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,

Plaintiffs,

v.

CME GROUP, INC., a Delaware Corporation; THE BOARD OF TRADE OF THE CITY OF CHICAGO, INC., a Delaware Corporation,

Defendants.

Case No. 14 CH 829

Judge Celia Gamrath

Calendar 6

JURY TRIAL DEMANDED

MEMORANDUM OPINION AND ORDER ON CLASS CERTIFICATION

This matter came on Plaintiffs' motion for class certification. For the following reasons, class certification is granted. The court certifies the following classes for damages only, not declaratory or injunctive relief:

1. All current owners of CME class B shares, subclassed into Membership Divisions B1, B2, B3, and B4, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

2. All current owners of CBOT class B memberships, subclassed into Membership Divisions B-1, B-2, B-3, B-4, and B-5, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

These subclasses reflect the reality that not all series of class B shares enjoy the same rights and privileges. Not all CBOT class B members enjoy voting rights, and each membership class is entitled to member fees only on certain products. As such, not every member is affected in the same way by a change of policy or program of CMEG. Accordingly, the court finds it appropriate to divide the classes into subclasses with each subclass to be treated as a class. *See* 735 ILCS 5/2-802(b).

BACKGROUND

After years of discovery and motions directed at the pleadings, on November 18, 2019, Plaintiffs filed the operative Fourth Amended Class Action Complaint ("FAC"). Defendants answered and filed affirmative defenses to which Plaintiffs replied on January 6, 2020.

The parties engaged in comprehensive discovery in connection with Plaintiffs' November 22, 2019, motion for class certification in which Plaintiffs requested "entry of an order certifying a class of all owners of CME class B shares or CBOT class B memberships from June 1, 2009 to November 22, 2019. The proposed class excludes business entities that are identified by CMEG as having membership status under any of the following rules: Rule 106.F, Rule 106.J, Rule 106.H, Rule 106.R, and Rule 106.S. The class further excludes any current class B shareholders who are officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG as of November 22, 2019."

On September 14, 2020, Defendants filed an opposition brief to Plaintiffs' motion for class certification. Plaintiffs filed a reply on November 12, 2020. After reading the briefs the court expressed surprise that Plaintiffs were seeking one giant class. Based on the separate and disparate CME and CBOT charters, the court expected to see at least two classes – one comprised of owners of CME class B shares and another comprised of owners of CBOT class B memberships.

In response to the court's query, Plaintiffs submitted alternate class proposals outlined in Exhibit A filed on December 16, 2020. For the first time ever, after nearly seven years of litigation, Plaintiffs included corporate entities as class members. This proposal was even more surprising given Plaintiffs' stance from the outset that corporate members would be excluded from the class. In fact, since 2014, Plaintiffs deliberately excluded corporate members from the class, noting their "different and potentially conflicting interests from the Class B Plaintiffs." *See* FAC, ¶33; *see also* 2nd full para. p. 9 of Plaintiffs' Memo of Law filed Dec. 4, 2019 (explaining the antagonistic interests of excluded corporate members). Moreover, none of the named Plaintiffs are corporate class B members and, thus, lack standing to assert claims on their behalf.

Plaintiffs' submission of Exhibit A spurred additional briefing. On January 29, 2021, the parties filed a Joint Submission of their respective positions on Plaintiffs' alternate all-members class. On March 4, 2021, the court heard oral argument. The court expressed faith that an appropriate class could be certified to accomplish judicial economy and protect the rights of those who might not be able to present claims individually. However, certifying a class was proving difficult given the factual and legal complexities of the case, relief sought in the FAC, and competing interests. This paradigm prompted the court to suggest the parties consider alternate class proposals and a workable solution to alleviate the court's concerns and avoid any potential conflict among class members. Briefing on alternative proposals closed on June 9, 2021, and the court took the matter under advisement. In determining whether to certify Plaintiffs' proposed class, the court has considered all matters of law and fact presented by the record, including the parties' pleadings, answers, affirmative defenses, class certification briefs, affidavits, exhibits, and oral arguments.

LEGAL STANDARD

"The basic purpose of a class action is the efficiency and economy of litigation." *CE Design Ltd. v. C&T Pizza, Inc.,* 2015 IL App (1st) 131465, ¶ 9. A party seeking class certification has the burden of establishing all the prerequisites of 735 ILCS 5/2-801 before a class may be certified. *Aguilar* v. *Safeway Ins. Co.,* 221 Ill.App.3d 1095, 1102 (1st Dist. 1991). Under section 2-801, a class may be certified only if the following four requirements are met:

(1) the class is so numerous that a joinder of all members is impracticable;
(2) there are questions of fact or law common to the class that predominate over any questions affecting only individual members;
(3) the representative parties will fairly and adequately protect the interests of the class; and
(4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.

In determining whether to certify a proposed class, the trial court accepts the allegations of the complaint as true and should err in favor of maintaining class certification. *CE Design Ltd.,* 2015 IL App (1st) 131465, ¶ 9. However, it must avoid deciding the underlying merits of the case or resolving unsettled legal questions. *Id.* While the court may not consider arguments directly on the merits, it should take into account the substantive elements of the plaintiff's claim and look to the proofs necessary to envision what a trial on the issues would look like. *Clay v. Am. Tobacco Co.,* 188 F.R.D. 483, 489 (S.D. Ill. 1999).

Section 2-801 and its four prerequisites for class certification are addressed in turn.

1. NUMEROSITY

The first statutory requirement for class certification is that "the class is so numerous that a joinder of all members is impracticable." 735 ILCS 5/2-801(1). Numerosity does not depend on Plaintiffs setting forth a precise number of class members or a listing of their names. Plaintiffs need only demonstrate that the class is sufficiently numerous to make joinder of all members impracticable. *Ramirez* v. *Midway Moving & Storage, Inc.,* 378 Ill.App.3d 51 (1st Dist. 2007). A good-faith, non-speculative estimate will suffice. *Cruz* v. *Unilock Chicago,* 383 Ill.App.3d 752, 771 (2d Dist. 2008). Although there is no magic number, Illinois courts generally find sufficient numerosity exists when the class has at least 40 members. *See Wood River Area Dev. Corp.* v. *Germania Fed. Sav. Loan Ass'n,* 198 Ill.App.3d 445, 450 (5th Dist. 1990). Illinois courts have certified relatively small classes in the past. *See Kulins* v. *Malco, Microdot Co.,* 121 Ill.App.3d 520, 530 (1st Dist. 1984) (19 class members).

Based on the discovery exchanged to date, Plaintiffs expect the number of putative class B members and shareholders to be in the thousands, albeit the precise size will depend on current membership records maintained by Defendants. According to Plaintiffs' Reply Brief filed on June 9, 2021, each subclass will have between 74 and 1,402 members. There is no reason to doubt the numerosity factor is satisfied with each subclass.

2. COMMONALITY AND PREDOMINANCE

The second statutory requirement for class certification is that "there are questions of fact or law common to the class that predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). The test for commonality is disjunctive. It does not require both a common issue of law and a common issue of fact, but it does require that a common issue predominate over individual questions. *Miner* v. *Gillette Co.*, 87 Ill.2d 7, 17 (Ill. 1981). Predominance exists where a successful adjudication of the plaintiff's claim permits each class member to recover. *Slimack* v. *Country Life Ins. Co.*, 227 Ill.App.3d 287, 292-93 (5th Dist. 1992). Once the court determines a predominating common question of fact or law exists, the presence of possible individual questions will not defeat the predominating common question. *Id.*

The court finds the common issues predominate over any individual claims. There is a common question of the proper interpretation of the CME and CBOT charters and whether Defendants breached Plaintiffs' core rights. There is also a common question of the scope and applicability of the implied covenant of good faith and fair dealing. *See* FAC, Count II. Predominance is satisfied because Plaintiffs' claims are predicated on these issues, as well as on Defendants' alleged conduct that is uniform to all class members. "A class action may be properly pursued where the defendant allegedly acted wrongfully in the same basic manner as to an entire class." *Walczak v. Onyx Acceptance Corp.*, 365 Ill.App.3d 664, 674 (2d Dist. 2006).

An overarching issue is whether class members are entitled to the best and most proximate access to Globex, free of charge, and whether Defendants improperly denied them this right or privilege. The question of whether the Aurora Data Center ("ADC") is a trading floor, and whether class members' rights and privileges extend to the best and most proximate, free access to Globex, will turn on common evidence. Plaintiffs also claim the same injury regardless of their damages.

As to CME class members, their claims are rooted in Core Right 2 under which CMEG agreed to protect the trading floor access rights and privileges granted to each series of class B stock, including the commitment to floor trading. As to CBOT class members, their claims are rooted in their own charter and series trading rights, which gives each holder of class B memberships "all trading rights and privileges" with respect to those they are entitled to trade on the open outcry exchange or electronic trading system. To prevail, Plaintiffs must show this includes the right to free superior access to Globex at the ADC. For class purposes, the evidence and common issues will be the same between members of each subclass.

With respect to Plaintiffs' fee claims, the CME and CBOT charters are materially different, which necessitates two separate classes. However, as to each class and subclass of Plaintiffs, the fee claims involve charter interpretation issues that will turn on common evidence. Because Plaintiffs allege a single charter governs each class, commonality and predominance are met.

It is undisputed that the CBOT charter grants a fee preference right to CBOT class members. Whether Defendants breached this right will turn on common evidence and facts showing all CBOT class members were aggrieved by the same misconduct, such as allowing nonmembers to trade at lower rates and allowing an unlimited number of traders to place trades at member rates on a single membership. As to CME class members, the CME charter is not nearly so clear in its supposed grant of a fee preference right and protection against extending preferential fees to nonmembers. Nonetheless, successful adjudication of the CME class representatives' individual claims will establish a right of recovery in other CME class members under Plaintiffs' damages theory.

To prevail on their fee claims, it will be necessary for Plaintiffs to show the nonmember discount programs violate their core rights. They may have to show pricing changes were adopted without a member vote or that they paid higher clearing fees or transaction fees than nonmembers, contrary to the protected fee preference right in the charters. Because each membership class is only entitled to member fees on their own division of products, not all Plaintiffs are affected equally by the purported breaches, incentive programs, and fee policy changes. Still, the difference is one of degree, not of kind. Thus, there is no reason to deny class certification where it appears the common questions predominate over any other issues that may affect individual class members. *See Neale v. Volvo Cars of N.A., LLC*, 794 F.3d 353, 374-75 (3rd Cir. 2015) (individual damages calculations do not preclude class certification); *Clark v. TAP Pharm. Prod. Inc.,* 343 Ill.App.3d 538, 548-49 (5th Dist. 2003) (the fact that class members' recoveries may be different or that some may not be entitled to relief at all does not defeat class certification where common questions predominate).

Turning to Defendants' affirmative defenses, these too involve common questions weighing in favor of class certification. Specifically, the defenses of the statute of limitations, laches, and standing raise issues that are common to each class or a broad swath of class members. At issue are alleged changes in CMEG operations following the opening of the ADC, Defendants' alleged breaches of the charters, when the breaches occurred, and the effect on particular class B series of membership. These defenses will necessitate the presentment of common evidence and implicate the rights of all class or subclass members.

In addition, Plaintiffs have proffered the expert report of Dr. Arnold who opines total class damages can be proven in at least two different ways using common proof. The first method attempts to ascertain what class members would have accepted had the changes to CMEG's operations been negotiated. The second method looks to historical price data for each subset of B shares to determine what their price would have been in the absence of Defendants' breaches. Dr. Arnold explains in detail how each of the damages models will work and how they may be applied concretely with common evidence once discovery is complete.

Defendants contend Dr. Arnold's methodologies are unsupported and speculative, complaining he has not performed a full-scale damages calculation. However, no full-scale damages analysis is required at the certification stage. Nor are Plaintiffs required at this stage to prove a classwide method of calculating damages. *See Roberson v. Symphony Post Acute Care Network,* 2019 IL App (5th) 190144-U, at ¶ 20 (approved certification of damages class even though plaintiff did not articulate her damages theory).

Damages are not assessed at the class certification stage. Nor is evidence resolved at this stage. The court is only required at this stage to "identify the substantive issues that will control the outcome, assess which issues will predominate, and then determine whether these issues are common to the class." *Cruz,* 383 Ill.App.3d at 773. Moreover, while this court need not decide the form the ultimate remedy will take at trial, Delaware law seemingly permits a court to award damages as a remedy for a breach of a corporate charter, not just prospective injunctive relief. *See Fletcher Int'l, Ltd. v. Ion Geo. Corp.,* No. 5109-CS, 2013 WL 6327997 (Del. Ch. Dec. 4, 2013) (court awarded damages as a remedy for breach of a corporate charter); *cf. In re Activision Blizzard, Inc. Stockholder Lit.,* 124 A.3d 1025 (Del. Ch. 2015) (holding in that particular case Plaintiffs could not pursue damages for breach of a corporate charter). For now, the court cannot say Dr. Arnold's methodologies are not viable. Defendants' criticisms do not defeat class certification.

In short, the central liability issues will turn largely on common facts and evidence, such as whether the ADC is a trading floor and whether class members are entitled to the best and most proximate, free access to Globex. They will also require uniform interpretations of the CME and CBOT charters and a determination of whether and when Defendants breached Plaintiffs' rights and privileges thereunder. These charters are the glue that holds each class together. However, to certify a damages class requires further division of subclasses based on the various divisions and series of class B shares.

Only CBOT series B-1 and B-2 members have the right to vote. Their claims and damages are distinct from those without voting power. Also, because each division is only entitled to member fees on all products within their designation, not all complained of policy or product changes affect all divisions of membership the same. Accordingly, it is inappropriate to lump all class B members and shareholders together in an all-members class. To do so would validate prematurely Plaintiffs' theory that the value of all memberships were reduced regardless of the division. Certifying subclasses obviates this and makes the class action feasible.

3. ADEQUACY OF REPRESENTATION

The third requirement for class certification is adequacy of representation. 735 ILCS 5/2-801(3). The court finds the proposed class representatives will fairly and adequately protect the interests of the class as a whole. They, along with their qualified and experienced counsel, are able to conduct this litigation, as they have done so far, and do not possess interests antagonistic to the class members identified.

Mr. Langer, Mr. Yermack, and Mr. Prosi are current CME shareholders and have held class B shares of CME since the demutualization. Mr. Goldberg and Mr. Petrow are current CBOT members and have been class B members of CBOT since CBOT's demutualization. Their interests are aligned with class members because they all have the same rights and privileges under their respective charters and all claim Defendants abridged their rights and privileges in the same or substantially similar way. These parties have an incentive to protect the rights of other current CME shareholders and CBOT members and have shown a demonstrated ability to work with class counsel, participate in this action, sit for hours of deposition testimony, and represent the interests of the class members.

Defendants argue Plaintiffs lack a basic understanding of the facts and cannot adequately represent the class. Not so. This case is complex and involves years of documents and facts. Proofs at trial will determine whether these class representatives have a full grasp of the facts that support class claims. The select excerpt of their deposition testimony cited by Defendants does not tell the whole story. It certainly does not reveal that Plaintiffs are unable to vigorously prosecute this action. *Cf. Murray v. New Cingular Wireless Servs., Inc*., 232 F.R.D. 295, 300 (N.D. Ill. 2005).

As for the proposed class counsel, the court is confident they possess the qualifications, experience, and capabilities needed to represent the class members' interests. Susman Godfrey LLP has been pursuing this case for more than seven years and has a demonstrated ability to handle a case of this size and scope. They, along with Suyash Agrawal of Massey & Gail LLP and Neil Weinfield of Dedendum Group LLC, are qualified, experienced, and have a strong grasp of the issues, facts, and law to meet the adequacy requirement.

Defendants do not quarrel with class counsels' qualifications to represent the class, but contend the named class representatives are inadequate and antagonistic to other class B members. In their view, there are four intra-class conflicts that exist. *See* pp. 33-35 of Defendants' Opposition Brief filed Sept. 14, 2020. However, based on what has been presented, this is not concrete enough to defeat class certification.

The described conflicts do not go to the heart of the litigation to overcome adequacy. They are hypothetical, for no particular individual has come forth to allege such conflict or complain. Even if they do, a potential class member's different view on the relief sought in a class action is not enough to defeat certification. If they don't like it, they may opt out. But they all enjoy the same rights and privileges under their respective charters, making it appropriate to include them in the class. Later on, as the issues are refined and Plaintiffs' damages theories solidified, there may be reason to create an additional lessor subclass of members, distinguishing between members who lease their seats and those who do not. However, as of now, the court does not see an actual intra-class conflict as it does with corporate members. Further, as for the purported conflict with members holding class A shares, there is no evidence to support the notion that class A shares will suffer if Plaintiffs win. Even so, this would not be sufficient to defeat adequacy. *See In re Tyco International, Ltd.*, 236 F.R.D. 62, 68-69 (D.N.H. 2006).

The same cannot be said for the apparent conflict between the putative class members and excluded corporate class B members. None of the named Plaintiffs are corporate members. Corporate members were excluded from the beginning, for seven years, because of the inherent conflict and antagonistic interests in seeking redress for changes that occurred since the opening of the ADC – changes that corporate members have undeniably benefited from and presumably wish to continue to enjoy. *See* FAC ¶33; *see also* 2nd full para. p. 9 of Plaintiffs' Memo of Law filed Dec. 4, 2019 (explaining the antagonistic interests of excluded corporate members).

It makes no difference that Plaintiffs are now only seeking a damages class. A victory for Plaintiffs may result in a change to current practices, which is contrary to the interests of corporate members. It also pits them against one another on liability issues because of the way

Plaintiffs are asking the court to interpret the CME and CBOT charters and define the scope of their core rights and series trading rights. Plaintiffs aim to prove Defendants breached these rights by giving preferential rates for corporate members and allowing multiple persons to trade on a single account of a corporate member. By seeking redress for this practice, which benefits corporate members, the conflict is so apparent that no opt-out solution can cure it. Accordingly, Plaintiffs cannot adequately represent the interests of corporate members. *See Client Follow-Up Co. v. Hynes,* 105 Ill.App.3d 619, 625 (1st Dist. 1982) (a class representative does not meet the adequacy requirement where it seeks relief potentially antagonistic to class members); *Grimes v. Fairfield Resorts, Inc.*, 331 F.App'x 630, 632-34 (11th Cir. 2007) (court affirmed denial of class certification based on a conflict of interest where certain members benefitted from the wrongdoing); *Mayfield v. Dalton,* 109 F.3d 1423, 1427 (9th Cir. 1997) (court refused to certify an all-members class where there were people among the broad class who approved of the policy being challenged).

Further, it would unduly prejudice Defendants to expand the class to include corporate members without the benefit of discovery. While Plaintiffs cast blame on Defendants for not engaging in all-members class discovery sooner, Defendants had no reason to. Plaintiffs never hinted at including corporate members until the eleventh hour and second round of briefing on class certification. Even Dr. Arnold's opinion on damages excludes corporate members from the equation, posing another hurdle for an all-members class.

Finally, the court rejects the notion that to exclude corporate members is to exclude necessary parties. The law allows for this in order for the class to maintain a degree of cohesion and commonality of interest. *See Bertulli v. Independent Ass'n of Continental Pilots,* 242 F.3d 290, 294 (5th Cir. 2001) (court certified class of pilots who were harmed by failure to hold a vote, but excluded pilots who arguably benefitted from it).

4. APPROPRIATENESS

The last requirement for class certification is that "the class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). In deciding whether a class action is an appropriate method for the fair and efficient adjudication of the controversy, "a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon v. Boden,* 224 Ill.App.3d 195, 203 (1st Dist. 1991). Where the first three prerequisites of section 2-801 have been met, then it follows that the last requirement is also fulfilled. *Steinberg* v. *Chicago Medical School,* 69 Ill.2d 320, 339 (Ill. 1977). Such is the case here.

Plaintiffs claim their cause of action stems from Defendants' breaches of core rights and privileges set forth in the CME and CBOT charters, resulting in common liability and damages for all members. They contend class certification will obviate the need for unduly duplicative litigation that may result in inconsistent rulings on things such as: Defendants' policies and practices pertaining to core rights; the interpretation of Plaintiffs' core rights, special voting rights, and series trading rights; and whether Defendants acted wrongfully, in the same basic manner, in breaching Plaintiffs' rights. The court agrees, and finds a class action will best

secure the economies of time, effort, and expense, and avoid the potential of inconsistent rulings. Having already found the previous three elements of section 2-801 satisfied, this court finds that a class action is the most efficient means of resolving this controversy. Although there are different rights and privileges associated with different divisions and B series shares, the creation of nine subclasses to address these variations renders this case manageable and appropriate as a class action.

CONCLUSION AND ORDER

In accordance with the findings above, the court finds that the requirements of 735 ILCS 5/2-801 are met, and Plaintiffs' motion for class certification of a damages class is granted. The court certifies the following classes:

1. All current owners of CME class B shares, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

2. All current owners of CBOT class B memberships, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

The court certifies the following four Division subclasses of the CME class:

1. All current owners of CME B1 Divisions of Membership, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

2. All current owners of CME B2 Divisions of Membership, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

3. All current owners of CME B3 Divisions of Membership, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and

106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

4. All current owners of CME B4 Divisions of Membership, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

The court certifies the following five Division subclasses of the CBOT class:

1. All current owners of CBOT B-1 Divisions of Membership, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

2. All current owners of CBOT B-2 Divisions of Membership, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

3. All current owners of CBOT B-3 Divisions of Membership, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

4. All current owners of CBOT B-4 Divisions of Membership, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by, officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

5. All current owners of CBOT B-5 Divisions of Membership, except for (1) business entities that are identified by CMEG as having membership status under any of the following rules: Rules 106.F, 106.J, 106.H, 106.I, 106.R, and 106.S, and (2) any current class B shareholders who are, or are owned by,

officers, employees, and directors (other than those directors elected only by the class B shareholders) of CME, CBOT, or CMEG.

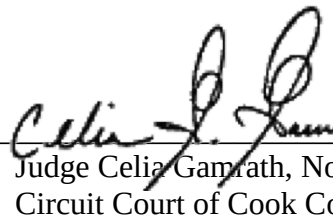
This order is limited to certification of a damages class only, for Plaintiffs are no longer seeking certification of a class on declaratory or injunctive relief. The court denies certification of an all-members class.

The court retains the power to alter, modify, or decertify the classes or add additional subclasses as the issues are refined and there is a more fulsome record. The court denies Plaintiffs' request to reserve certification of a class to pursue declaratory or injunctive relief until after trial and only if Plaintiffs prevail on liability. The court's power to modify, amend, or decertify a class ends when the court makes a decision on the merits. *See* 735 ILCS 5/2-802(a).

The court appoints Mr. Langer, Mr. Yermack, and Mr. Prosi as class representatives of the CME class and appoints Mr. Goldberg and Mr. Petrow as class representatives of the CBOT class. The court appoints Susman Godfrey LLP as lead class counsel, along with the supporting counsel of Suyash Agrawal of Massey & Gail LLP and Neil Weinfield of Dedendum Group LLC.

A remote status is set for January 26, 2022, at 10:00 AM via Zoom to discuss a proper notice plan and steps to move forward. Prior to this status, Plaintiffs shall file a motion for leave to appoint additional class representatives who are members of each certified Division subclass. If no suitable representative is named, the court reserves the right to decertify the subclass.

Judge Celia G. Gamrath
DEC 02 2021
Circuit Court - 2031

ENTERED: 

Judge Celia Gamrath, No. 2031
Circuit Court of Cook County
Chancery Division