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

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

Plaintiffs,)

vs.)

No. 2014 CH 00829

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

Defendants.)

REPORT OF PROCEEDINGS had at the hearing in
the above-entitled cause before the HONORABLE CELIA
GAMRATH, Judge of said Court, commencing on the 5th day
of May 2022, reported remotely from Chicago, Illinois, at
the approximate hour of 10 o'clock a.m.

REPORTED BY: KELLY A. BRICHETTO
CSR License No. 84-3252

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1 THE COURT: Calling the case of Langer versus
2 CME Group.

3 MR. MORRISSEY: Good morning, your Honor.
4 Steve Morrissey for the Plaintiffs.

5 THE COURT: Looks like Mr. Hogan is trying to
6 connect.

7 Good morning. It's Judge Gamrath. I see
8 that we're still waiting for Mr. Hogan to connect.

9 MS. LAPE: It appears that way, yes. Good
10 morning, your Honor.

11 THE COURT: We have Mr. Morrissey present.

12 Mr. Morrissey, do you have any colleagues
13 present with you this morning?

14 MR. MORRISSEY: I'm not seeing anyone. I
15 believe Mr. Agrawal may join us.

16 THE COURT: All right. We still have two
17 minutes.

18 MR. HOGAN: Good morning, Judge. This is Al
19 Hogan. I'm not sure if you could hear me.

20 THE COURT: Yes. We could see you and we
21 could hear you.

22 Let's see. Mr. Morrissey, would you like
23 us to wait a couple more minutes?

24 MR. MORRISSEY: No, we can proceed. I think

1 it will be a fairly short conference this morning if it
2 goes as Mr. Hogan and I have discussed, so I'm fine going
3 ahead if that's okay with you.

4 THE COURT: All right. So we are here. I see
5 that we have a court reporter present. She shall be the
6 person who is transcribing these proceedings. And just a
7 reminder that there shall be no videography, no
8 photography, no recording of this proceeding. Failure to
9 abide by those rules may subject you to contempt of
10 court. It's been my understanding that there have been
11 some violations, so just be mindful of that, please.

12 I do have some questions regarding the
13 papers I was sent yesterday. When you say go as proceed,
14 are you just expecting the Court to approve this and move
15 on or did you want some extra time with this?

16 MR. MORRISSEY: No, your Honor.

17 By way of background, our hope was to
18 submit something to you either by agreement or with the
19 disagreements more in advance of today's conference than
20 we were able to do so, but we were close enough to an
21 agreement that we figured it made sense to work for a
22 couple more days towards that end. We were able to reach
23 an agreement on the forms and procedures yesterday and
24 submitted them to you.

1 So our suggestion -- perhaps you've had
2 enough time to dig into the papers to have questions for
3 us today. Otherwise, we would also be happy to give you
4 some more time with the papers and then if you have
5 follow-up questions, address them in some manner with
6 you.

7 THE COURT: All right. Well, no time like the
8 present. So I do have some questions, and we will just
9 go starting with Exhibit A.

10 The third full paragraph you mention
11 Susman Godfrey. You do not mention the other lawyers as
12 you do on Page 11. Do you think it's prudent to mention
13 the other lawyers as you do on Page 11?

14 MR. MORRISSEY: That would be -- we would be
15 fine doing that, your Honor.

16 THE COURT: All right. And then from that
17 standpoint, Exhibit B, the first paragraph, that says
18 "Your Rights and Options," that too only refers to Susman
19 Godfrey, and I just think for transparency that we should
20 name all the lawyers. So if you could make that
21 correction, please.

22 MR. MORRISSEY: Very well.

23 THE COURT: Turning to Page 4 of Exhibit A, of
24 course, the first paragraph we need you to fill in a

1 date. What date did you have in mind?

2 MR. MORRISSEY: It's a function of when the
3 order's approved, so if it's today --

4 THE COURT: Let's say that it's approved today
5 or tomorrow. How many days out would you need? Let's
6 just build in a little bit of a safety valve of a couple
7 of days.

8 MS. LAPE: I think, Steve, it would be prudent
9 to build in at least a week for the exchange to finalize
10 the address list and e-mail list. I know that they're
11 working hard on it, but we do not have that right now, so
12 I do think we probably need, you know, a week to get
13 that.

14 MR. MORRISSEY: All right. Why don't we
15 confer on that date to fill in assuming that -- confer on
16 the dates to be filled in assuming that the order's
17 approved SAY tomorrow and then fill those in and get
18 those over to you.

19 THE COURT: And I will defer to you all on
20 those dates. That's fine. I just don't want to lose
21 track that there are several blanks in this order that
22 need to be filled in, so that's one of them.

23 Turning to Page 5 of Exhibit A, near the
24 end, the paragraph that begins: "On December 2nd, 2021,

1 the Court granted Plaintiffs' motion," so it's the third
2 paragraph from the bottom, I think that it would be wise
3 to indicate that there was clarification of that order
4 entered on February 17th, 2022.

5 MR. MORRISSEY: Yes.

6 THE COURT: Page 5, that last paragraph,
7 again, we have a blank date. That needs to be filled in.
8 Let's not lose track of that.

9 Turning to Page 7, the first paragraph
10 under Number 7, again, we have a blank date. That needs
11 to be filled in. We also have a blank date, and I know
12 you're aware of this. I just want somebody to mark it
13 off so that we do not forget.

14 Page 8, again, sort of towards the
15 middle-ish, towards the bottom we have a date that needs
16 to be filled in which is 30 days post notice.

17 In that paragraph, you reference this
18 option to opt out. So, for example, if you don't opt
19 out, a future successor will be included in the class
20 with the option to opt out. How long does this new
21 person have to opt out? So I don't want this to be
22 indefinite, right. So if I am a current member of the
23 class, how long do I have from today to opt out? I have
24 30 days post notice; correct?

1 MR. MORRISSEY: Yes.

2 THE COURT: So don't you think that we should
3 have some deadline for these new assignees or transferees
4 to opt out? The way this is written I think it's just
5 sort of an amendment.

6 MR. MORRISSEY: That's a very good catch, your
7 Honor. I think it would be appropriate to make it
8 parallel and 30 days after the transfer.

9 THE COURT: You could work through that with
10 Ms. Lape and Mr. Hogan. That's fine, but I do not want
11 this to be a forever opportunity.

12 MR. MORRISSEY: Understood.

13 THE COURT: It would be giving those new
14 assignees more rights than the current members.

15 MR. MORRISSEY: Yeah, they may be able to, you
16 know, watch how the trial's going and opt out in trial or
17 whatever.

18 THE COURT: I suppose that that sort of begs
19 the question too. I mean it seems to me that if you're
20 acquiring a share you're stuck with it as is. Is there a
21 reason why we're reviving some rights for new transferees
22 or assignees? Is this coming from Defendant or is this
23 coming from Plaintiff? I do have some questions about
24 that.

1 MR. MORRISSEY: I believe that suggestion came
2 from the Defendant and that we agreed to it. Our
3 preference would be that the rights went to the successor
4 and stayed with them so long as they were eligible for
5 the class.

6 MS. LAPE: I think, your Honor, that
7 suggestion came out of the provision in the Illinois
8 statutes requiring an opt-out, but I -- but I hear your
9 Honor's point, that if you're purchasing it with it being
10 part of a class action then that could make a difference
11 in the way that you interpret that statute.

12 THE COURT: Because I do think -- you know,
13 it's like you're opening the door to potential, you
14 know -- there might be a whole bunch of horse trading of
15 these memberships because of this suit and the unknown,
16 and as Mr. Morrissey said, what's going to happen as this
17 goes down the line. If it looks like a great victory,
18 what's that going to do? If it looks like a failure,
19 what's that's going to do in terms of who's keeping their
20 shares, who's getting rid of their shares? It seems to
21 me to be giving some insider baseball to potential
22 assignees or transferees, and quite frankly there's the
23 potentiality that current class holders who opted out
24 could reacquire a share and try to opt in. There could

1 be some insider baseball: My share for your share. You
2 have a slightly different right. I'm staying in for this
3 component and keeping out for that. I just -- you know,
4 I think it's more complicated than at first glance we're
5 looking at, and I am concerned about that.

6 MR. MORRISSEY: For all of those reasons, I
7 think we should try to make it work where there's not a
8 second opt-out created.

9 THE COURT: I think that we should have a
10 conference about this. I want to give Defendants the
11 opportunity to talk about this with the Court and
12 Plaintiffs the opportunity to talk about this with the
13 Court.

14 I'm not looking to blow the cap off
15 potential liability or exposure. I'm looking to contain
16 this to those who have come to this Court for some relief
17 based on, you know, the facts and circumstances, but,
18 again, we're not looking at this whole little, mini
19 subset of, you know, of options and trading rights and
20 increases of share. Like it just -- it seems like there
21 could be just some play involved that's unanticipated,
22 and I think we should just think about it a little bit
23 more before we rush to enter this with this particular
24 language. So I'm certainly willing to hear from

1 Plaintiffs and Defendants on this point, but I can't help
2 but notice that I think that this is going to raise some
3 issues later and that's all -- you know, there's going to
4 be some ramifications to Page 9 of Exhibit A as well.

5 So I'm going to turn now -- we're going to
6 leave that. On your notes make a note that the Court has
7 questions about that phrase that says with an option to
8 opt out. We talked about having a limit to that but just
9 conceptually how that's going to work because, again, if
10 somebody transfers their share, you know, mid trial
11 what's that going to do, somebody who has opted out or
12 somebody who has opted in, what's that going to do to
13 Plaintiffs?

14 Turning to Page 9, at the top of the page
15 you talk about publication on a certain date. Obviously
16 we don't have that firm date quite yet. Publication, I'm
17 thinking Crain's. Where else are you thinking -- the
18 Chicago Tribune? How many newspapers do we want to hit?

19 MR. MORRISSEY: We thought Crain's would be
20 sufficient in light of the additional methods of notice
21 here which are fairly comprehensive and direct to those
22 members that CME has and distribution through CME's own
23 platform.

24 THE COURT: Is it cost prohibitive to put it

1 in say our major Chicagoland newspapers?

2 MR. MORRISSEY: It would not be a huge
3 additional cost to put it in the Tribune as well. It's
4 just a question of in this day and age with the addition
5 of mail notice and dissemination through CME and Crain's
6 whether there will be additional people picking up the
7 physical newspaper and reading the publication.

8 THE COURT: Understood. I have motions for
9 service by publication which in my view is akin to no
10 service, so your point is well taken.

11 With that said, we do have I suppose some
12 other -- might argue that it's more than just the Tribune
13 or the Sun Times here in Chicago. I know that some
14 members may span the globe. Just give that some thought.
15 I'm not wedded to that, but, you know, more notice is
16 better than less, and it's probably not that labor
17 intensive to add a couple other publications.

18 MR. MORRISSEY: Yeah, I think the marginal
19 benefit of publishing in the legal newspaper might
20 actually exceed the Tribune.

21 THE COURT: Okay. So give that some thought.
22 Happy to entertain that, but at a minimum Crain's.

23 Going on to the next question, what
24 happens if I sell, transfer or assign ownership, so

1 here -- so this first sentence says: "In the event you
2 sell before such and such a date, you will not be
3 included and any opt-out request will be null and void."
4 So what does this mean like on a practical sense? So if
5 I sell -- so I hold a share. I opt out. I then sell the
6 share. My opt-out then is null and void. That new
7 person gets to step into the shoes and decide whether
8 they want to opt in or opt out?

9 MR. MORRISSEY: Yes. If the sale or transfer
10 has occurred before the opt-out date and the person
11 owning it on the opt-out date has the right -- it could
12 arise in two scenarios. One is the person who sells
13 sends out an opt-out notice before selling. The other
14 possibility is they sell and then notwithstanding the
15 fact they don't own the share anymore send out an opt-out
16 notice.

17 THE COURT: Sure. So that would not be
18 effective. Again, this is getting back to my last point
19 about how big is this class going to be, how many shifts
20 are we going to have in the class, how many different
21 people are coming in and are going to be doing this whole
22 little subset of trading of these shares based on this
23 suit and is that actually the right result. So this
24 whole paragraph I have some questions about that we don't

1 need to address today. I'd like to give lead counsel a
2 chance to meet and confer about the Court's concerns so
3 that you could be prepared to address these.

4 Same thing again we're talking about like
5 instead it's up to the new owner who is going to opt-out,
6 again, this is that unlimited period. We need to limit
7 that to at least that same 30-day period, and that gets
8 back to the point that I raised back on Page 8.

9 Another question that I have about that
10 paragraph is where it says: "If you sell your rights on
11 or after 30 days after notice and then purchaser could be
12 included if you didn't opt-out," I have this question:
13 What if you opt-out as to an old share characteristic but
14 then you want in again and you buy a new share because of
15 that? So, again, just an ordinary Samantha Jones owns a
16 share. She opts out. She sells it. She thinks the
17 litigation's going great. She wants to reacquire a new
18 share with different characteristics. Does she then get
19 the opportunity to get back into this class even though
20 she originally opted out?

21 MR. MORRISSEY: I believe that scenario -- so
22 Samantha Jones sold her share for whatever reason or
23 opted out her share and then acquires a new one that's
24 eligible for the class and already in the class. I think

1 she would be in the class by virtue -- she would be in
2 the class by virtue of the new share.

3 THE COURT: Again, I'm just -- you know, part
4 of these class actions are to just put a cover on it,
5 right, so that you know who you're dealing with and what
6 you're dealing with, and the way that this is structured
7 there's the potentiality that you could be getting new
8 class members or fewer class members up until, when, the
9 date of judgment?

10 MR. MORRISSEY: There's -- yeah, and we have
11 to deal with the reality that the shares do change hands
12 over time, so that will happen through the date of
13 judgment.

14 We anticipate there will be a core group
15 of, you know, thousands of shares that would remain in
16 the class through judgment and throughout. On the
17 margins we have reality, you know, what will happen.

18 The hope is to have as much of that
19 cleared up by the end of the opt-out period, so those
20 people holding shares now will be making a decision and
21 people who get out are out and people who stay are --

22 THE COURT: Sure. Except this period
23 continues on --

24 MR. MORRISSEY: Yes.

1 THE COURT: -- in perpetuity, and that's where
2 my questions come.

3 MR. MORRISSEY: Right. Right. And then the
4 question you flagged earlier would partially address this
5 by not creating an indefinite number of additional
6 opt-out periods upon transferring, and hopefully we can
7 work through that.

8 THE COURT: Yes. I see Mr. Hogan's hand
9 raised, and I'm certainly going to address that with you
10 in maybe if not more robust conversation, but you could
11 speak to it briefly if you'd like.

12 MR. HOGAN: Judge, I mean just really an
13 observation rather than a discussion is that your Honor's
14 prior question about could an individual, could a human
15 person sell their shares today and then acquire a share
16 down the road and be back into the class, and what, you
17 know, what occurred to me is that conceptually as a
18 matter of legal theory I think the answer would be yes as
19 you typically think about these kinds of charter claims.
20 The claims are attached to the share. Everybody's got
21 the same core rights, and, you know, that's why in
22 Delaware a lot of these cases are non opt-out classes
23 where everybody's included. For all the reasons -- you
24 know, we have frequently raised all those issues. So I

1 tend to think yes, the claims transfer with the share.

2 As I'm hearing your Honor's concern, I'm
3 also thinking about the reality of the seat market, and
4 we are going to -- as hard as we've worked on this, I'm
5 going to want to go talk to my client and the membership
6 directory and talk to Mr. Morrissey. The flip side is
7 because of the way the class is constructed right now
8 which is a damages class, in essence, attempting to
9 reduce the co right to travel with the shares to a
10 damages claim, maybe there is a way to cut that off and,
11 in essence, make the rights in this case sticking as of a
12 point in time until we can better define it.

13 That's going to create, you know,
14 complications for the seat market in terms of information
15 about shares as they're trading hands or on the market,
16 are those shares in the case or out of the case, but
17 those complications frankly already exist because we have
18 a lot of excluded shares to begin with because of the
19 corporate member issue.

20 These are good questions. It's one of the
21 most -- you know, it's a very complicated aspect of the
22 case, and I think we are going to have to go back and
23 think about how can we put a better definitional set
24 around it.

1 THE COURT: And I don't pretend to be the
2 expert in this. I know that you all know so much more
3 about this case and the inner workings than I do at this
4 point, but these are questions that I feel obligated to
5 raise with you and Mr. Morrissey, so your idea that this
6 is going to be short and sweet, not quite.

7 MR. MORRISSEY: Well, the question was not so
8 much that it would be short and sweet. Ultimately it was
9 whether the longer discussion should take place today or
10 after there's more time to digest, but I think this is
11 very helpful to get the initial questions and then follow
12 up.

13 THE COURT: Okay. Very good.

14 Let me see. What else? Oh, another
15 question. Down at the bottom of Page 9, if I'm a former
16 officer or director, employee, can I still be one of the
17 classes. Yes, you can be because it only excludes those
18 who are current officers or employees. What if I'm an
19 officer now -- and, of course, for those on the phone,
20 when I say I, rest assure I do not own shares. Saying,
21 again, Samantha Jones in our world. She is an officer
22 now. She's not a part of the class. She becomes a
23 former officer or employee or director six months down
24 the road. Can she get back in?

1 MR. MORRISSEY: I think we should add a
2 clarification there. I think the intent on both hands
3 here was that this would be as of the date of the
4 opt-out, so that if, you know, CME's CEO retires next
5 year, he suddenly doesn't come back into the class, but
6 that's another point we can confer on.

7 THE COURT: Yeah. So why don't you confer
8 about that?

9 My notes on the top of Page 10 just
10 reflect, again, yes, classes do not exclude these people.
11 Only excludes those who are owned by current officers,
12 employees or directors, right. So, again, we need to
13 look at the current and what's current and is there this
14 potential for revival if you're current and you're
15 excluded but you purchase something else down the line or
16 you give up your directorship or something like that,
17 what does that do for you. So that affects those two
18 questions up top as well.

19 Turning to Page 11 -- so a couple of
20 places you talk about this request to intervene, and I
21 suppose anybody could try, and I appreciate you saying
22 the Court may or may not allow it. I think that that was
23 in at least two places, and I just want to make sure that
24 stays in. That is not an invitation to come in and

1 intervene, and there is certainly no guarantee that
2 people would be allowed to.

3 I also want there to be something in this
4 notice that says class certification is an interlocutory
5 order. I could decertify this class. People need to be
6 aware of that. The class could shift. The class could
7 be decertified, and I think that I retain the authority
8 to do that. Does somebody know different?

9 MR. MORRISSEY: That's correct, and that's a
10 good thing to point out.

11 Another way that class definitions often
12 change is if there's ultimately some settlement. The
13 class could be modified as a result of the settlement
14 class definition. So I think noting that the definition
15 of the class could change or that the Court could issue a
16 subsequent order modifying or even decertifying the class
17 are, you know, possibilities, that would be --

18 THE COURT: So let's make that explicit so
19 people understand that.

20 Turning to Page 11, obviously there's
21 blanks at the top of the page that need to be filled in.
22 There's blanks in the middle of the page and blanks
23 towards the bottom.

24 And also on Page 12 there's some blanks.

1 Then Page 12 says: "Any questions you have concerning
2 this matter please do not contact the Court." I feel
3 like we're missing a word. It's not quite a full
4 sentence maybe, so just revisit that.

5 And the same thing -- we're missing a word
6 on Exhibit B. The heading that says: "Your rights and
7 options if you," you need the word are an excluded class
8 member. We're missing a word there. That's on Page --
9 that's on the Legal Notice for Exhibit B.

10 We have some blanks, of course, on that
11 second page of the Legal Notice. We have a blank on the
12 first page of the Legal Notice and then just a typo. We
13 have sort of a hanging extra parentheses right after that
14 blank where it says "i.e. as of whatever that date is."
15 I think you need to get rid of that parentheses.

16 So those are my comments. Oh, also if you
17 could add in the other lawyers underneath that paragraph
18 that says "Your Rights and Options." I think I mentioned
19 that already, so that's the second to last paragraph on
20 Exhibit B, and those are my initial comments after
21 looking last night at this notice.

22 MR. MORRISSEY: It's very helpful, your Honor.

23 THE COURT: Okay. So very good.

24 So that said, when would you like to come

1 back? How soon do you think you'll be able to meet and
2 confer?

3 MR. MORRISSEY: I think we could work through
4 those issues within the next week certainly assuming --
5 depending on Mr. Hogan's schedule and whether that works
6 for him.

7 MR. HOGAN: I think that's right. I think,
8 Judge, looking to the week of the 16th probably makes
9 sense. I do have a number of commitments next week. I'm
10 sure I'll be able to get through it, but toward the week
11 of the 16th I'll think we'll be able to get it done and
12 get back in front of your honor.

13 THE COURT: So I think either the 16th or
14 17th.

15 Sean, could we set aside maybe 30 minutes
16 for this case on the 16th or the 17th?

17 I am going to ask you to turn to the chat
18 box because I have another case that I need to call. So
19 if you could work out the date and time with my law
20 clerk.

21 Is there anything else that we need to
22 address?

23 Obviously if you could send me the papers
24 before you come in that week I'd appreciate it. I will

1 read it when I get it.

2 MR. MORRISSEY: We certainly hope to do that,
3 your Honor. We'll get them to you as soon as we can.

4 MR. HOGAN: Yes. We'll try and give you some
5 lead time on it.

6 THE COURT: Thank you all for coming in this
7 morning.

8 MR. MORRISSEY: Thank you very much.

9 MR. HOGAN: Thank you, your Honor.

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1 STATE OF ILLINOIS)
) ss.

2 COUNTY OF C O O K)

3 KELLY A. BRICHETTO, being first duly sworn, on
4 oath says that she is a Certified Shorthand Reporter
5 doing business in the City of Chicago, County of Cook and
6 State of Illinois;

7 That she reported in shorthand the proceedings
8 had at the hearing of the above-entitled cause;

9 And that the foregoing is a true and correct
10 transcript of her shorthand notes so taken as aforesaid
11 and contains all of the proceedings had at said hearing.

12 
13

KELLY A. BRICHETTO, C.S.R.

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17 before me this 5th
day of May, A.D.
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11 5:12,13 19:19 20:20	8 7:14 14:8	amendment 8:5	believe 3:15 9:1 14:21
12 20:24 21:1	84-3252 1:23	answer 16:18	benefit 12:19
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17th 7:4 22:14,16	a.d. 24:17	appears 3:9	blanks 6:21 20:21 20:22,22,24 21:10
2	a.m. 1:18	appreciate 19:21 22:24	blow 10:14
2014 1:8	abide 4:9	appropriate 8:7	board 1:9
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