CBOE
CHICAGO BOARD OPTIONS EXCHANGE

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

Re: File No. SR-CBOE-2008-40

Dear Ms. Morris:

I am writing on behalf of the Chicago Board Options Exchange ("CBOE" or the "Exchange") in response to the comment letter submitted by Mark and Joan Andrew (the "Andrew Comment Letter") in opposition to the permit plan (the "Permit Plan") described in the above-referenced rule filing (the "Rule Filing"). The Permit Plan would authorize the Exchange to issue up to fifty trading permits, in return for which permit holders would pay a monthly access fee to the Exchange. CBOE's Board has duly approved the Permit Plan and has recommended its adoption to the CBOE membership, which is scheduled to vote on the proposal by May 19, 2008.

As set forth in the Rule Filing, the Permit Plan is consistent with the Exchange Act, the Commission's rules and the Exchange's rules. In no way does the Andrew Comment Letter disagree. Because the Permit Plan satisfies the standards set forth in Section 19(b)(1) of the Exchange Act, the Rule Filing should be approved.

Instead of identifying any way in which the Permit Plan fails to satisfy the federal standards under which the Commission reviews the Rule Filing, the Andrew Comment Letter focuses entirely on whether the best way to structure the permit plan is for the Exchange to receive the fees that permit holders would pay for the trading access they would receive under the Permit Plan. The Exchange fully addressed that concern in my letter dated May 12, 2008, which responded to the comment letter submitted by Lawrence Blum and Michael Mondrus (the "Blum/Mondrus Comment Letter"). Specifically, CBOE noted that the Permit Plan's fee structure raises no question under the Exchange Act and instead is a matter that properly is for the CBOE membership to decide in connection with the vote that is now underway. If a majority of the CBOE membership vote in favor of the Permit Plan, it necessarily will mean that a majority of CBOE members agree that the fee structure is appropriate. If that is the vote, the Commission need not overrule that decision, because the resolution would be consistent with the requirements of the Exchange Act, the Commission's rules and the rules of CBOE.

In any event, two points should be emphasized about the objection raised in the Andrew Comment Letter. First, it is simply incorrect for the commenters to suggest that CBOE somehow would be taking access fees from its members under the Permit Plan. The members own the Exchange and therefore are the ultimate beneficiaries of revenues generated by the Permit Plan. The membership vote will reveal whether members agree that it is appropriate for the Exchange to receive the fees to be paid by permit holders, and that is the proper forum in which that debate should occur.

Second, the Andrew Comment Letter incorrectly suggests that it is unusual for an exchange to retain trading access fees and to set the level of such fees. In fact, there is ample precedent for that model for granting trading access. Examples include the Chicago Stock Exchange, NYSE Arca Options, and CBOE Stock Exchange. All of those trading permit models were approved by the Commission as being consistent with the Exchange Act and the Commission's rules, and all are precedent for approving the Rule Filing.

One final point of clarification is appropriate. The Andrew Comment Letter refers in several places to funds for trading access that are being held in "escrow." That reference is ambiguous because, although there are access fees that the Exchange was required to hold in escrow, the fees to be collected under the Permit Plan would not be held in any such escrow. In particular, Interpretation and Policy .01 of Rule 3.19 required that fees paid by certain former exerciser members needed to be escrowed until and unless the Commission approved SR-CBOE-2006-106. In contrast, there was no requirement that the Exchange escrow fees paid by such persons after that approval, and the Rule Filing similarly does not impose any escrow requirement with respect to fees to be collected under the Permit Plan. It is not clear whether the Andrew Comment Letter refers only to the funds escrowed under Rule 3.19.01 when it asks for clarification that "escrowed funds" belong to seat owners and when it seeks to require that escrowed funds be disbursed to seat owners upon stated future contingencies. If so, then that issue is not before the Commission, because the Permit Plan does not purport in any way to address the nature or disposition of the funds that were received under Rule 3.19.01. Instead, those issues already are addressed by Rule 3.19.01 itself. If the Andrew Comment Letter's requests concerning "escrowed funds" instead apply to the access fees to be collected under the Permit Plan, we have fully addressed above both the "ownership" of those funds and any requirement that the commenters would impose on the disposition of those funds.

For the foregoing reasons and for the additional reasons set forth in the Rule Filing and in the Exchange's response to the Blum/Mondrus Comment Letter, CBOE respectfully urges that, assuming the CBOE membership approves the Permit Plan, the Commission approve SR-CBOE-2008-40 as soon as possible after such membership approval, so that CBOE will be able to address the current need for increased trading access on the Exchange.

Very truly yours,

Joanne Moffic-Silver