IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHELDON LANGER, RONALD M. YERMACK, LANCE R. GOLDBERG, individually on behalf of themselves and all others similarly situated,	:	
Plaintiffs,	:	No. 14 CV 1240
v.	:	Hon. James F. Holderman
CME GROUP, INC., a Delaware Corporation; THE BOARD OF TRADE OF THE CITY OF CHICAGO, INC., a Delaware Corporation,	:	
Defendants.	:	

DEFENDANTS CME GROUP INC. AND THE BOARD OF TRADE OF THE CITY OF CHICAGO, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO REMAND

Matthew M.K. Stein
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
500 Boylston Street
Boston, Massachusetts 02116
(617) 573-4800
matthew.stein@skadden.com

Albert L. Hogan III
Jerrold E. Salzman
Marcella L. Lape
Brian S. Wallach
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
155 North Wacker Drive
Chicago, Illinois 60606
(312) 407-0700
albert.hogan@skadden.com
jerrold.salzman@skadden.com
marcella.lape@skadden.com
brian.wallach@skadden.com

Counsel for Defendants
CME Group Inc. and the Board of Trade of the City of Chicago, Inc.

Dated: April 28, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUTES, SESSION LAWS, AND RULES **PAGE(S)**

OHER AUTHORITIES **PAGE(S)**

PRELIMINARY STATEMENT

This is a breach of contract case, and nothing more. Plaintiffs' own complaint makes that clear: Starting in the first sentence, continuing in the first paragraph, and then repeated over and over again throughout the complaint is the fact that this is an action for "breach of contract." The complaint shows that contract law will be applied to two separate certificates of incorporation—CME Group Inc.'s ("CME Group") and the Board of Trade of the City of Chicago, Inc.'s ("CBOT")—to assess Plaintiffs' claim that the members of Chicago Mercantile Exchange Inc. ("CME Inc.") and CBOT have a right to the "best and most proximate" access to the Globex trading platform, even though no such right can be remotely found in either document. So, the question will be, did CME Group and CBOT breach the unstated, implied contract rights that Plaintiffs allege exist in the respective certificates of incorporation.

Now, however, Plaintiffs seek to remand this case on the alternative legal grounds either that this case is about corporate governance, or, that it relates entirely to rights, duties, and obligations related to securities. Neither idea has merit. Nothing about the case will depend on the application of Delaware corporate law or the corporate law of any other state, and Plaintiffs do not even attempt to explain how principles of corporate law will play into their breach of contract claim. The "internal affairs/corporate governance" exception to Class Action Fairness Act ("CAFA") is therefore inapplicable.

As for the notion that this case relates solely to rights created under securities, Plaintiffs are operating under a profound misunderstanding of the make-up of their putative class, and the source of its alleged rights. As to CME Inc. members, although they each hold a Class B share of CME Group that is linked to their CME Inc. membership, the purported rights at issue in this case are not related to the Class B shares. As to the CBOT members, they do not hold <u>any</u> share of <u>anything</u> by virtue of their CBOT membership. Plaintiffs' mistake in asserting that their entire

class enjoys rights flowing from CME Group Class B shares demonstrates conclusively why the securities exception cannot defeat CAFA jurisdiction in this case.

Plaintiffs also assert as a factual matter that two-thirds of the putative class are Illinois citizens and therefore the "home state" exception to CAFA jurisdiction applies. But Plaintiffs have failed to meet their burden of establishing this exception because they have offered an expert report that is based on the wrong standard, and is otherwise unreliable and inaccurate.

CAFA jurisdiction applies. The nature of this case, which deals with the way that a global financial institution interacts with customers all over the world, underscores why this case belongs in federal court.

FACTS

It is clear that Plaintiffs' motion is premised on a materially incorrect understanding of the corporate structures of the defendants. Accordingly, a correct understanding of those structures is central to the resolution of this motion, and is set forth below.

A. The Chicago Mercantile Exchange Demutualizes In 2000

The Chicago Mercantile Exchange was a member-owned mutual exchange until it demutualized in November 2000. (See Chi. Mercantile Exch. Holdings Inc., Amendment No. 1 to Registration Statement (Form S-4/A) (Oct. 1, 2001) ("CME Holdings Form S-4/A").) The demutualization was effectuated through a multi-step process that resulted in the old not-for-profit Chicago Mercantile Exchange being converted into a shareholder-owned, for-profit corporation known as Chicago Mercantile Exchange Inc. (CME Inc. in this brief). (Id.) CME Inc. then became a wholly-owned subsidiary of Chicago Mercantile Exchange Holdings Inc. ("CME Holdings"). (See CME Holdings, Current Report (Form 8-K) (Dec. 4, 2001).)

As part of this process, the members of the not-for-profit entity first agreed to relinquish their old memberships in exchange for Class A and Class B shares in CME Inc. (See CME

Holdings Form S-4/A.) The Class A shares were pure equity shares. (Id.) The Class B shares were linked to the trading rights previously associated with membership in the not-for-profit exchange, but were treated equivalently to Class A shares for purposes of, among other items, dividends and liquidation. (Id.) As part of CME Inc. becoming a wholly-owned subsidiary of CME Holdings, the members agreed to split their CME Inc. Class B shares into two parts: an equity component and a membership interest. (Id.) The equity component was divided into one Class B share and a number of Class A shares, both in CME Holdings. (Id.) For example, if a member held one Series B-1 Class B share in CME Inc., that member would receive one Class B CME Holdings share and 1,799 Class A CME Holdings shares. (Id.)

The new Class B shares in CME Holdings were linked to CME Inc. memberships: for each CME Inc. membership the member was given—and required to hold—one Class B share in CME Holdings. (See id. ("No membership in our exchange may be transferred without the simultaneous sale of the associated Class B share."); Docket No. 1-2 at PageID 58 (CME Group certificate of incorporation).) But, critically, the CME Inc. membership was distinct from the CME Holdings Class B share. (CME Holdings Form S-4/A ("Membership interests associated with the Class B shares of CME [Inc.] will be retained by the holders of such shares and maintained at CME [Inc.], and will not be part of or evidenced by the Class B stock in CME Holdings." (emphasis added)).)

In the end, in exchange for relinquishing their membership in the old Chicago Mercantile Exchange, the members received:

- A membership in CME Inc., which contained the trading privileges and gave access to the trading floor.
- One linked, but distinct, Class B share in CME Holdings.

- Class A shares in CME Holdings.[1]

(See id.; see also CME Holdings, Current Report (Form 8-K) (Dec. 4, 2001).)

The demutualization process, by design, involved the members relinquishing their ownership and control of the exchange. Instead of control in the new company, the members would have only certain limited "core rights." Accordingly, the CME Holdings Certificate of Incorporation was amended and restated to include the "core rights" for members of CME Inc. as part of the demutualization process. (See CME Holdings Form S-4/A; see also CME Holdings, Current Report (Form 8-K, Ex. 3.1) (Dec. 3, 2001).) Among them are the two membership rights of the putative CME Inc. class members that Plaintiffs allege were violated here: "trading floor access rights and privileges granted to members of the Exchange" and "eligibility requirements for any Person to exercise any of the trading rights or privileges of members in the Exchange." (Id.; see Compl. ¶ 97 (singling out those two rights).) Although contained in the CME Holdings Certificate of Incorporation, the "core rights" are limited to CME Inc. members, as the Certificate of Incorporation defines the term "the Exchange" as CME Inc. (CME Holdings, Current Report (Form 8-K, Ex. 3.1) (Dec. 3, 2001).)

In 2002, Class A shares in CME Holdings were offered to the public in an initial public offering ("IPO"), and have been publicly traded ever since. (See CME Group, Annual Report (Form 10-K) (Mar. 3, 2014).) Following the IPO, CME Holdings Class A shares owned by the former members in the old Chicago Mercantile Exchange were subject to transfer restrictions, but for periods ranging only from six to eighteen months. (See CME Group, Amendment No. 7 to Form S-1) (Dec. 5, 2002).) Thus, for the past decade the CME Inc. members have been able to sell these shares and, thus, monetize their prior ownership in the exchange. As of February 12,

[1] As discussed below, as a result of the merger with the CBOT Holdings, Inc., CME Holdings became CME Group. (See CME Group, Current Report (Form 8-K) (July 17, 2007).)

2014, there were over 335 million outstanding shares of CME Group Class A Stock, representing the publicly traded equity of the company. (See CME Group, Annual Report (Form 10-K) (Mar. 3, 2014).) In contrast, there are only 3,138 outstanding shares of CME Group Class B stock, which, as noted, are linked to membership in CME Inc. (Id.)

B. Board of Trade of the City of Chicago Demutualizes In 2005

Like the old Chicago Mercantile Exchange, the Board of Trade of the City of Chicago was a member-owned mutual exchange until it demutualized in 2005. (CBOT Holdings, Inc., Current Report (Form 8-K) (Apr. 22, 2005).) Through the demutualization, the not-for-profit entity was converted into CBOT Holdings, Inc. ("CBOT Holdings"), a for-profit holding company, and CBOT, Inc. (now CBOT), a nonstock, exchange subsidiary of CBOT Holdings. (Id.) As part of this process, the old member-owners received a combination of Class A shares in CBOT Holdings and a Class B membership in CBOT. (Id.; see also CBOT Holdings, Special Financial Report (Form 10-Q/A) (Sept. 8, 2005).) Immediately following the demutualization, the CBOT Holdings Class A shares were subject to trading restrictions ranging from six to eighteen months. Those restrictions expired in advance of the CBOT Holdings merger with CME Holdings (see below) thereby delinking a CBOT Class B membership ("CBOT membership") from any shares of CBOT Holdings. (See CBOT Holdings, Amendment No. 3 to Registration Statement (Form S-1/A) (Sept. 26, 2005).)

Similar to CME Holdings, CBOT amended and restated its Certificate of Incorporation as part of its demutualization to set forth certain limited rights associated with membership in CBOT. (See CBOT Holdings, Special Financial Report (Form 10Q/A) (Sept. 8, 2005) (stating that the Class B memberships "entitled the holder to certain trading rights and privileges at CBOT").) CBOT members, by virtue of their membership, were entitled to "trading rights and privileges . . . on the open outcry exchange system of [CBOT] or any electronic trading system

maintained by [CBOT]." (CBOT Holdings, Amendment No. 13 to Form S-4 Registration Statement (Form S-4/A) (Feb. 14, 2005) ("CBOT Holdings S-4/A") (Art. 4(D)(f)).) In addition, B-1 and B-2 members—not all CBOT members as Plaintiffs claim—were given additional rights, some of which are nearly identical to those provided to the CME Inc. members (compare CME Holdings, Current Report (Form 8-K, Ex. 3.1) (Dec. 3, 2001) ("Core Right" (4)), with CBOT Holdings S-4/A (Art. IV(D)(2)(b)(3))); others, however, are unique to a CBOT B-1 or B-2 membership. (See CBOT Holdings S-4/A (Art. IV(D)(2)(b)(2)).)[2] These membership rights are the rights of the putative CBOT members that Plaintiffs allege were breached.

C. CME Holdings And CBOT Holdings Merge In 2007 To Form CME Group

In 2007, CME Holdings merged with CBOT Holdings. The combined entity was renamed CME Group. As part of the merger, each share of CBOT Holdings Class A stock was converted into the right to receive 0.375 shares of CME Group Class A stock, and the CBOT Holdings Class A shares were delisted. (See CME Group, Current Report (Form 8-K) (July 17, 2007).) In addition, the amended and restated Certificate of Incorporation for CBOT specified that after the merger the entity's capital structure would consist of a single Class A membership, owned by CME Group, and multiple Class B memberships, representing the membership rights in the CBOT exchange. (See Docket No. 1-2, at PageID 64-65.) Finally, the post-merger certificates of incorporation for CME Group and CBOT restated the respective limited remaining membership rights discussed above for the CME Inc. and CBOT members.

D. Plaintiffs' Complaint

In January 2014, the three named plaintiffs filed this lawsuit against CME Group and CBOT claiming to represent a putative class comprising "members of CME [Inc.] and CBOT."

[2] It is not surprising that the B-1 and B-2 members were given some nearly identical rights to the CME Inc. members as the rights provided to the latter had been made public by this time.

(Compl. ¶ 2.) Their complaint seeks three forms of relief, all premised on alleged breaches of the membership rights held, separately, by CME Inc. members and CBOT members. Resolution of this dispute will require a court to determine whether there has been a breach of contract between CME Group and the CME Inc. members and, separately, whether there has been a breach of contract between CBOT and the CBOT members.

Thus, the key facts to understand are: (1) the membership rights alleged to have been breached in this case are purely contractual; (2) the rights are distinct between the CME Inc. members and the CBOT members, in that they are contained in separate certificates of incorporation; (3) CME Inc. members hold Class B shares of CME Group, but those shares do not contain the membership rights allegedly breached; and (4) CBOT members do not (by virtue of their membership) hold any shares of CME Group, or any other entity.

ARGUMENT

I. CAFA'S INTERNAL AFFAIRS EXCEPTION DOES NOT APPLY

A. This Action Does Not Relate To CME Group's Or CBOT's Internal Affairs

The internal affairs or corporate governance exception, 28 U.S.C. §§ 1332(d)(9)(B) & 1453(d)(2), does not apply because this case does not relate in any way to CME Group's or CBOT's corporate governance. See LaPlant v. Nw. Mut. Life Ins. Co., 701 F.3d 1137, 1139-40 (7th Cir. 2012). In LaPlant, the Seventh Circuit explained that the internal affairs exception applies when the claim (1) relates to "matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders," and (2) cannot be resolved without recourse to a state's corporate law. Id. (internal quotation marks and citation omitted). Here, Plaintiffs' claim fails to satisfy either requirement.

This action does not involve the identity or authority of CME Group's or CBOT's officers or directors, and is not a lawsuit by shareholders qua shareholders (i.e., equity holders):

- As for the owners of the CME Inc. memberships, these individuals are not suing in their capacity as shareholders. While they may own a CME Group Class B share, they also own a membership in CME Inc. and it is solely as members of that subsidiary that they have the "core rights" including "trading floor access rights and privileges" at issue here—as was made clear in the demutualization that membership interests "will not be part of or evidenced by the Class B stock." (See CME Holdings Form S-4/A; see also Docket No. 1-2, at PageID 56 (defining "Core Rights" to include "trading floor access rights and privileges granted to members of [CME Inc.]").)

- As for the owners of the CBOT memberships, they are not shareholders at all: they do not own shares in CBOT—instead, they solely own memberships—and what they own does not give them the right, for example, "to receive any [] dividend or other distribution" from CBOT. (Id. at PageID 65; see also Section II.A below). Moreover, there is no requirement at all that CBOT members own any shares of CME Group, or any other entity, and indeed Plaintiffs' filings make clear that many do not. (See Docket No. 29-2, at PageID 315.) Thus, their "core rights" at issue in this case derive solely from their status as CBOT members.

Plaintiffs' own complaint makes clear that this is nothing more than a breach of contract action. In the complaint, Plaintiffs refer to their contract rights and/or the alleged breach of those rights no less than 25 times;[3] indeed, the first purportedly common question of law and fact listed is "[t]he existence and meaning of the Class B Plaintiffs' contractual rights." (Id. ¶ 29(a).)

In their remand motion, however, Plaintiffs attempt to paint a very different picture of this case as one involving aggrieved shareholders raising claims relating to "Defendants' internal affairs and governance." (See Pls.' Corrected Memorandum in Support of Remand, at 2 (Docket No. 29; "Pl. Br.").)[4] Plaintiffs' about-face is at odds not only with the facts of this case but also

[3] See, e.g., id. ¶¶ 2 ("This is a breach of contract action . . . based on CME [Group]'s decision to fundamentally change the trading rights and privileges afforded to the Class B Plaintiffs, in violation of contractual obligations under which any such change by CME [Group] required the Class B Plaintiffs approval."), 7 ("As a result of the breach of contract alleged herein."), 10 ("CME [Group]'s ongoing breach of its contractual obligations to the Class B Plaintiffs."), 41 ("In seeking its members' approval of its demutualization plan, and in the corporate contractual documents memorializing the demutualization."), 89 ("The Class B Plaintiffs have suffered enormous damages as a result of the breaches of CME [Group]'s contractual obligations alleged above.").

[4] See also, e.g., id. at 5 ("[T]his case implicates the Class B Plaintiffs' right to vote and approve certain matters that affect their core rights as Class B shareholders/members."), 12 ("Because the single

(cont'd)

the law of this Circuit. In LaPlant, the Seventh Circuit rejected a similar attempt to dress up a simple breach of contract claim as one involving the defendant's internal affairs. 701 F.3d at 1141-42. There, the plaintiffs-annuitants filed a complaint in state court challenging the method the defendant insurance company had used to calculate annual dividends. Id. at 1138. The defendant removed under CAFA; and plaintiffs sought remand, arguing that the internal affairs exception applied as they were owners of the defendant and "ha[d] an ownership interest in [the defendant's] governance and profits." Id. at 1138-39. In reversing the district court's decision to grant remand, the Seventh Circuit concluded that the internal affairs exception did not apply because "[t]he suit does not involve the identity or authority of the firm's officers or directors, and the annuitants are not shareholders." Id. at 1140. Plaintiffs, the court explained, brought a case about contractual payments and thus were "entitled to be paid, not to a role in Northwestern Mutual's corporate governance." Id.

For purposes of their claims in this case, Plaintiffs are no more shareholders than were plaintiffs in LaPlant. As set out above, Plaintiffs are suing as members of CME Inc. and CBOT "to enforce their contractual rights [in their respective contracts] and recover money damages for the losses already suffered." (Compl. ¶¶ 13, 77, 100-01.) The relief sought is only for that alleged breach of Plaintiffs' contractual rights as members. (See id. at 38.) Resolution of this claim does not in any way require recourse to corporate law. "This is a contract case, not a corporate-governance case," and basic contract law concepts of interpretation and what constitutes a breach will determine the outcome here. LaPlant, 701 F.3d at 1140-41; see also Nano-Proprietary, Inc. v. Canon Inc., No. A-05-CA-258-SS, 2006 WL 6058423, at *5 (W.D.

(cont'd from previous page)
claim in this action involves a claim that relates to rights, duties, and obligations of CME [Group] Class B shares . . . ."), 17 (stating that this action should be remanded as it "solely involves a claim that relates to rights, duties and obligations relating to a security").

Tex. Nov. 14, 2006) ("The making and breaching of a contract is not a matter of internal corporate governance, but 'a corporate act of a sort that can be likewise done by an individual.'" (citation omitted)), aff'd, 537 F.3d 394 (5th Cir. 2008).[5]

Plaintiffs' reference to their "voting rights" under the CME Group and CBOT certificates of incorporation does not change the fact that the resolution of this case does not require recourse to corporate law. Plaintiffs' "voting rights," whatever they may be, are irrelevant to resolving their breach of contract claim or awarding the relief that they seek. Plaintiffs do not seek to compel CME Group or CBOT to hold a vote, but only to pay damages for what they view as actions contrary to their respective contractual rights as members in CME Inc. and CBOT. See id. (rejecting defendant's argument that because the case involved a question related to shareholder voting the internal affairs doctrine applied on the grounds that the lawsuit was "not a dispute between shareholders over their voting rights, but a claim for fraud and breach of contract between two companies dealing at arms' length.'").

Plaintiffs also attempt to bolster the new paradigm of themselves as aggrieved shareholders by trying to describe their claim as one arising in the context of the demutualizations. (See Pl. Br. at 7.) The error of this argument is demonstrated by the case on which they rely. In Ormond v. Anthem, Inc., plaintiffs were former members who received cash in a demutualization. No. 1:05-cv-1908-DFH-TAB, 2009 WL 3163117, at *3 (S.D. Ind. Sept. 29,

[5] As LaPlant is controlling authority in this circuit, Plaintiffs' reliance on Becher v. Northwestern Mutual Life Insurance Co., No. CV 10-6264 PSG (AGRx), 2010 WL 5138910 (C.D. Cal. Dec. 9, 2010), is unavailing. Plaintiffs' other cited cases are equally unhelpful because they involve claims by shareholders, whereas here Plaintiffs are suing either as CBOT members or in their capacity as CME Inc. members. See, e.g., Wolfe v. Weiss, Nos. 1:12-CV-2776, 1:12-CV-2816, 2013 WL 591977, at *2 (N.D. Ohio Feb. 14, 2013) (minority shareholders sought to prevent go-private transaction by majority shareholders because the special committee of the board who approved the transaction were not as independent as required by articles of incorporation); Aboushanab v. Janay, No. 06 Civ. 13472(AKH), 2007 WL 2789511, at **1, 4 (S.D.N.Y. Sept. 26, 2007) (shareholders claimed company failed to make payments required by governing document when it transferred assets and business to another corporation).

2009). Suing about events that occurred during the demutualization, they claimed that they were injured because the defendant (1) allocated shares to "grandfathered groups that were not entitled to them," (2) set the IPO price too low, and (3) diluted the former members' ownership interest. Id. As part of assessing if a class could be certified, the court undertook a choice-of-law analysis, and concluded that pursuant to Indiana law the internal-affairs doctrine applied:

> All of plaintiffs' remaining claims [negligence, breach of fiduciary duty, and breach of contract] are closely analogous to claims by shareholders against a corporation. Plaintiffs were policyholders in a mutual insurance company who then received compensation as the mutual company went through the legal alchemy of demutualization and was transformed into a publicly traded stock corporation.

Id. at *9. Thus, Ormond was focused on events that occurred before and during the demutualization—the price of the IPO and the number of shares to sell in the IPO, which are unmistakably tied to the demutualization process. See id. at **2-3.

Here, on the other hand, the separate demutualizations of the Chicago Mercantile Exchange and the Chicago Board of Trade are merely the historical "background" of this case. (Pl. Br. at 6.) Nothing about Plaintiffs' claim is related to either demutualization. Instead, the Complaint is challenging an action that occurred in 2012, more than a decade after the Chicago Mercantile Exchange demutualized in 2000, and nearly one since the Chicago Board of Trade demutualized in 2005. (Id. ¶ 6.) Plaintiffs do not contend that they were harmed by or through the demutualizations themselves, but, rather, allege that the contract rights they received were subsequently breached.. (See id. ¶ 58 ("For nearly a decade after demutualization, CME fulfilled its contractual obligations it undertook and confirmed at the time of the demutualization.").)

There is another important distinction between Ormond and this case: Plaintiffs are not seeking to represent a purported class of individuals and entities who were members of the old Chicago Mercantile Exchange or Board of Trade at the time of their respective demutualizations.

Instead, their purported class comprises individuals and entities who today own CME Inc. or CBOT memberships, and at least some of those individuals and entities were not members of either exchange at the time of demutualization. (See Pl. Br. at 1.) Thus, this case, unlike Ormond, is not about a demutualization and does not arise from the parties' relationship in the demutualization process. Instead, the claims at issue here are enforced through breach of contract claims, unrelated to corporate law and outside of the internal affairs exception.

B. The Plain Text Of The Exception Also Makes Clear It Does Not Apply Here, As Plaintiffs' Claims Involve Multiple Corporations

The internal affairs exception is also inapplicable in this case because, as its plain text makes clear, it only applies where the class action "solely involves a claim . . . that relates to the internal affairs of a corporation." 28 U.S.C. § 1332(d)(9)(B) (emphasis added); accord id. § 1453(d)(2). Although Plaintiffs' motion to remand now attempts to portray this case as involving a single claim about the rights, duties, and obligations related solely to "CME [Group] Class B shares" (Pl. Br. at 11), that characterization is flat wrong. Their complaint actually involves two breach of contract claims against two companies: one of which relates to CME Group, while the other relates to CBOT. As to CBOT members, they do not hold a Class B share of CME Group, and there is no requirement that they hold a share or of any other entity. Even as to the CME Inc. members, this case does not involve their Class B share.

In fact, this case is about the alleged breach of contractual rights contained in two separate certificates of incorporation, which rights are distinct and were created at different points in time by the two different companies.[6] Plaintiffs' complaint is not solely about one corporation and, thus, the internal affairs exception cannot apply See, e.g., Tuttle v. Sky Bell

[6] Despite their arguments now, Plaintiffs' complaint concedes this distinction. (See id. ¶ 3 (stating that their claims are based on two certificates of incorporation that involve "similar" contractual rights).)

Asset Mgmt., LLC, No. C 10-03588 WHA, 2011 WL 208060, at *5 (N.D. Cal. Jan. 21, 2011) (rejecting plaintiffs' motion to remand on the grounds that the internal affairs exception did not apply in a case with "claims against numerous defendants . . . [that] cannot be said to relate solely to the inter-relationship between one company's general partner and its limited partners" (internal quotation marks omitted)).[7]

II. CAFA'S SECURITIES EXCEPTION DOES NOT APPLY

A. This Action Does Not Solely Involve A Claim About The Rights, Duties And Obligations Related To The CME Group Class B Shares

Plaintiffs' erroneous belief that this action solely involves a claim about the rights related to the CME Group Class B shares also leads them to mistakenly argue that CAFA's securities exception in 28 U.S.C. §§ 1332(d)(9)(C) & 1453(d)(3) provides a basis for remand. (See Pl. Br. at 11-12.) As noted above, this belief is based on a fundamental misunderstanding about the relationship between CME Group and the CBOT members. What CBOT members own are their CBOT memberships. They do not hold a linked CME Group Class B share, and there is no requirement that they hold any other kind of share in CME Group or any other entity.[8] Thus, for a significant portion of Plaintiffs' putative class, this action implicates only their CBOT memberships and the trading rights and privileges established pursuant to CBOT's Certificate of Incorporation. It is therefore impossible that this action solely involves a claim about rights and duties related to the CME Group Class B shares.

Similarly, Plaintiffs' breach of contract claim on behalf of the CME Inc. members relates

[7] Plaintiffs' statement that their claim "'arise[s] under' and 'by virtue of' Delaware law" is not an argument at all, but simply a restatement of fact that if the internal affairs doctrine applies, it requires a court to apply the law of the corporation's state of incorporation. (See Pl. Br. at 8-9.) The internal affairs exception does not apply and, thus, standard Illinois choice-of-law rules will govern in this matter.

[8] It is of course possible that a CBOT member could also be a member of CME Inc., and thus hold a CME Group Class B share through that separate membership. But as a CBOT member, there is no tie to the ownership of any share of any company.

to those putative class members' rights as CME Inc. members, not CME Group Class B shareholders. In their Complaint, Plaintiffs focus on two of the "core rights" in the CME Group certificate of incorporation in particular: "the trading floor access rights and privileges granted to members of [CME Inc.]" and "the eligibility requirements for any Person to exercise any of the trading rights or privileges of members in [CME Inc.]." (Docket No. 1-2, at PageID 56; see Compl. ¶ 97.) As noted above, these rights are assigned to CME Inc. members. (Docket No. 1-2, at PageID 57-58.) This fact is underscored by the CME Holdings S4/A filed in connection with the demutualization process for the Chicago Mercantile Exchange, which stated that "[m]embership interests associated with the Class B shares of CME [Inc.] will be retained by the holders of such shares and maintained at CME [Inc.], and will not be part of or evidenced by the Class B stock in CME Holdings." Therefore, their claim is based on their rights as CME Inc. members and not for deprivation of their rights as CME Group Class B shareholders. See Estate of Pew v. Cardarelli, 527 F.3d 25, 27, 31-32 (2d Cir. 2008) (vacating remand pursuant to the securities exception on the grounds while the money-market certificates "create[d] rights in the holders to a rate of interest and to principal repayment at certain dates," "the present suit does not 'relate [ ] to' [or enforce] those rights; rather, it is a state-law consumer fraud action alleging that [defendant] fraudulently concealed its insolvency when it peddled the Certificates" (second alteration in original)).[9]

B. CBOT Memberships Are Not Securities

1. CBOT Memberships Are Not Investment Contracts

Plaintiffs argue in the alternative that CBOT memberships are securities. (See Pl. Br. at

[9] Greenwich Financial Services Distressed Mortgage Fund 3 LLC v. Countrywide Financial Corp., 603 F.3d 23, 29 (2d Cir. 2010) and Rubin v. Mercer Insurance Group, Inc., No. 10-6816 (MLC), 2011 WL 677466, at *1 (D.N.J. Feb. 15, 2011), both of which Plaintiffs cite, are distinguishable from this case: in both, plaintiffs sought redress for a breach of their rights as holders of a security.

12-17.) Plaintiffs first assert that CBOT memberships are investment contracts. (See Pl. Br. at 13-16.) Plaintiffs rely on the test in Securities & Exchange Commission v. W.J. Howey Co., which provides that an instrument is an investment contract if it is "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." 328 U.S. 293, 298-99 (1946). The Seventh Circuit has explained that under Howey three elements are required to establish that an instrument is an investment contract: there must be "(1) an investment of money, (2) in a common enterprise, (3) with the expectation of profits produced solely by the efforts of others." Stenger v. R.H. Love Galleries, Inc., 741 F.2d 144, 146 (7th Cir. 1984) (rejecting contention that investment contract existed). For a common enterprise to exist, "multiple investors must pool their investments and receive pro rata profits"—in other words, there must be "horizontal" commonality. Id.; see also, e.g., Wals v. Fox Hills Dev. Corp., 24 F.3d 1016, 1017-18 (7th Cir. 1994).

In Wals, the Seventh Circuit concluded that a condominium time-share purchase and rental agreement was not an investment contract. Id. at 1017. In addition to buying a time-share from the developer, the purchasers entered into two additional optional agreements with the developer, which permitted them to swap their week of the time-share for a week at another time of the year, and to allow the developer to rent their week for a cut of the rental income. Id. The court determined that the time-share and associated agreements were not an investment contract because there was no horizontal commonality amongst the time-share owners, as the purchasers "did not receive an undivided share of some pool of rentals or profits." Id. at 1019.

Here, as in Wals, there is no pool of profits in CBOT that are distributed to CBOT members. Since demutualization, CBOT members have had no right to receive dividends or

distributions from CBOT.[10] (See CBOT Holdings S-4/A; Docket No. 1-2, at PageID 65.) Instead, a CBOT member's profit on a membership comes from leasing it (as in Wals), selling it (again, as in Wals), or using it to engage in trades to "profit through trading activity" (as Plaintiffs concede). (See Pl. Br. 14.)

Further, Plaintiffs' argument that the focus should be on the fact that "[t]he price that a membership may fetch though sale or lease depends upon the 'efforts of others'" ignores that in Wals—where what the time-share owner could receive from renting was equally based on the efforts of others (the developer and property manager)—the court held there was no pooling of profits, horizontal commonality, or common enterprise. (Pl. Br. at 14); Wals, 24 F.3d at 1019. Moreover, Plaintiffs can derive significant profits through their own trading activity, even if they are individually "separate and singular transactions": indeed, the complaint states that they are bringing this lawsuit to protect their ability to exercise their own alleged trading privileges. (E.g., Compl. ¶¶ 5, 82; see Pl. Br. at 14.)

Plaintiffs place great weight on an unpublished New York state trial court decision—Wey v. New York Stock Exchange, Inc., No. 0602510/2005, 2007 WL 4101655 (N.Y. Sup. Ct. Nov. 7, 2007). But that case involved events occurring before an exchange demutualized. See 15 Misc. 3d 1127(A), at *2 (N.Y. Sup. Ct. Apr. 10, 2007; prior opinion). Wey, therefore, provides one state trial court judge's view of whether, under federal law, a seat on a mutual exchange is an investment contract. CBOT, however, is not a mutual exchange and has not been since it demutualized nine years ago. CBOT is owned by CME Group, not the CBOT members. Wey is simply inapposite and Plaintiffs cite no cases finding that a seat on a demutualized exchange is

[10] Plaintiffs' focus on the pre-demutualization Board of Trade is simply irrelevant here as the sole question raised by this case is whether the current members, post-demutualization, are part of a common enterprise. (See, e.g., Pl. Br. at 13.)

an investment contract.[11]

2. CBOT Memberships Are Not Securities Based On A Right To Trade Futures And Options Contracts

Alternatively, Plaintiffs assert that the CBOT memberships are securities because CBOT members can trade in a variety of futures and options that they claim are "security futures," a type of instrument enumerated in the definition of "security" in 15 U.S.C. § 77b(a)(1). And because a security includes "the right to purchase" instruments enumerated in the definition of a "security" a CBOT membership is therefore a security. (Pl. Br. at 16-17.) Plaintiffs argument is based on two fundamental errors.

First, of the four futures and options singled by Plaintiffs, two—U.S. Treasury Bond futures and options—are not "security futures" in 15 U.S.C. § 78c(a)(55). Section 78c(a)(55)(A), in relevant part, provides that a contract for sale of future delivery of "an exempted security under paragraph (12) of this subsection as in effect on January 11, 1983" (i.e., 15 U.S.C. § 78c(a)(12)) is not a "security future." As of January 11, 1983, a U.S. Treasury Bond was an exempted security under 15 U.S.C. § 78c(a)(12).[12] With regard to the two other futures and

---

[11] The other cases Plaintiffs cite are equally unhelpful as they either answered the question of whether something with a fixed return could be an investment contract, or decided that the instrument in question was not an investment contract. See Sec. & Exch. Comm'n v. Edwards, 540 U.S. 389 (2004) (sale-and-leaseback of public payphones with fixed return was an investment contract); United Hous. Found., Inc. v. Forman, 421 U.S. 837 (1975) (shares in Co-op City, New York, entitling shareholders to lease apartments there, were not investment contracts). Moreover, Plaintiffs' attempt to distinguish Ferreri v. Goldberg Securities Inc., CIV. A. No. 88-4041, 1989 WL 11073 (E.D. Pa. Feb. 7, 1989)—which concluded that a seat on a mutual exchange was not a security—from Wey as "unpublished, out-of-circuit, and twenty-five years old" is unavailing. (Pl. Br. at 15 n.10.) Ferreri is no more unpublished than Wey; neither was decided by a court in this Circuit; and Ferreri is actually more recent than the cases from 1848, 1853, 1939, 1941, 1946, 1967, 1975, 1982, and 1987 that Plaintiffs cite. (See id. at iii-iv.)

[12] See Pub. L. No. 94-29, § 3(3), 89 Stat. 97 (1975) (amending 15 U.S.C. § 78c(a)(12) to state, in pertinent part, "The term 'exempted security' or 'exempted securities' includes securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States"). Subsequent amendments to 15 U.S.C. § 78c before January 11, 1983 did not change that U.S. government obligations are exempted securities. See Securities Investor Protection Act Amendments of 1978, Pub. L. No. 95-283, *(cont'd)*

options—Single Stock Futures and Narrow Based Stock Index Futures—Plaintiffs provide no evidence—because there is none—that they are actually traded on CBOT.[13]

Second, even if these futures or options were "securities," the "right to trade a security" on the exchange does not derive from owning a CBOT membership.[14] Any member of the public who establishes the appropriate account can execute trades on CBOT. A CBOT member by virtue of his or her membership can also engage in certain activities not available to the public, e.g., access to the trading floor of the exchange. However, Plaintiffs are simply wrong that a CBOT membership is what provides the "right to purchase" on that exchange.

And even if Plaintiffs' argument wasn't factually incorrect, it is also contrary to established Seventh Circuit law. In Board of Trade of City of Chicago v. Securities & Exchange Commission, the Seventh Circuit interpreted the phrase Plaintiffs rely upon here—"warrant or right to subscribe to or purchase"—in determining if the SEC had authority to approve a rule permitting trading in a particular type of option. 677 F.2d 1137, 1139, 1155-56 (7th Cir.), judgment vacated as moot, 456 U.S. 1026 (1982). The option at issue was an exchange-formed off-set option in a type of note (GNMA certificates) that would not have required the option's seller or buyer to "ever own or deliver any GNMA's in order to profit from the option transaction." Id. at 1139, 1155. In concluding that this type of option was not a "warrant[] or

---

(cont'd from previous page)
§ 16, 92 Stat. 249 (1978); Small Business Investment Incentive Act of 1980, Pub L. No. 96-477, Title VII, § 702, 94 Stat. 2275 (1980); Pub. L. No. 97-303, § 2, 96 Stat. 1409 (1982).

[13] In addition, Plaintiffs only argue that four out of the five classes of CBOT memberships qualify as securities under this theory. (Compare Pl. Br. at 16-17 (referring to Class B-1 through B-4 memberships), with Compl. ¶ 25 (referring to Class B-1 through B-5 memberships).) As Plaintiffs offer no support for their contention that all CBOT memberships are securities under this theory, this argument fails for this reason as well.

[14] Under Plaintiffs' logic, all sorts of simple contractual agreements would themselves be "securities." Consider an agreement for an online brokerage account, which provides the right to trade securities over a computer. No reasonable person would consider that agreement itself a "security."

right[] to subscribe or purchase" and thus not a security, the court stated that:

> Ordinarily, warrants or rights are issued in connection with a transaction in which there is a genuine probability that the subscriber or purchaser will exercise the option because of a special interest in the underlying security itself. In the proposed market for GNMA options, on the other hand, the interest more often would be in the price of the underlying security and the identity of the security would be secondary. The usual warrant is issued with bonds and shares of stock, for example, in connection with a corporate reorganization or merger, or as an incentive to employees of the company whose stock underlies the warrant. The right to subscribe properly refers to the right given by an issuer to its stockholders to buy additional stock . . . .

Id. at 1156 (internal quotation marks and citations omitted).[15] In other words, the court tied the question of whether a "right to subscribe to or purchase" a security is itself a security to whether the identity of the underlying security would be important to the purchaser of the "right to subscribe to or purchase." If it was not, the instrument was not a security.

Here, a CBOT membership does not relate in any way to a specific security nor does it vest in a member the right to trade in a particular security at a given point in time in the future. Thus, for this reason as well, CBOT Memberships are simply not securities.

III. CAFA'S HOME-STATE EXCEPTION DOES NOT APPLY BECAUSE PLAINTIFFS HAVE NOT PROVEN THAT AT LEAST TWO-THIRDS OF THE PUTATIVE CLASS ARE ILLINOIS CITIZENS

Plaintiffs' argument that more than two-thirds of the putative class are Illinois citizens and, therefore, that the "home-state" exception in 28 U.S.C. § 1332(d)(4)(B) applies, is based on a fundamental misunderstanding of the law governing citizenship and a flawed statistical analysis. Plaintiffs contend to have met their burden of establishing that this exception applies

[15] The judgment in Board of Trade was vacated as moot "[u]pon consideration of the suggestions . . . filed by petitioners." 459 U.S. 1026. Nevertheless, this case has continued to be cited, including by the Seventh Circuit itself. See Bd. of Trade of City of Chi. v. Sec. & Exch. Comm'n, 187 F.3d 713, 716 (7th Cir. 1999). At least one court in this district has cited it for the proposition for which it is cited here—its construction of what constitutes a "warrant or right to subscribe to or purchase." See Abrams v. Oppenheimer Gov't Sec., Inc., 589 F. Supp. 4, 7-8 (N.D. Ill. 1983), aff'd, 737 F.2d 582 (7th Cir. 1984).

by submitting a report by Dr. Renzo Comolli, which alleges that "74.9% of putative Class members are citizens of Illinois." (See Pl. Br. at 18.) Plaintiffs argue that this submission thereby shifts the burden to CME and CBOT to "disprove those persons' intent to remain in Illinois." (Id.)[16] Plaintiffs are wrong legally, and factually.

To begin with, Dr. Comolli's conclusions rely upon an erroneous instruction that "an individual or trust member [of the putative class] is a 'citizen' of Illinois when the individual or assumed trustee is found to currently reside there." (See Docket No. 29-2, at PageID 476.) The law of the Seventh Circuit could not be clearer: "citizenship depends upon domicile, not residence." Miller v. Fryzel, 499 F. App'x 601, 603 (7th Cir. 2013); Heinen v. Northrup Grumman Corp., 671 F.3d 669, 670 (7th Cir. 2012) ("[C]itizenship . . . depends on domicile . . . . An allegation of 'residence' is therefore deficient."). Unlike residence, determining one's domicile requires a court to consider the "totality of the evidence," including:

> [W]here the person votes; . . . where the individual pays taxes; the location of real and personal property; the state that issued the party's driver's license; the location of bank accounts, social clubs and church memberships; the location of business and employment interests; the permanence of the living arrangement; and the location of the individual's physician, lawyer, accountant and dentist.

Viacom Inc. v. Flynn, No. 96 C 3131, 1997 WL 97697, at *1 (N.D. Ill. Feb. 27, 1997) (defendant was a citizen of Florida, not Illinois, based on the totality of the evidence, even though he spent more time in Illinois and had purchased a condominium in Illinois after purchasing his house in

[16] Plaintiffs appear to have latched on to the "may create" language from Phillips v. Wellpoint, Inc., No. 10-cv-357 JPG, 2010 WL 4877718, at *4 (S.D. Ill. Nov. 23, 2010), for the proposition that once they establish residency, the burden of proof shifts to Defendants to disprove an individual's intent to remain in Illinois. (Pl. Br. at 19.) As discussed below, this conclusion is belied by the second half of the sentence in Phillips, and by Phillips' ultimate holding—neither of which Plaintiffs included in their brief. The Phillips court's conclusion (that the burden is always with the plaintiff) is consistent with In re FedEx Ground Package System, Inc. Employment Practices Litigation, where that court held that "[a] party seeking the benefit of § 1332(d)(4)(B) bears the burden to show that its provisions apply. [Defendant] is under no obligation to show the putative class members are made up of less than two-thirds citizens of [the alleged home state] at this time." No. 3:05MD529 RM, 2006 WL 148945, at *3 (N.D. Ind. Jan. 13, 2006), aff'd sub nom. Hart v. FedEx Ground Package Sys. Inc., 457 F.3d 675 (7th Cir. 2006).

Florida); see also Heinen, 671 F.3d at 670 (plaintiff was domiciled in Massachusetts as he had a home there, was registered to vote there and his driver's license was issued there). Plaintiffs' instruction to Dr. Comolli makes clear that he, and they, failed to look at any items beyond the putative class members' addresses. This alone calls into question Plaintiffs' conclusions regarding both the individual class members and the trusts, which collectively make up over 85% of the class members sampled. See generally In re Sprint Nextel Corp., 593 F.3d 669 (7th Cir. 2010); Phillips, 2010 WL 4877718.

In Sprint, plaintiffs sought remand under the home state exception of a putative class consisting of individuals who (1) had a Kansas cell phone number and (2) received their cell phone bill at a Kansas mailing address. 593 F.3d at 671. In support of their motion to remand, plaintiffs argued that they had defined the class in such a way as to make it "more likely than not that two-thirds of the putative class members are Kansas citizens." Id. at 673. The district court agreed and granted remand. Id. at 671-72. On appeal, however, the Seventh Circuit vacated the remand order. Id. Noting that the plaintiffs had submitted no supplemental evidence about citizenship, the court explained that the plaintiffs had not met their burden as their conclusions regarding the citizenship of the putative class members were nothing more than "[s]ensible guesswork." Id. at 674. While the court acknowledged that the guesswork was "based on a sense of how the world works," it went on to state that "[t]here are any number of ways in which our assumptions about the citizenship of this vast class might differ from reality." Id. Thus, the court concluded that a "court may not draw conclusions about the citizenship of class members based on things like their phone numbers and mailing addresses." Id.

Similarly, in Phillips, plaintiffs moved to remand a class action pursuant to the local controversy and home state exceptions. 2010 WL 4877718, at *2. Plaintiffs argued they had

met their burden by (1) explicitly limiting the class to "Illinois individual or group health insurance policyholders," each of whom had to be a resident of Illinois in order to obtain a policy, and (2) because of defendant's interrogatory responses indicating that nearly all policyholders had an Illinois billing address (though defendant explicitly stated they were not providing information about citizenship). Id. at *3. In denying plaintiffs' motion to remand, the court stated that plaintiffs had "mistakenly equate[d] residency to citizenship." Id. at *4. In dicta, the court then noted that "evidence of residency may create a rebuttable presumption of domicile and, by implication citizenship"; however, it then immediately concluded that sentence by stating that "the two are not one and the same." Id. Moreover, it held that plaintiffs' evidence did not satisfy their burden even though defendant submitted no evidence contradicting the fact that "virtually all" putative class members had Illinois billing addresses. Id. Citing Sprint, it explained that "any purported correlation between the mailing and billing address" of the putative class members "and their citizenship represents guesswork," insufficient to satisfy their burden Id.

Here, despite commissioning a report by an outside expert, Plaintiffs have ultimately done no more than the plaintiffs in Phillips and Sprint. After receiving the list of all individuals and entities that own seats on CME Inc. and CBOT, Plaintiffs' Counsel went to Westlaw People Search to attempt to match the individuals' and trustees' last known address revealed through the Westlaw search with the "home address" listed on the spreadsheet provided by CME Group and CBOT. (See Docket Nos. 31-1, 31-2, and 31-3; see also Hogan Decl. Ex. A.) Counsel then provided Dr. Comolli "with summary results" consisting of lists of Illinois and non-Illinois residents as determined by Counsel. (See Docket No. 29-2, at PageID 476.) Dr. Comolli then used just these findings regarding residency to conclude that the number of Illinois citizens among the individual putative individual and trust class members—and indeed among all

groups—was the same as the residency percentages provided by Counsel. (Id. at PageID 476-77.) This is precisely the type of "sensible guesswork" rejected by Sprint and Phillips.

Plaintiffs' Counsel will undoubtedly seek to distinguish Phillips and Sprint on the grounds that they also asked Dr. Comolli to compare the current address of those individuals and trusts believed to currently be Illinois residents with a 2010 list of CBOT members—not provided by Defendants—to determine how many had Illinois address in 2010 and 2014. But evidence of where putative class members lived four years ago is irrelevant to determining their citizenship now; all that matters is where they were citizens on the date Plaintiffs' complaint was filed. See 28 U.S.C. § 1332(d)(7); Phillips, 2010 WL 4877718, at *3 (explaining "'[c]itizenship of the members of the proposed plaintiff class shall be determined for purposes of [CAFA and exceptions therein] as of the date of the filing of the complaint'" (alterations in original)).

Moreover, as set out in the attached report by Dr. Bruce Spencer, the reliability and accuracy of the conclusions in Dr. Comolli's report are further undermined by a series of questionable assumptions and flawed methodology. (See Spencer Decl. Ex. A.) As Judge Posner explained in ATA Airlines, Inc. v. Federal Express Corp., whenever statistical analysis is presented in support of a party's position, the court has an obligation to ensure that the analysis is accurate and reliable. 665 F.3d 882, 889 (7th Cir. 2011). With regard to statistical samples, this means that a court must ensure not only that the analysis is sound, but that the confidence interval is meaningful. Id. at 894-96. Here, the cumulative effect of the errors discussed above and noted in Dr. Spencer's report make clear that Plaintiffs' have not met their burden of proving that more than two-thirds of the putative class are Illinois citizens.

IV. THE FACTORS IN CAFA'S DISCRETIONARY EXCEPTION DEMONSTRATE THAT THIS COURT SHOULD RETAIN JURISDICTION

Finally, Plaintiffs move for remand based on CAFA's discretionary exception, which

permits this Court, "in the interests of justice and looking at the totality of the circumstances, [to] decline to exercise jurisdiction . . . based on consideration of" six enumerated factors. 28 U.S.C. § 1332(d)(3). This exception is intended to "reserv[e] to the States primarily local matters," while letting "federal courts decide interstate cases of national importance." West Virginia ex rel. McGraw v. CVS Pharm., Inc., 646 F.3d 169, 178 (4th Cir. 2011) (internal quotation marks and citation omitted); see also Hart v. FedEx Ground Package Sys. Inc., 457 F.3d 675, 681 (7th Cir. 2006) (Section 1332(d)'s legislative history makes clear that its provisions "should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant"); S. Rep. No. 109-14, at 36 (2005) (stating that cases with "nationwide ramifications of the dispute and the probable interface with federal [] laws (even if claims are not directly filed under such laws)" should be heard in federal court).

This case unquestionably involves matters of national interest. As an initial matter, Plaintiffs' own filings make clear that they seek to represent a class that would contain members from across the United States and the world. Moreover, there is no doubt that the CME Group is a substantial institution in the global financial system. CME Group provides "the widest range of global benchmark products across all major asset classes" in the world. (See CME Group, Annual Report (Form 10-K) (Mar. 3, 2014).) It is an international marketplace—regulated by federal and foreign agencies—that is accessible twenty-four hours a day during the trading week to enable individuals and companies from around the world to efficiently manage their risks. (Id.)

Plaintiffs' attempt to paint this case as one in which the impacts will only be felt in Illinois. (See Pl. Br. at 22.) Plaintiffs' assertion is not credible, however, in light of the relief requested in their complaint. In addition to the "hundreds of millions of dollars" Plaintiffs seek in damages, they also ask for an injunction that would "compel [CME Group] to require [other

CME Group customers] to purchase or lease memberships from [Plaintiffs] in order to obtain the trading rights and privileges to which [Plaintiffs] are entitled, including the best and closest proximity to [CME Group's Globex electronic trading platform.]" (Compl. at 38.) Those "other customers" of course, could be located anywhere in the world, and thus Plaintiffs' complaint clearly raises issues that reach far beyond the borders of Illinois. This is precisely the type of case of "national importance" that CAFA intended to be heard in U.S. District Court.[17]

CONCLUSION

Wherefore, for the foregoing reasons, CME Group and CBOT respectfully request that this Court deny Plaintiffs' motion to remand (Docket No. 24).

Dated: April 28, 2014
Chicago, Illinois

Respectfully submitted,

/s/ Albert L. Hogan III

Albert L. Hogan III
Jerrold E. Salzman
Marcella L. Lape
Brian S. Wallach
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
155 North Wacker Drive
Chicago, Illinois 60606
(312) 407-0700
albert.hogan@skadden.com
jerrold.salzman@skadden.com
marcella.lape@skadden.com
brian.wallach@skadden.com

Matthew M.K. Stein (admitted pro hac vice)
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
500 Boylston Street
Boston, Massachusetts 02116
(617) 573-4800
matthew.stein@skadden.com

Counsel for Defendants
CME Group Inc. and the Board of Trade of the City of Chicago, Inc.

[17] At this point in time the second, third and fifth factors in 28 U.S.C. § 1332(d)(3) are at least neutral, if not favor exercising jurisdiction, for the reasons discussed above. Moreover, the fact that no prior class action has been filed asserting the same or similar claims is at worst neutral here as it neither favors nor counsels against this Court exercising jurisdiction.

CERTIFICATE OF SERVICE

Albert L. Hogan III, an attorney, hereby certifies that on April 28, 2014, he caused a true and correct copy of DEFENDANTS CME GROUP INC. AND THE BOARD OF TRADE OF THE CITY OF CHICAGO, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO REMAND to be served by the Court's ECF system on the following counsel of record:

Stephen E. Morrissey
Susman Godfrey LLP
1201 3rd Ave., Suite 3800
Seattle, WA 98101
(206) 446-1199
smorriessey@susmangodfrey.com

Stephen D. Susman
Robert S. Safi
Susman Godfrey LLP
1000 Louisiana, Suite 5100
Houston, TX 77002
(713) 651-9366
ssusman@susmangodfrey.com
rsafi@susmangodfrey.com

Trevor Porter Stutz
Susman Godfrey LLP
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067
(310) 789-3104
tstutz@susmangodfrey.com

Suyash Agrawal
Jeannie Young Evans
Agrawal Evans LLP
308 West Erie Street, Suite 502
Chicago, IL 60654
(312) 448-8800
suyash@agrawalevans.com
Jeannie@agrawalevans.com

Dated: April 28, 2014

/s/ Albert L. Hogan III
Albert L. Hogan III

Nikki Kustok

From: usdc_ecf_ilnd@ilnd.uscourts.gov
Sent: Monday, April 28, 2014 4:34 PM
To: ecfmail_ilnd@ilnd.uscourts.gov
Subject: Activity in Case 1:14-cv-01240 Langer et al v. CME Group, Inc. et al response in opposition to motion

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

United States District Court

Northern District of Illinois - CM/ECF LIVE, Ver 6,1

Notice of Electronic Filing

The following transaction was entered by Hogan, Albert on 4/28/2014 at 6:33 PM CDT and filed on 4/28/2014
Case Name: Langer et al v. CME Group, Inc. et al
Case Number: 1:14-cv-01240
Filer: CME Group, Inc.
The Board of Trade of the City of Chicago
Document Number: 38

Docket Text:
RESPONSE by CME Group, Inc., The Board of Trade of the City of Chicagoin Opposition to MOTION by Plaintiffs Lance R Goldberg, Sheldon Langer, Ronald M Yermack to remand [24] (Hogan, Albert)

1:14-cv-01240 Notice has been electronically mailed to:

Albert Lee Hogan , III ahogan@skadden.com, chdocket@skadden.com

Brian Sully Wallach brian.wallach@skadden.com, chdocket@skadden.com

Jeannie Young Evans jeannie@agrawalevans.com

Jerrold E. Salzman jesalzma@skadden.com, chdocket@skadden.com

Marcella Louise Lape marcella.lape@skadden.com, chdocket@skadden.com

Matthew M.k. Stein matthew.stein@skadden.com, mlcbos@skadden.com, tholden@skadden.com

Robert S. Safi rsafi@susmangodfrey.com, cgreer@susmangodfrey.com

Stephen D Susman ssusman@susmangodfrey.com, jmccrary@susmangodfrey.com

Stephen E. Morrissey smorrissey@susmangodfrey.com, nkustok@susmangodfrey.com, tdenio@susmangodfrey.com

Suyash Agrawal suyash@agrawalevans.com, suyash.agrawal@yahoo.com

Trevor Porter Stutz tstutz@susmangodfrey.com, lquenzel@susmangodfrey.com

1:14-cv-01240 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040059490 [Date=4/28/2014] [FileNumber=12962725-0] [4cdb0fec2b4482f2849171a69216f06201a16f6e332aee3fa51011fc459fe54e6ad7bf012efb63b924ea040856cbe88f8e1a68e4b18f9b852fd13a94021b920e]]