Mark & Joan Andrew

May 12, 2008

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: File SR-CBOE-2008-40

Dear Ms. Morris,

I am writing with regard to the CBOE's proposal to issue 50 additional trading permits for access to its trading floor in addition to the 201 remaining permits recently granted.

When the Board of Trade merged with the Mercantile Exchange, and Board of Trade members chose to essentially give up their rights to trade on the CBOE in order to reap the benefits of merging with the Merc, the CBOE issued trading permits to grant access to 'exercisers' who were trading regularly on the CBOE at that point in time. These permits were devised to expire as the holding-trader left the floor. 50 or so of these permits have since expired. In an effort to maintain the business of making markets and providing liquidity, the CBOE now wants to issue 50 additional permits.

At the time the CBOT members gave up their CBOE trading rights, there were 930 CBOE members. The CBOE recognized 250 liquidity providers from the CBOT who were then offered the permits in an effort to maintain CBOE liquidity .

While I applaud the CBOE's desire to maintain its prominent position in the industry and continue to provide as much liquidity and market-making to the industry, the mechanics of the permit program are not in keeping with the administrative practices of the past, and are therefore questionable, at best.

From the onset of the CBOE, the pricing of floor access and revenue from floor access has been the business of the 'seat' owners. It was obvious at the inception of the exchange that only the owners/traders would be able to properly price access to the trading floor with its complex rights, obligations and costs in any particular market/industry condition.

The CBOE is attempting to usurp this time-honored administrative practice by proposing that it, the CBOE, retain the revenue from the initial 250 permits granted, these newly proposed permits, and I would assume any additional permits in the future.

The issue is substantive, and worthy of your consideration. The funds in question represent 20% of the overall access value of the exchange trading floor. The exchange has decided, willy-nilly, to lay claim to that revenue, with no commensurate responsibility to make markets or provide liquidity. Nor does it have the wherewithal to contribute to the overall pricing of each seat or overall access value at any point in time. It merely wants a 'part of the action', with no commensurate responsibility. The exchange is the exchange, the traders are the traders, and historically the value of being a trader on the exchange has been the responsibility of the traders. The exchange still wants the traders to come up

with the monthly value of access, they just want 20% of the action….merely for asking, and because they have the administrative onus to create the permits. They write it up, so they get to choose the wording.

Because who, exactly, is a 'seat' owner is still a matter under consideration by the Delaware court, the CBOE is holding all access funds to-date in an escrow fund. I would contend that once that matter has been adjudicated, the escrowed funds should immediately be disbursed to the 'seat' owners recognized by the court(s).

Some have argued that changing the CBOE permit proposal to allow for the owners to keep what is rightfully theirs historically, and sensibly, would cause a major delay in the issuance of the permits, which are sorely needed to remain competitive as an exchange. It is for that reason that I am writing to implore the SEC to rule that the CBOE must have to justify its claim to floor access revenue, or respect historical administrative practice of the seat owners pricing and receiving the revenue from those seeking access. The permit proposal passed or otherwise, should be remanded back to the exchange in order that the exchange can clarify that escrowed funds belong to the seat owners, not to the exchange.

Otherwise, the onus should be on the exchange to make their case for the money. The default position of the SEC should be that the escrowed funds are the rightful property of the seat owners.

No exchange should be allowed to willy-nilly lay claim to what has never been their business. Yes, the individual rent for each permit holder used to go to the CBOT seat owner, and not the current CBOE owners. But even that was in keeping with the administrative practice of the traders knowing best how much floor access was worth, and the traders having the responsibility that comes with pricing floor access. CBOT owners no longer exist; the only remaining 'like' constituency are the current seat owners of the CBOE. It is their access value that is being diluted by the issuance of the permits in pursuit of floor liquidity.

The vote on the CBOE proposal is occurring now. If the proposal passes and makes its way to the SEC, I am asking that the SEC remand the CBOE proposal back to the CBOE so that it can be made clear that the permit revenue being held in escrow is being held on behalf of the seat owners, to be distributed upon resolution of membership issues in Delaware.

I know it is the intention of the exchange to propose upon demutualization that all access revenue become the business of the CBOE, itself. When demutualization occurs, and a for-profit entity results, the seat owners may then vote to turn over access responsibility to the exchange, but until then there cannot be a two-tiered system, seat owners responsible for pricing on the one hand, and another entity, the CBOE, reaping revenue with no responsibility. This would be a bad precedent for the SEC to allow to occur.

Regards,

Mark & Joan Andrew
Seat owner, CBOE