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August 31, 2007

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

**Re: Petition to Abrogate in File No. SR-CBOE-2007-77**

Dear Ms. Morris:

I submit this letter in connection with the response of the Chicago Board Options Exchange, Incorporated ("CBOE") to the "Emergency Petition for Securities and Exchange Commission Review of Rulemaking Action of the Chicago Board Options Exchange, Incorporated" (the "Comment Letter"), which seeks the abrogation of SR-CBOE-2007-77 (the "Continued Membership Interpretation") and was submitted by CME Group, Inc. f/k/a CME Holdings, Inc. (collectively "CME Holdings"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), Michael Floodstrand and Thomas Ward. In particular this letter responds to the points raised in the August 20, 2007 letter from Frederick H. Alexander of Morris, Nichols, Arsht & Tunnel LLP (the "Alexander Letter") that was attached as Exhibit A to the Comment Letter. While the Alexander Letter was submitted in connection with SR-CBOE-2007-77, it focuses entirely on the process whereby CBOE's Board of Directors (the "Board") approved the proposed rule change in SR-CBOE-2006-106 (the "Exercise Right Interpretation"), which was submitted to the Commission on December 12, 2006 and amended on January 16, 2007 and June 28, 2007, and which consists of an interpretation of paragraph (b) of Article Fifth ("Article Fifth(b)") of CBOE's Certificate of Incorporation (the "Certificate") pertaining to the right of Full Members of CBOT to become members of CBOE without having to purchase a CBOE membership in light of the acquisition of CBOT by CME Holdings (the "Acquisition"). This letter supplements prior letters from our firm dated January 16, 2007 and June 28, 2007, which were filed with the Commission in SR-CBOE-2006-106.

I understand that Article Fifth(b) has been previously interpreted in accordance with agreements of CBOE and CBOT dated September 1, 1992, August 7, 2001 as amended by letter agreements dated October 7, 2004, and February 14, 2005, and December 17, 2003 (collectively, the "Agreements"). The interpretations of Article Fifth(b) embodied in the Agreements were approved by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934, as amended, in Release Nos. 34-32430, 34-517333, and 34-51252. Additionally, I understand that Article Fifth(b) has previously been interpreted by CBOE in other respects without an agreement with CBOT and that such interpretation was approved in Release

No. 34-46719. Finally, I understand that the interpretations of Article Fifth(b) embodied in SR-CBOE-2006-106 and in each of the prior proposed rule changes were approved by CBOE's Board. In connection with this letter, I have received and relied upon an affidavit from Joanne Moffic-Silver, General Counsel of CBOE, as to certain factual matters referenced in this letter.

The Alexander Letter attempts to inject into the Commission's consideration of the Continued Membership Interpretation concepts of fiduciary duty purportedly arising under state law in connection with the Exercise Right Interpretation. To the extent that fiduciary duties under Delaware law are relevant with respect to the Exercise Right Interpretation, the Alexander Letter, while accurately reciting the obvious principle that the Board owes fiduciary duties to all members of CBOE, including both members who hold transferable CBOE Memberships ("Seat Owners") and any persons who have validly exercised their right to become members of CBOE pursuant to Article Fifth(b) ("Exerciser Members"),[1] bases its conclusions entirely on an incorrect factual premise -- that a majority of the CBOE Board was self-interested when considering the Exercise Right Interpretation. That incorrect premise wholly undermines the conclusions Mr. Alexander reaches.

Contrary to Mr. Alexander's assumption that the Board was comprised of 23 members at the time of the Exercise Right Interpretation and that 12 of such members had a material interest in connection with the Exercise Right Interpretation to favor the Seat Owners, the CBOE Board in fact had a majority of disinterested public directors. At the time of the Exercise Right Interpretation, the Board was comprised of 21 members. Of those directors, 11 directors were individuals who had no membership interest in CBOE, possessed no right to acquire a membership interest in CBOE and had no affiliation with an entity which owned any CBOE membership (the "Public Directors"). An additional director was an Exerciser Member of CBOE (an "Exerciser Director") and therefore did not have a personal interest to favor the Seat Owners. Accordingly, a majority (12) of the members of the Board did not have any personal interest to act to benefit the Seat Owners to the detriment of the Exerciser Members.[2] Mr.

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[1] We, however, disagree with the Alexander Letter's suggestion that any fiduciary duties were owed to members of CBOT who had not exercised their rights to become members of CBOE. It is well settled under Delaware law that fiduciary duties are not owed to parties having a future right to become stockholders (or, in the case of CBOE, members). See e.g., Continental Airlines Corp. v. American General Corp., 575 A.2d 1160, 1168 (Del. 1990) (holders of warrants to purchase shares not owed fiduciary duties because they were not stockholders); Simons v. Cogan, 549, A.2d 300, 304 (Del. 1988) (holders of convertible debentures not owed fiduciary duties because they were not stockholders); Anadarko Petroleum Corp. v. Panhandle Eastern Corp., 545 A.2d 1171, 1175-76 (Del. 1988) (no fiduciary duties owed by a subsidiary's board to persons who would become stockholders of the subsidiary only upon a spin-off of the subsidiary, because such persons were not stockholders); Feldman v. Cutaia, C.A. No. 1656-N, slip op. at 16 (Del. Ch. Apr 5, 2006) ("The Delaware Supreme Court has consistently held that directors do not owe fiduciary duties to future stockholders."); Glinert v. Wickes Companies, Inc., C.A. No. 10407, slip op. at 23 (Del. Ch.) aff'd 586, A. 2d 1201 (Del. 1990) (options to buy stock do not qualify for the protections that flow from a fiduciary duty).

[2] In so stating, CBOE does not concede that any of its directors has a material financial interest in the Interpretation. In particular, the assertion in the Alexander Letter that CBOE's chief executive officer is "beholden to the regular members because his continued employment with CBOE rests in such members' hands" is in error. CBOE's chief executive officer serves at the pleasure of the CBOE Board Moreover, Seat Owners and Exerciser Members of CBOE have equivalent voting rights, including with respect to the election of directors - with the

Alexander's fundamental factual error renders inaccurate the entire legal analysis contained in the Alexander Letter with respect to application of the entire fairness standard under Delaware law. Where, as was the case here, a majority of the members of a board are disinterested and independent, decisions of such board are entitled to the presumption of the business judgment rule, as the Alexander Letter concedes. See Alexander Letter at 3; Mills Acquisition Co. v. MacMillan, 559 A.2d 1261 (Del. 1989).

The process employed by the Board in connection with its meeting on December 12, 2006 to consider the Exercise Right Interpretation evidences the procedural fairness of the Board's decision with respect to that Interpretation. At that meeting, the seven voting Public Directors[3] met and deliberated in closed session prior to the full Board taking any action with respect to the Exercise Right Interpretation. Outside counsel and other advisors were available to and utilized by the Public Directors in connection with their deliberation. Only after the Public Directors first deliberated and the seven voting Public Directors unanimously approved the Exercise Right Interpretation in the closed session did the full Board itself approve that Interpretation. Moreover, a majority of the members of the Board voting when the full Board considered the Exercise Right Interpretation were also Public Directors or Exerciser Directors and the Interpretation was unanimously approved by the seven voting Public Directors, the Exerciser Director, and the six remaining voting directors. Delaware law recognizes the positive effect of approval of the disinterested directors on a board of directors with respect to a decision in which some members of the board of directors may be deemed to have an interest. See Puma v. Marriott, 283 A.2d 693, 696 (Del. Ch. 1971) (concluding that since the transaction "was accomplished as a result of the exercise of independent business judgment of the outside, independent directors whose sole interest was the furtherance of the corporate enterprise, the court is precluded from substituting its uninformed opinion for that of the experienced, independent board members of Marriott."); see also 8 Del. C. § 144; Cede & Co. v. Technicolor, Inc., 634 A.2d 345 (Del.), modified, 636 A.2d 956 (Del. 1994); Oberly v. Kirby, 592 A.2d 445 (Del. 1991); Marciano v. Nakash, 535 A.2d 400, (Del. 1987); Nebenzahl v. Miller, C.A. No. 13206 (Del. Ch. Aug. 26, 1996, revised, Aug. 29, 1996).

In addition to resting on fundamental factual error, the Alexander Letter baldly asserts that the Board lacked good faith or breached its fiduciary duties in connection with the Exercise Right Interpretation. No legal or factual analysis is offered to support those conclusory assertions. Even if, contrary to fact, a majority of the members of the Board had a material interest in the Exercise Right Interpretation, it would not follow that the Board breached any fiduciary duties. Rather, in the context of a fiduciary duty analysis (if relevant), that fact would simply shift to the directors the burden to demonstrate that their actions were entirely fair to the

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exception of the Chairman and CEO, who is appointed directly by the Board and is a director by virtue of his position.

[3] The four Public Directors serving on the special committee of the CBOE Board to consider certain issues related to the CBOE's planned demutualization recused themselves from the deliberations and voting with respect to the Exercise Right Interpretation.

members of CBOE.[4] As the Delaware Supreme Court has held, "a determination that a transaction must be subjected to an entire fairness analysis is not an implication of liability." Emerald Partners v. Berlin, 787 A.2d 85, 93 (Del. 2001). Therefore, even if the Board had acted through a self-interested majority (which it did not), the Board would not be found to have breached its fiduciary duties in the face of such a review if the Board proved the entire fairness of the Exercise Right Interpretation. In addition, contrary to Mr. Alexander's statement (see Comment Letter at 4), there is no legal requirement to use a so-called "special committee" even where a majority of a board is self-interested in a transaction. While special committees are often utilized to shift the burden of proof from the board to a plaintiff in connection with a transaction otherwise subject to the entire fairness standard of review, here a majority of the Board was not self-interested.

Finally, as noted above, the Alexander Letter addresses only the Board's decision to approve the Exercise Right Interpretation and does not even mention the Continued Membership Interpretation adopted by the Board in SR-CBOE-2007-77. The facts surrounding the Board's approval of the Continued Membership Interpretation, however, also undermine any breach of fiduciary duty claim in connection with the Board's action. The Board approved SR-CBOE-2007-77 at a Board meeting June 29, 2007. At that meeting, the 10 Public Directors present constituted a majority of the directors acting, and they once again deliberated in closed session and approved SR-CBOE-2007-77 unanimously prior to any action being taken by the full Board with respect to that interpretation. After that separate meeting, the full Board considered and approved the Continued Membership Interpretation by a Board vote of seventeen directors in favor (nine Public Directors and eight others), and none against. Accordingly, the June 29, 2007 meeting of the Board evidences the same procedural fairness employed by the Board at the December 12, 2006 meeting at which the Exercise Right Interpretation was approved.

This letter is rendered solely for the benefit of CBOE in connection with the matters addressed herein and may not be furnished or quoted to, nor may the foregoing letter be relied upon by, any other person or entity for any purpose, other than the Commission, without my prior written consent. In the event that you have any questions with respect to this letter, do not hesitate to contact me at (302) 651-7760.

Very truly yours,

Michael D. Allen

Michael D. Allen

MDA:csi

[4] As noted in the Alexander Letter, if a majority of the directors were not independent or had a material interest in a transaction, the directors would have the burden of proving the entire fairness of the transaction or decision See, e.g., Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983)