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.	)	

DEFENDANTS CME GROUP INC.'S AND BOARD OF TRADE OF THE CITY OF CHICAGO, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' FOURTH AMENDED COMPLAINT

Defendants CME Group Inc. ("CMEG") and Board of Trade of the City of Chicago, Inc. ("CBOT"), by and through their attorneys of record, hereby state their answer to the Plaintiffs' Fourth Amended Complaint (the "Complaint") as follows. Any allegation, averment, contention or statement in the Complaint not specifically and unequivocally admitted herein is denied.

Defendants specifically object to Plaintiffs' use of the term "CME" to refer collectively to CMEG and CBOT in the Complaint and specifically deny all allegations in which the Defendants are collectively referred to as "CME." Defendants use the term "CMEG" throughout this Answer to refer to CME Group Inc., "CBOT" to refer to Board of Trade of the City of Chicago, Inc., and "CME, Inc." to refer to the Chicago Mercantile Exchange, Inc.

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.

ANSWER: Defendants admit that this is a breach of contract action and that Plaintiffs seek monetary damages and declaratory and equitable relief. Defendants deny the remaining allegations in Paragraph 1 of the Complaint.

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.

ANSWER: Defendants admit that CMEG is based in Chicago and owns a number of futures and options exchanges, including CBOT. Defendants further admit that in 2017, CMEG had revenues of approximately $3.6 billion. Defendants also admit that CMEG has a market capitalization of approximately $55 billion. Defendants deny the remaining allegations in Paragraph 2 of the Complaint, and further state that CBOT Holdings Inc. and Chicago Mercantile Exchange Holdings Inc. completed an $11.3 billion merger in 2007. At that time, Chicago Mercantile Exchange Holdings Inc. changed its name to CMEG.

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.

ANSWER: Defendants admit that Plaintiffs Langer, Yermack, and Prosi are members of CME, Inc., that Plaintiffs Goldberg and Petrow are members of CBOT, and that Plaintiffs purport to represent a class of members of CME, Inc. and CBOT, many of whom were part owners of CBOT or CME, Inc. prior to their demutualizations. Defendants also admit that CME, Inc. demutualized in 2000, converting from a non-profit membership organization owned by its members to a for-profit stock corporation, and that in connection with demutualization, CME, Inc. members received Class B shares that represented both equity interests and certain contractual rights. Today, the CME, Inc. members' Class B shares are in CMEG, not CME, Inc. Defendants further admit that the contractual rights granted to CME, Inc. members as a result of CME, Inc.'s demutualization are set forth in the CMEG Charter. Defendants also admit that CBOT demutualized in 2005, at which time the CBOT members received certain contractual rights set forth in the CBOT Charter. Defendants deny the remaining allegations in Paragraph 3 of the Complaint.

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.

ANSWER: Defendants admit that at the time of demutualization, CME, Inc. members and their lessees had the exclusive ability to access and trade on CME, Inc.'s trading

floor and therefore were the only individuals permitted to trade CME products on Globex from the trading floor. Defendants deny the remaining allegations in Paragraph 4 of the Complaint.

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.

ANSWER: Defendants admit that CMEG generates substantial revenues from member and non-member trading activity that is completed through Globex and that the expansion of the Globex platform has benefited CMEG and its public shareholders. Defendants further admit that CMEG Class B shareholders and CBOT Class B members have certain rights that are specified in the CMEG and CBOT Charters, respectively, and refer the Court to those Charters for the true and accurate terms thereof. Defendants also admit that certain of their CMEG Class B shareholders and CBOT Class B members have leased their trading rights and privileges to third parties in the past and continue to do so. Defendants deny the remaining allegations in Paragraph 5 of the Complaint.

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.

ANSWER: Defendants admit that at the time CME, Inc. completed its demutualization, the majority of trading was executed by traders in the open outcry pits, but electronic trading via the Globex platform represented a growing portion of the market.

Defendants further admit that at the time CME, Inc. completed its demutualization, CME, Inc. members and their lessees had the exclusive right to access CME's trading floor and therefore were the only individuals who could trade via Globex from that location. Defendants deny the remaining allegations in Paragraph 6 of the Complaint.

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.

ANSWER: Defendants admit that electronic trading expanded throughout the 2000s and that by 2007, over 75% of trades were executed electronically. Defendants further admit that the vast majority of derivative trading is now executed electronically and that market participants pay fees for Globex access. Defendants deny the remaining allegations in Paragraph 7 of the Complaint.

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.

ANSWER: Defendants admit that in January 2012, CMEG launched co-location services at the ADC—a large data center in Aurora, Illinois that houses the Globex match engine, which matches bids with offers to sell. Defendants further admit that co-location services are available to members at both the ADC and at a high speed trading facility at 350 E. Cermak

in Chicago for a monthly fee. Defendants deny the remaining allegations in Paragraph 8 of the Complaint.

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.

ANSWER: Defendants admit that CME, Inc. implemented open access to Globex in October 2000, and since that time, non-members have been able to access Globex and trade CME, Inc. products without owning or leasing a membership. CME further admits that it began offering co-location services at the ADC in January 2012, and that those services are available to both members and non-members for a fee. Defendants deny the remaining allegations in Paragraph 9 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 10 of the Complaint.

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*].

ANSWER: Defendants admit that the CMEG's market capitalization has increased by approximately $35 billion since January 2012, and that the value of its publicly traded Class A shares of common stock has also increased. Defendants deny the remaining allegations in Paragraph 11 of the Complaint.

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.

ANSWER: Defendants admit that CMEG Class B Shareholders and CBOT Class B Members are able to generate revenues by leasing the trading rights and privileges associated with their Class B memberships. Defendants deny the remaining allegations in Paragraph 12 of the 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.

ANSWER: Defendants admit that at the time of demutualization, CME, Inc. agreed to preserve certain "Core Rights" of the Class B Members of CME, Inc., including Core Right Number 2, under which CME agreed not to change the "trading floor access rights and privileges" without a vote of the CMEG Class B members. Defendants also admit that Article 15 of the CMEG Charter 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." Defendants refer the Court to the CMEG Certificate of Incorporation for the true and accurate terms thereof. Defendants further admit that CBOT's Certificate of Incorporation contains "Core Rights" that cannot be adversely affected without member approval. Defendants refer the Court to the CBOT Certificate of Incorporation for the true and accurate terms thereof. Defendants deny the remaining allegations in Paragraph 13 of the Complaint.

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.

ANSWER: Defendants admit that both members and non-members have the ability to co-locate at the ADC for a monthly fee. Defendants deny all remaining allegations in Paragraph 14 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 15 of the Complaint.

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.

ANSWER: Defendants admit that CMEG derived 2% of its revenues from its co-location business in 2012 through 2014, and further admit that an article published in the *Financial Times* estimated that CMEG's annual revenues in 2015 from co-location fees was approximately $65 million. Defendants admit that fees are generated for trades executed on Globex, including trades made by non-members. Defendants deny the remaining allegations in Paragraph 16 of the Complaint.

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.

ANSWER: Paragraph 17 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants admit that Plaintiffs have brought this putative class action and seek the relief set forth therein. Defendants deny the remaining allegations in Paragraph 17 of the Complaint.

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.

ANSWER: Paragraph 18 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants admit that Plaintiffs have brought this putative class action and seek the relief set forth therein. Defendants deny the remaining allegations in Paragraph 18 of the Complaint.

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.

ANSWER: Paragraph 19 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants admit that this Court has jurisdiction over this matter.

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.

ANSWER: Paragraph 20 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants deny that this case satisfies the requirements for maintaining a class action under 735 ILCS 5/2-801.

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.

ANSWER: Paragraph 21 states a legal conclusion to which no response is required. To the extent an answer is required, Defendants state that the United States District Court for the Northern District of Illinois has ruled that this action should proceed in state court.

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.

ANSWER: Paragraph 22 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants admit that venue is proper in this Court.

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.

ANSWER: Defendants deny that Sheldon Langer has been a member since 1974 and further state that Sheldon Langer has been a member since 1976. Defendants admit that Sheldon Langer has leased his membership to lessees since before January 2012, and resides in Lake County, Illinois. Defendants also admit that Mr. Langer holds his CME membership in a revocable family trust, but deny that he is the sole trustee of that trust. Defendants further state that CME, Inc.'s records indicate that Sheldon Langer and Goldie Langer or co-trustees of the family trust. The remaining statement in Paragraph 23 states a legal conclusion to which no response is required.

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.

ANSWER: Defendants admit that Ronald M. Yermack resides in Cook County, Illinois, has been a member of CME, Inc. since 1975, and has leased his membership to lessees since before January 2012. Defendants further admit that Mr. Yermack holds his CME membership in a revocable family trust and that he is the sole trustee of that trust. The remaining statement in Paragraph 24 states a legal conclusion to which no response is required.

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.

ANSWER: Defendants admit that Lance R. Goldberg resides in Cook County, Illinois, has been a member of CBOT since 2003, and has leased his membership since before January 2012. Defendants further admit that Lance R. Goldberg obtained a second membership in CBOT in 2013 and further state that he has leased out that membership as well. Defendants also admit that Mr. Yermack holds his CBOT memberships in a revocable family trust and that he is the sole trustee of that trust. The remaining statement in Paragraph 25 states a legal conclusion to which no response is required.

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.

ANSWER: Defendants admit that Robert Prosi has been a member of CME since 1976 and has held his current membership since 1995. Defendants deny that Mr. Prosi only leased his membership from 1995 to 2002, and further state that Mr. Prosi leased his membership from October 1995 to August 2003, and again from October 2003 to May 2007. Defendants admit that Mr. Prosi resides in Arlington Heights, Illinois. Defendants also admit that Mr. Prosi holds his current membership in his own name. The remaining statement in Paragraph 26 states a legal conclusion to which no response is required.

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.

ANSWER: Defandants admit that Gerald Petrow has been a member of CBOT since at least 1996 and has held his current membership since 1996. Defendants deny that Mr. Petrow has only leased his current membership on occasion since 2017, and further state that Mr. Petrow leased his current membership from May 2000 to October 2002 and then again for all but one month from May 2017 to the present. Defendants admit that Mr. Petrow resides in Chicago, Illinois. Defendants also admit that Mr. Petrow holds his current membership in his own name. The remaining statement in Paragraph 27 states a legal conclusion to which no response is required.

B. <u>Defendants</u>

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.

ANSWER: Defendants admit that CMEG is a Delaware corporation, headquartered in Chicago, Illinois, that owns and operates a number of derivative exchanges, including CME, Inc. Defendants also admit that the derivative exchanges that CMEG owns handled nearly 3.5 billion contracts worth more than $1 quadrillion in 2014. Defendants further admit that the ADC and the Globex electronic trading platform are located in Illinois. Defendants deny the remaining allegations in Paragraph 28 of the Complaint.

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.

ANSWER: Defendants admit that CBOT is a Delaware corporation headquartered in Chicago, Illinois. Defendants also admit that CBOT is a derivatives exchange

and a subsidiary of CMEG and that CBOT conducts significant business in Cook County, Illinois. Defendants deny the remaining allegations in Paragraph 29 of the Complaint.

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.

ANSWER: Paragraph 30 of the Complaint does not contain any allegations of fact and therefore no answer is required. Answering further, Defendants deny that class certification is appropriate in this case.

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.

ANSWER: Defendants admit the allegations in Paragraph 31 of the Complaint and refer the Court to the CMEG Charter for the true and accurate terms thereof.

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]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.

ANSWER: Defendants admit that on July 12, 2007, CBOT Holdings, Inc. merged with Chicago Mercantile Exchange Holdings Inc. The surviving entity, Chicago Mercantile Exchange Holdings Inc. immediately changed its name to CMEG. Defendants further

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

admit that the Amended and Restated Certification of Incorporation for CBOT provides that there are 3,681 CBOT Series B memberships including 1,402 Series B-1 memberships, 867 Series B-2 memberships, 128 Series B-3 memberships, 641 Series B-4 memberships, and 643 Series B-5 memberships. Defendants also admit that the CBOT Charter grants CBOT's Class B members certain contractual rights. Defendants refer the Court to the Amended and Restated CBOT Certificate of Incorporation for the true and accurate terms thereof. Defendants deny the remaining allegations in Paragraph 32 of the Complaint.

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

ANSWER: Defendants admit that clearing members guarantee the ability of their clients, also referred to as "customers," to trade on the exchange. Defendants further admit that corporate members of CME, Inc. and/or CBOT are required to own or lease a specified number of Class B memberships and enjoy member rates only when engaging in proprietary trading. Defendants also admit that electronic corporate members are required to meet certain trading volume requirements, and that neither clearing members nor corporate members lease memberships to third parties. The remaining statements in Paragraph 33 are not allegations of fact to which responses are required. To the extent any additional response is necessary,

Defendants deny the remaining allegations and further deny that class certification is appropriate in this case.

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.

ANSWER: Paragraph 34 of the Complaint does not contain any allegations of fact and therefore no answer is required. To the extent the statement set forth in Paragraph 34 of the Complaint requires a responsive pleading, Defendants deny such statement and further deny that class certification is appropriate in this case.

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.

ANSWER: Paragraph 35 of the Complaint does not contain any allegations of fact and therefore no answer is required. To the extent the statements set forth in Paragraph 35 of the Complaint require a responsive pleading, Defendants deny all such statements and further deny that class certification is appropriate in this case.

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.

ANSWER: Paragraph 36 of the Complaint does not contain factual allegations and therefore no answer is required. To the extent the statements set forth in Paragraph 3 of the Complaint require a responsive pleading, Defendants deny all such statements and further deny that class certification is appropriate in this case.

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.

ANSWER: Paragraph 37 of the Complaint does not contain factual allegations and therefore no answer is required. To the extent the statements set forth in Paragraph 37 of the Complaint require a responsive pleading, Defendants admit that Plaintiffs Langer, Yermack, and Prosi are members of CME, Inc. and CMEG Class B shareholders, and that Plaintiffs Goldberg and Petrow are members of CBOT. Defendants also admit that Plaintiffs' counsel is experienced.

Defendants deny all other statements, and further deny that class certification is appropriate in this case.

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.

ANSWER: Paragraph 38 of the Complaint does not contain factual allegations and therefore no answer is required. To the extent the statements set forth in Paragraph 38 of the Complaint require a responsive pleading, Defendants deny all such statements and further deny that class certification is appropriate in this case.

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.

ANSWER: Defendants admit the allegations in Paragraph 39 of the Complaint.

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).

ANSWER: Defendants admit that the quoted language in Paragraph 40 of the Complaint comes from Leo Melamad's book *For Crying Out Loud*, but specifically deny any characterizations Plaintiffs make or inferences Plaintiffs draw from the quoted language. Defendants deny the remaining allegations in Paragraph 40 of the Complaint.

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.

ANSWER: Defendants admit that from 1898 until it completed its demutualization in 2000, CME, Inc. was a mutual company owned and controlled by its member traders. Defendants also admit that at the time of the demutualization, open outcry was the predominant means of futures trading. Defendants deny the remaining allegations in Paragraph 41 of the Complaint.

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.

ANSWER: Defendants admit that CME, Inc. launched the "E-Mini" contract in September 1997—a futures product indexed to the S&P 500 and the first futures product traded electronically. Defendants also admit that at the time of the launch of the E-Mini contract, CME, Inc. placed Globex terminals on the trading floor with proximity to the S&P pit. Defendants further admit that the E-Mini is a successful product of CME, Inc. with present day trading volume in excess of $100 billion. Defendants also admit that the language excerpted in Paragraph 42 is a quote from the book *For Crying Out Loud*, but specifically deny any characterizations Plaintiffs make or inferences Plaintiffs draw from the quoted language. Defendants deny the remaining allegations in Paragraph 42 of the Complaint.

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.

ANSWER: Defendants admit that in his book, Melamed states that CME, Inc. retained McKinsey & Company to assist in developing a strategic plan that would be supported by the CME, Inc. members, that CME, Inc. placed two McKinsey partners on the committee responsible for those plans, and that in August 1998, McKinsey provided CME Inc.'s Strategic Planning Committee with a report in which it recommended that, if CME, Inc. 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."

Defendants deny the remaining allegations in Paragraph 43 of the Complaint.

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.

ANSWER: Defendants admit that in March 1999, the CME, Inc. 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 trading floor. Defendants further admit that Melamed states in *For Crying Out Loud* that the Galax-C "enable[d] local traders to conduct interactive Globex trading from anywhere on the trading floor." Defendants deny the remaining allegations in Paragraph 44 of the Complaint.

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.

ANSWER: Defendants admit that by 2000, electronic trading through Globex was a small but rapidly growing portion of CME, Inc.'s futures trading. Defendants further admit that members had the ability to trade electronically via Globex from the physical trading floor or remotely. Defendants deny the remaining allegations in Paragraph 45 of the Complaint.

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.

ANSWER: Defendants admit that Melamed states in *For Crying Out Loud* that "ultimately electronic trade would become the real 'price-discovery pit.'" Defendants deny the remaining allegations in Paragraph 46 of the Complaint, including any characterizations Plaintiffs make or inferences Plaintiffs draw from the quoted language.

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.

ANSWER: Defendants admit that in the late 1990s, CME, Inc. developed plans for the demutualization of the exchange, which would transition the exchange from a non-profit membership organization that was owned by its members to a for-profit stock corporation. Defendants also admit that the leadership of CME, Inc. hoped that demutualization would allow it to operate more efficiently and compete against rival exchanges. Defendants further admit that CME, Inc. completed its demutualization in 2000, and that CME, Inc.'s parent company, CME Holdings Inc., completed its Initial Public Offering in 2002. Defendants deny the remaining allegations in Paragraph 47 of the Complaint.

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 vote 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.

ANSWER: Defendants admit that CME, Inc. needed the support and approval of its member owners to complete the demutualization and that CME, Inc. devised a demutualization plan under which, upon demutualization, the equity interests in CME, Inc. would be allocated between two classes of stock: Class A shares, which consisted solely of equity interests, and Class B shares, which provided both equity interests and contractual trading rights and privileges. Defendants further admit that CME, Inc. represented to its members and regulatory authorities that the demutualization transaction would not change or diminish members' trading rights and privileges, and that members' trading rights and privileges would be the same before and after the demutualization. Defendants deny the remaining allegations in Paragraph 48 of the Complaint.

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.

ANSWER: Defendants admit that upon demutualization, the CME, Inc. members who previously owned the mutual organization became equity owners and members in the new corporate entity and that each CME, Inc. member received both Class A shares and Class B shares in the new CME, Inc., 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. Defendants

further admit that CME, Inc. 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, Inc. and that 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 also received fewer Class A Shares. Defendants deny the remaining allegations in Paragraph 49 of the Complaint.

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.

ANSWER: Defendants admit that as part of the demutualization, CME, Inc. promised that it would preserve certain "Core Rights" of its former member owners and that those Core Rights were enumerated in the CME, Inc. Charter. Defendants further admit that these "Core Rights" are now embodied in the CMEG Charter and refer the Court to the Charter

for the true and accurate terms thereof. Defendants deny the remaining allegations in Paragraph 50 of the Complaint.

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*.

ANSWER: Defendants admit that the quoted language appears in the CMEG Charter and refer the Court to the Charter for the true and accurate terms thereof.

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."***

ANSWER: Defendants admit that CME, Inc. made the requisite regulatory filings related to the demutualization with the CFTC in November 2000. Defendants also admit that the November 2000 Demutualization Memorandum states that CME, Inc. members "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." Defendants deny the remaining allegations in Paragraph 52 of the Complaint.

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.

ANSWER: Defendants admit that Amendment No. 5 to CME, Inc.'s Form S-4 Registration Statement, filed April 25, 2000, contains a description of the transaction the members were being asked to approve and the quoted passages. Defendants deny the remaining allegations in Paragraph 53 of the Complaint.

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.

ANSWER: Defendants admit that Amendment No. 5 to CME, Inc.'s Form S-4 Registration Statement, filed April 25, 2000, contains the quoted passages. Defendants also admit that physical access to CME's open outcry trading facilities was a privilege associated with CME membership when the demutualization vote took place. Defendants deny the remaining allegations in Paragraph 54 of the Complaint.

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.

ANSWER: Defendants admit that Amendment No. 5 to CME, Inc.'s Form S-4 Registration Statement, filed April 25, 2000, contains the quoted passages. Defendants deny the remaining allegations in Paragraph 55 of the Complaint.

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.

ANSWER: Defendants admit that in its SEC filings for demutualization, CME, Inc. recognized that the Class B shareholders' right to vote on any change or modification to their Core Rights could impact certain aspects of CME, Inc.'s decision making in the future. Defendants further admit that Amendment No. 5 to CME, Inc.'s Form S-4 Registration Statement, filed April 25, 2000, contains the quoted language in Paragraph 56 of the Complaint. Defendants deny the remaining allegations in Paragraph 56.

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).

ANSWER: Defendants admit that the CFTC's 2000 Demutualization Memorandum contains the language quoted in Paragraph 57 of the Complaint. Defendants

further admit that at the time of demutualization, CME members had the ability to trade both electronically on Globex and on the open outcry trading floor. Defendants otherwise deny the remaining allegations in Paragraph 57.

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).

ANSWER: Defendants admit that Amendment No. 5 to CME, Inc.'s Form S-4 Registration Statement, filed April 25, 2000, contains the quoted passage. Defendants deny the remaining allegations in Paragraph 58 of the Complaint.

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)

ANSWER: Defendants admit that Rule 121 – as it existed in June and December 2000 – contained the quoted language. Defendants deny the remaining allegations in Paragraph 59 of the Complaint.

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.)

ANSWER: Defendants admit that CME, Inc. submitted certain rule changes to the CFTC as part of the demutualization plan, which included changes to the then-current CME, Inc. Rule 582. Defendants further admit that the proposed changes to Rule 582 contained the quoted language. Defendants deny the remaining allegations in Paragraph 60 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 61 of the Complaint.

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.

ANSWER: Defendants admit that the quoted language in Paragraph 62 of the Complaint comes from Melamed's book, *For Crying Out Loud*, but deny any characterizations Plaintiffs make or inferences Plaintiffs draw from the quoted language. Defendants deny the remaining allegations in Paragraph 62 of the Complaint.

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).

ANSWER: Defendants admit that the quoted language in Paragraph 63 of the Complaint comes from Melamed's book, *For Crying Out Loud*, but deny any characterizations Plaintiffs make or inferences Plaintiffs draw from the quoted language. Defendants deny the remaining allegations in Paragraph 63 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 64 of the Complaint.

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.

ANSWER: Defendants admit that more than 98% of the CME, Inc. members voted in favor of the CME, Inc. demutualization plan. Defendants deny the remaining allegations in Paragraph 65 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 66 of the Complaint.

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).

ANSWER: Defendants admit that Amendment 1 to CME, Inc.'s Form S-4, filed October 2, 2011, contains the quoted language in Paragraph 67 of the Complaint and refer the

Court to Amendment 1 to CME, Inc.'s Form S-4 for the true and accurate terms thereof.

Defendants deny the remaining allegations in Paragraph 67 of the Complaint.

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).

ANSWER: Defendants admit that Amendment 1 to CME, Inc.'s Form S-4, filed October 2, 2001, contains the quoted language in Paragraph 68 of the Complaint and refer the Court to Amendment 1 to CME, Inc.'s Form S-4 for the true and accurate terms thereof.

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.

ANSWER: Defendants admit that Amendment No. 7 to the CME, Inc. Form S-1, filed December 5, 2002, contains the language quoted in Paragraph 69 of the Complaint.

Defendants refer the Court to Amendment No. 7 to the CME, Inc. Form S-1 for the true and accurate terms thereof. Defendants specifically deny that the "access rights and privileges" referred to in this SEC filing included "the right to the best and most proximate access to the Globex electronic trading platform." Defendants further deny any remaining allegations in Paragraph 69 of the Complaint.

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.

ANSWER: Defendants admit that in 2004, CME, Inc. discontinued open outcry floor trading for Eurodollar futures contracts, and that afterwards, Eurodollar futures contracts were only traded through the Globex electronic trading platform. Defendants deny the remaining allegations in Paragraph 70 of the Complaint.

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.

ANSWER: Defendants admit that CBOT was founded in 1848 and was owned and managed by and for its members for more than 150 years until it demutualized and restructured in 2005. Defendants further admit that in connection with the demutualization and restructuring, CBOT members ceded certain rights with respect to the management and control

of CBOT. Defendants also admit that CBOT members received certain contractual rights in the CBOT Charter that are similar (although not identical) to the core rights provided to CME Class B Shareholders in the CMEG Charter. Defendants refer the Court to the CBOT Charter for the true and accurate terms thereof. Defendants deny all remaining allegations in Paragraph 71 of the Complaint.

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.

ANSWER: Defendants admit that as a result of the demutualization and restructuring, CBOT members received Class A common stock in CBOT Holdings, Inc. (which later merged with CME Holdings Inc. and changed its name to CMEG) 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. Defendants also admit that in a letter including 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." Defendants deny the remaining allegations in Paragraph 72 of the Complaint.

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."

ANSWER: Defendants admit that CBOT's Certificate of Incorporation was amended and restated in connection with the demutualization and restructuring and that the CBOT Certificate of Incorporation contains provisions regarding the "Special Rights of Class B Membership," including "Series Trading Rights" and "Series B-1 Membership and B-2 Membership Voting Rights." Defendants refer the Court to the CBOT Certificate of Incorporation for the true and accurate terms thereof. Defendants further admit that the CBOT Holdings Inc.'s demutualization prospectus and subsequent SEC filings made by CBOT Holdings Inc., referred to certain of the "Series B-1 Membership and B-2 Membership Voting Rights" as "core rights." Defendants deny the remaining allegations in Paragraph 73 of the Complaint.

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.

ANSWER: Defendants admit that CBOT's Certificate of Incorporation contains provisions regarding Class B members trading rights in Section IV(D)(1) and further admit that the CBOT Certificate of Incorporation includes the provision quoted in Paragraph 74 of the Complaint. Defendants deny the remaining allegations in Paragraph 74 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 75 of the Complaint.

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 . . . .

ANSWER: Defendants admit the allegations in Paragraph 76 of the Complaint and refer the Court to the CBOT Certificate of Incorporation for the true and accurate terms thereof.

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) . . . ."

ANSWER: Defendants admit the allegations in Paragraph 77 of the Complaint and refer the Court to the August 7, 2001 Agreement between the Board of Trade of the City of Chicago, Inc. and Chicago Board Options Exchange Incorporated, which is attached as Exhibit D-1 to CBOT Holdings Inc.'s Amendment No. 13 to Form S-4, filed on February 14, 2005, for the true and accurate terms thereof.

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.

ANSWER: Defendants admit that in 2007, CBOT Holdings Inc. and Chicago Mercantile Exchange Holdings Inc. completed an $11.3 billion merger (the "CME/CBOT merger"). Immediately following this transaction, Chicago Mercantile Exchange Holdings Inc. changed its name to CMEG and CBOT became a wholly-owned subsidiary of CMEG. Defendants deny the remaining allegations in Paragraph 78 of the Complaint.

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.

ANSWER: Defendants admit that the quoted language in Paragraph 79 of the Complaint is contained in Melamed's book, *For Crying Out Loud*. Defendants deny any characterizations Plaintiffs make or inferences Plaintiffs draw from the quoted language. Defendants deny the remaining allegations in Paragraph 79 of the Complaint.

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.

ANSWER: Defendants admit that before the CME/CBOT merger was approved, CBOT Holdings received an unsolicited bid from Intercontinental Exchange ("ICE") that was valued at approximately $9 billion, $1 billion more than Chicago Mercantile Exchange Holdings Inc.'s offer. Defendants also admit that Chicago Mercantile Exchange Holdings Inc. 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."

ANSWER: Defendants admit that on June 22, 2007, Terrence A. Duffy, Executive Chairman of CME, Inc., and Craig Donohue, then-CEO of CME, Inc. sent a letter to CBOT Holdings shareholders related to CME Holdings Inc.'s proposal. Defendants further admit that the quoted language appeared in that letter. Defendants deny any characterizations Plaintiffs make or inferences Plaintiffs draw from the quoted language. Defendants deny the remaining allegations in Paragraph 81 of the Complaint.

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.

ANSWER: Defendants admit that at the time of the CME/CBOT merger, CME, Inc.'s and CBOT's respective charters were amended and restated and that the resulting Charters reaffirm the core rights granted to CBOT Class B members and CMEG Class B shareholders. Defendants also admit that the CBOT Certificate of Incorporation contains the passages quoted in Paragraph 82 of the Complaint. Defendants refer the Court to the CBOT Certificate of Incorporation for the true and accurate terms thereof. Defendants specifically deny any inference made by Plaintiffs that the core rights granted to CBOT members include all of the members' "trading rights and privileges" and deny all remaining allegations in Paragraph 82 of the Complaint.

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.

ANSWER: Defendants admit that Article 15 of the CMEG Charter provides that the rights of CMEG Class B shareholders 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." Defendants refer the Court to the CMEG Certificate of Incorporation for the true and accurate terms thereof.

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.

ANSWER: Defendants admit that after the CME/CBOT merger, customers of the constituent exchanges traded electronically on Globex. Defendants further admit that the quoted language in Paragraph 84 of the Complaint comes from Melamed's book, *For Crying Out Loud*. Defendants deny any characterizations Plaintiffs make or inferences Plaintiffs draw from the quoted language. Defendants deny the remaining allegations in Paragraph 84 of the Complaint.

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.

ANSWER: Defendants admit that the value of Class B seats fluctuate over time. Defendants further state that the cite from *Electronic Exchanges* states that "[e]ven after demutualization, prices slid a bit further to the point that there was a sale in January 2001 for a mere $188,000. Prices then doubled the next year to year and a half and stayed around $400,000 until the IPO in December 2002. Prices then bounced around in the $300,000 to $400,000 range until the summer of 2006, when they started a new rise. In April 2006 there was a sale for $370,000, and then prices rose consistently for the next 20 months until they hit a new peak of $1,550,000 in December 2007, an astounding increase of 319%. So, seat prices can be just as

volatile as the prices of the financial instruments traded on the exchange." Defendants deny the remaining allegations in Paragraph 85 of the Complaint.

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 its 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).

ANSWER: Defendants admit that in 2010, CMEG moved the Globex matching engines from a Remote Data Center located in Lombard, Illinois to the ADC facility and announced that it would begin offering co-location services at the ADC in 2012. Defendants specifically deny that the ADC is a trading floor and deny all remaining allegations in Paragraph 86 of the Complaint.

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.

ANSWER: Defendants admit that "co-location" involves placing customer equipment in close proximity to electronic trading match engines and that co-location reduces latency. Defendants further admit that the co-location services at the ADC and at the 350 E. Cermak facility are used, among others, by high-frequency traders that use fully automated

trading programs. Defendants also admit that CMEG derived 2% of its revenues from its co-location business in 2012 through 2014. Defendants deny the remaining allegations in Paragraph 87 of the Complaint.

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.

ANSWER: Defendants admit that the ADC is a large building and that space is leased out at the ADC to customers. Defendants further admit that a monthly fee is charged to customers who co-locate at the ADC and that customers can sub-lease rack space in a cage to other parties. Defendants also admit that the majority of CME's and CBOT's trading activity now occurs on Globex. Defendants specifically deny that the ADC functions as a trading floor and deny all remaining allegations in Paragraph 88 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 89 of the Complaint.

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.

ANSWER: Defendants admit that CMEG Class B shareholders and CBOT Class B members do not receive free co-location services at the ADC or the 350 E. Cermak facility and further state that paying customers have been able to access Globex and engage in high-speed trading activity by co-locating at 350 E. Cermak since November 2006. Defendants specifically deny that "[t]he ADC became CME's new trading floor" and otherwise deny the remaining allegations in Paragraph 90 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 91 of the Complaint.

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.

ANSWER: Defendants admit only that the Class B members of CME, Inc. (now Class B shareholders of CMEG) and Class B members of CBOT were eligible to access CME, Inc.'s and CBOT's electronic trading platforms both before and after demutualization. Defendants deny the remaining allegations in Paragraph 92 of the Complaint.

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.

ANSWER: Defendants admit that in addition to the match engine and co-location facilities at the ADC, Defendants operate an additional co-location facility at 350 E. Cermak in downtown Chicago and have several high speed Globex trading hubs in other locations throughout the world. Defendants further admit that the vast majority of trading now occurs on the Globex platform, that electronic trading generates many millions of dollars in Globex-related fees each quarter, and that the expanded trading volume generated by the growth of the Globex trading platform and CMEG's development of its electronic trading capabilities has enabled

CMEG to collect substantial additional revenue in the form of clearing, transaction, and access fees. Defendants deny the remaining allegations in Paragraph 93 of the Complaint.

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.

ANSWER: Defendants admit that neither CME, Inc. nor CBOT purchased the existing memberships as part of their respective demutualization transactions and that members of CME, Inc. and CBOT instead received equity interests and trading rights and privileges associated with their Class B shares. Defendants deny the remaining allegations in Paragraph 94 of the Complaint.

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.

ANSWER: Defendants admit that traders associated with clearing firms are allowed to trade through Globex without purchasing or leasing CMEG Class B memberships, and that "non-member customers," employees, and independent contractors of Rule 106.J firms are also allowed to trade through Globex. Defendants deny the remaining allegations in Paragraph 95 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 96 of the Complaint.

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.

ANSWER: Defendants admit that CME, Inc. Rule 106.R allows a proprietary trading firm to obtain the rights of an ECM by either purchasing one CME, Inc. membership or leasing two CME, Inc. memberships in the division of the exchange in which they wish to trade and that CBOT Rule 106.R permits proprietary trading firms to obtain ECM rights by leasing a Series B-1 or Series B-2 CBOT membership. Defendants further admit that multiple traders affiliated with CME, Inc. Rule 106.I and Rule 106.J corporate members may execute certain trades at corporate member rates without owning or leasing additional memberships, the extent of which is defined in each Rule. Defendants refer the Court to CME, Inc. and CBOT Rules 106.R, 106.I, and 106.J for the true and accurate terms thereof. Defendants deny the remaining allegations in Paragraph 97 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 98 of the Complaint.

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.

ANSWER: Defendants admit that CME, Inc. and CBOT offer various Market Maker and Incentive Programs (each individually a "Program" or collectively, "Programs") in accordance with CME and CBOT Rule 195. Defendants further state that in accordance with Rule 195, the terms and conditions of each individual Program are set forth in separate regulatory filings submitted to the U.S. Commodity Futures Trading Commission. Defendants refer the Court to CME Rule 195 and CBOT Rule 195 for the true and accurate terms thereof. Defendants also admit that on June 28, 2004, CME, Inc. announced that it would establish an incentive program targeting new electronic market participants. Defendants further admit that the quoted language in Paragraph 99 of the Complaint comes from a June 19, 2014 Wall Street Journal article, *Perks Live forever at CME Amid Review of Trade Incentives*, but specifically deny any characterizations Plaintiffs make or inferences Plaintiffs draw from the quoted language. Defendants deny the remaining allegations in Paragraph 99 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 100 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 101 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 102 of the Complaint.

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.

ANSWER: Defendants admit that Mr. Yermack asked Mr. Duffy questions at the May 22, 2013 annual meeting related to Class B shareholders' Core Rights and, separately, with respect to co-location at the ADC. Defendants deny the characterization of this exchange and deny the remaining allegations in Paragraph 103 of the Complaint.

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.

ANSWER: Defendants admit that Mr. Yermack asked Mr. Duffy questions at the May 22, 2013 annual meeting related to Class B shareholders' Core Rights and, separately, with respect to co-location at the ADC. Defendants further admit that Mr. Duffy and CME's in-house counsel Meg Wright answered those questions. Defendants deny the characterization of this exchange and deny the remaining allegations in Paragraph 104 of the Complaint.

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."

ANSWER: Defendants admit that Ronald Yermack asked Mr. Duffy questions at the May 22, 2013 annual meeting related to Class B shareholders' Core Rights and, separately, with respect to co-location at the ADC. Defendants deny the characterization of this exchange and deny the remaining allegations in Paragraph 105 of the Complaint.

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.

ANSWER: Defendants admit that in 2007, one CME, Inc. full Class B membership sold for more than $1.5 million and six CBOT Series B-1 memberships sold for more than $700,000. Defendants also admit that the revenues, trading volume, and market capitalization of CMEG have increased since 2012, as has the value of CMEG's Class A shares. Defendants deny the remaining allegations in Paragraph 106 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 107 of the Complaint.

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.

ANSWER: Defendants admit that CME Group's Form 10-K, filed March 1, 2013, states that CME's co-location program contributed to an increase in access and communication fees revenue from 2010 through 2012, including incremental revenue of $47.8 million in 2012 when compared with 2011. Defendants deny the remaining allegations in Paragraph 108 of the Complaint.

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.

ANSWER: Defendants deny that CMEG or CBOT Class B Plaintiffs are contractually entitled to co-locate at the ADC without payment of an access fee, and thus deny the allegations in Paragraph 108 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 110 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 111 of the Complaint.

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.

ANSWER: Paragraph 112 does not contain any allegations of fact to which a response is required.

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.

ANSWER: Defendants deny the allegations in Paragraph 113 and further state that the CMEG Certificate of Incorporation is a contract between CMEG and the Class B shareholders of CMEG, and that the CBOT Certificate of Incorporation is a contract between CBOT and the CBOT Class B members.

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.

ANSWER: Defendants admit that the CMEG Charter and the CBOT Charter provide the CMEG Class B shareholders and CBOT Class B members with certain core rights that were guaranteed in connection with the respective demutualizations. Defendants further admit that the former member-owners of CME, Inc. and CBOT gave up their memberships in the pre-existing mutual organizations as part of the demutualizations. Defendants deny the remaining allegations in Paragraph 114 of the Complaint.

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."

ANSWER: Defendants admit that the CMEG Charter provides that CMEG's Class B shareholders have certain "Core Rights" that cannot be changed or modified absent a majority vote of the Class B shareholders and that those rights include Core Right Number 2, which guarantees the Class B shareholders' "trading floor access rights and privileges." Defendants deny the remaining allegations in Paragraph 115 of the Complaint.

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.

ANSWER: Defendants admit that the CMEG Class B shareholders' trading rights and privileges are embodied in the constituent documents for CMEG and in the CME Inc. Rulebooks (as amended from time to time). Defendants deny the remaining allegations in Paragraph 116 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 117 of the Complaint.

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.

ANSWER: Defendants admit that under the CMEG Charter, any amendment, change or modification to the Core Rights requires a majority vote of the Class B shareholders.

Defendants deny the remaining allegations in Paragraph 118 of the Complaint.

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.

ANSWER: Defendants admit the allegations in Paragraph 119 of the Complaint and refer the Court to the CBOT Certificate of Incorporation for the true and accurate terms thereof.

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.

ANSWER: Defendants admit that the CBOT Class B members' trading rights and privileges are embodied in the constitute documents of CBOT and the CBOT Rulebooks (as amended from time to time). Defendants deny the remaining allegations in Paragraph 120 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 121 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 122 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 123 of the Complaint.

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.

ANSWER: Paragraph 124 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants admit that Plaintiffs have brought this putative class action and seek the relief set forth therein. Defendants deny the remaining allegations in Paragraph 124 of the Complaint.

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.

ANSWER: Paragraph 125 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants deny the allegations in Paragraph 125 of the Complaint.

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.

ANSWER: Defendants admit that the relationship between the CME Class B Plaintiffs and CMEG is ongoing and extends into perpetuity under the CMEG Charter and that the relationship between the CBOT Class B Plaintiffs and CBOT is ongoing and extends into perpetuity under the CBOT Charter. Defendants deny the remaining allegations in Paragraph 126 of the Complaint.

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.

ANSWER: Paragraph 127 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants deny the allegations in Paragraph 127 of the Complaint.

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.

ANSWER: Paragraph 128 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants admit that the CMEG and CBOT Charters are not term-limited and contain rights extending in perpetuity. Defendants deny the remaining allegations in Paragraph 128 of the Complaint.

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.

ANSWER: Paragraph 129 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants deny the allegations in Paragraph 129 of the Complaint.

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.

ANSWER: Paragraph 130 states a legal conclusion to which no response is required. To the extent that an answer is required, Defendants deny the allegations in Paragraph 130 of the Complaint.

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.

ANSWER: Paragraph 131 of the Complaint does not contain factual allegations and therefore no answer is required. To the extent that an answer is required, Defendants admit that Plaintiffs have failed to state a claim for breach of contract, that the ADC is not a trading floor, that Defendants may provide co-location services to both members and non-members for a fee, and that members have no right to share in co-location revenues. Defendants deny the remaining allegations in Paragraph 131 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 132 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 133 of the Complaint.

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

ANSWER: Defendants deny the allegations in Paragraph 134 of the Complaint.

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.

ANSWER: Paragraph 135 of the Complaint does not contain factual allegations and therefore no answer is required. To the extent that an answer is required, Defendants admit that Plaintiffs have failed to state a claim for breach of contract and deny the remaining allegations in Paragraph 135 of the Complaint.

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").

ANSWER: Defendants deny the allegations of Paragraph 136 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 137 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 138 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 139 of the Complaint.

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

ANSWER: Defendants deny the allegations in Paragraph 140 of the Complaint.

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.

ANSWER: Paragraph 141 of the Complaint does not contain factual allegations and therefore no answer is required. To the extent that an answer is required, Defendants admit that Plaintiffs have failed to state a claim for breach of contract and that co-location, access, and communication fees associated with accessing Globex are not "transaction fees" for purposes of Special Voting Right 2. Defendants deny the remaining allegations in Paragraph 141 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 142 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 143 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 144 of the Complaint.

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.

ANSWER: Defendants deny the allegations in Paragraph 145 of the Complaint.

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

ANSWER: Defendants deny the allegations in Paragraph 146 of the Complaint.

AFFIRMATIVE DEFENSES

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

Factual Allegations Common To All Defenses

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

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

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

5. Plaintiffs Sheldon Langer, Ronald Yermack, and Robert Prosi are holders of Class B Common Stock in CMEG, which affords them certain rights and privileges, including trading

rights and privileges on CME, Inc. The rights and privileges of the CMEG Class B Plaintiffs are defined, in writing, in the CMEG Charter, the CMEG Bylaws, and in the Rules of CME, Inc., as amended from time to time.

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

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

8. Plaintiffs Lance Goldberg and Gerald Petrow are Class B Members of CBOT. As CBOT Class B Members, Goldberg and Petrow enjoy certain rights and privileges related to CBOT, which are defined, in writing, in the CBOT Charter, the CBOT Bylaws, and the CBOT Rules, as amended from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

17. The CME Inc. By-Laws in place at the time defined the "trading rights and privileges" of holders of Class B Common Stock to include: (1) the right to appear upon the floor of the Chicago Mercantile Exchange and to act as a floor broker and/or trader; (2) the right to trade electronically through the Globex2 system (the right was restricted to trading only contracts assigned to the Class B series when accessing Globex terminals from the trading floor); (3) the right to lease out the trading privileges associated with the share of Class B Common Stock; and (4) a guarantee to charge clearing firms a lower clearing fee for trades made for the account of a holder of a series of shares of Class B Common Stock and a guarantee to not charge a higher clearing fee in the open outcry environment than in another trading environment. (2000 CME, Inc. Bylaws, § 6.3).)

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

B. CME's Open Access to Globex

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

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

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

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

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

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

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

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

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

28. On December 13, 2000, the CME, Inc. Board of Directors approved a new fee schedule for access to the Globex platform. The fee schedule included, *inter alia*: (1) monthly network connectivity costs for all users connecting to Globex via a method other than a Globex Terminal, dependent upon the bandwidth selected by the user, regardless of membership status, as well as an initial connection fee and disconnection fee; (2) monthly fees for Globex Terminals to be utilized outside of CME Inc.'s open outcry trading pits, regardless of membership status; and (3) monthly fees for Globex Terminals assigned to locals in the equity quadrant of CME's open outcry trading pits. (December 14, 2000 letter to Members (attached as Exhibit B).)

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

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

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

31. Pursuant to federal reporting requirements, CME Holdings Inc. filed public disclosure statements, including annual Form 10-Ks which described Class B Shareholders'

membership rights and Globex access rights to the general public. These disclosures reinforced that Globex was an open access system available to any individual customer and that CME Holdings Inc. charged Globex access fees to both members and non-members.

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

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

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

> **Trading on our open outcry trading floors is conducted exclusively by our members.** Our members are individual traders, as well as most of the world's

> largest banks, brokerages and investment houses. Prior to the introduction of our electronic trading platform, our members traded only on our open outcry trading floors. Today, our members are able to conduct trading on our open outcry trading floors, electronically through the GLOBEX platform and through privately negotiated transactions that we clear.

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

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

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

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

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

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

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

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

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

42. In a Member Update sent to all CME members, CME, Inc. stated, "Chicago Mercantile Exchange Inc. (CME) this week launched its new state-of the art Remote Data Center (RDC) with the successful deployment of major exchange technology upgrades at the off-site facility. Designed to ensure business continuity for the CME markets and outfitted with a comprehensive new technology and communications infrastructure, the new RDC is now the primary site for operation of CME's Globex electronic trading platform." (October 3, 2002 CME Update (excerpts attached as Exhibit C.)

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

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

E. CBOT Undergoes a Demutualization Prior to Merging with CME

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

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

> (1) the allocation of products that a holder of a specific Series of Class B Membership is permitted to trade (including on the electronic trading system);
>
> (2) the requirement that Members will be charged transaction fees that are lower than any other participant, including on the electronic trading system;
>
> (3) the membership qualifications or eligibility requirements for holding any Series of Membership or exercising any rights and privileges associated with that Series;
>
> (4) the commitment to maintain open outcry markets as set forth in the Certificate;
>
> (5) the requirement that any proposal to offer electronic trading between the hours of 6:00 a.m. and 6:00 p.m. of agricultural contracts or agricultural products traded in the open outcry markets be approved by the holders of Series B-1 and B-2 Memberships.

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

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

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

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

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

50. From August 2000 until January 2004, CBOT utilized the a/c/e system as its electronic trading platform. Shortly before its demutualization, however, CBOT transitioned its electronic trading platform to the LIFFE CONNECT™ software system. At the time of the demutualization, the host platform for e-cbot was located in London, England. (CBOT Form 10-K, filed March 1, 2007, at 6).

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

G. Merger of CBOT Holdings and CME Holdings

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

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

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

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

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

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

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

58. Subsequently, in its Form 10-K for 2007, filed February 28, 2008, CME Holdings, Inc. further disclosed that it had revenue growth in 2007 attributable to customers

upgrading to higher bandwidth Globex connections and as a result of the expansion of its co-location program. CME Holdings, Inc. explained that "[t]he co-location program allows customers to connect their trading applications directly to the CME Globex electronic platform by housing certain customer systems in a CME-specified data facility."

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

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

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

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

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

FIRST DEFENSE – STATUTE OF LIMITATIONS

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

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

66. To the extent that Plaintiffs allege that the Defendants breached their respective Charters by committing any act that predates 10 years from the date the Complaint was filed – including, but not limited to (i) moving the Globex match engine from the building that housed CME, Inc.'s open outcry facility to the Remote Data Center in October 2002, (ii) charging members fees to access Globex from outside the open outcry trading pits, (iii) charging both members and non-members identical Globex access fees, or (iv) allowing multiple traders associated with a member trading firm to execute firm trades on the Globex platform at member rates, those claims are barred by the applicable statutes of limitations.

SECOND DEFENSE - LACHES

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

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

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

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

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

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

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

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

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

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

FOURTH DEFENSE – STANDING

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

78. CMEG Class B shareholders Langer and Yermack and CBOT Class B member Goldberg have all leased their Class B memberships since at least August 2012 and, as a result, have not attempted to trade any products on Globex or been charged any fee for a trade made on Globex. In addition, none of the Plaintiffs have licensed co-location space from Defendants.

79. As a result, Plaintiffs lack standing to assert breach of contract claims against CMEG and CBOT based on the alleged failures to provide "free" co-location or preferential co-location fees, and the Plaintiffs who have leased their memberships throughout the entire class period further lack standing to assert breach of contract claims against CMEG and CBOT based on alleged failures to provide preferential clearing or transaction fees.

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

FIFTH DEFENSE

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

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

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

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

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

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

Dated: December 16, 2019
Chicago, Illinois

Respectfully submitted,

Skadden, Arps, Slate, Meagher & Flom LLP

/s/ Marcella L. Lape

Albert L. Hogan III
Marcella L. Lape
Timothy M. Frey
155 North Wacker Drive
Chicago, Illinois 60606
(312) 407-0700
al.hogan@skadden.com
marcella.lape@skadden.com
timothy.frey@skadden.com
Firm ID No.: 91729

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

CERTIFICATE OF SERVICE

Marcella L. Lape, an attorney, hereby certifies that on December 16, 2019, I caused true and correct copy of Defendants CME Group Inc.'s and Board of Trade of The City of Chicago, Inc.'s Answer and Affirmative Defenses to Plaintiffs' Fourth Amended Complaint to be served by electronic mail on the following counsel:

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

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

Mark H. Hatch-Miller
Attorney at Law
Susman Godfrey LLP
1301 Avenue of the Americas, 32nd Fl.
New York, NY 10019
(212) 336-8332
mhatch-miller@susmangodfrey.com

Suyash Agrawal
Massey & Gail LLP
50 E. Washington St.
Suite 400
Chicago, IL 60602
sagrawal@masseygail.com

Dated: December 16, 2019

/s/ Marcella L. Lape
Marcella L. Lape

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

/s/ Marcella L. Lape
Marcella L. Lape