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DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2014ch00829

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

SHELDON LANGER, RONALD M. )  
YERMACK, LANCE R. GOLDBERG, )  
ROBERT PROSI AND GERALD PETROW, )  
individually and on behalf of themselves and all )  
others similarly situated, )

10436460

Plaintiffs, )

No. 2014 CH 00829

v. )

Calendar 6

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

Hon. Celia G. Gamrath, Presiding

Defendants. )

**AFFIDAVIT OF TIMOTHY FREY IN SUPPORT OF DEFENDANTS’  
OPPOSITION TO PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION,  
FOR APPOINTMENT OF CLASS REPRESENTATIVES, AND FOR  
APPOINTMENT OF SUSMAN GODFREY LLP AS CLASS COUNSEL**

I, Timothy Frey, having the requisite personal knowledge, certify under the requirements of Section 1-109 of the Illinois Code of Civil Procedure as follows:

1. I submit this Affidavit in support of Defendants’ Opposition to Plaintiffs’ Motion For Class Certification, For Appointment of Class Representatives, And For Appointment of Susman Godfrey LLP As Class Counsel.

2. I am an associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to Defendants in the above-captioned action.

3. Attached as Exhibit 1 to this Affidavit is the Declaration of Robert Krewer In Support Of Defendants’ Opposition To Plaintiffs’ Motion For Class Certification, For Appointment of Class Representatives, And For Appointment of Susman Godfrey LLP as Class Counsel (“Krewer Declaration”).

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(a) Attached as Exhibit 1.A to the Krewer Declaration is a true and correct copy of a spreadsheet setting forth certain data regarding CME Class B share owners as of November 22, 2019.

(b) Attached as Exhibit 1.B to the Krewer Declaration is a true and correct copy of a spreadsheet setting forth certain data regarding CBOT Class B membership owners as of November 22, 2019.

(c) Attached as Exhibit 1.C to the Krewer Declaration is a true and correct copy of CME Fee Schedules from the time period prior to Demutualization, previously produced by Defendants in this Action beginning with the Bates stamp CME-LANGER-0233468.

(d) Attached as Exhibit 1.D to the Krewer Declaration is a true and correct copy of an excerpt from the September 1999 CME Rulebook, previously produced by Defendants in this Action beginning with the Bates stamp CME-LANGER-0030840.

(e) Attached as Exhibit 1.E to the Krewer Declaration is a true and correct copy of an excerpt from the June 2004 CBOT Rulebook, previously produced by Defendants in this Action beginning with the Bates stamp CME-LANGER-0010968.

4. Attached as Exhibit 2 to this Affidavit is a true and correct copy of documents beginning with the Bates stamp LANGER\_00000836, produced by Plaintiffs in this Action.

5. Attached as Exhibit 3 to this Affidavit is a true and correct copy of excerpts of the Chicago Mercantile Exchange's Proxy Statement and Prospectus dated April 25, 2000 filed in connection with the exchange's demutualization ("CME Demutualization Prospectus"), previously produced by Defendants in this Action with the Bates stamp beginning CME-LANGER-0001201. This document was previously marked as deposition Exhibit 18.

6. Attached as Exhibit 4 to this Affidavit is a true and correct copy of excerpts of the Chicago Board of Trade Proxy Statement and Prospectus dated February 14, 2005 filed in connection with the exchange's demutualization ("CBOT Demutualization Prospectus"), previously produced by Defendants in this Action with the Bates stamp CME-LANGER-1844000. This document was previously marked as deposition Exhibit 361.

7. Attached as Exhibit 5 to this Affidavit is a true and correct copy of a Letter from CME's Chairman of the Board and President & CEO to all Members and Staff, dated August 31, 2000, previously produced by Defendants in this Action beginning with the Bates stamp CME-LANGER-0097570. This document was previously marked as deposition Exhibit 355.

8. Attached as Exhibit 6 to this Affidavit is a true and correct copy of the article "CME Moves Into New Data Center, Plots Electronic Growth" written by Jacob Bunge and published by Dow Jones Newswires in August 2010.

9. Attached as Exhibit 7 to this Affidavit is true and correct copy of the 2007 Globex Reference Guide, previously produced by Defendants in this Action beginning with the Bates stamp CME-LANGER-0944307.

10. Attached as Exhibit 8 to this Affidavit is a true and correct copy of the Chicago Board of Trade Interpretative Notice re: Amendment To Regulation 9B.04 – e-cbot Access dated October 22, 2001. On July 2, 2015, Defendants filed this document in this Action as Exhibit 7 to the Affidavit of Margaret A. Wright In Support of Defendants' Combined Motion To Dismiss and Motion For Summary Judgment.

11. Attached as Exhibit 9 to this Affidavit is a true and correct copy of excerpts from the transcript of the deposition of Debra Kokal, taken on October 24, 2019.

12. Attached as Exhibit 10 to this Affidavit is a true and correct copy of excerpts from the transcript of the deposition of Plaintiff Lance R. Goldberg, taken on August 12, 2020.

13. Attached as Exhibit 11 to this Affidavit is a true and correct copy of excerpts from the transcript of the deposition of Plaintiff Ronald Yermack, taken on August 17, 2020.

14. Attached as Exhibit 12 to this Affidavit is a true and correct copy of the Amended Responses And Objections To Defendants' First Set of Interrogatories Directed To Plaintiffs Sheldon Langer, Ronald M. Yermack, Lance R. Goldberg, Robert Prosi, and Gerald Petrow, dated February 5, 2020.

15. Attached as Exhibit 13 to this Affidavit is a true and correct copy of excerpts from the transcript of the deposition of Plaintiff Sheldon Langer, taken on August 13, 2020.

16. Attached as Exhibit 14 to this Affidavit is a true and correct copy of excerpts from the transcript of the deposition of Craig Mohan, taken on July 30, 2019.

17. Attached as Exhibit 15 to this Affidavit is a true and correct copy of excerpts from the transcript of the deposition of Craig Mohan, taken on October 15, 2018.

18. Attached as Exhibit 16 to this Affidavit is a true and correct copy of excerpts from the transcript of the deposition of Plaintiff Robert J. Prosi, taken on August 11, 2020.

19. Attached as Exhibit 17 to this Affidavit is a true and correct copy of an excerpt from the transcript of the September 6, 2018 proceedings before this Court.

20. Attached as Exhibit 18 to this Affidavit is a true and correct copy of excerpts from the transcript of the deposition of Plaintiff Gerald Petrow, taken on August 14, 2020.

21. Attached as Exhibit 19 to this Affidavit is a true and correct copy of excerpts from the transcript of the deposition of Dr. Jonathan Arnold, taken on August 19, 2020.

22. Attached as Exhibit 20 to this Affidavit is a true and correct copy of the news release “CME Group Inc. Complete Acquisition of NYMEX Holdings, Inc., Expands its Diversified Product Offerings to Include Energy and Metals and Also Announces Preliminary Election Results” published on August 22, 2008. The news release is publicly available at <http://investor.cmegroup.com/news-releases/news-release-details/cme-group-inc-completes-acquisition-nymex-holdings-inc-expands>.

23. Attached as Exhibit 21 to this Affidavit is a true and correct copy of Chapter 1 of the CME Rulebook. This document was previously marked as deposition Exhibit 357. The Rulebook is publicly available at <https://www.cmegroup.com/rulebook/CME/>.

24. Attached as Exhibit 22 to this Affidavit is a true and correct copy of Chapter 1 of the CBOT Rulebook. The Rulebook is publicly available at <https://www.cmegroup.com/rulebook/CBOT/>.

25. Attached as Exhibit 23 to this Affidavit is a true and correct copy of Plaintiffs’ Supplemental Responses and Objections To Defendants’ Second Set of Interrogatories Directed To Plaintiffs Sheldon Langer, Ronald M. Yermack, Lance R. Goldberg, Robert Prosi, and Gerald Petrow, dated March 3, 2020. This document was previously marked as deposition Exhibit 359.

26. Attached as Exhibit 24 to this Affidavit is a true and correct copy of an excerpt from the June 2005 CBOT Rulebook, previously produced by Defendants in this Action beginning with the Bates stamp CME-LANGER-0012016.

27. Attached as Exhibit 25 to this Affidavit is a true and correct copy of a Market Regulation Advisory Noticed dated April 1, 2008, previously produced by Defendants in this Action beginning with the Bates stamp CME-LANGER-1230685.

28. Attached as Exhibit 26 to this Affidavit is a true and correct copy of documents beginning with the Bates stamp Langer\_00000411, produced by Plaintiffs in this Action. This document was previously marked as deposition Exhibit 367.

Under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this Affidavit are true and correct, except as to matters herein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that I verily believe the same to be true.

FURTHER YOUR AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Timothy Frey

STATE OF ILLINOIS        )  
COUNTY OF COOK        )

Subscribed and sworn to  
before me this 1<sup>ST</sup> day  
of September, 2020.

William R. Fieberg  
Notary Public



**CERTIFICATE OF SERVICE**

I certify that on September 14, 2020, I electronically filed a true and correct copy of the foregoing Affidavit Of Timothy Frey In Support Of Defendants' Opposition To Plaintiffs' Motion For Class Certification, For Appointment Of Class Representatives, And For Appointment Of Susman Godfrey LLP As Class Counsel and accompanying exhibits with the Clerk of the Court, and that I also served a true and correct copy of the foregoing Affidavit and exhibits by electronic mail on the following counsel:

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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 instrument are true and correct.

Dated: September 14, 2020

/s/ Timothy Frey  
Timothy Frey

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**Defendants' Appendix Table of Contents**

**Exhibit 1:** Declaration of Robert Krewer In Support Of Defendants' Opposition To Plaintiffs' Motion For Class Certification, For Appointment of Class Representatives, And For Appointment of Susman Godfrey LLP as Class Counsel .....DA-1

**Exhibit 1A:** Spreadsheet Identifying CME Class B Shareholders as of 11.22.19 .....DA-16<sup>1</sup>

**Exhibit 1B:** Spreadsheet Identifying CBOT Class B Members as of 11.22.19 .....DA-18

**Exhibit 1C:** CME-LANGER-0233468. ....DA-20

**Exhibit 1D:** CME-LANGER-0030840 .....DA-26

**Exhibit 1E:** CME-LANGER-0010968 .....DA-63

**Exhibit 2:** LANGER\_00000836 .....DA-114

**Exhibit 3:** CME Demutualization Prospectus (CME-LANGER-0001201) .....DA-117

**Exhibit 4:** CBOT Demutualization Prospectus (CME-LANGER-1844000) .....DA-156

**Exhibit 5:** CME-LANGER-0097570 .....DA-210

**Exhibit 6:** News Article: CME Moves Into New Data Center, Plots Electronic Growth .....DA-217

**Exhibit 7:** CME-LANGER-0944307 .....DA-220

**Exhibit 8:** Chicago Board of Trade Interpretative Notice re: Amendment To Regulation 9B.04 – e-cbot Access .....DA-254

**Exhibit 9:** Transcript of the deposition of Debra Kokal .....DA-256

**Exhibit 10:** Transcript of the deposition of Plaintiff Lance R. Goldberg .....DA-269

**Exhibit 11:** Transcript of the deposition of Plaintiff Ronald Yermack .....DA-287

**Exhibit 12:** Amended Responses And Objections To Defendants' First Set of Interrogatories Directed To Plaintiffs Sheldon Langer, Ronald M. Yermack, Lance R. Goldberg, Robert Prosi, and Gerald Petrow .....DA-306

**Exhibit 13:** Transcript of the deposition of Plaintiff Sheldon Langer .....DA-329

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<sup>1</sup> Defendants have filed Exhibits 1.A and 1.B separately under seal pursuant to the Order entered on September 11, 2020.

FILED DATE: 9/14/2020 1:58 PM 2014ch00829



<b>Exhibit 14:</b> Transcript of the deposition of Craig Mohan (July 30, 2019) .....	DA-372
<b>Exhibit 15:</b> Transcript of the deposition of Craig Mohan (October 15, 2018) .....	DA-377
<b>Exhibit 16:</b> Transcript of the deposition of Plaintiff Robert J. Prosi .....	DA-380
<b>Exhibit 17:</b> Transcript of September 6, 2018 Hearing.....	DA-401
<b>Exhibit 18:</b> Transcript of the deposition of Plaintiff Gerald Petrow.....	DA-405
<b>Exhibit 19:</b> Transcript of the deposition of Dr. Jonathan Arnold .....	DA-432
<b>Exhibit 20:</b> News Article: CME Group Inc. Complete Acquisition of NYMEX Holdings, Inc., Expands its Diversified Product Offerings to Include Energy and Metals and Also Announces Preliminary Election Results .....	DA-468
<b>Exhibit 21:</b> CME Rulebook Ch. 1.....	DA-472
<b>Exhibit 22:</b> CBOT Rulebook Ch. 1.....	DA-494
<b>Exhibit 23:</b> Plaintiffs’ Supplemental Responses and Objections To Defendants’ Second Set of Interrogatories Directed To Plaintiffs Sheldon Langer, Ronald M. Yermack, Lance R. Goldberg, Robert Prosi, and Gerald Petrow .....	DA-515
<b>Exhibit 24:</b> CME-LANGER-0012016.....	DA-545
<b>Exhibit 25:</b> CME-LANGER-1230685 .....	DA-553
<b>Exhibit 26:</b> Langer_00000411 .....	DA-556