IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SHELDON LANGER, RONALD M. YERMACK, LANCE R. GOLDBERG, individually on behalf of themselves and all others similarly situated,	)	No. 2014-CH-00829
Plaintiffs,	)	Calendar 6
v.	)	
CME GROUP, INC., a Delaware Corporation; THE BOARD OF TRADE OF THE CITY OF CHICAGO, INC., a Delaware Corporation,	)	Hon. Celia G. Gamrath, Presiding
Defendants.	)	JURY TRIAL DEMANDED

SECOND AMENDED CLASS ACTION COMPLAINT[†]

Plaintiffs Sheldon Langer, Ronald M. Yermack, Lance R. Goldberg individually and as representatives of a class of certain Class B shareholders in defendant CME Group, Inc. ("CME") and certain Class B members of CME's subsidiary The Board of Trade of the City of Chicago, Inc. ("CBOT"), by and through their attorneys of record, bring this action against CME and CBOT for breach of contract and breach of the implied covenant of good faith and fair dealing. CME's Class B shareholders and CBOT's Class B members are collectively referred to as the "Class B Plaintiffs"; CME and CBOT are collectively referred to as "CME" or "Defendants." In support of their claim for breach of contract, the Class B Plaintiffs allege as follows:

[†] Filed pursuant to leave of court granted on March 1, 2017.

I. NATURE OF THE ACTION

1. This is a breach of contract action seeking damages and declaratory and injunctive relief based on CME's decision to fundamentally change the trading rights and privileges afforded to the Class B Plaintiffs, and to modify the eligibility requirements for exercising trading rights and privileges to the substantial detriment of the Class B Plaintiffs. By doing so, CME breached contractual obligations under which any such change by CME required an affirmative vote by the Class B Plaintiffs, which CME never sought or obtained.

2. Chicago-based CME is the world's largest futures and options exchange company, with annual revenues of more than $3.6 billion and a market capitalization in excess of $40 billion. CME operates through various futures exchanges and trading platforms, including CBOT, which CME acquired in 2007 for $11.3 billion.

3. The Class B Plaintiffs are members of CME and CBOT, and are largely comprised of the "old-line" traders who owned the two exchanges prior to their demutualization. In 2000, CME demutualized—that is, it completed a corporate restructuring whereby it transitioned from a non-profit membership organization owned by its members to a for-profit stock corporation. Upon CME's demutualization, CME members received Class B shares in CME. The Class B shares conferred both equity interests in CME and contractual rights that were designed to preserve the value of their membership by protecting their trading rights and privileges into the future. Those contractual rights are set forth in the CME Group Charter (a copy of which is attached as Exhibit 1). The CBOT members who are Class B Plaintiffs obtained substantially similar contractual rights upon the demutualization of that exchange in 2005, and those contractual rights are set forth in the Amended and Restated Certificate of Incorporation for CBOT (the "CBOT Charter") (a copy of which is attached as

Exhibit 2). CME assumed the obligation to preserve the CBOT Class B members' rights when it acquired CBOT in 2007.

4. Since demutualization, CME has substantially modified the eligibility requirements under which the Class B Plaintiffs and other customers can access CME's core trading technology platform, Globex, and access and exercise their trading rights and privileges, including the exclusive rights and privileges of members to trade from any trading floor, the right of members to the best and most proximate access to Globex, and the right of members to trade at member rates. CME has done so without obtaining the authority or vote of the Class B Plaintiffs that was required under the parties' contracts. At demutualization, CME's Class B members had the exclusive right to trade CME products on Globex. The right for an individual trader to access Globex was linked to a unique "Globex Screen Right" that was associated with an individual membership, such that the total number of "Globex Screen Rights" was equal to the total number of memberships. Limiting the number of "Globex Screen Rights" to the number of memberships, and requiring the ownership or lease of membership rights to access Globex directly, contributed to the value of Class B memberships. Under the CME rules that were in place at the time of demutualization, which CME eliminated without its Class B members' approval after they voted to demutualize, any access fees generated from leasing Globex trading rights were to be shared with CME members.

5. As part of "open access" rules that were approved and publicized between the demutualization vote and the closing of the demutualization transaction, CME authorized an expansion in the number of Globex screens and began allowing non-members to trade via Globex. Under CME's "open access" rules, the number of Globex screens has grown substantially. CME now generates billions of dollars in clearing fees from both member and

non-member trading activity that is completed through Globex, and thus has benefited enormously from the expansion of the Globex platform. But apart from the clearing fees to which it is entitled, CME never sought or obtained member approval to keep any access fee revenue generated from allowing non-members to access Globex for itself rather than sharing such revenues with members, as was required as part of members' rights and privileges under the rules in place at the time of demutualization. In a continuing breach of its obligation to pay Globex access fees to its members, CME has collected tens of millions of dollars in Globex access and communication fees each year since 2001, with the amount of those fees increasing from approximately $12 million in in 2001 to more than $80 million per year today, and the collective amount of such fees that should have been shared with CME members totaling in the hundreds of millions of dollars.

6. Additionally, the Class B Plaintiffs previously, as part of their core trading rights and privileges, (a) had the best and most proximate access to Globex, whether trading electronically or from any CME trading floor; (b) did not have to pay any additional fee or surcharge to obtain that access; (c) were able to trade the full range of CME products on Globex and at member rates; and, as a result; (d) enjoyed preferential trading and clearing fees vis-à-vis other customers; and (e) were able to generate substantial revenues by leasing their trading rights and privileges to third parties.

7. Seventeen years ago, when CME was completing its demutualization, most trading was still executed by traders in the open outcry pits, but electronic trading via the Globex platform represented a large and rapidly growing portion of the market. At and before demutualization, CME members had the exclusive right to access CME's trading floor and trade via Globex from the trading floor. The ability to do so provided members with the best

and most proximate access to Globex as part of their trading floor access rights and privileges and contributed to the value of their memberships.

8. Electronic trading continued to expand dramatically throughout the 2000s, and by 2007 the vast majority of trades were executed electronically. Because the vast majority of derivatives trading is now executed electronically, Globex access is essential for any CME market participant. Market participants pay substantial fees to CME to obtain the best and most proximate access to Globex, and a trader who executes trades even fractions of a second more slowly than others is at a significant competitive disadvantage.

9. In January 2012, CME opened the Aurora Data Center ("ADC"), a massive new data center in Aurora, Illinois that now houses the Globex electronic trading platform and match engine, which matches bids with offers to sell, for co-located trading from that new trading floor, which serves as what CME has referred to as an "electronic pit." Upon opening the ADC, CME breached its obligations to provide CME and CBOT members and their lessees with exclusive access to trade from trading floors as a right and privilege of membership, and CME discontinued its longstanding practice of providing the Class B Plaintiffs with the best access to Globex for free and as part of their membership privileges. To access and trade via Globex from this massive new trading floor that now accounts for a substantial portion of trading activity on CME's exchanges, or to obtain preferential access to Globex from the high-speed trading facility that CME developed at 350 E. Cermak in Chicago or other trading facilities, the Class B Plaintiffs were told that they would need to pay substantial monthly "co-location" fees.

10. In recent years, CME also began by-passing the lease market for the trading and access rights associated with Class B shares by directly marketing the right to access Globex in

the ADC, allowing "non-member customers" and additional traders within clearing and corporate members to access Globex and trade CME products without owning or leasing memberships. By doing so, CME breached its contractual obligations, under which the "Core Rights" afforded to the Class B Plaintiffs include that any change to their floor access rights and privileges or to the eligibility requirements for any person to exercise the trading rights and privileges of CME requires the approval of the Class B Plaintiffs, which CME never obtained.

11. Beginning in the late 2000's, CME and CBOT also breached members' Core Rights under the CME Group Charter and the special rights of CBOT members in the CBOT Certificate by: (a) allowing multiple traders to trade at member rates under a single membership, without buying or leasing the trading rights associated with any other memberships; (b) depriving members of their right to preferential fees by allowing certain members and non-members to trade at rates that were superior to those enjoyed by members; and (c) requiring members to pay additional fees, such as the co-location fees charged at the ADC, to trade from a CME trading floor and to obtain the best and most proximate access to Globex that CME members enjoyed for free, and as a part of their exclusive membership privileges, at demutualization.

12. Since January 2012, when CME opened the ADC, CME's market capitalization has increased by more than $20 billion, and the value of its publicly traded Class A shares has increased proportionally. As a result of the breach of contract alleged herein, however, the Class B Plaintiffs—who consist largely of the futures traders who owned CME and CBOT prior to their demutualizations—have not shared in CME's tremendous growth. Instead, during this period of enormous growth for CME and its Class A shareholders, the value of plaintiffs' Class B memberships has declined substantially, with Class B memberships collectively losing

well more than one billion dollars in value. This radical deviation between the value of Plaintiffs' Class B shares and the value of CME's Class A shares and of CME as a whole is fundamentally inconsistent with the acknowledgement of CME's Chairman Emeritus, Leo Melamed, that the value of a CME membership serves as "[t]he bellwether of the Merc's strength and potential." Leo Melamed, *For Crying Out Loud: From Open Outcry to the Electronic Screen,* at 25 (2009) [hereafter, *For Crying Out Loud*].

13. Historically, Class B Plaintiffs had been able to generate significant revenues by leasing their "seats," *i.e.*, the trading rights and privileges that are, as a matter of contract, associated with Class B memberships. The plummeting value of the Class B Plaintiffs' seats in recent years stems from the fact that the previously liquid and lucrative market for leasing the trading rights and privileges associated with Class B memberships has been substantially destroyed through CME's actions. Because CME is now by-passing the Class B Plaintiffs and leasing Globex access rights on the ADC floor directly to customers that otherwise would have paid for access as part of their lease payments to Class B Plaintiffs, and generating fees for itself by allowing non-member customers and additional traders within clearing and corporate and other member and non-member firms to trade through Globex without owning or leasing Class B memberships, many Class B Plaintiffs are no longer able to lease their seats at all. Those that are still able to lease their seats are doing so at substantially lower rates than they would be able to obtain if they maintained the best and most proximate access to Globex and the exclusive right to trade on Globex from the ADC trading floor, if CME had not collected many millions of dollars in Globex access fees for itself without any approval by or compensation to the Class B members, if CME had not allowed non-members to exercise the trading rights and privileges belonging to members without buying or leasing memberships, if

CME had continued to honor its commitment to provide members with preferential rates, and if the value of members' seats had not been diluted by the conduct by Defendants alleged in this complaint.

14. Upon the creation of Plaintiffs' Class B shares, CME agreed to preserve certain "Core Rights" of the Class B shareholders, including Core Right Numbers 2 and 4, under which CME agreed not to change the Class B shareholders' "trading floor access rights and privileges" or the "eligibility requirements for an individual or entity to exercise any of the trading rights or privileges inherent in" Class B shares without a vote of the Class B shareholders. CBOT's Certificate of Incorporation similarly guarantees that the "trading rights and privileges" of its Class B members cannot be modified without member approval and further guaranteed that Class B members would enjoy fee preferences that were meaningful enough to promote the continued value of Class B memberships. In Article 15 of the CME Group Charter, CME further guarantees that CME and CBOT members are to have "all trading rights and privileges for all new products . . . traded on . . . any electronic trading system maintained by the Exchange or CBOT or any of their respective successors or successors-in-interest," *i.e.,* Globex. Until the late 2000's, CME appeared to acknowledge through its conduct and through the representations it made to the Class B Plaintiffs that the "trading rights and privileges" of the Class B Plaintiffs included the right and privilege to have preferential access and proximity to Globex, to have the exclusive right to access Globex from any trading floor operated by CME, and to trade CME products traded on Globex at preferential member rates without any surcharges or additional fees or special rebate arrangements with member and non-member customers that would undermine the value of that fee preference.

15. Upon opening the ADC, CME stopped providing the Class B Plaintiffs with the best and most proximate access to the Globex electronic trading platform as part of their membership rights and at no additional charge, and instead told the Class B Plaintiffs that they could continue to have the best access and closest proximity to Globex from the ADC only if they each paid CME $8,000 to $12,000 in monthly rental fees to do so. CME never obtained the Class B Plaintiffs' approval of this fundamental change to their trading rights and privileges. In further derogation of the Class B Plaintiffs' exclusive right and privilege to access the Globex from the ADC, not only does CME allow non-members to co-locate at the ADC, it allows them to do so on the same terms as members.

16. Defendants additionally have breached their contractual obligations to the Class B Plaintiffs by providing trading rights and preferential fees to certain non-member customers, and by providing certain member customers with fees that were superior to those made available to members generally. These breaches include: (a) allowing certain members, including ECM's and Rule 106.J members, to have an unlimited number of traders trading at member rates under a single membership; (b) providing certain Electronic Corporate Members ("ECMs") , clearing members and non-member customers with preferential fees that were not made available to Class B members generally, and by allowing ECMs, employees of clearing members, and other non-member customers to trade at member rates without requiring the purchase or lease of a Class B membership or any other compensation to Class B members. These too were changes to members' trading privileges and to the "the eligibility requirements for any Person to exercise any of the trading rights or privileges of members of the Exchange," in violation of the CME Class members' Core Rights under the CME Charter and of CBOT members' special rights under the CBOT certificate. By allowing unlimited numbers of

employees and contractors affiliated with ECMs and other member and non-member customers to trade at member rates without purchasing or leasing Class B memberships, and by granting preferential fees and additional Globex access rights to clearing members and ECMs and other non-member customers, CME has further undermined the market value and lease rates for Class B memberships, thereby damaging the Class B Plaintiffs.

17. By discontinuing the Class B Plaintiffs' right to the best and most proximate access to Globex as part of their membership rights and privileges, and by instead directly marketing to non-member customers the right to "co-located" access to Globex at the ADC and allowing additional traders to trade directly on Globex so long as they paid Globex fees to CME and their trades are guaranteed by a clearing member, CME has been able to garner for itself hundreds of millions of additional dollars in fees that otherwise would have been paid to the Class B Plaintiffs in the form of additional lease payments, or additional compensation for their Class B seats upon sale, or other distributions to CME members. For instance, CME claimed that it generated more than $40 million in co-location services fees in 2012 alone. According to an article published in the *Financial Times*, CME's annual revenues from co-location fees had increased to approximately $65 million by 2015, and CME thus has collected hundreds of millions of dollars in co-location since opening the ADC. CME has generated many millions of dollars in additional fees on trades executed by non-member customers and employees of ECMs and clearing members that it now permits to trade on Globex without owning or leasing Class B memberships.

18. The Class B Plaintiffs bring this class action against CME on behalf of all CME Class B shareholders and CBOT Class B members that are not Clearing Members or ECMs, to enforce their contractual rights and recover money damages for losses already suffered. The

Class B Plaintiffs additionally seek declaratory and injunctive relief and specific performance allowing them to co-locate at the ADC at no additional cost, and precluding CME from granting Globex trading rights to ECMs and other non-member traders that have not purchased or leased Class B memberships except on terms that are approved by the Class B members pursuant to the CME and CBOT Charters.

II. JURISDICTION AND VENUE

19. This Court has jurisdiction over this case under 735 ILCS 5/2-209(a) and (b) because the case arises from business that Defendants have transacted within this State, and because Defendants do business within this state.

20. This case satisfies the requirements for maintaining a class action under 735 ILCS 5/2-801 because: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members, (3) the representative parties will fairly and adequately protect the interest of the class, and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.

21. The claims in this case are properly asserted in and should remain in this court because (1) more than two-thirds of the proposed class members are citizens of the State of Illinois; (2) the Illinois citizens in the proposed class suffered their injuries in the State of Illinois; (3) no prior action alleging the claims asserted in this case or claims similar to those asserted in this case has been filed in federal court; and (4) the defendants are citizens of the State of Illinois.

22. Venue is proper in this district pursuant to 735 ILCS 5/2-101 because Defendants conduct business in Cook County and maintain principal places of business in Cook County.

III. THE PARTIES

A. The Plaintiffs

23. Sheldon Langer has been a member of CME since l974. Sheldon Langer has leased his membership to lessees since before January 2012. He resides in Lake County, Illinois. Mr. Langer holds his membership in a revocable family trust for which he is the sole trustee, and has the sole right to sue to enforce his rights as a CME member.

24. Ronald M. Yermack has been a member of CME since the mid-1970s. Ronald M. Yermack has leased his membership to lessees since before January 2012. He resides in Cook County, Illinois. Mr. Yermack holds his membership in a revocable family trust for which he is the sole trustee, and has the sole right to sue to enforce his rights as a CME member.

25. Lance R. Goldberg has been a member of CBOT since 2003 and has leased his membership to lessees since before January 2012, and now owns a second CBOT membership that he obtained in 2013. He resides in Cook County, Illinois. Mr. Goldberg holds his membership in a revocable family trust for which he is the sole trustee, and has the sole right to sue to enforce his rights as a CME member.

B. Defendants

26. CME is a Delaware corporation that owns and operates derivatives exchanges throughout the world. CME's exchanges annually handles billions of transactions worth approximately $1 quadrillion. CME's headquarters is in Chicago, Illinois. CME conducts an extensive amount of business in Cook County, Illinois. CME owns the ADC and the Globex electronic trading platform, which are in Illinois, and owns and operates the Chicago Mercantile Exchange as one of its subsidiary exchanges.

27. CBOT is a Delaware corporation and subsidiary of the CME, is one of the CME exchanges, and is headquartered in Chicago, Illinois. The CBOT conducts an extensive amount of business in Cook County, Illinois.

C. Class Allegations

28. The proposed class would consist of all Class B shareholders of CME and all Class B members of CBOT, except clearing Members, ECMs, and directors and officers of CME.

29. According to the CME Group Charter, there are 3,138 potentially eligible CME Class B shares, which fall into four individual memberships series at CME: (1) 625 "CME B-1 Memberships," which allow the members to trade all CME products; (2) 813 "International Monetary Market B-2 Memberships," which allow the members to trade certain financial products, (3) 1,287 "Index and Options Market B-3 Memberships," which allow the members to trade certain index futures and other products; and (4) 413 "Growth and Emerging Market B-4 Memberships," which allow the members to trade certain products usually associated with emerging market countries.

30. On July 12, 2007, the CBOT merged with CME. Under the Amended and Restated Certificate of Incorporation for CBOT, there are 3,681 authorized CBOT memberships that are potentially eligible for the proposed class, which include: 1,402 B-1 memberships, 867 B-2 memberships, 128 Series B-3 memberships, 641 Series B-4 memberships, and 643 Series B-5 memberships.[1] The CBOT Charter grants CBOT's Class B members rights that are substantially identical to the "Core Rights" of the CME Class B shareholders.

[1] CBOT Amended and Restated Certificate of Incorporation ("CBOT Charter"), 2007, Art. IV.B.2.

31. Excluded from the class would be Class B shareholders who are "Clearing Members" or "Corporate Members," as well as those Class B shareholders or members who are officers or directors of CME, because these groups have different and potentially conflicting interests from the Class B Plaintiffs. Clearing Members guarantee the ability of their clients, also referred to as "customers," to trade on the exchange, and under the CME practices challenged in this complaint are now able to authorize additional traders and teams of traders to execute trades through Globex without purchasing or leasing additional Class B memberships. Corporate Members are required to own or lease a specified number of Class B memberships, and they are permitted to engage in proprietary trading only. (Electronic Corporate Members are required to meet certain trading volume requirements.) Neither Clearing Members nor Corporate Members are in the business of leasing Class B memberships to third parties, and the current fee for co-located access to the Globex at the ADC is not material to their viability. There appear to be approximately 70 Clearing Members, and the number of Corporate Members, or Electronic Corporate Members is unknown.

32. To the extent the claims of CME members differ from those of CBOT members, plaintiffs may seek the certification of multiple classes or sub-classes to seek relief based on the conduct alleged herein if it is necessary to do so.

33. **Numerosity**. The class is so numerous that joinder of all members would be impracticable. There are thousands of class members. All members are alleging the same breach of the Charter based on Defendants' exclusion of the Class B Plaintiffs from the ADC unless a fee is paid and the same method for calculating damages.

34. **Common Questions.** Common questions of fact and law exist as to all members of the class and predominate over any questions solely affecting individual members of the class. The questions of fact and law that are common to the class include:

a. The existence and meaning of the Class B Plaintiffs' contractual rights.

b. Whether the ADC is a trading floor to which the Class B Plaintiffs are entitled to access as part of their rights and privileges under the CME Charter and the CBOT Certificate, and whether Defendants breached those rights by requiring the Class B Plaintiffs to pay a co-location fee in order to trade from the ADC.

c. Whether the Defendants breached their contractual obligations to the Class B plaintiffs by, without a vote, depriving the Class B Plaintiffs of their right to trade at preferential member rates by allowing multiple traders to trade on a single membership, by allowing certain ECM's and non-members to trade at preferential rates without owning or leasing memberships, and by providing certain members and non-members with rates that were superior to those made available to members generally.

d. Whether CME breached its obligations to the CME members in the Class by collecting access and communication fees to trade via Globex and keeping all of those fees for itself, without a member vote.

e. Whether the Class B Plaintiffs have sustained, or will sustain, injuries as a result of the breach of Defendants' contractual obligations.

f. The proper methodology for calculating the Class B Plaintiffs' damages.

g. Whether the Class B Plaintiffs should be granted the requested injunctive relief requiring that they be provided co-located access to the Globex system at the ADC as part of their trading rights and privileges.

35. **Adequacy of Representation.** The class representatives include Class B shareholders of CME and Class B members of CBOT. Their claims are substantially similar, if not identical, to those of absent class members; they have no interests antagonistic to the class.

Their undersigned counsel are experienced and capable of representing the class. Plaintiffs and their counsel have the necessary resources to adequately and vigorously litigate this action.

36. **Appropriateness.** A class action is the most appropriate method for the fair and efficient adjudication of the controversy since all matters would be before a single tribunal in a single action. Class treatment would be highly cost effective, both for the Court and the parties, in comparison to individual litigation.

IV. FACTS

A. The Development of the Class B Plaintiffs' Right to the Best Access and Closest Proximity to the Globex Trading Platform as Part of their Membership Rights and Privileges.

37. Over the past two decades, CME and CBOT have transitioned from an "open outcry" market, in which the vast majority of futures transactions were executed through verbal communications and hand signals delivered from one trader to another on a trading floor called the "pit," to a predominantly electronic marketplace, in which the vast majority of trades are now executed through computers. Leo Melamed, CME's former Chairman, and current Chairman Emeritus and Chairman of its Strategic Steering Committee—and self-described "effective leader of the Chicago Mercantile Exchange" from 1967 through 1991 and 1997 through 2002—explained in his book *For Crying Out Loud* that the groundwork for this transition was laid in the early 1990s, when the Globex electronic trading platform was launched through a joint venture between CME and CBOT, from which CBOT later withdrew. According to Melamed, "a primary hallmark of CME's success is Globex, its electronic transaction system. Globex enabled the exchange to evolve from the antiquated open-outcry transaction architecture to one that is at the cutting edge of present-day electronic automation." *For Crying Out Loud* at xiv.

38. The centrality of Globex to the future of futures trading was recognized by CME and its executives early on. In 1994, during an early failed attempt to form a joint venture with the then-independent CBOT to support the development and expansion of Globex, Melamed wrote, in what was to have been a *Chicago Tribune* editorial that he instead delivered verbally to the boards of directors of both CME and CBOT:

> In its most basic terms, Globex symbolizes the inevitable march of technology, the recognition by futures markets that the era of global 24 hour trading has arrived, and that automation is a *necessary adjunct to the infrastructure* of futures trade. But Globex means much more. Globex goes a long way toward assuring Chicago's continued dominance as the global capital of futures markets and the center for risk management.

For Crying Out Loud at 19 (emphasis added).

39. From its founding in 1898 and throughout the twentieth century, CME was a mutual company owned and controlled by its member traders, and the successful transition to the world of electronic trading that Melamed envisioned thus required the consent of CME's member traders. Additionally, because open outcry trading was still the predominant means of futures trading at the time, and because CME members played a key role in creating liquidity for its futures contracts, CME recognized that its floor traders would be critical to developing the market for new, electronically traded futures products. According to Melamed, CME Executive Bill Shepard, the Chairman of the Globex Oversight Committee that was responsible for implementing the Globex platform, recognized from the outset that providing members with the best access to electronically traded products was "vital, both in placating members as well as insuring the success of the contract." *For Crying Out Loud* at 35.

40. In September 1997, when CME launched the "E-Mini"—a futures product indexed to the S&P 500, and the first futures product that was traded only electronically—CME members on the trading floor had what Melamed described as a "special role in the

development of the E-Mini" contract market. *For Crying Out Loud* at 41. To ensure that its member floor traders could and would help build the market for the new product, CME "place[d] Globex terminals with an especially built arbitrage unit on the trading floor with proximity and visibility to the S&P 500 pit—which Bill [Shepard] referred to as the 'price-discovery pit.'" *Id.* The E-Mini has since been an enormously successful product for CME, and now has a daily trading volume in excess of $100 billion.

41. As CME continued to expand its electronic trading platform in the late 1990s, it recognized that it needed to do so in a way that its members would support. As Melamed put it, the "open outcry old guard was still alive and kicking with enough votes to derail" any recommendation for expanded electronic trading or for any corporate restructuring that would facilitate the expansion of electronic trading. *For Crying Out Loud* at 56. According to Melamed, CME retained the McKinsey & Company consulting firm to assist in developing a strategic plan that would be supported by the CME members, and placed two McKinsey partners on the committee that was responsible for those plans. In August 1998, McKinsey provided CME's Strategic Planning Committee with a report in which it recommended that, if CME was to obtain the member support it needed to expand electronic trading, it also would need to "allow current members to have trading rights on both the trading floor and the electronic platform." *Id.* at 55.

42. Throughout the late 1990s, CME continued to develop and implement technologies that would ensure its member owners had the best access and closest proximity to the Globex platform from the trading floor. For instance, in March 1999, the CME Strategic Planning Committee approved the development of a hand-held device called the "Galax-C," which was designed to provide traders with real-time access to Globex data while on the floor.

The Galax-C was designed to "enable local traders to conduct interactive Globex trading from anywhere on the trading floor." *For Crying Out Loud* at 57.

43. By 2000, electronic trading through the Globex was a small but rapidly growing portion of CME's futures trading business. Electronic trading then accounted for only approximately 10% of all trading through the CME, but the amount of electronic trading was doubling each year. From the outset, CME members, who at the time were still the owners of the company, had the best and most proximate access to the Globex platform to facilitate electronic trading, and they were not charged any additional fee or surcharge for that access. The best and most proximate access to the Globex platform was simply and consistently treated as a fundamental part of the CME members' trading rights and privileges, and members were able to access and trade via Globex from the trading floor and remotely as part of their membership rights and privileges. Under the CME Rules that existed at the time, and specifically the then-current version of Rule 582, the number of "Globex Screen Rights" ("GSR") was limited to the number of CME memberships, and each GSR was associated with an individual membership, such that CME members and their lessees had the exclusive right to execute trades directly through Globex terminals located on the trading floor and to share in any revenues generated from leasing Globex access to third parties.

44. CME viewed expanded electronic trading through the Globex platform as a core component of its business strategy, and it expected electronic trading through the Globex to comprise a progressively larger portion of overall trading in the future. As Melamed recounted, CME's understanding was that "ultimately electronic trade would become the real 'price-discovery pit,'" *For Crying Out Loud* at 41, with Globex serving as a virtual trading floor.

B. <u>CME Promised to Preserve Class B Plaintiffs' Right to the Best Access and</u>

Closest Proximity to the Globex Platform, and to Allow the Class B Plaintiffs to Share in Globex-related Revenues, as Part of its Demutualization.

45. In the late 1990s, CME, under Melamed's leadership, developed plans for the demutualization of the exchange—the transition from a non-profit membership organization that was owned by its members to a for-profit stock corporation. CME's leadership hoped that demutualization would allow CME to operate more efficiently and to compete effectively against rival exchanges throughout the world, and would position the company for an Initial Public Offering ("IPO") of its stock. CME ultimately completed its demutualization in November 2000, becoming the first exchange in the United States to do so. Two years later, CME completed its IPO.

46. To complete the demutualization, CME needed the support and approval of its member owners. CME devised a demutualization plan under which, upon demutualization, the equity interests in CME would be allocated between two classes of stock: Class A shares, which consisted solely of equity interests, and are now publicly traded; and Class B shares, which provided both equity interests and contractual trading rights and privileges. Both to secure the member voted needed to complete the transaction, and to obtain IRS approval of the demutualization plan as a tax-free transaction, CME understood, and represented to its members and regulatory authorities, that it was essential that members' trading rights and privileges be exactly the same before and after the transaction was completed, and that the transaction did not change or diminish members' trading rights in any way.

47. Upon demutualization, the CME members who previously owned the mutual organization and held trading rights and privileges in the exchange became equity owners and

members in the new corporate entity. Each CME member was granted both Class A shares and Class B shares, with the number of Class A shares and the trading rights associated with the Class B shares dependent upon the type of membership held by the member. Full members were issued the largest number of Class A shares, along with a Class B-1 share that conferred the right to trade the full range of products traded through CME. Class B-2, B-3, and B-4 members were granted trading rights that were limited to the products they were entitled to trade prior to demutualization, and were issued fewer Class A shares.

48. In seeking its members' approval of its demutualization plan, and in the corporate contractual documents memorializing the demutualization, CME promised that it would preserve certain "Core Rights" of its member owners, who became the Class B shareholders upon demutualization. Under CME Charter provisions adopted as part of the demutualization (and now embodied in the current version of the Charter that reaffirmed those provisions upon the completion of CME's merger with CBOT), the Class B shareholders' "Core Rights" are defined as follows:

> "Core Rights" shall mean:
>
> 1. the divisional product allocation rules applicable to each Membership class as set forth in the rules of the Exchange;
>
> 2. the trading floor access rights and privileges granted to Members of the Exchange;
>
> 3. the number of authorized and issued shares of any class of Class B Common Stock; or
>
> 4. the eligibility requirements for any Person to exercise any of the trading rights or privileges of members in the Exchange.

See CME Group Charter, Division B Common Stock, §1.

49. Under the CME Charter, "[a]ny change, amendment or modification of the Core Rights . . . shall be submitted to a vote of the Class B shareholders for their consideration and

approval." CME Group Charter, Subdivision 2, §1(b). Any such "change, amendment or modification must be approved by a majority vote of the aggregate votes cast . . . ." *Id.*

50. CME's regulatory filings made in connection with the demutualization and the Commodities Futures Trading Commission's ("CFTC") November 2000 Demutualization Memorandum approving the transaction confirm that the trading rights and privileges of Class B members include access to CME's electronic trading platform, Globex. Specifically, the CFTC Memorandum states that Class B shareholders in the new CME entity that was formed to facilitate demutualization "would have the right to trade on the floor of new CME *and electronically through the GLOBEX2 system as long as the individual or entity owned such shares.*"

51. In CME's 2000 Stock Registration Statement that it filed with the SEC in connection with the demutualization, which contained the prospectus describing the transaction they were being asked to approve through their vote, CME noted that "[a] holder of Class B shares . . . will have the right to trade electronically through the GLOBEX2 system." Amendment No. 5 to CME's Form S-4 Registration Statement, filed April 25, 2000 [hereinafter, Apr. 25, 2000 CME S-4], at 35. The 2000 Registration Statement further acknowledged that the Class B Plaintiffs would benefit from their access and proximity to Globex:

> Members and lessees also benefit from market information advantages that may accrue from their proximity to trading activity on the trading floors and from access to the GLOBEX2 order book.

Id. at 70.

52. In the Registration Statement that was used to explain the benefits of the proposed transaction to the members who it was asking to approve it, CME also explained steps

it had taken, and was committing to continue taking, to facilitate the Class B members' transition to electronic trading through the Globex. The Registration Statement described Globex as one of CME's "two trade execution facilities" in which members enjoyed trading privileges, along with the "open outcry trading pits," and stated that both trading facilities "offer our users secure and reliable facilities, immediacy of trade execution, anonymity, and price transparency." *Id.* at 62. The Registration Statement further noted that, "[i]n order to streamline the trading operations of our members and link our existing routing order technology, we have developed an application programming interface . . . designed to route orders efficiently . . . to our trading floors and to GLOBEX2." *Id.* at 62. CME further noted that "[o]ur development of links between open outcry, electronic trading and electronic order routing will provide market users with greater access to the liquidity and execution facilities we provide." *Id.* at 63. The Class B Plaintiffs were among the "market users" that were intended to benefit from those developments, and access to CME's trading facilities—for free, and as part of a memberships—was one of the essential privileges associated with a CME membership when the demutualization vote took place.

53. CME's SEC filings for the demutualization also recognized that the Class B Plaintiffs' rights and privileges included a right to the lowest clearing fees: "New CME will continue to charge a lower clearing fee on Exchange products for trades made for their own accounts by a holder of a Class B share or by a lessee of the trading privileges of a Class B share." *Id.*at 35. CME explained that "[t]he trades of members and lessees of memberships for their own accounts qualify for lower fees in recognition of the market liquidity their trading activity provides." *Id.* at 70.

54. In its SEC filings for the demutualization, CME also recognized that the Class B Plaintiffs' right to vote on any change or modification to their Core Rights could impact CME's decision making in the future. CME noted that the "Class B shareholders will have the ability to preserve their trading rights through special approval rights. . . . The special approval rights . . . could be used to block changes that management desires to make to enhance shareholder value." *Id.* at 10.

55. At the time of the demutualization, CME membership carried with it the right and privilege to access the Globex platform with the best proximity and access from the trading floor, and to trade either electronically or the open outcry floor. Members' trading rights and privileges thus extended to all of CME's trading facilities, both electronic and open outcry. As stated in Section B.1 of the CFTC's 2000 Demutualization Memorandum:

> An individual or entity that owned Class B Common Stock, and that also satisfied New CME's ownership and eligibility criteria, would have the right to trade on the floor of New CME ***and*** *electronically through the GLOBEX2 system as long as the individual or entity owned such shares.*

2000 Demutualization Memorandum, p. 5 (emphasis added).

56. CME's SEC filings specifically noted that Class B Plaintiffs had an unequivocal right to access Globex both from the trading floor and to trade from remote locations off of the trading floor:

> Trading Privileges. Each series of Class B Shares will have the trading privileges currently encompassed in the existing Membership interest associated with that series. New CME's rules will provide as follows:
>
> - Electronic Trading Rights. A holder of a series of Class B Shares who meets New CME's Membership and eligibility criteria will have the right to trade electronically through the GLOBEX2 system. *This right is restricted, when accessing GLOBEX2 terminals from the trading floors, to trading only contracts assigned to that series [of Class B Membership].*

> *Otherwise, the holder may trade any product listed on the GLOBEX2 system.*

See Apr. 25, 2000 Form S-4 at 70 (emphasis added).

57. June 2000 amendments to the CME Rule Book, specifically the "CME Rules to Implement the CME Demutualization," and the December 2000 CME "Consolidated Rule Book," also recognized that Globex access was part of Class B shareholders' trading rights and privileges and did not indicate that any charge would be associated with that access. In particular, Rule 121 recognized that Class B shareholders were eligible for Globex terminals and that they would receive member transaction rates for their Globex trades, with no mention of an access fee:

> 121. Membership Privileges
>
> Membership in the Exchange entitles the member to the following privileges:
>
> c. *To be eligible for a GLOBEX terminal*, upon approval by the Clearing member that will guarantee the transactions effected through such terminal, *and to receive member [transaction] rates for those contracts in his Membership category*.

Id. (emphasis added)

58. CME Rule 582, "GLOBEX Screen Rights," included as part of the rules submitted by CME to the CFTC as part of the demutualization plan, also provided that each Class B shareholder was entitled to a terminal, referred to as a "GLOBEX Screen Right" or "GSR" at no charge, as one of the rights and privileges of a member:

> *A GLOBEX terminal shall not be used to trade CME contracts unless a GLOBEX Screen Right ("GSR") has been assigned to that terminal. There shall be 2,724 GSRs (equal to the total number of Class B Shares, Series B-1, B-2 and B-3).*
>
> Only individuals and firms that are eligible to obtain GLOBEX terminals pursuant to Rules 574, 121 and 151 may obtain a GSR.

> *Each individual and firm that owns Class B Shares, Series B-1, B-2 and B-3 and has retained the trading privileges associated with such Class B Share shall be entitled to one GSR, at no cost, for each Class B Share owned.*

(emphasis added.)

59. As part of the same Rule 582, CME also provided that CME members would share in any lease fees generated from the licensing GSRs that were not used by Class B members to other members, clearing firms, and participating exchanges: "All lease fees collected in respect of GSRs shall be distributed, pro rata, to each owner of a Class B share who has not made use of the GSR attributable to that Class B Share." *Id.* Rule 582.E.

60. In urging CME members to approve the demutualization plan during meeting with Class B members, CME leadership stressed that the Class B Plaintiffs would retain their trading rights and privileges—including their rights to the best and most proximate access to all of CME's trading facilities, including Globex, and their right to superior trading fees—following demutualization.

61. Upon demutualization, Melamed explained, "the primary purpose of the Class B shares would be to *confer the trading privileges associated with membership in the existing CME* along with some equity value." *For Crying Out Loud* at 69 (emphasis added). With respect to clearing fees, "[w]e agreed that the clearing fees charged for floor-based business would never be greater than those charged for electronic trade." *Id.* at 70. During informational forums attended by Class B Plaintiffs prior to the vote on the demutualization plan, Melamed stressed that the clearing fees available to Class B shareholders would always be sufficiently lower than the fees available to any other customers to provide significant value to the Class B shareholders.

62. Melamed summarized CME's fundamental commitment to its Class B shareholders at the time of demutualization as follows:

> Changes to liquidity rules, or other "Core Rights" of B shareholders, such as product allocation rules, trading floor access rights and privileges, or other inherent floor membership rights, could not be made without a referendum by the B shareholders. *It was an explicit and ironclad guarantee*.

Id. at 71 (emphasis added).

63. The "explicit and ironclad guarantee" that Melamed provided to the Class B Plaintiffs at the time of demutualization included the right to maintain the best and most proximate access to the Globex electronic trading platform and any other trading facility operated by CME, at no additional charge, as part of their rights and privileges as members. Because the number of GSRs was limited to the number of memberships, and Class B members were entitled to share in GSR licensing revenues on a pro rata basis, the "explicit and ironclad guarantee" provided by Melamed also included the right to share in the profits associated with the future growth of the Globex platform.

64. Because of CME's strong commitment to preserve the rights of its members after demutualization, and to allow CME members to share in the anticipated growth of CME as electronic trading through Globex expanded, CME was able to secure its members' approval of the demutualization plan, with more than 98% of the votes cast in favor of the 2000 demutualization plan.

C. CME Confirmed Through its Course of Dealing After Demutualization that the Class B Plaintiffs' Core Rights Include the Best Access and Closest Proximity to Globex.

65. For nearly a decade after demutualization, the Class B plaintiffs believed that CME had fulfilled the contractual obligations it undertook and confirmed at the time of demutualization by continuing to provide the Class B Plaintiffs with the best access and closest proximity to the Globex electronic trading platform, and confirmed those commitments through its course of dealing.

66. For instance, in SEC filings for its 2002 IPO, CME described the rights and privileges held by the Class B shareholders to potential investors in its Class A shares. For instance, CME acknowledged that the Class B Plaintiffs had the right under its Certificate of Incorporation to approve changes to access rights and privileges and could block Defendants from moving to electronic trading:

> Under the terms of the CME certificate of incorporation, our Class B shareholders have the ability to preserve their rights to trade on our exchange by means of *special approval rights* over changes to the operation of our business, including our ability to move from open outcry trade execution to electronic trade execution. In particular, these provisions include a grant to the holders of our Class B common stock of the *right to approve any changes to the trading floor rights, access rights and privileges that a member has*, including the circumstances under which we can determine that an existing open outcry-traded product will no longer be traded by means of open outcry . . . . The share ownership of Class B shareholders in combination with their board representation rights and charter provision protections could be *used to block our board and management from changing or developing our business in order to compete more effectively and to enhance shareholder value, including the value of our Class A common stock*.

Amendment 1 to CME Form S-4, filed October 2, 2001, p. 18 (emphasis added).

67. The same proxy statement also acknowledges that Class B shareholders had the right to trade on both the physical trading floor and electronically through GLOBEX:

> ASSOCIATED EXCHANGE MEMBERSHIP. Each series of CME Class B common stock was issued in conjunction with a Membership in a specific division of the exchange. *CME's rules provide exchange Members with access to the trading floor of the exchange and the GLOBEX2 system for the contracts assigned to that Membership and the ability to use or lease their trading privileges.*

Id. (emphasis added).

68. In a December 2002 filing with the SEC made in preparation for its IPO, CME further stated that

> Under the terms of our certificate of incorporation, our members, as Class B shareholders, have the ability to protect their rights to trade on our exchange by means of ***special approval rights over changes to the operation of our markets and are entitled to elect six of the 20 directors on our board. In particular, our certificate of incorporation includes a grant to the holders of our Class B common stock of the right to approve any changes to the trading floor rights, access rights and privileges that a member has, the number of memberships in each membership class and the related number of authorized shares in each class of Class B common stock and the eligibility requirements to exercise trading rights or privileges. Class B shareholders must approve any changes to these special rights.***

Amendment No. 7 to CME Form S-1, filed December 5, 2002, p. 98 (emphasis added). The "access rights and privileges" referred to in CME's SEC filing included the right to the best and most proximate access to the Globex electronic trading platform, as well as the rights under Rule 582 to share in any fees generated by providing non-members with access to Globex.

69. In 2004, CME discontinued open outcry floor trading for Eurodollar futures contracts. After it did so, Eurodollar futures contracts were traded only through the Globex electronic trading platform. However, Class B members and their lessees who traded

Eurodollar futures contracts were still able to do so competitively because they had the best and most proximate access to the Globex platform.

D. CBOT Promised to Preserve the Class B Plaintiffs' Right to the Best Access and Closest Proximity to CBOT's Electronic Trading Systems as Part of its Demutualization.

70. Founded in 1848, CBOT was owned and managed by and for its members for more than 150 years until it demutualized and restructured in 2005. In connection with the demutualization and restructuring, CBOT members ceded certain rights with respect to the management and control of CBOT. What CBOT members did not cede, and instead expressly retained, were all of the trading rights and privileged they historically exercised, enjoyed, and benefited from. These rights were substantially identical to the core rights of CME Class B shareholders, as alleged above, and included the best and most proximate access to CBOT's electronic trading systems, the exclusive right to access those systems from the trading floor, and the right to fee preferences that were meaningful enough to promote the value of their seats.

71. As a result of CBOT's demutualization and restructuring, CBOT members received Class A common stock in a new entity called CBOT Holdings, Inc. (which later merged into CME) and one of five series ("Series B-1" through "Series B-5") of Class B memberships in CBOT, which was wholly owned by CBOT Holdings. In a letter that was included in CBOT Holdings' February 10, 2005 proxy solicitation and prospectus to CBOT members, then-Chairman of CBOT Charles P. Carey stated: "Each series of Class B membership in the CBOT subsidiary will represent trading rights and privileges in the restructured CBOT that correspond to the trading rights and privileges currently associated with

one of the current classes of membership in the CBOT." The prospectus repeatedly stated that CBOT members would retain their existing trading rights and privileges after the demutualization.

72. CBOT's certificate of incorporation was amended and restated in connection with the demutualization and restructuring (the "2005 CBOT Charter"). The 2005 CBOT Charter set forth "Special Rights of Class B Membership," which included Series Trading Rights" (the "Trading Rights") and "Series B-1 Membership and B-2 Membership Voting Rights" (the "Special Voting Rights"). The demutualization prospectus and later SEC filings described all of these rights as "core rights."

73. The Trading Rights were set forth in Section IV(D)(1) of the 2005 CBOT Charter. Section IV(D)(1)(f) made clear that CBOT members would continue to enjoy their existing trading rights and privileges, including their rights and privileges with respect to electronic trading systems:

> In addition to the rights and privileges set forth above, except as otherwise provided in the Certificate of Incorporation, the Bylaws or the Rules, each holder of a Class B Membership of any Series shall be entitled to all trading rights and privileges with respect to those products that such holder ***is*** entitled to trade on the open outcry exchange system of the Corporation ***or any electronic trading system*** maintained by the Corporation or any of its affiliates or any of their respective successors or successors-in-interest.

74. No provision of the 2005 CBOT Charter could be amended or repealed without the approval of the Series B-1 and Series B-2 members.

75. The Special Voting Rights were set forth in Section IV(D)(2)(b) of the charter, which provides:

> [T]he affirmative vote of the holders of a majority of votes cast . . . by the holders of Series B-1 Memberships and Series B-2

> Memberships . . . shall be required to adopt any amendment to the Bylaws or the Rules, that in the sole and absolute determination of the Board of Directors, adversely affects:
>
> (1) the allocation of products that a holder of a specific Series of Class B Membership is permitted to trade on the exchange facilities of the Corporation (***including both the open outcry trading system and the electronic trading system***),
>
> (2) the requirement that, except as provided in that certain Agreement, dated August 7, 2001, between the Corporation and the Chicago Board Options Exchange (the "CBOE"), as modified by that certain Letter Agreement, dated October 7, 2004, between the Corporation, CBOT Holdings, Inc. and the CBOE, in each case, as may be amended from time to time in accordance with their respective terms, holders of Class B Memberships who meet applicable membership and eligibility requirements will be charged transaction fees for trades of the Corporation's products for their accounts that are lower than the transaction fees charged to any participant who is not a holder of Class B Memberships for the same products, ***whether trading using the open outcry trading system or the electronic trading system***,
>
> (3) the membership qualifications or eligibility requirements for holding any Series of Class Membership or exercising any of the membership rights and privileges associated with such Series . . . .

76. As indicated above, Special Voting Right #2 referenced an August 7, 2001 agreement between CBOT and CBOE (the "CBOT/CBOE Agreement"), which was attached to the proxy statement and prospectus that was sent to CBOT members to solicit their vote in favor of demutualization. In the CBOT/CBOE Agreement, CBOT agreed to "maintain various incentives to promote the continued value of CBOT membership, including meaningful member and delegate fee preferences (applicable to the floor and electronic trading platform) . . . ."

E. The Class B Plaintiffs' Core Rights Were Expressly Reaffirmed in the 2007 Merger of CME and CBOT.

77. In 2007, CME acquired CBOT Holdings for more than $11 billion. The transaction resulted in a merger of CBOT Holdings merged into CME. CBOT became a wholly-owned subsidiary of CME.

78. According to Melamed, the CME/CBOT merger was designed to allow CME to begin offering the full range of futures and commodities products "side by side on the CME Globex electronic trading platform." *For Crying Out Loud*, Preface at x. According to Melamed, Globex "acted as the irresistible magnet to draw into its fold the CBOT." *Id.* at xvi.

79. Before the CME/CBOT merger was approved, CBOT Holdings received an unsolicited bid from IntercontinentalExchange ("ICE"). ICE's bid was valued at approximately $9 billion, $1 billion more than CME's offer. CME subsequently increased its offer.

80. On June 22, 2007, Terrence A. Duffy, Executive Chairman of CME, and Craig Donohue, then-CEO of CME, sent a letter to CBOT Holdings shareholders to persuade them to vote for CME's proposal. The letter touted the proposed merger's "superior economic benefits to member shareholders," stating: "Our core rights protections ensure our continued commitment to providing choice between electronic and open outcry trading." The letter further stated: "We have a long-standing pricing strategy of providing the lowest trading fees for member liquidity providers, with discounts that significantly exceed anything offered by ICE."

81. In conjunction with the CME/CBOT merger, CME's and CBOT's respective charters were amended and restated while reaffirming the core rights described above. For instance, under CBOT's amended and restated charter, memberships are intended to "represent

the right to trade on and otherwise utilize the facilities of [the CBOT]." CBOT 2007 Certificate of Incorporation, Art. IV.B.2 (emphasis added) CBOT Class B-1 members retained "all trading rights and privileges with respect to those products such holder is entitled to trade on the open outcry exchange system of the Corporation ***or any electronic trading system*** maintained by the Corporation or any of its successors or successors-in-interest." *Id.* Art. IV.D.1.4. (emphasis added). Other classes of Class B CBOT members likewise retained "the rights and privileges" for trading the categories of productions applicable to each class of membership "on the open outcry exchange system . . . or ***any electronic trading system*** maintained by the Corporation or any of its successors or successors-in-interest." *Id.* Art. D.1-B-F. The CBOT Charter thus expressly recognizes that the "trading rights and privileges" afforded to Class B members includes the trading rights and privileges related to any "electronic trading system," such as Globex.

82. Article 15 of the CME Group Charter similarly recognizes that the rights of CME and CBOT B-1 members include all trading rights and privileges for all new products first made available after the merger and traded on the open outcry exchange "or any electronic trading system maintained by the Exchange or CBOT or any of their successors or successors-in-interest," CME Group Charter Art. 15.

83. Following the CME/CBOT merger, CME operated Globex on behalf of and for the benefit of its constituent exchanges, including CBOT. The best and most proximate access rights to the Globex that the Class B Plaintiffs previously enjoyed free of charge and as part of their memberships allowed them to generate substantial revenues by leasing their seats to traders and trading firms that engaged in electronic trading through the Globex. Better proximity and access to the Globex platform increase the speed of offers and acceptances, and

thus increases the likelihood that a trade will be profitable. One of the main purposes of an exchange is to reduce the communication lag—or "latency" period—between an offer and acceptance. The superior access to the Globex platform that could be obtained by leasing a Class B seat allowed traders to use electronic trading programs to pursue new trading strategies, not possible before the advent of electronic trading that exploited the ability to trade at very high speeds and thereby reduce latency almost altogether. As Melamed explained, "[p]rograms, operating at unimaginable speeds, [now] apply advanced mathematical models in order to capture countless sophisticated trading strategies based on price correlations and associations between markets that were never before possible." *For Crying Out Loud,* Preface at xv.

84. Because of the lucrative lease market for the trading rights and privileges associated with Plaintiffs' Class B seats, including both the right to access CME's trading facilities and the right to trade at member rates, the value of those seats increased substantially after demutualization. Immediately following demutualization, Class B-1 shares in CME, for instance, were worth approximately $430,000 per Class B share. By December 2007 those shares had appreciated in value to $1.55 million per share. *See* Michael Gorham & Nidhi Singh, *Electronic Exchanges: The Global Transformation from Pits to Bits* at 113-114. At the time of CBOT's merger with CME, Series B-1 memberships in CBOT were priced in excess of $700,000 per share.

F. CME Discontinues its Longstanding Practice of Providing Class B Plaintiffs the Best and Most Proximate Access to the Globex Upon Opening the ADC.

85. As it prepared for launch of co-located trading at is new ADC trading floor in January 2012, CME made fundamental changes to the trading access rights and privileges that

Class B Plaintiffs had at the time of CME's and CBOT's respective demutualizations and that had continued to serve as the foundation for the value of the Class B Plaintiffs' memberships. In 2010, CME completed the first phase of construction at the ADC, and moved the Globex platform to the new facility and announced that it would begin offering co-located trading at the facility in 2012. Rich Miller, *CME Group Opens Chicago Trading Hub*, Data Center Knowledge (Aug 23, 2010).

86. "Co-location" involves placing multiple high-speed servers in very close proximity to electronic trading platforms, in this case, Globex, in order to further reduce the latency for the exchange of trading prices and market information. The co-location services at the ADC, as well as those provided by CME at other trading facilities, including a facility at 350 E. Cermak in Chicago, are used by high-frequency traders ("HFTs") that can make hundreds or even thousands of offers, purchases, quotations and trades per second using fully automated algorithmic trading programs, and CME now generates tens of millions of dollars per year in fees for co-location services. By garnering those co-location fees itself, rather than enabling the Class B Plaintiffs the privilege of accessing and charging customers for those services as part of their membership rights and privileges, CME made a fundamental change to the trading rights and privileges of the Class B Plaintiffs, without any member vote.

87. At the ADC, which is a huge building with a floor the size of several football fields, and which now functions as a trading floor and accounts for most of CME's trading activity, CME leases out space (referred to as "cages" or "closets") to "customers," including both Class B members and non-members. ECMs and trading firms that meet certain trading volume thresholds are not required to lease or purchase Class B memberships in order to access and trade from the ADC. Other CME customers who co-locate at the ADC are charged the

same price as Class B Plaintiffs for that access — $8,000 to $12,000 per month, or $96,000 to $144,000 per year. (The monthly fee charged by CME for co-locating varies depending upon bandwidth capacity – which is related to the speed and capacity of desired trading: 1 Gb = $8,000/mo., 10 Gb = $12,000/mo. Leases are for a one-year term.) Each "cage" has "rack space" for approximately 50 servers, and thus can host the trading activity for numerous traders or trading firms. Customers often sub-lease rack space in the cages to other parties for the placement of computer servers that are connected directly to the Globex Platform at the ADC.

88. By January 2012, CME had stopped providing Class B Plaintiffs and their lessees the best and most proximate access to the Globex platform, and by-passed the Class B Plaintiffs to begin offering "co-location" on the Globex directly to customers that had not leased or purchased Class B memberships.

89. Once the Globex electronic trading platform was moved to the ADC, access to Globex at the ADC became the best and most proximate available trading access, akin to access to the pit under open outcry trading. The ADC became CME's new trading floor. But the Class B Plaintiffs were not given free access to that trading facility, and CME further undermined the Class B Plaintiffs' access rights by operating another trading facility at 350 E. Cermak in Chicago, which also provided paying customers with the ability to access Globex and engage in high-speed trading activity. CME never sought or obtained the Class B Plaintiffs' approval of this fundamental change to their trading rights and privileges, and instead kept the Class B Plaintiffs largely in the dark about its plans for the ADC and how the opening of the ADC and the development of its new co-location services business would generate substantial revenues for CME while undermining the value of the Class B Plaintiffs' memberships.

90. Whereas the Class B Plaintiffs and their lessees previously had to pay no access fee to have the closest proximity to the Globex electronic trading platform, they now have to pay significant access fees or else forego the opportunity to trade at the ADC or CME's other co-location facilities and thereby suffer a latency disadvantage to non-member customers that pay CME for co-location services. By imposing an access fee on Class B Plaintiffs without their consent, CME changed both the "trading floor access rights and privileges" available to Class B Plaintiffs as Members of CME and CBOT and the "eligibility requirements" of Class B Plaintiffs "to exercise . . . the trading rights" of Members. Whereas the Class B Plaintiffs, members of CME and CBOT, previously enjoyed the best access and closest proximity to electronic trading platforms, *and as alleged above had the right and privilege to do since before demutualization*, their access is no longer superior to that of non-members of the exchange, and they are at a significant market disadvantage in seeking to trade or to lease their seats. As a result, the Class B Plaintiffs have also been deprived of substantial amounts of rent that they would have received had their lessees been allowed to co-locate at the ADC with superior proximity to the Globex platform and without paying any additional access fees; their seats are now worth far less than they would be if CME had fulfilled its contractual obligations.

91. The Class B Plaintiffs were eligible to access CME's and CBOT's electronic trading platforms both before and after demutualization without any additional charge. The placement of Globex at the ADC is just another upgrade of the same electronic trading platform that CME has maintained and upgraded since the early 1990s, and to which the Class B Plaintiffs were afforded the best access and closest proximity—at no additional charge, and as a fundamental part of their trading rights and privileges as Members—for two decades prior to 2012. Requiring the Class B Plaintiffs to pay for access to Globex at the ADC is a breach of

Plaintiffs' Core Rights because it changed their trading floor access rights and privileges and changed the eligibility requirements to exercise their trading rights and privilege to have the closest proximity and access to the Globex electronic trading platform.

G. Globex Today and CME's Failure to Honor Plaintiffs' Rights.

92. At demutualization, CME recognized that Globex ultimately would become the "real price discovery pit," supplanting the existing trading floors of the exchange as a virtual trading floor that, while still headquartered at CME's facilities in Chicago, would span the globe. *For Crying Out Loud*, p. 41. Today, CME's Globex electronic trading platform has fulfilled Melamed's vision. In addition to the match engine and co-location facilities at the ADC, CME has an additional co-location facility at 350 E. Cermak in downtown Chicago, and a network of high-speed Globex trading hubs throughout the world, but it does not provide its members with any share of the revenues generated by providing access to those trading facilities either. The vast majority of CME trading now occurs on the Globex platform, and CME generates tens of millions of dollars in Globex-related access and co-location fees every quarter.

93. In fulfilling Melamed's vision for Globex, however, CME has failed to honor the contractual rights of its members, the Class B Plaintiffs. Since securing the near-unanimous approval of its demutualization plan with an "ironclad guarantee" that it would not modify trading rights and privileges without its Class B members' approval, CME has pursued an apparently boundless expansion in the ability of non-members and additional traders at clearing and corporate members and Rule 106.J members to trade through Globex.

94. In developing and expanding Globex, CME has failed, and continues to fail, to honor the contractual commitments it made to its members upon demutualization and

reaffirmed in its securities filings and elsewhere after demutualization. Unlike other exchanges that demutualized, CME did not purchase its existing memberships as part of the demutualization transaction. Instead, CME members retained the equity interests and rights and privileges associated with their Class B shares, and a right to share in the profits associated with the future growth of the Globex trading platform through the exclusive right to Globex access fee revenues that existed at the time of demutualization. The eligibility requirements limiting the number of GSRs to the number of memberships, as well as the right to share in fees generated from the lease of GSRs to members and other market participants, set forth in the versions of Rules 574 and 582 that were in effect at the time of demutualization, were among the trading rights and privileges associated with Class B memberships that were guaranteed as part of members' Core Rights at the time of demutualization.

95. Contrary to the Class B plaintiffs' core rights and CME's contractual obligations to its members, CME never sought its Class B members' approval to change the requirement that any Globex access fees generated from the lease of GSRs, or any other access fees associated with the expansion in the number of Globex terminals, would be distributed amongst Class B members on a pro rata basis. Although the number of Globex terminals was strictly limited to the number of members when CME's June 2000 demutualization vote occurred, and although CME internally recognized that members were entitled to the benefits of expanded Globex access as part of their rights and privileges and members, CME adopted a new "open access" policy shortly after the demutualization vote but before the transaction closed. CME's "open access" policy allowed an unlimited expansion in the number of Globex terminals, and allowed non-member customers to access and trade through Globex, albeit not at member rates. As a result of CME's "open access" policy, the number of Globex traders throughout the world

has grown exponentially, and CME has generated many billions of dollars in clearing fees as a result of that expanded trading activity. The Class B Plaintiffs do not dispute CME's right to generate and retain those additional Globex-related clearing fees.

96. But CME never sought or obtained member approval to keep the revenue generated by expanding access to Globex for itself, and not share those access fees with members. Under CME Rule 582, which remained in place after the demutualization was completed, CME was required to allocate the revenues generated from leasing access to Globex terminals that were not used by its members on a *pro rata* basis. With the expansion in the number of Globex screens that resulted from the adoption of its new "open access" policy in 2000, CME began generating substantially revenues by charging access and communication fees to its new Globex customers. Between 2001 and the present, CME's revenues from Globex access and communication fees increased from approximately $12 million to more than $85 million, per year, enabling CME to gather hundreds of millions of dollars in revenues that should have been allocated to its Class B shareholders.

97. CME also now allows traders associated with clearing firms to trade through Globex without purchasing or leasing Class B memberships, allows "non-member customers" and employees and independent contractors of Rule 106.J firms to trade through Globex at rates that are as good as or better than the rates available to members generally, and has thus diluted the value of owning or leasing a membership. These are fundamental changes to the eligibility requirements for exercising the trading rights and privileges held by Class B members—and, particularly, the right to trade through Globex—that CME was not entitled to make without its members' approval.

98. CME additionally has breached the Core Rights of the Class B Plaintiffs by granting ECMs and, on information and belief, other categories of customers, access to engage in co-located trading at the ADC without requiring that they purchase or lease a Class B membership and without Class B Plaintiffs' approval; by providing ECMs and other customers preferential trading and clearing fee terms while failing to honor their obligation to ensure that the Class B Plaintiffs would receive preferential fees; and by allowing ECMs and other customers to trade products through Globex at preferential rates even though the Class B members have not been granted access to such rates, and by allowing ECMs and other customers to trade and execute trades on terms that make members' nominally preferential clearing rates effectively meaningless..

99. CME Rule 106.R provides that a proprietary trading firm may obtain the rights of an ECM by either purchasing one CME membership or leasing two CME memberships in the division of the exchange in which they wish to receive discounted rates. CBOT Rule 106.R likewise permits proprietary trading firms to obtain ECM rights by leasing a Series B-1 or Series B-2 CBOT membership. CME Rules 106.I and 106.J, and their counterparts within the CBOT rules, similarly allow unlimited numbers of traders affiliated with certain member firms to trade at member rates without owning or leasing any membership.

100. Through its "volume incentive program," CME has created an entirely new class of ECM known as "ECM-W" for which the requirement that an ECM own or lease a membership is waived so long as the firm meets certain trading volume thresholds. In other words, ECM-Ws can gain trading rights and privileges without any requirement that they own or lease any other type of CME membership. At demutualization, incentive programs were understood to be short term programs designed to increase liquidity for new product offers.

Now, however, CME allows incentive programs to continue indefinitely, thereby undermining or eliminating the fee preferences that members are supposed to enjoy as part of their membership rights and privileges.

101. Under its market maker incentive program, CME offers discounted fees to incentivize trading and the creation of liquidity in *new* markets. The fee incentive program, also known as its CME Electronic Incentive Program ("CEIP"), accords certain large volume market participants a discount on clearing fees for adding liquidity to markets for new products. The incentives which were supposed to be temporary, have continued indefinitely. CME has waived requirements that non-member customers become CME members. According to the Wall Street Journal, *"Perks Live Forever at CME Amid Review of Trade Incentives,"* Matthew Leising, June 19, 2014:

> On the Chicago Mercantile Exchange, where competition among high-frequency traders is supposed to create a fairer market, some firms get a better deal than others. . . The Eurodollar trading perks, which can be used to reduce trading costs, are 10 times greater for the original market-making firms than new entrants . . . Incentive programs at U.S. futures markets have boomed in the last decade, rising more than six fold, with 341 on file with the CFTC as of 2013, compared with 56 in 2010.

These agreements are not public, but include terms that are unique to each recipient of these fee deals. Among these terms are rebates, gross reductions in fees, and trading patterns eligible for discounts.

102. By providing ECM-Ws and other non-member customers access to the ADC without buying or leasing memberships, and by otherwise granting preferential fees to customers who were not Class B Plaintiffs and failing to honor its obligation to ensure that the Class B Plaintiffs would receive the best clearing and transaction fees, CME has further diluted

the value of the Class B Plaintiffs' shares and memberships and has caused the Class B Plaintiffs to lose lease revenues.

103. Due to the CME's breaches of its contractual obligations to its Class B members, certain CME fees and revenues that should be inuring to the benefit of Class B members are bypassing Class B members and instead increasing the CME's overall profits—thus increasing the value of Class A shares while decreasing the value of Class B shares.

104. When questioned by Class B Plaintiffs, CME management has refused to acknowledge the obligation to protect the Class B Plaintiffs' Core Rights in expanding access to Globex trading and developing the co-location facility at the ADC. In March 2010, Mr. Langer and other Class B shareholders met with CME management to discuss concerns about the languishing value of their Class B shares and lease rates, and about whether CME could do more to promote the value of the Class B shares. Terence Duffy, CME's Executive Chairman and President, told Mr. Langer that CME management did not have any obligation to represent the interests of Class B shareholders, disregarding CME's contractual obligations under the CME and CBOT charters. Mr. Duffy's statement reflected his disdain for the Class B plaintiffs' Core Rights under the CME and CBOT charters, and is consistent with the disregard for the rights of the Class B plaintiffs that CME and its management have shown in recent years.

105. At CME's annual meeting on May 22, 2013, one of the class representatives, Ronald Yermack, asked Mr. Duffy several questions about the ADC and the application of the Class B Plaintiffs' Core Rights to the ADC. In response to those questions, Mr. Duffy confirmed that the ADC is a trading facility where CME charges participants a fee in exchange for allowing them to execute trades at higher speeds based on their proximity to the CME match engine that is located in the same building. In prior conversations with Yermack and

other Class B Plaintiffs between 2010 and 2013, Duffy had repeatedly claimed that the value of Class B memberships and the lease revenues that could be generated from Class B memberships was linked to the overall trading volume at the exchange, and that the value of Class B memberships would appreciate as volume increased. However, Yermack and other Class B Plaintiffs observed that, even as CME's trading volume and revenues increased substantially, and even as CME's Class A shares increased in value, the value that could be generated from Class B memberships declined or continued to languish.

106. In response to the questions Yermack posed at the May 2013 annual meeting, Duffy and CME's in-house counsel asserted that the Class B Plaintiffs' did not have a right to approve CME's granting preferential access fees to non-members, and that the "rights and privileges" of Class B Plaintiffs were limited to the "trading floor" in Chicago, even though Core Right Number 4 makes no reference to the "trading floor," and even though nothing in the documents conferring the Class B Plaintiffs their trading and access rights suggests that those rights are limited to the historical trading floor and do not extend to a virtual or electronic trading floor like the one that now exists at the ADC. To the extent that documents provided to the Class B Plaintiffs and other communications at the time of the demutualization suggested that the Class B Plaintiffs' trading rights and privileges extended to electronic trading on the Globex platform, CME's in-house counsel asserted those were merely "undertakings as to how CME would operate its business" following demutualization, not contractual obligations.

107. Duffy acknowledged in response to the questions posed by Mr. Yermack at the 2013 Annual Meeting that the trading rights and privileges available at the ADC are highly valuable. According to Duffy, CME has now placed all of its Globex servers and clearing servers at the ADC, and built out enough space at the ADC so that trading firms could directly

access those servers at the ADC because "everyone wants to be as close as possible to the servers." Duffy further described CME's new co-location services business as a "good business," and claimed that "everyone" now has the "same exact access" to CME's electronic trading facilities. According to Duffy, the Class B Plaintiffs' trading rights and privileges are limited to the "traditional trading floor" of the Exchange and that the Class B Plaintiffs have no right to engage in electronic trading at the ADC unless they pay the additional access fee. CME's in-house counsel further stated that the Class B Plaintiffs had no right to trade on Globex, and that the Class B Plaintiffs' rights were limited to the "trading floor."

H. The Class B Plaintiffs' Damages

108. The Class B Plaintiffs have suffered enormous damages as a result of the breaches of CME's contractual obligations alleged above. In particular, since the opening of the ADC in January 2012, and since CME began allowing non-members to trade at member rates, the value of the Class B Plaintiffs' shares has decreased substantially, even as the revenues, trading volume, and market capitalization of CME and the value of its Class A shares has increased dramatically. Whereas each full membership in CME and CBOT was worth more than $1.5 million and more than $700,000 in 2007, today the same memberships have dwindled in value to less than $400,000 and less than $220,000, respectively.

109. Because the Class B Plaintiffs no longer have the best access and closest proximity to the Globex electronic trading platform for free, and because CME now markets access to Globex directly to corporate members, clearing members and non-members at rates that are equal to or better than the rates available to the Class B Plaintiffs, and because CME has not honored its commitment to share Globex-related fees with the Class B plaintiffs, the market for lease and sale of the Class B Plaintiffs seats has been substantially destroyed.

110. Plaintiffs do not currently possess precise data regarding the number of lessees and sub-lessees at the ADC. However, CME Group's Form 10-K, filed March 1, 2013, indicates that CME has been paid at least $40 million by customers in 2012 who co-located at the ADC. Based on this statement, on information and belief, one possible estimate is that there could be more than 300 CME customers co-locating at the ADC. On information and belief, the Plaintiffs believe that these "customers" are subleasing their cages to 20-40 sublessees apiece, or more than 6,000 subtenants.

111. If Class B Plaintiffs were provided the opportunity, to which they are contractually entitled, to co-locate at the ADC without payment of an access fee, non-member customers would have an economic incentive to lease the Class B Plaintiffs' membership rights to obtain access to co-location and to secure the preferential clearing and transaction fees available to Class B members.

112. As a result of Defendants' actions, the Class B Plaintiffs have suffered at least hundreds of millions of dollars in diminished share value and the loss of rental income that they would have received had they been able to offer for lease the full bundle of rights to which they were entitled without having to pay an access fee at the ADC. The Class B Plaintiffs will continue to suffer lost rental income, and the value of their shares will not recover, if they are not allowed to co-locate at the ADC without having to pay an access fee. The Class B Plaintiffs' losses will continue until the Class B Plaintiffs have been granted a remedy for the deprivations of their core rights.

113. The Class B Plaintiffs have also suffered a further diminished share value and diminution in lease income as a result of (a) CME's failure to require ECM-Ws and other non-member customers to purchase or lease Class B memberships to trade through Globex, (b)

CME's granting of preferential fees to ECMs and other non-member customers, and (c) CME's failure to share the fees generate from the lease or license of Globex access rights with its Class B members, as it was required to do under Rule 582 at the time of demutualization. CME has generated substantial fees from non-member customers that it permits to trade through Globex without owning or leasing Class B memberships; if CME had complied with its obligations to honor plaintiffs' core rights, and to modify those rights only upon an affirmative vote by the Class B Plaintiffs, CME would have been required to grant non-member customers access to trading through Globex only upon terms that the Class B plaintiffs approved, which would have included a revenue sharing arrangement to allocate the benefits of Globex trading access which, prior to demutualization, belonged exclusively to the CME members.

V. CAUSES OF ACTION

A. Count I – Breach of contract

114. The Class B Plaintiffs repeat and re-allege herein the allegations contained in Paragraphs 1 through 114, as if fully stated herein.

115. The CME Charter and the CBOT Charter are contracts between CME and CBOT, on the one hand, and the Class B Plaintiffs, on the other hand.

116. The CME Charter and the CBOT Charter set forth contractual obligations that Defendants undertook in issuing Class B shares and memberships through their demutualizations. The Class B Plaintiffs relinquished their membership in the pre-existing mutual organizations exchange for, *inter alia*, the contractual trading rights and privileges associated with their memberships in the reorganized entities, as confirmed in the CME Charter and the CBOT Charters.

I.A Breach of Contract – CME Members

117. As alleged above, the CME Charter provides that CME's Class B shareholders have certain "Core Rights" that cannot be changed or modified absent a majority vote of the Class B shareholders. Those Rights include Core Right 2, which guarantees the Class B shareholders' "trading floor access rights and privileges," and Core Right 4, under which CME agreed to maintain "[t]he eligibility requirements for any Person to exercise any of the trading rights or privileges of members of the Exchange."

118. The rights and privileges that each CME Class B shareholder has are not limited to a trading floor, but include all rights and privileges that a member had at the time of demutualization, including the rights to trade on all electronic trading systems, the right to the best and most proximate access to Globex, the exclusive right to access Globex from any trading floor free of charge, the right to preferential clearing fees, and the right to share in any revenues generated by CME in providing access to Globex. The trading rights and privileges of CME are embodied in the rules and by-laws that existed at the time of demutualization, and the meaning of those trading rights and privileges is also recognized and defined by trade usages, customs, and practices at the time of demutualization as well as CME's course of conduct in recognizing the existence of these rights and privileges following demutualization.

119. CME has breached its Class B shareholders' Core Rights in the following ways:

(A) The ADC is a trading floor within the meaning of Core Right 2, and under Core Right 4 only members are eligible to exercise the trading rights and privileges of members. Under Core Rights 2 and 4, the Class B Plaintiffs have the exclusive right to access and trade from any CME trading floor for free as part of their membership rights, and members further have a right to the best and most proximate access to Globex. Moreover, the right to access and trade at the ADC and other CME trading

facilities properly belongs to CME members, and any fees associated with providing access to those facilities, such as co-location fees, properly should have been paid to or shared with members pursuant to a revenue-sharing plan approved by members. CME has breached the Core Rights by, without member approval:

1. Allowing non-members to trade CME products on Globex from the ADC trading floor.

2. Requiring Class B members to pay "co-location" or other access-related fees to obtain the best proximity and access to Globex, and to trade from the ADC. And,

3. Collecting "co-location" and other access-related fees from market participants that trade from the ADC and other facilities that provide preferred access to Globex without paying them to or sharing them with members pursuant to a revenue-sharing plan approved by the members.

(B) The right to preferential clearing fees was among the trading rights and privileges held by members when CME demutualized, and was thus guaranteed by Core Rights 2 and 4. At demutualization, the right to preferential fees was recognized as a matter of custom and practice to be a central feature of a CME membership, and was specifically guaranteed under By-Law 6.3(d) of the CME and Rule 121 of the CME Rules. In presenting the demutualization plan to CME members, CME Chairman Emeritus Leo Melamed and its Second Vice Chairman James Oliff assured members that the right to preferential fees was sacrosanct, and would

always remain in place following demutualization. For many years following demutualization, CME recognized the existence of members' right to preferential fees through its course of conduct. Despite members' Core Right to preferential fees, CME has violated the Core Rights by:

1. Allowing non-members, and individuals affiliated with certain members, to trade at member rates, thereby changing the eligibility requirements for exercising the rights and privileges of members without the member vote required by the CME Charter.

2. Providing certain customers with special discounts and rebates that enable them to trade on terms that are substantially preferential to the rates available to members generally. And,

3. Charging co-location fees in order to have the best and most proximate access to Globex, thereby eliminating the benefits of the nominally beneficial fees set forth in CME's fee schedule.

(C) At demutualization, members were entitled to share on a *pro rata* basis in any access fee revenues generated by leasing Globex terminals to market participants under CME Rule 582. The right to share in those revenues was one of the trading privileges of CME members, and was thus guaranteed by Core Rights 2 and 4. Following the adoption of its "open access" policy shortly after the demutualization vote in June 2000, which eliminated the prior limit on the number of Globex terminals to the number of members, the number of Globex terminals in use throughout the world increased substantially over the next several years. CME

charged access and communication fees to each Globex user that traded through Globex, but it did not share any of those revenues with CME members. Indeed, after demutualization, CME unilaterally eliminated Rule 582 without any member vote, and began keeping all Globex access fee revenues for itself. Since 2000, CME has engaged in a continuing and ongoing breach of its obligation to share Globex access fee revenues with its Class B members, collecting hundreds of millions in dollars in Globex access and communication fee revenues that properly should have been shared with the CME Class B shareholders in the proposed class.

120. Under the CME Charter, any amendment, change or modification to the Core Rights requires a majority vote of the Class B shareholders. CME did not obtain the required member vote before amending, changing, and modifying its members Core Rights in the ways described above, and is thus in breach of the Core Rights obligations under the CME Charter.

I.B Breach of Contract – CBOT Members

121. As alleged above, the CBOT Charter provides that CBOT's Class B members with certain "Trading Rights" and "Special Voting Rights" that cannot be changed or modified absent a majority vote of the Series B-1 and Series B-2 members. Those Rights include Special Voting Right 2, which guarantees the Class B members preferential transaction fees, and Special Voting 3, under which CBOT agreed to maintain "eligibility requirements for . . . exercising any of the membership rights and privileges associated with" Class B memberships.

122. The rights and privileges that each CBOT Class B members has are not limited to a trading floor, but include all rights and privileges that a member had at the time of demutualization, including the rights to trade on all electronic trading systems, the right to the best and most proximate access to the electronic trading systems, the exclusive right to access

electronic trading systems from any trading floor, and the right to preferential transaction fees. The trading rights and privileges of CBOT are embodied in the rules and by-laws that existed at the time of demutualization, and the meaning of those trading rights and privileges is also recognized and defined by trade usages, customs, and practices at the time of demutualization as well as CBOT's course of conduct in recognizing the existence of these rights and privileges following demutualization.

123. By not putting the following the matters to a vote of the Series B-1 and B-2 members, CBOT has breached its Class B members' Trading Rights, Special Voting Right 2, and Special Voting Right 3:

(A) CBOT has allowed non-members to trade CBOT products on Globex from the ADC trading floor, in breach of (1) Class B members' Trading Rights, which include the best and most proximate access, relative to non-members, to the electronic trading platform and the exclusive right to trade electronically from the trading floor, and (2) Special Voting Right 3, which prohibits CBOT from allowing non-members to exercise the trading rights and privileges of members without a vote of the Series B-1 and B-2 members.

(B) CBOT has charged CBOT Class B members "co-location" and other access-related fees to have the best and most proximate access for trading CBOT products, including from the ADC trading floor, in breach of Class B members' Trading Rights to trade electronically from the trading floor free of charge, thereby eliminating the fee benefits that are protected by Special Voting Right 2.

(C) CBOT has breached the Trading Rights, Special Voting Right 2, and Special Voting Right 3 by allowing non-members, and individuals affiliated with certain members, to trade at member rates without a vote of the Series B-1 and B-2 members.

(D) CBOT has provided certain customers with special discounts and rebates that enable them to trade on terms that are substantially preferential to the rates available to members generally, in breach of the Trading Rights, Special Voting Right 2, and Special Voting Right 3.

(E) CBOT has breached Special Voting Right 2 and Special Voting Right 3 by charging members the same rates to "co-locate" and otherwise access the ADC trading floor and other "co-location" and trading facilities. Because these fees increase the overall cost of transactions on Globex that are executed from the ADC or other "co-location" or trading facilities, CBOT must either give members a fee preference that is meaningful enough to promote Class B membership value or obtain a member vote to approve a plan for sharing the revenues generated through co-location fees. Its failure to do so without a vote of the Series B-1 and B-2 members is a breach of Special Voting Right 2. Furthermore, by allowing non-members to pay the same rates as members, CBOT has breached Special Voting Right 3.

I.C Causation and Damages – All Class B Plaintiffs

124. Although the breaches alleged above adversely impacted the value of the Class B memberships earlier, and although Class B plaintiffs were deprived of substantial revenues as a result of those breaches for many years, The Class B Plaintiffs were able to generate substantial revenues leasing their memberships until 2012, and their memberships maintained

substantial economic value that generally increased or decreased in tandem with fluctuations in the overall value of CME and its publicly traded Class A shares.

125. As a result of these breaches, which are ongoing, CME has unjustly enriched itself, and the Class B Plaintiffs have suffered substantial damages in an amount to be proven at trial as a result of the diminished value of their memberships, the loss of lease revenues that they otherwise would have earned and would continue to earn absent the breaches of contract alleged herein, and the loss of the opportunity to share in the co-location and Globex access fee revenues that CME has collected without member approval and in violation of the Class B Plaintiffs' exclusive rights and privileges.

B. Count II – Breach of the Implied Covenant of Good Faith and Fair Dealing

126. Defendants have implied obligations of good faith and fair dealing with respect to their obligations under their contracts with the Class B Plaintiffs.

127. ***Exclusive Right to Access Globex from Co-Location Facilities for Free.*** Pleading in the alternative to Count I, Plaintiffs allege that Defendants have denied that the ADC is a "trading floor," and have further asserted that they may provide preferential access to Globex at the ADC and other co-location facilities to market participants that pay co-location fees, without member approval and without any obligation to provide members with free co-location services as part of their membership rights and privileges or to share co-location revenues with members. To the extent the Court accepts Defendants' position, then there is a gap or interstitial space in the express terms of both the CME and CBOT Charters with respect to the Class B Plaintiffs' rights with respect to the ADC and other "co-location" facilities, the development of which was not, and could not have been, anticipated by the parties at the time of Defendants' demutualizations.

128. Had the parties considered whether the Class B Plaintiffs' rights and privileges would extend to "co-location" facilities such as the ADC—which have a trading floor's quintessential characteristics, including a time and place advantage relative to other market participants—the parties would have agreed that the Class B Plaintiffs' rights and privileges included the right and privilege, to the exclusion of non-members, to access Globex from the ADC and other "co-location" facilities, and to do so without having to pay any fees for that access. The parties would have further agreed that this right and privilege could not be changed without a member vote of CME Class B shareholders and CBOT Series B-1 and B-2 members.

129. Implying this covenant into the CME and CBOT Charters is necessary to effectuate the purpose of the terms the parties agreed to, and to prevent Defendants from denying the Class B Plaintiffs the fruit of their bargain.

130. Defendants have breached this implied covenant, causing damages to the Class B Plaintiffs as alleged above.

131. ***CME Fees.*** Pleading in the alternative to Count I, Plaintiffs allege that CME has denied that its obligation to provide CME Class B shareholders with preferential clearing fees that promote the value of CME Class B shares carries with it a duty not to impose other fees, such as co-location, access, and communication fees, that eliminate the benefits of preferential clearing fees. To the extent the Court accepts CME's position, then there is a gap or interstitial space in the express terms of both the CME Charters with respect to the Class B Plaintiffs' rights with respect to such fees.

132. Just as "co-location" facilities such as the ADC were not contemplated in June 2000 when the CME members voted to demutualize, related co-location, access, and communication fees likewise were not, and could not have been, contemplated by the parties.

At the time of CBOT's demutualization, the only fees that Class B members had ever been charged for the ability to trade electronically from CBOT's facilities were transaction fees (specifically, "exchange fees" and "clearing fees").

133. Had the parties considered whether CME Class B shareholders would be charged such fees, they would have agreed that Class B members would have the right to access the ADC and other "co-location" facilities free of charge.

134. In the alternative, the parties would have agreed that Class B shareholders were entitled to co-location, access, and communication fee preferences that were sufficient to promote the value of Class B shares, as evident, from among other facts, the fee preferences mandated by the CBOT/CBOE Agreement applied to all fees and were not limited to any other particular category of fees.

135. Implying these covenants into the CME Charter is necessary to effectuate the purpose of the terms the parties agreed to, and to prevent CME from denying the Class B Plaintiffs the fruit of their bargain.

136. CME has breached these implied covenants, causing damages to the Class B Plaintiffs as alleged above.

137. ***CBOT Fees.*** Pleading in the alternative to Count I, Plaintiffs allege that CBOT has denied that co-location, access, and communication fees associated with accessing Globex from the ADC or other "co-location" facilities are "transaction fees" for purposes of Special Voting Right 2. Further, CBOT has denied that its obligation to provide CBOT Class B members with preferential transaction fees carries with it a duty not to impose other fees, such as co-location, access, and communication fees, that eliminate the benefits of preferential transaction fees. To the extent the Court accepts CBOT's position, then there is a gap or

interstitial space in the express terms of the CBOT Charter with respect to the Class B Plaintiffs' rights with respect to such fees.

138. Just as "co-location" facilities such as the ADC were not contemplated in June 2000 when the CME members voted to demutualize, related co-location, access, and communication fees likewise were not, and could not have been, contemplated by the parties.

139. Had the parties considered whether CBOT Class B members would be charged such fees, they would have agreed that Class B members would have the right to access the ADC and other "co-location" facilities free of charge.

140. In the alternative, the parties would have agreed that CBOT Class B members were entitled to co-location, access, and communication fee preferences that were sufficient to promote the value of Class B members.

141. Implying these covenants into the CBOT Charter is necessary to effectuate the purpose of the terms the parties agreed to, and to prevent CBOT from denying the Class B Plaintiffs the fruit of their bargain.

142. CBOT has breached these implied covenants, causing damages to the Class B Plaintiffs as alleged above.

Jury Demand

The Class B Plaintiffs demand a trial by jury.

Prayer for Relief

WHEREFORE, the Class B Plaintiffs respectfully request this Court:

(1) Enter judgment in their favor and against all Defendants;

(2) Award damages to the Class B Plaintiffs and against all Defendants based on the lost lease revenues, lost profits and diminution in the value of their memberships resulting from Defendants' breach of their contractual obligations;

(3) Disgorgement of Globex-related fees that, under the rights and privileges of Class B Plaintiffs that existed at the time of demutualization, should have been shared with the Class B Plaintiffs on a *pro rata* basis;

(4) Award injunctive relief to compel Defendants to allow the Class B Plaintiffs or their lessees to co-locate at the ADC with the shortest latency and without having to pay an access fee in the future;

(5) Award injunctive relief to compel Defendants to (a) obtain Class B member approval of changes to the eligibility requirements for trading on the Globex system, including any circumstances in which non-member customers are permitted to trade from the ADC or any other CME trading facility, and any circumstances in which any customer is able to execute trades at a net cost that is lower than the published rates available to members generally; (c) require ECMs and other customers to purchase or lease memberships from Class B plaintiffs in order to obtain the trading rights and privileges to which Class B members are entitled, including the right to trade at member rates and best access and closest proximity to the Globex platform at the ADC; and (d) requiring CME to share revenues generated by Globex access fees with CME members..

(6) Award such additional relief as is just and proper.

Dated: March 2, 2017

Respectfully submitted,

SHELDON LANGER
RONALD M. YERMACK
LANCE R. GOLDBERG

By: 
One of their Attorneys

Suyash Agrawal
Matt Reedy
MASSEY & GAIL LLP
Cook County Firm No. 56232
50 E. Washington Street – Suite 400
Chicago, Illinois 60602
(312) 283-1590 main
sagrawal@masseygail.com
mreedy@masseygail.com

Stephen D. Susman
IL ARDC# 6314819 (Rule 707)
Robert S. Safi
IL ARDC# 6314817 (Rule 707)
SUSMAN GODFREY L.L.P.
1000 Louisiana Street – Suite 5100
Houston, Texas 77002
(713) 651-9366 main
ssusman@susmangodfrey.com
rsafi@susmangodfrey.com

Stephen E. Morrissey
IL ARDC# 6314877 (Rule 707)
SUSMAN GODFREY L.L.P.
1201 Third Avenue – Suite 3800
Seattle, WA 98101-3000
(206) 516-3880 main
smorrissey@susmangodfrey.com

Mark Hatch-Miller
IL ARDC# 6323352 (Rule 707)
SUSMAN GODFREY L.L.P.
560 Lexington Avenue - 15th Floor
New York, NY 10022-6828
(212) 336-8332 direct
Mhatch-miller@susmangodfrey.com

Attorneys for Plaintiffs

PROOF OF SERVICE

Pursuant to Illinois Supreme Court Rules 11 and 131, the undersigned, an attorney, certifies that he served the foregoing instrument by transmitting it via e-mail on March 2, 2017 from Chicago, Illinois to the following designated e-mail addresses of record for Defendants' counsel, who have consented to e-mail service:

Albert L. Hogan III, Esq.
al.hogan@skadden.com

Marcella L. Lape, Esq.
marcella.lape@skadden.com

Suyash Agrawal