

## MEMORANDUM

**TO:** CBOE-2007-77 Files

**FROM:** Johnna Dumler  
Division of Market Regulation

**DATE:** August 21, 2007

**SUBJECT:** Meeting with CME/CBOT counsel

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On August 21, 2007, at 1:00 pm, Erik Sirri, Bob Colby, Elizabeth King, Richard Holley, and Johnna Dumler met with Jerry Salzman (counsel for CME), Peter Carey (counsel for CBOT), Gordon Nash (counsel for putative class members in Delaware litigation), and Charles Horn (counsel for CBOT Holdings ) (collectively "Counsel"). During the meeting, Counsel urged the Commission to abrogate SR-CBOE-2007-77. Counsel noted that if the Commission staff is disinclined to do so, they will likely ask the Commission to intervene.

Mr. Salzman noted the effect on CBOT lease holders of CBOE-2007-77 (previously 14-19 CBOT seats went unleased, compared to 58 presently; price fell from a max of \$5,300 to as low as \$2,000; all but 6 of the 147 exercise lessees have walked away from their leases). Mr. Salzman also noted the effect on the price of CBOE membership, from \$850,000 on 1/30/2006 to around \$2,700,000 presently.

Mr. Salzman advised Commission staff regarding Counsel's opposition to CBOE-2007-77 as outlined in his August 20, 2007 memorandum, including: (1) it is not a proper interpretation of CBOE Rule 3.19, but rather relates to Rule 3.16 and Article Fifth(b), and no CBOE member vote was taken to create new temporary memberships; (2) the majority of CBOE's Board is not disinterested; (3) CBOE's legal opinion is flawed; (4) CBOE had other options available that would have preserved the status quo.

Erik Sirri asked Counsel for their opinion on the Delaware judge's order staying the state court proceedings. Counsel agreed that the DE court indicated that it retained and would exercise its jurisdiction over the state law claims.

Counsel asked what, if any, action the Commission plans to take with respect to both SR-CBOE-2007-77 and SR-CBOE-2006-106 and the anticipated timing of any such action. Erik Sirri noted that both SR-CBOE-2006-106 and SR-CBOE-2007-77 remain under consideration.