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Case No. 2822

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR THE NEW CASTLE COUNTY

MAHYAR AMIRSALEH, Plaintiff, – against – BOARD OF TRADE OF THE CITY OF NEW YORK, INC., and INTERCONTINENTALEXCHANGE, INC., Defendants.	**VERIFIED COMPLAINT** C.A. No. _____

Plaintiff Mahyar Amirsaleh ("Amirsaleh"), by and through his attorneys Prickett, Jones & Elliott, P.A. and The Shapiro Firm, LLP, for his Verified Complaint against Board of Trade of the City of New York, Inc. ("NYBOT") and IntercontinentalExchange, Inc. ("ICE") (collectively "Defendants") alleges upon knowledge as to himself and otherwise upon information and belief as follows:

NATURE OF THE ACTION

1. This action seeks an order of specific performance requiring Defendants to issue to Amirsaleh shares of ICE in the same amount, and on same terms and conditions, as issued to other members of NYBOT who had made an election to receive "Stock Consideration" by the January 5, 2007 Election Deadline, pursuant to Section 4.3 of the NYBOT and ICE Agreement and Plan of Merger, dated as of September 14, 2006, as amended by Amendment 1, dated October 20, 2006 (the "Merger Agreement").

2. In addition, this action seeks an order of specific performance requiring NYBOT to reinstate Amirsaleh's two Equity (i.e., Trading) Memberships, which were wrongfully revoked and cancelled by NYBOT.

3. Defendants breached the Merger Agreement and breached their duty of good faith and fair dealing by failing to give Amirsaleh timely and sufficient notice of the Election Deadline.

4. This failure prevented Amirsaleh from making a timely and effective merger compensation election, consequently depriving him of his right to obtain shares of ICE common stock.

5. Such stock ownership was necessary for him to retain his trading rights at NYBOT, rights associated with his Equity Memberships in NYBOT and rights which have been in his family for nearly four decades.

6. Defendants (1) failure to notify Amirsaleh of the Election Deadline; and (2) setting of a deadline that did not comply with the terms of the Merger Agreement itself and was, in any event, unreasonably short, was motivated by the financial self-interest of preferred NYBOT Members whose own elections increased in value every time a disfavored member like Amirsaleh was wrongfully cashed out.

7. At the time of the merger, the stock consideration election option was twice as valuable as the cash consideration option. Even though Amirsaleh submitted an Election Form as soon as it was provided to him by NYBOT indicating that he was exercising his right to stock, because Defendants prevented Amirsaleh from making a timely election, Defendants treated his Election Form as one for "no election." Thus, Defendants were entitled under the terms of the Merger Agreement to make

Amirsaleh's election for him, and gave him the less valuable cash option – leaving more (of the limited number of) shares and thus more valuable compensation for favored NYBOT Members.

8. Upon information and belief, recognizing that timely notice of the Election Deadline was not given to Amirsaleh and other disfavored members, NYBOT membership services personnel contacted Amirsaleh by phone to inquire as to his election six (6) days after the Election Deadline and eventually provided him with the Election Form, which was subsequently rejected as "untimely."

9. Because of Defendants' breach of contract, and breach of their duty of good faith and fair dealing, Amirsaleh is entitled to ICE shares that he elected to receive, the applicable cash component commensurate with such election, the lost income from his wrongfully terminated trading rights, as well as the restoration of his NYBOT trading rights themselves.

PARTIES

10. Plaintiff Amirsaleh is an individual who is a resident of the State of New Jersey. From on or about 1997 until January 12, 2007, when NYBOT became a wholly-owned subsidiary of ICE, Amirsaleh owned two (2) Equity Memberships in NYBOT, which pursuant to the by-laws of NYBOT permitted him, or his lessees, to trade on the NYBOT exchange. As discussed further below, these trading memberships had been owned by Amirsaleh and his family for decades, under the auspices of other commodities exchanges that became part of NYBOT in a merger in or about 1997.

11. Defendant ICE is, upon information and belief, a Delaware corporation with its principal place of business located at 2100 RiverEdge Parkway, Suite 500, Atlanta, Georgia, 30328. ICE operates an electronic marketplace for trading futures and OTC energy contracts.

12. Defendant NYBOT is, upon information and belief, a Delaware for-profit corporation and wholly owned subsidiary of ICE, with its principal place of business at One North End Avenue, World Financial Center, New York, NY, 10282-1101. Prior to January 12, 2007, NYBOT was a New York not-for-profit corporation with the same principal place of business. NYBOT operates as a futures exchange.

COUNT I: BREACH OF CONTRACT

Amirsaleh's Equity Interest in NYBOT

13. Amirsaleh repeats and realleges the allegations contained in paragraphs 1 through 12 of his Complaint with the same force and effect as if fully set forth herein.

14. One of Amirsaleh's NYBOT Equity Membership traces back to in or about the early 1970s. Amirsaleh's father owned a seat on what was then the Cotton Exchange and subsequently became part of NYBOT during a 1997 merger. This seat was transferred to Amirsaleh by his father in or about 1989.

15. In or about 1980, Amirsaleh purchased his second NYBOT Equity Membership, originally a seat on the Coffee, Sugar and Cocoa Exchange, which too became part of NYBOT during a 1997 merger.

16. Pursuant to the bylaws of NYBOT, Amirsaleh's two (2) Equity Memberships carried the right to trade on NYBOT's futures exchange. The same by-

laws allowed the lease of such rights to third-party futures traders. As permitted by the by-laws, Amirsaleh entered into contracts, which leased his rights to third-party futures traders

17. The Equity Memberships were exclusive, and as such, valuable. Upon information and belief, at the time of the NYBOT/ICE merger, there were only 977 Equity Memberships, which were held by a total of approximately 700 NYBOT Members.

Notice of the Merger and Its Impact on NYBOT Members

18. On September 14, 2007 NYBOT and ICE announced their intention to merge and filed a copy of the Merger Agreement with the Securities and Exchange Commission ("SEC"). Pursuant to the Merger Agreement, upon closing NYBOT would become a wholly-owned subsidiary of ICE and would no longer be a private, member-owned, not-for-profit corporation.

19. Upon information and belief, on or about November 20, 2006, NYBOT began mailing the Prospectus and Proxy Statement, dated November 17, 2006, concerning the Merger Agreement to the holders of NYBOT Equity Memberships ("NYBOT Members"). Amirsaleh received such mailing and returned his ballot on November 28, 2006, well before the December 11, 2006 deadline.

20. The Prospectus and Proxy Statement were also filed with the SEC and state, in relevant part:

> *Election Form.* The election form will be sent to NYBOT members in a separate mailing subsequent to the mailing of this prospectus/proxy statement. Each NYBOT member will use the election form to make the cash election or stock election for his or her NYBOT membership interest or membership interests. To make the stock election or the

> cash election, NYBOT members must properly complete and sign an election form as specified in the instructions to the election form, and the properly completed and executed election form must be received by the exchange agent at or prior to the election deadline....
>
> *Election Deadline.* The election deadline for making the stock election or the cash election will be indicated in the separate mailing of the election form and is expected to be 5:00 p.m., New York City time, on a business day that is at least five business days prior to the completion of the merger.

21. On December 6, 2006, executives from both ICE and NYBOT made presentations to NYBOT Members at a special meeting. A transcript of this meeting was filed with the SEC.

22. On December 11, 2006, NYBOT Members voted to adopt the Merger Agreement.

23. The merger was completed on January 12, 2007.

24. The Merger Agreement, Prospectus and Proxy Statement, set forth the rights of NYBOT Members, such as Amirsaleh, in the merger, including their right to merger compensation. However, none of the publicly filed documents, nor any documents sent to Amirsaleh with respect to Merger Agreement prior to January 12, 2007, specified the particular date by which NYBOT Members would be required to make an election of merger compensation. Nor did any of these documents specify a date from which the election deadline could be discerned.

Merger Compensation Elections

25. Because NYBOT would no longer be a private, not-for-profit organization after the merger, and thus the Equity Memberships would cease to exist upon the merger's closing, Amirsaleh, and the other NYBOT Members, would be required to

convert their Equity Memberships into either ICE shares or cash, or a combination of the two.

26. Section 4.1 of the Merger Agreement outlines the merger compensation options. Pursuant to Section 4.1, Defendants gave NYBOT Members as of the "Election Form Record Date" the choice of one of three election options. NYBOT Members could elect to redeem each Equity Membership for either (1) 17,025 shares of ICE common stock (which closed at $124.56 on January 5, 2007); (2) a cash distribution of $1,074,719 (i.e., approximately $63.00 per share); or (3) a combination of cash and stock.

27. In remarks made to NYBOT Members at their meeting on December 6, 2007, a transcript of which was filed with the SEC as Form 425 on the same date, Jeffrey C. Sprecher, Chairman and CEO of ICE, stated that Defendants "negotiated this cash and share optionality into the deal to give flexibility to NYBOT members – given that a number of members are non-U.S. entities that may prefer to receive a guaranteed amount of cash in lieu of US listed securities."

28. Both the share and cash elections had limits of approximately 10.3 million shares and $400,000,000 respectively. If either the share option or the cash option were oversubscribed, the elections were contractually subject to proration. For example, if more NYBOT members elected to receive shares than there were shares available to give every member 17,025 shares per NYBOT Equity Membership held, the total available shares would be divided evenly among the NYBOT Equity Memberships and members would also receive a prorated cash distribution.

29. At least a partial election of shares was required to retain trading rights on the NYBOT exchange. Pursuant to Section (a)(i) of Annex A to the bylaws of the surviving corporation, NYBOT Members could obtain a Trading Membership in NYBOT after the merger if a proper application was made and if the NYBOT Member owned 3,162 shares of ICE common stock per Trading Membership. The bylaws provide that "Any NYBOT Member that fails to hold such requisite number of shares shall have such NYBOT Membership permanently revoked and cancelled." Thus, NYBOT Members who elected to receive solely cash compensation would lose their trading rights.

Defendants Failure to Provide Amirsaleh Notice of Election Date

30. Pursuant to section 4.3(a) of the Merger Agreement, "(a)n election form and other appropriate and customary transmittal materials in such form as ICE and NYBOT shall mutually agree (the "Election Form") shall be mailed . . . to each Member as of the close of business on the fifth business day prior to the Mailing Date ("the Election Form Record Date ").

31. Notwithstanding the above, neither the actual Election Form Record Date, Mailing Date (five business days thereafter), nor the Election Deadline were specified, upon information and belief, in any SEC filing or publicly available document prior to the mailing of the Election Form. Nor did Amirsaleh ever receive timely notice of any of these critical dates.

32. Amirsaleh was a NYBOT Member, holding two (2) NYBOT Equity Memberships, at all relevant times until his NYBOT Membership was wrongfully revoked.

33. Upon information and belief, Defendants did not mail, or otherwise transmit, to Amirsaleh the Election Form as required by Section 4.3 (a) of the Merger Agreement. Prior to the January 5, 2007 Election Deadline, Amirsaleh did not receive the Election Form at any address that was on record with NYBOT or elsewhere. Because none of the publicly available documents specified either an Election Form Record Date or Election Deadline, and because Amirsaleh was not notified of such as required by the Merger Agreement, Amirsaleh was unaware of the date by which he was required to make the merger compensation election. He also was never in possession of the forms needed to make a timely election.

34. As a result of Defendants' failure to notify Amirsaleh of the Election Deadline prior to the Election Deadline, Amirsaleh could not and did not make an election of merger compensation prior to the Election Deadline.

35. On or about January 12, 2007 – seven days after the purported Election Deadline – Linda Chin, a Senior Coordinator in NYBOT's Member Services department, contacted Amirsaleh's New Jersey office by telephone indicating that she needed to speak with Amirsaleh and that he needed to sign "some papers." Amirsaleh's assistant informed Ms. Chin that Amirsaleh had been traveling – as he had been for the better part of December and January – and asked Ms. Chin to send her the documents that Amirsaleh was required to sign.

36. Late on January 12, 2007 -- the same date of the NYBOT/ICE merger's closing --- Ms. Chin faxed to Amirsaleh's office a NYBOT Membership and Pledge Agreement and Pledge Addendum. This fax, as was subsequently discovered, did not include, nor make reference to the Election Booklet that was required to make an

election. Also, neither Ms. Chin, nor her January 12, 2007 fax, made any reference to the Election Deadline.

37. The Pledge Agreement and Pledge Addendum were signed by Amirsaleh on January 18, 2007 -- agreeing to pledge the required 3,162 shares for each of his two (2) Equity Membership in order to retain his trading rights -- and was faxed back to Ms. Chin by Amirsaleh's assistant who asked therein "What else [Amirsaleh] ha[d] to do?"

38. On January 18, 2007 -- some six (6) days after sending Amirsaleh an incomplete set of materials -- Ms. Chin, of NYBOT Membership services, called Amirsaleh's office and inquired about his completed "Election Booklet," which had not been included in her January 12, 2007 fax, nor received by Amirsaleh from any other source.

39. At the end of the day on January 18, 2007, Ms. Chin finally emailed the Election Booklet to Amirsaleh's office. In such email Ms. Chin instructed Amirsaleh "[i]n the [sic] attempt to save your Memberships," to complete the Election Booklet and fax and overnight the same to Computershare Trust Company ("Computershare"), the Defendant's exchange agent, "according to instructions on page 9 of the booklet." Ms. Chin also noted that she "could not guarantee that [Amirsaleh's] booklet will be accepted."

40. Beginning on or about January 18, 2007, Amirsaleh's assistant made numerous attempts to contact NYBOT Member Services and NYBOT's Legal department, in an effort to understand the situation and to insure that Amirsaleh's NYBOT Equity Memberships, and associated trading rights, were not in jeopardy.

41. The Election Booklet was faxed to Amirsaleh, who was traveling, as soon as he arrived at his hotel, on January 19, 2007. Amirsaleh signed and returned the Election Booklet by fax and overnight mail on January 19, 2007, electing to obtain shares of ICE: shares that would enable him to continue to trade futures on the NYBOT exchange.

42. Even though Amirsaleh elected to receive solely Stock Consideration, on or about February 1, 2007, Amirsaleh, instead, received a check from Defendants, dated January 12, 2007 (and postmarked January 29, 2007), in the amount of $1,556,398.40 -- purporting to represent the "cash out" compensation for his two (2) NYBOT Equity Memberships, less withholding taxes. Amirsaleh was informed that his "untimely" election for his two (2) Equity Membership Interests were treated as "No Election" shares, which in turn were deemed "Cash Election Shares" at the discretion of the Defendants because, not surprisingly, the Cash election was undersubscribed.

43. As the Stock Election was oversubscribed, NYBOT Members who made the Stock Election prior to the Election Deadline ultimately received (per NYBOT Equity Membership held) 11,067 shares of ICE common stock and a cash component of $378,208.00, rather than 17,025 shares of ICE common stock (per NYBOT Equity Membership held) as originally contemplated by the Merger Agreement.

44. Upon information and belief, NYBOT Member Services was aware that Amirsaleh and other disfavored NYBOT Members did not receive timely notice of the Election Deadline and for that reason contacted Amirsaleh, well after the January 5, 2007 deadline, in an effort to "help save his membership." Of course, if notice

pursuant to the Merger Agreement was properly effectuated, there would have been no reason to contact NYBOT Members who failed to make a "timely" election, as the same would have been automatically treated as a "no election" under the Merger Agreement.

45. On January 29, 2007, Amirsaleh received a fax from NYBOT Member Services Managing Director, Helene J. Recco, which indicated that because Amirsaleh had been cashed out, if he wanted to continue trading on what had been his two NYBOT Equity Memberships, he would now have to purchase 3,162 shares (per seat) on the open market (at more than twice the value that his shares were wrongfully cashed out at) and pledge the same before February 1, 2007.

46. Amirsaleh immediately responded by fax to Ms. Recco, also on January 29, 2007, once again explaining to NYBOT, as he had done many times by phone in the previous days, that as soon as he received the complete NYBOT Election Form, he made his election to receive ICE shares as compensation for his two Equity Memberships and at the same time pledged the requisite 3,162 per membership to retain his trading rights. Such completed Election Form and booklet was delivered by fax and sent out by Federal Express for overnight delivery, on January 19, 2007, as instructed to NYBOT care of its exchange agent Computershare in Braintree Massachusetts. The fax went through immediately on the morning of January 19, 2007 and the Federal Express package was delivered to Computershare on Monday, January 22, 2007.

47. Amirsaleh's January 29, 2007 fax also demanded that his share election be recognized by NYBOT, as he never requested a cash payment for his NYBOT Equity Memberships.

48. On March 5, 2007, Amirsaleh received a fax from Ms. Recco, which amazingly seemed to suggest that according to the Merger Agreement, the Election Deadline might actually have been February 1, 2007. Specifically, the fax states that "All required agreements were required to be returned, and the requisite shares pledged, by February 1, 2007." Of course, if this was the (new) Election Deadline, then Amirsaleh's election and share pledge was certainly timely.

49. Amirsaleh's cash payment was approximately half of the value of the shares that he should have received if his election of stock consideration was recognized. On March 7, 2007, Amirsaleh deposited Defendant's check "under protest" and "without prejudice" in escrow, pending the outcome of this action.

50. Because he received cash instead of ICE shares, Amirsaleh lost the associated right to trade on the NYBOT exchange, and its related income stream. Further, having lost his trading rights, the trading leases of those rights that Amirsaleh had with third parties were terminated on February 1, 2007.

The Election Notice Did Not Conform to the Merger Agreement Requirements

51. The Election Booklet that Amirsaleh was first sent on January 18, 2007 -- thirteen (13) days after the January 5, 2007 Election Deadline – states that the Record Date (i.e. the date on which all persons holding Equity Memberships in NYBOT would be entitled to participate in the election process) was December 29, 2006.

Upon information and belief, the Election Booklet is the only document in which the Record Date was specified.

52. Section 4.3(a) of the Merger Agreement states that the "Election Form Record Date" is "the close of business on the fifth business day prior to the Mailing Date." The same section states that the "Mailing Date" is the date on which "(a)n election form and other appropriate and customary transmittal materials in such form as ICE and NYBOT shall mutually agree (the "Election Form") shall be mailed . . . to each Member" who was a member on the "Election Form Record Date."

53. Compliance with the plain language of the Merger Agreement, thus meant that once NYBOT and ICE set the Election Form Record Date of December 29, 2006, the Mailing Date of the Election Form could not have been until January 8, 2007: five (5) business days after December 29th (taking into account the January 1st holiday).

54. The Election Deadline in the Election Booklet was impossibly set as January 5, 2007: only four (4) business days after the Election Form Record Date and *before* the contractually mandated Mailing Date.

55. By setting an Election Deadline before the contractual Mailing Date, Defendants made it impossible for NYBOT and ICE to follow the notice provisions of the Merger Agreement. Additionally, given that NYBOT and ICE learned that Amirsaleh did not receive notice of the Election Deadline, they were required to take additional reasonable steps to ensure that Amirsaleh actually received notice and had an opportunity to make a timely election.

56. By failing to meet their notice obligations under section 4.3 of the Merger Agreement, in both failing to provide Amirsaleh actual notice and failing to provide notice according to the time table outlined in the agreement, Defendants have breached the Merger Agreement, denying Amirsaleh his right to ICE shares and their associated trading rights and causing him irreparable harm.

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

57. Amirsaleh repeats and realleges the allegations contained in paragraphs 1 through 56 of his Complaint with the same force and effect as if fully set forth herein.

58. On what ultimately became the Election Deadline, January 5, 2007, shares of ICE closed at $124.56. If a Member were given the full number of shares allocated under the Merger Agreement -- 17,025 per NYBOT Equity Membership -- the Member making the all stock election would have received $2,120,634 in consideration, as compared to $1,074,719 (per Equity Membership) if the cash option were exercised. Thus, the "stock election" was twice as valuable as the "cash election." As stated by the ICE CEO himself, the cash option existed primarily for foreign investors who did not want to invest in U.S. securities. Since NYBOT Members were free to sell their shares upon receipt, such members could cash out the ICE shares for twice as much as the "cash election" making such an election an unreasonable choice.

59. In addition, NYBOT Members receiving and retaining approximately 30% of their shares, would retain the valuable right to trade on the NYBOT exchange. NYBOT Members who elected the cash option lost that right.

60. Upon information and belief, Amirsaleh was not the only disfavored NYBOT Member who did not receive timely notice and was, thus, prevented from making a timely election.

61. It was in the favored NYBOT Members' self-interest to give insufficient notice, and thereby limit the number of timely elections. Each Member who submitted an untimely election form, per the Merger Agreement, was deemed to have made "no election," the consequence of which was that Defendants had sole discretion to determine those Members' compensation. Accordingly, for each untimely election, Defendants could distribute the cash payout, rather than the considerably more valuable shares.

62. Because there were a limited number of shares available, it was in the interest of NYBOT to limit the number of share elections made, so as to maximize the number of shares distributed to favored NYBOT Members. In other words, each disfavored NYBOT Member like Amirsaleh who did not receive timely notice and was wrongfully cashed out meant greater compensation for the favored NYBOT Members.

63. On information and belief, Defendants timed the distribution of the Election Forms so as to maximize the number of NYBOT Members who would miss the Election Deadline. Upon information and belief, the Election Forms were mailed to some, but not all, NYBOT Members during the Christmas and New Year's holidays, a time of year when a majority of people are away from their places of business. Amirsaleh himself was traveling during that time period.

64. Upon information and belief, Defendants gave NYBOT Members who actually received notice only a handful of business days during this holiday period, to review the same -- including with financial, tax and legal representatives -- and sign and return the forms so that they would be received by the January 5, 2007 Election Deadline.

65. The Defendants had not changed the merger compensation options since originally stated in the Merger Agreement in September 2006. And the Merger Agreement originally contemplated that the Election Form would be distributed to NYBOT Members with the Prospectus and Proxy Statement, which was mailed in November. Yet, instead of giving NYBOT Members reasonable notice of the Election Deadline and sufficient time to complete and return the Election Forms, as Defendants were entirely capable of doing, Defendants waited until the time of the year when the majority of people are not conducting business to send the Election Forms.

66. Giving only a handful of days to review and return documents that affect millions of dollars of rights was unreasonable, in and of itself. Moreover, giving such limited notice over the holiday period clearly deprived disfavored NYBOT Members of their right to sufficient notice.

67. Defendants' failure to provide notice sufficient for NYBOT Members to make an effective election, thus denying Amirsaleh and other NYBOT Members their right to shares in ICE and associated trading rights, constitutes a violation of Defendants' duty of good faith and fair dealing inherent to the Merger Agreement.

68. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Amirsaleh prays for the following relief:

1. Judgment on Amirsaleh's First and Second Counts and an Order directing that (a) Defendants be required to issue to Amirsaleh shares of ICE and the associated cash consideration, plus interest at the highest legal rate permitted, in the same amount, and on same terms and conditions, as issued to other members of NYBOT who had made an election to receive "Stock Consideration" by the January 5, 2007 Election Deadline, pursuant to Section 4.3 of the NYBOT and ICE Agreement and Plan of Merger, dated as of September 14, 2006, as amended by Amendment 1, dated October 20, 2006 (the "Merger Agreement"); and (b) NYBOT reinstate Amirsaleh's two (2) Equity Memberships and associated trading rights.
2. Ordering further that Defendants be required to pay Amirsaleh compensatory damages, in an amount to be determined, for lost income derived from the leasing of his NYBOT Membership Interest between February 1, 2007 and Judgment, plus interest at the highest legal rate permitted;
3. Reasonable attorney's fees, interest, costs and disbursements in connection with this action; and

4. Such other and further relief as this Court deems just and proper.

Dated: March 22, 2007

PRICKETT, JONES & ELLIOTT, P.A.

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