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

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

FOURTH AMENDED CLASS ACTION COMPLAINT[†]

Plaintiffs Sheldon Langer, Ronald M. Yermack, Lance R. Goldberg, Robert Prosi, and Gerald Petrow, 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 the Court's October 8, 2019 Order stating: "Plaintiffs are granted leave to file their amended complaint to which there is no objection, which amendment shall . . . be filed by November 22, 2019."

I. NATURE OF THE ACTION

1. This is a breach of contract action seeking money damages, and as alternative to damages based on future injuries, a declaratory judgment and forward-looking equitable relief based on CME's decision to fundamentally change the trading rights and privileges afforded to the Class B Plaintiffs, 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 $55 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 ways in 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 from the trading floor. Requiring the ownership or lease of membership rights to access Globex directly from the trading floor contributed to the value of Class B memberships.

5. CME now generates billions of dollars in trading, clearing and Globex 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. 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, Globex 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.

6. 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.

7. 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.

8. 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.

9. 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 requires the approval of the Class B Plaintiffs, which CME never obtained.

10. 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.

11. Since January 2012, when CME opened the ADC, CME's market capitalization has increased by more than $35 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*].

12. 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 at member rates and from the ADC floor 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 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.

13. Upon the creation of Plaintiffs' Class B shares, CME agreed to preserve certain "Core Rights" of the Class B shareholders, including Core Right Number 2, under which CME agreed not to change the Class B shareholders' "trading floor access rights and privileges" 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.

14. 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.

15. 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, 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.

16. 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 trading, clearing and 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.

17. 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 their losses.

18. CME's breaches of the Class B plaintiffs' perpetual charter rights are ongoing and will continue to cause injury to the Class B plaintiffs far in the future absent appropriate court-ordered relief. Because the extent of the Class B plaintiffs' future injuries extending in perpetuity may not be measurable, the Class B Plaintiffs additionally seek a declaratory judgment regarding the scope of their rights and CME's breach, and forward-looking equitable relief including but not limited to: (1) requiring CME to allow the Class B Plaintiffs and their lessees the exclusive right to co-locate at the ADC at no additional cost; and (2) requiring CME to honor members' fee preference rights, including by prohibiting CME, ECMs, non-members or any other market participants from offering or receiving trading, clearing or Globex fees at rates lower than those provided to members generally.

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.

26. Robert Prosi has been a member of CME since 1976, and has held his current membership since 1995. Mr. Prosi leased his current membership from 1995 to 2002. He resides in Arlington Heights, Illinois. He holds his current membership in his own name and has the sole right to sue to enforce his rights as a CME member.

27. Gerald Petrow has been a member of CBOT since at least 1996, and has held his current membership since that year. Mr. Petrow has leased his current membership on occasion since 2017. He resides in Chicago, Illinois. He holds his current membership in his own name and has the sole right to sue to enforce his rights as a CBOT member.

B. Defendants

28. CME is a Delaware corporation that owns and operates derivatives exchanges throughout the world. CME's exchanges annually handle 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.

29. 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

30. 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.

31. 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.

32. 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.

33. 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.

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

There appear to be approximately 70 Clearing Members, and the number of Corporate Members, or Electronic Corporate Members is unknown.

34. 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.

35. **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.

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

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

f. Whether a declaratory judgment regarding the scope of members' rights and CME's breaches of those rights should issue.

g. Whether the Class B Plaintiffs should be granted the requested forward-looking equitable relief requiring, among other things, that the Class B members be provided to the Globex system at the ADC as part of their trading rights and privileges and that members' fee preference rights be fully honored going forward.

37. **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.

38. **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.

39. 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.

40. 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).

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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. CME Promised to Preserve Class B Plaintiffs' Right to the Best Access and Closest Proximity to the Globex Platform as Part of its Demutualization.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.*

52. 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***."

53. 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.

54. 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.

55. 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.

56. 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.

57. 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).

58. 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).

59. 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)

60. 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.)

61. 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.

62. 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.

63. 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).

64. 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.

65. 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.

66. 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.

67. 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).

68. 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).

69. 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.

70. 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.

71. 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.

72. 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.

73. 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."

74. 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.

75. 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.

76. 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 . . . .

77. 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.

78. 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.

79. 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.

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

81. 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."

82. 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.

83. 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.

84. 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.

85. 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.

86. 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).

87. "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.

88. 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.

89. 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.

90. 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.

91. 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 the "trading floor access rights and privileges" available to Class B Plaintiffs as Members of CME and CBOT. 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.

92. 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 to have the closest proximity and access to the Globex electronic trading platform.

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

93. 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. 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. The expanded trading volume

generated by the growth of the Globex trading platform, and particularly the substantial increases in trading volume that have been facilitated by the development of CME's new electronic trading floor at the ADC and other trading venues through which CME provides preferred access to the Globex platform, has enabled CME to collect hundreds of millions, if not billions, of dollars in additional clearing, transaction, and access fees. 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 trading rights and privileges associated with their Class B shares.

95. 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

trading rights and privileges exclusively held by Class B members—and, particularly, the right to trade through Globex—that CME was not entitled to make without its members' approval.

96. 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.

97. 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.

98. 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.

99. 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, trading and Globex 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.

100. 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.

101. 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.

102. When questioned by Class B Plaintiffs, CME management has refused to acknowledge the obligation to protect the Class B Plaintiffs' Core Rights in the manners detailed in this complaint. 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.

103. 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.

104. 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.

105. 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

106. 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, the value of the same memberships have dwindled in value to less than $400,000 and less than $220,000, respectively, following the opening of the ADC.

107. 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, the market for lease and sale of the Class B Plaintiffs seats has been substantially destroyed.

108. 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.

109. 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.

110. 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.

111. 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, and (b) CME's granting of preferential fees to ECMs and other non-member customers.

V. CAUSES OF ACTION

A. Count I – Breach of contract

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

113. 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.

114. 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

115. 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."

116. 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, and the right to preferential clearing fees. 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.

117. 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 only members are eligible to exercise the trading rights and privileges of members. Under Core Right 2, 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 with closest proximity and access to 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 Right 2. 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;

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.

118. 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

119. 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.

120. 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.

121. 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 and Special Voting Right 2:

(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.

(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 and Special Voting Right 2 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 and Special Voting Right 2.

(E) CBOT has breached Special Voting Right 2 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.

I.C Causation and Damages – All Class B Plaintiffs

122. 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.

123. 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.

I.D Declaratory and Equitable Relief – All Class B Plaintiffs

124. The Class B Plaintiffs also seek a declaration delineating the scope of their contract rights (including under the implied duty of good faith and fair dealing, discussed below) and CME's breach of their rights, as well as forward-looking equitable relief requiring CME to honor the Class B Plaintiffs' express and implied contract rights going forward.

125. With regard to declaratory relief, for the reasons set forth above and below, there is clearly an actual controversy between the parties regarding the scope of the Class B Plaintiffs' rights and the extent of CME's breach of those rights, and the controversy is capable of being affected by a determination of the controversy.

126. The relationship between the Class B Plaintiffs and CME is ongoing, and extends into perpetuity under the charters; a declaration regarding the scope of Plaintiffs' rights and CME's breach will permit CME to alter its future contract to avoid additional liability.

127. With regard to forward-looking equitable relief, for the reasons set before above as well as below, the Class B Plaintiffs have clear and ascertainable rights that need protection, to wit, their express contract rights and other rights protected by the implied covenant of good faith and fair dealing.

128. The Class B Plaintiffs will lack an adequate remedy at law if the Court determines that future damages resulting from CME's nonperformance are uncertain or difficult to ascertain. Future damages may be uncertain because, among other reasons, the charters at issue are not term-limited but instead provided the Class B Plaintiffs with rights extending in perpetuity.

129. Plaintiffs will also suffer irreparable harm if forward-looking equitable relief is not granted. CME's violations of the Class B Plaintiffs' rights are ongoing, and will likely be

repeated even in the event of an award of past damages for breach and/or a declaration confirming the scope of Class B Plaintiffs' express and implied contract rights.

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

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

131. ***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.

132. 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.

133. 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.

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

135. ***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.

136. 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").

137. 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.

138. 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.

139. 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.

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

141. ***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.

142. 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.

143. 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.

144. 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.

145. 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.

146. 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) Issue a declaratory judgment regarding the scope of members' rights and CME's breaches of those rights;

(4) Award forward-looking equitable relief to compel Defendants to, among other things, allow the Class B Plaintiffs or their lessees to co-locate at the ADC with closest proximity and access to Globex or any other CME co-location facility or trading floor without

having to pay an access fee in the future;

(5) Award forward-looking equitable relief to compel Defendants to, among other things, prohibit non-member customers from trading from the ADC or any other CME co-location facility or trading floor;

(6) Award forward-looking equitable relief to compel Defendants to, among other things, charge non-members fees substantially greater than those charged to members or their lessees.

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

Dated: November 17, 2019

Respectfully submitted,

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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 November 17, 2019 from Chicago, Illinois to the following designated e-mail addresses of record for Defendants' counsel, who have consented to e-mail service:

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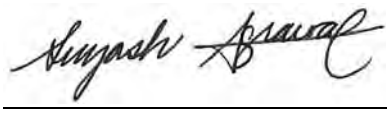

Suyash Agrawal

EXHIBIT 1

THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF CME GROUP INC.

CME Group Inc. (hereinafter referred to as the "Corporation"), which was originally incorporated in the State of Delaware on August 2, 2001 under the name Chicago Mercantile Exchange Holdings Inc., hereby certifies that this Third Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware. This Third Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Corporation's second amended and restated certificate of incorporation as hereby amended. The text of the second amended and restated certificate of incorporation as heretofore amended is hereby restated to read in its entirety as follows:

ARTICLE ONE: The name of the corporation is CME Group Inc.

ARTICLE TWO: The address of the corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the corporation's registered agent at such address is The Corporation Trust Company.

ARTICLE THREE: The purpose of the corporation shall be to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as set forth in Title 8 of the Delaware Code (the "DGCL").

ARTICLE FOUR: The total number of shares of all classes of capital stock that the corporation is authorized to issue is 1,010,003,138 shares, of which:

10,000,000 shares shall be shares of Preferred Stock, par value $.01 per share (the "Preferred Stock"), including 140,000 authorized shares of Series A Junior Participating Preferred Stock (the "Series A Junior Participating Preferred Stock");

1,000,000,000 shares shall be shares of Class A Common Stock, par value $.01 per share (the "Class A Common Stock");

625 shares shall be shares of Class B-1 Common Stock, par value $.01 per share (the "Class B-1 Common Stock");

813 shares shall be shares of Class B-2 Common Stock, par value $.01 per share (the "Class B-2 Common Stock");

1,287 shares shall be shares of Class B-3 Common Stock, par value $.01 per share (the "Class B-3 Common Stock"); and 413 shares shall be shares of Class B-4 Common Stock, par value $.01 per share (the "Class B-4 Common Stock").

The term "Class B Common Stock" shall mean, collectively, Class B-1 Common Stock, Class B-2 Common Stock, Class B-3 Common Stock and Class B-4 Common Stock. The term "Common Stock" shall mean, collectively, the Class A Common Stock and the Class B Common Stock. The designations, voting powers, optional or other special rights and the qualifications, limitations or restrictions thereof, of the above classes shall be as follows:

DIVISION A
PREFERRED STOCK

The rights, preferences and privileges and qualifications, limitations and restrictions granted to and imposed on the shares of Preferred Stock of the corporation shall be as set forth below in this Division A.

Shares of Preferred Stock may be issued in one or more series at such time or times, and for such consideration or considerations, as the board of directors shall determine. The board of directors is hereby authorized to fix, state and establish, in the resolution or resolutions providing for the issuance of any wholly unissued series of Preferred Stock, the relative powers, rights, designations, preferences, qualifications, limitations

and restrictions of such series in relation to any other series of Preferred Stock at the time outstanding. The board of directors is also expressly authorized to fix the number of shares of each such series, but not below the number of shares thereof then outstanding. The authority of the board of directors with respect to each series of Preferred Stock shall include (without limitation) the determination of the following:

(a) the dividend rate on the shares of such series, whether dividends shall be cumulative, and, if so, from which date or dates, and the rights of priority, if any, with respect to the payment of dividends on the shares of such series relative to other series of Preferred Stock or classes of stock;

(b) whether the shares of such series shall have voting rights (other than the voting rights provided by law) and, if so, the terms and extent of such voting rights;

(c) whether the shares of such series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate upon the occurrence of such events as the board of directors may prescribe;

(d) whether the shares of such series shall be subject to redemption by the corporation or at the request of the holder(s) thereof, and, if so, the terms and conditions of any such redemption;

(e) the rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding up of the corporation, and the rights of priority, if any, with respect to the distribution of assets on the shares of such series relative to other series of Preferred Stock or classes of stock; and

(f) any other preferences, privileges and powers, and relative, participating, optional or other special rights, and qualifications, limitations or restrictions of such series, as the board of directors may deem advisable and as shall not be inconsistent with the provisions of this Certificate of Incorporation, as the same may be amended from time to time.

* * * *

Pursuant to the above stated authority, the board of directors has designated the following series of Preferred Stock:

SECTION 1. DESIGNATION AND AMOUNT.

The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" and the number of shares constituting such series shall be 140,000.

SECTION 2. DIVIDENDS AND DISTRIBUTIONS.

(a) The holders of shares of Series A Junior Participating Preferred Stock shall be entitled to receive, when, as and if declared by the board of directors out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Junior Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (x) $.01 or (y) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Class A Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Class A Common Stock, since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Junior Participating Preferred Stock. In the event the corporation shall at any time after the date of consummation of the merger of CME Merger Subsidiary Inc. with and into the Exchange (as defined below) (the "Rights Declaration Date") (i) declare any dividend on Class A Common Stock payable in shares of Class A Common Stock, (ii) subdivide the outstanding Class A Common Stock, or (iii) combine the outstanding Class A Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Junior Participating Preferred Stock were entitled immediately prior to such event under clause (y) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Class A Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class A Common Stock that were outstanding immediately prior to such event.

(b) The corporation shall declare a dividend or distribution on the Series A Junior Participating Preferred Stock as provided in Paragraph (a) above immediately after it declares a dividend or distribution on the Class A Common Stock (other than a dividend payable in shares of Class A Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Class A Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $.01 per share on the Series A Junior Participating Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(c) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Junior Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Junior Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Junior Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The board of directors may fix a record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

SECTION 3. VOTING RIGHTS.

The holders of shares of Series A Junior Participating Preferred Stock shall have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each share of Series A Junior Participating Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the shareholders of the corporation. In the event the corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Class A Common Stock payable in shares of Class A Common Stock, (ii) subdivide the outstanding Class A Common Stock, or (iii) combine the outstanding Class A Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Junior Participating Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Class A Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class A Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided herein or by law, the holders of shares of Series A Junior Participating Preferred Stock and the holders of shares of Class A Common Stock and Class B Common Stock shall vote together as one class on all matters submitted to a vote of shareholders of the corporation.

(c) (i) If at any time dividends on any Series A Junior Participating Preferred Stock shall be in arrears in an amount equal to six quarterly dividends thereon, the occurrence of such contingency shall mark the beginning of a period (herein called a "default period") which shall extend until such time when all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all shares of Series A Junior Participating Preferred Stock then outstanding shall have been declared and paid or set apart for payment. During each default period, all holders of Preferred Stock (including holders of the Series A Junior Participating Preferred Stock) with dividends in arrears in an amount equal to six quarterly dividends thereon, voting as a class, irrespective of series, shall have the right to elect two directors.

(ii) During any default period, such voting right of the holders of Series A Junior Participating Preferred Stock may be exercised initially at a special meeting called pursuant to Paragraph (c)(iii) of this Section 3 or at any annual meeting of shareholders, and thereafter at annual meetings of shareholders, provided that such voting right shall not be exercised unless the holders of 10% in number of shares of Preferred Stock outstanding shall be present in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of Preferred Stock of such voting right. At any meeting at which the holders of Preferred Stock shall exercise such voting right initially during an existing default period, they shall have the right,

voting as a class, to elect directors to fill such vacancies, if any, in the board of directors as may then exist up to two directors or, if such right is exercised at an annual meeting, to elect two directors. If the number which may be so elected at any special meeting does not amount to the required number, the holders of the Preferred Stock shall have the right to make such increase in the number of directors as shall be necessary to permit the election by them of the required number. After the holders of the Preferred Stock shall have exercised their right to elect directors in any default period and during the continuance of such period, the number of directors shall not be increased or decreased except by vote of the holders of Preferred Stock as herein provided or pursuant to the rights of any equity securities ranking senior to or pari passu with the Series A Junior Participating Preferred Stock.

(iii) Unless the holders of Preferred Stock shall, during an existing default period, have previously exercised their right to elect directors, the board of directors may order, or any shareholder or shareholders owning in the aggregate not less than 10% of the total number of shares of Preferred Stock outstanding, irrespective of series, may request, the calling of a special meeting of the holders of Preferred Stock, which meeting shall thereupon be called by the Chairman of the Board, the President, any Managing Director or the Secretary of the corporation. Notice of such meeting and of any annual meeting at which holders of Preferred Stock are entitled to vote pursuant to this Paragraph (c)(iii) shall be given to each holder of record of Preferred Stock by mailing a copy of such notice to him or her at his or her last address as the same appears on the books of the corporation. Such meeting shall be called for a time not earlier than 20 days and not later than 60 days after such order or request or in default of the calling of such meeting within 60 days after such order or request, such meeting may be called on similar notice by any shareholder or shareholders owning in the aggregate not less than 10% of the total number of shares of Preferred Stock outstanding. Notwithstanding the provisions of this Paragraph (c)(iii), no such special meeting shall be called during the period within 60 days immediately preceding the date fixed for the next annual meeting of the shareholders.

(iv) In any default period, the holders of Common Stock, and other classes of stock of the corporation if applicable, shall continue to be entitled to elect the whole number of directors until the holders of Preferred Stock shall have exercised their right to elect two directors voting as a class, after the exercise of which right (x) the directors so elected by the holders of Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the board of directors may (except as provided in Paragraph (c)(ii) of this Section 3) be filled by vote of a majority of the remaining directors theretofore elected by the holders of the class of stock which elected the director whose office shall have become vacant. References in this Paragraph (c) to directors elected by the holders of a particular class of stock shall include directors elected by such directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period, (x) the right of the holders of Preferred Stock as a class to elect directors shall cease, (y) the term of any directors elected by the holders of Preferred Stock as a class shall terminate, and (z) the number of directors shall be such number as may be provided for in the certificate of incorporation or bylaws irrespective of any increase made pursuant to the provisions of Paragraph (c)(ii) of this Section 3 (such number being subject, however, to change thereafter in any manner provided by law or in the certificate of incorporation or bylaws). Any vacancies in the board of directors effected by the provisions of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining directors.

(d) Except as set forth herein, holders of Series A Junior Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

SECTION 4. CERTAIN RESTRICTIONS.

(a) Whenever quarterly dividends or other dividends or distributions payable on the Series A Junior Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Junior Participating Preferred Stock outstanding shall have been paid in full, the corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, except dividends paid ratably on the Series A Junior Participating Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, provided that the corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Junior Participating Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series A Junior Participating Preferred Stock, or any shares of stock ranking on a parity with the Series A Junior Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the board of directors) to all holders of such shares upon such terms as the board of directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The corporation shall not permit any subsidiary of the corporation to purchase or otherwise acquire for consideration any shares of stock of the corporation unless the corporation could, under Paragraph (a) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

SECTION 5. REACQUIRED SHARES.

Any shares of Series A Junior Participating Preferred Stock purchased or otherwise acquired by the corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the board of directors, subject to the conditions and restrictions on issuance set forth herein.

SECTION 6. LIQUIDATION, DISSOLUTION OR WINDING UP.

(a) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Junior Participating Preferred Stock shall have received an amount equal to 1,000 times the Exercise Price, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series A Liquidation Preference"). Following the payment of the full amount of the Series A Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series A Liquidation Preference by (ii) 1,000 (as appropriately adjusted as set forth in Paragraph (c) of this Section 6 to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the "Adjustment Number"). Following the payment of the full amount of the Series A Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series A Junior Participating Preferred Stock and Common Stock, respectively, holders of Series A Junior Participating Preferred Stock and holders of shares of both classes of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Preferred Stock and Common Stock, on a per share basis, respectively.

(b) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other series of preferred stock, if any, which rank on a parity with the Series A Junior Participating Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of both classes of Common Stock.

(c) In the event the corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Class A Common Stock payable in shares of Class A Common Stock, (ii) subdivide the outstanding

Class A Common Stock, or (iii) combine the outstanding Class A Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Class A Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class A Common Stock that were outstanding immediately prior to such event.

SECTION 7. CONSOLIDATION, MERGER, ETC.

In case the corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Class A Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Class A Common Stock is changed or exchanged. In the event the corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Class A Common Stock payable in shares of Class A Common Stock, (ii) subdivide the outstanding Class A Common Stock, or (iii) combine the outstanding Class A Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Junior Participating Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Class A Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class A Common Stock that were outstanding immediately prior to such event.

SECTION 8. NO REDEMPTION.

The shares of Series A Junior Participating Preferred Stock shall not be redeemable.

SECTION 9. AMENDMENT.

The Certificate of Incorporation of the corporation shall not be further amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Junior Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series A Junior Participating Preferred Stock, voting separately as a class.

SECTION 10. FRACTIONAL SHARES.

Series A Junior Participating Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holders fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Junior Participating Preferred Stock.

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DIVISION B
COMMON STOCK

SUBDIVISION 1. GENERAL PROVISIONS

The rights, preferences and privileges, and qualifications, limitations and restrictions granted to and imposed on the classes of Common Stock shall be as set forth in this Division B.

SECTION 1. DEFINITIONS.

In addition to the terms defined elsewhere, the following terms shall have the respective meanings set forth below:

"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.

"Exchange" shall mean Chicago Mercantile Exchange Inc., a subsidiary of the corporation.

"Person" shall mean any individual, corporation, partnership, trust or other entity.

"CBOT" shall mean Board of Trade of the City of Chicago, Inc., a subsidiary of the corporation.

A "Transfer" (and the related term "Transferred") shall mean any sale, pledge, gift, assignment or other transfer of any ownership in any share of Class B Common Stock.

SECTION 2. GENERAL.

Except as otherwise set forth in this Division B, the relative powers, preferences and participating, optional or other special rights, and the qualifications, limitations or restrictions of each class of Common Stock shall be identical in all respects.

SECTION 3. DIVIDENDS.

Subject to the rights of the holders of Preferred Stock, holders of Common Stock shall be entitled to receive such dividends and other distributions in cash, stock of any corporation or property of the corporation as may be declared thereon by the board of directors from time to time out of assets or funds of the corporation legally available therefore, and shall share equally on a per share basis in all such dividends and other distributions.

SECTION 4. VOTING RIGHTS.

Subject to the rights of holders of Class B Common Stock set forth in this Division B, at every meeting of the shareholders of the corporation in connection with the election of Equity Directors (as defined below) and all other matters submitted to a vote of shareholders, every holder of Common Stock shall be entitled to one vote in person or by proxy for each share of Common Stock registered in his or her name on the transfer books of the corporation. Except as otherwise required by law or by this Division B, the holders of each class of Common Stock shall vote together as a single class, subject to any right that may be conferred upon holders of Preferred Stock to vote together with holders of Common Stock on all matters submitted to a vote of shareholders of the corporation.

SECTION 5. LIQUIDATION RIGHTS.

Upon the liquidation, dissolution or winding up of the corporation, holders of Common Stock shall be entitled to receive any amounts available for distribution to holders of Common Stock after the payment of, or provision for, obligations of the corporation and any preferential amounts payable to holders of any outstanding shares of Preferred Stock.

SUBDIVISION 2. CLASS B COMMON STOCK

In addition to the rights, preferences and privileges, and qualifications, limitations and restrictions granted to and imposed on the shares of Class B Common Stock of the corporation as set forth in Subdivision 1 of this Division B, the rights, preferences and privileges, and qualifications, limitations and restrictions granted to and imposed on the shares of Class B Common Stock of the corporation shall be as set forth in this Subdivision 2 of this Division B.

SECTION 1. SPECIAL VOTING RIGHTS.

In addition to the voting rights set forth in Subdivision 1 of this Division B, the holders of shares of Class B Common Stock shall, subject to Paragraph (c) of this Section 1, have the following additional voting rights:

(a) ELECTION OF CLASS B DIRECTORS. Subject to and in accordance with Article Five, Holders of shares of Class B-1 Common Stock shall have the sole right to elect three directors to the corporation's board of directors (the "Class B-1 Directors"), and each holder of Class B-1 Common Stock shall have one vote per share in any such election. Holders of shares of Class B-2 Common Stock shall have the sole right to elect two directors to the corporation's board of directors (the "Class B-2 Directors"), and each holder of Class B-2 Common Stock shall have one vote per share in any such election. Holders of shares of Class B-3 Common Stock shall have the sole right to elect one director to the corporation's board of directors (the "Class B-3 Director" and together with the Class B-1 Directors and Class B-2 Directors, the "Class B Directors"), and each holder of Class B-3 Common Stock shall have one vote per share in any such election.

(b) CORE RIGHTS. Any change, amendment or modification of the Core Rights or of the terms of Section 3 of this Subdivision 2 shall be submitted to a vote of the holders of the Class B Common Stock for their

consideration and approval. In any such vote, holders of Class B-1 Common Stock shall be entitled to six votes for each share of Class B-1 Common Stock held, holders of Class B-2 Common Stock shall be entitled to two votes for each share of Class B-2 Common Stock held, holders of Class B-3 Common Stock shall be entitled to one vote for each share of Class B-3 Common Stock held and holders of Class B-4 Common Stock shall be entitled to one-sixth of one vote for each share of Class B-4 Common Stock held. Any such change, amendment or modification must be approved by a majority of the aggregate votes cast by the holders of the Class B Common Stock present (in person or by proxy) and voting at the meeting of holders of Class B Common Stock called for the purpose of voting on the proposed change, amendment or modification; provided that holders of at least a majority of the aggregate number of votes entitled to vote on the matter shall be present, in person or by proxy, at such meeting. The absence of a quorum of the holders of Common Stock shall not effect the exercise by the holders of Class B Common Stock of the voting rights granted pursuant to this Paragraph (b).

(c) LIMITATION ON VOTING RIGHTS. Notwithstanding anything to the contrary contained in this Section 1 of this Subdivision 2, for so long as any Person or group of Persons acting in concert beneficially own (as defined below) 15% or more of the outstanding shares of any class of Class B Common Stock, then in any election of directors elected by that class or other exercise of voting rights with respect to Core Rights or with respect to the election or removal of directors elected by that class, such Person or group shall only be entitled to vote (or otherwise exercise voting rights with respect to) a number of shares of that class of Class B Common Stock that constitutes a percentage of the total number of shares of that class of Class B Common Stock then outstanding which is less than or equal to such Person or group's Entitled Voting Percentage (as defined below). For the purposes hereof, a Person or group's "Entitled Voting Percentage" at any time shall mean the percentage of the then outstanding shares of Class A Common Stock in the aggregate, beneficially owned by such Person or group at such time. For purposes of this Paragraph (c), a "beneficial owner" of Common Stock includes any Person or group of Persons who, directly or indirectly, including through any contract, arrangement, understanding, relationship or otherwise, written or oral, formal or informal, control the voting power (which includes the power to vote or to direct the voting) of such Common Stock.

SECTION 2. LIMITATION ON OWNERSHIP AND TRANSFER RESTRICTIONS.

(a) Shares of Class B Common Stock may not be Transferred at any time except as follows and subject to the following limitations:

(i) No person may own a share of Class B-1 Common Stock unless that person is recognized on the books and records of the Exchange as the owner of a CME Division membership ("CME Membership") in the Exchange as governed by the rules of the Exchange; provided that each holder shall not be permitted to own more than one share of Class B-1 Common Stock for each CME Membership;

(ii) No person may own a share of Class B-2 Common Stock unless that person is recognized on the books and records of the Exchange as the owner of an International Monetary Market Division membership ("IMM Membership") in the Exchange as governed by the rules of the Exchange; provided that each holder shall not be permitted to own more than one share of Class B-2 Common Stock for each IMM Membership;

(iii) No person may own a share of Class B-3 Common Stock unless that person is recognized on the books and records of the Exchange as the owner of an Index and Option Market Division membership ("IOM Membership") in the Exchange as governed by the rules of the Exchange; provided that each holder shall not be permitted to own more than one share of Class B-3 Common Stock for each IOM Membership;

(iv) No person may own a share of Class B-4 Common Stock unless that person is recognized on the books and records of the Exchange as an owner of a Growth and Emerging Markets Division membership ("GEM Membership") as governed by the rules of the Exchange; provided that each holder shall not be permitted to own more than one share of Class B-4 Common Stock for each GEM Membership;

(b) No share of Class B-1 Common Stock may be Transferred other than in connection with the Transfer of a CME Membership made in accordance with the rules of the Exchange; provided that no more than one share of Class B-1 Common Stock may be Transferred with a CME Membership;

(c) No share of Class B-2 Common Stock may be Transferred other than in connection with the Transfer of an IMM Membership made in accordance with the rules of the Exchange; provided that no more than one share of Class B-2 Common Stock may be Transferred with an IMM Membership;

(d) No share of Class B-3 Common Stock may be Transferred other than in connection with the Transfer of an IOM Membership made in accordance with the rules of the Exchange; provided that no more than one share of Class B-3 Common Stock may be Transferred with an IOM Membership;

(e) No share of Class B-4 Common Stock may be Transferred other than in connection with the Transfer of a GEM Membership made in accordance with the rules of the Exchange; provided that no more than one share of Class B-4 Common Stock may be Transferred with a GEM Membership;

(f) Every certificate for shares of Class B-1 Common Stock, Class B-2 Common Stock, Class B-3 Common Stock and Class B-4 Common Stock shall bear a legend on its face reading as follows:

> "The shares of Common Stock represented by this certificate may not be Transferred to any person in connection with a Transfer that does not meet the rules of the Exchange or the terms of the Certificate of Incorporation of this corporation until the transfer restrictions applicable to the shares represented by this certificate expire, and no person who receives the shares represented by this certificate in connection with a Transfer that does not satisfy the rules of the Exchange or the terms of the Certificate of Incorporation of this corporation prior to such time is entitled to own or to be registered as the record holder of the shares of Common Stock represented by this certificate. Each holder of this certificate, by accepting the certificate, accepts and agrees to all of the foregoing."

(g) Except as permitted by this Section 2 of this Subdivision 2, any proposed Transfer of shares of Class B-1 Common Stock, Class B-2 Common Stock, Class B-3 Common Stock or Class B-4 Common Stock shall be void.

SECTION 3. COMMITMENT TO MAINTAIN FLOOR TRADING.

The corporation shall cause the Exchange, (i) as long as an open outcry market is liquid (as defined below), to maintain for such open outcry market a facility for conducting business, for the dissemination of price information, for clearing and delivery and (ii) to provide reasonable financial support (consistent with the calendar year 1999 budget levels established by Chicago Mercantile Exchange, an Illinois not-for-profit corporation, the predecessor of the Exchange) for technology, marketing and research for open outcry markets. If an open outcry market is not liquid, as determined by the board of directors, the board may determine, in its sole discretion, whether such obligations will continue, and for how long, in respect of such market. For purposes of this Section, an open outcry market will be deemed "liquid" if it meets any of the following tests on a quarterly basis:

(a) if a comparable exchange-traded product exists, including electronic trading at the Exchange, the Exchange's open outcry market has maintained at least 30% of the average daily volume of such comparable product (including, for calculation purposes, volume from exchange-for-physical transactions in such open outcry market); or

(b) if a comparable exchange-traded product exists and the product trades exclusively by open outcry at the Exchange, the Exchange's open outcry market has maintained at least 30% of the open interest of such comparable product; or

(c) if no comparable exchange-traded product exists, the open outcry market has maintained at least 40% of the average quarterly volume in that market during 1999 at Chicago Mercantile Exchange, an Illinois not-for-profit corporation, the predecessor of the Exchange (including, for calculation purposes, volume from exchange-for-physical transactions in such open outcry market); or

(d) if no comparable exchange-traded product exists and the product trades exclusively by open outcry, the open outcry market has maintained at least 40% of the average open interest in that market during 1999 at Chicago Mercantile Exchange, an Illinois not-for-profit corporation, the predecessor of the Exchange.

ARTICLE FIVE:

(A) Subject to Article Four, Division B, Subdivision 2, Section 1(a) of this Certificate of Incorporation and Article X of the bylaws of the corporation, the number of directors that shall constitute the whole board of directors of the corporation shall be fixed exclusively by one or more resolutions adopted by the board of directors of the corporation, which number shall be no more than 33. As of the time of acceptance by the Delaware Secretary of State of the filing of this Third Amended and Restated Certificate of Incorporation (the "Effective Time"), the board of directors of the corporation shall consist of 33 members, including 27 directors that are not

Class B Directors (the "Equity Directors"), three Class B-1 Directors, two Class B-2 Directors and one Class B-3 Director. Until the annual meeting of shareholders to be held in 2012 (the "2012 Annual Meeting"), at least ten Equity Directors shall be CBOT Directors. During the period from the Effective Time to the first business day prior to the 2012 Annual Meeting (i) it shall be a qualification for any director to be nominated or elected by the board of directors to replace any CME Director (whose term is expiring or has expired or who shall have been removed or become disqualified or who shall have resigned, retired, died or otherwise shall fail to continue to serve as a director of the corporation) that such replacement director shall have been designated by the CME Nominating Representatives and (ii) it shall be a qualification for any director to be nominated or elected by the board of directors to replace any CBOT Director (whose term is expiring or has expired or who shall have been removed or become disqualified or who shall have resigned, retired, died or otherwise shall fail to continue to serve as a director of the corporation) that such replacement director shall have been designated by the CBOT Nominating Representatives. For purposes of this Certificate of Incorporation, the terms "CME Director," "CME Nominating Representatives," "CBOT Director" and "CBOT Nominating Representatives" shall have the respective meanings set forth in the corporation's bylaws as in effect at the Effective Time.

(B) The board of directors of the corporation shall be divided into three classes, designated Class I, Class II and Class III. Each class of directors shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire board of directors of the corporation. At the first annual meeting of shareholders following the Effective Time, the term of office of the Class II directors shall expire. At the second annual meeting of shareholders following the Effective Time, the term of office of the Class III directors shall expire. At the third annual meeting of shareholders following the Effective Time, the term of office of the Class I directors shall expire.

(C) At each annual meeting of shareholders, successors to the class of directors whose terms expire at that annual meeting shall be elected for a three-year term.

(D) A director shall hold office until the annual meeting of shareholders for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

(E) Subject to the provisions of Article X of the bylaws of the corporation during the Transition Period (as such term is defined in the bylaws in effect as of the Effective Time) and Paragraph (A) of this Article Five, any vacancy on the board of directors of the corporation may be filled by a majority of the board of directors then in office and any director elected to fill such a vacancy shall have the same remaining term as that of his or her predecessor; PROVIDED, HOWEVER, that any vacancy occurring with respect to a Class B-1 Director, a Class B-2 Director or a Class B-3 Director shall be filled from the candidates who lost for such position from the most recent election, with the candidates being selected to fill such vacancy in the order of the aggregate number of votes received in such previous election.

(F) No person shall be eligible for election as a Class B-1 Director, a Class B-2 Director or a Class B-3 Director unless he or she shall own, or be recognized as the owner for the purposes of the Exchange of, at least one share of the class of Class B Common Stock entitled to elect such director.

(G) Any director may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least two-thirds of the voting power of the shares entitled to elect such person as a director.

(H) During the period starting on the Effective Time and ending on the first business day prior to the 2012 Annual Meeting, the corporation shall not amend, modify or repeal, by merger or otherwise, any provision contained in this Article Five or Article Fifteen unless such amendment, modification or repeal is approved by a majority of the board of directors then in office, which majority must include a majority of the CME Directors and a majority of the CBOT Directors.

ARTICLE SIX: The board of directors is hereby authorized to create and issue, whether or not in connection with the issuance and sale of any of its stock or other securities or property, rights entitling the holders thereof to purchase from the corporation shares of Preferred Stock, Class A Common Stock or securities of any other corporation. The times at which and the terms upon which such rights are to be issued will be determined by the board of directors and set forth in the contracts or instruments that evidence such rights. The authority of the board of directors with respect to such rights shall include, without limitation, determination of the following:

(A) The initial purchase price per share or other unit of the stock or other securities or property to be purchased upon exercise of such rights;

(B) Provisions relating to the times at which and the circumstances under which such rights may be exercised or sold or otherwise transferred, either together with or separately from, any other stock or other securities of the corporation;

(C) Provisions which adjust the number or exercise price of such rights or amount or nature of the stock or other securities or property receivable upon exercise of such rights in the event of a combination, split or recapitalization of any stock of the corporation, a change in ownership of the corporation's stock or other securities or a reorganization, merger, consolidation, sale of assets or other occurrence relating to the corporation or any stock of the corporation, and provisions restricting the ability of the corporation to enter into any such transaction absent an assumption by the other party or parties thereto of the obligations of the corporation under such rights;

(D) Provisions which deny the holder of a specified percentage of the outstanding stock or other securities of the corporation the right to exercise such rights and/or cause the rights held by such holder to become void;

(E) Provisions which permit the corporation to redeem or to exchange such rights; and

(F) The appointment of a rights agent with respect to such rights.

ARTICLE SEVEN:

(A) In furtherance of and not in limitation of the powers conferred by law, subject to the provisions of Article X of the bylaws of the corporation, the board of directors is expressly authorized and empowered to adopt, amend or repeal the bylaws; PROVIDED, HOWEVER, that the bylaws may also be altered, amended or repealed by the affirmative vote of the holders of two-thirds of the voting power of the then outstanding Common Stock, voting together as a single class.

(B) Unless and except to the extent that the bylaws of the corporation shall so require, the election of directors of the corporation need not be by written ballot.

ARTICLE EIGHT: No shareholder shall have any preemptive right to subscribe to an additional issue of any class or series of the corporation's capital stock or to any securities of the corporation convertible into such stock.

ARTICLE NINE: Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of at least two-thirds of the voting power of the then outstanding Common Stock, voting together as a single class, shall be required to amend, repeal or adopt any provisions inconsistent with Paragraph (G) of Article Five or Articles Six, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen or Fifteen of this Certificate of Incorporation.

ARTICLE TEN: No director of the corporation shall be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. Any amendment or repeal of this Article by the shareholders shall not adversely affect any right or protection of a director of the corporation existing hereunder in respect of any act or omission occurring prior to such amendment or repeal.

ARTICLE ELEVEN: The corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; PROVIDED, HOWEVER, that, except for proceedings to enforce rights to indemnification, the corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the board of directors. The right to indemnification conferred by this Article Eleven shall include the right to be paid by the corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The corporation may, to the extent authorized from time to time by the board of directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the corporation similar to those conferred in this Article Eleven to directors and officers of the corporation.

The rights to indemnification and to the advance of expenses conferred in this Article Eleven shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate of Incorporation, the bylaws of the corporation, any statute, agreement, vote of shareholders or disinterested directors or otherwise.

Any repeal or modification of this Article Eleven by the shareholders of the corporation shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

ARTICLE TWELVE: In furtherance and not in limitation of the powers conferred by law or in this Certificate of Incorporation, the board of directors (and any committee of the board of directors) is expressly authorized, to the extent permitted by law, to take such action or actions as the board of directors or such committee may determine to be reasonably necessary or desirable to (A) encourage any person to enter into negotiations with the board of directors and management of the corporation with respect to any transaction which may result in a change in control of the corporation which is proposed or initiated by such Person or (B) contest or oppose any such transaction which the board of directors or such committee determines to be unfair, abusive or otherwise undesirable with respect to the corporation and its business, assets or properties or the shareholders of the corporation, including, without limitation, the adoption of such plans or the issuance of such rights, options, capital stock, notes, debentures or other evidences of indebtedness or other securities of the corporation, which rights, options, capital stock, notes, debentures or other evidences of indebtedness and other securities (i) may be exchangeable for or convertible into cash or other securities on such terms and conditions as may be determined by the board of directors or such committee and (ii) may provide for the treatment of any holder or class of holders thereof designated by the board of directors or any such committee in respect of the terms, conditions, provisions and rights of such securities which is different from, and unequal to, the terms, conditions, provisions and rights applicable to all other holders thereof.

ARTICLE THIRTEEN: No action required to, or which may, be taken at an annual or special meeting of shareholders of the corporation may be taken without a meeting, and the power of the shareholders of the corporation to act by written consent, whether pursuant to Section 228 of the DGCL or otherwise, is specifically denied.

ARTICLE FOURTEEN: Special meetings of the shareholders, for any purpose or purposes, unless otherwise prescribed by statute or by this Certificate of Incorporation, may be called by the Chairman of the Board, in his discretion, and shall be called by the Chairman of the Board or the Secretary at the request in writing of a majority of the directors then holding office. Any such written request shall state the purpose or purposes of the proposed meeting.

ARTICLE FIFTEEN: The corporation shall, and shall cause each of the Exchange and CBOT and their respective successors and successors-in-interest to, (i) grant to each holder of a CME Membership and each holder of a Series B-1 membership in CBOT all trading rights and privileges for all new products first made available after the effective time of the merger of CBOT Holdings, Inc. with and into the corporation, pursuant to that certain Agreement and Plan of Merger, dated as of October 17, 2006, as amended, among the corporation, CBOT Holdings, Inc. and the CBOT (the "Merger Effective Time") and traded on the open outcry exchange system of the Exchange or CBOT or any electronic trading system maintained by the Exchange or CBOT or any of their respective successors or successors-in-interest; (ii) prohibit the Exchange and any of its successors or successors-in-interest from trading products that, as of the Merger Effective Time, were traded on CBOT's open outcry exchange system or any electronic trading system maintained by CBOT; and (iii) prohibit CBOT and any of its successors or successors-in-interest from trading products that, as of the Merger Effective Time, were traded on the Exchange's open outcry exchange system or any electronic trading system maintained by the Exchange. The board of directors of the corporation shall, and shall cause the Exchange and CBOT to, enforce these requirements. Other members of CBOT shall have such trading rights and privileges for new products first made available after the Merger Effective Time and traded on the open outcry exchange system of the Exchange or CBOT or any electronic trading system maintained by the Exchange or CBOT or any of their respective successors or successors-in-interests as determined by the board of directors of the corporation in its sole discretion.

EXHIBIT 2

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF BOARD OF TRADE OF THE CITY OF CHICAGO, INC. (ORIGINALLY INCORPORATED IN THE STATE OF DELAWARE UNDER THE NAME DELAWARE CBOT, INC. ON MAY 12, 2000)

ARTICLE I
NAME

The name of the corporation is Board of Trade of the City of Chicago, Inc. (hereinafter referred to as the "Corporation").

ARTICLE II
REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent, Delaware 19904. The name of the registered agent of the Corporation at such address is National Registered Agents, Inc.

ARTICLE III
CORPORATE PURPOSES

The nature of the business or purposes to be conducted or promoted by the Corporation are to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (as amended from time to time, the "DGCL").

ARTICLE IV
MEMBERSHIP

A. *General.*

The Corporation shall have no authority to issue capital stock. The terms and conditions of membership in the Corporation shall be as provided in or pursuant to this Certificate of Incorporation, the Bylaws of the Corporation (the "Bylaws") and the Rules and Regulations of the Corporation as in effect from time to time (the "Rules").

B. *Classes and Series of Membership.*

Membership in the Corporation shall be divided into classes and series as set forth in this Article IV.

1. *Class A Membership.*

There shall be one Class A Membership in the Corporation (the "Class A Membership" and the holder thereof, the "Class A Member"), which Class A Membership shall be held by CME Group Inc., a Delaware corporation ("CME Group"). It shall be a term and condition of such Class A Membership that such membership may not be transferred to or held by any person or entity other than CME Group unless authorized by an amendment to this Section B(1) of Article IV. Except to the extent (if any) expressly provided herein or required by law, the Class A Member shall have the right to vote on any matter to be voted on by the members of the Corporation other than on those matters expressly reserved to the vote of the holders of Series B-1 Memberships and Series B-2 Memberships (each as defined in Section B(2) of this Article IV) and shall have the exclusive right to receive any dividend or other distribution (including upon liquidation, dissolution, winding-up or otherwise) to be declared, paid or distributed by the Corporation, and no other member of or class or series of membership in the Corporation shall be entitled to vote on any matter except as set forth in Section D(2) or Section E of this Article IV or Article IX of this Certificate of Incorporation, or to receive any such dividend or other distribution.

2. *Class B Membership.*

(a) Class B Memberships in the Corporation (each a "Class B Membership" and the holder thereof, a "Class B Member") shall represent the right to trade on and otherwise utilize the facilities of the Corporation in accordance with and to the extent permitted by this Certificate of Incorporation, the Bylaws and, to the extent not inconsistent with this Certificate of Incorporation, the Bylaws or the Rules. There shall be authorized three thousand six hundred eighty-one (3,681) Class B Memberships, which shall be divided into five (5) series ("Series") as follows:

1,402 Series B-1 Memberships (each, a "Series B-1 Membership" and the holder thereof, a "Series B-1 Member");

867 Series B-2 Memberships (each, a "Series B-2 Membership" and the holder thereof, a "Series B-2 Member");

128 Series B-3 Memberships (each, a "Series B-3 Membership" and the holder thereof, a "Series B-3 Member");

641 Series B-4 Memberships (each, a "Series B-4 Membership" and the holder thereof, a "Series B-4 Member"); and

643 Series B-5 Memberships (each, a "Series B-5 Membership" and the holder thereof, a "Series B-5 Member");

(b) Notwithstanding Section B(2)(a) of this Article IV, the Corporation may issue additional authorized but unissued Series B-2 Memberships only in connection with the conversion of Series B-3 Memberships into Series B-2 Memberships pursuant to Section D(3) of this Article IV and no person may become or qualify as a Series B-2 Member at any time by acquiring a theretofore authorized but unissued Series B-2 Membership except as a result of such a conversion.

(c) Class B Memberships shall have no right to receive any dividend or other distribution (including upon liquidation, dissolution, winding-up or otherwise) to be declared, paid or distributed by the Corporation. The respective rights and privileges of each Series of Class B Membership shall be as provided in or pursuant to this Certificate of Incorporation and the Bylaws.

C. *Class B Voting Rights.*

Except as otherwise expressly provided in this Certificate of Incorporation, the holders of Class B Memberships shall not be entitled to vote on any matter. On any matter on which the holders of Series B-1 Memberships and Series B-2 Memberships are entitled to vote together as a single class pursuant to this Certificate of Incorporation, each holder of Series B-1 Memberships shall be entitled to one (1) vote per such membership and each holder of Series B-2 Memberships shall be entitled to one-sixth (1/6) of one (1) vote per such membership.

D. Special Rights of Class B Membership.

The holders of each Series of Class B Membership shall have the trading rights and other rights and privileges, and shall be subject to the restrictions, terms and conditions, set forth below.

1. *Series Trading Rights.*

(a) *Series B-1 Memberships.* Each holder of a Series B-1 Membership who satisfies the qualifications for and requirements of Full Membership in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a Full Member as set forth in this Certificate of Incorporation, the Bylaws and the Rules. Each holder of a Series B-1 Membership shall also be entitled to all trading rights and privileges for all new products first made available after the filing of this Certificate of Incorporation traded on the open outcry exchange system of the Corporation or Chicago Mercantile Exchange Inc. ("CME Exchange") or any electronic trading system maintained by the Corporation or CME Exchange or any of their respective successors or successors-in-interest, and the Board of Directors of the Corporation shall enforce this requirement.

(b) *Series B-2 Memberships.* Each holder of a Series B-2 Membership who satisfies the qualifications for and requirements of Associate Membership in the Corporation as set forth in the Rules shall be entitled to

the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, an Associate Member as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(c) *Series B-3 Memberships.*

(1) Each holder of a Series B-3 Membership who satisfies the qualifications for and requirements of being a holder of a one-half Associate Membership as set forth in clause (2) of Rule 296.00 of the Rules shall be entitled to the rights and privileges of, and subject to the restrictions, conditions and limitations on, a holder of a one-half Associate Membership as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(2) Each holder of a Series B-3 Membership who satisfies the qualifications for and requirements of being a holder of a GIM Membership Interest in the Corporation as set forth in clause (1) of Rule 296.00 of the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a holder of a GIM Membership Interest as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(d) *Series B-4 Memberships.* Each holder of a Series B-4 Membership who satisfies the qualifications for and requirements of being a holder of an IDEM Membership Interest in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a holder of an IDEM Membership Interest as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(e) *Series B-5 Memberships.* Each holder of a Series B-5 Membership who satisfies the qualifications for and requirements of being a holder of a COM Membership Interest in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a holder of a COM Membership Interest as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(f) 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 successors or successors-in-interest.

2. *Series B-1 Membership and B-2 Membership Voting Rights; Certain Covenants.*

(a) In addition to any approval of the Board of Directors of the Corporation required by this Certificate of Incorporation, the Bylaws or applicable law, the affirmative vote of the holders of a majority of the votes cast by the holders of Series B-1 Memberships and Series B-2 Memberships, voting together as a class based on their respective voting rights at any annual or special meeting of the Corporation, shall be required to adopt (subject to the immediately following sentence, by merger or otherwise) any amendment of, or any modification or repeal of any provisions contained in, Section B(2), Section C, Section D, Section E or Section F of Article IV or the second sentence of Article IX of this Certificate of Incorporation or, during the Transition Period (as defined in the bylaws of CME Group) Article VI. Notwithstanding the foregoing, the holders of Series B-1 Memberships and Series B-2 Memberships shall not be entitled to a vote on any merger, consolidation or reorganization of the Corporation that results, by operation of law or otherwise, in an amendment, modification or repeal of this Certificate of Incorporation so long as the rights and privileges of the holders of Series B-1 Memberships and Series B-2 Memberships set forth in Section B(2), Section C, Section D, Section E and Section F of Article IV and the second sentence of Article IX and, during the Transition Period, Article VI of this Certificate of Incorporation are preserved in the Certificate of Incorporation or other governing document of the surviving corporation of such transaction.

(b) In addition to any approval of the Board of Directors of the Corporation required by this Certificate of Incorporation, the Bylaws or applicable law, the affirmative vote of the holders of a majority of the votes cast, except in the case of paragraph (4) below, by the holders of Series B-1 Memberships and Series B-2 Memberships, voting together as a class based on their respective voting rights at any annual or special meeting of the Corporation, shall be required to adopt any amendment to this Certificate of Incorporation or the Bylaws or the Rules that, in the sole and absolute determination of the Board of Directors of the Corporation, 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 the 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 Membership for the same products, whether trading utilizing the open outcry trading system or the electronic trading system,

(3) the membership qualifications or eligibility requirements for holding any Series of Class B Membership or exercising any of the membership rights and privileges associated with such Series,

(4) the commitment to maintain open outcry markets set forth in Section E of Article IV of this Certificate of Incorporation, which must be approved by a majority of the voting power of the outstanding Series B-1 Memberships and Series B-2 Memberships, voting together as a class, or

(5) the ability of a Class B Member to engage in dual-trading, unless such amendment to the Bylaws or Rules is required, in the opinion of counsel, by applicable law or governmental rule or regulation.

For purposes of Section D(2)(b)(1) of Article IV, the allocation of products that the holders of any Series of Class B Membership are permitted to trade on the exchange facilities of the Corporation shall be deemed to be adversely affected only if a product is eliminated from the allocation of products the holders of a particular Series of Class B Memberships are permitted to trade.

(c) Following the date of filing of this Certificate of Incorporation, and unless otherwise agreed to by the Series B-1 Members and the Series B-2 Members voting together as a single class in accordance with Section C of this Article IV, the Corporation shall use commercially reasonable efforts to preserve the Exercise Right for the benefit of the Series B-1 Members and their delegates, including (i) defending any actions, suits or proceedings brought to challenge all or any portion of the Exercise Right and, in the event of an adverse ruling or determination, pursuing reasonable grounds for appeal, (ii) taking reasonable steps, including instituting actions, suits and proceedings and pursuing reasonable grounds for appeal, to secure for the Series B-1 Members and their delegates that have exercised the Exercise Right the right to receive any dividends or other distributions to be made by the CBOE to its members and (iii) complying with the Corporation's obligations under agreements with the CBOE regarding the Exercise Right, including making available to the CBOE the information specified in any such agreements or any surveillance plans with the CBOE; provided that the Corporation shall not be required in connection with its obligations under the foregoing clauses (i) and (ii) of this Section D(2)(c) of this Article IV of this Certificate of Incorporation to contribute to any settlement or satisfy the obligation of any third party.

(d) On any matter on which holders of Series B-1 Memberships and Series B-2 Memberships are entitled to vote pursuant to paragraphs (a) and (b) of this Section D(2) of Article IV, such holders of Series B-1 Memberships and Series B-2 Memberships shall be the only members of the Corporation entitled to vote thereon. Holders of Series B-1 Memberships and Series B-2 Memberships shall have no other voting rights except as expressly set forth herein and shall not have the right to take action by written consent in lieu of a meeting and shall have no right to initiate any proposal, at or for any meeting of members. One-third of the total voting power of the Series B-1 Memberships and Series B-2 Memberships present in person or by proxy shall constitute a quorum at any meeting to take action on the matters as to which such holders are entitled to vote pursuant to paragraphs (a) and (b) of Section D(2) of this Article IV. Series B-3 Memberships, Series B-4 Memberships and Series B-5 Memberships shall have no right to vote on any matters or to initiate any proposals at or for any meeting of members. For purposes of any vote of the holders of Series B-1 Memberships and Series B-2 Memberships permitted by this Certificate of Incorporation, the Board of Directors of the Corporation shall be entitled to fix a record date, and only holders of record as of such record date shall be entitled to vote on the matter to be voted on.

(e) During the period ending at the annual meeting of shareholders of CME Group to be held in 2012, the Corporation will provide the CBOT Directors (as defined in the bylaws of CME Group) with advance notice (a "Rule Change Notice") of any proposed change to the Rules (a "Proposed Rule Change"). If a majority of the CBOT Directors provide written notice to the Corporation (an "Initial Rejection Notice") within five (5) business days after delivery of the Rule Change Notice (the "Initial Rejection Notice Period") that they have determined in their sole discretion that any such Proposed Rule Change will materially impair the business of the Corporation or materially impair the business opportunities of the holders of the Class B Memberships, such Proposed Rule Change will be submitted to a committee of the Board of Directors of the Corporation (the "Rule Change Committee") comprised of three CBOT Directors designated by the Vice Chairman of the Corporation and two CME Directors designated by the Chairman of the Corporation for approval. Approval shall require the affirmative vote of a majority of the full Rule Change Committee. The Corporation shall not effect any Proposed Rule Change unless and until either (a) the Initial Rejection Notice Period terminates without the CBOT Directors providing an Initial Rejection Notice with respect to such Proposed Rule Change or (b) the Rule Change Committee approves such Proposed Rule Change.

3. *Conversion Rights of Series B-3 Memberships.*

(a) *Conversion.* Subject to, and upon compliance with, the provisions of this Section D(3) of Article IV, any two (2) Series B-3 Memberships shall be convertible at the option of the holder into one (1) Series B-2 Membership.

(b) *Mechanics of Conversion.* A holder of Series B-3 Memberships may exercise the conversion right specified in Section D(3)(a) of Article IV by delivering to the Corporation or any transfer agent of the Corporation written notice stating that the holder elects to convert such memberships, accompanied by the certificates or other instruments, if any, representing the memberships to be converted. Conversion shall be deemed to have been effected on the date when delivery of such written notice, accompanied by such certificate or other instrument, if any, is made, and such date is referred to herein as the Conversion Date.

As promptly as practicable after the Conversion Date, the Corporation may issue and deliver to or upon the written order of such holder a certificate or other instrument, if any, representing the number of Series B-2 Memberships to which such holder is entitled as a result of the exercise of such conversion right. The person in whose name the certificates or other instruments representing Series B-2 Memberships are to be issued shall be deemed to have become the holder of record of such Series B-2 Memberships on the applicable Conversion Date.

(c) *Memberships Reserved for Issuance.* The Corporation shall take all actions necessary to reserve and make available at all times for issuance upon the conversion of Series B-3 Memberships, such number of Series B-2 Memberships as are issuable upon the conversion of all outstanding Series B-3 Memberships.

E. *Commitment to Maintain Open Outcry Markets.* Subject to the terms and conditions of this Section E of Article IV, the Corporation shall maintain open outcry markets operating as of April 22, 2005 (the "Effective Date") and provide financial support to each such market for technology, marketing and research, which the Board of Directors of the Corporation determines, in its sole and absolute discretion, is reasonably necessary to maintain each such open outcry market.

Notwithstanding the foregoing or any other provision of this Certificate of Incorporation, the Board of Directors of the Corporation may discontinue any open outcry market at such time and in such manner as it may determine if (1) the Board of Directors determines, in its sole and absolute discretion, that a market is no longer "liquid" or (2) the holders of a majority of the voting power of the then outstanding Series B-1 Memberships and Series B-2 Memberships, voting together as a single class based on their respective voting rights, approve the discontinuance of such open outcry market.

For purposes of the foregoing, an open outcry market will be deemed "liquid" for so long as it meets either of the following tests, in each case as measured on a quarterly basis:

(a) if a comparable exchange-traded product exists, the open outcry market has maintained at least 30 percent (30%) of the average daily volume of such comparable product (including for calculation purposes, volume from Exchange-For-Physicals transactions in such open outcry market); or

(b) if no comparable exchange-traded product exists, the open outcry market has maintained at least 40 percent (40%) of the average quarterly volume in that market as maintained by the Corporation in 2001

(including, for calculation purposes, volume from Exchange-For-Physicals transactions in such open outcry market).

The commitment to maintain open outcry markets set forth in this Section E of Article IV will not apply to markets introduced after the Effective Date.

F. *Exercise Rights.* Subject to the terms and conditions of this Section F of Article IV of this Certificate of Incorporation:

1. Each holder of record on the official books and records of the Corporation as of May 29, 2007 of (I) a Series B-1 Membership in respect of which an Exercise Right Privilege (as defined in Rule 210(b) of the Rules) is issuable but has not been issued or (II) both (a) one or more Exercise Right Privileges and (b) a Series B-1 Membership shall have the right, exercisable during the forty five (45) day period (the "Offer Period") immediately following the effective time of the merger of CBOT Holdings, Inc. ("CBOT Holdings") with and into Chicago Mercantile Exchange Holdings Inc. ("CME Holdings") pursuant to the terms of that certain Agreement and Plan of Merger, dated as of October 17, 2006, as amended, among the Corporation, CBOT Holdings and CME Holdings, to sell any such Exercise Right Privilege to the Corporation for an amount equal to $250,000 in cash (a "Purchase Offer"). In order to exercise the Purchase Offer, such holder must deliver to the Corporation prior to the expiration of the Offer Period (i) the Exercise Right Privilege and (ii) a duly executed assignment agreement in the form attached to this Certificate of Incorporation as Annex A (the "Assignment Agreement"). The Corporation shall make payment as provided in this Section F.1 to a holder who makes the required delivery of the Exercise Right Privilege and Assignment Agreement within thirty (30) days after the expiration of the Offer Period.

2. In the event of a Final Resolution (as defined below) pursuant to which the Class Members (as defined below) receive a recovery of cash, marketable securities or other property or rights with respect to each Exercise Right Privilege held by a Class Member and/or retain or are declared to have property or rights with respect to each Exercise Right Privilege held by a Class Member (collectively, a "Per ERP Recovery") with an aggregate Fair Market Value (as defined below) less than $250,000, the Corporation shall pay to each such Class Member with respect to each such Exercise Right Privilege held by such Class Member an amount equal to the difference between $250,000 and the Fair Market Value of the Per ERP Recovery so received or retained, as applicable, by such Class Member with respect to such Exercise Right Privilege held by such Class Member (a "Balance Payment"). In order for a Class Member to receive a Balance Payment with respect to an Exercise Right Privilege, such Class Member must provide evidence reasonably satisfactory to the Corporation that such Class Member received the Per ERP Recovery pursuant to the Final Resolution with respect to such Exercise Right Privilege. The Corporation shall make payment to such holder prior to the later of (i) thirty (30) days after delivery of the sufficient evidence contemplated by the immediately preceding sentence or (ii) thirty (30) days after the date the Fair Market Value of the Per ERP Recovery is determined in accordance with the terms of Section 5(e) of this Section F of Article IV of this Certificate of Incorporation.

3. In the event of the entry of a Zero Judgment (as defined below), the Corporation will pay to each Non-Recovery Class Member (as defined below) $250,000 for each Exercise Right Privilege held by such Non-Recovery Class Member. The Corporation shall make payment to a Non-Recovery Class Member within thirty (30) days after the date the such person's status as a Non-Recovery Class Member is determined in accordance with the terms of Section 5(g) of this Section F of Article IV of this Certificate of Incorporation.

4. Notwithstanding anything to the contrary contained in this Section F of this Article IV of this Certificate of Incorporation, in no event shall the Corporation be required to pay in excess of $250,000 in respect of any single Exercise Right Privilege.

5. For purposes of this Section F of Article IV of this Certificate of Incorporation, the term:

(a) "*CBOE Litigation*" means that litigation captioned *CBOT Holdings, Inc., et al. v. Chicago Board Options Exchange, Inc., et al., Civil Action No. 2369-VCN (Del. Ch. Ct.)*;

(b) "*Class Member*" means (i) if a class is certified by the Court in the CBOE Litigation, any member of such class or (ii) if a class is not certified by the Court in the CBOE Litigation, any person or entity who satisfies the definition of a member of the class as set forth in the Complaint, so long as the Exercise Right Privileges purchased by the Corporation pursuant to this Section may be used by a member of the class to participate in a Final Resolution (*provided, however*, that in no event shall CBOE or any direct or indirect transferee of an Exercise Right Privilege from CBOE be considered a "Class Member" for purposes of this Section F of this Article IV of this Certificate of Incorporation);

(c) "*Court*" means the Delaware Chancery Court presiding over the CBOE Litigation;

(d) "*Complaint*" means the complaint on file with the Court setting forth the claims in the CBOE Litigation as of the time of the Final Resolution;

(e) "*Date of Determination*" means the date of the Final Resolution giving rise to the need to determine Fair Market Value;

(f) "*Fair Market Value*" means, with respect to the components of any Per ERP Recovery, the sum of (1) the amount of cash received plus (2) the value of any marketable securities received, which shall be deemed to have a per security value equal to the average of the closing prices of such marketable security for the ten trading days ending on the day immediately proceeding the Date of Determination on the principal national securities exchange or inter- dealer quotation system on which such marketable securities are listed or admitted to trading plus (3) the value of any other property or rights received or retained, the value of such property or right being determined on the basis of an arm's length transaction between a willing buyer and a willing seller based on then prevailing market conditions and taking into account all circumstances determined to be relevant to the establishment of such price at such time but disregarding any liquidity, minority, transferability or other discounts by an independent investment banking firm with a national reputation that is recognized to have expertise in valuations of such other property or rights selected by the CBOT Directors (or, if no CBOT Directors exist at such time, their successors) and approved by the full Board of Directors of the Corporation;

(g) "*Final Resolution*" means a final, non-appealable resolution of all claims of the Class Members set forth in the Complaint that is binding on all Class Members, which may include, without limitation (i) a judgment of the Court resolving the CBOE Litigation, (ii) a settlement resolving the CBOE Litigation confirmed by an order of the Court and (iii) if the CBOE Litigation is dismissed other than on its merits, a decision or order of, or settlement with, a governmental authority or third party arbitrator with respect to all claims of the Class Members set forth in the Complaint; *provided, however*, in the case of clauses (i) and (ii) that such settlement, decision or order does not prevent the Exercise Right Privileges purchased by the Corporation pursuant to this Section F of this Article IV of this Certificate of Incorporation from being used by a member of the class to participate in a Final Resolution;

(h) "*Non-Recovery Class Member*" means any person who provides evidence reasonably satisfactory to the Corporation that such person meets the requirements of a Class Member; and

(i) "*Zero Judgment*" means a Final Resolution pursuant to which the Class Members do not receive or retain, as applicable, any Per ERP Recovery.

6. The Board of Directors of the Corporation shall be authorized to adopt, change or waive any Rule as it deems necessary or advisable to enable the Corporation to acquire or dispose of Exercise Right Privileges in order to satisfy its obligations under this Section F of this Article IV of this Certificate of Incorporation and to realize the value of the Exercise Right Privileges acquired pursuant to paragraph 1 of this Section F of this Article IV of this Certificate of Incorporation. The provisions of Section D(2)(e) of this Article IV of this Certificate of Incorporation shall not apply to any adoption, change or waiver of a Rule pursuant to this paragraph 6 of this Section F of this Article IV of this Certificate of Incorporation; *provided*, that nothing in this paragraph 6 of this Section F of this Article IV of this Certificate of Incorporation shall be interpreted to permit the Corporation to impose fees, costs or expenses on Class B Members in order to acquire the Exercise Right Privileges.

ARTICLE V
MANAGEMENT OF AFFAIRS

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and members:

A. In accordance with Sections 141(a) and 141(j) of the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the Bylaws, the directors are hereby empowered to exercise all powers and do all acts and

things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate of Incorporation and any Bylaws adopted by the Class A Member; provided, however, that no Bylaws hereafter adopted by a member of the Corporation shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

B. A special meeting of members shall be called by the Chairman of the Board or the Board of Directors of the Corporation upon receipt by the Chairman of the Board or the Secretary of the Corporation of a written demand of a majority of the directors then holding office.

C. Any action required or permitted to be taken by the members of the Corporation must be effected at a duly called annual or special meeting of members of the Corporation and may not be effected by any consent in writing by such members, provided that the Class A Member shall have the right to effect by consent in writing any action which would require the approval of the Class A Member at a duly called annual or special meeting of the members of the Corporation.

ARTICLE VI
BOARD OF DIRECTORS

The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the Bylaws. Election of directors need not be by written ballot unless the Bylaws so provide. The Board of Directors of the Corporation shall at all times be comprised of the same directors as those of CME Group.

ARTICLE VII
AMENDMENT OF BYLAWS

The Board of Directors of the Corporation is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. The Class A Member shall also have power to adopt, amend or repeal the Bylaws. The only member of the Corporation with any power to adopt, amend or repeal the Bylaws of the Corporation shall be the Class A Member, and no other member of, or class or series of membership in, the Corporation shall have any such power. Except as specifically provided in the Rules, no member of, or class or series of membership in, the Corporation shall have any power to adopt, amend or repeal the Rules.

ARTICLE VIII
LIMITATION OF LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a director, except for liability (A) for any breach of the director's duty of loyalty to the Corporation or its members, (B) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (C) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification. For purposes of this Article VIII, the term "director" shall, to the fullest extent permitted by the DGCL, include any person who, pursuant to this Certificate of Incorporation, is authorized to exercise or perform any of the powers or duties otherwise conferred upon a board of directors by the DGCL.

ARTICLE IX
AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend, modify or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware, and all rights conferred upon the members of the Corporation are granted subject to this reservation. Any amendment of, or modification or repeal of any provision contained in, Section B(2), Section C, Section D, Section E or Section F of Article IV or this sentence of this Article IX or, during the Transition Period, Article VI of this Certificate of Incorporation (subject to the last

sentence of Section D(2)(a) of Article IV, by merger or otherwise) shall require, first, the approval of the Board of Directors of the Corporation and, second, the approval of a majority of the votes cast by the Series B-1 Members and Series B-2 Members, voting together as a single class in accordance with Section C of Article IV. Except as provided in the immediately preceding sentence, any amendment of, or modification or repeal of any provision contained in, this Certificate of Incorporation shall require, first, the approval of the Board of Directors of the Corporation and, second, the approval of the Class A Member and no other member or series or class of membership shall have the right to vote on any such amendment or repeal.

* * * *

[Form of Assignment Agreement for the sale of Exercise Right Privilege]

The undersigned (the "*Selling ERP Holder*") is the holder of record on the official books and records of the Board of Trade of the City of Chicago ("*CBOT*") as of May 29, 2007 of (I) a Series B-1 Membership (as defined in the Amended and Restated Certificate of Incorporation of CBOT (the "*Certificate of Incorporation*")) in respect of which an Exercise Right Privilege (as defined in Rule 210(b) of the Rules and Regulations of CBOT) (referred to hereinafter as an "*ERP*") is issuable but has not been issued or (II) both (a) an ERP and (b) a Series B-1 Membership and proposes to sell such ERP to CBOT for an amount equal to $250,000 in cash pursuant to Section F of Article IV of the Certificate of Incorporation.

The Selling ERP Holder understands that CBOT only has a commitment to purchase an ERP for which delivery of the ERP together with this Assignment Agreement, duly executed by the Selling ERP Holder, is made to CBOT during the forty-five (45) day period immediately following the effective time of the merger of CBOT Holdings, Inc. ("*CBOT Holdings*") with and into Chicago Mercantile Exchange Holdings Inc. ("*CME Holdings*") pursuant to the terms of that certain Agreement and Plan of Merger, dated as of October 17, 2006, as amended, among the CBOT, CBOT Holdings and CME Holdings.

1. The Selling ERP Holder represents and warrants to CBOT that:

a. The Selling ERP Holder has valid title to the ERP, free and clear of all security interests, claims, liens, equities or other encumbrances ("*Liens*"), and has the legal right and power, and all authorization and approval required by law or the certificate of incorporation or by-laws (or equivalent organizational documents) of the Selling ERP Holder (if the Selling ERP Holder is not a natural person), to enter into this Assignment Agreement and to sell, transfer and deliver the ERP to be sold by such Selling ERP Holder. When the ERP is delivered to and paid for by CBOT in accordance with the terms of this Assignment Agreement and the Certificate of Incorporation, CBOT will have valid title to the ERP, free and clear of all Liens.

b. The execution and delivery by the Selling ERP Holder of, and the performance by the Selling ERP Holding of its obligations under, this Assignment Agreement will not contravene any provisions of applicable law, or the certificate of incorporation or by-laws (or equivalent organizational documents) of the Selling ERP Holder (if the Selling ERP Holder is not a natural person), or any agreement or other instrument binding upon the Selling ERP Holder or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Selling ERP Holder, and no consent, approval authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Selling ERP Holder of its obligations under this Assignment Agreement.

c. The Selling ERP Holder did not acquire the ERP in a transfer directly or indirectly from the Chicago Board Options Exchange, Inc.

2. CBOT shall make payment to the Selling ERP Holder in accordance with Section F of Article IV of the Certificate of Incorporation to the account set forth on the signature page hereto.

3. This Assignment Agreement shall be governed by the internal laws of the State of Delaware, without regard to conflict of law principles.

In witness whereof, the undersigned has duly executed this Assignment Agreement this day of , 2007.

_____

Signature of Selling ERP Holder

Selling ERP Holder:

Name: _____

Address: _____

_____

Phone: _____

Selling ERP Holder hereby authorizes CBOT to remit the proceeds from the sale of the ERP to CBOT to the following account:

Bank Name: _____
Bank Address: _____
_____
ABA#: _____
Account#: _____
Account Name: _____

[Signature Page to Assignment Agreement for the Sale of Exercise Right Privilege]