MAYER·BROWN

Mayer Brown LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel (202) 263-3000
Main Fax (202) 263-3300
www.mayerbrown.com

Charles M. Horn
Direct Tel (202) 263-3219
Direct Fax (202) 263-5219
chorn@mayerbrown.com

October 15, 2007

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

Attn: Nancy M. Morris, Secretary

Re: File Number: SR-CBOE-2007-107

Ladies and Gentlemen:

On behalf of CME Group Inc. ("CME") and its wholly-owned subsidiary, the Board of Trade of the City of Chicago, Inc. ("CBOT"), we hereby request that the Securities and Exchange Commission ("SEC" or "Commission") promptly abrogate SR-CBOE-2007-107, filed by Chicago Board Options Exchange, Incorporated ("CBOE") and published for comment by the SEC in the *Federal Register* on September 24, 2007.

The proposed rule change purports to continue on a conditional basis the temporary membership status that was provided to certain "temporary members" under the interpretation of CBOE Rule 3.19 that is the subject of SR-CBOE-2007-77 (the "Interpretation"), as well as from and after any approval of SR-CBOE-2006-106 by the Commission.[1] The stated reason for this newest rule change is that it "preserves fair and orderly markets at CBOE by avoiding the sudden loss of as many as 229 Temporary Members who presently are contributing liquidity to CBOE's markets", and that it "treats these Temporary Members fairly by avoiding the immediate termination of their trading access on the Exchange upon the approval of SR-CBOE-2006-106."

The CBOE's newest rule change, however, is legally insufficient and is inconsistent with the Exchange Act's requirements for the adoption with immediate effectiveness of certain rules under section 19(b)(3) thereof, and therefore must be abrogated by the Commission. First, as we previously have explained, Exchange Act section 19(b)(3) is intended for rules of a purely administrative or housekeeping nature. In contrast, the newest rule filing continues in existence a new class of CBOE membership status – albeit temporary – for a large number of CBOT Exerciser Members in direct violation of the membership vote requirements of CBOE Constitution Section 2.1. Accordingly, this rule filing in no respect can be characterized as a mere "housekeeping" rule that qualifies for immediate effectiveness under Exchange Act section 19(b)(3).[2] Second, the

---

1 *See also* SR-CBOE-2007-91 (filed August 3, 2007).

2 *See* comments letters filed by the CBOT with respect to SR-CBOE-2007-77, dated July 27 and August 9, 2007.

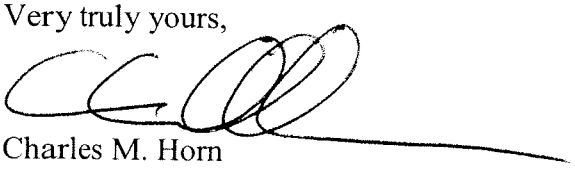
argument that this newest rule change is necessary to avoid a disruption of the CBOE's markets ignores the fact that this "disruption" is entirely of the CBOE's own making, namely, its filing of its illegal Proposed Rule Change which, if adopted by the Commission, unilaterally would terminate the Exercise Rights of CBOT Exerciser Members without due process and in violation of the Exchange Act and applicable state law.[3] In other words, the legal validity of the newest proposed rule change depends squarely on the legal sufficiency of the underlying Proposed Rule Change, and because the latter is legally insufficient, the CBOE's latest filing similarly must fail for the same reason.

Stripped of self-serving verbiage, the newest rule change and the CBOE's accompanying explanations are nothing more than a continuation of CBOE's ongoing campaign to deprive Exerciser Members of valuable rights to which they are contractually entitled under the Exercise Right that CBOE wants illegally to extinguish. That this newest rule change is about the allocation – or, more accurately, the *mis*allocation – of property rights, and not about any lofty notions of "fair and orderly markets" or "fair treatment" of temporary members, is made abundantly clear under the latest rule change itself, which by its language *ceases* to be effective upon the CBOE's demutualization. The financial benefit of that demutualization, of course, is the ultimate prize that CBOE is eyeing on behalf of its regular members, and is what CBOE wants to expropriate from CBOT Exerciser Members in violation of their contract rights, the Exchange Act and state law.

CBOT therefore respectfully requests that the SEC exercise its authority under Section 19(b)(3)(C) of the Exchange Act to abrogate the rule change filed under SR-CBOE-2007-107 and require its resubmission as a proposed rule change, as required thereunder.

Thank you for your consideration of the foregoing. If you have any questions, please contact the undersigned at (202) 263-3219, or Jerrold Salzman at (312) 407-0718.

Very truly yours,



Charles M. Horn

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

---

[3] Capitalized terms used herein have the same meanings given those terms in the CBOT's February 27, 2007 comment letter in opposition to the Proposed Rule Change that is the subject of SR-CBOE-2006-106 (the "February Letter"). We reiterate herein CBOT's opposition to the Proposed Rule Change and the actions of CBOE's Board, which has previously been explained in CBOT's February Letter.

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
Jerrold Salzman, Counsel for CME