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, Plaintiffs, v. CME GROUP, INC., a Delaware Corporation; THE BOARD OF TRADE OF THE CITY OF CHICAGO, INC., a Delaware Corporation, Defendants.	No. 2014 CH 00829 Calendar 6 Honorable Celia G. Gamrath Presiding JURY TRIAL DEMANDED

PLAINTIFFS' REPLY TO DEFENDANTS' AFFIRMATIVE DEFENSES IN THEIR ANSWER TO THE THIRD AMENDED COMPLAINT

Plaintiffs Sheldon Langer, Ronald M. Yermack, and Lance R. Goldberg, individually and on behalf of all others similarly situated, hereby reply to Defendants CME Group Inc.'s ("CMEG") and Board of Trade of the City of Chicago, Inc.'s ("CBOT") Affirmative Defenses to Plaintiffs' Third Amended Complaint. Plaintiffs state:

AFFIRMATIVE DEFENSES

1. Defendants CMEG and CBOT, by their attorneys, hereby set forth their affirmative defenses to the Third Amended Complaint. By listing any matter as a defense, Defendants do not assume the burden of proof or any other burden if such burden would be on Plaintiffs under applicable law. Moreover, by setting forth the following defenses, Defendants do not waive the right to assert additional defenses at a later date and expressly reserve the right to do so, including by amending or seeking leave to amend this Answer.

ANSWER: This paragraph does not contain facts but instead sets forth legal conclusions and arguments to which no response is required. To the extent any response is required, Plaintiffs deny the allegations in this paragraph.

Factual Allegations Common To All Defenses

2. Defendant CMEG is a Delaware corporation, headquartered in Chicago, Illinois. CMEG owns and operates derivative exchanges throughout the world, including CME Inc. and CBOT.

ANSWER: Admitted.

3. Defendant CBOT is a derivatives exchange headquartered in Chicago, Illinois.

ANSWER: Admitted.

4. Chicago Mercantile Exchange Holdings Inc., the former parent company of CME, Inc., and CBOT Holdings, Inc., the former parent company of CBOT, merged in 2007. The surviving entity, Chicago Mercantile Exchange Holdings Inc., then changed its name to CMEG.

ANSWER: Admitted.

5. Plaintiffs Sheldon Langer and Ronald Yermack are holders of Class B Common Stock in CMEG, which affords them certain rights and privileges, including trading rights and privileges on CME, Inc. The rights and privileges of the CMEG Class B Plaintiffs are defined, in writing, in the CMEG Charter, the CMEG Bylaws, and in the Rules of CME, Inc., as amended from time to time.

ANSWER: Plaintiffs admit that Sheldon Langer and Ronald Yermack are holders of Class B Common Stock in CMEG, which affords them, *inter alia*, rights and privileges

relating to the Chicago Mercantile Exchange Inc., and that certain rights and privileges of members are set forth in the CMEG Group Charter, the CMEG By-laws, and the Rules of the CME. Except as so stated, Plaintiffs deny the allegations of this paragraph.

6. The CMEG Charter sets forth the Core Rights guaranteed to the Class B shareholders. A Class B shareholders' Core Rights are distinct from other trading rights and privileges defined in the CMEG bylaws and the Rules of CME, Inc. because the Core Rights cannot be changed or modified absent a majority vote of the Class B shareholders.

ANSWER: Plaintiffs admit that the Core Rights set forth in the CMEG Charter cannot be changed or modified absent a majority vote of the Class B shareholders. Except as so stated, Plaintiffs deny the allegations of this paragraph.

7. Plaintiffs Langer and Yermack have leased their trading rights and privileges to other individuals since at least August 2012.

ANSWER: Plaintiffs admit that Langer and Yermack have leased trading rights and privileges associated with CME membership to other parties since at least August 2012. Except as so stated, Plaintiffs deny the allegations of this paragraph.

8. Plaintiff Lance Goldberg is a Class B Member in CBOT. As a CBOT Class B Member, Goldberg enjoys certain rights and privileges related to CBOT, which are defined, in writing, in the CBOT Charter, the CBOT Bylaws, and the CBOT Rules, as amended from time to time.

ANSWER: Plaintiffs admit that Lance Goldberg is a Class B Member in CBOT, that CBOT Class B Memberships include rights and privileges related to CBOT, and that certain rights and privileges of CBOT members are set forth in the CBOT Charter, the

CBOT Bylaws, and the CBOT Rules. Except as so stated, Plaintiffs deny the allegations of this paragraph.

9. Plaintiff Goldberg has leased his trading rights and privileges since at least August 2012.

ANSWER: Plaintiffs admit that Goldberg has leased trading rights and privileges associated with CBOT membership to other parties since at least August 2012. Except as so stated, Plaintiffs deny the allegations of this paragraph.

A. CME Inc.'s Demutualization and the Adoption of the "Core Rights"

10. Prior to November 2000, CME, Inc. was an Illinois not-for-profit membership corporation governed by its members. On November 13, 2000, however, CME, Inc. completed a demutualization in which it converted to a Delaware for-profit corporation.

ANSWER: Admitted.

11. The demutualization transaction resulted in the conversion of membership interests in CME into Class A Common Stock, which conferred equity rights, and Class B Common Stock, which conferred the traditional equity rights and trading rights of its associated membership divisions, including floor trading rights and privileges.

ANSWER: Plaintiffs admit that the demutualization transaction included issuance of Class A Common Stock, which conferred equity rights, and Class B Common Stock, which conferred other rights and privileges. Plaintiffs deny that members' Class B memberships included only trading floor rights and privileges as alleged by defendants, as Class B members received equity, Core Rights, and trading rights and privileges. Except as so stated, Plaintiffs deny the allegations of this paragraph.

12. As part of the demutualization, the former member-owners gave up referendum voting rights that they previously enjoyed, which allowed them to overturn board action in adopting any new Exchange rules or amending or repealing existing rules. In return, the new CME, Inc. agreed that holders of CME Class B shares would have the right to vote on any changes, amendments, or modifications to four "Core Rights."

ANSWER: Plaintiffs admit that the Core Rights set forth in the CMEG Charter cannot be changed or modified absent a majority vote of the Class B shareholders. Except as so stated, Plaintiffs deny the allegations of this paragraph.

13. In the Demutualization Plan that CME distributed to its former member-owners on November 2, 1999, CME explained to its members that the Core Rights were designed to protect their open outcry trading rights. CME explained: "[I]n order to assure members that their current floor trading rights will be protected, the Board has designed provisions to preserve members' core open outcry trading rights. These core rights include: (1) current divisional product allocation rules applicable to each series of Class B shares; (2) current floor access rights and privileges, including the commitments [to maintain open outcry trading facilities]; (3) decisions regarding the issuance of additional Class B Shares; and (4) eligibility requirements for exercising and transferring the trading privileges component of Class B shares." (See CME Demutualization Plan at 15, (attached as Exhibit A).)

ANSWER: Plaintiffs admit the quote, without Defendants' alteration, appears in the referenced document. Except as so stated, Plaintiffs deny the remaining allegations of this paragraph, including any allegation or implication via the alteration that "floor access rights and privileges" were limited to open outcry, and the allegation that the document was "the" Demutualization Plan, as CME's plans for demutualization were described in various

documents and set forth in a prospectus provided to members before their vote to approve the transaction.

14. The Demutualization Plan also explained that management's commercial decisions concerning open outcry trading would be constrained by the adoption of the Core Rights, but that decisions related to electronic trading, products, access, distribution, side-by-side trading and electronic access fees would not. (Ex. A at 20.)

ANSWER: Plaintiffs admit the referenced document and page contain language about "management[']s] . . . commercial decisions." Except as so stated, Plaintiffs deny the allegations of this paragraph, including the allegation this document was "the" Demutualization Plan, as CME's plans for demutualization were described in various documents and set forth in a prospectus provided to members before their vote to approve the transaction.

15. The Core Rights, which the Exchange also referred to as "open outcry core rights" were memorialized in the Amended and Restated Certificate of Incorporation of Chicago Mercantile Exchange Inc., which became effective on November 13, 2000 (the "2000 CME, Inc. Charter"). The Core Rights protected by the 2000 CME, Inc. Charter included:

(1) the divisional product allocation rules applicable to each series of Class B Common Stock as set forth in the rules of the corporation;

(2) the trading floor access rights and privileges granted to each series of Class B Common Stock, including the Commitment to Maintain Floor Trading;

(3) the number of authorized and issued shares of any series of Class B common stock; and

(4) eligibility requirements for an individual or entity to exercise any of the trading rights and privileges inherent in any series of Class B Common Stock.

ANSWER: Plaintiffs admit that the Core Rights were listed in the Amended and Restated Certificate of Incorporation of Chicago Mercantile Exchange Inc., which became effective on November 13, 2000 (the "2000 CME, Inc. Charter") and the language in (1)-(4) above appears verbatim in the Charter. The Core Rights, the scope of which is both broad and ambiguous without reference to other evidence, were also memorialized and discussed in the prospectus for the demutualization document and other documents. Except as so stated, Plaintiffs deny the allegations of this paragraph.

16. The 2000 CME, Inc. Charter also set forth the "Trading Rights" for each series of Class B Common Stock issued by CME. The Charter explained that the holders of each series of stock would have the "trading rights, including the trading floor access rights and privileges, set forth in the corporation's by-laws and rules" for that series' corresponding former membership division (emphasis added).

ANSWER: Plaintiffs admit that the quotations appear in the Charter. Except as so stated, Plaintiffs deny the allegations of this paragraph.

17. The CME Inc. By-Laws in place at the time defined the "trading rights and privileges" of holders of Class B Common Stock to include: (1) the right to appear upon the floor of the Chicago Mercantile Exchange and to act as a floor broker and/or trader; (2) the right to trade electronically through the Globex2 system (the right was restricted to trading only contracts assigned to the Class B series when accessing Globex terminals from the trading floor); (3) the right to lease out the trading privileges associated with the share of Class B Common Stock; and (4) a guarantee to charge clearing firms a lower clearing fee for trades made for the account of a holder of a series of shares of Class B Common Stock and a guarantee to not charge a higher

clearing fee in the open outcry environment than in another trading environment. (2000 CME, Inc. Bylaws, § 6.3).)

ANSWER: Plaintiffs admit that the quotations appear in the Charter. Except as so stated, Plaintiffs deny the allegations of this paragraph.

18. Unlike the Core Rights contained in the certificate of incorporation, these trading rights and privileges could be changed at any time without Class B Shareholder approval.

ANSWER: Denied.

B. CME's Open Access to Globex

19. During the same time period that CME was completing its demutualization, CME made the determination to allow open access to its "Globex" electronic trading platform.

ANSWER: Denied.

20. Prior to that time, only Clearing Members, Members, and persons who had applied for and obtained Electronic Trading Hours ("ETH") permits had the right to trade directly on Globex.

ANSWER: To the extent the phrase "prior to that time" used in paragraph 20 is intended to mean "before demutualization," plaintiffs admit paragraph 20. Except as so stated, denied.

21. On August 30, 2000, however, Board of Directors of CME unanimously determined to adopt Rule amendments to allow open access to Globex for all market participants.

ANSWER: Plaintiffs admit that, on August 30, 2000, CME's board of directors adopted certain Rules allowing other market participants to access Globex remotely, and

not on CME's trading floors and trading facilities, and that CME has at various times referred to those Rules as "open access" rules. Except so stated, denied.

22. An August 31, 2000 Dow Jones Newswires article entitled "CME Board to Allow Greater Access to Electronic System" reported that, on August 30, 2000, "CME's board of directed voted to open up its electronic trading platform, Globex, to all customers." (Dow Jones Newswires, CME Board to Allow Greater Access to Electronic System, August 30, 2000 at 1.) The article noted that while CME members currently were the only ones allowed to directly access Globex, after CFTC approval, all "individuals or institutional customers guaranteed by a clearing member of CME will be able to directly access the system," a move which would "allow investors to have the ability to view bids and offers in the market." (Id.)

ANSWER: Admitted that these matters appear in the article. Except so stated, denied.

23. CME issued a Special Executive Report to its Members on October 19, 2000, further notifying them of the rule changes adopted by the Board, including that the former rule regarding Globex access (Rule 582) would be completely repealed as a result of the change to open access.

ANSWER: Plaintiffs admit that there is a document described as a Special Executive Report dated October 19, 2000 that includes notification of CME's rule changes relating to access to the Globex system and the repeal of Rule 582. Plaintiffs are without knowledge or information as to whether or how this Special Executive Report was communicated to members, and therefore deny the remainder of the allegations of this paragraph.

24. CME approved the Globex access Rule changes and announced them to the Membership prior to the demutualization and adoption of the Core Rights, and at the time that the Members had a referendum right to reject rule changes approved by the Board.

ANSWER: Denied.

25. No CME Member sought a referendum on the proposed Rule changes.

ANSWER: Plaintiffs are without knowledge or information as to whether members were provided information sufficient to assess the accuracy of the allegations of paragraph 25, which are therefore denied.

26. CME completed its demutualization on November 13, 2000.

ANSWER: Plaintiffs admit that the demutualization closed on November 13, 2000. Except as so stated, denied.

27. Subsequently, on November 27, 2000, after receiving approval from the CFTC, CME implemented open access on Globex, allowing any market participant who is guaranteed by a clearing member of the exchange to have direct access to trade on Globex.

ANSWER: Plaintiffs admit that the rule changes relating to expanded access to Globex adopted by CME's board in August 2000 were implemented on or about November 27, 2000. Except as so stated, denied.

28. On December 13, 2000, the CME, Inc. Board of Directors approved a new fee schedule for access to the Globex platform. The fee schedule included, inter alia: (1) monthly network connectivity costs for all users connecting to Globex via a method other than a Globex Terminal, dependent upon the bandwidth selected by the user, regardless of membership status, as well as an initial connection fee and disconnection fee; (2) monthly fees for Globex Terminals to

be utilized outside of CME Inc.'s open outcry trading pits, regardless of membership status; and (3) monthly fees for Globex Terminals assigned to locals in the equity quadrant of CME's open outcry trading pits. (December 14, 2000 letter to Members (attached as Exhibit B).)

ANSWER: Plaintiffs admit the referenced document discusses "2001 Fee Changes." Except as so stated, Plaintiffs deny the allegations of this paragraph.

29. In other words, as early as December 2000, CME, Inc. charged members a fee to access and trade on the Globex platform. CME, Inc. also made clear that Globex access fees were assessed based on the type of connectivity that a user desired, and not based on membership status.

ANSWER: Plaintiffs admit the apparently referenced document discusses "2001 Fee Changes." Except as so stated, Plaintiffs deny the allegations of this paragraph.

C. CME Discloses Further Information Regarding its Open Access Policy in Securities and Exchange Commission Filings Related to its Initial Public Offering

30. Shortly following its demutualization and the enactment of the Core Rights, CME Holdings Inc. began preparing for an initial public offering ("IPO"), which it completed on December 5, 2002.

ANSWER: Admitted.

31. Pursuant to federal reporting requirements, CME Holdings Inc. filed public disclosure statements, including annual Form 10-Ks which described Class B Shareholders' membership rights and Globex access rights to the general public. These disclosures reinforced that Globex was an open access system available to any individual customer and that CME Holdings Inc. charged Globex access fees to both members and non-members.

ANSWER: Plaintiffs admit that Chicago Mercantile Exchange Holdings Inc. filed public disclosure statements, including annual Form 10-Ks that, inter alia, referred to Class B Shareholders' membership rights and Globex access rights. Except as so stated, Plaintiffs deny the allegations in this paragraph.

32. The 2002 Form 10-K for CME Holdings Inc. reported, for example, that while "[p]rior to [CME's] demutualization, direct access to [its] markets, whether on [CME's] open outcry trading floors or through the GLOBEX platform, was limited to members and those with an exchange permit who met specified qualifications," this changed when, "[i]n connection with [its] demutualization, [it] opened access to [CME's] markets by allowing unlimited, direct access to the GLOBEX platform for all market participants." (CME Holdings Inc. 2002 Form 10-K, filed March 21, 2003, at 4.) The 10-K further disclosed that the open access policy allowed "any individual or institutional customer guaranteed by a clearing firm to obtain direct access to the GLOBEX platform." (Id.)

ANSWER: Plaintiffs admit that the quotations appear in the referenced document. Except as so stated, Plaintiffs deny the allegations of this paragraph.

33. CME Holdings Inc. also explained its electronic access fees, emphasizing that access fees depended on the type of connection that a "customer" chooses. The Company explained, "GLOBEX access fees are the connectivity charges to customers of our electronic trading platform. The fee each customer is charged will vary depending on the type of connection provided. There is a corresponding communication expense associated with providing these connections that also varies based on the type of connection selected by the customer." (Id. at 31.)

ANSWER: Plaintiffs admit that the quotation appears in the referenced document. Except as so stated, Plaintiffs deny the allegations of this paragraph.

34. In the 2003 Form 10-K, CME Holdings Inc. reiterated that a membership was necessary to trade on the open outcry trading floor and that members had the ability to trade both on the open outcry trading floor and electronically through the Globex platform:

> **Trading on our open outcry trading floors is conducted exclusively by our members.** Our members are individual traders, as well as most of the world's largest banks, brokerages and investment houses. Prior to the introduction of our electronic trading platform, our members traded only on our open outcry trading floors. Today, our members are able to conduct trading on our open outcry trading floors, electronically through the GLOBEX platform and through privately negotiated transactions that we clear.

(CME Holdings Inc. 2003 Form 10-K, filed March 11, 2004, at 5-6.)

ANSWER: Plaintiffs admit that the quotation appears in the referenced document. Except as so stated, Plaintiffs deny the allegations of this paragraph.

35. But CME Holdings Inc. once again made clear that a membership was not required to execute trades on Globex. CME Holdings Inc. stated, "[p]rior to our demutualization, direct access to our markets, whether on our open outcry trading floors or through the GLOBEX platform, was limited to members and those with an exchange permit who met specified qualifications. . . . Today, any individual or institutional customer guaranteed by a clearing firm is able to obtain direct access to the GLOBEX platform." (Id.)

ANSWER: Plaintiffs admit that the quotation appears in the referenced document. Except as so stated, Plaintiffs deny the allegations of this paragraph.

36. At all times since the implementation of open access, any individual or institutional customer guaranteed by a clearing firm has been able to access and trade on Globex.

ANSWER: Plaintiffs are without knowledge or information sufficient to assess the truth or falsity of this allegation. The meaning and implementation of what CME refers to

as "open access" as changed over time, as has the manner and terms on which individuals and institutional customers have been able to access and trade on Globex. Therefore, denied.

37. Additionally, for at least ten years prior to the filing of the initial Complaint in this action, CME, Inc. has permitted multiple traders associated with certain types of corporate members to trade on Globex at corporate member rates provided that they are conducting firm business.

ANSWER: Plaintiffs admit that, in some circumstances, multiple traders associated with certain types of memberships were permitted to access and trade on Globex at member rates for more than ten years prior to the filing of the complaint; plaintiffs deny any inference or allegations that CME did not significantly expand the categories of non-member customers permitted to trade at rates that were equal to or better than general member rates during the ten years prior to the filing of the complaint. Plaintiffs have insufficient information to assess the truth or falsity of the remaining allegations of this paragraph, and therefore they are denied.

38. In May 2004, CME Holdings, Inc. announced that it had introduced a new "Electronic Corporate Membership Program to offer a flexible, cost-effective alternative for electronic proprietary trading groups and trading arcades that are not eligible for existing membership categories and fee incentives." CME further disclosed that "program participants w[ould]be eligible for special GLOBEX transaction and clearing fee rates of 44 cents per side for all CME interest rate, commodity, foreign exchange and E-mini stock index products." (CME Holdings Inc. Form 10-Q, filed May 5, 2004, at p. 12.)

ANSWER: Plaintiffs admit that the quotations appear in the referenced document. Except as so stated, Plaintiffs deny the allegations of this paragraph.

D. CME, Inc. Moves the Globex Matching Engine to a Remote Data Center in 2002

39. At the time of demutualization, the Globex proprietary matching engine and secondary, disaster recovery backup engine were located at CME, Inc.'s building at 10 S. Wacker Drive, Chicago, Illinois.

ANSWER: Admitted.

40. The match engine and backup engine remained at 10 S. Wacker Drive until shortly after September 11, 2001, when CME, Inc. became subject to new regulations regarding disaster recovery.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

41. On October 3, 2002, prior to its IPO and thus, at a time when the Class B members still owned all of the Class A and Class B shares of CME, Inc., CME, Inc. announced that it had relocated the Globex platform to a new, off-site facility, which was located in Lombard, Illinois.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

42. In a Member Update sent to all CME members, CME, Inc. stated, "Chicago Mercantile Exchange Inc. (CME) this week launched its new state-of the art Remote Data Center (RDC) with the successful deployment of major exchange technology upgrades at the off-site facility. Designed to ensure business continuity for the CME markets and outfitted with a comprehensive new technology and communications infrastructure, the new RDC is now the

primary site for operation of CME's Globex electronic trading platform." (October 3, 2002 CME Update (excerpts attached as Exhibit C.)

ANSWER: Plaintiffs admit that the quotation appears in the referenced document. Except as so stated, Plaintiffs deny the allegations of this paragraph.

43. CME, Inc.'s backup, disaster recovery matching engine remained at 10 S. Wacker Drive until 2003, when CME moved the recovery engine to the Annex Data Center located at 350 E. Cermack, Chicago, Illinois.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

44. The primary and recovery Globex match engines continued to be housed at the Remote Data Center and Annex Data Center, respectively, through the date of, and after, the merger between CME Holdings, Inc. and CBOT Holdings, Inc.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

E. CBOT Undergoes a Demutualization Prior to Merging with CME

45. In 2005, CBOT demutualized and converted from a not-for-profit member-owned organization to a for-profit corporation. In connection with the demutualization, CBOT amended its Certificate of Incorporation to provide its former owners – the Class B members – with a number of contractual protections or Core Rights that could not be adversely affected without the approval of Series B-1 and B-2 Members ("2005 CBOT Charter").

ANSWER: Plaintiffs admit that in 2005, CBOT demutualized and converted from a not-for-profit member-owned organization to a for-profit corporation. Plaintiffs further

admit that CBOT amended its Certificate of Incorporation and that the amended Certificate of Incorporation (the 2005 CBOT Charter) confirms that membership rights and privileges cannot be adversely affected without the approval of Series B-1 and B-2 Members. Except as so stated, Plaintiffs deny the allegations in this paragraph.

46. Specifically, Series B-1 and B-2 Members received the right to vote on amendments to the Rules, Certificate, or Bylaws if, in the sole and absolute determination of Board of Directors of the Corporation, the amendment adversely affected:

(1) the allocation of products that a holder of a specific Series of Class B Membership is permitted to trade (including on the electronic trading system);

(2) the requirement that Members will be charged transaction fees that are lower than any other participant, including on the electronic trading system;

(3) the membership qualifications or eligibility requirements for holding any Series of Membership or exercising any rights and privileges associated with that Series;

(4) the commitment to maintain open outcry markets as set forth in the Certificate;

(5) the requirement that any proposal to offer electronic trading between the hours of 6:00 a.m. and 6:00 p.m. of agricultural contracts or agricultural products traded in the open outcry markets be approved by the holders of Series B-1 and B- 2 Memberships.

(Id.) Today, the first four Core Rights remain substantively identical in CBOT's Certificate of Incorporation.

ANSWER: Plaintiffs admit that the current CBOT Certificate of Incorporation contains language substantively similar to provisions (1) – (4) above. Except as so stated, denied.

47. The 2005 CBOT Charter also set forth the specific rights and privileges associated with each Series of membership, explaining for example, that a holder of a Series B-1 Membership was "entitled to the rights and privileges of, and . . . subject to the restrictions, conditions and limitations on, a Full Member as set forth in this Certificate of Incorporation, the Bylaws and the Rules." The current CBOT Charter contains the same language today.

ANSWER: Plaintiffs admit that the 2005 CBOT Charter contained the quoted language and that the current CBOT Charter contains the same language today. Except as so stated, denied.

F. CBOT Opens Access to its Proprietary Electronic Trading System and Transitions to a London-Based Platform

48. On September 24, 2001, less than a year after CME, Inc. adopted open access to Globex, the Board of Directors of CBOT determined to amend its Rules to allow open access to its electronic trading platform known as "e-cbot."

ANSWER: Admitted.

49. In an October 22, 2001 Interpretive Notice sent to CBOT Members, CBOT explained that the Rule changes "allow[ed] electronic connectivity to the OrderDirectTM API and the a/c/e platform for all market participants who are guaranteed by a CBOT® clearing firm member."

ANSWER: Admitted.

50. From August 2000 until January 2004, CBOT utilized the a/c/e system as its electronic trading platform. Shortly before its demutualization, however, CBOT transitioned its electronic trading platform to the LIFFE CONNECT™ software system. At the time of the

demutualization, the host platform for e-cbot was located in London, England. (CBOT Form 10-K, filed March 1, 2007, at 6).

ANSWER: Plaintiffs admit that the referenced filing states "[w]e currently rely on the LIFFE CONNECT system software." Plaintiffs admit that the referenced filing states "in connection with the upgrade, the host platform for e-cbot was moved from London to Chicago." Except as so stated, Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

51. It was not until after the demutualization, on February 9, 2006, that CBOT announced in a press release that it had "successfully moved [its] trading host to Chicago." (Exhibit 99.1 to CBOT Form 8-K, filed February 2, 2006.)

ANSWER: Plaintiffs deny that CBOT filed a Form 8-K on February 2, 2006. Plaintiffs admit that CBOT filed a Form 8-K on February 9, 2006 including an Exhibit 99.1 stating that CBOT "successfully moved [its] trading host to Chicago." Except as so stated, Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

G. Merger of CBOT Holdings and CME Holdings

52. In 2007, the former parent of CME, Inc., Chicago Mercantile Exchange Holdings Inc. merged with Chicago Board of Trade Holdings, Inc. The combined Company was renamed CME Group Inc., and CBOT became a wholly-owned subsidiary of CMEG.

ANSWER: Admitted.

53. In January 2008, CBOT migrated all of its electronically-traded products from its e-cbot trading platform onto Globex. By this date, the central Globex match engine had been located in Lombard, Illinois, for more than 5 years.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

H. CME, Inc. and CBOT Invest In Electronic Trading and Co-Location

54. Throughout the early 2000s, both CME, Inc. and CBOT worked to improve the speed at which their customers—both members and non-members—could access and trade on their respective electronic trading platforms.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

55. On October 3, 2006, CME, Inc. issued a press release announcing that it would begin offering co-location services, allowing its customers "to connect their collocated trading servers to the CME over high-speed fiber optic connections in the fourth quarter of 2006." (CME, Inc. October 3, 2006 Press Release (attached as Exhibit D).

ANSWER: Plaintiffs admit that the quotation appears in the referenced document. Except as so stated, Plaintiffs deny the allegations of this paragraph.

56. CME, Inc. offered these services at the data center located at 350 E. Cermack in Chicago, Illinois.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

57. In its Form 10-K for 2006, filed March 1, 2007, CME Holdings, Inc. further announced that "[i]n the fourth quarter of 2006, we provided our customer firms the opportunity to connect their co-located trading servers to our network over high-speed fiber optic connections. These server connections are expected to decrease network latency times for order entry to the CME Globex trading platform to less than one millisecond."

ANSWER: Plaintiffs admit that the quotation appears in the referenced document. Except as so stated, Plaintiffs deny the allegations of this paragraph.

58. Subsequently, in its Form 10-K for 2007, filed February 28, 2008, CME Holdings, Inc. further disclosed that it had revenue growth in 2007 attributable to customers upgrading to higher bandwidth Globex connections and as a result of the expansion of its co- location program. CME Holdings, Inc. explained that "[t]he co-location program allows customers to connect their trading applications directly to the CME Globex electronic platform by housing certain customer systems in a CME-specified data facility."

ANSWER: Plaintiffs admit that the quotation appears in the referenced document. Except as so stated, Plaintiffs deny the allegations of this paragraph.

59. In 2008, following the CME/CBOT merger, Defendants purchased space in Aurora, Illinois to build a new data center, which they referred to as DC3. The primary reason for building DC3 was that Defendants believed that their existing data facilities would soon lack capacity to process increasing trade volumes.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

60. The DC3 data center was completed in August of 2010, and Defendants fully transitioned the Globex matching engine to the DC3 data center in November 2010. Defendants began offering co-location at the DC3, which Plaintiffs refer to as the Aurora Data Center or ADC, in January 2012.

ANSWER: Plaintiffs admit that Defendants began offering co-location at the ADC in January 2012. Except as so stated, Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

61. To offset the cost of completing and maintaining the ADC, CME charges members and non-member customers who co-locate at the ADC a monthly or yearly fee. These moves were widely publicized and disclosed in CMEG's public filings with the Securities and Exchange Commission.

ANSWER: Plaintiffs admit that CME charges members and non-member customers fees to co-locate at the ADC. Except as so stated, Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

62. In addition to the ADC, the range of connectivity options to Globex includes Internet connections, direct connections and several telecommunications hubs that provide reduced connectivity costs, increased accessibility, and fast efficient training. Globex telecommunications hubs are located in Hong Kong, Kuala Lumpur, London, Mexico City, New York City, Sao Paulo, Singapore, and Tokyo.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

63. Defendants continue to charge customers Globex access fees based on the type of connection they choose, and do not distinguish between members and non-members.

ANSWER: Plaintiffs admit that Defendants charge customers Globex access fees based on, among other things, their type of connection. Plaintiffs further admit that Defendants now do not distinguish between members and non-members with respect to various categories of rates and fees, including Globex access fees, and that preferential rates and fees that are not available to members generally are now made available to certain member and non-member customers alike. Otherwise, denied.

FIRST DEFENSE – STATUTE OF LIMITATIONS

64. Defendants incorporate and reallege the foregoing Paragraphs as if fully set forth herein.

ANSWER: Plaintiffs incorporate and repeat their responses to paragraphs 1 to 63 as if fully set forth herein.

65. Under Illinois law, a plaintiff must bring a breach of contract claim based on a written contract within ten years of the date when a party first breaches its contractual duty or obligation. 735 ILCS § 5/13-206.

ANSWER: This paragraph does not contain facts but instead sets forth legal conclusions and arguments to which no response is required. To the extent any response is required, Plaintiffs deny the allegations in this paragraph.

66. To the extent that Plaintiffs allege that the Defendants breached their respective Charters by committing any act that predates 10 years from the date the Complaint was filed – including, but not limited to (i) moving the Globex match engine from the building that housed

CME, Inc.'s open outcry facility to the Remote Data Center in October 2002, (ii) charging members fees to access Globex from outside the open outcry trading pits, (iii) charging both members and non-members identical Globex access fees, or (iv) allowing multiple traders associated with a member trading firm to execute firm trades on the Globex platform at member rates, those claims are barred by the applicable statutes of limitations.

ANSWER: This paragraph does not contain facts but instead sets forth legal conclusions and arguments to which no response is required. To the extent any response is required, Plaintiffs deny the allegations in this paragraph.

SECOND DEFENSE - LACHES

67. Defendants incorporate and reallege the foregoing Paragraphs as if fully set forth herein.

ANSWER: Plaintiffs incorporate and repeat their responses to paragraphs 1 to 66 as is fully set forth herein.

68. CME, Inc. re-located its Globex trading platform and match engine from the building that housed CME, Inc.'s open outcry trading pits to an off-site location in October 2002.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

69. CBOT's electronic trading platform and match engine was never housed in the same building as its open outcry facilities. In fact, at the time of CBOT's demutualization, the host platform for its proprietary electronic trading platform was located in London, England. (CBOT Form 10-K, filed March 1, 2007, at 6).

ANSWER: Plaintiffs admit that the referenced filing states "in connection with the upgrade, the host platform for e-cbot was moved from London to Chicago." Except as so stated, Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

70. In November 2006, CME Holdings, Inc. introduced co-location services for all customers – for a fee. Following CBOT's merger with CME Holdings, Inc. and the migration of CBOT's products to the Globex platform, in 2008, CBOT likewise began offering co-location services to all customers for a fee.

ANSWER: Plaintiffs admit that, since 2006, Defendants have allowed customers to have superior access to its trading platforms through the co-location services they market; that Defendants charge fees for co-location services that allow the purchasers of those services to execute trades more quickly than other customers, including members that are not co-located at the ADC; and that defendants first introduced their offering of co-location services in and after November 2006. Plaintiffs deny any other allegations contained in this paragraph.

71. Moreover, since the implementation of open access at CME, Inc. in November 2000 and CBOT in September 2001, Plaintiffs have been given the same access rights to CBOT's and CME's electronic trading platforms as non-members, and the Exchanges have charged both members and non-members identical Globex access fees based on the type of connection desired.

ANSWER: Denied.

72. For more than ten years preceding the filing of the initial Complaint in this action, CME, Inc. also permitted multiple traders associated with certain member firms to execute firm trades on Globex at corporate member rates.

ANSWER: Plaintiffs admit that, in some circumstances, multiple traders associated with certain types of memberships were permitted to access and trade on Globex at member rates for more than ten years prior to the filing of the complaint; Plaintiffs deny any inference or allegations that CME did not significantly expand the categories of non-member customers permitted to trade at rates that were equal to or better than general member rates during the ten years prior to the filing of the complaint. Plaintiffs have insufficient information to assess the truth or falsity of the remaining allegations of this paragraph, and therefore they are denied.

73. The significant expenditures that CME, Inc. and CBOT made to advance their electronic trading platforms, as well as the advancements in trading technology that each Exchange completed and the access rights that customers received were announced to the memberships, described in filings with the SEC, and covered by press releases and reports.

ANSWER: Plaintiffs have insufficient information to admit or deny the allegations in this paragraph, and therefore they are denied.

74. Yet until this lawsuit, filed in January 2014, Plaintiffs never asserted a so-called right to the "best and most proximate" access to Globex, or the "best and most proximate access for free," and never challenged non-members' access rights to Globex.

ANSWER: Plaintiffs admit that they did not assert the claims asserted here in any other lawsuit before the lawsuit was filed. Plaintiffs deny the remaining allegations of this

paragraph, and further allege that at the time of demutualization and for years thereafter, members were provided the best and most proximate access to trading on Defendants' exchanges as part of their memberships; and that the opening of the ADC in January 2012 constituted the opening of a new trading floor to which members were not afforded a right to access and trade as part of their memberships, in violation of members' core rights.

75. The location of the electronic trading platforms and match engines away from the open outcry trading pits, the ability for all customers to co-locate their servers with these platforms, for a fee, and the ability of non-customers to access Globex has become a way of life for the Exchanges for more than 11 years.

ANSWER: Denied.

76. As a result, Plaintiffs' breach of contract claims based on the alleged rights to the best and most proximate access to Globex at the ADC or any other trading facilities are barred, in whole or in part, by the doctrine of laches, as are the Plaintiffs' claims challenging non- members' access rights and related fees.

ANSWER: Denied.

FOURTH DEFENSE – STANDING[1]

77. Defendants incorporate and reallege the foregoing Paragraphs as if fully set forth herein.

ANSWER: Plaintiffs incorporate and repeat their responses to paragraphs 1 to 76 as if fully set forth herein.

[1] Defendant's Answer and Affirmative Defenses to Plaintiffs' Third Amended Complaint does not contain a Third Defense.

78. CMEG Class B shareholders Langer and Yermack and CBOT Class B member Goldberg have all leased their Class B memberships since at least August 2012 and, as a result, have not paid any co-location or other Globex access fees, attempted to trade any products on Globex, or been charged any fee for a trade made on Globex.

ANSWER: Plaintiffs admit that Langer, Yermack, and Goldberg have leased trading rights and privileges associated with CME or CBOT membership to other parties since at least August 2012. Except as so stated, Plaintiffs deny the allegations of this paragraph.

79. As a result, Plaintiffs lack standing to assert breach of contract claims against CMEG and CBOT based on the alleged failures to provide "free" co-location or preferential fees.

ANSWER: Denied.

80. In addition, because Plaintiffs have held their memberships since the time of demutualization, and have not sold them, they lack standing to claim damages based on an alleged diminution of value.

ANSWER: Plaintiffs admit that Langer, Yermack, and Goldberg have held memberships since the time of demutualization and have not sold them. Plaintiffs otherwise deny the allegations in this paragraph.

FIFTH DEFENSE

81. Defendants incorporate and reallege the foregoing Paragraphs as if fully set forth herein.

ANSWER: Plaintiffs incorporate and repeat their responses to paragraphs 1 to 80 as if fully set forth herein.

82. Defendants CMEG and CBOT presently have insufficient knowledge or information upon which to form a belief as to whether there may be, as yet unstated, defenses available to Defendants, and therefore expressly (i) reserve the right to amend or supplement the Answer, defenses and all other pleadings, and (ii) reserve the right to (a) assert any and all additional defenses under any applicable state law in the event that discovery or other investigation indicates such defenses would be appropriate, and (b) assert any cross-claims, counterclaims and third-party claims when and if they become appropriate to this action.

ANSWER: This paragraph does not contain facts but instead sets forth legal conclusions and arguments to which no response is required. To the extent any response is required, Plaintiffs deny the allegations in this paragraph.

WHEREFORE, Defendants CME and CBOT request this Court enter judgment:

(i) dismissing, with prejudice the count set forth in the Amended Complaint against the Defendants;

(ii) awarding Defendants CMEG and CBOT reasonable attorneys' fees, costs and disbursements incurred herein; and

(iii) awarding Defendants CMEG and CBOT any such other and further relief the Court deems just and proper.

ANSWER: This paragraph does not contain facts but instead sets forth legal conclusions and arguments to which no response is required. To the extent any response is required, Plaintiffs deny the allegations in this paragraph.

Dated: June 11, 2018

Respectfully submitted,

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RONALD M. YERMACK
LANCE R. GOLDBERG

By: 

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CERTIFICATE 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 June 11, 2018, 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