SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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HERBERT ALTMAN, RONALD BERNSTEIN, CHRISTOPHER C. CADY, JEFFREY CHASON, JENNIFER M. COLLI, SALVATORE COLLI, CARMINE CUMBO, JEFFREY DAVIS, ERIC DINOWITZ, KEVIN P. DRONER, WALTER FAIR, ROBERT FERRARO, RICHARD FISCHER, MARC FISHBERGER, JOHN B. FORSYTH, LON FREDERICKS, DOUGLAS M. FRIEDMAN, ARNOLD FUCHS, ROBERG GILLIES, HAROLD GREEN, RICHARD C. K. HALES, EILEEN C. HALLIGAN, JOSEPH J. HAYDUK, MICHAEL JACOBSON, MICHAEL KAREN, MAX KATZ, SEAN KEATING, DAVID LONDONER, JOHN McNAMARA, C. ADAM MEDICI, MATTHEW MESSINA, MICHAEL A. MILEVOI, JAMES MURPHY, JESSICA PEARSON, PABLO PORTUGAL, DOMINICK A. RIBELO, DANIEL REYNOLDS, MICHAEL ROMANO, ROBERT ROSSI, DONALD SAARI, TIMOTHY SHAW, EUGENE STEFANELLI, JUDE SULLIVAN, JULIAN TAYLOR, STEPHEN C. TUCK, MICHAEL WAGNER, JAY C. WALSH and JOHN M. WALSH,

Plaintiffs,

v.

THE NEW YORK BOARD OF TRADE AND THE BOARD OF GOVERNORS OF THE NEW YORK BOARD OF TRADE,

Defendants.

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Index No. 604220/06

COMPLAINT

The above named Plaintiffs, by their attorneys, Bernfeld, DeMatteo & Bernfeld, LLP, as and for their complaint against the above-named Defendants, allege as follows:

THE PARTIES

1. Each Plaintiff is a holder of a FINEX and/or Options Permit (as such terms are defined below) granting them certain membership rights to trade defined options and futures contracts on the floor of the New York Board of Trade.

2. The New York Board of Trade ("NYBOT") is a not for profit corporation organized under the laws of the State of New York.

3. The Board of Governors of NYBOT (the "Board") consists of the governors elected by the voting members of NYBOT.

SUMMARY OF ACTION

4. NYBOT is a regulated commodities exchange which trades futures and options with respect to a variety of contracts by open outcry in rings on the trading floor of the exchange.

5. NYBOT was formed by the merger of two separate commodities exchanges,[1] a process which began in or around 1998 and became effective in 2004. The exchanges that merged into NYBOT as well as the predecessors to those exchanges had separate categories of membership defined by the contracts and trading rings the membership allowed. When NYBOT was formed, these different memberships were classified into one of three categories: "Full or Equity"; "Options Permit" and "FINEX Permit".

6. In or the fall of 2006, the NYBOT Board announced that it had entered into a proposed agreement with the IntercontinentalExchange, Inc. ("ICE") the net effect of which will be to sell and transfer the NYBOT exchange to ICE (the "ICE Agreement").[2] Under the proposal, ICE will pay in excess of $1.2 billion in cash and stock, all of which is to be paid

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[1] As discussed below, these exchanges were also the result of the mergers of previous separate exchanges.

[2] Under the New York Not For Profit Law, the Agreement must be approved by two-thirds of the members of NYBOT. In addition, there are regulatory approvals required, including by the CFTC.

solely to the full members of NYBOT. The Permit Holder Members receive no portion of that $1.2 billion. The Permit Holder members will, however, lose significant existing rights and protections, jeopardizing their ability to continue to operate and maintain viable floor operations or the value of their permits.

7. In a transparent attempt to justify this otherwise wrongful exclusion of the Permit Holder Members from the ICE proposal, the Defendants now contend that the rights of the Permit Holder Members exist essentially at the pleasure of the Board which can amend, transfer and/or eliminate their rights at any time. The Board's position is essentially that the Permit Holder Members only have a species of contract rights - and even those rights are illusory and are subject to unilateral termination by the Board.

8. However, the rights of those that are now designated as Permit Holders are, and historically were, considered membership rights in their particular exchanges, subject to all of the obligations of members. In the period leading up to effective date of the NYBOT merger, the associate memberships that ultimately became NYBOT Permit Holders were assured that the merger would not adversely affect their rights, i.e. they would continue to be members of the new merged entity, NYBOT. These assurances were also made to regulatory bodies such as the CFTC. These assurances continued even after the change in terminology and even under the NYBOT rules and definitions, Permit Holders were specifically acknowledged to be a NYBOT "member" with full trading and floor privileges for the contracts covered by their particular permit. The current attempt by Defendants to strip Plaintiffs of membership and to claim that all of Plaintiffs' trading and floor operation rights may be eliminated and transferred by Defendants in the ICE Agreement constitutes a blatant attempt to rewrite history in order to deprive

Plaintiffs of financial and membership rights that they clearly possess.

9. If the ICE Agreement is allowed to proceed in this fashion, irreparable injury will result. The rights of the Permit Holder Members will have been taken from them and stripped of their value without their consent and without any consideration. Moreover, given the Board's current stance, which is incorporated at least by implication in the ICE Agreement, even Plaintiffs' diminished rights will be illusory and subject to elimination if ICE chooses to do so. In essence, under the ICE Agreement, Plaintiffs' rights - whether characterized as members or pursuant to contract - will effectively cease to exist as of right, putting in jeopardy their ability to continue to earn a living, or to realize market value for their rights.

10. The Agreement specifically permits ICE to shut down certain trading rings immediately and others in the future. If and when such rings are shut down, the Permit Holders' ongoing business will be destroyed, without any compensation or consideration for the time, effort and capital invested by the Permit Holders in reliance, at least in part, on the assurances that they received regarding their rights as members of NYBOT. Further, the ICE Agreement will effectively destroy the existing market for the Permits since a potential purchaser is unlikely to pay very much value to obtain such illusory rights.

11. Despite the dramatic adverse impact on the Plaintiffs and their rights - and perhaps because of it - the Defendants have excluded the Permit Holder Members from any participation in the decision-making process concerning the ICE Agreement, including the membership vote required under the Not for Profit Law. A membership vote is scheduled for December 11, 2006, but the Permit Holder Members have been informed that they are prohibited from attending or voting. This is in violation of the Permit Holder Members' rights under the

New York Not For Profit Law, their rights as members of NYBOT and its previous incarnations as well as even the contract rights that NYBOT claims the Permit Holders have.

12. The structuring and approval of the proposed transaction by the Defendants violates their fiduciary obligations as well as the prohibition against fiduciary self-dealing. NYBOT exists as a Not for Profit Corporation under New York's Not for Profit Law. The board of a Not for profit Corporation owes a fiduciary duty to its constituents and is prohibited from self-dealing. Despite these duties and prohibitions, the Board has chosen to favor one class of member or seat holder to the extreme detriment - indeed exclusion - of another class. Moreover, the NYBOT members who control the Board are of the same member class which will be receiving all of the $1.2 billion consideration for the transfer of the exchange, including the rights of the Permit Holders who will, however, receive nothing. This violates the Board's fiduciary duties. It also constitutes wrongful self-dealing.

13. Under the circumstances, this action seeks declaratory, injunctive and other equitable and legal relief, including, without limitation, the following: (i) a declaration of Plaintiffs' rights, both as members, parties to a contract, licensees or otherwise; (ii) a declaration that their rights cannot be transferred and/or diminished absent consideration in the manner in which the full members are receiving consideration; (iii) a declaration that the Agreement cannot be implemented and approved absent the participation of the Permit Holders in the approval process and the affirmative approval of the Permit Holder members as a membership class; (iv) a declaration that the Defendants' conduct is a violation of their fiduciary duties to the Permit Holders; (v) a declaration that the Proposed Agreement as it is currently written violates the New York Not For Profit Law in that, *inter alia*, it represents self-dealing by the Board in favor of the

class of membership to which the governors belong; (vi) monetary damages for the loss and diminution of business and related rights that is contemplated by the Agreement; (vii) monetary damages for the violation of and unilateral imposition of the forfeiture of rights that have been suffered by these Plaintiffs; (viii) monetary damages for the rescission of the Permit Holders' contract rights; damages for breach of the Permit Holders' contracts; (ix) monetary damages incurred due to the reliance on the Defendants' representations in connection with the formation of NYBOT; (x) monetary damages for the Defendants' breach of their fiduciary duties to the Permit Holders; and (xi) an injunction against the Defendants moving forward with the approval process or holding a vote of any group of members for the purpose of approving the Agreement in the absence of participation by the Permit Holders.

FACTS COMMON TO ALL CLAIMS

A. The Formation of NYBOT

14. NYBOT was formed by the merger of the New York Cotton Exchange ("NYCE") and the Coffee, Sugar & Cocoa Exchange ("CSCE"), two exchanges which had also been the product of previous exchange mergers including the merger of the NYCE with the New York Financial Exchange ("NYFE") in the mid-1980's.

15. Both NYCE and CSCE had multiple levels of membership for persons and entities who had purchased "seats" allowing them to trade on those exchanges. For example, in the CSCE, there were full and associate memberships, the primary distinction being which contracts the member could trade,[3] but the holders of the associate membership were

[3] For example, the associate member could only trade the commodity that corresponded to his membership.

unquestionably members of the exchange.

16. Similarly, NYCE had a variety of classes of members with full members having the right to trade all exchange products and the other memberships being limited to trading the contracts and products that corresponded to that membership.

17. In 1998, in preparation for the ultimate merger of the two exchanges, the CSCE and the NYCE became subsidiaries of the Board of Trade of the City of New York, Inc., a newly-formed holding company which was used to facilitate the secondary merger which would ultimately result in NYBOT. During the period prior to the effective date of the secondary merger, the two exchanges operated independently and all of the various classes of membership continued as before.

18. As part of the NYBOT merger, the Defendants and/or their predecessors were required to obtain regulatory approval, including approval from the Commodities Futures Exchange Commission (the "CFTC"). In connection with that process, between 1998 and June 2004, numerous submissions and statements were made by the Defendants and/or the predecessors to the Defendants containing assurances to the various classes of members and to the CFTC among others, that the merger would not operate to deprive members of existing rights and, in fact, would operate in an equitable manner so as not to cause an advantage to any class or category to the disadvantage of another.

19. Specific assurances were given that: (i) the various associate memberships, licensees and permits holders would be converted into associate memberships in the interim entity retaining all trading and other rights that such persons had previously held; and (ii) the secondary merger which resulted in NYBOT would not adversely affect the rights and privileges

of these associate members.

20. Until the very end, throughout the process of bringing about the secondary merger, in numerous statements and memos distributed by the Defendants and/or their predecessors, these associate members were referred to as "members" of the merged exchanges. Indeed, it was not until the adoption of changes to the by-laws in June 2004, that the term "Permit Holder" was used to describe these members.

21. Upon information and belief, the CFTC's approval of the initial and secondary mergers which resulted in NYBOT was premised, at least in part, upon the assurances that the rights of these associate members would not be adversely affected.

22. In 2004, the Defendants adopted the current by-laws. Full members were now referred to as "Equity Members" and the former associate members were now labeled "Permit Holders". Further, although the new by-law provisions provided that the Permit Holders were not members with voting rights to elect the Board under the Not for Profit Law, the Defendants otherwise continued to advise the Permit Holders that they were members within the meaning of the rules. Further, in letters sent after the adoption of these by-law changes, the various associate members who would become Permit Holders in NYBOT, were informed by the Defendants that they were receiving "membership privileges" based upon the "Membership(s) and or Permit(s)" that they held. Further, Permit Holders were (and remain) defined as "members" under the definitions and rules adopted by NYBOT.

23. The Defendants have now taken the position that Permit Holders are not only no longer "members" but their contract rights are subject to revision, transfer and termination at will by the Defendants for no consideration. This is in direct contradiction to statements made to the

CFTC and the various assurances given to the different classes of members before, during and after the merger process which resulted in the formation of NYBOT.

B. The Rights of the Permit Holders/Associate Members

24. NYBOT Permit Holders/Associate Members and the so-called "Equity Members" are both generally referred to as holders of "Seats" on the exchange. With two exceptions, their rights have been essentially the same. These two exceptions are that: (i) the "Equity Member" is allowed to trade all products and commodities that are traded in the NYBOT rings; and (ii) the "Equity Member" has the right to vote for Board Members.

25. Both before and after the NYBOT merger, the Permit Holder Members possessed membership rights (and membership obligations) in their defined rings and contracts including the right to trade the futures and/or options contracts corresponding to their Permit/Membership on the floor of the NYBOT exchange and to do so at membership discounted clearing fees. In addition , the Permit Holders possessed the right to transfer or lease their seats to others in the same manner and subject to the same process as full or equity members, with all of the attendant rights moving from the transferor to the transferee. The seats all had an equity value and were traded on an open market.

26. Permit Holders were and are subject to all member rules, disciplinary proceedings and sanctions (which, like equity members can only be imposed after compliance with membership due process and hearing rights).

27. The Permit Holder Members have represented and currently represent a significant portion of NYBOT's trading volume and revenue and have created a significant portion of the value that the Defendants now seek to sell and appropriate for the sole benefit of

the so-called Equity Members.

C. The ICE Agreement

28. ICE is a public corporation which offers an electronic trading platform to the public. In the main, ICE offers trading in energy products.

29. At some point prior to August 2006, the Defendants and ICE began secret discussions and negotiations regarding the acquisition of NYBOT by ICE, including all of the rights and privileges held by the various types of members.

30. Upon information and belief, during the early discussions, ICE proposed to purchase all of the NYBOT memberships, including the Permits, and pay fair consideration to each class of member for that purchase. But, upon information and belief, the Defendants persuaded ICE to pay all of the consideration solely to the equity members, including the consideration ICE had earmarked for the Permit Holders. In that regard, upon information and belief, Defendants advised ICE that (i) the Permit Holders did not hold any rights that required purchase or consideration; and (ii) the only class of member whose rights needed to be purchased was the so-called Equity Members. Upon information and belief, Defendants further represented to ICE that the Permit Holders' rights were terminable and amendable at the pleasure of the Defendants and that by purchasing the Equity Members' rights, ICE would be purchasing the Permit Holders' rights also.

31. As a result, under the proposed ICE Agreement, the equity members will receive the entire purchase consideration including the portion that ICE proposed to pay to the Permit Holder Members. Further, only the equity members will participate in the approval process, including voting on whether or not to approve or disapprove the ICE Agreement.

32. The Permit Holders have been threatened with repercussions and retaliation if they protest the Agreement or seek to assert their rights.

AS AND FOR A
FIRST CAUSE OF ACTION

33. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

34. As a result of the foregoing, Plaintiffs are entitled to a declaration pursuant to CPLR 3001 setting forth and defining their rights as Permit Holders of NYBOT.

35. Specifically, Plaintiffs are entitled to a Declaration that: (i) they are members of NYBOT as that term is generally understood and for purposes of the New York Not For Profit Law; (ii) or, in the alternative, if their rights are contractual only, that those contract rights afford them membership rights and status; and (iii) their substantive rights, whether as members, parties to a contract and/or otherwise are not terminable or subject to change by Defendants or any transferee or successor to Defendants absent their consent.

AS AND FOR A
SECOND CAUSE OF ACTION

36. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

37. As a result of the foregoing, Plaintiffs are entitled to a declaration pursuant to CPLR 3001 that their rights and interests in NYBOT may not be sold or transferred directly or indirectly without their consent and without acceptable and agreed-upon consideration.

AS AND FOR A
THIRD CAUSE OF ACTION

38. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1

through 35 as if fully set forth herein in their entirety.

39. As a result of the foregoing, Plaintiffs are entitled to a declaration pursuant to CPLR 3001 that the Permit Holders have the right to participate in the approval process of any agreement or merger such as the ICE Agreement which affects their rights and directing the Defendants to include the Permit Holders in any vote to approve or disapprove the ICE Agreement.

AS AND FOR A
FOURTH CAUSE OF ACTION

40. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

41. Plaintiffs are entitled to a declaration pursuant to CPLR 3001 that the Defendants' actions before and after the secondary merger which formed NYBOT up to and including the negotiating and adopting of the ICE Agreement represent a violation of their fiduciary duties and that all such actions are void.

AS AND FOR A
FIFTH CAUSE OF ACTION

42. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

43. Plaintiffs are entitled to a declaration pursuant to CPLR 3001 that the ICE Agreement and the transfer contemplated therein is void and in violation of the New York Not For Profit Law in that, *inter alia*: (i) it is the product of self dealing by the Board, its members and employees in favor of themselves and the class of membership to which they belong; and (ii) the transfer is not in the best interest of the exchange, but rather, in the interest of one class of

member of the exchange.

AS AND FOR A
SIXTH CAUSE OF ACTION

44. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

45. As a result of the foregoing, Plaintiffs are entitled to a declaration pursuant to CPLR 3001 that the ICE Agreement and the transfer contemplated therein represents an unjust enrichment of the Defendants and the Equity Members at the expense of the Permit Holders including the Plaintiffs.

AS AND FOR A
SEVENTH CAUSE OF ACTION

46. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

47. As a result of the foregoing, Defendants should be estopped from asserting any position that the Permit Holders are not members or that their rights could be unilaterally reduced without their consent contrary to the statements and assurances described above which were made to the Permit Holders and the CFTC.

48. Further, Plaintiffs are entitled to a judgment in an amount to be determined at trial for the damages suffered by them in detrimental reliance upon those statements and assurances.

AS AND FOR A
EIGHTH CAUSE OF ACTION

49. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

50. As a result of the foregoing, Plaintiffs have suffered and will suffer monetary

damages in an amount to be determined at trial for, *inter alia*, the damage to the market value of their Permits as well as the damage to and destruction of their membership and business rights as contemplated by the ICE Agreement.

AS AND FOR A
NINTH CAUSE OF ACTION

51. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

52. As a result of the foregoing, Plaintiffs are entitled to monetary damages in an amount to be determined at trial for any loss, diminution or forfeiture of the Permit Holder's membership or contract rights.

AS AND FOR A
TENTH CAUSE OF ACTION

53. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

54. As a result of the foregoing, Plaintiffs are entitled to monetary damages in an amount to be determined at trial for the unilateral abrogation of the Permit Holders' contract rights.

AS AND FOR A
ELEVENTH CAUSE OF ACTION

55. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

56. As a result of the foregoing, Plaintiffs are entitled to monetary damages in an amount to be determined at trial for breach of the Permit Holders' contracts and contractual rights.

AS AND FOR A
TWELFTH CAUSE OF ACTION

57. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

58. As a result of the foregoing, Plaintiffs are entitled to monetary damages in an amount to be determined at trial for the Defendants' breach of their fiduciary duties to the Permit Holders.

AS AND FOR A
THIRTEENTH CAUSE OF ACTION

59. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

60. Throughout the period of the initial and secondary mergers which resulted in the formation of NYBOT, the Defendants and their predecessors made a number of representations to those who would eventually become Permit Holders and to various regulatory bodies, including the CFTC, that: (i) the Permit Holders were to be members of NYBOT; (ii) the Permit Holders' rights would be dealt with equitably; and (iii) the merger would not adversely affect the rights of the associate members and others who eventually became Permit Holders.

61. These representations were made on a number of occasions from early 1998 through June 2004. For example, representations were made to the CFTC at some point between December 1997 and March 1998 as part of a submission regarding the proposed merger and seeking CFTC approval. Included among the representations made at that time were that all of the associate and permit memberships (whether associate memberships and/or permits/licensees) in the former CSCE and NYCE would become associate members in the interim entity formed

following the initial merger and that the secondary merger would not affect that status or these associate members' rights.

62. In or around May 2003 the various holders of associate memberships in the exchanges which would become NYBOT were informed that their previous memberships would be consolidated into NYBOT memberships.

63. In a press release dated July 15, 2003, the Defendants and/or their predecessors stated that the various memberships and trading privileges would be consolidated into "Regular Memberships"; "Financial Memberships" and "Option Memberships". This was repeated in letters to the various associate members in or about July 2003.

64. In or about March 2004, future Permit Holders were informed that the conversion of their previous associate membership to a NYBOT permit would be accomplished in an equitable manner without advantage or disadvantage to any class or category of member.

65. In or about April 26, 2004 in a letter to the CFTC, Defendants and/or their predecessors represented that the proposed NYBOT by-laws encompassed the previous rules of the previous exchanges without significant or material change.

66. In letters sent in June 2004, after the effective date of the by-law changes and the secondary merger, the various associate members who would now become NYBOT Permit Holders were informed that they were members of NYBOT. Indeed, the title of the letters was "confirmation of NYBOT membership". In these letters the new Permit Holders were informed that they were receiving "membership privileges" in NYBOT.

67. The foregoing are by no means an exhaustive list of the statements, representations, omissions and assurances made by Defendants and/or their predecessors in

connection with the rights of the Permit Holders in the newly-formed NYBOT. They are merely examples of the representations made in this regard.

68. If it is now determined that the actions taken by Defendants caused the Plaintiffs to obtain less than their memberships and membership rights or that their rights were in any manner diminished by the formation of NYBOT, then the various representations, omissions, statements and assurances set forth above were false when made and intended to defraud both the Permit Holders and the regulators with respect to the rights of Permit Holders in NYBOT.

69. The Permit Holders (and, upon information and belief, the CFTC, among others) relied upon these representations, omissions, statements and assurances and, upon information and belief, the approval of the mergers process which resulted in the formation of NYBOT was based, at least in part, on the truth of these representations, omissions, statements and assurances.

70. If Defendants now successfully decree that the Permit Holders' were divested of the membership rights that they held prior to the merger and that they did not receive the membership rights and privileges that they were promised at the time of the merger, then the Permit Holders have been damaged by these representations, omissions, statements and assurances .

71. As a result of the foregoing, the Plaintiffs have been damaged in an amount to be determined at trial.

72. Further, upon information and belief, the conduct of the Defendants was intended to and did harm the Plaintiffs. As a result, Plaintiffs are entitled to punitive damages in an amount to be determined at trial.

AS AND FOR A
FOURTEENTH CAUSE OF ACTION

73. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 35 as if fully set forth herein in their entirety.

74. As a result of the foregoing, an injunction should be granted enjoining the Defendants from proceeding with the approval process or adopting the ICE Agreement in the absence of participation by the Permit Holders. Further, the Defendants should be enjoined from proceeding with the ICE Agreement unless and until the rights of the Permit Holders are fully determined in this action.

WHEREFORE, the Plaintiffs demand judgment against the Defendants as follows:

a. On the First Cause of Action, a declaration pursuant to CPLR 3001 that: that: (i) they are members of NYBOT as that term is generally understood and for purposes of the New York Not For Profit Law; (ii) or, in the alternative, if their rights are contractual only, that those contract rights afford them membership rights and status; and (iii) their substantive rights, whether as members, parties to a contract and/or otherwise are not terminable or subject to change by Defendants or any transferee or successor to Defendants absent their consent;

b. On the Second Cause of Action, a declaration pursuant to CPLR 3001 that their rights and interests in NYBOT may not be sold or transferred directly or indirectly without their consent and without acceptable and agreed-upon consideration;

c. On the Third Cause of Action, a declaration pursuant to CPLR 3001 that the Permit Holders have the right to participate in the approval process of

any agreement or merger such as the ICE Agreement which affects their rights and directing the Defendants to include the Permit Holders in any vote to approve or disapprove the ICE Agreement;

d. On the Fourth Cause of Action, a declaration pursuant to CPLR 3001 that the Defendants' actions before and after the secondary merger which formed NYBOT up to and including the negotiating and adopting of the ICE Agreement represent a violation of their fiduciary duties and that all such actions are void;

e. On the Fifth Cause of Action, a declaration pursuant to CPLR 3001 that the ICE Agreement and the transfer contemplated therein is void and in violation of the New York Not For Profit Law;

f. On the Sixth Cause of Action, a declaration pursuant to CPLR 3001 that the ICE Agreement and the transfer contemplated therein represents an unjust enrichment of the Defendants and the Equity Members at the expense of the Permit Holders including the Plaintiffs;

g. On the Seventh Cause of Action, estopping Defendants from asserting any position: (i) that the Plaintiffs are not members of NYBOT; (ii) that their rights could be unilaterally reduced without their consent; and/or (iii) which is contrary to the statements and assurances regarding described above which were made to the Permit Holders and the CFTC, together with monetary damages in an amount to be determined at trial;

h. On the Eighth Cause of Action, monetary damages in an amount to be

determined at trial;

i. On the Ninth Cause of Action, monetary damages in an amount to be determined at trial;

j. On the Tenth Cause of Action, monetary damages in an amount to be determined at trial;

k. On the Eleventh Cause of Action, monetary damages in an amount to be determined at trial;

l. On the Twelfth Cause of Action, monetary damages in an amount to be determined at trial;

m. On the Thirteenth Cause of Action, monetary damages in an amount to be determined at trial together with punitive damages in an amount to be determined at trial;

n. On the Fourteenth Cause of Action, an injunction enjoining the Defendants from proceeding with the approval process or adopting the ICE Agreement in the absence of participation by the Permit Holders and/or proceeding with the ICE Agreement unless and until the rights of the Permit Holders are fully determined;

o. Together with the costs and disbursements of bringing this action, including but not limited to the Plaintiffs' attorneys fees; and

p. Such other and further relief in favor of the Plaintiffs as this Court deems just and proper.

Dated: New York, New York
December 7, 2006

Signature pursuant to 22 NYCRR 130-1.1:

Bernfeld, DeMatteo & Bernfeld, LLP
Attorneys for the Plaintiffs

By:_____
David B. Bernfeld
600 Third Avenue, 15th Floor
New York, New York 10016
(212) 661-1661