings and CME. The ICE Agreement also provides that if ICE's efforts to buy out the claims of CBOT members are successful, CBOE will withdraw the Proposed Rule Change and submit a new rule change consistent with the ICE Agreement plan. On its face, the ICE Agreement conclusively undercuts CBOE's claim in the Proposed Rule Change (and before the Delaware Court) that after the CME merger, the Exercise Right will have no value and the rights of Eligible CBOT Full Members will be extinguished. We also are dismayed that CBOE has not seen fit to bring this most critical and relevant development to the attention of the Commission in its consideration of the Proposed Rule Change.

CBOE's alliance with ICE provides additional reasons as to why this controversy should be resolved by the Delaware Court, and not by the Commission. The ICE Agreement expressly acknowledges that a class action is pending against CBOE in the Delaware Court and specifically provides that the ICE offer is conditioned upon approval by the Delaware Court. As we have stated in the past, nowhere in its voluminous filings before the Commission or in the Delaware Court has CBOE explained what legitimate corporate purpose is served by cutting out over 1,300 potential shareholders when CBOE demutualizes (except, of course, the obvious purpose of enriching the regular CBOE members, including a large portion of its Board). These concerns, in fact, were the subject of observations made by the Delaware Court at a May 30, 2007 hearing in the Delaware Action, when the Court asked CBOE counsel:

> Isn't the whole purpose of the CBOE's presenting [its] rule to the SEC to deny exerciser rights their expectation in the fruits of the CBOE demutualization?[3]

The Delaware Court later provided what to CBOT is the obvious answer:

> But this to me just looks like a gambit [to] cut-out, the CBOT side of the equation from the demutualization. And that perhaps may be framed harshly, but that seems to be what the intent is, that's what the purpose is.[4]

Discussion

The history of the Exercise Right, CBOE's unilateral attempt to extinguish the Exercise Right, and the Delaware Action that seeks to require CBOE to honor its contractual commitments to CBOT and the Exerciser Members, are fully described in the February Letter

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2 *See* Exhibit A.

3 Remarks of Vice Chancellor Noble, Transcript of Proceedings in the Delaware Action, May 30, 2007, p. 6.

4 *Id*, pp. 8-9.

and need not be repeated here. Similarly, we already have shown in our February letter why the Proposed Rule Change cannot be approved, and nothing in CBOE's June 15 letter supports a different conclusion. Therefore, we will limit our discussion below to certain matters raised by CBOE's June 15 letter.

I. The Proposed Rule Change is not a "Membership" Rule.

The controversy that gave rise to CBOE's Proposed Rule Change does not involve an interpretation or application of the Exchange Act. The dispute involves the contract rights of certain CBOT members, and the Delaware Court's interpretation and enforcement of that contract will not interfere with the Commission's authority to regulate national securities exchanges. The central issues in this matter involve the intent of the parties when, in the 1992 Agreement, (i) they defined the requirements that CBOT members had to satisfy in order to qualify as "Eligible Full CBOT Members" and (ii) they provided that Eligible CBOT Full Members would have the right to equal treatment, including the right to share equally with CBOE members in any cash or property distribution by CBOE. The resolution of these issues is common grist for State courts.

CBOE argues that the Proposed Rule Change is a "membership" rule that is subject to the SEC's exclusive jurisdiction because it concerns "who is eligible to become and remain a member of a national securities exchange." The Proposed Rule Change is nothing of the sort: it is an *ownership* rule through which CBOE attempts to extinguish the value of a private property right -- the Exercise Right -- that is attached to a CBOT (not a CBOE) membership. The Proposed Rule Change does *not* deny any CBOT member the right to become a CBOE member if the CBOT member satisfies CBOE's Exchange Act-based membership eligibility requirements (and, of course, purchases a CBOE membership at the current market price of over $2.5 million). Contrary to CBOE's statement, the controversy does not require a determination by the Commission or the Court of "who is eligible to become and remain a member of a national securities exchange." (June 15 letter, p. 4). And, as the SEC itself has repeatedly recognized, its authority over SRO rulemaking under the Exchange Act is limited to determining whether such rules are consistent with the Exchange Act.[5]

The critical distinction between a membership rule that is a proper subject of SRO rulemaking on the one hand, and the Proposed Rule Change on the other hand, was pointed out by Delaware Vice-Chancellor Noble at the May 30, 2007 hearing in the Delaware Action before the Delaware Court:

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[5] *See, e.g.*, Exchange Act Release No. 34-51252, File No. SR-CBOE-2004-16, 70 Fed. Reg. 10442, 10444 (Mar. 3, 2005); Notice of Proposed Rulemaking, Exchange Act Release No. 34-50699, 69 Fed. Reg. 71126, 71140, 71145-6 (proposed Nov. 18, 2004).

> Let's – let's start philosophically. We've spent a lot of time arguing about what membership is. But is this case really about membership? Isn't it really just about cutting up the pie of heretofore unfathomable wealth that's going to be created through the demutualization of CBOE, and what does the SEC have to do with dividing the pie?[6]

In the 1992 Agreement, the parties agreed that, should there be any distribution of cash or property by CBOE, certain CBOT members would share equally in that distribution. The parties identified those persons as "Eligible CBOT Full Members." The SEC has no special interest or expertise in determining what the parties meant when they elected to use those terms. This is a term nowhere found in the Exchange Act. Indeed, CBOT and its members are not even regulated by the SEC. It also is important to note that, in case of a cash or property distribution by CBOE, the 1992 Agreement also specifically provides that Eligible Full CBOT Members may exercise *solely for the purpose of participating in this distribution.* (1992 Agreement p. 4, ¶ 3(b)). In such circumstances, the CBOE agreed that those members would not be required to pay dues or meet any "qualification requirements." Thus, the dispute cannot involve an issue as to who is *qualified* to be a member of a national securities exchange.

For the same reasons, CBOE's assertion that exclusive SEC jurisdiction over this matter is necessary to ensure that SROs are not subject to inconsistent standards is wrong. This dispute involves the contract rights of certain CBOT members, and the Delaware Court's interpretation and enforcement of that contract will not interfere with the efforts of the Commission to regulate securities exchanges.

Therefore, contrary to CBOE's statement (June 15 letter at 4), this controversy does not require a determination by the Commission of "who is eligible to become and remain a member of a national securities exchange."[7] In turn, CBOE cannot explain why it is impossible for it to comply with the Exchange Act on the one hand, and its contractual commitments and the fiduciary duties imposed by state law pursuant to the 1992 Agreement on the other hand. There is absolutely no need for an *exclusive* federal regulatory process to decide the value of a property right that attaches to a CBOT membership and that was the result of a good faith bargain, *which by its terms is expressly governed by state law,* that was reached between CBOT and CBOE in 1992 and reaffirmed on several occasions thereafter.

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[6] Transcript of May 30 hearing in the Delaware Action, at 6. *See also*, comparable Delaware Court remarks at page 24 of the transcript. The transcript is attached as an exhibit to the June 25, 2007 comment letter filed in this matter by Marshall Spiegel, retired equity CBOE and CME member.

[7] Meeting the definition of an Eligible CBOT Full Member in no way equates with being qualified as a CBOE member. The great majority of Eligible CBOT Full Members have never – and will never – request permission to seek a membership for purposes of trading on CBOE or any other national securities exchange.

CBOE further claims that the courts "consistently" have decided that the Commission's SRO rulemaking jurisdiction preempts judicial consideration of changes to Article Fifth(b). We first question whether three state lower court decisions, one of which (*Buckley*) was decided 10 years before the 1992 Agreement, one that was settled prior to its ultimate disposition, and one to which CBOT was not even a party, represent a compelling level of judicial authority on the subject. As we previously have stated, however, the *Buckley* decision addressed a narrow claim for specific performance resulting from an express denial by CBOE of membership to a single CBOT lessor. Therefore, *Buckley*, which entailed a member dispute over actual trading and membership privileges on CBOE, arguably fell within the ambit of membership denial provisions of Exchange Act sections 6(a)(7) and 6(d), but in any event is plainly distinguishable on its facts from CBOE's attempt to extinguish wholesale Exerciser Members' ownership rights through the Proposed Rule Change.[8]

Finally, the duplicity of CBOE's position is clear from the ICE Agreement under which it will compensate all Eligible CBOT Full Members, if – but only if – CBOT Holdings and its shareholders agree to merge with ICE instead of CME. In such an event, CBOE agrees to withdraw the Proposed Rule Change (that provides that Eligible CBOT Full Members receive nothing) and substitute a rule change that provides for the payment of more than $665 million to this group.

In sum, this controversy, and the Proposed Rule Change, have nothing to do with "membership issues", and everything to do with the ownership issues before the Delaware Court. The Proposed Rule Change therefore is not a "membership rule" or a "membership decision" of the sort contemplated under sections 6(a)(2), 6(a)(7) and 6(d) of the Exchange Act, or one where the SEC has exclusive authority to rule on its merits.

II. Whether the Proposed Rule Change Was Fairly Adopted and Complied with Delaware Law is a State, Not a Federal, Issue that Must Be Adjudicated in the Delaware Court.

CBOE devotes much effort (June 15 letter, at pp. 15-23) – and indeed has submitted two letters from a Delaware lawyer opining on matters of Delaware law – in an attempt to explain why the procedures it used in approving the Proposed Rule Change were fair and consistent with Delaware law, even while it argues that the Delaware Court has no proper role in interpreting Article Fifth(b). Inasmuch as it is not the SEC's role to decide issues of state law under section 19(b) of the Exchange Act – a proposition that the SEC itself has acknowledged in the past – we

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[8] The Second Circuit later observed in *Barbara v. NYSE*, 99 F.3rd 49,55 (2d Cir. 1996) that Exchange Act section 27 "plainly refers to claims created by the [Exchange] Act or by rules promulgated thereunder, but not to claims created by state law." The court further read *Buckley* as holding that a state law claim against a national securities exchange for breach of a provision in its certificate of incorporation is not within the scope of Exchange Act section 27. *Id.*

will not address the numerous factual inaccuracies in CBOE's arguments.[9] Rather, CBOE's arguments demonstrate *precisely* why the matter of the Proposed Rule Change's conformance to state law should be left to the informed decision-making of the Delaware Court. If there are substantive matters of Delaware law presented by the Proposed Rule Change, there is no legal or policy reason why the SEC should feel compelled to override the Delaware Court's consideration of these matters.

As the Second Circuit observed in *Barbara*, n.8 *supra*, "'... [T]he rules of a securities exchange are contractual in nature,'" Merrill Lynch, Pierce, Fenner & Smith Inc. v. Georgiadis, 903 F.2d 109, 113 (2d Cir. 1990), and are thus interpreted pursuant to ordinary principles of contract law, an area in which the federal courts have no special expertise.'" 93 F.2d at 55. And, as the SEC itself observed in Exchange Act Release No. 51252, quoted (selectively) by CBOE in its June 15 letter, "[e]xcept to the extent that the Commission's analysis of state law informs its finding that, as a federal matter under the Exchange Act, CBOE complied with its own Certificate of Incorporation in determining that the proposed rule change is an interpretation of, not an amendment to, Article Fifth(b), the Commission is not purporting to decide a question of state law."

III. The Proposed Rule Is Inconsistent with the Requirements of the Exchange Act.

CBOE's efforts to justify the Proposed Rule Change (June 15 letter, at pp. 23-34) similarly fall well short of the mark for several reasons:

A. *The Proposed Rule Change does not articulate an adequate statutory basis for approval and therefore fails to comply with the procedural requirements of Exchange Act section 19(b) and Rule 19b-4.* Form 19b-4 not only requires that a SRO explain the purpose of a proposed rule change, but also that the SRO explain the *legal basis* for the proposed rule change. CBOE, however, has provided no explanation or justification for the *statutory basis* for the Proposed Rule Change. Its one-sentence statement that the Proposed Rule Change is consistent with the Exchange Act is patently insufficient: Item 3(b) of Form 19b-4 provides that "[a] *mere assertion* that the proposed rule change is consistent with those requirements is *not sufficient,*" and this is all CBOE has stated. Similarly, CBOE's explanation that the body of the Proposed Rule Change explains the legal basis for CBOE rule is wrong, inasmuch as Form 19b-4 makes clear that the explanation of the purpose of a proposed rule change required by Form 19b-4 is separate from Form 19b-4's requirement that a SRO explain the *legal basis* for a proposed rule

[9] Inaccuracies in abundance, however, there are: as one example, CBOE asserts that the issue of interpreting Article Fifth(b) was not before the Delaware Court when CBOE filed the Proposed Rule Change with the Commission (June 15 letter, at page 16). In fact, CBOT filed its action regarding the value of the Exercise Right under Article Fifth(b) the prior August. That CBOE subsequently decided to revalue the Exercise Right at zero through the Proposed Rule Change does not change the fact that the Article Fifth(b) matter was before the Delaware Court at the time the Proposed Rule Change was filed.

change, which CBOE has not done. Therefore, CBOE has not satisfied the procedural requirements of Exchange Act section 19(b) and Rule 19b-4.

B. *The Proposed Rule Change is inconsistent with the substantive requirements of the Exchange Act.* In its February Letter, CBOT has explained in detail why the Proposed Rule Change fails to comply with applicable requirements of Exchange Act section 6. CBOE's lengthy efforts to explain why the Proposed Rule Change is "reasonable" fail to address the Proposed Rule Change's deficiencies under the Exchange Act.[10]

As we previously explained, the Proposed Rule Change is not even a proper subject of SRO rulemaking under the SEA. Nowhere in the structure and requirements of the Exchange Act applicable to SROs is there the slightest suggestion that CBOE's misplaced views about the legal consequences of changes in a *commodities exchange's* ownership structure or membership has any relation to the statutory factors that must support any SRO rule change under the Exchange Act, or that the SEC must have exclusive jurisdiction to consider such a matter. And, inasmuch as the Proposed Rule Change is not a membership rule (as explained above), but merely a rule that (illegally) reallocates the pecuniary value of a CBOE ownership right, the Proposed Rule Change is not a proper subject of SRO rulemaking under the Exchange Act.[11]

Conclusion

As we have previously demonstrated, the Proposed Rule Change is not a proper subject of CBOE rulemaking under the Exchange Act, and fails in several material respects to comply with the requirements of the Exchange Act. The Proposed Rule Change concerns core matters of state corporations and fiduciary law that are the proper domain of the Delaware courts and that the SEC does not have the responsibility or expertise to decide. Nothing that CBOE says in its June 15 letter changes in any material respect the validity of these points. For these reasons, CBOT respectfully reiterates its request that the SEC institute proceedings under section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change should be disapproved, and hold a public hearing to consider the matters presented by the Proposed Rule Change.

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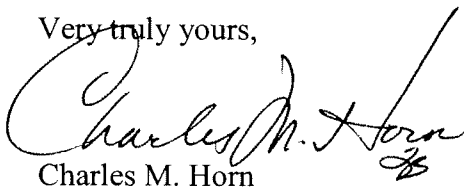
[10] Much of CBOE's argument is based on the assertion that after the CME merger, CBOT no longer will have "members." To reach this conclusion, CBOE makes substantive (and erroneous) judgments about CBOT's corporate charter, ownership structure and membership privileges. CBOT most certainly will have members after the merger of CBOT Holdings and CME. Moreover, whether CBOE's argument is supportable under the 1992 Agreement or the 2001 Agreement is a matter of contract, not Exchange Act, interpretation that plainly belongs in the Delaware Court.

[11] CBOE's position also is patently inconsistent with the ICE Agreement discussed above. If CBOE is correct in asserting that the Exercise Right will no longer exist and will have no value after the CME-CBOT Holdings merger, how can CBOE simultaneously be acknowledging through its offer that the Exercise Rights are worth over $665 million if CBOT Holdings merges with ICE instead of CME?

Thank you for your consideration of the foregoing. If you have any questions, please contact the undersigned at (202) 263-3219 or Kathryn McGrath at (202) 263-3374.

Very truly yours,



Charles M. Horn

Attachment

cc: The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Annette L. Nazareth, Commissioner

Brian G. Cartwright, Esq., SEC General Counsel
Janice Mitnick, Esq., SEC Assistant General Counsel for Market Regulation
Elizabeth King, SEC
Richard Holley, SEC
Johnna Dumler, SEC
Joanne Moffic-Silver, CBOE
Patrick Sexton, CBOE
Gordon Nash, Counsel for Plaintiff Class in the Delaware Action

CBOE

Chicago Board Options Exchange

Summary of ICE-CBOE Agreement

Membership Meeting

June 14, 2007

Agenda

- Background
- ICE-CBOE Agreement
- ICE Proposal to CBOT
- Next steps
- CBOE Board's Recommendation

Background

- CBOE had extensive but ultimately unsuccessful negotiations with CBOT and counsel for CBOT members
- CME was approached but had no interest in entering discussions
- ICE approached us with a creative and reasonable proposal which would:
  - resolve the exercise right issue
  - resolve the current litigation
  - Allow CBOE to proceed with its demutualization
- CBOE Board concluded it was in members' interest to pursue this opportunity

Recent Developments

- On June 12 ICE submitted a revised proposal to CBOT incorporating provisions related to the exercise right
- Today CME and CBOT announced a revised agreement and CBOT declared the CME proposal superior to ICE's
- ICE still has the opportunity to further revise its proposal
- Any revised ICE proposal must incorporate the provisions related to resolving the exercise right issue

Current ICE Proposal

- Exchange ratio: 1.42 ICE shares for each CBOT Holdings share
- Special dividends of $0.29 per share paid to CBOT Holdings shareholders in 3rd and 4th quarters 2007
- Up to $2.5 billion cash election
- With regard to the exercise right, CBOE and ICE together have offered a $665 million pool of cash and debentures for resolution of exercise right issues; a minimum of $500,000 per eligible person

Current CME Proposal

- Exchange ratio: 0.35 CME shares for each CBOT Holdings share
- Special dividend of $9.14 per share paid to CBOT Holdings shareholders (equates to $250,000 for each Full Member who is eligible to exercise)
- ERP holders, who are also B-1 Members on May 29, 2007 will have a choice of receiving $250,000 for their ERPs or to continue in the CBOE lawsuit with $250,000 guarantee
- $3.5 billion post-closing cash tender offer for CME Holdings shares at $560 per share

Current CBOE Position

- CBOE's primary objective is to resolve the exercise right in a manner that is fair to all parties
- CBOE has entered into an agreement with ICE toward this end that is exclusive for a period of time
- A member vote will be held on July 3 to approve the terms of this agreement

ICE-CBOE Agreement

- Agreement to resolve exercise right issue, including current litigation, in connection with an ICE-CBOT merger
- ICE and CBOE would pay Exercise Right Consideration, upon satisfaction of all conditions
- ICE and CBOE agree to bilateral exclusivity
- Any revised ICE offer must include the exercise right provisions

Exercise Right Consideration

- CBOE and ICE would each provide $332,750,000 in total consideration to eligible CBOT Full Members possessing all the required interests (eligible persons)
- Each eligible person would be entitled to pro rata share of the consideration in either:
  - All cash;
  - Debentures convertible into stock of CBOE following its demutualization or other conversion event; or
  - Debentures convertible into stock of newly combined ICE/CBOT
- Each eligible person would receive a minimum of $500,000 in consideration per Full CBOT Membership

Exercise Right Consideration

- Total consideration paid jointly by ICE and CBOE would be divided by number of eligible persons as of record date of ICE-CBOT merger
- Eligible persons would receive more consideration if fewer than maximum number (1,331) of potentially eligible persons possess required interests at required time
- If CBOE debentures or ICE debentures are oversubscribed, persons electing debentures would receive pro rata share of debentures and remainder in cash
- Eligible person electing CBOE stock would receive a minimum of 10% of the stock a CBOE seat owner would receive
- If CBOE debentures are fully subscribed, eligible persons would hold 12.5% of total outstanding shares of CBOE Holdings

Conditions to Payment of Exercise Right Consideration

- Obligations to pay Exercise Right Consideration contingent on:
  - Closing of ICE-CBOT merger;
  - CBOE membership approval;
  - SEC approval of exercise right interpretation;
  - Approvals of Boards of Directors or stockholders of CBOT Holdings and CBOT; and
  - Final court approval of settlement of Delaware litigation concerning exercise right

Trading Permits

- **Following ICE-CBOT Merger**
  - Each person who is an Exerciser Member immediately before ICE-CBOT merger would be granted a temporary trading permit (subject to payment of fees to CBOE)

- **Following CBOE Demutualization**
  - Temporary trading permits would expire upon CBOE demutualization and be replaced with post-demutualization trading permits
  - Persons with temporary trading permits immediately prior to CBOE demutualization would be entitled to obtain post-demutualization trading permits on same basis as CBOE members

Mutual Exclusivity

- During period of mutual exclusivity:
  - CBOE may not discuss, negotiate or agree with either CBOT or a potential acquirer of CBOT regarding either settlement of pending exercise right litigation or elimination of exercise right eligibility
  - ICE may not enter into any discussions, negotiations, transactions or agreements with CBOT that do not include terms of ICE-CBOE Agreement relating to exercise right
- ICE would not enter into Agreement without these provisions
- CBOE's Board concluded that the advantages of the Agreement made these provisions acceptable

Exclusivity Periods

- Initial exclusivity period runs through July 3
- CBOE Member vote scheduled for July 3 to approve terms of ICE-CBOE Agreement, and extend exclusivity to August 15
- Second member vote on August 15 to vote on extending exclusivity to October 1 and on any material changes related to exercise right issues
- Exclusivity terminates on October 1 or if a CME-CBOT merger is approved by shareholders

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CBOE-ICE Joint Initiatives

- **Subject to reaching a definitive agreement, CBOE will:**
  - **Provide technical assistance to ICE regarding design and deployment of ICE's electronic options on futures trading platform,**
  - **Provide electronic access to ICE's options on futures products to CBOE's members,**
  - **Jointly develop ICE volatility futures products and related index products, and**
  - **Investigate making CFE products available through ICE's electronic trading platform**

Summary

- CBOE would provide consideration of $332,750,000 to eligible persons as compensation for loss of exercise right eligibility
- CBOE consideration would be in the form of cash, debentures convertible to shares of CBOE Holdings or a combination thereof
- Former Exerciser Members would have continued access via trading permits leased from CBOE
- CBOE would provide various types of technical and product development assistance to ICE
- ICE would match CBOE consideration
- Both exercise right issue and pending litigation would be resolved

Next Steps

- CBOE membership vote on July 3, 2007 to approve the ICE-CBOE Agreement
- Ballot materials will be distributed on June 19, 2007 both by email and regular mail
- Ballot materials will include a copy of the ICE-CBOE Agreement and will describe more fully what you are being asked to approve
- Materials will provide instructions for voting by telephone, Internet, fax, mail or in person

CBOE Board's Recommendation

- The Board of Directors of CBOE recommends that you vote "FOR" the approval of the transactions contemplated in the ICE-CBOE Agreement
- The proposed transactions, if successful, will:
  - resolve exercise right issue
  - resolve current litigation related to exercise rights
  - allow CBOE to proceed with its demutualization

This communication shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any state or jurisdiction in which an offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

In connection with the proposed restructuring transaction, CBOE Holdings, Inc. ("CBOE Holdings") has filed certain relevant materials with the United States Securities and Exchange Commission (SEC), including a registration statement on Form S 4. Members are encouraged to read the registration statement, including the proxy statement/prospectus that are a part of the registration statement, because it contains important information about the proposed transaction. Members are able to obtain a free copy of the proxy statement/prospectus, as well as the other filings containing information about CBOE Holdings and the Chicago Board Options Exchange, Incorporated ("CBOE"), without charge, at the SEC's Web site, http://www.sec.gov, and the companies' website, www.CBOE.com. In addition, CBOE members may obtain free copies of the proxy statement/prospectus and other documents filed by CBOE Holdings or the CBOE from CBOE Holdings by directing a request to the Office of the Secretary, CBOE Holdings, Inc., 400 South LaSalle Street, Chicago, Illinois 60605.

CBOE Holdings, the CBOE and their respective directors, executive officers and other employees may be deemed to be participants in the solicitation of proxies in connection with the proposed transaction. Information about the directors and executive officers of CBOE Holdings and of the CBOE is available in the prospectus/proxy statement.