



CBOE Information Circular IC06-44

To: CBOE Membership

From: Office of the Chairman

Date: April 12, 2006

Re: Questions and Answers Concerning the Exercise Right

The following are answers to some of the questions that have been asked concerning the right granted to CBOT members under Article Fifth(b) of CBOE's Certificate of Incorporation to become members of CBOE without having to purchase a CBOE membership (the "Exercise Right"). Most of these questions have to do with the Exercise Right in light of the demutualization of CBOT and its subsequent IPO. Our answers are based on paragraph (b) of Article Fifth of CBOE's Certificate of Incorporation, CBOE's Constitution, and CBOE's current interpretations of Article Fifth(b) embodied in certain agreements between CBOE and CBOT (namely, the "1992 Agreement" and the "2001 Agreement" as amended in 2004 and 2005, both of which have been filed with and approved by the Securities and Exchange Commission).

CBOE's interpretations related to the Exercise Right are subject to review and change as the applicable circumstances may evolve. This Q&A is of a general nature only and is not intended to be relied on or construed as legal, financial, or tax advice. Consequently, individuals are urged to seek their own legal, financial, and tax advice in respect of any actions they intend to take with respect to shares of Class A common stock of CBOT Holdings, CBOT B-1 memberships, or CBOT Exercise Right Privileges.

Q1. Who is currently eligible to exercise now that CBOT has completed its restructuring and become a subsidiary of a publicly-traded for-profit holding company?

A1. Under CBOE's interpretation of the Exercise Right contained in the 2001 Agreement between CBOE and CBOT, the only persons who are entitled to be exerciser members of CBOE are those who own or possess interests equal to all of the interests that were issued in exchange for a full CBOT membership in the restructuring of CBOT (namely, 27,338 shares of CBOT Holdings common stock, subject to anti-dilution adjustment if necessary in the future, and either one Class B, Series B-1 membership in the CBOT subsidiary from which the Exercise Right Privilege has not been separated, or one Class B, Series B-1 membership from which the Exercise Right Privilege has been separated plus one Exercise Right Privilege).

Q.2 Must all of these CBOT interests be owned, or may one or more of them be leased?

A.2 In accordance with the definitions of "Eligible CBOT Full Member" and "Eligible CBOT Full Member Delegate" contained in Sections 1(d) and 1(e) of the 2001 Agreement, the interests may either be owned or leased. In addition, as further explained in Q.&A.7 below, in accordance with the last sentence of Section 1(e) of that Agreement, shares of CBOT Holdings common stock may be possessed by a lessee pursuant to a pledge or assignment of the shares if the owner of the shares is precluded from selling or transferring the shares during the term of the pledge or assignment. That same sentence provides that some of these interests may be owned while others are leased or possessed in the other ways described. For example, a CBOT exerciser could own the requisite number of CBOT Holdings shares and lease a CBOT B-1 membership and Exercise Right Privilege.

Q.3 How must shares of CBOT Holdings common stock be held in order to use them to exercise?

A.3 In order to use shares of CBOT Holdings common stock to exercise, those shares must be either (1) registered in the name of the owner in book-entry form on the stock records maintained by the stock transfer agent for CBOT Holdings or (2) in certificated form as a physical stock certificate or certificates issued in the name of the owner and registered in the name of the owner on the stock records maintained by the stock transfer agent for CBOT Holdings. In those two instances, the records of the transfer agent for CBOT Holdings will reflect the owner of those shares. Thus, the information that CBOE receives from CBOT reflecting share ownership (which is a pass-through of information on the books of the transfer agent) will evidence that share ownership.

CBOE will recognize shares of CBOT Holdings to support exercise only if the shares are held by the exercising CBOT Series B-1 (Full) Member in one of the above two ways. For example, CBOE will not recognize shares of CBOT Holdings to support exercise if the shares are held in a brokerage account and registered in street name.

Q.4 What happens if a CBOT exerciser no longer owns or possesses one or more of the three CBOT interests required to exercise?

A.4 If a CBOT exerciser no longer owns or possesses the interests required to exercise (that is, interests equal to the three interests that were issued in exchange for a full CBOT membership in the restructuring of CBOT), that person will no longer have the right to exercise or to act as a CBOE member. This may occur if the CBOT exerciser no longer possesses the three CBOT interests or if the CBOT lessor that has leased or pledged those interests to a CBOT exerciser sells or no longer owns those interests. Therefore, CBOT exercisers that are CBOT lessees and possess their CBOT interests through a lease arrangement with a CBOT lessor should be aware that their right to continue to act as a CBOE member is dependent upon their CBOT lessor continuing to own all of those required CBOT interests (namely, the required number of CBOT Holdings shares, a B-1

membership, and an Exercise Right Privilege) If at some point the CBOT lessor no longer owns any of those CBOT interests, the CBOT lessee exerciser will immediately lose the right to exercise and to act as a CBOE member.

Q.5 How does CBOE know whether a person has all of the CBOT interests required in order to exercise?

A.5 There are contractual information sharing provisions in CBOE's agreements with CBOT that enable CBOE to verify that CBOT exercisers own or possess all of the interests required in order to exercise. Pursuant to these information sharing provisions, CBOE receives a daily electronic transmission of data from CBOT that reflects the CBOT interests owned or possessed by each CBOT exerciser. In addition, under the information sharing provisions, CBOE has audit rights to review the underlying information and verify that CBOT exercisers have all of the CBOT interests required to exercise.

Q.6 What happens to the 27,338 share ownership requirement if CBOT Holdings splits its outstanding shares of common stock or declares a stock dividend?

A.6 The number of shares required to be owned or possessed by a person in order to exercise is subject to anti-dilution provisions set forth in Section 1(d) and 1(e) of the 2001 Agreement. So, for example, if CBOT Holdings were to effect a 2:1 stock split, the number of shares required to be owned or possessed would be 54,676 shares. If CBOT Holdings were to declare a 5% stock dividend, the number of shares would be 28,705.

Q.7 Does a person own or possess shares of CBOT Holdings common stock for purposes of the Exercise Right if the person has pledged or assigned the shares as collateral to secure an obligation to a third party?

A.7 Section 1(e) of the 2001 Agreement provides that an individual may possess through delegation or lease, rather than through ownership, one or more the interests required in order to exercise. The mechanism for possessing shares of CBOT Holdings common stock through delegation or lease rather than through ownership is through a form of a pledge or assignment that is intended to be equivalent to a lease under which the owner of the shares is precluded from selling or transferring them during the term of the pledge or assignment. As a general matter, if an owner of CBOT Holdings common stock pledges or assigns shares to a lessee in this way, the lessee may utilize those shares to exercise during the term of the pledge or assignment and the owner of the shares would be precluded from using those shares to exercise during that time period.

On the other hand, if an owner of CBOT Holdings common stock enters into some other type of pledge or assignment, such as a pledge to secure a loan, the owner of the shares would ordinarily be able to utilize those shares to exercise and the lender-pledgee would not be able to do so. Similarly, a person to whom the owner has pledged or assigned those shares in the context of a lease arrangement would ordinarily be able to use the

shares to exercise and any lender-pledgee to the owner would not be able to use the shares to exercise.

References to a pledge or assignment of shares in the context of lease arrangements in the answer to this Question 7 are intended to apply to customary lease arrangements. A different answer would apply under other circumstances to prevent the same shares from being used to support more than one exercise at the same time, or to prevent any other result that is inconsistent with the terms and intent of the 2001 Agreement. In this regard, CBOE reserves the right to readdress this answer.

Q.8 Is an owner of shares of CBOT Holdings who, through the use of derivatives, has established a collar on some or all of his shares of CBOT Holdings or has otherwise hedged against some or all of the economic risks and rewards of owning the stock, still considered an owner of the shares for purposes of the Exercise Right?

A.8 Under the 2001 Agreement, the fact that the owner may not be subject to all of the economic risks and rewards of ownership does not by itself mean that the owner has lost the right to exercise.

Q.9 What are the fee provisions applicable to CBOT exercisers under the 2001 Agreement?

A.9 Under the 2001 Agreement, CBOT customer rates are assessed with respect to the following types of transactions of CBOT exercisers on CBOT:

(1) CBOT Full Members who are Exerciser Members of the CBOE may trade on the CBOT's electronic trading platform as a CBOT member at member rates only if they are not physically present on the CBOE trading floor and are not logged on to the CBOE's electronic trading platform.

(2) CBOT Full Member Delegates who are Exerciser Members of the CBOE may trade on the CBOT's electronic trading platform only at customer rates.

(3) A CBOT exerciser may not trade on the CBOT's trading floor in the capacity of a CBOT Full Member at any time when such CBOT Full Member is logged on to the CBOE's electronic trading platform unless such CBOT Full Member possesses another membership or membership interest that has not either been delegated or, in the case of another CBOT Full Membership, used as a basis to exercise and become a member of the CBOE, and that entitles such member to trade in a particular product.

CBOE receives electronic transmissions of trading data from CBOT that enable CBOE to verify that CBOT exercisers are charged by CBOT as required above.

Any questions regarding this circular should be addressed to Joanne Moffic-Silver, General Counsel, at 312-786-7462 ([mofficj@cboe.com](mailto:mofficj@cboe.com)), or Arthur Reinstein, Deputy General Counsel, at 312-786-7570 ([reinstei@cboe.com](mailto:reinstei@cboe.com)).