

IN THE
APPELLATE COURT OF ILLINOIS,
FIRST JUDICIAL DISTRICT

SHELDON LANGER,	)	Appeal to the Appellate Court
	)	of Illinois, First Judicial
Plaintiff-Appellant,	)	District From the Circuit Court
	)	of Cook County, Illinois,
v.	)	County Department – Law
	)	Division,
CME GROUP, INC.,	)	
	)	
Defendant-Appellee,	)	No. 2014 CH 00829
	)	
	)	The Honorable
	)	STEPHEN A. SWEDLOW,
	)	Judge Presiding

MOTION FOR LEAVE TO AMEND NOTICE OF APPEAL

Appellants timely filed a notice of appeal on July 8, 2026 (exhibit 1). In order to ensure this Court has all materials necessary to fully adjudicate the issues on appeal, Appellants respectfully move for leave to amend their notice of appeal to supplement it with a copy of an encompassed order that is subject to the notice but was inadvertently omitted from the original filing. Granting this motion will serve the interests of justice by providing a complete appellate record without any prejudice to the Appellee.

The previously filed notice of appeal “encompass[ed] all orders preceding and incorporated into the final judgment” entered on June 15, 2026. One such order that will be addressed in the briefing is the trial court’s April 15, 2025 order denying in

part and granting in part Defendant's motion for summary judgment. A copy of that order is attached hereto as Exhibit 2. Leave to amend the notice of appeal should be granted where, as here, it causes no prejudice to the opposing party and promotes the efficient resolution of issues properly before the court. *See* Ill. S. Ct. R. 303(d) (permitting amendments to notices of appeal); *In re Est. of Stewart*, 2016 IL App (2d) 151117, ¶ 128 ("Notices of appeal are liberally construed in Illinois, particularly where the opposing party has not been prejudiced."). A verification by certification is attached in support of this motion.

For these reasons, Appellants respectfully request that this Court grant leave to amend the notice of appeal (as attached at Exhibit 3) to include the April 15, 2025 order.

August 12, 2026

/s/ Suyash Agrawal
Suyash Agrawal

MASSEY & GAIL LLP
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Chicago, IL 60602
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Attorney for Plaintiffs-Appellants

PROOF OF SERVICE

The undersigned counsel for Plaintiffs-Appellants certifies a copy of the foregoing **MOTION FOR LEAVE TO AMEND NOTICE OF APPEAL** was filed and served through Odyssey eFileIL's EFileAndServe function and served on the below counsel of record by electronic mail on August 12, 2026.

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Amanda Brown
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marcella.lape@skadden.com
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Attorneys for Defendants-Appellees

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.

/s/ Suyash Agrawal
Suyash Agrawal

VERIFICATION BY CERTIFICATION

I, Suyash Agrawal, state the following:

1. I am a U.S. citizen over the age of 18.
2. My current business address is 50 East Washington Street, Suite 400, Chicago, IL 60602.
3. I have personal knowledge of the facts stated in this verification by certification, if called upon, I can testify competently to these facts.
4. I am a partner at the law firm Massey & Gail LLP.
5. I am a registered attorney in good standing with the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC number 6308343).
6. I represent Plaintiffs-Appellants in this appeal.
7. Plaintiffs-Appellants filed in the Circuit Court its Notice of Appeal on July 8, 2026.
8. Plaintiffs-Appellants filed in the Circuit Court report of proceedings from the Circuit Court to complete the record on July 9 and 16, 2026.
9. Plaintiff-Appellants filed in the Circuit Court a request for preparation of the Record on Appeal on July 16, 2026. The record is due to be filed in this Court by September 9, 2026.
10. Plaintiff-Appellants now seek permission to amend their Notice of Appeal with the reviewing court under Illinois Supreme Court Rule 303.
11. Because the record is not yet prepared, Plaintiffs-Appellants' Motion to Amend their Notice of Appeal is based on facts not yet in the record.

12. I therefore certify to the facts in the record until such time that the Circuit Court has prepared them.

Under the 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 to the best of my knowledge, information, and belief.

Respectfully submitted,

DATED: August 12, 2026

By: /s/ Suyash Agrawal
Attorney for Plaintiffs-Appellants

EXHIBIT 1

**APPEAL TO THE ILLINOIS APPELLATE COURT
FIRST JUDICIAL DISTRICT**
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED
7/8/2026 2:47 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2014CH00829
Calendar, Q
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SHELDON LANGER, RONALD M.	)	No. 2014 CH 00829
YERMACK, ROBERT PROSI, GERALD	)	
PETROW, CRAIG RHEINGRUBER,	)	(Transferred to Law)
STANTON MILLER, RAY LARSEN, DANIEL	)	
RYAN, CAROL JORISSEN, individually on	)	Calendar Q
behalf of themselves and all others similarly	)	
situated,	)	
	)	Honorable Stephen A. Swedlow,
Plaintiffs,	)	Presiding
	)	
v.	)	
	)	
CME GROUP, INC., a Delaware Corporation;	)	
THE BOARD OF TRADE OF THE CITY OF	)	JURY TRIAL DEMANDED
CHICAGO, INC., a Delaware Corporation,	)	
	)	
Defendants.	)	

PLAINTIFFS' NOTICE OF APPEAL

Please take notice that Plaintiffs-Appellants, Sheldon Langer, Ronald M. Yermack, Robert Prosi, Gerald Petrow, Craig Rheingruber, Stanton Miller, Ray Larsen, Daniel Ryan, Carol Jorissen, individually on behalf of themselves and all others similarly situated, by and through their attorneys, pursuant to Supreme Court Rules 301 and 303, hereby appeal to the Illinois Appellate Court, First Judicial District, from the final judgment entered on June 15, 2026, by the Honorable Stephen A. Swedlow, Judge of the Circuit Court of Cook County, Illinois, and encompassing all orders preceding and incorporated into that final judgment.

By this appeal, Plaintiffs-Appellants respectfully request that the Illinois Appellate Court, First Judicial District, (a) reverse or vacate the order of the Circuit Court dated June 15, 2026; (b) reverse the July 25, 2025, jury verdict; (c) reverse or vacate in part the order of the Circuit Court

dated July 8, 2025; (d) reverse or vacate in part the order of the Circuit Court dated March 16, 2018; and (e) grant such other relief as the court deems appropriate. Copies of the documents referenced in items (a)–(d) are attached.

Dated: July 8, 2026

Respectfully submitted,

By: /s/ Suyash Agrawal

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to Illinois Supreme Court Rules 11 and 131, the undersigned, an attorney, certifies that he served the foregoing instrument by transmitting it via e-mail on July 8, 2026 from Chicago, Illinois to the following designated e-mail addresses of record for Defendants' counsel, who have consented to e-mail service:

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Amanda Brown
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amanda.brown@skadden.com

Attorneys for Defendants

/s/ Suyash Agrawal
Suyash Agrawal

EXHIBIT A

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

SHELDON LANGER et al.,

Plaintiffs,

v.

**CME GROUP INC. and BOARD OF
TRADE OF THE CITY OF CHICAGO, INC.,**

Defendants.

Case No.: 2014 CH 00829

Calendar Q

Hon. Stephen A. Swedlow

ORDER

This matter comes before the Court for judgment on Plaintiffs', Sheldon Langer ("Langer"), Ronald M. Yermack, Robert Prosi, Gerald Petrow, Craig Rheingruber, Stanton Miller, Ray Larsen, Daniel Ryan, Carol Jorissen, individually on behalf of themselves and all others similarly situated (collectively "Plaintiffs"), Corrected Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial.

Factual Background

From July 7, 2025, to July 25, 2026, the Honorable Judge Sherlock presided over the jury trial of Sheldon Langer *et al.* v. CME Group, Inc. Plaintiffs presented their case in chief over nine days, calling twenty-five witnesses. Defendants presented their case in chief over three days, calling nine witnesses. On July 25, 2026, after less than four hours of deliberation, the jury returned a verdict for Defendants, CME Group, Inc. ("CME"), and Board of Trade of the City of Chicago, Inc. ("CBOT").

On September 30, 2026, Plaintiffs filed their Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial. On October 30, 2026, Plaintiffs filed their Corrected

Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial (“Motion for JNOV”). Plaintiffs argue that the Court should enter judgment for Plaintiffs notwithstanding the verdict because the jury’s verdict was against the weight of the evidence since Delaware law required ambiguities to be resolved in Plaintiffs’ favor, the Aurora Data Center (“ADC”) is a “facility” under the CBOT Charter, and the ADC is a “trading floor” under the CME Charter.

Plaintiffs assert that their motion satisfies the standard for JNOV on liability, but even if the court disagrees, it should grant a new trial because: (1) the verdict was contrary to the manifest weight of the evidence, (2) the CFTC glossary was improperly admitted, (3) Defendants’ emails supporting Plaintiffs’ interpretation of the contract were excluded, and (4) Defendants used hypothetical A-share valuations which produced substantial and likely outcome-determinative prejudice.

On December 12, 2025, Defendants filed their Opposition to Plaintiffs’ Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial. Defendants allege that the jury correctly found that neither Charter provides members an exclusive right to access the ADC, and that neither Exchange violated the covenant of good faith and fair dealing, after considering the overwhelming evidence elicited at trial. Defendants assert that nothing in Plaintiffs’ motion warrants a new trial or justifies overturning the sound judgment of the jury.

On January 26, 2026, Plaintiffs filed their Reply, arguing that under Delaware law, the Court’s instructions, and the undisputed trial record, the only legally sustainable outcome on liability is judgment for Plaintiffs. Plaintiffs assert that their motion satisfies the standard for JNOV on liability, but argue that even if the court disagrees, it should grant a new trial based on evidentiary errors and the jury’s incorrect verdict. On March 11, 2026, the Court held oral argument on the matter. At oral argument, the Court granted the parties’ request to file

supplemental briefing regarding Defendants' claim that Plaintiffs waived any challenge to the relevance and prejudicial effect of Defendants' evidence concerning the hypothetical, present-day value of A shares received by some CME and CBOT members.

On March 27, 2026, Plaintiffs filed their Supplemental Brief in Support of their Motion for JNOV, contending that: (1) Plaintiffs timely submitted and thus did not waive their post-trial challenge to the sufficiency of the evidence to support a defense verdict, both under the overwhelming evidence standard for JNOV and the manifest weight standard for a new trial, and (2) Plaintiffs did not waive their right to seek a new trial based on Defendants' use of the hypothetical value of A shares to prejudice the jury using class members' supposed wealth, because Plaintiffs filed and argued a motion in limine, noted they were preserving their objection before opening, and objected during a witness testimony.

On March 27, 2026, Defendants filed their Supplemental Brief Regarding Waiver in Opposition to Plaintiffs' Post-Trial Motion, alleging that Plaintiffs failed to preserve their objection to evidence about the hypothetical present value of A Shares during trial, and since the Court's pre-trial ruling on that objection is "unreviewable," this Court should not address it now. *Guski v. Raja*, 409 Ill. App. 3d 686, 695 (2011).

On April 10, 2026, Plaintiffs filed their Supplemental Reply Brief in Support of their Motion for JNOV, arguing that: (1) the Court should grant JNOV and has broad discretion to grant a new trial, (2) the "A Share" evidence and arguments merit a new trial for plain error, (3) Plaintiffs preserved their objections, and (4) Plaintiffs did not invite Defendants' prejudicial evidence and argument. On April 10, 2026, Defendants filed their Supplemental Reply Brief Regarding Waiver in Opposition to Plaintiffs' Waiver Brief and Post-Trial Motion. Defendants assert that Plaintiffs never objected to the evidence of the hypothetical present-day value of A

Shares at trial and waived the right to do so now. Defendants allege that Plaintiffs seek to mischaracterize the record and invoke inapposite authority. On April 16, 2026, the Court held oral argument on the matter.

Legal Analysis

Motion for Judgment Notwithstanding the Verdict

A motion for judgment notwithstanding the verdict presents a question of law. *Townsend v. Univ. of Chicago Hosps.*, 318 Ill. App. 3d 406, 409 (2000). The motion should be granted when “all the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand.” *Id.* (quoting *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)). It is “unquestionably” the jury’s job to “resolve conflicts in the evidence, to pass upon the credibility of the witnesses, and to decide what weight should be given to the witnesses.” *Maple v. Gustafson*, 151 Ill. 2d 445, 452 (1992). This is a “very difficult standard to meet, limiting the power of the circuit court to reverse a jury verdict to extreme situations only.” *Jones v. Chi Osteopathic Hosp.*, 316 Ill. App. 3d 1121, 1125 (1st Dist. 2000).

Plaintiffs allege that applying the law given in the Court’s instructions to the contract language and other evidence presented at trial, no reasonable juror could have returned a defense verdict. Plaintiffs contend that as required by Delaware law and the doctrine of *contra proferentem*, where there is evidence that a contract was drafted by one party, rather than the product of negotiation between all parties, ambiguities in the language must be resolved against the drafter. Del. P.J.I. Civ. § 19.15 (rev) 2006. Plaintiffs assert that applying *contra proferentem*, the jury should have determined that the ADC is a “facility” under the CBOT Charter, and the ADC is a “trading floor” under the CME Charter, compelling a ruling in Plaintiffs’ favor.

Defendants, in response, argue that: (1) the evidence uniformly supported a defense verdict, (2) Plaintiffs' arguments that the terms in the Charters should be interpreted to their benefit failed, and (3) the doctrine of contra proferentem neither requires the jury to disregard extrinsic evidence nor allows the Court to overrule the jury's findings.

At trial, the Court instructed the jury that "[t]here are certain rules to consider in interpreting contractual terms that appear ambiguous or unclear," including that "if the party that drafted the language of the contract can be determined, the language must be construed most strongly against that party." JI No. 13. Plaintiffs argue that the evidence at trial compels the conclusion that Defendants drafted the CME and CBOT Charters, and therefore the jury must have construed the contract language in the Plaintiffs' favor. However, it is the jury's job to "resolve conflicts in the evidence, to pass upon the credibility of the witnesses, and to decide what weight should be given to the witnesses." *Maple*, 151 Ill. 2d at 452. A motion for judgment notwithstanding the verdict is not merely a vehicle for a party to request another chance to overrule an unfavorable decision. The Court finds that Plaintiffs fail to meet their burden in proving that "all the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand." *Townsend*, 318 Ill. App. 3d at 409.

Motion for a New Trial

A court may order a new trial in two circumstances. First, a court may set aside the verdict and order a new trial if the verdict is contrary to the manifest weight of the evidence. *Pedrick*, 37 Ill. 2d at 509-10. A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evidence or where the findings of the jury are unreasonable, arbitrary and not based upon any of the evidence. *Maple v. Gustafson*, 151 Ill. 2d 445, 454

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(1992). It is not enough that the evidence is conflicting or merely that the jury could have found differently. *Villa v. Crown Cork & Seal Co.*, 202 Ill. App. 3d 1082, 1089 (1st Dist. 1990).

Plaintiffs argue that applying the Court's instructions of the law to the evidence presented at trial, a reasonable juror would have had to conclude that the ADC, the CME facility where the vast majority of CME and CBOT trades are executed, is a "facility" under the CBOT Charter and a "trading floor" under the CME Charter. Plaintiffs assert that the overwhelming, uncontroverted evidence establishing that Defendants drafted the Charters, a reasonable juror would have had to construe the Charters against Defendants, supporting a verdict in Plaintiff's favor. In response, Defendants contend that the jury properly concluded based on the ample evidence presented that the Charters did not grant members exclusive access to anything Plaintiffs labeled a "trading floor" or "facility."

The Court finds that Plaintiffs have failed to meet their high burden of proving the verdict was against the manifest weight of the evidence. It is not enough that the evidence is conflicting or merely that the jury could have found differently. *Villa*, 202 Ill. App. 3d at 1089. The Court determines that Plaintiffs fail to prove that the findings of the jury are unreasonable, arbitrary, and not based upon any of the evidence. *Maple*, 151 Ill. 2d at 454.

Second, a new trial is appropriate where "any error occurred which operated to the prejudice of a party or unduly affected the outcome of the trial." *Nelson v. Union Wire Rope Corp.*, 31 Ill. 2d 69, 118 (1964). A trial judge is given the discretion in determining whether evidence is admissible. *Taluzek v. Ill. Cent. Gulf R. Co.*, 255 Ill. App. 3d 72, 83 (1st Dist. 1993). That determination will not be overturned upon review unless an abuse of discretion is clearly evident. *Id.* A party is not entitled to reversal based on evidentiary rulings unless the error was substantially prejudicial and affected the outcome of the case. *Id.* Illinois courts generally find

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reversible prejudice only where a case is so “close on its facts” that the “jury might have decided either way.” *First Nat’l Bank of La Grange v. Glen Oaks Hosp. & Med. Ctr.*, 357 Ill. App 3d 828, 844 (2d Dist. 2005).

Plaintiffs assert that multiple erroneous evidentiary rulings seriously and unfairly prejudiced Plaintiffs and independently warrant them a new trial. Plaintiffs contend that the Court erroneously permitted Defendants to rely on irrelevant third-party statements to argue the ADC is not a trading floor, and prohibited Plaintiffs from using third-party statements to show that Plaintiffs’ proffered interpretation of the Charters was consistent with industry usage and Defendants’ own understanding of the contract language. Plaintiffs argue that the Court incorrectly permitted Defendants to introduce evidence regarding the hypothetical, present-day value of the publicly traded Class A shares that some members of the Class received at demutualization, but denied Plaintiffs the opportunity to present evidence concerning their actual financial circumstances to mitigate the impact of Defendants evidence.

Defendants allege that Judge Sherlock acted within his judicial discretion when correctly ruling on the few evidentiary matters Plaintiffs raise in their motion for a new trial. Defendants argue that the Court did not abuse its discretion, and even if it did, the prejudice was not substantial enough to warrant the extreme remedy of a new trial. Defendants allege that the case was not “so close on its facts” that the “jury might have decided either way.” *First Nat’l Bank of La Grange*, 357 Ill. App. 3d at 844.

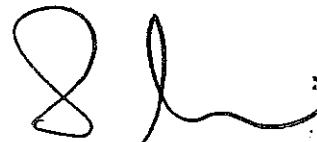
The Court determines that Judge Sherlock acted within his judicial discretion when ruling on the evidentiary matters raised by Plaintiff. *Taluzek*, 255 Ill. App. 3d at 83. Upon this Court’s review of the record, it finds that no abuse of discretion is clearly evident. *Id.* Any erroneous evidentiary rulings Plaintiffs believe the Court made would not entitle Plaintiffs to a new trial, as

even when construing them in Plaintiffs' favor, the Court determines they were not substantially prejudicial and would not have affected the outcome of the case. *Id.* The Court does not need to decide the issue of waiver because absent the waiver and construing all disputed evidentiary rulings in Plaintiffs' favor, the outcome of the case would still not have been affected.

Holding

The Court, being fully advised in the premises, hereby **DENIES** Plaintiffs' Corrected Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial. This Order is final and appealable.

DATED: June 15, 2026



Hon. Stephen A. Swedlow

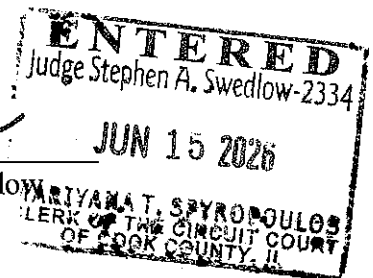


EXHIBIT B

VERDICT FORM – CME

Claim 1: Breach of Contract - CME

1. Did Plaintiffs prove that CME Group breached the CME Charter by failing to perform its obligations under that contract?

YES: ____ NO: X

If your answer to Question 1 is YES, go to Question 2. If your answer to Question 1 is NO, disregard the remaining questions on this page, go to the next page, and sign Verdict B for Claim 1 - CME.

2. Did Plaintiffs prove that they sustained damages as a result of this breach?

YES: ____ NO: ____

If your answer to Question 2 is YES, go to Question 3. If your answer to Question 2 is NO, disregard the remaining question on this page, go to the next page, and sign Verdict B for Claim 1 - CME.

3. What amount of damages, if any, do you award the CME Plaintiff Class on this claim?

\$ _____ Damages

\$ _____ Prejudgment Interest

If you answered Question 3, proceed to the next page, sign Verdict A for Claim 1 - CME, and re-enter the same damages and interest calculations reflected above.

Claim 1 – Breach of Contract - CME

On this claim, we, the jury, find for the CME Plaintiff Class and against CME Group.

VERDICT A

\$ _____ Damages

\$ _____ Prejudgment Interest

On this claim, we, the jury, find for CME Group and against the CME Plaintiff Class.

VERDICT B

Stew / Dick
Wayla Cend
W. J. ...
George ...
Timothy ...
George ...

ER ...
UKW
Nancy Ellen ...
Ed ...
Myron ...
Edward ...

DO NOT ANSWER any of the following questions regarding Claim 2 – CME, if you signed Verdict A on Claim 1 - CME. If you signed Verdict A on Claim 1 – CME, skip all questions regarding Claim 2 – CME, do not enter either verdict option on Claim 2 – CME, and instead proceed immediately to consider Claim 1 – CBOT.

Claim 2: Breach of the Implied Covenant of Good Faith and Fair Dealing - CME

1. Did Plaintiffs prove that CME Group breached the implied covenant of good faith and fair dealing inherent in the CME Charter?

YES: ____ NO: X

If your answer to Question 1 is YES, go to Question 2. If your answer to Question 1 is NO, disregard the remaining questions on this page, go to the next page, and sign Verdict B for Claim 2 - CME.

2. Did Plaintiffs prove that they sustained damages as a result of this breach?

YES: ____ NO: ____

If your answer to Question 2 is YES, go to Question 3. If your answer to Question 2 is NO, disregard the remaining question on this page, go to the next page, and sign Verdict B for Claim 2 - CME.

3. What amount of damages, if any, do you award the CME Plaintiff Class on this claim?

\$ _____ Damages

\$ _____ Prejudgment Interest

If you answered Question 3, proceed to the next page, sign Verdict A for Claim 2 - CME, and re-enter the same damages and interest calculations reflected above.

Claim 2 – Breach of Implied Covenant of Good Faith and Fair Dealing - CME

On this claim, we, the jury, find for the CME Plaintiff Class and against CME Group.

VERDICT A

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\$ _____ Damages

\$ _____ Prejudgment Interest

On this claim, we, the jury, find for CME Group and against the CME Plaintiff Class.

VERDICT B

Steve Pincus
Edward Kase
Miguel Hank
ELJ
Maryellen Schultz
Eric B

W. T. W.
George Zaya
Fifty Two Team
Pamela
W. T. W.
W. T. W.

YOU MUST begin answering the following separate questions regarding the CBOT claims, regardless of how you answered the prior questions regarding the CME claims.

VERDICT FORM – CBOT

Claim 1: Breach of Contract - CBOT

1. Did Plaintiffs prove that Defendants, CME Group and CBOT, breached the CBOT Charter by failing to perform their obligations under that contract?

YES: ___ NO: X

If your answer to Question 1 is YES, go to Question 2. If your answer to Question 1 is NO, disregard the remaining questions on this page, go to the next page, and sign Verdict B for Claim 1 - CBOT.

2. Did Plaintiffs prove that they sustained damages as a result of this breach?

YES: ___ NO: ___

If your answer to Question 2 is YES, go to Question 3. If your answer to Question 2 is NO, disregard the remaining question on this page, go to the next page, and sign Verdict B for Claim 1 - CBOT.

3. What amount of damages, if any, do you award the CBOT Plaintiff Class on this claim?

\$ _____ Damages

\$ _____ Prejudgment Interest

If you answered Question 3, proceed to the next page, sign Verdict A for Claim 1 - CBOT, and re-enter the same damages and interest calculations reflected above.

Claim 1 – Breach of Contract - CBOT

On this claim, we, the jury, find for the CBOT Plaintiff Class and against Defendants, CME Group and CBOT.

VERDICT A

\$ _____ Damages

\$ _____ Prejudgment Interest

On this claim, we, the jury, find for Defendants and against the CBOT Plaintiff Class.

VERDICT B

Steve Klein
Edward Reed
Margaret Hamilton
Ed
George Zaya
Toby M. Reed

W. J. Reed
Ed
W. J. Reed
Margaret Hamilton
Ed
W. J. Reed

DO NOT ANSWER any of the following questions regarding Claim 2 – CBOT, if you signed Verdict A on Claim 1 - CBOT. If you signed Verdict A on Claim 1 – CBOT, skip all questions regarding Claim 2 – CBOT, do not enter either verdict option on Claim 2 – CBOT, and instead conclude your deliberations.

Claim 2: Breach of the Implied Covenant of Good Faith and Fair Dealing - CBOT

1. Did Plaintiffs prove that Defendants, CME Group and CBOT, breached the implied covenant of good faith and fair dealing inherent in the CBOT Charter?

YES: ___ NO: ☒

If your answer to Question 1 is YES, go to Question 2. If your answer to Question 1 is NO, disregard the remaining questions on this page, go to the next page, and sign Verdict B for Claim 2 - CBOT.

2. Did Plaintiffs prove that they sustained damages as a result of this breach?

YES: ___ NO: ___

If your answer to Question 2 is YES, go to Question 3. If your answer to Question 2 is NO, disregard the remaining question on this page, go to the next page, and sign Verdict B for Claim 2 - CBOT.

3. What amount of damages, if any, do you award the CBOT Plaintiff Class on this claim?

\$ _____ Damages

\$ _____ Prejudgment Interest

If you answered Question 3, proceed to the next page, sign Verdict A for Claim 2 - CBOT, and re-enter the same damages and interest calculations reflected above.

Claim 2 – Breach of Implied Covenant of Good Faith and Fair Dealing - CBOT

On this claim, we, the jury, find for the CBOT Plaintiff Class and against Defendants, CME Group and CBOT.

VERDICT A

\$ _____ Damages

\$ _____ Prejudgment Interest

On this claim, we, the jury, find for Defendants and against the CBOT Plaintiff Class.

VERDICT B

Stefano
Edmund
Michael
Robert
W. L.
George

George
George Zaya
Yusef
Joe
Michael
W. L.

EXHIBIT C

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

SHELDON LANGER, RONALD M.)
YERMACK, ROBERT PROSI, GERALD)
PETROW, CRAIG RHEINGRUBER,)
STANTON MILLER, RAY LARSEN, DANIEL)
RYAN, CAROL JORISSEN, individually on)
behalf of themselves and all others similarly)
situated,)

Plaintiffs,)

v.)

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

Defendants.)

No. 2014 CH 00829

(Transferred to Law)

Calendar Q

Honorable Patrick J. Sherlock,
Circuit Judge Presiding

CC
J

PROPOSED ORDERS

This matter came before the Court on motions to limit expert testimony and motions in limine filed by Defendants CME Group Inc. ("CMEG") and The Board of Trade of the City of Chicago, Inc. ("CBOT") (together, "Defendants"), motions in limine filed by Plaintiffs Sheldon Langer, et al., on behalf of themselves and all others similar situated ("Plaintiffs"), and on stipulations by the Plaintiffs and Defendants (together, "Parties").

PARTIES GENERAL STIPULATION AND AGREEMENT

Pursuant to the Parties' stipulation and agreement the Court ORDERS as follows:

1. No party will reference before the jury any pretrial motions in limine, including the fact that a party filed motions in limine or that the Court granted or denied any requested relief. Provided, however, that a party may reference a motion in limine for the limited purpose of objecting to a perceived violation of the Court's in limine rulings.
2. No party will reference a document unless the document has been or is reasonably expected to be presented into evidence (by either party) as an exhibit or as a demonstrative. This agreement does not prohibit commentary on the fact that an opposing party failed to offer

a potentially-relevant document. Nor does it prohibit an expert witness from testifying to the bases for his or her opinions, even if those bases are themselves either not admitted or inadmissible.

3. No party will reference an expert's other affiliations with a party or its counsel on matters not related to this instant litigation. This agreement does not preclude references to work as an expert witness generally or work for the Plaintiffs' or defense bars generally.
4. No party will reference the role or presence in the courtroom of jury consultants or shadow jurors, if any, or the use, if any, of jury consultants or jury study or focus groups to assist with trial preparation, jury selection, or trial.
5. No party will ask questions during voir dire seeking to commit prospective jurors to a particular range or amount of damages. This agreement does not prevent the Parties from asking prospective jurors if they can award an amount of damages that is "fair" or whether there are circumstances in which no damages are "fair."
6. No party will offer or present evidence or argument concerning settlement offers made by any party or concerning any conduct or statements made by any party or a representative of any party during negotiations, communications, or discussions related to settlement.
7. No party will make any reference to contingent fees, fees incurred, or fee agreements for legal services. This agreement does not preclude evidence related to experts, including their hourly rates, bills, or total compensation. It also does not preclude evidence related to the potential recovery for Plaintiff witnesses, and their statements about that recovery, even if such evidence is contained within documents or statements that mention lawyer pay.
8. No party will reference the size of any law firm representing any party, the geographic location of the law firm's offices or any of its lawyers, other matters handled by or

involving the law firm and any of its lawyers, other clients or types of clients represented by the law firm or lawyers, any disciplinary action or investigation into the law firm or lawyers, or the wealth of any attorney or law firm. If a juror indicates familiarity with any law firm representing any party during voir dire, the Parties will confer with the Court as to any additional examination of the relevant juror that may be necessary outside of the presence of other jurors/prospective jurors.

9. Defendants will not offer argument or evidence that a judgment in this case will adversely affect the local economy or members of the jury, will lead to layoffs, will harm or threaten the financial viability of Defendants, or will harm Defendants' employees or customers.

PRETRIAL CONFERENCE ORDERS

Having reviewed the briefs filed by the Parties and having heard oral arguments on the motions, the Court ORDERS as follows:

Defendants' Motion to Limit the Testimony of Jerry Markham

Defendants' motion to limit the testimony of Plaintiffs' expert Jerry W. Markham is DENIED. Defendants may make objections at trial.¹ (6/20/25 Tr. 173:16-174:10.)

Defendants' Motion for Clarification of the Court's Ruling on Defendants' Motion to Exclude the Testimony of Dr. Jonathan Arnold

Defendants' motion for clarification, which seeks to exclude Dr. Jonathan Arnold's opinions related to foregone access fees, is DENIED. (6/20/25 Tr. 192:15-193:1.)

DEFENDANTS' MOTION *IN LIMINE* #1.

Motion To Bar Argument Related to Contra Proferentem

Defendants' motion in limine number one is GRANTED IN PART AND RESERVED IN PART. The motion is granted until evidence is introduced that the Defendants played some role

¹ As a general matter, all rulings denying motions to exclude or limit evidence are without prejudice to objections raised at trial.

in drafting the agreements that are at issue in this case. If there is no such argument, then it can be addressed when considering jury instructions. (6/18/25 Tr. 63:1-7.)

DEFENDANTS' MOTION *IN LIMINE* #2.

Motion To Exclude Testimony Regarding Individual Members' Subjective Interpretation of Charter Rights

The parties are unable to reach agreement on the Court's ruling as to Defendants' motion in limine number two. Defendants will file a response to Plaintiffs' recently-filed "Memorandum In Support of Admission Of Extrinsic Evidence Regarding Meaning of 'Trading Floor' and 'Trading Facilities.'" 4/25

DEFENDANTS' MOTION *IN LIMINE* #3.

Motion To Exclude the "A to Z" Memorandum

Defendants' motion in limine number three is DENIED. Defendants may object at trial depending on the context in which Plaintiffs seek to use the memorandum. (6/18/25 Tr. 84:22-24.) 5/22/29

DEFENDANTS' MOTION *IN LIMINE* #4.

Motion To Bar the Book *For Crying Out Loud* By Leo Melamed

Defendants' motion in limine number four is GRANTED IN PART. Motion is granted subject to request by Plaintiffs for introduction of specific passages at specific times, subject to the Court's ruling at that time. (6/18/25 Tr. 87:15-19.) 4/22/29 5/22/29

DEFENDANTS' MOTION *IN LIMINE* #5.

Motion To Bar Testimony Related to a "Code of Silence"

Defendants' motion in limine number five is GRANTED. Plaintiffs may not introduce the phrase "code of silence." (6/18/25 Tr. 89:11-18.) 4/22/29

DEFENDANTS' MOTION *IN LIMINE* #6.

Motion To Exclude Jack Sandner's Speech From 1998

Defendants' motion in limine number six is DENIED. Defendants may raise objections at trial. (6/18/25 Tr. 97:6-7.) 5229

DEFENDANTS' MOTION *IN LIMINE* #7.

Motion To Exclude References To Third-Party Descriptions of Their Co-Location Services 4229

Defendants' motion in limine number seven is GRANTED. The portions of documents identified in Defendants' motion and Exhibits 15, 16, and 17 thereto are excluded "for purposes of either establishing the truth of the matter asserted, which is clearly the reason that they're trying to be introduced, but also because they constitute hearsay within hearsay." (6/18/25 Tr. 109:9-16.)

DEFENDANTS' MOTION *IN LIMINE* #8.

Motion To Bar Testimony Related To IRS 5229

Defendants' motion in limine number eight is DENIED. (6/18/25 Tr. 117:14.)

DEFENDANTS' MOTION *IN LIMINE* #9.

Motion To Bar Evidence Related To the Number of Class Members and Potential Per-Member Damages Recovery 4229/5229

Defendants' motion in limine number nine is GRANTED IN PART AND DENIED IN PART. Motion is denied as it relates to the number of class members. Motion is granted to the extent that Plaintiffs may not argue per-class member damage computations, except any per-member math Dr. Arnold has previously disclosed. (6/18/25 Tr. 120:24-121:8.)

DEFENDANTS' MOTION *IN LIMINE* #10.

Motion To Bar Testimony Related To CME'S Acquisition of NYMEX 4340

Defendants' motion in limine number ten is RESERVED. The Court takes the issue under advisement. (6/18/25 Tr. 125:9-10.)

DEFENDANTS' MOTION *IN LIMINE* #11.

Motion To Exclude Evidence and Argument Related To Fee Claims

Defendants' motion in limine number eleven is agreed to by the Parties and GRANTED.

(6/18/25 Tr. 125:13-16.)

4229-

DEFENDANTS' MOTION *IN LIMINE* #12.

**Motion To Bar Testimony Related To Any Alleged Breach of Fiduciary Duty or Duty
Related To the Value of Class B Shares**

Defendants' motion in limine number twelve is GRANTED IN PART AND DENIED IN PART. The Court denies the motion to the extent that it seeks to bar the introduction of evidence related to the existence of a fiduciary duty between one party or another but grants the motion with respect to argument about whether or not certain conduct constitutes a breach of fiduciary duty "because breaches of fiduciary duty are not at issue in the case, but the existence of a fiduciary duty can certainly provide color to the claim for violation of covenant of good faith and fair dealing." (6/18/25 Tr. 132:13-133:2.)

4229/5229

DEFENDANTS' MOTION *IN LIMINE* #13.

Motion To Exclude Any Reference To CMEG's Market Capitalization

Defendants' motion in limine number thirteen is GRANTED IN PART AND DENIED IN PART. The motion is granted "with the caveat that to the extent that either of the plaintiffs' experts has included market cap in their analysis that's already been disclosed," such evidence or argument is allowed. (6/18/25 Tr. 135:20-136:3.)

4229
5229

DEFENDANTS' MOTION *IN LIMINE* #14.

**Motion To Exclude Internal CME Documents Using the Phrase "Trading Floor" in
Connection With the ADC**

Defendants' motion in limine fourteen is DENIED. (6/18/25 Tr. 138:22-24.)

5229

DEFENDANTS' MOTION *IN LIMINE* #15.

Motion To Exclude Questioning Regarding Alleged Instructions Not To Use the Term "Trading Floor" After Commencement of Litigation

Defendants' motion in limine number fifteen is DENIED. (6/18/25 Tr. 140:10.) *5029 -*

DEFENDANTS' MOTION *IN LIMINE* #16.

Motion To Exclude Comments By Jerrold Salzman *5029 -*

Defendants' motion in limine number sixteen is DENIED. Defendants may object at trial. (6/18/25 Tr. 148:16-17.)

DEFENDANTS' MOTION *IN LIMINE* #17.

Motion To Exclude References To Length of Litigation *4029 -*

Defendants' motion in limine number seventeen is GRANTED. The Court will allow references to specific dates but bars discussion of the length of time the case has been pending. (6/18/25 Tr. 148:24-149:23.)

DEFENDANTS' MOTION *IN LIMINE* #18. *4029 -*

Motion To Exclude Argument or Testimony Regarding Identity of Non-Present Class Members

Defendants' motion in limine number eighteen is agreed to by the Parties and GRANTED IN PART. The motion is granted to the extent that it seeks to exclude the fact that there were four opt outs from the Class. (6/18/25 Tr. 151:9-18.)

DEFENDANTS' MOTION *IN LIMINE* #19. *4029 -*

Motion To Exclude Argument Suggesting Defendants Are Responsible For Any Absence of Data or Information in the Record

Defendants' motion in limine number nineteen is GRANTED. The motion is granted as to any argument that documents were destroyed or otherwise disposed of so as to prevent a fulsome discovery of the facts in the case. The Court will not prevent Plaintiff from asking about the existence of documents. (6/18/25 Tr. 154:2-16.)

PLAINTIFFS' MOTION *IN LIMINE* #1 5009 -

Motion To Exclude Evidence or Argument Regarding Unasserted Claims Against LNet/Jackson and Open Access

Plaintiffs' motion in limine number one is DENIED. Plaintiffs may raise objections at trial. (6/20/25 Tr. 210:8-17.)

PLAINTIFFS' MOTION *IN LIMINE* #2 4/229/5009 -

Motion To Exclude Evidence Related To Plaintiffs' Receipt or Sale of A Shares

Plaintiffs' motion in limine number two is GRANTED IN PART AND DENIED IN PART. The motion is denied with respect to specific Plaintiff's receipt of A shares at demutualization. The motion is denied with respect to specific Plaintiffs' sales of A shares and denied with respect to the current hypothetical value of owning shares. The motion is granted regarding discussing the value of any particular Plaintiff's shares on a particular day. The Parties agree to not discuss the use of any proceeds received from the sale of A Shares. (6/20/25 Tr. 231:10-15; 231:23-232:14.)

PLAINTIFFS' MOTION *IN LIMINE* #3

Motion To Exclude Laches Defense from Jury Trial 4/229

Plaintiffs' motion in limine number three is agreed to by the Parties and GRANTED. (6/20/25 Tr. 234:3.)

PLAINTIFFS' MOTION *IN LIMINE* #4 5009 -

Motion To Exclude Dismissed or Abandoned Claims/Theories

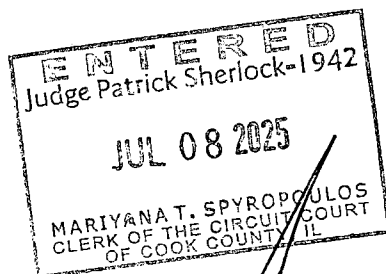
Plaintiffs' motion in limine number four is partially agreed by the Parties and partially DENIED. The Parties agree Defendants will not raise argument or evidence with respect to the fact that the Plaintiffs pled a claim for breach based on Open Access and that that was dismissed. The Court denies the remaining issues in the motion and permits Plaintiffs to make objections at trial. (6/20/25 Tr. 234:17-20; 236:11-14.)

PLAINTIFFS MOTION *IN LIMINE* #5

Motion To Exclude CFTC Glossary

5029

Plaintiffs' motion in limine number five is DENIED. (6/20/25 Tr. 242:20.)



ENTERED: _____

Judge Patrick J. Sherlock

EXHIBIT D

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

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

Plaintiffs,

v.

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

Defendants.

No. 14 CH 829

Judge Celia Gamrath

Calendar 6

ORDER GRANTING IN PART DEFENDANTS' MOTION TO DISMISS

This case comes on Defendants', CME Group, Inc. (CMEG) and The Board of Trade of the City of Chicago, Inc. (CBOT), Motion to Dismiss or Strike Certain Allegations in Plaintiffs' Second Amended Complaint pursuant to 735 ILCS 5/2-615, 5/2-619, and 5/2-619.1. The Motion to Dismiss is granted in part as follows: Plaintiffs' claims relating to revenue sharing, exclusive access to Globex, and disgorgement are dismissed with prejudice. Allegations based on Core Right 4 and Special Voting Right 3 are stricken. Plaintiffs' request for injunctive relief is stricken without prejudice. The Motion to Dismiss is denied in all other respects.

BACKGROUND

Plaintiffs Sheldon Langer, Ronald M. Yermack, and Lance R. Goldberg filed this putative class action against Defendants CMEG and CBOT on behalf of themselves and similarly situated Class B shareholders of CMEG common stock and Class B members of CBOT. Plaintiffs are entitled to certain rights and privileges on the Chicago Mercantile Exchange (CME) and CBOT, depending on their member interests. CME and CBOT are

derivative Exchanges headquartered in Chicago and owned by CMEG. Plaintiffs are comprised largely of old line traders who owned the two Exchanges before their respective demutualizations in 2000 and 2005 and merger in 2007.

At the merger in July 2007, CME and CBOT amended their individual Charters governing the rights and privileges of members. Plaintiffs' Complaint alleges CMEG and CBOT breached these Charters and contractual obligations to Plaintiffs, causing them damages. The Complaint contains two counts: Breach of contract and breach of implied covenant of good faith and fair dealing.

CME

From its founding in 1898 and throughout the 20th Century, CME was an Illinois mutual company owned and controlled by its member traders. In November 2000, CME demutualized and converted to a Delaware for-profit corporation. Demutualization resulted in the conversion of membership interests 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.

Prior to demutualization, CME members had referendum voting rights that allowed them to override Board action in adopting any new Exchange rules or amending or repealing existing rules. As part of demutualization, CME members gave up these referendum rights. In return, CME agreed Class B members would have the right to vote on any changes, amendments, or modifications to four Core Rights memorialized in the Amended and Restated Certificate of Incorporation of Chicago Mercantile Exchange (CME Charter) (eff. Nov. 13, 2000), which are now embodied in the CMEG Charter. At issue are Core Rights 2 and 4, under which CME agreed to protect:

2. The trading floor access rights and privileges granted to each series of Class B Common Stock, including the Commitment to Maintain Floor Trading;
4. The eligibility requirements for any Person to exercise any of the trading rights or privileges inherent in any series of Class B Common Stock.¹

Plaintiffs interpret these Core Rights broadly, while Defendants construe them narrowly. Although contract interpretation is generally a question of law, Core Right 2 cannot be summed up as neatly as Defendants hope. It requires additional evidence to ascertain the parties' intent and meaning of terms. Accordingly, and for the reasons below, the court denies Defendants' Motion to Dismiss because it is premature to conclude, as a matter of law, the Aurora Data Center (ADC) is not a trading floor within the context of Core Right 2 and there is no Core Right protecting Plaintiffs' access to Globex and preferential fees.

CBOT

In 2005, CBOT also demutualized and converted from a not-for-profit member-owned organization to a for-profit corporation. CBOT amended its Certificate of Incorporation (CBOT Charter) to provide Class B members with Trading Rights and Special Voting Rights over amendments to the Certificate of Incorporation, Bylaws, or Rules that, in the sole and absolute determination of the CBOT Board of Directors, adversely affects specified rights, including:

2. The requirement that . . . holders of Class B memberships who meet the applicable membership and eligibility requirements will be charged transaction fees for trades of the Corporation's products for their accounts that are lower than the transaction fees charged to any participant who is not a holder of Class B membership for the same products, whether trading utilizing the open outcry trading system or the electronic trading system; and
3. The membership qualifications or eligibility requirements for holding any Series of Class B membership or exercising any of the membership rights and privileges associated with such Series. *See* Sec. IV(D)(2)(b).

¹ This is the current version of Core Right 4 upon which Plaintiffs rely in their Complaint. They cite a prior version of Core Right 4 in their Opposition brief to the Motion to Dismiss (pp. 9-10, 26), arguing language not in existence.

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The CBOT Charter also provides CBOT members will continue to enjoy their existing trading rights and privileges, including their rights and privileges with respect to electronic trading systems. *See* Sec. IV(D)(1)(f).

LOBEX

An impetus for this case surrounds the relocation of Globex from CME's downtown trading floor to the Aurora Data Center (ADC) and charging of new co-location fees in 2012 to members who previously accessed Globex for free. Globex is CMEG's electronic trading system that provides real-time price data and access to global markets. The ADC is a massive data center in Aurora that houses the trade matching engines for Globex products. Close proximity to Globex gives traders a distinct advantage – an advantage Plaintiffs claim they have an exclusive right to access for free.

Over the past two decades, CME and CBOT have transitioned from an open outcry market to a predominantly electronic marketplace in which hand signals were traded in for computers. 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.

In September 1997, when CME launched the E-Mini, a futures product traded electronically and indexed to the S&P 500, CME placed Globex terminals on the trading floor with proximity and visibility to the S&P 500 pit. In March 1999, CME developed a hand-held device called Galax-C, which was designed to provide traders with real-time access to Globex data while on the trading floor.

Under the CME Rules that existed at the time, specifically Rule 582, the number of Globex Screen Rights (GSR) was limited to the number of CME memberships. Each GSR was

associated with an individual membership, such that CME members had the exclusive right to execute trades directly through Globex terminals located on the trading floor and share in any revenues generated from leasing Globex access to third parties. Members were not charged any additional fee or surcharge for this access and were able to access Globex from the trading floor and remotely. A member who owned a GSR, but did not trade electronically, had the ability to put his GSR into a pool to be leased out by CME. Rule 582 called for CME to distribute *pro rata* all GSR lease fees collected to each owner of a Class B share who did not make use of the GSR attributable to their membership.

While CME was completing demutualization in 2000, it decided to allow open access to Globex. Electronic trading on Globex then changed from a largely closed system to an open system in which CME allowed direct electronic access to the Globex order book and products traded on Globex for all market participants, including non-members. In 2001, CBOT similarly allowed open access to its own electronic trading platform, e-cbot. E-cbot was migrated onto Globex in January 2008.

As part of CME's implementation of open access in 2000, CME adopted and announced a number of Rule changes, including the elimination of Rule 582. CME approved and publicized the change to open access and elimination of Rule 582 between the time that the CME membership voted on demutualization and the time the Commodity Futures Trading Commission (CFTC) approved the demutualization transaction. Ever since open access began in 2000, both non-members and members have had the ability to directly access and trade on Globex. CME has collected Globex access and communication fees from both, but has not paid any access or communication fees to Plaintiffs.

In August 2010, CMEG moved the primary matching engine for Globex to the ADC. In January 2012, CMEG began to offer co-location at the ADC. Through co-location, CMEG directly leases space in the ADC to members and non-member customers so that they can directly access Globex with high-speed servers in close proximity to the Globex matching engines. This reduces the latency for trade and market information. CMEG charges a fee to anyone who co-locates at the ADC and has allowed multiple individuals to trade on one membership. Plaintiffs contend this reduces demand to lease their memberships and devalues Class B shares. Plaintiffs further contend they, as members, are entitled to exclusive access to the ADC – a new trading floor, so they claim – and to the best, most proximate, free access to Globex.

COMPLAINT

Plaintiffs allege CMEG and CBOT breached contractual obligations to Plaintiffs by modifying, without member vote, trading rights and privileges afforded to Class B members and eligibility requirements for exercising trading rights and privileges. Specifically, Plaintiffs complain Defendants have bypassed the lease market for Class B memberships by permitting non-members to receive the same access and proximity to Globex as members, which has significantly reduced the value of their shares and constitutes a breach of contract. They also allege Defendants breached Plaintiffs' Core and Special Rights by not giving members preferential treatment and lower fees vis-à-vis the ADC and the right to share in Globex access fee revenues. In the alternative, Plaintiffs contend Defendants breached the implied covenant of good faith and fair dealing by denying Plaintiffs preferential fees and free, best access to the ADC and Globex.

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Plaintiffs contend Defendants violated Core Rights 2 and 4 of the CMEG Charter and Special Voting Rights 2 and 3 contained in the 2005 CBOT Charter. Plaintiffs also rely upon Special Trading Rights of the CBOT Charter, Section IV.D.1(f), which states: "In addition to the rights and privileges set forth above, except as otherwise provided in the Certificate of Incorporation, 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."

Defendants argue this section is not among the Special Voting Rights and therefore does not require a member vote in order to adversely change it. While this may be true, the Complaint overall adequately states a claim for breach of contract premised on a violation of protected trading rights and, alternatively, for breach of implied covenants.

DISCUSSION

LEGAL STANDARD

Defendants move to dismiss or strike certain allegations in the Complaint in a combined motion filed under 735 ILCS 5/2-619.1. A section 2-615 motion to dismiss challenges the legal sufficiency of a pleading based on defects apparent on its face. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364 (2004). In reviewing the sufficiency of a pleading, the court accepts as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004). The court construes the allegations in the pleading in the light most favorable to the plaintiff. *King v. First Capital Fin. Servs. Corp.*, 215 Ill. 2d 1, 11-12 (2005).

A section 2-619 motion to dismiss admits the legal sufficiency of all well-pled facts in a complaint, but raises defects, defenses, or other affirmative matter that avoid the legal effect of plaintiff's claim. *See Advocate Health & Hosps. Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (1st Dist. 2004). A court must construe the documents, affidavits, and evidence in the light most favorable to the non-moving party, and the defendant bears the burden of proving any defense it relies upon. *Id.*; *Wolf v. Bueser*, 279 Ill. App. 3d 217, 222 (1st Dist. 1996).

ANALYSIS

1. Illinois' ten-year statute of limitations bars Plaintiffs' claims relating to revenue sharing and exclusive access to Globex, including their request for disgorgement.

a. Open Access and Rule 582 were eliminated in 2000.

The court agrees with Defendants that open access and the elimination of Rule 582 in the year 2000 precludes Plaintiffs' claims of revenue sharing and right of exclusive access to Globex. These claims are dismissed with prejudice.

First, there are no well-pled facts to show CBOT members, unlike CMEG shareholders, ever had rights to revenue sharing or exclusive access to Globex under the CBOT Charter. Second, while the CME Charter did provide such rights to members, these rights emanated from Rule 582, which was eliminated more than ten years ago. Any supposed breach by Defendants in eliminating Rule 582 and providing for open access is barred by Illinois' ten-year statute of limitations. *See* 735 ILCS 5/13-206. Although this case is governed by Delaware substantive law, a statute of limitations is procedural, so Illinois' ten-year statute applies. *See, e.g., Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A.*, 199 Ill. 2d 325, 351–52 (2002).

In order to block implementation of open access and elimination of Rule 582, Plaintiffs had to exercise their referendum right, which they held prior to the completion of demutualization in 2000. They did not exercise this right, and open access was complete prior to

demutualization. Even if, as Plaintiffs suggest, an affirmative member vote was required to eliminate exclusive access and revenue sharing under Rule 582, failing to hold a member vote was a one-time occurrence that triggered the statute of limitations in 2000, or 2001 at the latest,² according to the Complaint.

The continuing harm or continuing violation theory advanced by Plaintiffs cannot save their claims. While the theory has utility with respect to installment contracts, it is inapplicable to claims for a single breach of contract. See *Hassebrock v. Ceja Corp.*, 2015 IL App (5th) 140037, ¶35. “If a single breach occurs, either by repudiation or material failure of performance, the claim accrues at that time and the statute of limitations begins to run for all claims on that contract.” *Id.*, quoting *Hi-Lite Products Co. v. American Home Products Corp.*, 11 F.3d 1402, 1409 (7th Cir. 1993).

The facts of this case are analogous to those in *Hassebrock*, such that Defendants allegedly breached and repudiated Plaintiffs’ right to exclusive access and revenue sharing from Globex when they eliminated Rule 582 and obtained approval for open access in 2000. Thus, even if this was a continuous-performance-type contract entitling Plaintiffs to a continual revenue stream, there was a single breach that triggered the statute of limitations in the year 2000 when Rule 582 was eliminated and supposedly breached by failure to hold a vote.

Accordingly, Plaintiffs’ claims for revenue sharing and exclusive access to Globex under the CMEG Charter are dismissed with prejudice under 735 ILCS 5/2-619(a)(5). Similar claims brought by CBOT members necessarily fail as a matter of law and are dismissed under 735 ILCS 5/2-615 for failure to state a claim. Not only do Plaintiffs fail to point to a specific protectable right to Globex or Globex access revenue stream within their Charter, but they identify no

² This argument stems from Plaintiffs’ contention that Rule 582 was still in the Rulebook in 2000.

Special Voting Right violated with respect to these rights or a right to share leasing fees generated from the ADC. In fact, such revenue sharing in the form of a dividend or distribution is prohibited by Article IV.B.2.(c) of the CBOT Charter.

b. Disgorgement for Globex-related fees is not recoverable.

Because the court is dismissing all claims concerning revenue sharing from Global access, the court strikes Plaintiffs' request for disgorgement (Prayer for Relief, ¶3). Historically, disgorgement is not a remedy for breach of contract since its underlying purpose of preventing unjust enrichment is incongruent with the compensatory nature of breach of contract damages. However, the Restatement (Third) of Restitution seems to extend its application, recognizing the newness of disgorgement in the context of bad faith, breach of fiduciary duty, opportunistic breach of contract, and insider trading – none of which are alleged here. Notwithstanding, disgorgement of Globex-related fees is not recoverable by Plaintiffs because the underlying claims have been dismissed and there is no possibility Plaintiffs can recover. Accordingly, Plaintiffs' claim for disgorgement is stricken with prejudice under 735 ILCS 5/2-615.

2. Plaintiffs' claim to the most proximate, free access to Globex survives dismissal, but allegations premised on Core Right 4 and Special Voting Right 3 are stricken.

The court denies Defendants' Motion to Dismiss Plaintiffs' breach of contract claim based on a violation of their right to the most proximate, free access to Globex. However, this claim cannot be premised on Core Right 4 or Special Voting Right 3, which govern eligibility of membership. These allegations shall be stricken from the Complaint for they are not well pled or supported by a reasonable interpretation.

To grant a section 2-615 motion, this court must find Plaintiffs cannot prove any set of facts, under any circumstances, that would entitle them to relief. *See Marshall v. Burger King*

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Corp., 222 Ill.2d 422, 429 (2006). The court must accept as true all well-pled allegations in the Complaint and draw all reasonable inferences in Plaintiffs' favor. *Id.*

As stated above, Plaintiffs' right to exclusive access to Globex and revenue sharing was eliminated with the advent of open access. However, this does not foreclose CMEG Plaintiffs' claim for breach of Core Right 2, which they allege includes a right to the most proximate, free access to Globex housed at the ADC, a new type of trading floor. The most proximate, free access to Globex was a right and privilege Plaintiffs enjoyed before it moved to the ADC. Non-members did not enjoy this same right or privilege and would lease a membership in order to have floor access and proximity to Globex.

To survive this Motion to Dismiss, Plaintiffs have alleged sufficiently that the ADC is a trading floor, attempting to explain how it functions as a trading floor within the meaning of the Charter. By relocating Globex to a new floor and charging an access fee to members, Defendants allegedly breached Plaintiffs' trading floor access rights and privileges.

Defendants raise cogent reasons why the ADC is not a trading floor within the meaning of Core Right 2. Ultimately, this will be a question of fact requiring evidence and further information as to how the ADC operates as a trading floor. But for now, drawing all reasonable inferences in CMEG Plaintiffs' favor, the court finds they have pled sufficient facts to state a claim for breach of their right to the most proximate, free access to Globex housed at the ADC.

CBOT Plaintiffs' claim is more tenuous, as there is no counterpart to Core Right 2 in the CBOT Charter. Nonetheless, there exists a viable claim based on their Special Trading Rights designed to protect the right to the electronic trading system, which Plaintiffs allege encompasses free, proximate access to Globex. Alternatively, as discussed below, all Plaintiffs have sufficiently alleged a breach of implied covenants of good faith and fair dealing in this regard.

However, Plaintiffs cannot rely on Core Right 4 and Special Voting Right 3 to support their claim to the most proximate, free access to Globex. The court agrees with Defendants that Core Right 4 and Special Voting Right 3 are clearly limited to eligibility requirements governing things like moral character, age, good credit, and financial wherewithal. They do not provide for expansive trading rights, but relate solely to Plaintiffs' rights to protect against CMEG unilaterally changing the eligibility requirements to be a trading member or lessee of a Class B membership. Plaintiffs' capacious reading of these rights and comparative language in the Charters cannot withstand scrutiny, even when viewed in the most favorable light. As such, these allegations are stricken from the Complaint and cannot form a basis for breach of contract.

3. Plaintiffs' claims for preferential fees survive dismissal.

Defendants' Motion to Dismiss Plaintiffs' claims for preferential fees is denied. Special Voting Right 2 of the CBOT Charter clearly gives Plaintiffs a protected right to lower transaction fees than non-members. What these transaction fees consist of remains to be seen and cannot be decided on a motion to dismiss.

The court rejects the notion that without pointing to an affirmative change to the Charter, Bylaws, or Rules, Plaintiffs cannot state a claim for breach. What the CBOT Charter forbids be done directly cannot be done indirectly without a member vote. To hold otherwise would make Plaintiffs' rights illusory.

The CMEG Charter, unlike the CBOT Charter, does not expressly identify preferential fees in the Core Rights. However, this is not fatal to Plaintiffs' claim. CMEG Rule 121 and Bylaw 6.3(d) recognize preferential fees for members as a trading right and privilege – a privilege once limited only to members and individuals who leased a membership. Although the prospectus recognizes management discretion and incentive pricing, Plaintiffs allege this has

become a permanent fixture that guts their Core Rights. When construing all well-pled facts in Plaintiffs' favor, it is plausible their rights protect against extending membership rights and preferential fees to non-members and diluting the leasing market by permitting multiple individuals to trade on a single membership. Defendants have failed to meet the heavy burden that currently must be satisfied to obtain dismissal of this claim under section 2-615.

In short, both sides have presented reasonable yet different interpretations of the Charters and attendant materials on the issue of preferential fees. This alone is sufficient to withstand a motion to dismiss. *See UtiliSave, LLC v. Miele*, No. 10729-VCP, 2015 WL 5458960, at *7 (Del. Ch. Sept. 17, 2005).

4. Plaintiffs' request for injunctive relief is stricken.

In the prayer for relief, Plaintiffs argue they are entitled to injunctive relief to co-locate at the ADC without having to pay an access fee, to share revenues generated by Globex fees, and to compel ECMs and other customers to purchase or lease memberships from them to enhance the value of their Class B shares.

Illinois law governs the determination of whether injunctive relief is an appropriate remedy and the procedural elements of asserting a claim for injunctive relief. *See Am. Food Mgmt., Inc. v. Henson*, 105 Ill. App. 3d 141, 147 (5th Dist. 1982). “[A]n injunction is an extraordinary remedy which may be granted when the plaintiff establishes that his remedy at law is inadequate and he will suffer irreparable harm without the injunctive relief.” *Sadat v. Am. Motors Corp.*, 104 Ill. 2d 105, 115 (1984). A well-pleaded complaint for injunctive relief must contain facts that “establish the inadequacy of legal remedy and the irreparable injury the plaintiff will suffer without the injunction.” *Id.* at 116.

Plaintiffs contend injunctive relief is necessary because the violations are continuous and ongoing, making their remedy at law inadequate. However, Plaintiffs have failed to plead specific facts necessary to demonstrate this element or the suffering of irreparable harm.

Plaintiffs argue “no magic words are required” to plead facts supporting an injunction. However, facts that clearly establish injunctive relief is necessary still must be pleaded. *See Wilson v. Wilson*, 217 Ill. App. 3d 844, 856 (1st Dist. 1991). Plaintiffs also must plead how money damages is inadequate and will not make them whole. *See Maas v. Cohen Associates, Inc.*, 112 Ill. App. 3d 191, 196 (1st Dist. 1983) (injunctive relief is not proper where monetary damages is an adequate remedy). Plaintiffs’ mere conclusory allegations fall short of the requisite pleading standard. Their request for injunctive relief is stricken without prejudice under section 2-615.

5. Motion to Dismiss Count II is denied.

Plaintiffs plead Count II in the alternative, asserting a breach of implied covenants of good faith and fair dealing in the CMEG and CBOT Charters. They allege development of the ADC and other co-location facilities and fees could not have been anticipated by the parties. Had they been, the members would have negotiated rights to preferential access and co-location fees at the time of establishment of the Charters.

Under Delaware law, the implied covenant of good faith and fair dealing is “‘best understood as a way of implying terms in the agreement,’ whether employed to analyze unanticipated developments or to fill gaps in the contract’s provisions.” *Dunlap v. State Farm Fire & Cas. Co.*, 878 A. 2d 434, 441 (Del. 2005), quoting *E.I. DuPont de Nemours & Co. v. Pressman*, 679 A. 2d 436, 443 (Del. 1996). Courts will imply terms when “the party asserting the

implied covenant proves that the other party has acted arbitrarily or unreasonably, thereby frustrating the fruits of the bargain that the asserting party reasonably expected.” *Nemec v. Shrader*, 991 A. 2d 1120, 1126 (Del. 2010). “Thus, to properly plead a claim for breach of the implied covenant, [plaintiff] must allege some injury to his contractual interest as a result of the breach of the implied obligation.” *Kuroda v. SPJS Holdings LLC*, 971 A. 2d 872, 888–89 (Del. Ch. 2009). The appropriate legal test “is this: is it clear from what was expressly agreed upon that the parties who negotiated the express terms of the contract would have agreed to proscribe the act later complained of as a breach of the implied covenant of good faith — had they thought to negotiate with respect to that matter.” *Katz v. Oak Industries, Inc.*, 508 A. 2d 873, 880 (Del. Ch. 1986). If yes, a court may conclude such act constitutes a breach of the implied covenant of good faith. *Id.*

Defendants argue the Charters are not silent on the issues raised by Plaintiffs. Rather, they outline specific Core Rights and Special Voting Rights that require a member vote before they may be altered. Defendants contend the absence of certain rights and words is meaningful. They urge the court not to rewrite the Charters to benefit Plaintiffs.

Defendants make much of the fact Class B Plaintiffs did not specifically negotiate rights relating to Globex and sought only to protect their trading floor access rights and privileges. However, this ignores how Globex was accessed on the trading floors solely by members and the lease market that existed prior to co-location. It ignores that close proximity and free Globex access was a privilege of membership, notwithstanding the advent of open access. It ignores Plaintiffs’ allegations that relocation of Globex to the ADC was not predicted and co-location fees were not contemplated at the time of demutualization. Had this been known or

contemplated, Plaintiffs allege they would have negotiated rights expressly in the Core and Special Voting Rights to preserve the value of their shares.

The court finds merit to Plaintiffs' contention in light of the unanticipated dynamic changes to Globex, relocation of Globex to the ADC, new co-location fees, and expansion of access rights to non-members trading on an individual membership. The Charters were designed to protect critical, fundamental rights of membership, including floor access rights and privileges and other enumerated trading rights. Accepting as true all well-pled allegations, Plaintiffs have sufficiently alleged injury to their contractual rights as a result of a breach of an implied obligation.

The court is cognizant the implied duty of good faith and fair dealing is a limited, extraordinary remedy intended to enforce the parties' contractual bargain by preventing one party from engaging in conduct that frustrates the other party's right to the benefit of a contract. Although the doctrine is rarely utilized, it would be premature to dismiss Count II as to Plaintiffs' preferential fee claims and preferential access to Globex at the ADC. Defendants' Motion to Dismiss Count II is denied in this regard, but granted to the extent Plaintiffs seek exclusive access to Globex and revenue sharing in Count II. These claims are barred unequivocally for the reasons set forth in section 1 of this Order.

CONCLUSION

Defendants' Motion to Dismiss is granted in part as follows: Plaintiffs' claims relating to revenue sharing, exclusive access to Globex, and disgorgement are dismissed with prejudice. Allegations based on Core Right 4 and Special Voting Right 3 are stricken. Plaintiffs' request for

injunctive relief is stricken without prejudice. The Motion to Dismiss is denied in all other respects.

Plaintiffs are granted to April 16, 2018 to re-plead and file a Third Amended Complaint. This case is set for status on April 30, 2018, at 9:00 a.m. The court anticipates setting discovery deadlines on that date as to the meaning of Core and Special Voting Rights and preferential fees. The parties should discuss an appropriate discovery schedule in advance of the status hearing.

In the meantime, as discussed in open court, the parties are encouraged to try a dispute resolution process as an alternative to the adversarial court process. Reaching a resolution is completely voluntary, but a mediator is in a position to help clarify and streamline the issues and hopefully find a mutually beneficial solution for everyone involved in a timely, less expensive way.

IT IS ORDERED:

1. Defendants' Motion to Dismiss is granted in part and denied in part.
2. Plaintiffs shall re-plead and file a Third Amended Complaint by April 16, 2018.
3. This case is set for status on April 30, 2018, at 9:00 a.m.

Judge Celia Gamrath

MAR 16 2018

Circuit Court - 2031

ENTERED: _____

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

EXHIBIT 2

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

Sheldon Langer, et al.	)	
	)	
	)	Case No. 2014 CH 00829
v.	)	
	)	Judge Patrick J. Sherlock
CME Group, Inc. et al.	)	
	)	
Defendants	)	
	)	

ORDER

Defendants CME Group, Inc. and Board of Trade of the City of Chicago, Inc. have moved (a) for summary judgment, (b) to exclude the expert testimony of Dr. Jonathon Arnold and (c) to decertify the class. In the almost 300 pages of briefing that comprise these motions, the Court: (a) finds a multitude of disputed facts that require it to deny defendants' motion for summary judgment, in part, and grant it, in part, (b) denies defendants' motion to exclude Dr. Arnold's testimony and (c) denies defendants' motion to decertify the class. The Court's analysis follows¹:

A. The Court's Standard for Summary Judgment.

Summary judgment should be granted only where the depositions, pleadings, admissions, and affidavits on file, when viewed in the light most favorable to the nonmovant, demonstrate that there is no genuine issue of material fact and that the movant is clearly entitled to judgment as a matter of law. *Progressive Ins. Co. v. Universal Cas.*

¹ The Court adopts the terminology utilized in the parties' briefs.

Co., 347 Ill. App. 3d 10, 17 (1st Dist. 2004), citing 735 ILCS 5/2-1005(c). This is a high bar.

The purpose of a summary judgment proceeding is not to try issues of fact but is to determine whether any triable issues exist. *Staton v. Amax Coal Co.*, 122 Ill. App.3d 631, (3d Dist. 1984). The party moving for summary judgment bears the initial burden and may succeed either by 1) affirmatively showing that some element of the case must be resolved in its favor or 2) by establishing " 'that there is an absence of evidence to support the nonmoving party's case.' " *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986) (emphasis added by the Court.)) *See also Purtil v. Hess*, 111 Ill. 2d 229, 240 (1986) ("While use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit, it is a drastic means of disposing of litigation and therefore should be allowed only when the right of the moving party is clear and free from doubt") (internal citations omitted).

The non-moving party must proffer evidence that establishes a material issue of fact if they are to defeat summary judgment. *Land v. Board of Education*, 202 Ill. 2d 414, 433 (2002). While a non-moving party need not prove his or her claim at the summary judgment stage, it is the "put up or shut up" moment in a suit, and the non-moving party must present some factual basis to support his or her claim. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 14; *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 708 (2002). To "put up," the party opposing summary judgment ordinarily must produce actual evidentiary facts that would enable a jury to return a favorable verdict—and "mere speculation, conjecture, or guess" is insufficient. *Barrett v. FA Group, LLC*, 2017 IL

App (1st) 170168, ¶ 26 (quoting *Sorce v. Naperville Jeep Eagle Inc.*, 309 Ill. App. 3d 313, 328 (1999)). In considering a defendant's motion for summary judgment, the Court is required to draw all reasonable inferences in plaintiff's favor.

Among the problems with defendants' motion for summary judgment, defendants argue that if "trading floor access rights and privileges is ambiguous," the extrinsic evidence regarding the long-standing course of dealing between the parties confirms that plaintiffs have no claim.² Defendants ignore well established Illinois law that "[w] here an ambiguity in a contract appears, interpretation becomes a question of fact. *Associated Physicians Ins. Co. v. Obasi*, 262 Ill. App. 3d 343, 349 (1st Dist. 1993). When the language of a contract is ambiguous, its meaning must be ascertained through the consideration of extrinsic evidence and summary judgment is, therefore, inappropriate. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263 (1992) ("In cases involving contracts, there is a disputed fact precluding summary judgment when the material writing contains an ambiguity which requires admission of extrinsic evidence"); *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 334 (1st Dist. 2005) ("When, however, the language of a contract is ambiguous, its meaning must be ascertained through a consideration of extrinsic evidence and summary judgment is, therefore, inappropriate."). Delaware law is no different. *See B&C Holdings, Inc. v. Temperature Holdings, LLC*, 2020 Del. Super. LEXIS 183, *23 ("If the contract is ambiguous, resolving that ambiguity becomes an issue for trial, so that the fact finder may consider extrinsic evidence to construe the contract and determine the parties' intent.").

² The Court will explain below the factual disputes that arise from the contract ambiguities.

Defendants also argue that the evidence verifies the only objectively reasonable interpretation of the term “trading floor” supports their motion for summary judgment. But, “[r]easonableness is a fact question, after all.” *Downing v. Somers*, 2023 IL App (4th) 220900, P40; *Jordan v. E. I. DuPont de Nemours & Co.*, 1991 Del. Super. LEXIS 35, *3 (“Under Delaware law, the interpretation of a contract is a question of law only if the terms of the agreement are plain and unambiguous. A question of interpretation, however, is to be determined as a question of fact if it depends on a choice among reasonable inferences to be drawn from extrinsic evidence.” (internal citations omitted)).

This Court is not prepared to decide disputed issues of fact, make reasonableness determinations or decide between reasonable interpretations of contract terms. To do so would result in reversible error and a remand from the appellate court for a trial in a year’s time (or more) rather than conducting the trial now. Defendants certainly have a defensible case – but plaintiffs’ have submitted sufficient evidence supporting their theory of the case.

B. The Parties

Defendant CME Group, Inc. (“CMEG”), a Delaware corporation headquartered in Chicago, Illinois, owns and operates a number of derivative exchanges. Trading occurs predominantly on CMEG’s electronic trading platforms around the globe, nearly 24 hours a day throughout the trading week. The Chicago Mercantile Exchange Inc. (“CME”) is a subsidiary of CMEG and is a derivatives exchange headquartered in Chicago. Defendant Board of Trade of the City of Chicago, Inc. (“CBOT”) is also a subsidiary of CMEG and a derivatives exchange headquartered in Chicago.

Plaintiffs Sheldon Langer, Ronald Yermack, Robert Prosi, and Craig Rheingruber are holders of Class B Common Stock in CMEG and class representatives of a certified class of select Class B Members of the CMEG (the “CMEG Plaintiffs”). As owners of CMEG Class B shares, the CMEG Plaintiffs receive certain rights and privileges under the CMEG Certificate of Incorporation (the “CMEG Charter”) and are required to be recognized on the books and records of the CME as the owner of a divisional membership in CME. As holders of CME Memberships, Plaintiffs Langer, Yermack, Prosi, and Rheingruber enjoy membership privileges on CME and are subject to member obligations as contained in the CME Rulebook.

Plaintiffs Lance Goldberg³, Gerald Petrow, Stanton Miller, Ray Larsen, Daniel Ryan, and Carol Jorissen are holders of Class B Memberships in CBOT and serve as class representatives of a certified class of select owners of CBOT Class B Memberships (the “CBOT Plaintiffs”). As owners of CBOT Class B Memberships, the CBOT Plaintiffs enjoy certain rights and privileges related to CBOT and are subject to certain obligations, which are defined, in writing, in the CBOT Amended and Restated Certificate of Incorporation (the “CBOT Charter”), the CBOT Bylaws, and the CBOT Rules.

C. The Claims Asserted

1. Count I. Breach of Contract.

In Count I, the Class claims that defendants breached their contracts in a variety of ways. Primarily, the Class contends that the defendants breached their Core Rights and guaranteed “trading floor access rights and privileges.” Specifically, CME Class contends

³ Lance Goldberg was removed as a class representative on January 14, 2025.

that the Aurora Data Center (“ADC”) is a trading floor within the meaning of Core Right 2– hence, only members are eligible to exercise trading rights and privileges at the ADC. The CME Class contends that the defendants breached their Core Rights by (a) allowing non-members to trade CME products from the ADC trading floor, (b) requiring Class B members to pay co-location fees to trade from the ADC, and (c) collected co-location fees from market participants without sharing them pursuant to the revenue sharing plan with members.

The CME Class also contends that defendants breached their contractual rights allowing non-members to trade at member rates, providing discounts and special rates to large customers that are better than rates available to members, and charging co-location fees to CME Class members thereby eliminating the benefits of the CME fee schedule.

The CBOT Class contends defendants breached their Core Rights by not putting certain matters to a vote of the Series B-1 and/or Series B-2 members. Namely, non-members right to trade CBOT from the ADC trading floor; charging co-location fees thereby eliminating fee benefits protected by Special Voting Right 2; allowing non-members to trade at member rates; providing discounts to certain customers; and failing to give members a fee preference or revenue share.

a. Genuine Issues of Disputed Fact

The Court finds genuine issue of disputed fact concerning practically every point defendants make in their brief in support of summary judgment: whether the CME charter restricts members trading rights to the open outcry trading floors, whether the ADC is a trading floor within the meaning of the class members Core Rights, whether defendants

breached the CME charter and/or the CBOT charter by granting non-members access to the ADC without member approval, and whether plaintiffs' claims are barred by the statute of limitations/laches.

By way of example, defendants argue that the only plausible interpretation of CBOT's "trading rights and privileges" is that it relates to the open outcry trading floors. Defendants' position is certainly plausible. However, the Court cannot say defendants' position is undisputed and cannot determine on summary judgment the plausibility of their interpretation (especially in the face of another option that some may find more plausible). The CBOT Certificate grants "trading rights and privileges. . . on the open outcry exchange system of the Corporation or any electronic trading system." With respect to the CME, defendants argue that the Class' core right of "trading rights and privileges" remained only as long as "an open outcry market is liquid." The Class counters that during demutualization the CME Core Rights were described to include "open outcry and electronic trading rights."

The Court will not go through the various other positions taken by defendants and plaintiffs in their 200 pages of summary judgment briefing because the factual disputes are so numerous that summary judgment is plainly not appropriate. For illustrative purposes, the Court finds the following disputed facts preclude summary judgment:

- a. "trading rights and privileges" – defendants contend that the only reasonable interpretation is that this important contractual term applies only to an open outcry trading floor. Plaintiffs cite to testimony from defendants that "there's no indication that language that that right or privilege is limited to open outcry

floors” or “on open outcry trading on a floor.” (C. Donohue). In seeking preferential tax treatment, defendants stated that Class B stock preserves “trading rights and privileges relating to both our open outcry and electronic trading systems.” Numerous other facts presented by defendants and by plaintiffs support this dispute.

- b. “trading floor” – defendants take the position that “trading floor” is limited to the open outcry trading floor that was a specifically bargained-for right of Class B shareholders. Plaintiffs counter with testimony and evidence that former CBOT chair Jack Sandner promised the Class that floor trading rights would continue after open outcry ended – “the trading floor is the world of cyberspace.” The CME explained that a Class B share entitled the owner to “floor access” and “electronic trading rights.” CMEG wrote that the ADC is “an electronic trading floor.” The dispute over what is a trading floor is amply demonstrated in the briefs.
- c. Laches – defendants contend that they were prejudiced by the Class’ delay in brings because plaintiffs “sat on their hands” until the completion of construction and opening of a several hundred-million-dollar state-of-the-art trading facility. The Class counters that questions of fact preclude summary judgment on the issue of prejudice (a necessary element of a laches defense) because they did not know of the development plans for the ADC and the opening has resulted in enormous sums of money to the defendant corporation.

These raise questions of fact on the defense of laches⁴.

b. Damages as a Result of the Breach.

i. Improperly Assessed Fees.

The Class concedes that they “have not put forth an independent assessment relating to fees⁵, above and beyond claimed damages for the violation of their exclusive floor trading rights.” This section does not address the purported foregone Co-Location Fees that are the subject of Dr. Arnold’s analysis and opinions – the Court addresses those fees separately below. The Class argues that they should be allowed to proceed notwithstanding this failing so they can pursue nominal damages.

In *Palmer v. Moffat*, 2004 Del. Super. LEXIS 51, *13-14, the Court held:

If the case proceeded to trial, Plaintiff could receive at most a nominal award because profits were decimated as of January 2000... This Court questions the wisdom of going through a lengthy and costly trial when it is known from the outset that the plaintiff will perhaps recover one dollar and part of his pride. Even where nominal damages are possible, a trial is not always warranted:

The allowance of nominal damages is generally based on the ground either that every injury from its very nature legally imports damage, or that the injury complained of would in the future be evidence in favor of the wrongdoer, specially where, if continued for a sufficient length of time, the invasion of the plaintiff's rights would ripen into a prescriptive right in favor of the defendant. The maxim "de minimis non curat lex" [the law cares not about trifles] will not preclude the award of nominal damages in

⁴ If “prejudice cannot be established . . . whether laches should have barred plaintiffs cause of action was a question of fact, which was improper for determination on summary judgment. *Bill v. Bd. of Educ.*, 351 Ill. App. 3d 47, 64 (1st Dist. 2004). “It is ‘a question of fact dependent largely upon the particular circumstances,’ where ‘[c]hange of position on the part of those affected by nonaction, and the intervention of rights are factors of supreme importance.’ A defendant pursuing a defense of laches must also show that she was ‘prejudiced by the plaintiffs’ failure to assert their claims in a timely manner.’” *Thomas & Agnes Carvel Found. v. Carvel*, 2008 Del. Ch. LEXIS 142, *21-23.

⁵ These fees include multiple trader fees, fees from volume discounts, fees from incentive programs and the Globex fee cap.

such cases. However, if there is no danger of prescription, no proof of substantial loss or injury, or willful wrongdoing by the defendant, it has been said that there is no purpose for allowing damages, and judgment should be rendered for the defendant.

This trial will be complex enough that the Court sees no benefit requiring issues to be presented to the jury which, if the jury found in favor of the plaintiff, would result in an award of only nominal damages.

ii. The Class' Claim for Expectation Damages

Defendants seek summary judgment on the Class' expectation damages based upon their argument that Dr. Jonathon Arnold's opinions should be barred. Dr. Arnold has calculated "foregone trading fees" using the comparable uncontrolled transaction ("CUT") analysis. Defendants recognize that the CUT analysis is an accepted means by which to evaluate whether the amount charged for a controlled transfer was arm's length by comparing it to an uncontrolled transaction. *See Medtronic, Inc. v. Consol. Subsid. V. Comm'r of Internal Revenue*, 900 F.3d 610 (8th Cir. 2018). So, Arnold's methodology satisfies the Frye standard. *See Donaldson v. Central Illinois Public Service Co.*, 199 Ill. 2d 63, 76-77 (2002) (the admission of expert testimony is governed by the standards expressed in Frye, which dictates that scientific evidence is only admissible at trial if the methodology or scientific principle upon which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs).

According to defendants, plaintiffs are left without sufficient evidence of class wide damages after the Court strikes Arnold calculations and opinions. The Court denies summary judgment on this basis, denies defendants' motion to strike Arnold's affidavit and denies defendants' motion to decertify the class.

In their motion to strike the Arnold affidavit, defendants argue that his calculations are not supported by generally accepted or reliable methodologies. Defendants argue that utilizing the NYMEX transaction as a comparable is faulty because of the significant differences between the two transactions. Additionally, defendants argue that Dr. Arnold failed to consider other similar and more comparable transactions entered into by the CBOT and the CME. Defendants' arguments can fairly be characterized as disagreements with Arnold's methods, appropriate cross examination material and the subject to criticism by their own expert witness.

The Court finds nothing new or novel about Dr. Arnold's opinions. Indeed, Arnold's comparable transaction methodology is the type of opinions experts have relied upon in other cases. "A person will be allowed to testify as an expert if his experience and qualifications afford him knowledge that is not common to laypersons, and where his testimony will aid the trier of fact in reaching its conclusions." *Thompson v. Gordon*, 221 Ill. 2d 414, 428, 851 N.E.2d 1231, 303 Ill. Dec. 806 (2006). An expert's qualifications by knowledge, skill, experience, training, or education in a field require " 'at least a modicum of reliability.'" *Turner v. Williams*, 326 Ill. App. 3d 541, 552, 762 N.E.2d 70, 260 Ill. Dec. 804 (2001). Furthermore, the basis for a witness's opinion generally does not affect his standing as an expert; such matters go only to the weight of the evidence, not its sufficiency. *See National Bank of Monticello v. Doss*, 141 Ill. App. 3d 1065, 1072, 491 N.E.2d 106, 96 Ill. Dec. 292 (1986). The weight to be assigned to an expert opinion is for the trier of fact to determine in light of the expert's credentials and the factual basis of his opinion. *Treadwell v. Downey*, 209 Ill. App. 3d 999, 1003, 568 N.E.2d 998, 154 Ill. Dec.

777 (1991). The burden is placed upon the adverse party during cross-examination to elicit the facts underlying the expert opinion. *Wilson v. Clark*, 84 Ill. 2d 186, 194, 417 N.E.2d 1322, 49 Ill. Dec. 308 (1981). Delaware procedural law differs (i.e. it applies the Daubert standard while Illinois applies the Frye standard), but the law is otherwise no different than Illinois. See *In re Zantac (Ranitidine) Litig.*, 2024 Del. Super. LEXIS 440, *40-41 (“Disputes as to the strength of [an expert’s] credentials, faults in his use of [a particular] methodology, or lack of textual authority for his opinion, go to the weight, not the admissibility of his testimony. . . . Any challenge to his application of those methodologies goes to the jury.”)

Whether Dr. Arnold’s analysis is worthy of consideration or so full of holes that a fact finder will not be swayed is a jury consideration. The Court cannot say that the Class has no evidence of class-wide damages. Moreover, the Court declines to bar Dr. Arnold from testifying in the trial of this cause and denies defendants’ motion for decertification.

2. Count II. Breach of Good Faith and Fair Dealing

The Classes’ claim for defendants’ breach of the obligation of good faith and fair dealing is premised upon their argument had the parties considered the Class’ rights regarding co-location facilities (i.e. the ADC), the parties would have agreed that the Class would have access to Globex from the ADC without a fee and would further have agreed that the trading rights and privileges could not be changed without a vote of the class members.

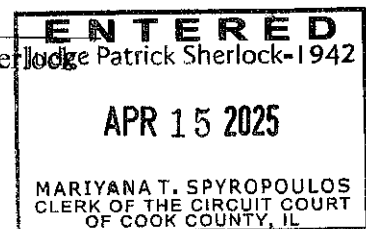
The Court grants summary judgment on the Class’ claim for having to pay fees for utilizing the ADC (indeed, it appears that no class representatives ever, in fact, paid any

such fees). The Class concedes that they “have not put forth an independent assessment relating to fees.” As to their second claim for damages that the Class would have bargained for exclusive floor trading right – defendants’ argument fares no better here. Disputed factual issues on damages prevent the grant of summary judgment.

For the foregoing reasons, defendants’ motion for summary judgment is granted, in part, and denied, part. Additionally, the Court denies defendants’ motion to exclude Dr. Arnold’s testimony. Finally, the Court denies defendants’ motion to decertify the class. The case will proceed to trial on the previously set trial date of July 7, 2025. Further, the Court will conduct a Final Pre-Trial Conference on June 18, 2025 at 1:30 p.m. Consistent with the Court’s standing order, no later than 45 days prior to the trial date, the parties are directed to meet and exchange the trial materials. Additionally, no later than 21 days before trial, each party is responsible for delivering to chambers Trial Materials (as defined in the Court’s standing order).

ENTERED:

Honorable Patrick J. Sherlock



April 15, 2025

EXHIBIT 3

**APPEAL TO THE ILLINOIS APPELLATE COURT
FIRST JUDICIAL DISTRICT**

**FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

SHELDON LANGER, RONALD M.	)	No. 2014 CH 00829
YERMACK, ROBERT PROSI, GERALD	)	
PETROW, CRAIG RHEINGRUBER,	)	(Transferred to Law)
STANTON MILLER, RAY LARSEN, DANIEL	)	
RYAN, CAROL JORISSEN, individually on	)	Calendar Q
behalf of themselves and all others similarly	)	
situated,	)	
	)	Honorable Stephen A. Swedlow,
Plaintiffs,	)	Presiding
	)	
v.	)	
	)	
CME GROUP, INC., a Delaware Corporation;	)	
THE BOARD OF TRADE OF THE CITY OF	)	JURY TRIAL DEMANDED
CHICAGO, INC., a Delaware Corporation,	)	
	)	
Defendants.	)	

PLAINTIFFS' AMENDED NOTICE OF APPEAL

Please take notice that Plaintiffs-Appellants, Sheldon Langer, Ronald M. Yermack, Robert Prosi, Gerald Petrow, Craig Rheingruber, Stanton Miller, Ray Larsen, Daniel Ryan, Carol Jorissen, individually on behalf of themselves and all others similarly situated, by and through their attorneys, pursuant to Supreme Court Rules 301 and 303, hereby appeal to the Illinois Appellate Court, First Judicial District, from the final judgment entered on June 15, 2026, by the Honorable Stephen A. Swedlow, Judge of the Circuit Court of Cook County, Illinois, and encompassing all orders preceding and incorporated into that final judgment.

By this appeal, Plaintiffs-Appellants respectfully request that the Illinois Appellate Court, First Judicial District, (a) reverse or vacate the order of the Circuit Court dated June 15, 2026; (b) reverse the July 25, 2025, jury verdict; (c) reverse or vacate in part the order of the Circuit Court

dated July 8, 2025; (d) reverse or vacate in part the order of the Circuit Court dated April 15, 2025; (e) reverse or vacate in part the order of the Circuit Court dated March 16, 2018; and (f) grant such other relief as the court deems appropriate. Copies of the documents referenced in items (a)–(e) are attached.

Dated: August 12, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Illinois Supreme Court Rules 11 and 131, the undersigned, an attorney, certifies that he served the foregoing instrument by transmitting it via e-mail on August 12, 2026 from Chicago, Illinois to the following designated e-mail addresses of record for Defendants' counsel, who have consented to e-mail service:

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Suyash Agrawal

EXHIBIT A

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

SHELDON LANGER et al.,

Plaintiffs,

v.

**CME GROUP INC. and BOARD OF
TRADE OF THE CITY OF CHICAGO, INC.,**

Defendants.

Case No.: 2014 CH 00829

Calendar Q

Hon. Stephen A. Swedlow

ORDER

This matter comes before the Court for judgment on Plaintiffs', Sheldon Langer ("Langer"), Ronald M. Yermack, Robert Prosi, Gerald Petrow, Craig Rheingruber, Stanton Miller, Ray Larsen, Daniel Ryan, Carol Jorissen, individually on behalf of themselves and all others similarly situated (collectively "Plaintiffs"), Corrected Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial.

Factual Background

From July 7, 2025, to July 25, 2026, the Honorable Judge Sherlock presided over the jury trial of Sheldon Langer *et al.* v. CME Group, Inc. Plaintiffs presented their case in chief over nine days, calling twenty-five witnesses. Defendants presented their case in chief over three days, calling nine witnesses. On July 25, 2026, after less than four hours of deliberation, the jury returned a verdict for Defendants, CME Group, Inc. ("CME"), and Board of Trade of the City of Chicago, Inc. ("CBOT").

On September 30, 2026, Plaintiffs filed their Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial. On October 30, 2026, Plaintiffs filed their Corrected

Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial (“Motion for JNOV”). Plaintiffs argue that the Court should enter judgment for Plaintiffs notwithstanding the verdict because the jury’s verdict was against the weight of the evidence since Delaware law required ambiguities to be resolved in Plaintiffs’ favor, the Aurora Data Center (“ADC”) is a “facility” under the CBOT Charter, and the ADC is a “trading floor” under the CME Charter.

Plaintiffs assert that their motion satisfies the standard for JNOV on liability, but even if the court disagrees, it should grant a new trial because: (1) the verdict was contrary to the manifest weight of the evidence, (2) the CFTC glossary was improperly admitted, (3) Defendants’ emails supporting Plaintiffs’ interpretation of the contract were excluded, and (4) Defendants used hypothetical A-share valuations which produced substantial and likely outcome-determinative prejudice.

On December 12, 2025, Defendants filed their Opposition to Plaintiffs’ Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial. Defendants allege that the jury correctly found that neither Charter provides members an exclusive right to access the ADC, and that neither Exchange violated the covenant of good faith and fair dealing, after considering the overwhelming evidence elicited at trial. Defendants assert that nothing in Plaintiffs’ motion warrants a new trial or justifies overturning the sound judgment of the jury.

On January 26, 2026, Plaintiffs filed their Reply, arguing that under Delaware law, the Court’s instructions, and the undisputed trial record, the only legally sustainable outcome on liability is judgment for Plaintiffs. Plaintiffs assert that their motion satisfies the standard for JNOV on liability, but argue that even if the court disagrees, it should grant a new trial based on evidentiary errors and the jury’s incorrect verdict. On March 11, 2026, the Court held oral argument on the matter. At oral argument, the Court granted the parties’ request to file

supplemental briefing regarding Defendants' claim that Plaintiffs waived any challenge to the relevance and prejudicial effect of Defendants' evidence concerning the hypothetical, present-day value of A shares received by some CME and CBOT members.

On March 27, 2026, Plaintiffs filed their Supplemental Brief in Support of their Motion for JNOV, contending that: (1) Plaintiffs timely submitted and thus did not waive their post-trial challenge to the sufficiency of the evidence to support a defense verdict, both under the overwhelming evidence standard for JNOV and the manifest weight standard for a new trial, and (2) Plaintiffs did not waive their right to seek a new trial based on Defendants' use of the hypothetical value of A shares to prejudice the jury using class members' supposed wealth, because Plaintiffs filed and argued a motion in limine, noted they were preserving their objection before opening, and objected during a witness testimony.

On March 27, 2026, Defendants filed their Supplemental Brief Regarding Waiver in Opposition to Plaintiffs' Post-Trial Motion, alleging that Plaintiffs failed to preserve their objection to evidence about the hypothetical present value of A Shares during trial, and since the Court's pre-trial ruling on that objection is "unreviewable," this Court should not address it now. *Guski v. Raja*, 409 Ill. App. 3d 686, 695 (2011).

On April 10, 2026, Plaintiffs filed their Supplemental Reply Brief in Support of their Motion for JNOV, arguing that: (1) the Court should grant JNOV and has broad discretion to grant a new trial, (2) the "A Share" evidence and arguments merit a new trial for plain error, (3) Plaintiffs preserved their objections, and (4) Plaintiffs did not invite Defendants' prejudicial evidence and argument. On April 10, 2026, Defendants filed their Supplemental Reply Brief Regarding Waiver in Opposition to Plaintiffs' Waiver Brief and Post-Trial Motion. Defendants assert that Plaintiffs never objected to the evidence of the hypothetical present-day value of A

Shares at trial and waived the right to do so now. Defendants allege that Plaintiffs seek to mischaracterize the record and invoke inapposite authority. On April 16, 2026, the Court held oral argument on the matter.

Legal Analysis

Motion for Judgment Notwithstanding the Verdict

A motion for judgment notwithstanding the verdict presents a question of law. *Townsend v. Univ. of Chicago Hosps.*, 318 Ill. App. 3d 406, 409 (2000). The motion should be granted when “all the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand.” *Id.* (quoting *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)). It is “unquestionably” the jury’s job to “resolve conflicts in the evidence, to pass upon the credibility of the witnesses, and to decide what weight should be given to the witnesses.” *Maple v. Gustafson*, 151 Ill. 2d 445, 452 (1992). This is a “very difficult standard to meet, limiting the power of the circuit court to reverse a jury verdict to extreme situations only.” *Jones v. Chi Osteopathic Hosp.*, 316 Ill. App. 3d 1121, 1125 (1st Dist. 2000).

Plaintiffs allege that applying the law given in the Court’s instructions to the contract language and other evidence presented at trial, no reasonable juror could have returned a defense verdict. Plaintiffs contend that as required by Delaware law and the doctrine of *contra proferentem*, where there is evidence that a contract was drafted by one party, rather than the product of negotiation between all parties, ambiguities in the language must be resolved against the drafter. Del. P.J.I. Civ. § 19.15 (rev) 2006. Plaintiffs assert that applying *contra proferentem*, the jury should have determined that the ADC is a “facility” under the CBOT Charter, and the ADC is a “trading floor” under the CME Charter, compelling a ruling in Plaintiffs’ favor.

Defendants, in response, argue that: (1) the evidence uniformly supported a defense verdict, (2) Plaintiffs' arguments that the terms in the Charters should be interpreted to their benefit failed, and (3) the doctrine of contra proferentem neither requires the jury to disregard extrinsic evidence nor allows the Court to overrule the jury's findings.

At trial, the Court instructed the jury that "[t]here are certain rules to consider in interpreting contractual terms that appear ambiguous or unclear," including that "if the party that drafted the language of the contract can be determined, the language must be construed most strongly against that party." JI No. 13. Plaintiffs argue that the evidence at trial compels the conclusion that Defendants drafted the CME and CBOT Charters, and therefore the jury must have construed the contract language in the Plaintiffs' favor. However, it is the jury's job to "resolve conflicts in the evidence, to pass upon the credibility of the witnesses, and to decide what weight should be given to the witnesses." *Maple*, 151 Ill. 2d at 452. A motion for judgment notwithstanding the verdict is not merely a vehicle for a party to request another chance to overrule an unfavorable decision. The Court finds that Plaintiffs fail to meet their burden in proving that "all the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand." *Townsend*, 318 Ill. App. 3d at 409.

Motion for a New Trial

A court may order a new trial in two circumstances. First, a court may set aside the verdict and order a new trial if the verdict is contrary to the manifest weight of the evidence. *Pedrick*, 37 Ill. 2d at 509-10. A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evidence or where the findings of the jury are unreasonable, arbitrary and not based upon any of the evidence. *Maple v. Gustafson*, 151 Ill. 2d 445, 454

(1992). It is not enough that the evidence is conflicting or merely that the jury could have found differently. *Villa v. Crown Cork & Seal Co.*, 202 Ill. App. 3d 1082, 1089 (1st Dist. 1990).

Plaintiffs argue that applying the Court's instructions of the law to the evidence presented at trial, a reasonable juror would have had to conclude that the ADC, the CME facility where the vast majority of CME and CBOT trades are executed, is a "facility" under the CBOT Charter and a "trading floor" under the CME Charter. Plaintiffs assert that the overwhelming, uncontroverted evidence establishing that Defendants drafted the Charters, a reasonable juror would have had to construe the Charters against Defendants, supporting a verdict in Plaintiff's favor. In response, Defendants contend that the jury properly concluded based on the ample evidence presented that the Charters did not grant members exclusive access to anything Plaintiffs labeled a "trading floor" or "facility."

The Court finds that Plaintiffs have failed to meet their high burden of proving the verdict was against the manifest weight of the evidence. It is not enough that the evidence is conflicting or merely that the jury could have found differently. *Villa*, 202 Ill. App. 3d at 1089. The Court determines that Plaintiffs fail to prove that the findings of the jury are unreasonable, arbitrary, and not based upon any of the evidence. *Maple*, 151 Ill. 2d at 454.

Second, a new trial is appropriate where "any error occurred which operated to the prejudice of a party or unduly affected the outcome of the trial." *Nelson v. Union Wire Rope Corp.*, 31 Ill. 2d 69, 118 (1964). A trial judge is given the discretion in determining whether evidence is admissible. *Taluzek v. Ill. Cent. Gulf R. Co.*, 255 Ill. App. 3d 72, 83 (1st Dist. 1993). That determination will not be overturned upon review unless an abuse of discretion is clearly evident. *Id.* A party is not entitled to reversal based on evidentiary rulings unless the error was substantially prejudicial and affected the outcome of the case. *Id.* Illinois courts generally find

reversible prejudice only where a case is so “close on its facts” that the “jury might have decided either way.” *First Nat’l Bank of La Grange v. Glen Oaks Hosp. & Med. Ctr.*, 357 Ill. App 3d 828, 844 (2d Dist. 2005).

Plaintiffs assert that multiple erroneous evidentiary rulings seriously and unfairly prejudiced Plaintiffs and independently warrant them a new trial. Plaintiffs contend that the Court erroneously permitted Defendants to rely on irrelevant third-party statements to argue the ADC is not a trading floor, and prohibited Plaintiffs from using third-party statements to show that Plaintiffs’ proffered interpretation of the Charters was consistent with industry usage and Defendants’ own understanding of the contract language. Plaintiffs argue that the Court incorrectly permitted Defendants to introduce evidence regarding the hypothetical, present-day value of the publicly traded Class A shares that some members of the Class received at demutualization, but denied Plaintiffs the opportunity to present evidence concerning their actual financial circumstances to mitigate the impact of Defendants evidence.

Defendants allege that Judge Sherlock acted within his judicial discretion when correctly ruling on the few evidentiary matters Plaintiffs raise in their motion for a new trial. Defendants argue that the Court did not abuse its discretion, and even if it did, the prejudice was not substantial enough to warrant the extreme remedy of a new trial. Defendants allege that the case was not “so close on its facts” that the “jury might have decided either way.” *First Nat’l Bank of La Grange*, 357 Ill. App. 3d at 844.

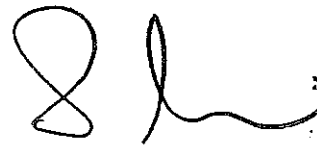
The Court determines that Judge Sherlock acted within his judicial discretion when ruling on the evidentiary matters raised by Plaintiff. *Taluzek*, 255 Ill. App. 3d at 83. Upon this Court’s review of the record, it finds that no abuse of discretion is clearly evident. *Id.* Any erroneous evidentiary rulings Plaintiffs believe the Court made would not entitle Plaintiffs to a new trial, as

even when construing them in Plaintiffs' favor, the Court determines they were not substantially prejudicial and would not have affected the outcome of the case. *Id.* The Court does not need to decide the issue of waiver because absent the waiver and construing all disputed evidentiary rulings in Plaintiffs' favor, the outcome of the case would still not have been affected.

Holding

The Court, being fully advised in the premises, hereby **DENIES** Plaintiffs' Corrected Post-Trial Motion for Judgment Notwithstanding the Verdict or New Trial. This Order is final and appealable.

DATED: June 15, 2026



Hon. Stephen A. Swedlow

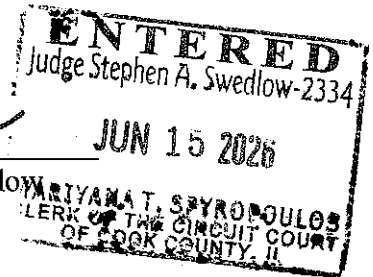


EXHIBIT B

VERDICT FORM – CME

Claim 1: Breach of Contract - CME

1. Did Plaintiffs prove that CME Group breached the CME Charter by failing to perform its obligations under that contract?

YES: ____ NO: ☒

If your answer to Question 1 is YES, go to Question 2. If your answer to Question 1 is NO, disregard the remaining questions on this page, go to the next page, and sign Verdict B for Claim 1 - CME.

2. Did Plaintiffs prove that they sustained damages as a result of this breach?

YES: ____ NO: ____

If your answer to Question 2 is YES, go to Question 3. If your answer to Question 2 is NO, disregard the remaining question on this page, go to the next page, and sign Verdict B for Claim 1 - CME.

3. What amount of damages, if any, do you award the CME Plaintiff Class on this claim?

\$ _____ Damages

\$ _____ Prejudgment Interest

If you answered Question 3, proceed to the next page, sign Verdict A for Claim 1 - CME, and re-enter the same damages and interest calculations reflected above.

Claim 1 – Breach of Contract - CME

On this claim, we, the jury, find for the CME Plaintiff Class and against CME Group.

VERDICT A

\$ _____ Damages

\$ _____ Prejudgment Interest

On this claim, we, the jury, find for CME Group and against the CME Plaintiff Class.

VERDICT B

Stew / Dick
Wayla Cend
W. J. ...
Joe ...
Timothy ...
George ...

ER ...
DKW
Nancy ...
Ed ...
Michael ...
Edward ...

DO NOT ANSWER any of the following questions regarding Claim 2 – CME, if you signed Verdict A on Claim 1 - CME. If you signed Verdict A on Claim 1 – CME, skip all questions regarding Claim 2 – CME, do not enter either verdict option on Claim 2 – CME, and instead proceed immediately to consider Claim 1 – CBOT.

Claim 2: Breach of the Implied Covenant of Good Faith and Fair Dealing - CME

1. Did Plaintiffs prove that CME Group breached the implied covenant of good faith and fair dealing inherent in the CME Charter?

YES: ____ NO: ☒

If your answer to Question 1 is YES, go to Question 2. If your answer to Question 1 is NO, disregard the remaining questions on this page, go to the next page, and sign Verdict B for Claim 2 - CME.

2. Did Plaintiffs prove that they sustained damages as a result of this breach?

YES: ____ NO: ____

If your answer to Question 2 is YES, go to Question 3. If your answer to Question 2 is NO, disregard the remaining question on this page, go to the next page, and sign Verdict B for Claim 2 - CME.

3. What amount of damages, if any, do you award the CME Plaintiff Class on this claim?

\$ _____ Damages

\$ _____ Prejudgment Interest

If you answered Question 3, proceed to the next page, sign Verdict A for Claim 2 - CME, and re-enter the same damages and interest calculations reflected above.

Claim 2 – Breach of Implied Covenant of Good Faith and Fair Dealing - CME

On this claim, we, the jury, find for the CME Plaintiff Class and against CME Group.

VERDICT A

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\$ _____ Damages

\$ _____ Prejudgment Interest

On this claim, we, the jury, find for CME Group and against the CME Plaintiff Class.

VERDICT B

Steve Pincus
Ed Kase
Miguel Hank
ELJ
Maryellen Schultz
Ed B

W. W.
George Zaya
Fifty Two Team
Pamela
W. F. S.
W. F. S.

YOU MUST begin answering the following separate questions regarding the CBOT claims, regardless of how you answered the prior questions regarding the CME claims.

VERDICT FORM – CBOT

Claim 1: Breach of Contract - CBOT

1. Did Plaintiffs prove that Defendants, CME Group and CBOT, breached the CBOT Charter by failing to perform their obligations under that contract?

YES: ___ NO: X

If your answer to Question 1 is YES, go to Question 2. If your answer to Question 1 is NO, disregard the remaining questions on this page, go to the next page, and sign Verdict B for Claim 1 - CBOT.

2. Did Plaintiffs prove that they sustained damages as a result of this breach?

YES: ___ NO: ___

If your answer to Question 2 is YES, go to Question 3. If your answer to Question 2 is NO, disregard the remaining question on this page, go to the next page, and sign Verdict B for Claim 1 - CBOT.

3. What amount of damages, if any, do you award the CBOT Plaintiff Class on this claim?

\$ _____ Damages

\$ _____ Prejudgment Interest

If you answered Question 3, proceed to the next page, sign Verdict A for Claim 1 - CBOT, and re-enter the same damages and interest calculations reflected above.

Claim 1 – Breach of Contract - CBOT

On this claim, we, the jury, find for the CBOT Plaintiff Class and against Defendants, CME Group and CBOT.

VERDICT A

\$ _____ Damages

\$ _____ Prejudgment Interest

On this claim, we, the jury, find for Defendants and against the CBOT Plaintiff Class.

VERDICT B

Steve Klein
Edward Reed
Margaret Hamilton
Ed
George Zaya
Toby M. Reed

W. J. Reed
Ed
W. J. Reed
Margaret Hamilton
Ed
W. J. Reed

DO NOT ANSWER any of the following questions regarding Claim 2 – CBOT, if you signed Verdict A on Claim 1 - CBOT. If you signed Verdict A on Claim 1 – CBOT, skip all questions regarding Claim 2 – CBOT, do not enter either verdict option on Claim 2 – CBOT, and instead conclude your deliberations.

Claim 2: Breach of the Implied Covenant of Good Faith and Fair Dealing - CBOT

1. Did Plaintiffs prove that Defendants, CME Group and CBOT, breached the implied covenant of good faith and fair dealing inherent in the CBOT Charter?

YES: ___ NO: ☒

If your answer to Question 1 is YES, go to Question 2. If your answer to Question 1 is NO, disregard the remaining questions on this page, go to the next page, and sign Verdict B for Claim 2 - CBOT.

2. Did Plaintiffs prove that they sustained damages as a result of this breach?

YES: ___ NO: ___

If your answer to Question 2 is YES, go to Question 3. If your answer to Question 2 is NO, disregard the remaining question on this page, go to the next page, and sign Verdict B for Claim 2 - CBOT.

3. What amount of damages, if any, do you award the CBOT Plaintiff Class on this claim?

\$ _____ Damages

\$ _____ Prejudgment Interest

If you answered Question 3, proceed to the next page, sign Verdict A for Claim 2 - CBOT, and re-enter the same damages and interest calculations reflected above.

Claim 2 – Breach of Implied Covenant of Good Faith and Fair Dealing - CBOT

On this claim, we, the jury, find for the CBOT Plaintiff Class and against Defendants, CME Group and CBOT.

VERDICT A

\$ _____ Damages

\$ _____ Prejudgment Interest

On this claim, we, the jury, find for Defendants and against the CBOT Plaintiff Class.

VERDICT B

Stefano
Edmund
Michael
Robert
W. L.
George

George
George Zaya
Yusef
John
Michael
W. L.

EXHIBIT C

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

SHELDON LANGER, RONALD M.)
YERMACK, ROBERT PROSI, GERALD)
PETROW, CRAIG RHEINGRUBER,)
STANTON MILLER, RAY LARSEN, DANIEL)
RYAN, CAROL JORISSEN, individually on)
behalf of themselves and all others similarly)
situated,)

Plaintiffs,)

v.)

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

Defendants.)

No. 2014 CH 00829

(Transferred to Law)

Calendar Q

Honorable Patrick J. Sherlock,
Circuit Judge Presiding



PROPOSED ORDERS

This matter came before the Court on motions to limit expert testimony and motions in limine filed by Defendants CME Group Inc. ("CMEG") and The Board of Trade of the City of Chicago, Inc. ("CBOT") (together, "Defendants"), motions in limine filed by Plaintiffs Sheldon Langer, et al., on behalf of themselves and all others similar situated ("Plaintiffs"), and on stipulations by the Plaintiffs and Defendants (together, "Parties").

PARTIES GENERAL STIPULATION AND AGREEMENT

Pursuant to the Parties' stipulation and agreement the Court ORDERS as follows:

1. No party will reference before the jury any pretrial motions in limine, including the fact that a party filed motions in limine or that the Court granted or denied any requested relief. Provided, however, that a party may reference a motion in limine for the limited purpose of objecting to a perceived violation of the Court's in limine rulings.
2. No party will reference a document unless the document has been or is reasonably expected to be presented into evidence (by either party) as an exhibit or as a demonstrative. This agreement does not prohibit commentary on the fact that an opposing party failed to offer

a potentially-relevant document. Nor does it prohibit an expert witness from testifying to the bases for his or her opinions, even if those bases are themselves either not admitted or inadmissible.

3. No party will reference an expert's other affiliations with a party or its counsel on matters not related to this instant litigation. This agreement does not preclude references to work as an expert witness generally or work for the Plaintiffs' or defense bars generally.
4. No party will reference the role or presence in the courtroom of jury consultants or shadow jurors, if any, or the use, if any, of jury consultants or jury study or focus groups to assist with trial preparation, jury selection, or trial.
5. No party will ask questions during voir dire seeking to commit prospective jurors to a particular range or amount of damages. This agreement does not prevent the Parties from asking prospective jurors if they can award an amount of damages that is "fair" or whether there are circumstances in which no damages are "fair."
6. No party will offer or present evidence or argument concerning settlement offers made by any party or concerning any conduct or statements made by any party or a representative of any party during negotiations, communications, or discussions related to settlement.
7. No party will make any reference to contingent fees, fees incurred, or fee agreements for legal services. This agreement does not preclude evidence related to experts, including their hourly rates, bills, or total compensation. It also does not preclude evidence related to the potential recovery for Plaintiff witnesses, and their statements about that recovery, even if such evidence is contained within documents or statements that mention lawyer pay.
8. No party will reference the size of any law firm representing any party, the geographic location of the law firm's offices or any of its lawyers, other matters handled by or

involving the law firm and any of its lawyers, other clients or types of clients represented by the law firm or lawyers, any disciplinary action or investigation into the law firm or lawyers, or the wealth of any attorney or law firm. If a juror indicates familiarity with any law firm representing any party during voir dire, the Parties will confer with the Court as to any additional examination of the relevant juror that may be necessary outside of the presence of other jurors/prospective jurors.

9. Defendants will not offer argument or evidence that a judgment in this case will adversely affect the local economy or members of the jury, will lead to layoffs, will harm or threaten the financial viability of Defendants, or will harm Defendants' employees or customers.

PRETRIAL CONFERENCE ORDERS

Having reviewed the briefs filed by the Parties and having heard oral arguments on the motions, the Court ORDERS as follows:

Defendants' Motion to Limit the Testimony of Jerry Markham

5229

Defendants' motion to limit the testimony of Plaintiffs' expert Jerry W. Markham is DENIED. Defendants may make objections at trial.¹ (6/20/25 Tr. 173:16-174:10.)

Defendants' Motion for Clarification of the Court's Ruling on Defendants' Motion to Exclude the Testimony of Dr. Jonathan Arnold

Defendants' motion for clarification, which seeks to exclude Dr. Jonathan Arnold's opinions related to foregone access fees, is DENIED. (6/20/25 Tr. 192:15-193:1.)

DEFENDANTS' MOTION *IN LIMINE* #1.

4229
4360

Motion To Bar Argument Related to Contra Proferentem

Defendants' motion in limine number one is GRANTED IN PART AND RESERVED IN PART. The motion is granted until evidence is introduced that the Defendants played some role

¹ As a general matter, all rulings denying motions to exclude or limit evidence are without prejudice to objections raised at trial.

in drafting the agreements that are at issue in this case. If there is no such argument, then it can be addressed when considering jury instructions. (6/18/25 Tr. 63:1-7.)

DEFENDANTS' MOTION *IN LIMINE* #2.

Motion To Exclude Testimony Regarding Individual Members' Subjective Interpretation of Charter Rights

The parties are unable to reach agreement on the Court's ruling as to Defendants' motion in limine number two. Defendants will file a response to Plaintiffs' recently-filed "Memorandum In Support of Admission Of Extrinsic Evidence Regarding Meaning of 'Trading Floor' and 'Trading Facilities.'" 4/25

DEFENDANTS' MOTION *IN LIMINE* #3.

Motion To Exclude the "A to Z" Memorandum

Defendants' motion in limine number three is DENIED. Defendants may object at trial depending on the context in which Plaintiffs seek to use the memorandum. (6/18/25 Tr. 84:22-24.) 5/22/9

DEFENDANTS' MOTION *IN LIMINE* #4.

Motion To Bar the Book *For Crying Out Loud* By Leo Melamed

Defendants' motion in limine number four is GRANTED IN PART. Motion is granted subject to request by Plaintiffs for introduction of specific passages at specific times, subject to the Court's ruling at that time. (6/18/25 Tr. 87:15-19.) 4/22/9 5/22/9

DEFENDANTS' MOTION *IN LIMINE* #5.

Motion To Bar Testimony Related to a "Code of Silence"

Defendants' motion in limine number five is GRANTED. Plaintiffs may not introduce the phrase "code of silence." (6/18/25 Tr. 89:11-18.) 4/22/9

DEFENDANTS' MOTION *IN LIMINE* #6.

Motion To Exclude Jack Sandner's Speech From 1998

Defendants' motion in limine number six is DENIED. Defendants may raise objections at trial. (6/18/25 Tr. 97:6-7.) 5229

DEFENDANTS' MOTION *IN LIMINE* #7.

Motion To Exclude References To Third-Party Descriptions of Their Co-Location Services 4229

Defendants' motion in limine number seven is GRANTED. The portions of documents identified in Defendants' motion and Exhibits 15, 16, and 17 thereto are excluded "for purposes of either establishing the truth of the matter asserted, which is clearly the reason that they're trying to be introduced, but also because they constitute hearsay within hearsay." (6/18/25 Tr. 109:9-16.)

DEFENDANTS' MOTION *IN LIMINE* #8.

Motion To Bar Testimony Related To IRS 5229

Defendants' motion in limine number eight is DENIED. (6/18/25 Tr. 117:14.)

DEFENDANTS' MOTION *IN LIMINE* #9.

Motion To Bar Evidence Related To the Number of Class Members and Potential Per-Member Damages Recovery 4229/5229

Defendants' motion in limine number nine is GRANTED IN PART AND DENIED IN PART. Motion is denied as it relates to the number of class members. Motion is granted to the extent that Plaintiffs may not argue per-class member damage computations, except any per-member math Dr. Arnold has previously disclosed. (6/18/25 Tr. 120:24-121:8.)

DEFENDANTS' MOTION *IN LIMINE* #10.

Motion To Bar Testimony Related To CME'S Acquisition of NYMEX 4340

Defendants' motion in limine number ten is RESERVED. The Court takes the issue under advisement. (6/18/25 Tr. 125:9-10.)

DEFENDANTS' MOTION *IN LIMINE* #11.

Motion To Exclude Evidence and Argument Related To Fee Claims

Defendants' motion in limine number eleven is agreed to by the Parties and GRANTED.

(6/18/25 Tr. 125:13-16.)

4229-

DEFENDANTS' MOTION *IN LIMINE* #12.

**Motion To Bar Testimony Related To Any Alleged Breach of Fiduciary Duty or Duty
Related To the Value of Class B Shares**

Defendants' motion in limine number twelve is GRANTED IN PART AND DENIED IN PART. The Court denies the motion to the extent that it seeks to bar the introduction of evidence related to the existence of a fiduciary duty between one party or another but grants the motion with respect to argument about whether or not certain conduct constitutes a breach of fiduciary duty "because breaches of fiduciary duty are not at issue in the case, but the existence of a fiduciary duty can certainly provide color to the claim for violation of covenant of good faith and fair dealing." (6/18/25 Tr. 132:13-133:2.)

4229/5229

DEFENDANTS' MOTION *IN LIMINE* #13.

Motion To Exclude Any Reference To CMEG's Market Capitalization

Defendants' motion in limine number thirteen is GRANTED IN PART AND DENIED IN PART. The motion is granted "with the caveat that to the extent that either of the plaintiffs' experts has included market cap in their analysis that's already been disclosed," such evidence or argument is allowed. (6/18/25 Tr. 135:20-136:3.)

4229
5229

DEFENDANTS' MOTION *IN LIMINE* #14.

**Motion To Exclude Internal CME Documents Using the Phrase "Trading Floor" in
Connection With the ADC**

Defendants' motion in limine fourteen is DENIED. (6/18/25 Tr. 138:22-24.)

5229

DEFENDANTS' MOTION *IN LIMINE* #15.

**Motion To Exclude Questioning Regarding Alleged Instructions Not To Use the Term
"Trading Floor" After Commencement of Litigation**

Defendants' motion in limine number fifteen is DENIED. (6/18/25 Tr. 140:10.) *5029 -*

DEFENDANTS' MOTION *IN LIMINE* #16.

Motion To Exclude Comments By Jerrold Salzman *5029 -*

Defendants' motion in limine number sixteen is DENIED. Defendants may object at trial.
(6/18/25 Tr. 148:16-17.)

DEFENDANTS' MOTION *IN LIMINE* #17.

Motion To Exclude References To Length of Litigation *4029 -*

Defendants' motion in limine number seventeen is GRANTED. The Court will allow references to specific dates but bars discussion of the length of time the case has been pending.
(6/18/25 Tr. 148:24-149:23.)

DEFENDANTS' MOTION *IN LIMINE* #18. *4029 -*

**Motion To Exclude Argument or Testimony Regarding Identity of Non-Present Class
Members**

Defendants' motion in limine number eighteen is agreed to by the Parties and GRANTED IN PART. The motion is granted to the extent that it seeks to exclude the fact that there were four opt outs from the Class. (6/18/25 Tr. 151:9-18.)

DEFENDANTS' MOTION *IN LIMINE* #19. *4029 -*

**Motion To Exclude Argument Suggesting Defendants Are Responsible For Any Absence of
Data or Information in the Record**

Defendants' motion in limine number nineteen is GRANTED. The motion is granted as to any argument that documents were destroyed or otherwise disposed of so as to prevent a fulsome discovery of the facts in the case. The Court will not prevent Plaintiff from asking about the existence of documents. (6/18/25 Tr. 154:2-16.)

PLAINTIFFS' MOTION *IN LIMINE* #1 5009 -

Motion To Exclude Evidence or Argument Regarding Unasserted Claims Against LNet/Jackson and Open Access

Plaintiffs' motion in limine number one is DENIED. Plaintiffs may raise objections at trial. (6/20/25 Tr. 210:8-17.)

PLAINTIFFS' MOTION *IN LIMINE* #2 4009/5009 -

Motion To Exclude Evidence Related To Plaintiffs' Receipt or Sale of A Shares

Plaintiffs' motion in limine number two is GRANTED IN PART AND DENIED IN PART. The motion is denied with respect to specific Plaintiff's receipt of A shares at demutualization. The motion is denied with respect to specific Plaintiffs' sales of A shares and denied with respect to the current hypothetical value of owning shares. The motion is granted regarding discussing the value of any particular Plaintiff's shares on a particular day. The Parties agree to not discuss the use of any proceeds received from the sale of A Shares. (6/20/25 Tr. 231:10-15; 231:23-232:14.)

PLAINTIFFS' MOTION *IN LIMINE* #3

Motion To Exclude Laches Defense from Jury Trial 4009

Plaintiffs' motion in limine number three is agreed to by the Parties and GRANTED. (6/20/25 Tr. 234:3.)

PLAINTIFFS' MOTION *IN LIMINE* #4 5009 -

Motion To Exclude Dismissed or Abandoned Claims/Theories

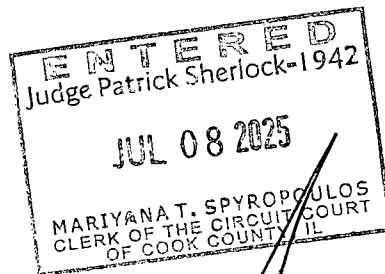
Plaintiffs' motion in limine number four is partially agreed by the Parties and partially DENIED. The Parties agree Defendants will not raise argument or evidence with respect to the fact that the Plaintiffs pled a claim for breach based on Open Access and that that was dismissed. The Court denies the remaining issues in the motion and permits Plaintiffs to make objections at trial. (6/20/25 Tr. 234:17-20; 236:11-14.)

PLAINTIFFS MOTION *IN LIMINE* #5

Motion To Exclude CFTC Glossary

5029

Plaintiffs' motion in limine number five is DENIED. (6/20/25 Tr. 242:20.)



ENTERED: _____

Judge Patrick J. Sherlock

EXHIBIT D

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

Sheldon Langer, et al.	)	
	)	
	)	Case No. 2014 CH 00829
v.	)	
	)	Judge Patrick J. Sherlock
CME Group, Inc. et al.	)	
	)	
Defendants	)	
	)	

ORDER

Defendants CME Group, Inc. and Board of Trade of the City of Chicago, Inc. have moved (a) for summary judgment, (b) to exclude the expert testimony of Dr. Jonathon Arnold and (c) to decertify the class. In the almost 300 pages of briefing that comprise these motions, the Court: (a) finds a multitude of disputed facts that require it to deny defendants' motion for summary judgment, in part, and grant it, in part, (b) denies defendants' motion to exclude Dr. Arnold's testimony and (c) denies defendants' motion to decertify the class. The Court's analysis follows¹:

A. The Court's Standard for Summary Judgment.

Summary judgment should be granted only where the depositions, pleadings, admissions, and affidavits on file, when viewed in the light most favorable to the nonmovant, demonstrate that there is no genuine issue of material fact and that the movant is clearly entitled to judgment as a matter of law. *Progressive Ins. Co. v. Universal Cas.*

¹ The Court adopts the terminology utilized in the parties' briefs.

Co., 347 Ill. App. 3d 10, 17 (1st Dist. 2004), citing 735 ILCS 5/2-1005(c). This is a high bar.

The purpose of a summary judgment proceeding is not to try issues of fact but is to determine whether any triable issues exist. *Staton v. Amax Coal Co.*, 122 Ill. App.3d 631, (3d Dist. 1984). The party moving for summary judgment bears the initial burden and may succeed either by 1) affirmatively showing that some element of the case must be resolved in its favor or 2) by establishing " 'that there is an absence of evidence to support the nonmoving party's case.' " *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986) (emphasis added by the Court.)) *See also Purtil v. Hess*, 111 Ill. 2d 229, 240 (1986) ("While use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit, it is a drastic means of disposing of litigation and therefore should be allowed only when the right of the moving party is clear and free from doubt") (internal citations omitted).

The non-moving party must proffer evidence that establishes a material issue of fact if they are to defeat summary judgment. *Land v. Board of Education*, 202 Ill. 2d 414, 433 (2002). While a non-moving party need not prove his or her claim at the summary judgment stage, it is the "put up or shut up" moment in a suit, and the non-moving party must present some factual basis to support his or her claim. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 14; *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 708 (2002). To "put up," the party opposing summary judgment ordinarily must produce actual evidentiary facts that would enable a jury to return a favorable verdict—and "mere speculation, conjecture, or guess" is insufficient. *Barrett v. FA Group, LLC*, 2017 IL

App (1st) 170168, ¶ 26 (quoting *Sorce v. Naperville Jeep Eagle Inc.*, 309 Ill. App. 3d 313, 328 (1999)). In considering a defendant's motion for summary judgment, the Court is required to draw all reasonable inferences in plaintiff's favor.

Among the problems with defendants' motion for summary judgment, defendants argue that if "trading floor access rights and privileges is ambiguous," the extrinsic evidence regarding the long-standing course of dealing between the parties confirms that plaintiffs have no claim.² Defendants ignore well established Illinois law that "[w] here an ambiguity in a contract appears, interpretation becomes a question of fact. *Associated Physicians Ins. Co. v. Obasi*, 262 Ill. App. 3d 343, 349 (1st Dist. 1993). When the language of a contract is ambiguous, its meaning must be ascertained through the consideration of extrinsic evidence and summary judgment is, therefore, inappropriate. *Loyola Academy v. S & S Roof Maintenance. Inc.*, 146 Ill. 2d 263 (1992) ("In cases involving contracts, there is a disputed fact precluding summary judgment when the material writing contains an ambiguity which requires admission of extrinsic evidence"); *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 334 (1st Dist. 2005) ("When, however, the language of a contract is ambiguous, its meaning must be ascertained through a consideration of extrinsic evidence and summary judgment is, therefore, inappropriate."). Delaware law is no different. *See B&C Holdings, Inc. v. Temperature Holdings, LLC*, 2020 Del. Super. LEXIS 183, *23 ("If the contract is ambiguous, resolving that ambiguity becomes an issue for trial, so that the fact finder may consider extrinsic evidence to construe the contract and determine the parties' intent.").

² The Court will explain below the factual disputes that arise from the contract ambiguities.

Defendants also argue that the evidence verifies the only objectively reasonable interpretation of the term “trading floor” supports their motion for summary judgment. But, “[r]easonableness is a fact question, after all.” *Downing v. Somers*, 2023 IL App (4th) 220900, P40; *Jordan v. E. I. DuPont de Nemours & Co.*, 1991 Del. Super. LEXIS 35, *3 (“Under Delaware law, the interpretation of a contract is a question of law only if the terms of the agreement are plain and unambiguous. A question of interpretation, however, is to be determined as a question of fact if it depends on a choice among reasonable inferences to be drawn from extrinsic evidence.” (internal citations omitted)).

This Court is not prepared to decide disputed issues of fact, make reasonableness determinations or decide between reasonable interpretations of contract terms. To do so would result in reversible error and a remand from the appellate court for a trial in a year’s time (or more) rather than conducting the trial now. Defendants certainly have a defensible case – but plaintiffs’ have submitted sufficient evidence supporting their theory of the case.

B. The Parties

Defendant CME Group, Inc. (“CMEG”), a Delaware corporation headquartered in Chicago, Illinois, owns and operates a number of derivative exchanges. Trading occurs predominantly on CMEG’s electronic trading platforms around the globe, nearly 24 hours a day throughout the trading week. The Chicago Mercantile Exchange Inc. (“CME”) is a subsidiary of CMEG and is a derivatives exchange headquartered in Chicago. Defendant Board of Trade of the City of Chicago, Inc. (“CBOT”) is also a subsidiary of CMEG and a derivatives exchange headquartered in Chicago.

Plaintiffs Sheldon Langer, Ronald Yermack, Robert Prosi, and Craig Rheingruber are holders of Class B Common Stock in CMEG and class representatives of a certified class of select Class B Members of the CMEG (the “CMEG Plaintiffs”). As owners of CMEG Class B shares, the CMEG Plaintiffs receive certain rights and privileges under the CMEG Certificate of Incorporation (the “CMEG Charter”) and are required to be recognized on the books and records of the CME as the owner of a divisional membership in CME. As holders of CME Memberships, Plaintiffs Langer, Yermack, Prosi, and Rheingruber enjoy membership privileges on CME and are subject to member obligations as contained in the CME Rulebook.

Plaintiffs Lance Goldberg³, Gerald Petrow, Stanton Miller, Ray Larsen, Daniel Ryan, and Carol Jorissen are holders of Class B Memberships in CBOT and serve as class representatives of a certified class of select owners of CBOT Class B Memberships (the “CBOT Plaintiffs”). As owners of CBOT Class B Memberships, the CBOT Plaintiffs enjoy certain rights and privileges related to CBOT and are subject to certain obligations, which are defined, in writing, in the CBOT Amended and Restated Certificate of Incorporation (the “CBOT Charter”), the CBOT Bylaws, and the CBOT Rules.

C. The Claims Asserted

1. Count I. Breach of Contract.

In Count I, the Class claims that defendants breached their contracts in a variety of ways. Primarily, the Class contends that the defendants breached their Core Rights and guaranteed “trading floor access rights and privileges.” Specifically, CME Class contends

³ Lance Goldberg was removed as a class representative on January 14, 2025.

that the Aurora Data Center (“ADC”) is a trading floor within the meaning of Core Right 2– hence, only members are eligible to exercise trading rights and privileges at the ADC. The CME Class contends that the defendants breached their Core Rights by (a) allowing non-members to trade CME products from the ADC trading floor, (b) requiring Class B members to pay co-location fees to trade from the ADC, and (c) collected co-location fees from market participants without sharing them pursuant to the revenue sharing plan with members.

The CME Class also contends that defendants breached their contractual rights allowing non-members to trade at member rates, providing discounts and special rates to large customers that are better than rates available to members, and charging co-location fees to CME Class members thereby eliminating the benefits of the CME fee schedule.

The CBOT Class contends defendants breached their Core Rights by not putting certain matters to a vote of the Series B-1 and/or Series B-2 members. Namely, non-members right to trade CBOT from the ADC trading floor; charging co-location fees thereby eliminating fee benefits protected by Special Voting Right 2; allowing non-members to trade at member rates; providing discounts to certain customers; and failing to give members a fee preference or revenue share.

a. Genuine Issues of Disputed Fact

The Court finds genuine issue of disputed fact concerning practically every point defendants make in their brief in support of summary judgment: whether the CME charter restricts members trading rights to the open outcry trading floors, whether the ADC is a trading floor within the meaning of the class members Core Rights, whether defendants

breached the CME charter and/or the CBOT charter by granting non-members access to the ADC without member approval, and whether plaintiffs' claims are barred by the statute of limitations/laches.

By way of example, defendants argue that the only plausible interpretation of CBOT's "trading rights and privileges" is that it relates to the open outcry trading floors. Defendants' position is certainly plausible. However, the Court cannot say defendants' position is undisputed and cannot determine on summary judgment the plausibility of their interpretation (especially in the face of another option that some may find more plausible). The CBOT Certificate grants "trading rights and privileges. . . on the open outcry exchange system of the Corporation or any electronic trading system." With respect to the CME, defendants argue that the Class' core right of "trading rights and privileges" remained only as long as "an open outcry market is liquid." The Class counters that during demutualization the CME Core Rights were described to include "open outcry and electronic trading rights."

The Court will not go through the various other positions taken by defendants and plaintiffs in their 200 pages of summary judgment briefing because the factual disputes are so numerous that summary judgment is plainly not appropriate. For illustrative purposes, the Court finds the following disputed facts preclude summary judgment:

- a. "trading rights and privileges" – defendants contend that the only reasonable interpretation is that this important contractual term applies only to an open outcry trading floor. Plaintiffs cite to testimony from defendants that "there's no indication that language that that right or privilege is limited to open outcry

floors” or “on open outcry trading on a floor.” (C. Donohue). In seeking preferential tax treatment, defendants stated that Class B stock preserves “trading rights and privileges relating to both our open outcry and electronic trading systems.” Numerous other facts presented by defendants and by plaintiffs support this dispute.

- b. “trading floor” – defendants take the position that “trading floor” is limited to the open outcry trading floor that was a specifically bargained-for right of Class B shareholders. Plaintiffs counter with testimony and evidence that former CBOT chair Jack Sandner promised the Class that floor trading rights would continue after open outcry ended – “the trading floor is the world of cyberspace.” The CME explained that a Class B share entitled the owner to “floor access” and “electronic trading rights.” CMEG wrote that the ADC is “an electronic trading floor.” The dispute over what is a trading floor is amply demonstrated in the briefs.
- c. Laches – defendants contend that they were prejudiced by the Class’ delay in brings because plaintiffs “sat on their hands” until the completion of construction and opening of a several hundred-million-dollar state-of-the-art trading facility. The Class counters that questions of fact preclude summary judgment on the issue of prejudice (a necessary element of a laches defense) because they did not know of the development plans for the ADC and the opening has resulted in enormous sums of money to the defendant corporation.

These raise questions of fact on the defense of laches⁴.

b. Damages as a Result of the Breach.

i. Improperly Assessed Fees.

The Class concedes that they “have not put forth an independent assessment relating to fees⁵, above and beyond claimed damages for the violation of their exclusive floor trading rights.” This section does not address the purported foregone Co-Location Fees that are the subject of Dr. Arnold’s analysis and opinions – the Court addresses those fees separately below. The Class argues that they should be allowed to proceed notwithstanding this failing so they can pursue nominal damages.

In *Palmer v. Moffat*, 2004 Del. Super. LEXIS 51, *13-14, the Court held:

If the case proceeded to trial, Plaintiff could receive at most a nominal award because profits were decimated as of January 2000... This Court questions the wisdom of going through a lengthy and costly trial when it is known from the outset that the plaintiff will perhaps recover one dollar and part of his pride. Even where nominal damages are possible, a trial is not always warranted:

The allowance of nominal damages is generally based on the ground either that every injury from its very nature legally imports damage, or that the injury complained of would in the future be evidence in favor of the wrongdoer, specially where, if continued for a sufficient length of time, the invasion of the plaintiff's rights would ripen into a prescriptive right in favor of the defendant. The maxim "de minimis non curat lex" [the law cares not about trifles] will not preclude the award of nominal damages in

⁴ If “prejudice cannot be established . . . whether laches should have barred plaintiffs cause of action was a question of fact, which was improper for determination on summary judgment. *Bill v. Bd. of Educ.*, 351 Ill. App. 3d 47, 64 (1st Dist. 2004). “It is ‘a question of fact dependent largely upon the particular circumstances,’ where ‘[c]hange of position on the part of those affected by nonaction, and the intervention of rights are factors of supreme importance.’ A defendant pursuing a defense of laches must also show that she was ‘prejudiced by the plaintiffs’ failure to assert their claims in a timely manner.’” *Thomas & Agnes Carvel Found. v. Carvel*, 2008 Del. Ch. LEXIS 142, *21-23.

⁵ These fees include multiple trader fees, fees from volume discounts, fees from incentive programs and the Globex fee cap.

such cases. However, if there is no danger of prescription, no proof of substantial loss or injury, or willful wrongdoing by the defendant, it has been said that there is no purpose for allowing damages, and judgment should be rendered for the defendant.

This trial will be complex enough that the Court sees no benefit requiring issues to be presented to the jury which, if the jury found in favor of the plaintiff, would result in an award of only nominal damages.

ii. The Class' Claim for Expectation Damages

Defendants seek summary judgment on the Class' expectation damages based upon their argument that Dr. Jonathon Arnold's opinions should be barred. Dr. Arnold has calculated "foregone trading fees" using the comparable uncontrolled transaction ("CUT") analysis. Defendants recognize that the CUT analysis is an accepted means by which to evaluate whether the amount charged for a controlled transfer was arm's length by comparing it to an uncontrolled transaction. *See Medtronic, Inc. v. Consol. Subsid. V. Comm'r of Internal Revenue*, 900 F.3d 610 (8th Cir. 2018). So, Arnold's methodology satisfies the Frye standard. *See Donaldson v. Central Illinois Public Service Co.*, 199 Ill. 2d 63, 76-77 (2002) (the admission of expert testimony is governed by the standards expressed in Frye, which dictates that scientific evidence is only admissible at trial if the methodology or scientific principle upon which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs).

According to defendants, plaintiffs are left without sufficient evidence of class wide damages after the Court strikes Arnold calculations and opinions. The Court denies summary judgment on this basis, denies defendants' motion to strike Arnold's affidavit and denies defendants' motion to decertify the class.

In their motion to strike the Arnold affidavit, defendants argue that his calculations are not supported by generally accepted or reliable methodologies. Defendants argue that utilizing the NYMEX transaction as a comparable is faulty because of the significant differences between the two transactions. Additionally, defendants argue that Dr. Arnold failed to consider other similar and more comparable transactions entered into by the CBOT and the CME. Defendants' arguments can fairly be characterized as disagreements with Arnold's methods, appropriate cross examination material and the subject to criticism by their own expert witness.

The Court finds nothing new or novel about Dr. Arnold's opinions. Indeed, Arnold's comparable transaction methodology is the type of opinions experts have relied upon in other cases. "A person will be allowed to testify as an expert if his experience and qualifications afford him knowledge that is not common to laypersons, and where his testimony will aid the trier of fact in reaching its conclusions." *Thompson v. Gordon*, 221 Ill. 2d 414, 428, 851 N.E.2d 1231, 303 Ill. Dec. 806 (2006). An expert's qualifications by knowledge, skill, experience, training, or education in a field require " 'at least a modicum of reliability.'" *Turner v. Williams*, 326 Ill. App. 3d 541, 552, 762 N.E.2d 70, 260 Ill. Dec. 804 (2001). Furthermore, the basis for a witness's opinion generally does not affect his standing as an expert; such matters go only to the weight of the evidence, not its sufficiency. *See National Bank of Monticello v. Doss*, 141 Ill. App. 3d 1065, 1072, 491 N.E.2d 106, 96 Ill. Dec. 292 (1986). The weight to be assigned to an expert opinion is for the trier of fact to determine in light of the expert's credentials and the factual basis of his opinion. *Treadwell v. Downey*, 209 Ill. App. 3d 999, 1003, 568 N.E.2d 998, 154 Ill. Dec.

777 (1991). The burden is placed upon the adverse party during cross-examination to elicit the facts underlying the expert opinion. *Wilson v. Clark*, 84 Ill. 2d 186, 194, 417 N.E.2d 1322, 49 Ill. Dec. 308 (1981). Delaware procedural law differs (i.e. it applies the Daubert standard while Illinois applies the Frye standard), but the law is otherwise no different than Illinois. See *In re Zantac (Ranitidine) Litig.*, 2024 Del. Super. LEXIS 440, *40-41 (“Disputes as to the strength of [an expert’s] credentials, faults in his use of [a particular] methodology, or lack of textual authority for his opinion, go to the weight, not the admissibility of his testimony. . . . Any challenge to his application of those methodologies goes to the jury.”)

Whether Dr. Arnold’s analysis is worthy of consideration or so full of holes that a fact finder will not be swayed is a jury consideration. The Court cannot say that the Class has no evidence of class-wide damages. Moreover, the Court declines to bar Dr. Arnold from testifying in the trial of this cause and denies defendants’ motion for decertification.

2. Count II. Breach of Good Faith and Fair Dealing

The Classes’ claim for defendants’ breach of the obligation of good faith and fair dealing is premised upon their argument had the parties considered the Class’ rights regarding co-location facilities (i.e. the ADC), the parties would have agreed that the Class would have access to Globex from the ADC without a fee and would further have agreed that the trading rights and privileges could not be changed without a vote of the class members.

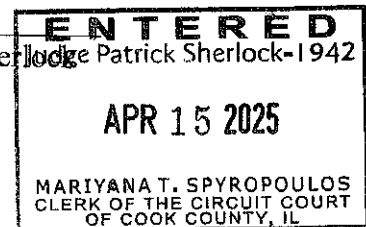
The Court grants summary judgment on the Class’ claim for having to pay fees for utilizing the ADC (indeed, it appears that no class representatives ever, in fact, paid any

such fees). The Class concedes that they “have not put forth an independent assessment relating to fees.” As to their second claim for damages that the Class would have bargained for exclusive floor trading right – defendants’ argument fares no better here. Disputed factual issues on damages prevent the grant of summary judgment.

For the foregoing reasons, defendants’ motion for summary judgment is granted, in part, and denied, part. Additionally, the Court defendants’ motion to exclude Dr. Arnold’s testimony. Finally, the Court denies defendants’ motion to decertify the class. The case will proceed to trial on the previously set trial date of July 7, 2025. Further, the Court will conduct a Final Pre-Trial Conference on June 18, 2025 at 1:30 p.m. Consistent with the Court’s standing order, no later than 45 days prior to the trial date, the parties are directed to meet and exchange the trial materials. Additionally, no later than 21 days before trial, each party is responsible for delivering to chambers Trial Materials (as defined in the Court’s standing order).

ENTERED:

Honorable Patrick J. Sherlock



April 15, 2025

EXHIBIT E

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

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

Plaintiffs,

v.

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

Defendants.

No. 14 CH 829

Judge Celia Gamrath

Calendar 6

ORDER GRANTING IN PART DEFENDANTS' MOTION TO DISMISS

This case comes on Defendants', CME Group, Inc. (CMEG) and The Board of Trade of the City of Chicago, Inc. (CBOT), Motion to Dismiss or Strike Certain Allegations in Plaintiffs' Second Amended Complaint pursuant to 735 ILCS 5/2-615, 5/2-619, and 5/2-619.1. The Motion to Dismiss is granted in part as follows: Plaintiffs' claims relating to revenue sharing, exclusive access to Globex, and disgorgement are dismissed with prejudice. Allegations based on Core Right 4 and Special Voting Right 3 are stricken. Plaintiffs' request for injunctive relief is stricken without prejudice. The Motion to Dismiss is denied in all other respects.

BACKGROUND

Plaintiffs Sheldon Langer, Ronald M. Yermack, and Lance R. Goldberg filed this putative class action against Defendants CMEG and CBOT on behalf of themselves and similarly situated Class B shareholders of CMEG common stock and Class B members of CBOT. Plaintiffs are entitled to certain rights and privileges on the Chicago Mercantile Exchange (CME) and CBOT, depending on their member interests. CME and CBOT are

derivative Exchanges headquartered in Chicago and owned by CMEG. Plaintiffs are comprised largely of old line traders who owned the two Exchanges before their respective demutualizations in 2000 and 2005 and merger in 2007.

At the merger in July 2007, CME and CBOT amended their individual Charters governing the rights and privileges of members. Plaintiffs' Complaint alleges CMEG and CBOT breached these Charters and contractual obligations to Plaintiffs, causing them damages. The Complaint contains two counts: Breach of contract and breach of implied covenant of good faith and fair dealing.

CME

From its founding in 1898 and throughout the 20th Century, CME was an Illinois mutual company owned and controlled by its member traders. In November 2000, CME demutualized and converted to a Delaware for-profit corporation. Demutualization resulted in the conversion of membership interests 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.

Prior to demutualization, CME members had referendum voting rights that allowed them to override Board action in adopting any new Exchange rules or amending or repealing existing rules. As part of demutualization, CME members gave up these referendum rights. In return, CME agreed Class B members would have the right to vote on any changes, amendments, or modifications to four Core Rights memorialized in the Amended and Restated Certificate of Incorporation of Chicago Mercantile Exchange (CME Charter) (eff. Nov. 13, 2000), which are now embodied in the CMEG Charter. At issue are Core Rights 2 and 4, under which CME agreed to protect:

2. The trading floor access rights and privileges granted to each series of Class B Common Stock, including the Commitment to Maintain Floor Trading;
4. The eligibility requirements for any Person to exercise any of the trading rights or privileges inherent in any series of Class B Common Stock.¹

Plaintiffs interpret these Core Rights broadly, while Defendants construe them narrowly. Although contract interpretation is generally a question of law, Core Right 2 cannot be summed up as neatly as Defendants hope. It requires additional evidence to ascertain the parties' intent and meaning of terms. Accordingly, and for the reasons below, the court denies Defendants' Motion to Dismiss because it is premature to conclude, as a matter of law, the Aurora Data Center (ADC) is not a trading floor within the context of Core Right 2 and there is no Core Right protecting Plaintiffs' access to Globex and preferential fees.

CBOT

In 2005, CBOT also demutualized and converted from a not-for-profit member-owned organization to a for-profit corporation. CBOT amended its Certificate of Incorporation (CBOT Charter) to provide Class B members with Trading Rights and Special Voting Rights over amendments to the Certificate of Incorporation, Bylaws, or Rules that, in the sole and absolute determination of the CBOT Board of Directors, adversely affects specified rights, including:

2. The requirement that . . . holders of Class B memberships who meet the applicable membership and eligibility requirements will be charged transaction fees for trades of the Corporation's products for their accounts that are lower than the transaction fees charged to any participant who is not a holder of Class B membership for the same products, whether trading utilizing the open outcry trading system or the electronic trading system; and
3. The membership qualifications or eligibility requirements for holding any Series of Class B membership or exercising any of the membership rights and privileges associated with such Series. *See* Sec. IV(D)(2)(b).

¹ This is the current version of Core Right 4 upon which Plaintiffs rely in their Complaint. They cite a prior version of Core Right 4 in their Opposition brief to the Motion to Dismiss (pp. 9-10, 26), arguing language not in existence.

The CBOT Charter also provides CBOT members will continue to enjoy their existing trading rights and privileges, including their rights and privileges with respect to electronic trading systems. *See* Sec. IV(D)(1)(f).

GLOBEX

An impetus for this case surrounds the relocation of Globex from CME's downtown trading floor to the Aurora Data Center (ADC) and charging of new co-location fees in 2012 to members who previously accessed Globex for free. Globex is CMEG's electronic trading system that provides real-time price data and access to global markets. The ADC is a massive data center in Aurora that houses the trade matching engines for Globex products. Close proximity to Globex gives traders a distinct advantage – an advantage Plaintiffs claim they have an exclusive right to access for free.

Over the past two decades, CME and CBOT have transitioned from an open outcry market to a predominantly electronic marketplace in which hand signals were traded in for computers. 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.

In September 1997, when CME launched the E-Mini, a futures product traded electronically and indexed to the S&P 500, CME placed Globex terminals on the trading floor with proximity and visibility to the S&P 500 pit. In March 1999, CME developed a hand-held device called Galax-C, which was designed to provide traders with real-time access to Globex data while on the trading floor.

Under the CME Rules that existed at the time, specifically Rule 582, the number of Globex Screen Rights (GSR) was limited to the number of CME memberships. Each GSR was

associated with an individual membership, such that CME members had the exclusive right to execute trades directly through Globex terminals located on the trading floor and share in any revenues generated from leasing Globex access to third parties. Members were not charged any additional fee or surcharge for this access and were able to access Globex from the trading floor and remotely. A member who owned a GSR, but did not trade electronically, had the ability to put his GSR into a pool to be leased out by CME. Rule 582 called for CME to distribute *pro rata* all GSR lease fees collected to each owner of a Class B share who did not make use of the GSR attributable to their membership.

While CME was completing demutualization in 2000, it decided to allow open access to Globex. Electronic trading on Globex then changed from a largely closed system to an open system in which CME allowed direct electronic access to the Globex order book and products traded on Globex for all market participants, including non-members. In 2001, CBOT similarly allowed open access to its own electronic trading platform, e-cbot. E-cbot was migrated onto Globex in January 2008.

As part of CME's implementation of open access in 2000, CME adopted and announced a number of Rule changes, including the elimination of Rule 582. CME approved and publicized the change to open access and elimination of Rule 582 between the time that the CME membership voted on demutualization and the time the Commodity Futures Trading Commission (CFTC) approved the demutualization transaction. Ever since open access began in 2000, both non-members and members have had the ability to directly access and trade on Globex. CME has collected Globex access and communication fees from both, but has not paid any access or communication fees to Plaintiffs.

In August 2010, CMEG moved the primary matching engine for Globex to the ADC. In January 2012, CMEG began to offer co-location at the ADC. Through co-location, CMEG directly leases space in the ADC to members and non-member customers so that they can directly access Globex with high-speed servers in close proximity to the Globex matching engines. This reduces the latency for trade and market information. CMEG charges a fee to anyone who co-locates at the ADC and has allowed multiple individuals to trade on one membership. Plaintiffs contend this reduces demand to lease their memberships and devalues Class B shares. Plaintiffs further contend they, as members, are entitled to exclusive access to the ADC – a new trading floor, so they claim – and to the best, most proximate, free access to Globex.

COMPLAINT

Plaintiffs allege CMEG and CBOT breached contractual obligations to Plaintiffs by modifying, without member vote, trading rights and privileges afforded to Class B members and eligibility requirements for exercising trading rights and privileges. Specifically, Plaintiffs complain Defendants have bypassed the lease market for Class B memberships by permitting non-members to receive the same access and proximity to Globex as members, which has significantly reduced the value of their shares and constitutes a breach of contract. They also allege Defendants breached Plaintiffs' Core and Special Rights by not giving members preferential treatment and lower fees vis-à-vis the ADC and the right to share in Globex access fee revenues. In the alternative, Plaintiffs contend Defendants breached the implied covenant of good faith and fair dealing by denying Plaintiffs preferential fees and free, best access to the ADC and Globex.

Plaintiffs contend Defendants violated Core Rights 2 and 4 of the CMEG Charter and Special Voting Rights 2 and 3 contained in the 2005 CBOT Charter. Plaintiffs also rely upon Special Trading Rights of the CBOT Charter, Section IV.D.1(f), which states: "In addition to the rights and privileges set forth above, except as otherwise provided in the Certificate of Incorporation, 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."

Defendants argue this section is not among the Special Voting Rights and therefore does not require a member vote in order to adversely change it. While this may be true, the Complaint overall adequately states a claim for breach of contract premised on a violation of protected trading rights and, alternatively, for breach of implied covenants.

DISCUSSION

LEGAL STANDARD

Defendants move to dismiss or strike certain allegations in the Complaint in a combined motion filed under 735 ILCS 5/2-619.1. A section 2-615 motion to dismiss challenges the legal sufficiency of a pleading based on defects apparent on its face. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364 (2004). In reviewing the sufficiency of a pleading, the court accepts as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004). The court construes the allegations in the pleading in the light most favorable to the plaintiff. *King v. First Capital Fin. Servs. Corp.*, 215 Ill. 2d 1, 11-12 (2005).

A section 2-619 motion to dismiss admits the legal sufficiency of all well-pled facts in a complaint, but raises defects, defenses, or other affirmative matter that avoid the legal effect of plaintiff's claim. *See Advocate Health & Hosps. Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (1st Dist. 2004). A court must construe the documents, affidavits, and evidence in the light most favorable to the non-moving party, and the defendant bears the burden of proving any defense it relies upon. *Id.*; *Wolf v. Bueser*, 279 Ill. App. 3d 217, 222 (1st Dist. 1996).

ANALYSIS

1. Illinois' ten-year statute of limitations bars Plaintiffs' claims relating to revenue sharing and exclusive access to Globex, including their request for disgorgement.

a. Open Access and Rule 582 were eliminated in 2000.

The court agrees with Defendants that open access and the elimination of Rule 582 in the year 2000 precludes Plaintiffs' claims of revenue sharing and right of exclusive access to Globex. These claims are dismissed with prejudice.

First, there are no well-pled facts to show CBOT members, unlike CMEG shareholders, ever had rights to revenue sharing or exclusive access to Globex under the CBOT Charter. Second, while the CME Charter did provide such rights to members, these rights emanated from Rule 582, which was eliminated more than ten years ago. Any supposed breach by Defendants in eliminating Rule 582 and providing for open access is barred by Illinois' ten-year statute of limitations. *See* 735 ILCS 5/13-206. Although this case is governed by Delaware substantive law, a statute of limitations is procedural, so Illinois' ten-year statute applies. *See, e.g., Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A.*, 199 Ill. 2d 325, 351-52 (2002).

In order to block implementation of open access and elimination of Rule 582, Plaintiffs had to exercise their referendum right, which they held prior to the completion of demutualization in 2000. They did not exercise this right, and open access was complete prior to

demutualization. Even if, as Plaintiffs suggest, an affirmative member vote was required to eliminate exclusive access and revenue sharing under Rule 582, failing to hold a member vote was a one-time occurrence that triggered the statute of limitations in 2000, or 2001 at the latest,² according to the Complaint.

The continuing harm or continuing violation theory advanced by Plaintiffs cannot save their claims. While the theory has utility with respect to installment contracts, it is inapplicable to claims for a single breach of contract. *See Hassebrock v. Ceja Corp.*, 2015 IL App (5th) 140037, ¶35. “If a single breach occurs, either by repudiation or material failure of performance, the claim accrues at that time and the statute of limitations begins to run for all claims on that contract.” *Id.*, quoting *Hi-Lite Products Co. v. American Home Products Corp.*, 11 F.3d 1402, 1409 (7th Cir. 1993).

The facts of this case are analogous to those in *Hassebrock*, such that Defendants allegedly breached and repudiated Plaintiffs’ right to exclusive access and revenue sharing from Globex when they eliminated Rule 582 and obtained approval for open access in 2000. Thus, even if this was a continuous-performance-type contract entitling Plaintiffs to a continual revenue stream, there was a single breach that triggered the statute of limitations in the year 2000 when Rule 582 was eliminated and supposedly breached by failure to hold a vote.

Accordingly, Plaintiffs’ claims for revenue sharing and exclusive access to Globex under the CMEG Charter are dismissed with prejudice under 735 ILCS 5/2-619(a)(5). Similar claims brought by CBOT members necessarily fail as a matter of law and are dismissed under 735 ILCS 5/2-615 for failure to state a claim. Not only do Plaintiffs fail to point to a specific protectable right to Globex or Globex access revenue stream within their Charter, but they identify no

² This argument stems from Plaintiffs’ contention that Rule 582 was still in the Rulebook in 2000.

Special Voting Right violated with respect to these rights or a right to share leasing fees generated from the ADC. In fact, such revenue sharing in the form of a dividend or distribution is prohibited by Article IV.B.2.(c) of the CBOT Charter.

b. Disgorgement for Globex-related fees is not recoverable.

Because the court is dismissing all claims concerning revenue sharing from Global access, the court strikes Plaintiffs' request for disgorgement (Prayer for Relief, ¶3). Historically, disgorgement is not a remedy for breach of contract since its underlying purpose of preventing unjust enrichment is incongruent with the compensatory nature of breach of contract damages. However, the Restatement (Third) of Restitution seems to extend its application, recognizing the newness of disgorgement in the context of bad faith, breach of fiduciary duty, opportunistic breach of contract, and insider trading – none of which are alleged here. Notwithstanding, disgorgement of Globex-related fees is not recoverable by Plaintiffs because the underlying claims have been dismissed and there is no possibility Plaintiffs can recover. Accordingly, Plaintiffs' claim for disgorgement is stricken with prejudice under 735 ILCS 5/2-615.

2. Plaintiffs' claim to the most proximate, free access to Globex survives dismissal, but allegations premised on Core Right 4 and Special Voting Right 3 are stricken.

The court denies Defendants' Motion to Dismiss Plaintiffs' breach of contract claim based on a violation of their right to the most proximate, free access to Globex. However, this claim cannot be premised on Core Right 4 or Special Voting Right 3, which govern eligibility of membership. These allegations shall be stricken from the Complaint for they are not well pled or supported by a reasonable interpretation.

To grant a section 2-615 motion, this court must find Plaintiffs cannot prove any set of facts, under any circumstances, that would entitle them to relief. *See Marshall v. Burger King*

Corp., 222 Ill.2d 422, 429 (2006). The court must accept as true all well-pled allegations in the Complaint and draw all reasonable inferences in Plaintiffs' favor. *Id.*

As stated above, Plaintiffs' right to exclusive access to Globex and revenue sharing was eliminated with the advent of open access. However, this does not foreclose CMEG Plaintiffs' claim for breach of Core Right 2, which they allege includes a right to the most proximate, free access to Globex housed at the ADC, a new type of trading floor. The most proximate, free access to Globex was a right and privilege Plaintiffs enjoyed before it moved to the ADC. Non-members did not enjoy this same right or privilege and would lease a membership in order to have floor access and proximity to Globex.

To survive this Motion to Dismiss, Plaintiffs have alleged sufficiently that the ADC is a trading floor, attempting to explain how it functions as a trading floor within the meaning of the Charter. By relocating Globex to a new floor and charging an access fee to members, Defendants allegedly breached Plaintiffs' trading floor access rights and privileges.

Defendants raise cogent reasons why the ADC is not a trading floor within the meaning of Core Right 2. Ultimately, this will be a question of fact requiring evidence and further information as to how the ADC operates as a trading floor. But for now, drawing all reasonable inferences in CMEG Plaintiffs' favor, the court finds they have pled sufficient facts to state a claim for breach of their right to the most proximate, free access to Globex housed at the ADC.

CBOT Plaintiffs' claim is more tenuous, as there is no counterpart to Core Right 2 in the CBOT Charter. Nonetheless, there exists a viable claim based on their Special Trading Rights designed to protect the right to the electronic trading system, which Plaintiffs allege encompasses free, proximate access to Globex. Alternatively, as discussed below, all Plaintiffs have sufficiently alleged a breach of implied covenants of good faith and fair dealing in this regard.

However, Plaintiffs cannot rely on Core Right 4 and Special Voting Right 3 to support their claim to the most proximate, free access to Globex. The court agrees with Defendants that Core Right 4 and Special Voting Right 3 are clearly limited to eligibility requirements governing things like moral character, age, good credit, and financial wherewithal. They do not provide for expansive trading rights, but relate solely to Plaintiffs' rights to protect against CMEG unilaterally changing the eligibility requirements to be a trading member or lessee of a Class B membership. Plaintiffs' capacious reading of these rights and comparative language in the Charters cannot withstand scrutiny, even when viewed in the most favorable light. As such, these allegations are stricken from the Complaint and cannot form a basis for breach of contract.

3. Plaintiffs' claims for preferential fees survive dismissal.

Defendants' Motion to Dismiss Plaintiffs' claims for preferential fees is denied. Special Voting Right 2 of the CBOT Charter clearly gives Plaintiffs a protected right to lower transaction fees than non-members. What these transaction fees consist of remains to be seen and cannot be decided on a motion to dismiss.

The court rejects the notion that without pointing to an affirmative change to the Charter, Bylaws, or Rules, Plaintiffs cannot state a claim for breach. What the CBOT Charter forbids be done directly cannot be done indirectly without a member vote. To hold otherwise would make Plaintiffs' rights illusory.

The CMEG Charter, unlike the CBOT Charter, does not expressly identify preferential fees in the Core Rights. However, this is not fatal to Plaintiffs' claim. CMEG Rule 121 and Bylaw 6.3(d) recognize preferential fees for members as a trading right and privilege – a privilege once limited only to members and individuals who leased a membership. Although the prospectus recognizes management discretion and incentive pricing, Plaintiffs allege this has

become a permanent fixture that guts their Core Rights. When construing all well-pled facts in Plaintiffs' favor, it is plausible their rights protect against extending membership rights and preferential fees to non-members and diluting the leasing market by permitting multiple individuals to trade on a single membership. Defendants have failed to meet the heavy burden that currently must be satisfied to obtain dismissal of this claim under section 2-615.

In short, both sides have presented reasonable yet different interpretations of the Charters and attendant materials on the issue of preferential fees. This alone is sufficient to withstand a motion to dismiss. *See UtiliSave, LLC v. Miele*, No. 10729-VCP, 2015 WL 5458960, at *7 (Del. Ch. Sept. 17, 2005).

4. Plaintiffs' request for injunctive relief is stricken.

In the prayer for relief, Plaintiffs argue they are entitled to injunctive relief to co-locate at the ADC without having to pay an access fee, to share revenues generated by Globex fees, and to compel ECMs and other customers to purchase or lease memberships from them to enhance the value of their Class B shares.

Illinois law governs the determination of whether injunctive relief is an appropriate remedy and the procedural elements of asserting a claim for injunctive relief. *See Am. Food Mgmt., Inc. v. Henson*, 105 Ill. App. 3d 141, 147 (5th Dist. 1982). “[A]n injunction is an extraordinary remedy which may be granted when the plaintiff establishes that his remedy at law is inadequate and he will suffer irreparable harm without the injunctive relief.” *Sadat v. Am. Motors Corp.*, 104 Ill. 2d 105, 115 (1984). A well-pleaded complaint for injunctive relief must contain facts that “establish the inadequacy of legal remedy and the irreparable injury the plaintiff will suffer without the injunction.” *Id.* at 116.

Plaintiffs contend injunctive relief is necessary because the violations are continuous and ongoing, making their remedy at law inadequate. However, Plaintiffs have failed to plead specific facts necessary to demonstrate this element or the suffering of irreparable harm.

Plaintiffs argue “no magic words are required” to plead facts supporting an injunction. However, facts that clearly establish injunctive relief is necessary still must be pleaded. *See Wilson v. Wilson*, 217 Ill. App. 3d 844, 856 (1st Dist. 1991). Plaintiffs also must plead how money damages is inadequate and will not make them whole. *See Maas v. Cohen Associates, Inc.*, 112 Ill. App. 3d 191, 196 (1st Dist. 1983) (injunctive relief is not proper where monetary damages is an adequate remedy). Plaintiffs’ mere conclusory allegations fall short of the requisite pleading standard. Their request for injunctive relief is stricken without prejudice under section 2-615.

5. Motion to Dismiss Count II is denied.

Plaintiffs plead Count II in the alternative, asserting a breach of implied covenants of good faith and fair dealing in the CMEG and CBOT Charters. They allege development of the ADC and other co-location facilities and fees could not have been anticipated by the parties. Had they been, the members would have negotiated rights to preferential access and co-location fees at the time of establishment of the Charters.

Under Delaware law, the implied covenant of good faith and fair dealing is “‘best understood as a way of implying terms in the agreement,’ whether employed to analyze unanticipated developments or to fill gaps in the contract’s provisions.” *Dunlap v. State Farm Fire & Cas. Co.*, 878 A. 2d 434, 441 (Del. 2005), quoting *E.I. DuPont de Nemours & Co. v. Pressman*, 679 A. 2d 436, 443 (Del. 1996). Courts will imply terms when “the party asserting the

implied covenant proves that the other party has acted arbitrarily or unreasonably, thereby frustrating the fruits of the bargain that the asserting party reasonably expected.” *Nemec v. Shrader*, 991 A. 2d 1120, 1126 (Del. 2010). “Thus, to properly plead a claim for breach of the implied covenant, [plaintiff] must allege some injury to his contractual interest as a result of the breach of the implied obligation.” *Kuroda v. SPJS Holdings LLC*, 971 A. 2d 872, 888–89 (Del. Ch. 2009). The appropriate legal test “is this: is it clear from what was expressly agreed upon that the parties who negotiated the express terms of the contract would have agreed to proscribe the act later complained of as a breach of the implied covenant of good faith — had they thought to negotiate with respect to that matter.” *Katz v. Oak Industries, Inc.*, 508 A. 2d 873, 880 (Del. Ch. 1986). If yes, a court may conclude such act constitutes a breach of the implied covenant of good faith. *Id.*

Defendants argue the Charters are not silent on the issues raised by Plaintiffs. Rather, they outline specific Core Rights and Special Voting Rights that require a member vote before they may be altered. Defendants contend the absence of certain rights and words is meaningful. They urge the court not to rewrite the Charters to benefit Plaintiffs.

Defendants make much of the fact Class B Plaintiffs did not specifically negotiate rights relating to Globex and sought only to protect their trading floor access rights and privileges. However, this ignores how Globex was accessed on the trading floors solely by members and the lease market that existed prior to co-location. It ignores that close proximity and free Globex access was a privilege of membership, notwithstanding the advent of open access. It ignores Plaintiffs’ allegations that relocation of Globex to the ADC was not predicted and co-location fees were not contemplated at the time of demutualization. Had this been known or

contemplated, Plaintiffs allege they would have negotiated rights expressly in the Core and Special Voting Rights to preserve the value of their shares.

The court finds merit to Plaintiffs' contention in light of the unanticipated dynamic changes to Globex, relocation of Globex to the ADC, new co-location fees, and expansion of access rights to non-members trading on an individual membership. The Charters were designed to protect critical, fundamental rights of membership, including floor access rights and privileges and other enumerated trading rights. Accepting as true all well-pled allegations, Plaintiffs have sufficiently alleged injury to their contractual rights as a result of a breach of an implied obligation.

The court is cognizant the implied duty of good faith and fair dealing is a limited, extraordinary remedy intended to enforce the parties' contractual bargain by preventing one party from engaging in conduct that frustrates the other party's right to the benefit of a contract. Although the doctrine is rarely utilized, it would be premature to dismiss Count II as to Plaintiffs' preferential fee claims and preferential access to Globex at the ADC. Defendants' Motion to Dismiss Count II is denied in this regard, but granted to the extent Plaintiffs seek exclusive access to Globex and revenue sharing in Count II. These claims are barred unequivocally for the reasons set forth in section 1 of this Order.

CONCLUSION

Defendants' Motion to Dismiss is granted in part as follows: Plaintiffs' claims relating to revenue sharing, exclusive access to Globex, and disgorgement are dismissed with prejudice. Allegations based on Core Right 4 and Special Voting Right 3 are stricken. Plaintiffs' request for

injunctive relief is stricken without prejudice. The Motion to Dismiss is denied in all other respects.

Plaintiffs are granted to April 16, 2018 to re-plead and file a Third Amended Complaint. This case is set for status on April 30, 2018, at 9:00 a.m. The court anticipates setting discovery deadlines on that date as to the meaning of Core and Special Voting Rights and preferential fees. The parties should discuss an appropriate discovery schedule in advance of the status hearing.

In the meantime, as discussed in open court, the parties are encouraged to try a dispute resolution process as an alternative to the adversarial court process. Reaching a resolution is completely voluntary, but a mediator is in a position to help clarify and streamline the issues and hopefully find a mutually beneficial solution for everyone involved in a timely, less expensive way.

IT IS ORDERED:

1. Defendants' Motion to Dismiss is granted in part and denied in part.
2. Plaintiffs shall re-plead and file a Third Amended Complaint by April 16, 2018.
3. This case is set for status on April 30, 2018, at 9:00 a.m.

Judge Celia Gamrath

MAR 16 2018

Circuit Court - 2031

ENTERED: _____

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

No. 1-26-1303

IN THE
APPELLATE COURT OF ILLINOIS,
FIRST JUDICIAL DISTRICT

SHELDON LANGER,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois,
Plaintiff-Appellant,	)	County Department – Law
	)	Division,
v.	)	
	)	
CME GROUP, INC.,	)	No. 2014 CH 00829
	)	
Defendant-Appellee,	)	The Honorable
	)	STEPHEN A. SWEDLOW,
	)	Judge Presiding

NOTICE OF FILING

TO: See attached Certificate of Service

PLEASE TAKE NOTICE that on August 12, 2026, Plaintiffs-Appellants filed the attached **NOTICE OF FILING, MOTION TO AMEND NOTICE OF APPEAL, VERIFICATION BY CERTIFICATION, and PROPOSED ORDER**, a copy of which is hereby served upon you.

August 12, 2026

/s/ Suyash Agrawal
Suyash Agrawal

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Attorney for Plaintiffs-Appellants

PROOF OF SERVICE

The undersigned counsel for Plaintiffs-Appellants certifies a copy of the **NOTICE OF FILING, MOTION TO AMEND NOTICE OF APPEAL, VERIFICATION BY CERTIFICATION, and PROPOSED ORDER** were filed and served through Odyssey eFileIL's EFileAndServe function and served on counsel of record by electronic mail on August 12, 2026.

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Attorneys for Defendants-Appellees

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.

/s/ Suyash Agrawal
Suyash Agrawal

No. 1-26-1303

IN THE
APPELLATE COURT OF ILLINOIS,
FIRST JUDICIAL DISTRICT

SHELDON LANGER,	)	Appeal to the Appellate Court
	)	of Illinois, First Judicial
Plaintiff-Appellant,	)	District from the Circuit Court
	)	of Cook County, Illinois,
v.	)	County Department – Law
	)	Division,
CME GROUP, INC.,	)	
	)	
Defendant-Appellee,	)	No. 2014 CH 00829
	)	
	)	The Honorable
	)	STEPHEN A. SWEDLOW,
	)	Judge Presiding

PROPOSED ORDER

This matter coming to be heard on the motion of Plaintiff-Appellant, to amend its Notice of Appeal, notice having been given and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that Plaintiff-Appellant's Motion for Leave to Amend their Notice of Appeal is ALLOWED/DENIED.

The Clerk should accept the Amended Notice of Appeal in the above-captioned appeal.

DATED: _____

ENTER: _____
JUDGE