

MIKE BEEBE  
GOVERNOR

A. HEATH ABSHURE  
COMMISSIONER



HERITAGE WEST BUILDING, SUITE 300  
201 EAST MARKHAM STREET  
LITTLE ROCK, ARKANSAS 72201-1692  
TELEPHONE: (501) 324-9260  
FACSIMILE: (501) 324-9268

## ARKANSAS SECURITIES DEPARTMENT

July 24, 2009

Richard T. Miller  
SchiffHardin LLP  
6600 Sears Tower  
Chicago, Illinois 60606

RE: CBOE Holdings, Inc.  
No Action Letter No. 09-90000392-NA-005

Dear Mr. Miller:

The Arkansas Securities Department ("Department") is in receipt of your letter dated June 24, 2009, requesting that the Department issue a no action letter concerning the issuance of Class B Shares by CBOE Holdings, Inc. (the "Corporation") to any certain Settlement Class Members residing in Arkansas without first registering the securities in our state. You represent in your request that you do not believe any Settlement Class Members reside in Arkansas. A copy of your request letter is attached for reference.

Based on the facts and representations contained in your request letter, at the present time, the Staff of the Department will recommend no action to require registration of the Class B Shares to be issued to Settlement Class Members pursuant to the court-approved settlement of the class action litigation. Further, the staff will recommend no action to require registration, as dealers or agents, of the Corporation or its officers and directors who perform ministerial functions in connection with the issuance of these Class B Shares.

Please note that the position of the Staff of the Department is based solely upon the representations made in your request letter and applies only to the facts as set out therein. Different facts or circumstances might and often would require a different response from the Staff of the Department. The position of the Staff of the Department expressed in this letter only deals with anticipated enforcement action by the Department. Further, the position of the Staff of the Department does not purport to be and should not be interpreted to be a legal opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read "David H. Smith".

David H. Smith  
Chief Counsel

Attachment



09 JUN 25 AM 8:53

ARKANSAS SECURITIES DEPT.

Richard T. Miller  
312-258-5596  
rmiller@schiffhardin.com

6600 SEARS TOWER  
CHICAGO, ILLINOIS 60606  
t 312.258.5500  
f 312.258.5600  
www.schiffhardin.com

90000392  
DS

June 24, 2009

A. Heath Abshire,  
Commissioner, Arkansas Securities Department  
Heritage West Building, Suite 300  
201 East Markham Street  
Little Rock, Arkansas 72201-1692

**Re: Request for Exemption from Registration for Class B Common Stock of CBOE Holdings, Inc.**

Dear Mr. Abshire:

We are writing on behalf of our client CBOE Holdings, Inc., a Delaware corporation (the "Corporation"), in connection with the issuance by the Corporation of shares of its Class B Common Stock (the "Class B Shares") pursuant to a judicially approved class action settlement. As indicated below, the transaction is exempt from federal securities registration requirements pursuant to Section 3(a)(10) of the Securities Act of 1933 (the "Securities Act"). On behalf of the Corporation, we respectfully request the issuance by your department of a letter to the effect that the issuance of the Class B Shares is exempt from registration under the registration provisions of the Arkansas Securities Act (the "Act"), or, in the alternative, that the Department will not recommend any enforcement against the Corporation if the Corporation issues the Class B Shares without registration. We also request that you confirm that the Corporation and its officers and directors are exempt from the broker dealer and agent registration requirements of the Act with respect to the issuance.

The Corporation is currently a wholly-owned subsidiary of the Chicago Board Options Exchange, Incorporated, a Delaware membership corporation ("CBOE"). CBOE is one of the world's leading options and derivative exchanges. CBOE is a self-regulatory organization under the Securities Exchange Act of 1934 and as such is subject to regulation and oversight by the Securities and Exchange Commission ("SEC"). The Board of Directors of CBOE has approved a restructuring transaction in which CBOE would change its organizational structure from a non-stock corporation owned by its members to become a wholly-owned subsidiary of the Corporation, which is organized as a stock corporation owned by its stockholders. This type of organizational restructuring has been completed by many exchanges over the past few years and is sometimes referred to as a "demutualization." The demutualization will need to be approved by a vote of CBOE's membership and the SEC before it can be implemented.

On August 23, 2006, CBOE and its directors were sued (the "Exercise Right Litigation") in the Court of Chancery of the State of Delaware (the "Delaware Court") by the Board of Trade of the City of

A. Heath Abshire, Commissioner  
June 24, 2009  
Page 2

Chicago, Inc. (“CBOT”), CBOT Holdings Inc., the parent corporation of the CBOT (“CBOT Holdings”) and two members of the CBOT who purported to represent a class of individuals (“Exercise Member Claimants”) who claim that they were, or had the right to become, members of CBOE pursuant to CBOE’s Certificate of Incorporation, which granted to full members of CBOT the right to be members of CBOE without having to acquire a separate CBOE membership (this right was commonly referred to as the “Exercise Right”). The plaintiffs sought a judicial declaration that Exercise Member Claimants were entitled to receive the same stock and other consideration in CBOE’s proposed demutualization as CBOE members, and an injunction to bar CBOE and CBOE’s directors from issuing any stock to CBOE members as part of the proposed demutualization, unless Exercise Member Claimants received the same stock and other consideration as CBOE members.

On July 12, 2007, Chicago Mercantile Exchange Holdings, Inc. (“CME Holdings”) acquired CBOT through the merger of CBOT Holdings into CME Holdings (the “CME/CBOT Merger”). The announcement of the CME/CBOT Merger required CBOE to determine the effect of the CME/CBOT Merger on the Exercise Right. CBOE’s determination, which was reflected in an interpretation of Article Fifth that was filed with and approved by the SEC, was that following the completion of the CME/CBOT Transaction there would no longer be any members of the CBOT who would qualify to become or remain a member of CBOE pursuant to the Exercise Right.

After two years of litigating issues in Delaware, on August 20, 2008, CBOE entered into a Stipulation of Settlement (the “Settlement Agreement”) with the plaintiffs pursuant to which the plaintiffs agreed to dismiss the Exercise Right Litigation, with prejudice, in exchange for the settlement consideration (described below). The Settlement Agreement was preliminarily approved by the Delaware Court on August 22, 2008. A copy of the Settlement Agreement is attached hereto as Exhibit A. On December 16, 2008, after appropriate notice to all class members, the Delaware Court conducted a lengthy hearing to consider whether to approve the Settlement Agreement and to consider the objections filed by certain members of the plaintiff class. Although a final judgment has not yet been entered, by Memorandum Opinion, dated June 3, 2009, the Delaware Court certified the class, approved the Settlement Agreement and concluded that the Settlement Agreement was “fair, reasonable and adequate.” The Memorandum Opinion is attached hereto as Exhibit B.

The Settlement Agreement calls for a non-opt out settlement class, which means that anyone in the settlement class is bound by the Settlement Agreement and does not have the right to pursue separate claims against CBOE. The settlement class consists of two groups:

- The first group (Group A) consists of all persons who, prior to August 22, 2008, simultaneously owned or possessed at least one CBOT B-1 membership, at least one Exercise Right Privilege and at least 27,338 shares of CBOT stock or (after the CME/CBOT Merger) 10,251.75 shares of CME Holdings stock. An Exercise Right Privilege is the privilege, whether or not that privilege or right was not attached to a CBOT B-1 Membership, that when held together with a CBOT B-1 Membership and the requisite shares of CBOT Common Stock (or following the CME/CBOT Merger, shares

A. Heath Abshire, Commissioner

June 24, 2009

Page 3

of CME Holdings stock) constituted the Exercise Right. In order to receive a share of the settlement consideration paid to Group A, the members of Group A also must (1) have owned the package of three interests as of 5:00 p.m. (central time) on October 14, 2008 and continued to own that package until October 31, 2008 and (2) have met certain other eligibility and procedural criteria contained in the Settlement Agreement. We refer to members of Group A as “Participating Group A Settlement Class Members” and we refer to the package of interests described in this bullet as a “Group A Package.”

- The second group (Group B) consists of all persons who owned an Exercise Right Privilege as of 5:00 p.m. (central time) on October 14, 2008 but are not members of Group A, and their transferees and assigns. In order to receive a payment from the Group B settlement consideration, members of Group B must have met certain other eligibility and procedural criteria contained in the Settlement Agreement. We refer to members of Group B as Participating Group B Settlement Class Members.

Under the Settlement Agreement, Participating Group A Settlement Class Members will share in an equity pool which will consist of a number of the Corporation’s Class B Shares equal to the product of (i) 0.21951220, times (ii) the aggregate number of shares of Class A Shares issued in the demutualization to owners of regular CBOE memberships (i.e., a membership that was made available by CBOE in accordance with its Rules). In addition, both Participating Group A and Group B Settlement Class Members will share in a cash pool equal to \$300,000,000. For each Exercise Right Privilege that a Participating Group B Settlement Class Member owned on October 14, 2008, that class member will receive \$250,000 from the cash pool.<sup>1</sup> The remainder of the cash pool, after making a minor payment to one of the class representatives, will be distributed to the Participating Group A Settlement Class Members on a pro rata basis for each Group A Package the Group A class member owned, subject to a maximum, based on the total number of Group A Packages that existed on October 14, 2008.

As a result of the Settlement Agreement, the proposed demutualization has been structured such that each regular CBOE membership that is held by a CBOE member on the date of the demutualization transaction will be converted into the right to receive shares of Class A Common Stock of the Corporation (the “Class A Shares”), which in the aggregate will amount to approximately 82% of the total shares of common stock in the Corporation that will be outstanding following the issuance of stock in the demutualization and the issuance of stock to the Settlement class Members. The Group A Participating Class Members will be issued the Class B Shares of the Corporation, which in the aggregate will

---

<sup>1</sup> The payment to the Group B class members is not the transaction that is the subject of this letter. The description of the payments to the Group B class members is being provided solely to provide information necessary for a complete understanding of the settlement consideration. In addition to the cash and equity pools described above, certain class members are eligible to receive under the Settlement Agreement certain refunds of fees paid to the exchange in connection with such class member’s activities on the exchange operated by CBOE. We do not believe these other aspects of the Settlement Agreement are relevant to the issue presented here; therefore, we have excluded any discussion of those potential payments.

A. Heath Abshire, Commissioner  
June 24, 2009  
Page 4

represent approximately 18% of the total shares of common stock of the Corporation that will be outstanding following the following the issuance of stock in the demutualization and the issuance of stock to the Settlement Class Members.

According to the information provided to CBOE by counsel to the Settlement Class Members, there are approximately 850 Group A Participating Class Members, residing in approximately 30 states and various foreign jurisdictions, eligible to receive the Class B Shares under the Settlement Agreement. Of those participants, we don't believe that any Settlement Class Members reside in Arkansas; however, certain Settlement Class Members did not provide class counsel with residential addresses. As a result, the Corporation is not certain of the residence of all Settlement Class Members. Out of an abundance of caution, the Corporation has determined to seek an exemption from you in case it happens that any Settlement Class Members reside in Arkansas. The final terms of the demutualization have not yet been set, including the total number of shares to be issued. Also, because the Corporation does not have any common stock outstanding, there is no market in the stock and no per share market price.

The Notice of Pendency of Class Action, Proposed Settlement of Class Action, Settlement Hearing and Right to Appear was distributed to all interested parties over three and a half months in advance of the hearing on the fairness of the settlement and provided all such interested parties the opportunity to be heard at the hearing. The issuance and distribution of the Class B Shares have been judicially approved as part of a fairness hearing and the Class B Shares will be issued in exchange for the claims of the Group A Participating Class Members (as defined in the Settlement Agreement).

The issuance of the Class B Shares is exempt from registration under Section 3(a)(10) of the Securities Act, which exempts from the Securities Act, securities that are issued "in exchange for one or more *bona fide* outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions for such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court . . .".

Likewise, Section 23-42-102(13)(B)(iv) of the Act excludes from the definition of "sale," "sell," "offer" or "offer to sell" any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash. Although the issuance and distribution of the Class B Shares in the settlement may not specifically be a "reorganization," we believe that it would be reasonable to apply the exclusion in Section 23-42-102(13)(b)(iv) to the issuance and distribution of the Class B Shares and since (i) there will be an issuance of securities in exchange for the outstanding claims of the settlement class members, (ii) all interested parties were notified of the fairness hearing, (iii) the issuance and distribution of the Class B Shares was judicially approved following the fairness hearing, and (iv) the Class B Shares will only be issued if the demutualization transaction (which is a reorganization) is completed. If Section 23-42-102(13)(B)(iv) applies then the class B shares are exempt from the Securities Registration requirements of the Act because the issuance and distribution of the Class B shares would not be an offer or sale subject to registration under Section 23-42-103 of the Act.

A. Heath Abshire, Commissioner  
June 24, 2009  
Page 5

We also believe that requiring registration of the Class B Shares is not in the public interest or necessary for the protection of the Settlement Class Members for the following reasons: (i) the class members are protected by the judicial approval of the Settlement Agreement, (ii) there has been no "offering" of securities as the class members were not solicited to participate in the class, (iii) no investment decision was made or will be made, since the Settlement Class Members were not able to opt-out of the class, (iv) each Participating Group A Class Member, in order to be eligible to receive the stock, must have held a significant amount of stock in CBOT (a national commodity exchange) and a B-1 membership in CBOT, each of which evidences a level of sophistication and familiarity with markets and securities not possessed by the public at large, (v) the Settlement Class Members will be exchanging claims for stock and will not be paying any additional consideration, and there has not been, and will not be, any general solicitation except for the required class notification.

We respectfully request that, if it is determined that Settlement Class Members reside in Arkansas, the Department issue a no-action letter to the effect that the issuance of the Class B Shares is exempt from registration under the registration provisions of the Act, or, in the alternative, that the Department will not recommend any enforcement against the Corporation if the Corporation issues the Class B Shares without registration under the Act.

Section 23-42-102(1)(b)(i)(e) of the Act exempts from the agent registration requirements of the Act an individual who represents an issuer in effecting transactions involving a reorganization or any other individual assisting the issuer or any other constituent party in the process of the reorganization, so long as such individual is not employed for the primary purpose of obtaining or soliciting proxies, consents, or other required means of approval from the security holders of the issuer or any other constituent party to the reorganization and receives no compensation other than his or her regular salary and reimbursement for actual expenses, if any, incurred in good faith in the course of such duties or activities. As discussed above, although the issuance and distribution of the Class B Shares in the settlement may not specifically be a "reorganization," we believe that fundamentally similar facts of the situation merit an exclusion. Section 23-42-102(2)(b) of the Act excludes an issuer from the definition of "broker-dealer." Certain officers and directors of the Corporation may be performing only ministerial functions with respect to the issuance of the Class B Shares and will not be receiving any additional compensation for those functions.

We respectfully request that the Department issue a no-action letter to the effect that, if it is determined that Settlement Class Members reside in Arkansas, the issuance of the Class B Shares will be exempt from registration under the registration provisions of the Act, or, in the alternative, that the Department will not recommend any enforcement against the Corporation if the Corporation issues the Class B Shares without registration under the Act.

Thank you very much for your assistance. Should you have any questions or require any additional information, please do not hesitate to contact me at (312) 258-5596 or Nicholas Georgiton at (312) 258-5650. Your prompt attention to this request for a no-action letter would be greatly appreciated.



A. Heath Abshire, Commissioner  
June 24, 2009  
Page 6

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. T. Miller', with a long horizontal flourish extending to the right.

Richard T. Miller