Filed by CBOT Holdings, Inc.
Subject Company--CBOT Holdings, Inc.
Pursuant to Rule 425 under the Securities Act of 1933
File No. 333-72184

The following letter was distributed to CBOT members and made available on the CBOT's intranet site, MemberNet, on August 9, 2002.

August 9, 2002

Dear Members:

Yesterday, the Court granted summary judgment in favor of the defendants, CBOT Full Members, ending the lawsuit filed in Circuit Court in August 2000 by certain Associate Members and membership interest holders in connection with the proposed allocation of shares in a restructured Chicago Board of Trade.

After an exhaustive analysis of the facts, the Court held that CBOT Full Members do not owe fiduciary duties to Associate Members and membership interest holders. The Court also held that there was absolutely no evidence that CBOT Full Members influenced the Independent Allocation Committee of the Board of Directors or its recommendation.

Since the outset of this litigation, we have been confident that the Court would ultimately hold that the 1,402 CBOT Full Members do not owe fiduciary duties to other members. The decision removes one of the last impediments to going forward with our restructuring transactions. We will keep you informed of future developments as we move forward. A copy of the Court's decision will be available shortly, and can be obtained by contacting the Legal Department at 312-435-3613.

Sincerely,

/s/ Nickolas J. Neubauer

Nickolas J. Neubauer

While CBOT Holdings, Inc. ("CBOT Holdings") has filed with the SEC a Registration Statement on Form S-4, including a preliminary proxy statement and prospectus, relating to the restructuring of the Board of Trade of The City of Chicago, Inc. ("CBOT"), it has not yet become effective, which means it is not yet final. CBOT members are urged to read the final Registration Statement on Form S-4, including the final proxy statement and prospectus, relating to the restructuring of the CBOT referred to above, when it is finalized and distributed to CBOT members, as well as other documents which CBOT Holdings or the CBOT has filed or will file with the SEC, because they contain or will contain important information for making an informed investment decision. CBOT members may obtain a free copy of the final prospectus, when it becomes available, and other documents filed by CBOT Holdings or the CBOT at the SEC's web site at www.sec.gov. This communication shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of securities in any state in which offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

* * * *

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT - CHANCERY DIVISION

TIMOTHY FELDHEIM, STEVE FANADY, LEONARD GOLDSTEIN, RICK OLSWANGER, DAVE BARTELSTEIN, JOHN ZAWASKI, VIRGINIA MCGATHEY, AND JOHN SCHMIDT, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS, vs. FRANK L. SIMS, MICHAEL B. ALEXANDER, JERRY R. STEINBORN, TRUIT E. TROGDON AND BURNELL D. KRAFT, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, AND THE CHICAGO BOARD OF TRADE, DEFENDANTS.	) No. 00 CH 11791

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause before the Honorable PATRICK E. McGANN, Judge of the said Court, taken before Margaret M. Kruse, Certified Shorthand Reporter and Notary Public, at Suite 2508, Daley Center, on the 8th day of August A.D., 2002, commencing at 2:00 p.m.

A P P E A R A N C E S:

SACHNOFF & WEAVER, LTD., By
MR. BARRY S. ROSEN
MR. MICHAEL D. RICHMAN
30 South Wacker Drive, Suite 2900
Chicago, Illinois 60606-7484
(312) 207-1000

appeared on behalf of Plaintiffs;

KIRKLAND & ELLIS, By
MR. GARRETT B. JOHNSON
MS. DONNA M. WELCH
200 East Randolph Drive, Suite 5400
Chicago, Illinois 60601
(312) 861-2000

appeared on behalf of Defendants.

THE CLERK: Feldheim vs. Sims.

THE COURT: Good afternoon, everyone.

First of all, I want to apologize for any inconvenience I caused by not being prepared to announce my decision yesterday.

Summary judgment motions permit the trial court to determine whether any genuine issue of material fact exists in the action, and if not, to provide an expedient means of resolution. Greenberg vs. Orthosport, 282 Ill.App.3d, page 830. The underlying policy is to facilitate litigation, to avoid congestion of trial calendars, and to reduce unnecessary trials. Brown vs. Murphy, 278 Ill.App.3d 981. The court's task on such a motion is only to determine whether there is a genuine issue of fact and not to resolve a disputed factual question. Hanson vs. Demarakis, 259 Ill.App.3d 166.

Summary judgment is appropriate only when there is no genuine issue of fact and the movant is entitled to judgment as a matter of law. Groce vs. South Chicago Community Hospital, 282 Ill.App.3d 1004. To aid in this determination, the trial court must consider the affidavits, depositions, admissions, exhibits and pleadings on file and

construe them strictly against the movant and liberally in favor of the nonmovant. Douglass vs. Dolan, 675 N.E.2d 1012. Documents submitted in response to the motion by a nonmovant must be construed liberally in their favor, while documents submitted by the movant in support of summary judgment must be construed strictly against the movant. Zoeller vs. Augustine, 271 Ill.App.3d, 370.

Although a plaintiff is not required to prove his or her case at the summary judgment stage, he or she must present some evidentiary facts to support the element of their claim. Davis vs. John Crane, Inc., 261 Ill.App.3d 419. The opponent cannot simply rely upon their complaint or answer to raise an issue of fact when the movant has supplied facts which, if not contradicted, entitle them to judgment as a matter of law. Jackson Jordan, Inc. vs. Letydig, Voit & Mayer, 158 Ill.2d 240.

Our Supreme Court has warned that while the use of summary judgment procedure is to be encouraged in the interest of the prompt disposition of lawsuits, they are a drastic measure. Consequently, trial courts should grant such judgment only when the movant's right to judgment is clear and free from

doubt, again citing the Greenberg vs. Orthosport case.

Summary judgment is a remedy that must be awarded with caution in order to avoid preempting a litigant's right to trial or his right to fully present the factual basis of a case where a material dispute may exist. Cozzi vs. North Palos Elementary School District 117, 232 Ill.App.3d 379.

A triable issue precludes summary judgment where the material facts are disputed or where the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. Espinoza vs. Elgin Joliet & Eastern Railway Company, 165 Ill.2d 107. In construing a motion for summary judgment, the trial court may draw inferences from the undisputed facts. If reasonable people could draw divergent inferences, the issues should be decided by the trier of fact and the motion should be denied. Dowd & Dowd vs. Gleason, 284 Ill.App.3d 915. And I would recognize on different grounds that case was reversed by the Illinois Supreme Court subsequently. Where doubt exists as to the right to summary judgment, the wiser judicial policy is to permit resolution of the dispute by trial, citing

again the Jackson Jordan case at page 249.

The first observation that I believe is important and necessary is the context of this litigation. It is a class action. Pursuant to 735 Illinois Compiled Statutes 5/8-101, et seq, a class action affords the court with a procedural device to efficiently adjudicate claims involving common questions of law or fact.

It envisions from its historical roots controversies involving either or both plaintiffs and defendants too numerous to practically join in one proceeding. It confers no additional rights on any party nor does it ascribe any unity of purpose or action as a result of mere membership in the representative class. The only commonality is the mutual interest in the determination of the legal and/or factual issues that will resolve the controversy between the plaintiffs and defendants who make up the respective classes in this case.

The controversy herein surrounds the allocation of equity among members of the Chicago Board of Trade as they progress to a new era in their history. A decision, as one witness noted during his deposition, the most important thing to happen at the

Board in 100 years. While Mr. Rosenthal and others would certainly disagree with that assessment and point to the expansion of the markets and adding of members as a more significant development in the advancement of the Exchange, this question of fact is not material to the issue before the Court.

The parties have developed and I find the following undisputed facts:

In 1848, a group of Chicago business leaders founded the Chicago Board of Trade as an Illinois charter corporation. While the number of original members has never been disclosed in the evidence, each member had one vote. This governance forum and format existed until approximately 1997.

The parties discussed in great detail what the Board of Trade actually does. The Chicago Board of Trade began as a market to set the price of grain and other similar commodities. Persons in the business of growing, selling, financing, manufacturing or otherwise bringing these raw products to the marketplace need a device or system to transfer the financial risk of their portion of the enterprise. This would be done through broker/agents who would trade various contracts among

themselves for the benefit of their customers. These broker/agents became members of the original Chicago Board of Trade.

Originally, the members paid the cost of establishing the marketplace for their activity. They purchased or leased a facility to conduct their business, employed persons to record their activities and transactions. In other words, they paid to provide all of the support necessary to carry on their activity as traders. This created a fairness and accountability in the market, as well as confidence in those people who came to the market to engage in spreading the risk.

These members, by law, received no distribution of the profits of the charter corporation, but they did receive the most important benefit of their membership, the right to trade in the open outcry pits of the Chicago Board of Trade, in other words, the right to earn an income. Here they were free to use all of their skills to maximize and retain all profits from their trading.

As the years went by, other exchanges opened, the government changed or expanded the rules concerning the types of commodities that could be

traded at such exchanges. The institution also changed. It moved into a large downtown skyscraper in 1930 and purchased significant interests in real estate. It expanded its facilities to accommodate these newly deregulated products and markets. It expanded and modernized the marketplace. It adapted to the new technology by creating an options exchange permitting overnight electronic trading and other changes to increase the viability of the Chicago Board of Trade.

As it evolved through the period of the late '70s, there were at that time 1402 full members. Their leadership realized that they would have to attract additional traders in order to create a market for the new products that were coming on line. While many of the members had an interest in these new initiatives, it was generally understood and agreed there were insufficient members to make a viable market for all of the new products and to attract and maintain the customers who were seeking a large marketplace for the various commodities and interest that they wished to trade in or had interest in. Thus the Board decided and agreed to create additional memberships.

Here a question of fact exists. Some current or former members, for example Mr. Rosenthal, believed these changes added value to the Exchange by increasing the volume of trades. While others, and I would point to Messrs. Odom and Neubauer, disagreed. This dispute again, I believe, is not material to the issues before this court.

The first group was the financial instrument membership group. There were 100 of these created in 1977. In 1979 this group became what is now known as the associate members. During this process, the members each retained one vote per membership, the full members did, and granted one-sixth vote as well as one-sixth of one interest in any liquidation of the Board of Trade assets. This was done as was the future to make these individuals owners of the Board and to avoid any income tax consequences to the Board from selling these memberships.

Each financial interest member which replaced the GNMA licensees received an associate membership as well as one-fourth of an additional associate membership in 1979. Each full member also received a one-fourth associate membership interest at that time.

In 1982, the Board of Trade again expanded its membership by creating the government interest members, or GIMs, who had no vote but received a liquidation interest of .111 of a full interest; a commodity option member, or COM, who received no vote but a liquidation right of .005 of a full membership; and an index debt and equity member, or IDEM, who received the same rights as the COM membership classification. These new memberships were distributed to the full members, each receiving a one-fourth interest in each category and the associate members each receiving a half interest in both the COM and IDEM memberships.

The market then allowed these recipients to trade their interest, respective interests, in order to create a full GIM, COM or IDEM membership which then could be sold or leased. The memberships also have different trading rights. Full members can trade in any commodity and in any portion of the Board and have the exercise right to also trade on the Chicago Board of Options Exchange. The other member categories have restricted trading rights. As indicated the Chicago Board of Trade corporation exists to provide a marketplace for its member

traders. The physical plant, staff and administration are financed in part by the dues, transaction fees and various other charges assessed against the members and those customers who do business on the Board of Trade.

From time to time, the amount of some of these charges, with the exception of the current dues, were higher for member interests other than full. There have also been caps on such fees limiting the liability of the full members while those caps did not apply to the other membership categories.

The Board of Trade is governed by a board of directors elected by the members. There are 1402 full members, each with one vote. There are 791 associate members, each with one-sixth of a vote. Those vote totals aggregate 132. Thus the total possible number of votes on any issue is, according to my math, 1534. However, when you deduct the associate memberships that are also owned by full members, their vote shrinks to 94 votes or, I believe the parties have indicated, 6 percent of the eligible votes on any issue.

There is a quorum requirement of 300 votes

before a measure can pass. Hence, the associate members can never control an election by the strength of their sole vote. In order to effect change, they must either form a coalition with certain full members to pass their proposal.

The plaintiffs have indicated that only the board can decide what issues reach the ballot for vote by the full members. That is actually incorrect. By rule -- and I want to say Rule 220, but I don't think it is -- 25 members regardless of their position can petition the board of directors for a special meeting to discuss an issue. If the board refuses, 100 members can then sign a petition that calls a special meeting to consider an issue and require a vote.

The 18-member board consists of full members, two associate members and outside directors. The associate member group which can only be two of the 18 members can also be fulls, thus again further diluting, the inferences are, the membership and participation of associates in the decision-making policies of the Board of Trade.

There is a chair elected by the members who can only be a full member. It's who occupies the

chair for two years. That individual, while a member of the board, can only vote when there is a tie in the board determination. There is a vice chair who is also required to be a full member.

During the course of discovery, it was disclosed that full members dominate the executive committee, which is the most important committee on the board, the nominating committee, the finance committee, the strategy committee, the human resources committee, and the appellate committee. In addition, over the years public directors which were formerly nominated by the president are now nominated by the full-member dominated nominating committee.

During the period of 1988 to 2002, 89 percent of all committee members were full members, 89 1/2 of all committee chairs were full members, 96 percent of all executive committee members were full members, 100 percent of the executive committee chairs were full members, 89 percent of all nominating committee members are full members, 100 percent of the restructuring task force were full members, and 88 percent of the restructuring implementation committee were full members.

As the Board has evolved, there has been a constant concern for maintaining the market, as I indicated. That is why products were introduced and expanded, new membership interests were created, overnight trading was instituted. During this process, the Board came to the conclusion that its market was being challenged by technological advances, and the Board's viability and/or continued existence depended on changing its corporate format and having greater access to the equity markets.

Thus in 1999, the then chairman, the absentminded Mr. Daniel Brennan, created a committee to study the Board's situation and options. The studies resulted in the appointment of an allocation committee to distribute the Board of Trade assets to members in a new for-profit Chicago Board of Trade.

This committee in anticipation the Chicago Board of Trade changed from a charter corporation to its current status as a Delaware not-for-profit corporation. The committee consisted of former Governor James Thompson, former minority leader Robert Michael, Mr. Ralph Weems, a Professor Hamada of the University of Chicago Business School, and Mr. Flip Filipowski an entrepreneur, who left the

committee shortly after it formed.

This subcommittee engaged William Blair & Company to analyze the assets of the Board of Trade and make a recommendation as to its allocation. The committee also hired independent counsel from the law firm of Winston & Strawn to act as its counsel. The subcommittee had the power to accept or reject the allocation and decide whether or not to recommend it to the full board. The full board, however, does have the ultimate power to forward the proposal to the membership for a vote.

Currently, the recommendation is as follows: There will be two classes of stock created, class A and class B. These will contain trading rights in one class and equity rights in the other class. These will be bundled or stapled together so that control, it is thought, will be maintained by those who trade on the Board of Trade. No member's trading rights will be affected by this distribution. The trading rights of the full members, the dissolution rights of the full members and the profit distribution of the full members will consist of one membership interest.

Associate members will increase their voting

strength to one-fifth of a vote per membership. They will increase their dissolution rights in a similar manner. The GIM interests will receive one-tenth of a vote per interest and will actually have their dissolution rights decreased by 1/100th of a point but receive a greater distribution of the profit.

As I indicated no group as yet has received, but for a couple of allocations in the 1980s, any profit from the former charter corporation.

The COM group will receive voting rights, lesser; they'll be .014 votes per member. Their dissolution rights will also increase to the same and they will have the same interest per membership in profit distribution. The IDEM membership will receive .012 votes. They have no vote now. Their dissolution rights will increase to the same amount as well as their profit distribution. I should note, to make the record clear, that the COMS and IDEMS at this point both have dissolution rights and profit distribution rights.

As a result, the voting rights of the plaintiff class will increase from its current 8.34 percent to 11.9 percent, its dissolution rights and its profit distribution rights will also increase by

different percentages. So they both exist to be 11.93 percent, which is an increase over the existing distribution.

In Weinberger vs. UOP, the Delaware Supreme Court -- that case was reported at 409 A.2d 1262 -- held that whenever a majority shareholder or group of shareholders combined to form a majority and undertakes to exercise an available statutory power so as to impose the will of the majority upon the minority, such action gives rise to a fiduciary duty on the part of the majority shareholder to deal fairly with the minority whose property interests are thus controlled by the majority.

Interestingly in that case, the trial judge dismissed the complaint because the majority shareholder, Signals, did not vote but structured the vote so that the cash-out merger was approved by the minority shareholders who had no duty to the minority shareholders, other than Signal, which was the majority shareholder, who the court held had no duty to the other shareholders.

Of perhaps greater interest is that the indefatigable Mr. Weinberger pursued his claim and found out that common directors of Signal, the silent

majority holder who didn't vote, and UOP, common directors of both corporations that were appointed by Signal, had failed to disclose that a higher valuation than the $21 for the stock that was offered actually had existed and was within the knowledge and control of the fiduciary directors of UOP. That was found to be a breach of fiduciary duty in the later case of Weinberger vs. UOP at 457 A.2d 701.

The undisputed facts in this case indicate there is no majority shareholder on the Board of Trade. Thus, we must look to the second basis to determine whether the minority shareholders combined to form a majority in order to exercise control over a matter. This is not a new principle of law. As we shall see, it has roots back to the beginning of the 20th century and, in fact, has received much attention in the 1940s and '50s. For example, I would refer you to the article in the 104th volume in the University of Pennsylvania Law Review at page 75 written by Mr. Leech entitled, "Transactions and Corporate Control."

Under Delaware law, with the exception of one decision, the determination of whether a minority has combined to impose the will on the minority is

transaction based, Kahn vs. Tremont Corporation, 694 A.2d, page 422. This distinction is sensible because it is inherently unfair to call upon a shareholder to defend a transaction they did not dictate, nor it is appropriate in light of the rule that a shareholder is free to vote in his or her own self-interest.

A shareholder only becomes a fiduciary when the shareholder crosses the line and becomes the manager by either negotiating or dictating both sides of the transaction. I would cite to you the case of Kahn vs. Lynch Communications at 638 Ill.App.2d 1110. This, by the way, is that aberrant case which I'll discuss in a moment.

The fact of control is not sufficient. Control must be exercised. That is the holding of the United States Supreme Court in the case of Southern Pacific Company vs. Bogert, where Justice Brandeis wrote the following:

"But the doctrine by which the holders of the majority of the stock of a corporation who dominate its affairs are held to act as trustees for the minority does not rest on such technical distinction. It is the fact of control of the common

property held and exercised" -- it is a conjunctive sentence, it is not disjunctive -- "not the particular means or manner in which the control is exercised that creates the fiduciary obligation. That's at page 492 of 250 U.S.

As I indicated, there are a strong line of cases which hold under Delaware jurisprudence the same result. In Re Wheelabrator Technology, Inc. Shareholders Litigation, 663 A.2d 1194; Kaplan vs. Centex, which was cited by the parties at 284 A.2d 119; In Re Sealand Corporation, again cited by the parties, 1988 Del. Ch. LEXIS 65.

As I indicated, the Kahn vs. Lynch case is also the only Delaware case that went beyond the transaction analysis, perhaps, in part, because Alcatel, the minority shareholder, had such a pervasive impact on Lynch's managerial decisions. Prior to the cash-out merger, which is a significant issue in that many of these cases, if not most of these fiduciary cases, are based on situations where there are cash-out or forced mergers of parties, which is, as we'll see I hope later, a different situation than we find here.

In fact, prior to the decision on the

cash-out merger, which Alcatel pushed, it fired trusted managers, it vetoed a merger that the board felt was in Lynch's best interest, it attempted to profit by forcing a merger upon Lynch with an undesirable partner that was affiliated with Alcatel, and finally, not obtaining its goal, pushed the cash-out merger, eliminating all the other shareholders.

In Ivanhoe Partners vs. Newmont Mining Corporation, at 535 A.2d 1334, the court found no duty to other shareholders when a minority, 26 percent shareholders, agreed with management to the sale of assets and declaration of a dividend based on the proceeds of the sale of those assets in order to finance the acquisition of other minority interests to fend off a takeover from a hostile suitor which was greater than the amount of the value of the shares currently on the market.

The minority shareholder, Newmont -- actually it wasn't Newmont, I believe it was a gold company, but the name of it is really irrelevant -- had been a minority shareholder for a period of time and had a long and friendly relationship with Newmont where it agreed to stand pat and not to acquire more

than a 33 percent interest in the corporation and allow it to operate its business without attempting to take it over. And once the bid for a greater value came in, they acted in concert and this shareholder felt that it was done to breach their fiduciary duty. The court recognized that the continued existence of the corporation was a valid concern of the board and shareholders and found no fiduciary duty.

Similarly, in Citron vs. Fairchild Camera and Instrument Corporation at 569 A.2d page 53, the same court held that in the absence of some controlling stock ownership, a plaintiff must show domination through actual control of corporate conduct.

There is simply no evidence in the record of the direct involvement by voting members other than directors in the allocation process. In fact, the deposition testimony of Mr. Lee and Mr. Daniel Stern best illustrate this point.

The junior Mr. Stern had no real information about the transaction, he was merely concerned about his trading rights and maintaining those, while the senior Mr. Stern felt the proposal was unfair to the

full owners because it reduced his equity in the Board of Trade. But feeling this, he took no formal action.

The evidence is clear that while there may have been informal discussions, informational meetings concerning the allocation among or between the many members of the Board of Trade, the only input they had was in response to a solicitation by the allocation committee, and only certain members, a few members, responded to that invitation.

The Thompson committee was not controlled or directed by any member. Now, there is some comment about testimony from former Governor Thompson where he indicated that he felt he had no duty specifically to the minority shareholders. However, a complete reading of the transcript of his deposition indicates that he perceived his duty as a duty directed toward all members of the Exchange and that it was inappropriate for him to single out the interest of any single membership classification.

So there is no evidence that any member had any participation in the deliberations other than perhaps as a board member during the board process, but clearly not through the deliberations of the

allocation committee or its independent counsel or staff.

In the absence of such evidence, the plaintiff asserts that the very corporate structure as contained in its bylaws, rules and regulations and demonstrated by the historical record, create, in my terms, a voting agreement by which the full members combine to exercise the required control over the affairs of the board.

The plaintiff has cited no case which supports this position other than Kahn vs. Lynch. Indeed, other decisions such as In Re Daisymart Convenient Stores, 1999 West Law 350473, an unpublished opinion and used by this Court for illustrative purposes only, not for any standing rule of law, appeared to recognize this point where it was clear and undisputed that the defendant shareholder controlled the destiny of the corporation by its shear number of votes, but after reaching that determination continued its analysis of the transaction that gave rise to the claim to determine what role that shareholder played in the actual transaction.

In a decision not cited by the parties but

actually citing to the Southern Pacific vs. Bogert decision, Gottesman vs. General Motors Corporation, 279 F.Supp. 361 from the Southern District of New York in 1967, the court, after taking an interesting tour through the relationship between DuPont, a 23 percent shareholder in General Motors, and General Motors, discussing the development of finishes and fabrics in automobiles, noted the distinction between a dominant or majority shareholder who has taken no steps to usurp the corporate decision-making process and one who does.

In that case, although finding that DuPont's, because of its holdings, 23 percent, representation on the board, a guaranteed election of six members, more than 50-year relationship with General Motors, including the ability to comment on prospective presidents of the General Motors Corporation as to whether or not they would be able to serve in that position, found that General Motors clearly had the ability to control the decision-making process. But there was no evidence in any way that control impacted on General Motors' decision to purchase products from DuPont Corporation at higher prices that were available on the general

market, thus breaching its fiduciary duty to the shareholders.

Now, this case was decided in the Southern District of New York. DuPont and General Motors were at that time Delaware corporations. The judge found that New York law and Delaware law were exactly the same and cited to the Southern Pacific case and emphasized the dual nature of the requirement, not only the ability to control but the actual exercise of that control on the transaction in question. Although many commentators have felt that Kahn vs. Lynch, or what has become known by them as Lynch I, is an aberrant decision, it is imperative for this Court to analyze this matter in light of that ruling.

If there is a question of material fact that show that the full membership interests have exercised dominion and control over the affairs of the Board of Trade, and if so, summary judgment is inappropriate. On the other hand, if no such material question of fact exists, summary judgment is appropriate.

Moreover, since the Board of Trade is undergoing what is legally known as an organic change, the Court must be concerned with whether, as

some commentators indicate, this matter is an ownership claim issue. This means does the transaction relate to the member's role as an owner and not an owner of his or her share in the corporation. That was a concern pointed out by Bayliss Manning in "Reflections in Practical Tips in Life the Boardroom" after Van Gorkon, which is found at 41 Business Law 1, page 5, a 1985 article.

Here it clearly does not involve an ownership claim, because the ownership interests, after reorganization, in every member class except for the full member, will be greater than it was before. Every member will retain trading rights. The future market will determine the value of those trading rights, and that seems to be the major concern of the parties.

It must be understood that Delaware law recognizes that continued corporate existence, in other words, the continued existence of the Board of Trade, is a legitimate concern of the board of directors. Williams vs. Geier, 671 A.2d 1368.

Now, there has been some reference by the plaintiffs and in testimony of some witnesses that this is the ultimate endgame in terms of the Board of

Trade. I don't know that it is in terms of the corporate literature on this issue. It clearly may become one, as the parties anticipate, but only as a result of the market. Nothing that the board is doing or that the shareholders may or may not approve will result in the end of any rights that the parties have. It may well be that what people predict becomes true. On the other hand, the Board's experience with the financial marketplace and an unanticipated explosion may also be true.

However, I must embark upon my analysis. In order to do so, I must commence by defining the relationship between the Chicago Board of Trade and its member interests. It is a basic tenet of corporate governance that such relationship is contractual in nature. That relationship is defined by the articles of incorporation and bylaws of the corporation.

Here, the Chicago Board of Trade has five separate classes of members, each with defined rights and equity interests. No argument has been made or case or statute cited to stand for the principle that such a structure is illegal under Delaware law or that was illegal under any preceding corporate form

or structure under which the Board of Trade operated. Each interest, whether purchased from the Board or another holder was done, I presume, with no evidence to the contrary in the record, with full disclosure of what was being obtained for the consideration paid.

A corporation functions in its structure like a democracy. Each member is entitled to exercise what rights they have under the corporate forum which governs the organization, and they may do so in their own self-interest. As corporations act much like democracies, it is a sine qua non that politics will intervene. It is also, in my opinion, a profound statement to suggest that any proposed action to gain approval by the shareholders must have the support of a majority of the voters. The board must know this when they make the proposal.

The plaintiff has cited no case nor can the Court find one that invalidates any otherwise legitimate corporate action merely because it benefits a majority of shareholders at the supposed expense of minority shareholders, or even as in Williams vs. Geier, which I cited to previously, the minority shareholders are told at the time of the

vote the issue would probably pass regardless of what they think because the majority favored the proposal.

The plaintiff points to the extremely limited input, almost to the exclusion by the non-full member interest in the board's election, the election of the chair, the domination of the committees, the results of elections. None of these are alleged to be illegal. This has gone on for many, many years.

With respect to Mr. Rosenthal's affidavit, much of which is nontestimonial in nature, it merely states the obvious, that because the Board of Trade exists to facilitate its members' trading rights, the board's proposals were ratified by a majority of the voters when they were deemed to be in the best interest of the voters and rejected when not believed to be in their interest. The last election of the chair of the board proves this.

More importantly, the plaintiffs seek to impose a duty on members who the evidence shows may own individually a majority of the votes and may from time to time vote similarly for the actions of a duly elected board.

I think I would be remiss in not commenting

on the statement of board member McDowell, who, at one point of his deposition, I think at page 108, said that it was not an independent board. Again, I believe this statement was taken out of context. Mr. McDowell was in the midst of describing his personal view, which I think was rather candid, that no person, regardless of what occupation or position they take, enters into that occupation without preconceived notions, biases, beliefs that he or she has gained through their life.

I would venture to say that no member of the judiciary, including myself, would not suffer from those same infirmities at the time they assumed the position of public trust that they have. I know I have. I think the challenge to the individual and what Mr. McDowell was attempting to say is to acknowledge that you have those infirmities and understand the role you are called upon to play and do your utmost to make the decision that is fair and just and to acknowledge and disregard any input that those predilections or preconceptions may have on you. I think that in that way, and that is the only inference that can be taken from what he said.

Delaware law, I believe, wisely holds there

must be some evidence that in addition to being in the majority, the minority exercises control over the transaction, or in accordance with Kahn vs. Lynch Communications, they exercise control over the affairs of the corporation. It can never be the rule, and it has never, ever been the rule, that where a disparate and disconnected group of shareholders have the potential to control the corporation that they are deemed to have a fiduciary duty to the other members.

There must be more evidence that exists in the record, which is merely that a legally organized and operated corporation, acting in accordance with its bylaws and charter, has made decisions. To reach a conclusion other than the one that I have would result in the courts becoming inherently involved in almost all corporate decision-making whenever a majority of block of shareholders vote in a certain pattern, regardless of the weighted vote contained in the bylaws or charter or the unconnected or disparate interest those shareholders have.

Indeed, if I were to so hold every decision of the Chicago Board of Trade from this point on, maintained under its current structure, would require

the imposition of fiduciary duties on each and every member to determine and thus the court would have to conduct a fairness test on almost every decision that would affect members rights, which is not the role of the court.

There is no evidence that other than elected chairmen, a portion of the board of directors, the shareholders had any part in the allocation process. Independent directors chose financial advisors who made recommendations and considered other proposals. If the board or any of its members have breached their duties to the plaintiff, certainly the plaintiffs have had a sufficient access to the decision-making process, the allocation system, to make any claim that they may have, and I make no comment on the efficacy of any such claim, but these full members should not be held to answer any further for the actions of people over whom there is no evidence that they have actually controlled or impliedly controlled by any inference from any of the records.

There is no question of material fact. It is apparent to me that as a result there is no doubt, there's absolutely no doubt in my mind that the full

members who coincidentally have a majority number of votes in the board structure that is legal have exercised any domination or control over the affairs of the Chicago Board of Trade since 1977 when the first members, other than full members, were allowed.

Therefore, for those reasons I've stated, summary judgment is entered in favor of the defendant class, represented by Frank L. Sims and others, and against the plaintiff class, represented by Timothy Feldheim, and others. The class representatives shall cause a copy of this order to be mailed at their own expense to each member of the class they represent. This order terminates this case.

Court's in recess.

(Which were all the proceedings had in the above-entitled matter, at the time and place aforesaid.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

MARGARET M. KRUSE, being first duly sworn on oath says that she is a court reporter doing business in the City of Chicago; that she reported in shorthand the proceedings given at the taking of said hearing and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid and contains all the proceedings given at said hearing.

Margaret M. Kruse, CSR, RPR

SUBSCRIBED AND SWORN TO
before me this 8th day
of August, A.D., 2002.

Notary Public

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