

15 November 2007

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

Attn: Nancy M. Morris, Secretary

Re: Release No. 34-56458; File No. SR-CBOE-2007-107

The Chicago Board of Options Exchange (CBOE) Articles of Incorporation established two equal classes of membership.

-Exercise Right Privilege (ERP) CBOE Member

-Regular CBOE Member

Interestingly, the ERP CBOE Member was the first to trade. At the time the Regular CBOE Membership was being offered at \$10,000, but it didn't have value until the ERP Members established the market.

The CBOE Articles of Incorporation establishing the two classes of memberships were approved by the Securities and Exchange Commission (SEC) when it approved the CBOE as a designated market place. Thereafter, the role of the SEC was to regulate the marketplace, having already approved the CBOE Corporate Charter establishing the two classes of membership.

I am reminded of the role of two other Federal Agencies, The Office of Comptroller of the Currency (OCC) and the Federal Reserve Board (FRB), one regulating State Chartered Banks and the other Federal Chartered Banks. When Chemical Bank and The Manufacturers Hanover Trust were acquired by Chase Manhattan Bank which then acquired J.P. Morgan and BancOne to collectively become JPMorganChase, the regulators did not decree a "material change" occurred thereby invalidating all contractual obligations of the Banks that disappeared. To the contrary, their regulatory obligation was to ensure the successor Bank, JPMorganChase, was in compliance with all the rules and regulations of the banking industry, including honoring all contractual obligations. Similarly, The Chicago Mercantile Exchange (CME) Group acquisition of The Chicago Board of Trade (CBOT) does not constitute a "material change" because there was no change other than name. All the pieces of the CME and CBOT remain in place: membership, the markets, open interest, contracts, clearing: all functioning as before (as if nothing happened).

What is more interesting is that the SEC had earlier approved the CBOE's Corporate Charter establishing the two classes of membership, and is now being asked to invalidate the ERP CBOE Membership on the grounds of "material change" because the CME acquired the CBOT. There is no legal precedent that a merger or acquisition of exchanges, banks or brokers causes "material change" to invalidate existing contractual obligations.

A review of the emergence of the CBOE as a world class market is instructional. From the beginning the CBOE used the CBOT's human resources and financial balance sheet, plus its physical plant. Compensation was the ERP attached to the CBOT membership. The ERP CBOE Members were intimately involved in the early formation and success of

the CBOE. They were the original traders/market makers that gave the CBOE its legitimacy, the bodies that guaranteed the liquidity, growth and the investment community acceptance. There are today many individual and corporate ERP Members who run market making/execution facilities that generate almost 50% of the daily CBOE volume. These ERP Members contributed significantly to the technology of the electronic order entry/reporting system, remote market makers, the pricing model/weighting, new products and the governance of the CBOE.

It is inconceivable to me that the SEC would reverse its previous approval of the ERP CBOE Membership on the claim of "material change" by the CBOE because of a merger. And this doesn't even get into the "fiduciary responsibility" of the CBOE Board of Directors to protect all interests of the exchange (both the ERP and Regular Member), nor the "economic harm" inflicted by the CBOE unilaterally terminating the ERP CBOE Membership on an active group of CBOE market makers/traders.

Please deny the CBOE request for a rule change.

Respectfully submitted,

Peter M. Todebush  
CME Group Full Member 2007  
CBOT Full Member 1976-2007  
CBOE ERP Member 1978-1992  
CBOE Delegate ERP Member 1997-2007