



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MAHYAR AMIRSALEH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2822-CC
	)	
BOARD OF TRADE OF THE CITY	)	
OF NEW YORK, INC., and	)	
INTERCONTINENTALEXCHANGE, INC.,	)	
	)	
Defendants.	)	

ANSWER

Defendants Board of Trade of the City of New York, Inc. (“NYBOT”) and IntercontinentalExchange, Inc. (“ICE”) (collectively, “Defendants”), by and through their undersigned counsel, hereby answer plaintiff Mahyar Amirsaleh’s Verified Complaint (the “Complaint”) as follows:

1. Admitted only that the action seeks an order of specific performance. The remaining allegations contained in this paragraph are denied.
2. Admitted only that the action seeks an order of the sort described in this paragraph. The remaining allegations contained in this paragraph are denied.
3. Denied.
4. Admitted only that Mr. Amirsaleh failed to make a timely merger compensation election. The remaining allegations contained in this paragraph are denied.
5. Admitted only that stock ownership was necessary for a NYBOT member to retain trading rights at NYBOT following consummation of the merger (the “Merger”) contemplated by the Agreement and Plan of Merger, dated as of September 14, 2006, as

amended by Amendment No. 1, dated October 30, 2006 (the “Merger Agreement”) by and among ICE, CFC Acquisition Co., and NYBOT. Denied that such stock ownership was available to Mr. Amirsaleh only if he had elected to receive stock consideration in connection with the Merger. Defendants lack information or knowledge sufficient to form a basis for admitting or denying the remaining allegations in this paragraph.

6. Denied.

7. With respect to the second and third sentences of Paragraph 7, admitted only that Mr. Amirsaleh’s untimely Election Form submission was treated as “No Election” and that, under the terms of the Merger Agreement, Defendants were entitled to treat, and did treat, each “No Election” as an election for the cash option. The remaining allegations contained in this paragraph are denied.

8. Denied.

9. Denied.

#### **PARTIES**

10. The second sentence of paragraph 10 is admitted. Defendants lack information or knowledge sufficient to form a basis for admitting or denying the remaining allegations contained in this paragraph.

11. Admitted.

12. Admitted.

#### **COUNT 1: BREACH OF CONTRACT**

##### **Amirsaleh’s Equity Interest in NYBOT**

13. Defendants repeat and reallege each and every answer set forth above in response to paragraphs 1 through 12 of the Complaint.

14. Admitted only that the New York Cotton Exchange subsequently became part of NYBOT through a 1997 merger. Defendants lack information or knowledge sufficient to form a basis for admitting or denying the remaining allegations contained in this paragraph.

15. Admitted only that the Coffee, Sugar & Cocoa Exchange became part of NYBOT through a 1997 merger. Defendants lack information or knowledge sufficient to form a basis for admitting or denying the remaining allegations contained in this paragraph.

16. Denied, except admitted only that Mr. Amirsaleh leased his trading rights to third-party futures traders. By way of further response, Defendants respectfully refer the Court to the bylaws of NYBOT in effect prior to the Merger for a full and accurate statement of the terms thereof, and to the NYBOT Membership Rules (which are distinct from NYBOT's bylaws) for a full and accurate statement of the terms governing trading privileges and the right to lease such privileges.

17. Admitted only that the Equity Memberships had value and that there were approximately 977 of them (967 held by NYBOT Members and 10 held in treasury) as of the time of the Merger. The remaining allegations contained in this paragraph are denied.

**Notice of the Merger and Its Impact on NYBOT Members**

18. Admitted.

19. Admitted.

20. Admitted that, on November 17, 2006, NYBOT filed a Prospectus and Proxy Statement with the Securities and Exchange Commission ("SEC"). Defendants respectfully refer the Court to the Prospectus and Proxy Statement for a full and accurate statement of their contents.

21. Admitted.

22. Admitted.

23. Admitted.

24. With respect to the first sentence of this paragraph, Defendants respectfully refer the Court to the Merger Agreement and the Prospectus and Proxy Statement for a full and accurate statement of their contents. The remaining allegations contained in this paragraph are denied.

**Merger Compensation Elections**

25. Admitted only that the Equity Memberships would cease to exist and would be converted upon the Merger's closing in accordance with the terms of the Merger Agreement. The remaining allegations contained in this paragraph are denied.

26. Admitted only that Section 4.1 and other Sections of the Merger Agreement govern the effect of the Merger on NYBOT Membership Interests. The remaining allegations in this paragraph are denied.

27. Admitted that a transcript of remarks made to NYBOT Members by Jeffrey C. Sprecher, Chairman and CEO of ICE, at a meeting held on December 6, 2007, was filed with the SEC as Form 425 on the same date. Defendants respectfully refer the Court to the Form 425 for a full and accurate statement of its contents. By way of further response, Defendants aver that, at the December 6, 2007 meeting, Mr. Sprecher stated,

In the next couple weeks, you will receive an election form that asks you to express your preference for all cash, all stock or a combination of cash and stock. ... I also understand that many of you have inquired as to how to ensure you receive the maximum number of shares of ICE common stock -- and the answer is simply to indicate that you want 100% of the consideration to be paid with stock. Although this does not guarantee that you will receive all stock with no cash, it does guarantee that you will receive the maximum amount of stock available for each membership interest.

28. The first and second sentences of paragraph 28 are admitted. The third sentence of this paragraph is denied. Defendants respectfully refer the Court to the Merger Agreement for a full and accurate statement of its terms.

29. The first and final sentences of this paragraph are denied. Defendants respectfully refer the Court to the bylaws of the surviving corporation for a full and accurate statement of their contents.

**Defendants' Failure to Provide Amirsaleh Notice of Election Date**

30. Denied. Defendants respectfully refer the Court to the Merger Agreement for a full and accurate statement of its contents.

31. With respect to the first sentence of this paragraph, admitted only that none of the referenced dates were identified in any publicly available documents prior to the mailing of the Election Booklet on December 19, 2006. The remaining allegations contained in the first sentence are denied, and the second sentence of this paragraph is also denied.

32. Admitted only that Mr. Amirsaleh was a NYBOT member who owned two Equity Memberships prior to the time of the Merger. The remaining allegations contained in this paragraph are denied.

33. Denied.

34. Admitted only that Mr. Amirsaleh did not make an election of merger consideration prior to the Election Deadline. The remaining allegations contained in this paragraph are denied.

35. Admitted only that Linda Chin of NYBOT's Member Services department contacted Mr. Amirsaleh's New Jersey office by telephone on or about January 12, 2007. The remaining allegations contained in this paragraph are denied.

36. Admitted only that Ms. Chin faxed a NYBOT Membership and Pledge Agreement and Pledge Addendum to Mr. Amirsaleh's office on January 12, 2007. The remaining allegations contained in this paragraph are denied.

37. Admitted only that Mr. Amirsaleh signed the Pledge Agreement and Pledge Addendum and returned it by facsimile to Ms. Chin on or about January 18, 2007. Defendants respectfully refer to that facsimile for a true and accurate statement of its contents. Defendants lack information or knowledge sufficient to form a basis for admitting or denying the remaining allegations contained in this paragraph.

38. Admitted only that, on or about January 18, 2007, Ms. Chin contacted Mr. Amirsaleh's New Jersey office by telephone to inform Mr. Amirsaleh that he had not yet returned his Election Booklet. The remaining allegations contained in this paragraph are denied.

39. Denied, except admitted only that, on or about January 18, 2007, Ms. Chin emailed an electronic copy of the Election Booklet to Mr. Amirsaleh's office. Defendants respectfully refer the Court to the email described in this paragraph for a full and accurate statement of its contents.

40. Denied.

41. Admitted only that Mr. Amirsaleh's Election Booklet, in which Mr. Amirsaleh purported to elect to obtain shares of ICE, was not received by NYBOT's exchange agent by fax and mail until January 19 and January 22, 2007, respectively. Defendants lack information or knowledge sufficient to form a basis for admitting or denying the remaining allegations set forth in this paragraph.

42. Admitted only that Mr. Amirsaleh received cash, that his untimely election for two (2) Equity Membership Interests was treated as "No Election," that this was in turn

deemed as a “Cash Election,” and that the “Cash Election” was undersubscribed. The remaining allegations contained in this paragraph are denied.

43. Admitted only that NYBOT Members who timely made a “Stock Election” received 11,067 shares of ICE common stock and a cash component of \$378,208 per NYBOT Membership Interest. The remaining allegations in this paragraph are denied.

44. Denied.

45. Denied, except admitted that NYBOT Member Services Managing Director, Helene J. Recco, sent plaintiff a fax on or about January 29, 2007. Defendants respectfully refer the Court to that faxed communication for a full and accurate statement of its contents.

46. Admitted only that a response to Ms. Recco’s January 29, 2007 fax was sent by fax on that same date. Defendants respectfully refer the Court to that faxed response for a full and accurate statement of its contents. Defendants lack information or knowledge sufficient to form a basis for admitting or denying the allegations regarding whether Mr. Amirsaleh’s completed Election Booklet was sent by Federal Express to NYBOT’s exchange agent, Computershare Trust Company, N.A. (“Computershare”), whether it was delivered on or about January 22, 2007, or whether Mr. Amirsaleh also faxed his completed Election Booklet to Computershare on January 19, 2007. The remaining allegations contained in this paragraph are denied.

47. Denied. Defendants respectfully refer the Court to that faxed response for a full and accurate statement of its contents.

48. Denied. Defendants respectfully refer the Court to that faxed communication for a full and accurate statement of its contents.

49. The first sentence of paragraph 49 is denied. Defendants lack information or knowledge sufficient to form a basis for admitting or denying allegations set forth in the second, final sentence of paragraph 49.

50. Denied, except admitted only that Mr. Amirsaleh's trading leases were terminated on or about February 1 and February 2, 2007.

**The Election Notice Did Not Conform to the Merger Agreement Requirements**

51. Denied, except admitted only that the Election Booklet states that the "Record Date" was December 29, 2006. By way of further response, Defendants aver that the "Record Date" identified in the Election Booklet is not, and was not intended to be, the same as the "Election Form Record Date," as defined in the Merger Agreement. Defendants further aver that the Election Booklet was mailed on December 19, 2006. Defendants respectfully refer the Court to the Merger Agreement and Election Booklet for a full and accurate statement of their contents.

52. Denied. Defendants respectfully refer the Court to the Merger Agreement for a full and accurate statement of its contents.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

**COUNT II: BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

57. Defendants repeat and reallege each and every answer set forth above in response to paragraphs 1 through 56 of the Complaint.

58. Denied, except admitted only that shares of ICE closed at \$124.56 on January 5, 2007.



59. Denied.

60. Denied, except it is averred that Mr. Amirsaleh was not the only NYBOT member whose untimely election was treated as a “Cash Election.”

61. Denied, except it is admitted that each untimely election of merger consideration was treated as a “Cash Election.”

62. Denied.

63. Denied.

64. Denied.

65. Denied, except it is admitted that the Merger Agreement was not amended to change the Merger consideration. Defendants respectfully refer the Court to the Merger Agreement for a full and accurate statement of its contents.

66. Paragraph 66 states conclusions of law, for which no response is required or made. To the extent this paragraph also purports to assert factual allegations regarding notice provided NYBOT members, those allegations are denied.

67. Denied.

68. Paragraph 68 states a conclusion of law, for which no response is required or made.

### **DEFENSES**

As and for their separate defenses, Defendants allege as follows:

#### **First Defense (Failure to State a Claim)**

The Complaint fails to state a claim upon which relief may be granted.

**Second Defense  
(Lack of Standing)**

Plaintiff lacks standing to assert claims for breach of the Merger Agreement and breach of the implied covenant of good faith and fair dealing under the Merger Agreement and his claims and requests for relief are barred by Section 9.8 of the Merger Agreement.

**Third Defense  
(Waiver, Estoppel, Acquiescence)**

Plaintiff's claims and requests for relief are barred by the doctrines of waiver, estoppel, and/or acquiescence.

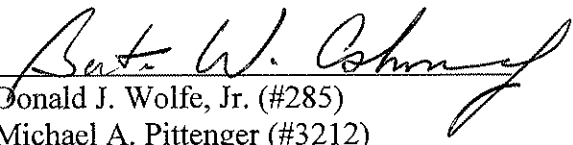
**Fourth Defense  
(Failure to Mitigate Damages)**

Plaintiff has failed to take reasonable efforts to mitigate or avoid the damages asserted in the Complaint.

**WHEREFORE**, Defendants pray for judgment as follows:

- (a) that the Complaint be dismissed with prejudice and that judgment be entered against Plaintiff and in favor of Defendants;
- (b) that Defendants be awarded their costs, including reasonable attorneys' fees, in defending this action; and
- (c) that the Court award Defendants such other and further relief as may be just and proper.

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*Attorneys for Defendants*