J. Alexander Stevens

14th February 2007

Office of the Secretariat
Securities and Exchange Commission
100 F Street, N. E.
Washington, D.C. 20549—1090

Attn: Ms. Nancy M. Morris, Secretary

VIA: Electronic Mail ONLY: Rule-Comments@SEC.gov

Ladies and Gentlemen,

RE: FILE NUMBER: SR-CBOE-2006-106

I refer to your Release (dated the 29th January 2007) No. 34—55190, File No. SR-CBOE-2006-106 (the "Release") in which you invite comment from all interested persons with reference to the Chicago Board Options Exchange's ("CBOE's") Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to an Interpretation of Paragraph (b) of Article Fifth of its Certificate of Incorporation ("Proposed Rule Change"). Presenting views expressed in my individual capacity, and also expressed on behalf of Eagle Securities, Inc. (CRD File No, 104430) ("Eagle"), an effectively-registered broker/dealer ("BD"), this letter is submitted pursuant to such invitation.

BACKGROUND

I first became an Exerciser Member of the CBOE effective upon my purchase, in 1983, of a Full Chicago Board of Trade ("CBOT") Membership; this was so because I was then already a CBOE Member by virtue of an unrelated Membership. I again became an Exerciser Member of the CBOE in about October 2001 and have enjoyed such status continuously since that time.

In 2006, my wife and I formed Eagle as successor to my Sole Proprietor BD market-making business conducted as an Exerciser Member of the CBOE. In connection therewith, my CBOE Exerciser Membership is "Registered For" Eagle; it is through, and *only* through, such registration that Eagle enjoys Membership in the CBOE as a market-making member organization.

COMMENT LETTER TO YOU DATED THE 31st JANUARY 2007 FROM CHARLES M. HORN, ESQ. OF MAYER, BROWN, ROWE & MAW LLP

I now refer to the comment letter dated the 31st January 2007 in this matter over the signature of Charles M. Horn, Esq. submitted to you on behalf of the CBOT and CBOT Holdings, Inc.

Having read, absorbed, and reflected upon the arguments made by Mr. Horn, and also having read each earlier submission (and certain other documents) to which he from time to time refers; in my view it would be difficult, within the context and constraints of this forum, to have submitted commentary better written both as a matter of style and as a matter of substance.

CONTRACT DISPUTE PRESENTLY PENDING IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

As the Commission is, of course, well aware, a contract dispute closely related to the Proposed Rule filing now placed before you is presently pending before the Court of Chancery in the State of Delaware.

Delaware Chancery Court is in my view the logical—and correct—venue for the adjudication of such dispute. (While the various relevant agreements themselves were made subject to State of Illinois contract law, the issues raised involve matters of Delaware law governing the conduct of corporations; and both the CBOT and the CBOE are Delaware corporations.) Why do I make such an assertion? It is precisely because the Delaware Chancery Court, as a Court of Equity, has in place fully adequate due process safeguards for all parties to this type of dispute.

Such safeguards are critical to the equitable resolution of a dispute of this magnitude. I estimate, based upon a set of prevailing facts and using just a few very reasonable assumptions, that the aggregate dollar amount of such dispute is in excess of *one billion dollars*. My estimate could well be conservative; I assert that expectation simply because all of my other estimates and projections in recent years relative to future valuations of the various exchanges have proved far too cautious.

PROPOSED RULE CHANGE SR-CBOE-2006-106, AS AMENDED, SUBMITTED BY THE CBOE

In the midst of such dispute, now comes the CBOE with its Proposed Rule Change. This Proposed Rule Change, if approved by the Commission and if, left unchallenged, put into effect by the CBOE, will have the result, over time, of shifting by my estimate well in excess of one billion dollars of value from one set of persons to another. Such Proposed Rule Change is designed solely to

expropriate, without due process of law and for no identifiable public purpose whatsoever, the legitimate property interests of hundreds of individuals and other persons, many of whom clearly are involved in the securities business. What's wrong with that one might ask? (After all, regulatory agencies, by delegated authority, are charged to take action within their mandate to protect the public interest, sometimes thereby greatly affecting the financial fortunes of private persons.) Well, to address the question "What's wrong with that result" *in this case*, one needs first to examine the language contained in the CBOE's Proposed Rule Change.

In Sec. II. A. 2. of the text of the Release, the CBOE, in part pertinent, states:

> "The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general. And furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is a reasonable interpretation of existing rules of the Exchange that is designed to promote just and equitable principles of trade, to protect the mechanism of a free and open, and, in general, to protect investors and the public interest."

Stirring words those; and, since they assert a "belief" rather than a fact, such assertion cannot be challenged as being untrue. But the use of such language is, in this case, poisonous; such language invites the Commission to substitute for a fact-based system of regulation a belief-based system, a system based upon the stated "belief" of one distinctly not disinterested party.

In the text of the Release prior to its statement of belief, the CBOE scrupulously avoids ever introducing facts supporting such a belief. In fact, it is only the statement itself that contains within it a lame effort to imply that the Proposed Rule Change somehow "protects investors and the public interest." It does no such thing, and the CBOE fails even to attempt in its discussion any such demonstration. But that's not all. Implicit in the CBOE's discussion is a recognition that its Proposed Rule Change may actually harm investors and be injurious to the public interest; and, so, it has offered a "Plan" graciously to allow to continue in business those persons whose property wrongfully is being taken without compensation, but only for so long as might be necessary—presumably in the sole judgment of the CBOE—to ensure the maintenance of fair and orderly markets.

However, the CBOE offers no details of its "Plan." There are no Rules offered here by the CBOE by which one might judge such Plan's reasonableness or sufficiency under the circumstances. We are all just supposed to take the CBOE's word for it.

While the text of the Release pays lip service to well-established historical facts, shed of its flawed reasoning and conclusory proclamations, there remains

precious little and nothing of merit in any case; without doubt there is nothing stated genuinely in furtherance of any identifiable public interest or any legitimate regulatory purpose.

CONCLUSION

My opposition to the Commission taking action at this time to approve the Proposed Rule Change is, at its core, on grounds of an abject lack in this procedure of due process. At this stage, at least, of the Commission's approval procedure, in view of the serious and complex issues surrounding this *particular* matter, there appears to me to be relatively little process of any kind, let alone what has come to be known as "due process." In the modern world, the battle against the arbitrary exercise of power by self-interested persons, whether sovereign or private, goes back about 800 years; and that battle seems still never to be entirely over or won.

I admit that I am arguing out of self-interest—but also from conviction as to the sanctity of due process independent of such interest. The CBOE's arguments, in stark contrast, as set forth in the Release—never a model of logical rigor—are arguments only of belief borne of self-interest. On top of that, the CBOE doesn't have the common decency to disclose or acknowledge in the discourse its self-interest, but instead cynically wraps its energetic pursuit of the Proposed Rule Change with references to "protecting the public interest." That's intellectually dishonest and also insulting to the hundreds of its Exerciser Members.

I seek to have this contract dispute adjudicated by the Courts consistent with the well-established principals of due process protection to be afforded all interested parties, and for the Commission to defer its further consideration of this Proposed Rule Change until such time as the Court(s) have issued their findings in the related contract dispute.

Respectfully submitted,

J. A. Stevens

J. Alexander Stevens

STEV274@GMX.CH • PHONE: (+) 41-33-534-9628 • FAX: (+) 41-44-274-2947
CH-3826 GIMMELWALD • SWITZERLAND