IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM C. BRAMAN, MARK MENDELSON, and JOHN SIMMS, Individually and On Behalf of All Others Similarly Situated,	)	
Plaintiffs,	)	
v.	)	**Case No. 14-cv-02646**
THE CME GROUP, INC., THE BOARD OF TRADE OF THE CITY OF CHICAGO, THE CME EXCHANGE, INC., TERRENCE A. DUFFY, PHUPINDER GILL, BRYAN T. DURKIN and ANITA LISKEY,	)	**Hon. John Robert Blakey**
Defendants.	)	

THIRD AMENDED AND SUPPLEMENTAL COMPLAINT

INTRODUCTION

1. Defendant **CME Group, Inc.** ("CME Group") owns and operates commodity futures and derivatives exchanges, including two in this district: Defendant **Chicago Mercantile Exchange** ("CME") and Defendant **Chicago Board of Trade** ("CBOT").

2. In the CME Group's execution and reporting of commodity futures contract and derivative transactions, the two most important facts are (1) prices, and (2) the volume of transactions. A third, lesser but still significant fact involves the amount of the fee paid by the customer to the CME or CBOT for the purchase or sale of each contract.

3. With regard to the foregoing three facts, the CME Group and the Individual Defendants operated the CME and CBOT so as to injure Plaintiffs and Class members, but greatly profit the Defendants and the John Doe Defendant high frequency traders.

4. **First,** an originally undisclosed and later misrepresented "latency loophole" aspect of trading on the CME and CBOT permitted high frequency traders ("HFTs") to systematically trade ahead of Plaintiffs. ¶¶6-12 below. **Second**, the adverse effects of the delayed reporting of prices and the resulting systematic trading ahead caused by the latency loophole, were compounded by a high amount of wash sales by HFTs on the CME and CBOT. ¶¶13-16 below. **Third,** undisclosed incentive agreements that Defendants made with high frequency traders were contrary to the stated purposes for incentive agreements. By these agreements, the CME Group financially incentivized and empowered the HFTs to engage to a greater degree in the wash sales and abuses of the latency loophole that injured Plaintiffs and Class members. ¶¶17-20 below.

5. As a result, Plaintiffs have been injured and make claims under the Commodity Exchange Act, 7 U.S.C. §1 *et seq.* (¶¶23-24 below), the Sherman Antitrust Act, 15 U.S.C. §1 *et*

seq. (¶¶25-31), and the common law for damages and injunctive and declaratory relief. ¶¶32-33 below.

6. **Latency Loophole.** During the Class Period, Defendants CME and CBOT executed and reported trades through computerized trading engines. These operated in a manner that created an inherent and critical, but wholly undisclosed, characteristic of the trading on the CBOT and CME by Plaintiffs and members of the Class.

7. Specifically, such trading was materially disadvantaged by the existence of a delay between different types of reports which the CME characterized as a "latency," and the press referred to as the "latency loophole." This latency or delay characteristic of Defendants' execution and reporting was not disclosed by Defendants or anyone else until an article appeared in the Wall Street Journal on or about May 1, 2013. Scott Patterson, Jenny Strasburg and Liam Pleven, WALL STREET JOURNAL (May 1, 2013), *available at* http://online.wsj.com/news/articles/SB10001424127887323798104578455032466082920.).

8. As a result of this latency loophole, HFTs regularly and systematically received sufficient advance notice of prices that they could and regularly did trade ahead of Plaintiffs and Class members.

9. Prior to the Wall Street Journal article released on or about May 1, 2013, Defendants had made many representations to the public about the material characteristics of the trading, executions, and reports of trading on the CME and CBOT.

10. But at no time had Defendants disclosed the material fact of the latency loophole. Defendants' foregoing representations (alleged in detail below) were rendered misleading by Defendants' omission in failing to disclose the latency loophole and its critical consequence that HFTs received sufficient advance notice of prices to systematically trade ahead of others.

11. Upon and after the disclosure of the latency loophole by the Wall Street Journal on May 1, 2013, Defendants made a statement that the duration of the latency loophole was only one microsecond, and made other statements to the consistent effect that the duration of the latency (or delay in reporting) was insignificantly short. *See* ¶¶58-59, 77-79, 84 below (alleging the time, place and contents of these representations statements).

12. These statements were also misleading and false. First, the duration of the latency was 1,000 times-10,000 times greater than a microsecond. Second, the actual duration of the delay involved in the latency loophole provided sufficient advance knowledge of prices to HFTs so that they could and did systematically trade ahead of Plaintiffs and all other Class members on a daily and widespread basis.

13. **Wash Sales.** Wash sales are a *per se* unlawful and manipulative device. In a wash sale, the same person enters both the purchase **and** sale side of the same transaction. A wash sale is not a bona fide transaction. The price of a wash sale transaction is not a bona fide price. The report of the wash sale as a legitimate one creates both a false statement of trading volume and a manipulated, false and non-bona fide price.

14. While engaging in large volumes of trades, HFTs entered buy and sell orders that sometimes matched and were executed against one another. These were wash sale transactions. They artificially inflated the reported volume of trading and artificially created a non-bona fide, manipulated price. But these wash sales, in part, aided the HFTs in abusing the latency loophole.

15. Coinciding with the time when the latency loophole existed, the amount of wash sales on the CME markets reportedly grew to unprecedented proportions. Bart Chilton, in an interview with CNBC on March 18, 2013, stated that, according to the Commodity Futures Trading Commission ("CFTC") surveillance, wash trades were occurring daily at a "large, voluminous

level - I mean really to me a shocking level."[1] Mr. Chilton was a Commissioner of the CFTC at the time of this statement. Indeed, by some estimates, wash sales represent fifty percent of the current CME transaction volume.

16. A high amount of wash sales and other transactions profited the CME Group as well. The principal form of revenues and profits for the CME Group is the per transaction fee charge that the CME Group made for each completed trade on the CME and CBOT and its other wholly-owned exchanges. This fee was assessed on wash sales as well. For the 2014 calendar year, the CME Group reported in its Form 10-K total revenues of $3,112.5 million, with clearing and transaction fee revenues accounting for $2,616.3 million, or 84.06% of total revenues.

17. **The CME Group's Undisclosed Incentive Payments Defray The Costs And Empower The HFTs' Wash Sales And Abuses Of The Latency Loophole.** While engaged in the foregoing unlawful conduct, Defendants also made undisclosed incentive payment agreements with preferred HFTs. These payments subsidized and encouraged the HFTs' depredations of Plaintiffs and other Class members. The agreements applied to and provided discounts and payments with respect to futures contracts and derivatives that were actively traded. Therefore the payments were contrary to the stated public purposes of the CME's incentive program.

18. Incentive payments by the CME Group to various traders were supposedly made for the purpose of encouraging volume in low volume or less used futures contracts. However, on or about June 19, 2014, it was revealed that incentive payments were being made by the CME to HFTs even in futures contracts that were extremely liquid, including the Eurodollar futures contract.

[1] http://video.cnbc.com/gallery/?video=3000154836&play=1.

19. These undisclosed incentive payment agreements further favored such HFTs. For example, the incentive payments tended to offset the high transaction costs incurred by HFTs in order to make a high volume of trades, including wash sales and abuses of the latency loophole.

20. Absent discovery, including the CME and CBOT "audit trails" which show the sequence of transactions, there is no public information that permits Plaintiffs to allege the specific times of the trading ahead, wash sales, manipulation of prices, and other unlawful transactions alleged herein. However, Plaintiffs have good grounds to believe and do allege that such unlawful transactions and their adverse effects on the prices of CME and CBOT futures contracts were daily, systematic, and widespread occurrences.

21. Plaintiffs and members of the Class have been disadvantaged by Defendants' unlawful conduct. This caused Plaintiffs and Class Members to transact in a manipulated market. Plaintiffs and Class Members are entitled to an accounting, to recover their actual damages, and to other relief. Because the existence of the Latency Loophole is ongoing and will continue unless enjoined, Plaintiffs are also entitled to injunctive relief.

****

22. **Commodity Exchange Act Claims.** (a) Congress provides in the Commodity Exchange Act an express private right of action for individuals to bring claims against commodity exchanges and the persons associated with the commodity exchanges. 7 U.S.C. §25(b). This private right of action requires the plaintiff to show bad faith enforcement of or failure to enforce the Commodity Exchange Act, the rules and regulations thereunder, or the rules and bylaws of the Exchange.

(b) Congress also provides a private right of action for injuries suffered as a result of fraud in connection with, or the manipulation of the prices of, purchases or sales of futures contracts or other derivatives. 7 U.S.C. §25(a).

(c) Congress viewed the private rights of action as "critical" to the maintenance of the integrity to the futures market and the deterrence of wrongdoing. *Cange v. Stotler & Co.*, 826 F.2d 581, 594-595 (7th Cir. 1987) (quoting H.R. Rep. No. 565, 97th Cong., 2d Sess., pt. 1 at 56-57, *reprinted* in 1982 U.S. Code Cong. & Admin. Nes 3871, 3905-06).

23. Plaintiffs bring this action pursuant to 7 U.S.C. §§25(a)-(b) in order to obtain their actual damages as well as declaratory and equitable relief.

24. **Antitrust.** (a) Congress prohibits contracts, combinations, or conspiracies in unreasonable restraint of trade. 15 U.S.C. §1.

(c) The contracts for rebates of commissions and incentive payments made by the CME Group with HFTs unreasonably restrained trade and had a greater adverse effect on competition than any offsetting procompetitive effects. Also, there were less anticompetitive means, available to Defendants including by implementing the contracts with full disclosure to the market of the agreements. Part of the harm to competition arising from the agreements is their natural, obvious restrictive anticompetitive and exclusionary effects. They subsidized and empowered the HFTs to trade ahead of Plaintiffs and obtain better prices than their competitors. In the absence of such agreements and subsidies, the HFTs would not have been able to harm competition to the same degree than they could with the subsidies.

25. Congress prohibits the exercise or acquisition of monopoly power through restrictive, exclusionary or anticompetitive means. 15 U.S.C. §2. This includes making preferential contracts with certain customers of the monopolist in order to perpetuate the

monopoly at the expense and/or to the detriment of other customers who are the competitors of the preferred customers.

(b) The CME Group had monopoly power over (a) "the execution and reporting of transactions on its exchanges and the fees charged therefor; and (b) the trading of most futures contracts traded on the CME, CBOT, and the CME Group's other exchanges.

26. In order to perpetuate its monopoly power, including its monopoly power over its futures contracts as against other commodity exchanges, the CME made preferential contracts with HFTs to deprive the other exchanges of the HFTs' business. The CME Group's preferential contracts with the large HFTs subsidized and encouraged the HFTs' trading. This includes the HFTs' incidence of abusing the latency loophole and making wash sales.

27. This financial subsidy by the CME Group monopolist of a few competitors of Plaintiffs and Class members was, thus, not merely a subsidy denied to Plaintiffs and Class members. It was a subsidy that allowed the preferred competitors material advantages in trading in the monopolist's market. This includes profiting at the expense of Plaintiffs and other non-preferred customers through unlawful abuses of the latency loophole, unlawful wash sales, and unlawful undisclosed incentive agreements.

28. Furthering their monopoly and obtaining more monopolistic revenues from the non-preferred customers, the CME additionally exercised its monopoly power so as to fail to disclose and misrepresent the monopoly preferences it was granting to the preferred competitors of Plaintiffs and Class members. This caused Plaintiffs and Class members to continue to trade on Defendants' exchanges without knowledge of the subsidies and rebates. That continued trading furthered the CME Group's monopoly, monopoly profits, and financial benefits and continued to self-perpetuate the monopoly.

29. The totality of the CME Group's exclusionary and anticompetitive conduct caused Plaintiffs and Class members to pay more for each contract they traded, to receive lower quality services, and to lose money on their trades. All of these anticompetitive acts and effects resulted in the monopolist forcing the non-preferred customers to pay in multiple ways for the privileges afforded to the preferred customers. This furthered the monopoly of the CME Group and profited the HFTs at the expense of Plaintiffs and Class members.

30. As a direct result of the CME Group's Section 2 violation, Plaintiffs have been injured in their property. This includes by suffering overpayment for information, losses on trading, transacting at artificially high prices, and receiving a lower quality of service provided by the monopolist CME Group. Plaintiffs are entitled to recover their damages as well as injunctive and declarative relief.

31. Regarding injunctive and declaratory relief, sunshine is the best disinfectant. The CME Group and other Defendants should be ordered to make the disclosures revealed to be appropriate by discovery herein. These include, at a minimum, (a) disclosing the duration of the latency loophole in each type of futures contract traded on the CME and CBOT; (b) disclosing the rebates or payments the CME Group provided to HFTs, including identifying what contracts, and why; (c) disclosing the other incentives and relationships that the CME or its officers or directors have with the preferred HFTs; and (d) disclosing whether the CME's "Real Time" data actually provides reports of prices in real time or, for example, other reports provide faster information about prices than does the inaptly-named Real Time data.

32. (a) Additionally or alternatively, the CME should be ordered to correct its computer code so as to eliminate the latency loophole.

(b) Other injunctive relief regarding the CME Group's ownership and operation of four commodity exchanges may be considered equitable, required, and appropriate after discovery.

JURISDICTION AND VENUE

33. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337 and 7 U.S.C. §§ 1 et seq., Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§15(a) and 26, and Section 22 of the CEA, 7 U.S.C. §§ 1a(4) and 25(a)(1)(D), and 18 U.S.C. § 1951.

34. This Court may exercise supplemental jurisdiction over Plaintiffs' state law claim pursuant to 28 U.S.C. § 1367.

35. This Court has subject matter jurisdiction over Plaintiffs' state law claim pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), in that this is a class action in which the members of the Class (as defined herein) exceed 100; the matter or controversy exceeds the sum of $5,000,000, exclusive of interests and costs; and some members of the Class are citizens of a state different from some Defendants.

36. Venue is proper pursuant to Judicial Code, 28 U.S.C. § 1391(a) and (b) and 7 U.S.C. § 25(c), because Defendants reside in this judicial district, and the events giving rise to the claims asserted herein occurred in this judicial district.

37. Defendants' conduct was within the flow of, was intended to, and did, in fact, have a substantial effect on the interstate commerce of the United States, including in this District.

38. During the Class Period, Defendants used the instrumentalities of interstate commerce, including wires, wireless spectrum, and the U.S. mail, to effectuate their illegal conspiracy and otherwise to restrain trade.

39. Defendants' conduct has had a substantial effect on the intrastate commerce of the United States, as well as each of the fifty states and its other territories.

40. This Court has personal jurisdiction over each Defendant, because each Defendant transacted business, maintained substantial contacts, is located and/or they or their co-conspirators committed overt acts in furtherance of their illegal conspiracy, in the United States, including in this District. The monopolization, conspiracy and other violations in restraint of trade were directed at, and had the intended effect of, causing injury to persons residing in, located in, or doing business in this District.

PARTIES

Plaintiffs

41. Plaintiffs suffered injury during the Class Period caused by the wrongful actions of Defendants as alleged herein and include:

a) Plaintiff **William C. Braman** ("Plaintiff Braman," and together with Plaintiffs Mendelson and Simms, the "Plaintiffs") is an individual residing in the Northern District of Illinois. Plaintiff Braman executed trades in the following CME Globex markets, among others, during the Class Period: U.S. Treasury Bond (ticker symbol ZB), Ten-year T-Note (ticker symbol ZN), Five-year T-Note (ticker symbol ZF), Ultra U.S. Treasury Bond (ticker symbol UB), E-mini Dow ($5) (ticker symbol YM), E-mini S&P 500 (ticker symbol ES), E-mini S&P MidCap 400 (ticker symbol EMD), E-mini NASDAQ 100 (ticker symbol NQ), Nikkei/USD (ticker symbol NKD), E-mini Nikkei 225 (ticker symbol ENY), Japanese Yen (ticker symbol 6J), British Pound (ticker symbol 6B), Swiss Franc (ticker symbol 6S), Euro FX (ticker symbol 6E), Eurodollar (ticker symbol GE), Soybean Meal (ticker symbol ZM), Chicago SRW Wheat (ticker symbol ZW), Corn (ticker symbol ZC), Crude Oil (ticker symbol CL), Premium Unleaded Gasoline 10 ppm FOB MED (Platts)

(ticker symbol A3G), NY Heating Oil (Platts) (ticker symbol AYH), Henry Hub Natural Gas (ticker symbol NG), and suffered losses on those transactions as a direct result of Defendants' allowance and facilitation of a marketplace manipulated by certain preferred HFTs and Defendants' failure to enforce CEA, CFTC and Exchange Defendants' Rules and Regulations, and by relying on what was falsely represented to him as real-time market data by Defendants.

b) Plaintiff **Mark Mendelson** ("Plaintiff Mendelson," and together with Plaintiffs Braman and Simms, the "Plaintiffs") is an individual residing in the Northern District of Illinois. Plaintiff Mendelson executed trades in the following CME Globex markets, among others, during the Class Period: U.S. Treasury Bond (ticker symbol ZB), Ten-year T-Note (ticker symbol ZN), Five-year T-Note (ticker symbol ZF), E-mini S&P 500 (ticker symbol ES), Eurodollar (ticker symbol GE), and suffered losses on those transactions as a direct result of Defendants' allowance and facilitation of a marketplace manipulated by certain preferred HFTs and Defendants' failure to enforce CEA, CFTC and Exchange Defendants' Rules and Regulations, and by relying on what was falsely represented to him as real-time market data by Defendants.

c) Plaintiff **John Simms** ("Plaintiff Simms," and together with Plaintiffs Braman and Mendelson, the "Plaintiffs") is an individual residing in the Northern District of Illinois. Plaintiff Simms executed trades in the following CME Globex markets, among others, during the Class Period: U.S. Treasury Bond (ticker symbol ZB), Ten-year T-Note (ticker symbol ZN), Five-year T-Note (ticker symbol ZF), and suffered losses on those transactions as a direct result of Defendants' allowance and facilitation of a marketplace manipulated by certain preferred HFTs and Defendants' failure to enforce CEA, CFTC and

Exchange Defendants' Rules and Regulations, and by relying on what was falsely represented to him as real-time market data by Defendants.

d) The 22 futures contracts identified by Plaintiffs as ones in which they transacted during the Class Period and were damaged thereby are among the most heavily traded on Defendants' exchanges, often having open interest in the hundreds of thousands and even millions of futures contracts, and open interest in related options contracts in the hundreds of thousands. Furthermore, the minimum tick size price fluctuations for these futures contracts are massively greater than the minimum tick size price fluctuations in the equities markets, where the minimum fluctuations can amount to a mere penny, making the potential profit margins for manipulative or preferential transactions carried out in the futures markets many orders of magnitude greater than similar manipulative or preferential transactions carried out in the equities markets. For example, the U.S. Treasury Bond futures contract has a minimum tick size price fluctuation of 1/32 of one point, or $31.25, while the E-mini S&P 500 futures contract has a minimum tick size price fluctuation of 0.25 index points, or $12.50.

Defendants

42. Defendants caused injury to Plaintiffs during the Class Period by their wrongful actions as alleged herein and include:

Exchange Defendants

a) Defendant **CME Group, Inc.** ("CME Group"), is a Delaware corporation that owns and operates derivatives exchanges, including the CME and the CBOT. The CME Group's principal place of business and location is in Chicago, Illinois.

b) Defendants the **Chicago Board of Trade** ("CBOT") and the **Chicago Mercantile Exchange** ("CME") are wholly owned subsidiaries of the CME Group, Inc. whose principal place of business is in Chicago, Illinois.

Individual Defendants

c) Defendant **Terrence A. Duffy** ("Duffy") has served as Executive Chairman and President of the CME Group since 2012. Previously he served as Executive Chairman since 2006, when he became an officer of the CME Group. Defendant Duffy also serves as Executive Chairman and President of Defendant CME, Inc. As alleged herein, Defendant Duffy was responsible for knowingly making false and misleading statements to the press, the United States Congress, the investing public in general, and the Class in particular, regarding the exploitation of the Latency Loophole by certain preferred HFTs and other clandestine arrangements made by Defendants to enhance profits at the expense of Plaintiffs and the Class.

d) Defendant **Phupinder Gill** ("Gill") has served as the Chief Executive Officer of the CME Group since 2012. Previously he served as President of the CME Group since 2007 and as President and Chief Operating Officer of CME Holdings and of the CME since January 1, 2004. In addition to running the firm's day-to-day operations, Defendant Gill is responsible for implementing strategic initiatives to expand the CME Group's core business and pursue new global growth opportunities in over-the-counter and emerging markets. Defendant Gill also serves as CEO of Defendant CME, Inc.

e) Defendant **Bryan T. Durkin** ("Durkin") has served as Chief Operating Officer of the CME Group since July 2007. He is responsible for the Products & Services, Marketing, Research & Product Development, Technology, Global Operations and Enterprise Solutions

Divisions, as well as the company's global offices. Additionally, he is President of GFX Corp., a wholly-owned subsidiary of the CME Group that provides liquidity in foreign exchange futures. Defendant Durkin led the global integrations following the CME's merger with the CBOT in 2007 and CME Group's acquisition of the New York Mercantile Exchange ("NYMEX") in 2008. Defendant Durkin also serves as COO and Managing Director-Products & Services of Defendant CME, Inc. Before joining CME Group, Durkin served as Executive Vice President and Chief Operating Officer of the CBOT. Prior to that role, he was in charge of the CBOT's Office of Investigations and Audits where he oversaw the audits, financial surveillance, trade practice and market surveillance self-regulatory and enforcement divisions for the exchange. His career with both CME Group and CBOT spans more than 30 years.

f) Defendant **Anita Liskey** ("Liskey") has served as Managing Director, Corporate Marketing and Communications of the CME Group since 2007, Managing Director, Corporate Marketing and Communications of the CME since 2002, and as a Director of Defendant CBOT from 1989 to 1995. As alleged herein, Defendant Liskey was responsible for knowingly making false and misleading statements to the press, the investing public in general and the Class in particular regarding the exploitation of the Latency Loophole by certain preferred HFTs and other clandestine arrangements made by Defendants to enhance profits at the expense of Plaintiffs and the Class.

John Doe Defendants

g) Plaintiffs do not know the identity of the **Doe Defendants** because trading on Defendants' exchanges is anonymous. For that reason, Plaintiffs do not know the precise number of Doe Defendants, but Plaintiffs believe that discovery will reveal the precise identities of

those preferred HFTs that were given access to the alleged clandestine incentive agreements and that were empowered by Defendants to take advantage of the Latency Loophole to the detriment of Plaintiffs and the Class.

43. The acts alleged in this Complaint have been committed by the Defendants CME Group, CBOT, CME, Duffy, Gill, Liskey and Durkin (hereinafter all collectively referred to as "Defendants"), and were authorized, ordered, or done by their directors, officers, agents, employees, or representatives while actively engaged in the management of the Defendants' governance and operations.

SUBSTANTIVE ALLEGATIONS

44. The CME Group owns and operates the CME commodity exchange and the CBOT commodity exchange. The CME and the CBOT offer and host commodity future trading in various commodity future and derivative contracts. For most of these contracts, there is no comparable contract offered by any other U.S. commodity exchange. These futures contracts include 10-Year T-Note Futures (CBOT), E-mini S&P 500 Futures (CME), 5-Year T-Note Futures (CBOT), U.S. Treasury Bond Futures (CBOT), E-mini NASDAQ 100 Futures (CME), E-mini Dow ($5) Futures (CBOT), Live Cattle Futures (CME), Lean Hog Futures (CME), 30 Day Federal Funds Futures (CBOT), E-mini S&P MidCap 400 Futures (CME), Class III Milk Futures (CME), E-mini Health Care Select Sector Futures (CME), and E-mini Industrial Select Sector Futures (CME).

45. The Exchange Defendants determine how trading is conducted, and reports of trade prices and volumes are made on and from the respective exchanges. During the Class Period, most of the trading --- and typically, virtually all of the trading --- as well as all of the reporting is accomplished and performed by computerized means.

46. The CME Group reports the prices and executions of trades through various means to the customers. The CME Group has monopoly power to control the means of such reporting, the charges that the CME makes therefor, and other issues. The CME Group also has monopoly power over the prices it charges for each futures contract execution.

47. When Plaintiffs and other Class members are competing with one another in trading, equal access to the information important to trading is critical. The Defendants sold a supposed Real-time Market Data which supposedly provided to the purchaser of such data reports of market information in real-time as the events occurred.

48. This supposed equality of information was supposed to prevent the destabilization of the market by HFTs. The HFTs' systems could abuse, exploit and exacerbate any information asymmetries. This could create negative feedback loops. They could systematically advantage the HFTs' trading but systematically disadvantage the trading of Plaintiffs and other Class members who were competitors of the HFTs.

49. For traders making a decision whether to transact in commodity futures contracts and, if so, at what price, the two most important facts provided by the CME are the price at which the futures contract is trading and the volume of the trading.

50. A lesser but still important factor in the profitability of trading in commodity futures contracts and derivatives, is the charge by the commodity exchange for each contract traded. As reported in the CME Group's Form 10-Ks, during the Class Period the average charge per contract for clearing and transaction fees went from $0.664 per contract in 2005 to $0.743 per contract in 2014, with a low of $0.634 per contract in 2007 and a high of 0.836 per contract in 2009.

51. **Price.** The price of the purchase and the price of the sale, determine whether commodity futures transactions make or lose money for the trader. Small differences extrapolated

over many trades can put a trader out of business or provide them with sustainable profits. For this reason alone, the report of the price at which a futures contract is trading and the actual price at which the trader makes their purchase or sale of the contract are very important in commodity futures.

52. **Price/Volume.** The prices and volume of futures contracts trading are important for other reasons. Volume reflects the level of interest in a given futures contract. Greater volume indicates greater levels of supply and demand and liquidity. Liquidity is the ability to trade in the market at or close to one's chosen price. Greater levels of volume are indications of liquidity and may attract more market participants.

53. Price and volume data may also indicate or create patterns. These patterns provide probabilistic information about whether the prices of the commodity futures contract are likely to increase or decrease. In these ways and others, the accurate, real-time price/volume data provide important information about whether a trader should purchase or sell a futures contract or abstain from transacting.

54. For the foregoing and additional reasons, real time reports of commodity futures prices on an equal basis to traders are very important to whether the purchase and sale of commodity futures contracts result in profits or losses.

55. The CME Group represented publically that it provided real time reports of prices on an equal basis to all traders who purchased and used the CME's Real Time data. But these statements were false or misleading.

56. During the Class Period, the confirmations of executed trades (price) were received by some market participants substantially sooner than other market participants were even aware of the executed trades and the resulting price information. Market participants that received price

information before most everyone else knew of the price information were able to make a great many trades based upon this information, all before the rest of the marketplace learned of this price information.

57. This delay, which Defendants belatedly characterized as a "latency", provided faster reporting of prices on executed trades to the persons whose trade was executed than the reports of those prices to the remainder of the market.

58. The exact duration of this delay varied among the CME Group's futures contracts. Absent discovery, Plaintiffs do not know the duration of the delay. Plaintiffs have good grounds to believe and do allege that the duration exceeded 1 millisecond, was at great as 10 milliseconds, and may have been greater than 10 milliseconds.

59. A millisecond is one thousandth of a second. A microsecond is one millionth of a second. A millisecond is 1,000 microseconds.

60. Lower latency/higher relative speed in the high frequency ecosystem can translate into the ability to discern price information faster than others in order to act on this information before anyone else can. Being faster means being able to see price information before everyone else and more importantly, being able to trade ahead of others and as such affect all others, by having discerned this price information long before anyone else is able to.

61. Such trading has produced a two tiered market in which select HFTs were obtaining, by virtue of their frequent trades, faster information about prices than Plaintiffs and Class members. These select HFTs were trading ahead of Plaintiffs and Class members. Plaintiffs and Class members received dated information which no longer reflected the real-time prices, patterns, etc. this was all due to the undisclosed latency loophole. These HFTs were

acting based on real prices and real market trends. Plaintiffs and Class members were frequently acting on dated information, no longer extant apparent price trends in a fog.

62. The Exchange Defendants and the Individual Defendants well knew each of the foregoing facts. However, 85% of the revenues of the CME Group are based on the per fee contracts charged on each trade. Thus, the Exchange Defendants and Individual Defendants had strong financial motives to facilitate the HFTs' high volumes of trading and the abuses previously alleged and further alleged below.

63. As part of this facilitation, the Exchange Defendants and Individual Defendants made a series of incomplete, misleading, or false statements. Each of these statements failed to disclose the critical fact of the latency loophole. Equally important, they each failed to disclose the consequences of such latency loophole. See above alleging the consequences.

64. For example, on May 12, 2010, **Defendant Duffy** stated that: "Everybody has to understand that high-frequency trading is still liquidity," and the CFTC must "be careful in not cutting them [HFTs] off."[2]

65. On May 20, 2010, in testimony before a Senate Subcommittee, **Defendant Duffy** testified: "The use of high frequency trading by proprietary trading firms, investment banks, hedge funds and index traders, among others, has made the marketplace more efficient and competitive for all market participants. Careful consideration should be given to any decision to place significant restrictions or limitations on HFTs that would be harmful to the marketplace and result in less efficient and less liquid markets."[3]

---

[2] *Wall Street Pit,* "CME Warns Against Restricting High-speed Trading," May 12, 2010 http://wallstreetpit.com/27351-cme-warns-against-restricting-high-speedtrading/.

[3] Testimony of Terrence A. Duffy Before the Senate Subcommittee - May 20, 2010 http://filecache.drivetheweb.com/mr4enh_cme/353/download/Duffy052010Testimony051910.pdf.

66. On April 12, 2011, in testimony before the Senate Committee on Banking, **Defendant Duffy** testified: "[P]rice manipulation and other disruptions to the integrity of prices destroy[] public confidence in the integrity of our markets and harms the acknowledged public interest in legitimate price discovery and we have the greatest incentive and best information to prevent such misconduct." (p.16) Defendant Duffy also testified: "There is a shared interest among market participants, exchanges and regulators in having market and regulatory infrastructures that promote **fair, transparent and efficient markets and that mitigate exposure to risks that threaten the integrity and stability of the market**." (p.26).[4] [Emphasis added]

67. In an interview reported by Reuters on November 19, 2012, **Defendant Durkin** defended CME's oversight of manipulative or suspect trading. 'We have surveillance mechanisms in place to look for that kind of activity,' he told Reuters. 'If we identify it, we pursue it.'[5]

68. In a speech delivered at the "Flash Crash Conference: One Year Later" at Georgetown University on May 5, 2011, **Defendant Durkin** made the following assertions:

> The reality is that speed is going to continue to be a characteristic of our financial markets. As a self-regulating organization, we of course are committed to ensuring that we employ effective risk, volatility and error-mitigation functionality to support high-frequency trading activity in a way that benefits all market participants. However, very careful consideration should be given to any decision to place restrictions on these traders that would be harmful to their participation and result in less efficient and less liquid markets.[6]

---

[4] Testimony of Terry Duffy, CME Executive Chairman, before the Senate Committee on Banking, Housing & Urban Affairs to discuss "Implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act", April 12, 2011.

[5] *Reuters*, "Analysis: High speed traders jolt U.S. grain trade," Nov. 19, 2012 http://uk.reuters.com/article/2012/11/19/usa-grains-hft-idUKL1E8MJ5XJ20121119.

[6] Bryan Durkin Speech "Flash Crash Conference: One Year Later," at Georgetown University, Washington, DC; Rafik B. Hariri Building, Fisher Colloquium Durkin+Georgetown+University+Flash+Crash+050511.pdf.

69. The foregoing representations by Defendants were incomplete or misleading. The CME Group did not operate "in a way that benefits all market participants" as represented by Defendants, per Defendant Durken, on May 5, 2011 in the quote immediately above. Instead, the Exchange Defendants' computer code and algorithms had the previously alleged inherent characteristic. As previously alleged, the HFT John Doe Defendants built their programs expressly in order to take advantage of the CME's prior reporting to them of the prices at which they executed trades. This resulted in a market that benefited the select HFTs but hurt the other participants.

70. Accordingly, rather than operating "in a way that benefits all market participants," the CME Group was intentionally operating its exchanges in a way that greatly benefits certain favored HFTs at the expense of Plaintiffs and Class members.

71. By failing to disclose the foregoing material facts, Defendants rendered misleading their repeated public statements about the benefits of HFTs and the supposed need to encourage the HFTs. This includes the Exchange Defendants' representations to the effect that they were "committed to ensuring that we employ" trading and reporting methods "that benefit all market participants." *E.g.*, Defendant Durken's May 5 statement quoted above.

72. Again, on May 1, 2011, the existence of the latency loophole was made public for the first time. Scott Patterson, Jenny Strasburg and Liam Pleven, "High-Speed Traders Exploit Loophole," WALL STREET JOURNAL (May 1, 2013), available at: http://online.wsj.com/news/articles/SB10001424127887323798104578455032466082920http://link.brightcove.com/services/player/bcpid3517188355001?bckey=AQ~~,AAAAC59qSJk~,vyxcsD3OtBMbTlF0rtwip3425Y5GGmjL&bclid=3516882341001&bctid=3563813069001

73. The same *Wall Street Journal* article also relates that: "[w]hil many speed advantages are well-known to market insiders, only a relatively small group of sophisticated firms

appears to be aware of the CME's trade-reporting delays." According to an official at Jump Trading LLC, a Chicago HFT whose records have been subpoenaed by the New York Attorney General and the CFTC, "[s]ophisticated traders have been aware of the CME's order-latency issue for years and have incorporated the information into their trading strategies." *Id.* CME Group Board Director William Shepherd is a financial backer of Jump Trading, as well as its predecessor Akamai Trading, LLC, and it is reported that in 2013, Jump Trading paid Defendant CME Group $83 million in trading fees while receiving about $17 million for "market making activities."

74. When the Exchange Defendants' latency loophole began to be reported by the Press, the Exchange Defendants again made statements that were inaccurate, incomplete, misleading or false. These statements favored the Defendants at the expense of the Plaintiffs and Class members.

75. For example, in a Bloomberg TV interview on May 13, 2014, the CME characterized their delays as a "speed of light issue…[that Defendants] simply cannot address." In reality, the significance of the Latency Loophole is not related to the speed of light. Rather, the significance of the Latency Loophole involves (a) a CME/CME Group/CBOT network design flaw, (b) a resulting tremendous advantage for certain favored HFTs who have built their systems around this flaw, and (c) the material consequence that these HFTs systematically trade ahead of Plaintiffs and Class members who are operating based on dated prices.[7]

76. The essence of the facts that the Defendants should have addressed was and is whether the CME price reporting delay is of sufficient duration to have consequences for market

---

[7] http://link.brightcove.com/services/player/bcpid3517188355001?bckey=AQ~~,AAAAC59qSJk~,vyxcsD3OtBMbTlF0rtwip3425Y5GGmjL&bclid=3516882341001&bctid=3563813069001 quotation at 1:58

participants' trading. The length of the delay is sufficient to have the very serious trading consequences alleged above: daily, widespread, systematic trading ahead by the HFT John Doe Defendants and what has become a two tiered asymmetric reporting market.

77. Similarly, when asked about the Latency Loophole, the CME Group mischaracterized the issue in the same Bloomberg TV interview on May 13, 2014 by stating that, "when we put out our market data to the world there is no latency, it goes out at the same time." [8] This statement was false. Executed trades, or order fills, are sent to market participants before the reports of the same price changes and market data are sent to the public. As alleged repeatedly above, the delay has extremely material adverse consequences that should have been disclosed.

78. When the CME Group admitted the existence of the Latency Loophole as a delay, "between market data and trade confirmation," it falsely stated on or about May 1, 2013 that the delay is "one microsecond."[9] Later, the CME Group claimed that the delay is 1,000 times greater than a microsecond *i.e.*, the delay is one millisecond. *Id.* At other times, the CME Group said the latency was as much as 10,500 times greater, i.e., 1 millisecond. *Id*.

79. The latter statement may be accurate:

> A Chicago trading firm says it recently detected delays between the time it received confirmations of trades and the time the CME published the information on multiple futures contracts covering thousands of trades. For two weeks in late December and early January, the firm detected an average delay of 2.4 milliseconds for silver futures, 4.1 milliseconds in soybean futures and 1.1 milliseconds for gold futures.

"High Speed Traders Exploit Loophole" at fn. 12 *supra*.

80. 1 millisecond is 100 times as long as it takes an HFT to receive data and initiate a new trade. 4.1 milliseconds is 410 times as long.

[8] *Id* at 2:07
[9] Id at 2:30

81. For another example, on April 29, 2014, CME Group Chairman Terrance Duffy stated or implied that the CME Group provides transparency supposedly for smaller investors. "I think transparency is of the utmost of importance for the individual investors especially the smaller investors. They've got to have confidence that the game is not rigged for lack of a better term and that they have an opportunity to participate."[10] Due to the Latency Loophole and the CME's favored HFT firms trading ahead of small investors, there was unequal reporting and a lack of transparency

82. For example, Defendant Duffy further stated in the Bloomberg TV interview on May 13, 2014 that "true transparency" comes from trading a product in only one place like the CME and that it is "hard to get credibility on what the value of that price is" if it is dark. But because of the Latency Loophole, CME fills are 'dark' to all participants for a time sufficient for HFTs to systematically trade ahead. *See* http://link.brightcove.com/services/player/bcpid3517188355001?bckey=AQ~~,AAAAC59qSJk~,vyxcsD3OtBMbTlF0rtwip3425Y5GGmjL&bclid=3516882341001&bctid=3516904636001 at 1:25.

83. When asked to address whether certain market participants obtain access to price data before others, the CME Group stated, through Defendant Liskey in an official CME Group statement released on April 13, 2014: "CME Group only has one data feed that is distributed to all participants at the same time. No one can see another's order until it hits the order book, when it is public."[11] That data, as claimed several weeks later by Defendant Duffy during a *Reuters Insider*

[10] http://link.brightcove.com/services/player/bcpid3517188355001?bckey=AQ~~,AAAAC59qSJk~,vyxcsD3OtBMbTlF0rtwip3425Y5GGmjL&bclid=3516882341001&bctid=3520929979001 quotation at 2:55

[11] http://www.futuresmag.com/2014/04/13/cme-group-responds-to-hft-suit

interview on April 28, 2014, and again on the same date during a *Bloomberg Television* interview, "all comes out of one pipe."[12]

84. These are false statements. Again, the prices of fills (or executions) for the HFTs go out to the HFTs sufficiently before they go to the public data feed that the HFTs systematically trade ahead of Plaintiffs and the Class. This allows these same market participants the chance to make many subsequent trades, based on this information, before the rest of the market is made aware of the first trade.

85. At other times, the CME stated that the latency times were as great as many milliseconds:

> CME spokeswoman Anita Liskey said the exchange operator is aware of the order delays, which industry officials refer to as a "latency."
>
> There are "times when customers experience a latency of a few milliseconds between the time they receive their trade confirmations and when the information is accessible on the public feeds," she said, noting that the delays "are not consistent and vary across asset classes." [13]

86. But, when asked about the Latency Loophole after testifying before the United States Senate Agricultural Committee on May 13, 2014, Defendant Duffy stated there was "no latency." He said that the Latency Loophole did not matter because the futures exchanges represented a "vertical silo." These statements are false and misleading for the reasons previously alleged.[14]

---

[12] http://link.brightcove.com/services/player/bcpid3517188355001?bckey=AQ~~,AAAAC59qSJk~,vyxcsD3OtBMbTlF0rtwip3425Y5GGmjL&bclid=3516882341001&bctid=3516904636001

[13] Scott Patterson, Jenny Strasburg and Liam Pleven, "High-Speed Traders Exploit Loophole," WALL STREET JOURNAL (May 1, 2013), available at: http://online.wsj.com/news/articles/SB10001424127887323798104578455032466082920

[14] http://link.brightcove.com/services/player/bcpid3517188355001?bckey=AQ~~,AAAAC59qSJk~,vyxcsD3OtBMbTlF0rtwip3425Y5GGmjL&bclid=3516882341001&bctid=3563813069001

87. When addressing the CFTC's Technology Advisory Committee on June 3, 2014, Defendant Durkin, in his role as Chief Operating Officer of Defendant CME Group, made the following statement:

> Our market data is sent to everyone at once. There are no preferential data feeds that are provided exclusively to a particular segment of user base. While customers have several options in terms of how they receive data from us, we do not restrict anyone's access. Having multiple connectivity options makes our markets available and accessible to a broad array of market participants. No one can see orders prior to them hitting our match engine and being made available to the order book.[15]

As Defendant Durkin well knew at the time of these statements, these assertions were false and misleading for the reasons previously alleged.

The High Incidence Of Wash Sales.

88. In 1936, the United States Congress outlawed wash trades with the passage of the Commodity Exchange Act-calling the activity, "pure, unadulterated fraud."[16] Wash trades are used as part of some HFT strategies and also to reach the trading volume levels necessary to get payment in the form of rebates or stipends from the Exchange Defendants pursuant to clandestine incentive agreements.

89. Wash trades, alternatively termed wash sales, are prohibited by the CEA § 4c(a)(1) and (2), codified as 7 U.S.C. § 4c(a)(1) and (2). Wash trades occur when the same party takes both side of a trading transaction-in other words, the same party is both the buyer and the seller.

---

[15] http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/tac_060314_transcript.pdf

[16] "This bill seeks to minimize cheating or fraudulent practices by outlawing…wash sales, cross trades, accommodation trades, and other fictitious transactions. There hardly is any need for comments on these provisions." Senator Smith 80 CONG. REC. 78455 (May 26, 1936). See also statement by Senator Pope, "Wash sales are pretended sales made openly in the pit or trading place for the purpose of deceiving other traders. They are employed to give the false appearance of trading and to cause prices to be registered which are not true prices." 80 CONG. REC. 6159 (Apr. 17, 1936).

90. Former CFTC Commissioner Bart Chilton stated that wash trades occurred in the futures markets on a daily basis at "voluminous" and shocking levels, and are widespread among high-frequency trading firms, said Chilton, who has frequently said rapid-fire computer-driven strategies distort markets and boost the cost of trading for individual investors."[17]

91. Wash trades comprise by some estimates fifty percent of Exchange Defendants' total trading volume.[18] HFT wash trades provide the impression of immense volume, which in turn attracts non-HFTs to the market.[19]

92. Confidential Witness A, a high frequency trader, stated on June 13, 2014 that wash trades are part of HFT strategies in the futures market where firms need to trade continuously in a manner which assists in detecting market direction and permits them to exit adverse trades when the market goes against their positions. HFTs continuously place small bids and offers (called bait) at the back of order queues to gain directional clues. If the bait orders are hit, the algorithm will place follow-up orders either to accumulate favorable positions or to exit "toxic" risks, a process which leverages bait orders to gain valuable directional clues as to which way the market will likely move. The initial bait orders are very small with subsequent orders being very large. A portion of the large orders that follow the smaller bait orders are wash trades. All of this activity happens intentionally and continuously.

---

[17] http://www.reuters.com/article/2013/03/18/cftc-washtrades-chilton-idUSL1N0CADUD20130318

[18] CFTC's then Commissioner Bart Chilton on interview with CNBC on March 18, 2013 states that according to CFTC surveillance **wash trades occur daily at "large, voluminous level-I mean really to me a shocking level.**" (emphasis supplied) http://video.cnbc.com/gallery/?video=3000154836&play=1

[19] Incentives in the form of reduced or waived fees to HFTs has an impact on CME revenue comparable to the case of Barclays LX and its allowance of predatory HFTs to attract market share and revenue. See Dave Hunter piece http://dave-hunter.com/why-barclays-lied

93. According to an article that appeared in the *Wall Street Journal* on March 18, 2013, the CFTC is focused on suspected wash trades by high speed firms in futures contracts tied to the value of crude oil, precious metals, agricultural commodities and the Standard & Poor's 500-stock index, among other underlying instruments.[20]

94. While the Exchange Defendants enacted prohibitions against wash trades in November of 2013, it made provision for certain HFTs to make their "Self-Match Prevention measures" against the occurrence of wash trades ***voluntary*** thereby making enforcement against certain market participants less robust than against others.[21] This voluntary compliance allows HFTs to place identifiers on orders coming from different algorithms or strategies within their firms only if they choose to do so. The CME's prohibition against wash trades also allows HFTs an "out" if they state that the suspected wash trade was either not intentional or that it did not emanate from the same algo or sub-account.[22] Given that a HFT firm may have 200 traders or algorithms and can identify which trade came from what sub-account or algo within the firm after the transaction is completed, the CME's wash trade prohibition against HFT abuse is ineffective at best.

95. On December 24, 2014, Defendant CME Group issued a revised and final Market Regulation Advisory Notice regarding Rule 534 ("Wash Sales Prohibited"), which changed the

---

[20] Scott Patterson, Jenny Strasburg and Jamila Trindle, *'Wash Trades' Scrutinized*, WALL STREET JOURNAL March 18, 2013, available at: http://www.wsj.com/articles/SB10001424127887323639604578366491497070204.

[21] "**Q16: Is the use of CME Group's Self-Match Prevention functionality mandatory?** A16: Use of CME Group SMP functionality is optional and each firm has the flexibility to tailor its application of SMP functionality and its use of SMP IDs in ways that are appropriate for its particular business model and trading strategies." http://www.cmegroup.com/rulebook/files/cme-group-ra1308-5.pdf

[22] http://www.cmegroup.com/rulebook/files/cme-group-ra1308-5.pdf

explanation in answer to Question 11 regarding Defendant CME Group's "SMP functionality on CME Globex," which allows voluntary compliance with reporting wash trades by HFTs and other market participants. This system actually set up yet another opportunity for certain HFTs not only to avoid compliance by not reporting wash trades by affiliated entities but also to gain unfair order queue priority by knocking resting orders out of priority.[23]

96. The Exchange Defendants allowed, encouraged, and failed to prevent widespread wash trading by HFTs which created artificially inflated volume numbers and profits for the CME Group.[24]

Incentive Payments

97. The Exchange Defendants have long disclosed that they offer incentive agreements (called market maker programs) in new and illiquid, or thinly traded markets. By rebating commissions these agreements bring trading activity and market participants into these new or idle contracts to try to give them a chance to grow.

98. Contrary to the stated purpose of providing incentive agreements to help new or illiquid markets, the Exchange Defendants have entered into clandestine incentive/rebate agreements with favored firms like DRW Trading Group and Allston Trading that paid incentives or rebated fees for trading in well-established and heavily traded futures contracts.

---

[23] *See* October 29, 2014 Laura French, "Robots are killing off Wall Street's traders," WORLD FINANCE (discussing the spoofing dispute between Allston and HTG being arbitrated by the CME: "A source told *Bloomberg* that HTG believed the CME's self-match prevention system (which stops a company from carrying out a trade with itself) may have been exploited in spoof transactions, leading the CME to add that misuse of its software was a "violation" against trade regulations"), available at: http://www.worldfinance.com/home/robots-are-killing-off-wall-streets-traders.

[24] Scott Patterson, Jenny Strasburg and Jamila Trindle, *'Wash Trades' Scrutinized*, WALL STREET JOURNAL March 18, 2013, available at: http://www.wsj.com/articles/SB10001424127887323639604578366491497070204.

99. The CME has paid HFTs up to $750,000 per month merely for adding to the volume of trades in already well established futures contracts including even the highest volume contracts, such as the Eurodollar futures contract.

100. On June 17, 2014, a *Bloomberg.com* news article reported that HFT trading rebates, common in both the equities and futures markets, were under scrutiny by the U.S. Senate's Permanent Subcommittee on Investigations: "U.S. stock exchanges and one of the world's largest mutual fund companies called for greater public disclosure or elimination of obscure incentives and fees that lawmakers said favor the interests of high-speed traders over other investors….The Securities and Exchange Committee and Commodities Futures Trading Commission are also investigating whether traders benefit unfairly from better access to data and other incentives."[25]

101. It was revealed by *Bloomberg News* on June 19, 2014 that the Exchange Defendants have long entered into these clandestine agreements. The Exchange Defendants pay select favored market participant firms and HFTs to make trades even in established and well traded markets like Eurodollar futures, completely unbeknownst to all other market participants.[26]

102. The CFTC, the United States Department of Justice and the New York Attorney General are investigating and have subpoenaed the CME's clandestine contracts with certain HFTs - which contracts contain secret preferential pricing arrangements between the CME Group and

[25] "High-Frequency Trading Rebates Under Scrutiny in Senate," Bloomberg.com (June 17, 2014), available at: http://www.bloomberg.com/news/print/2014-06-17/high-speed-trading-fees-under-scrutiny-by-u-s-senators.html.

[26] June 19, 2014 Matthew Leising, "Perks Live Forever at CME Amid Review of Trade Incentives," Bloomberg, available at: http://www.bloomberg.com/news/2014-06-19/perks-live-forever-at-cme-amid-review-of-trade-incentives.html

certain firms. Among the firms that have been subpoenaed are Virtu Financial Inc., Chopper Trading LLC, Jump Trading LLC and Tower Research Capital, LLC.[27]

103. According to sources within the futures industry, the CME Group has given out 341 private incentive agreements as of July 2014, up from 56 agreements in 2010.

104. Confidential Witness B told Plaintiffs' counsel on May 19, 2014 that they have knowledge of the existence of a clandestine rebate agreement between the CME and a very large volume HFT firm, in the S&P500 E-Mini contract. The S&P500 E-Mini contract is arguably the most liquid and one of the most traded contracts in North America-the CME and CME Group do not need to have a clandestine incentive agreement in this market.

105. The CME Group has made false statements about these incentive agreements stating that the CME and CFTC make them available on their website. This is not true because the terms of these agreements, including their existence in certain markets are fiercely shrouded in secrecy.[28]

106. The CME and CBOT publish the commission fees (alternatively called trading and clearing fees) they charge to the public on its website. But they do not publish these clandestine and hidden incentive agreements, which contain commission structures far below what is made to the rest of the world.[29]

---

[27] http://online.wsj.com/news/articles/SB10001424052702303287804579447610625554506 http://www.bloomberg.com/news/2014-04-16/high-speed-traders-said-to-be-subpoenaed-in-n-y-probe.html

[28] http://link.brightcove.com/services/player/bcpid3517188355001?bckey=AQ~~,AAAAC59qSJk~,vyxcsD3OtBMbTlF0rtwip3425Y5GGmjL&bclid=3516882341001&bctid=3563813069001

[29] http://www.cmegroup.com/company/files/CME_Fee_Schedule.pdf http://www.cmegroup.com/company/files/CBOT_Fee_Schedules.pdf

107. Because of the CME Group's monopoly and non-disclosure, Plaintiffs do not know when these agreements began nor the futures contracts they cover. According to sources within the futures industry, it is suspected that incentive agreements were first offered by the CME to select HFTs in the established markets of Eurodollars and the S&P 500 E-Mini contract around 2005.

108. By surreptitiously giving some firms the ability to trade for secretly discounted rates, the CME and CBOT have effectively subrogated their role as self-regulatory entities to be in business with certain market participants-giving them an advantage over all others.[30]

109. The fact is that at no time have Defendants admitted to the trading public that these agreements exist in established markets. The existence of these clandestine agreements was only first confirmable through public sources in March 2014 through the S-1 filing of HFT firm Virtu Financial Inc. This document made the disclosure that the, "CFTC is looking into our trading during the period from July 2011 to November 2013 and specifically our participation in certain incentive programs offered by exchanges or venues during that time period."[31]

---

[30] Section 5(d)(2)(A) – "The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—
(i) access requirements;
(ii) the terms and conditions of any contracts to be traded on the contract market; and
(iii) rules prohibiting abusive trade practices on the contract market."
Section 5(d)(9)(A) – "The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade."
Section 5(d)(12) – "The board of trade shall establish and enforce rules—
(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and
(B) to promote fair and equitable trading on the contract market."
http://legcounsel.house.gov/Comps/COMEX_NEW.pdf

[31] https://www.sec.gov/Archives/edgar/data/1592386/000104746914002070/a2218589zs-1.htm#dm16701_business quotation is taken from page 30.

110. Defendants caused and utilized information asymmetry and clandestine incentive agreements to create a two-tiered marketplace on the CME and CBOT.

111. On November 4, 2014, the Financial Times reported in a story by Gregory Meyer, entitled "ICE chief blasts rival's tactics to lure users," that Jeff Sprecher, the CEO of ICE, had "launched an unusually explicit criticism" of the CME Group's strategy of providing fee rebates and other financial incentives to "attract the type of algorithm…trading that typically drives commercial users away."

112. As previously alleged, the Exchange Defendants' clandestine incentive agreements furthered their monopoly, unreasonably restrained trade, and financially incentivized and empowered the HFTs to engage in a greater amount of abuses of the latency loophole and of wash trades by defraying the fee costs by making a high volume of trades.

CLASS ALLEGATIONS

113. Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23 on behalf of persons who, between January 1, 2005 and the present (the "Class Period") (a) purchased and/or sold futures contracts or derivatives or other contracts on the CME or CBOT, (b) directly or indirectly paid for real-time data and price information for financial futures contracts, agricultural, energy, metal, equity index, foreign exchange and interest rate futures and options contracts provided by Defendants, or (c) paid exchange fees CME Group, CBOT or CME related entities to trade futures contracts or derivatives or other contracts.

114. Excluded from the Class are Defendants (including the Doe Defendants when identified), any officer, director, partner or owner of any of the Defendants, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest, and any individuals or entities that that

were parties to any of the illegal and anticompetitive preferential agreements, fee reductions, rebates or other improper financial incentives as alleged herein.

115. The members of the Class are so numerous that joinder of all members is impracticable pursuant to F.R.C.P. Rule 23 (a) (1). The exact number of Plaintiff Class Members is unknown to Plaintiffs. It can only be ascertained through discovery Plaintiffs believe that the number of Class members is in the thousands. Class members are geographically dispersed.

116. Plaintiffs' claims are typical of and not antagonistic to the claims of the members of the Class. All members of the Class are similarly affected by Defendants' wrongful conduct that is complained of herein.

117. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained counsel competent and experienced in class actions and applicable law.

118. The conduct of Defendants has been and continues to be of such a nature, as alleged herein, to be generally applicable to all members of the Class. This makes appropriate final injunctive relief as sought and described more fully herein on a Classwide basis.

119. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class within the meaning of F.R.C.P. Rule 23(a)(2) and 23(b)(3). Among the common questions of law and fact are:

(a) whether a latency loophole existed;

(b) if so, what were the extent and consequences of such latency;

(c) whether wash sales were made by the HFTs;

(d) if so, what was the extent and consequences of such wash sales;

(e) whether the undisclosed incentive agreements existed;

(f) if so, what were the extent and consequences of such agreements;

(g) whether Defendants made statements that were rendered false or misleading by the facts alleged herein;

(h) if so, what was the extent and consequences of such false and misleading statements;

(i) whether the CEA and CFTC Rules and Regulations were violated by Defendants' conduct alleged herein;

(j) whether as a result of the any of these violations, Defendants caused prices in the CBOT and CME futures markets to be manipulated during the Class Period;

(k) whether Defendants acted in bad faith within the meaning of Section 22(b) of the CEA;

(l) whether any Defendant aided and abetted the violations of the CEA, the fraud, the manipulation, or the bad faith conduct;

(m) whether Defendants' conduct caused damages to Class members;

(n) whether Defendants' conduct violated the federal antitrust laws;

(o) if so, whether Defendants' violations caused Plaintiffs and the Class recoverable damages under the antitrust laws;

(p) whether any violations of the federal antitrust laws entitle Plaintiffs and members of the Class to injunctive relief;

(q) the identity of the Doe Defendants, and the value and extent of their unlawful conduct.

120. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Joinder of all members of the Plaintiff Class is impracticable. The

damages suffered by most individual members of the Plaintiff Class may be relatively small. The expense and burden of individual litigation make it virtually impossible for most members of the Plaintiff Class to redress the wrongs done to them individually. The Plaintiff Class is readily definable. The prosecution of this action as a class action will reduce the possibility of repetitious litigation and different treatment of different Defendants for the same misconduct and damages. There will be no significant difficulties in managing this action as a class action.

121. Class Members' identities and futures transactions can generally be identified by looking at the records of the CME and CBOT trade clearing entity, CME Clearing, and other trade clearing firms at the CME and CBOT.

122. An additional reason for the misleading and false nature of Defendants' previously alleged representations is the combination of some or all of the undisclosed facts previously alleged: the undisclosed latency loophole, the undisclosed facts relating to the latency loophole including the consequences thereof, the undisclosed incentive agreements, the undisclosed consequences thereof, and the undisclosed incidences of wash sales and the consequences thereof.

123. On August 28, 2014, Matthew Leising disclosed for the first time in a *Bloomberg.com* story that the CME Group had been running a profitable subsidiary trading unit under the management of Defendant Durkin named GFX Corporation. This CME Group subsidiary acted in direct competition with Plaintiffs and the Class.

124. On February 5, 2015, the CME Group reported that fourth quarter revenue had risen by 22% over the same period in 2013, and that 4th quarter diluted earnings had increased by more than 50%. As reported in a *Zacks Equity Research* earnings analysis published on February 15, 2015, the CME Group's clearing and transaction fees spiked 23.6% year over year, accounting for

about 85% of total revenue. This attributed in one material part, to the conduct previously alleged herein.

125. On March 10, 2015, HTG Capital Partners filed a lawsuit in this District against unnamed HFT manipulators. According to the HTG complaint allegations, HTG Capital suffered damages during the Class Period from these alleged manipulative activities in some of the same futures contracts traded by Plaintiffs. This included, through transactions (alleged with particularity) occurring on December 6, 2013, January 9, 2014, and August 27, 2014.

FRAUDULENT CONCEALMENT

126. The unlawful activity alleged herein was by its nature self-concealing. Defendants at no time during the Class Period revealed their computer codes, their incentive agreements, or the nature or extent of wash sales to Plaintiffs or the public. Defendants at no time disclosed the latency loophole and made many statements that were rendered misleading by its existence and consequences.

127. When the latency loophole began to be disclosed, Defendants continued to make statements designed to minimize its significance. Plaintiffs sued within two years of the times of the disclosures in the press about the latency loophole.

128. Defendants' actions were calculated to conceal the existence of the prevalence of wash trades, the Latency Loophole and clandestine rebate agreements.

129. Plaintiffs exercised due diligence. When facts began to emerge suggesting the existence of the latency loophole and possible connections between the latency loophole and other facts, Plaintiffs took steps to obtain counsel and bring this suit.

130. Due to the fraudulent concealment, any applicable statute of limitations affecting or limiting the rights of action of the Class and the Plaintiffs has been tolled during the period of fraudulent concealment.

CLAIMS FOR RELIEF

A. First Cause of Action Against Defendants For Manipulation In Violation Of The Commodity Exchange Act, 7 U.S.C. § 9 And CFTC Rule 180.1

131. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs as if fully set forth herein.

132. The Individual Defendants and the Exchange Defendants well knew that their statements were false and misleading because of the material facts that such Defendants consistently omitted to disclose, all as previously alleged herein. Defendants also well knew that the direct and undisclosed consequences of the omitted material facts included the systematic trading ahead by the favored HFTs, the high incidences of wash sales, the Exchange Defendants' financial subsidy of such conduct, and the trading by Plaintiffs and Class members based upon prices represented to be real time accurate prices but which were stale prices.

133. Exchange Defendants and Individual Defendants further well knew that their foregoing conduct helped inflate the volume of trading for which the Exchange Defendants received fees and otherwise financially benefited the Exchange Defendants and Individual Defendants as well as the favored HFTs but caused Plaintiffs and Class members to transact based upon dated prices.

134. Section 6(c) of the CEA, 7 U.S.C. §9 makes it "unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any … contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate…"

135. The CEA authorizes private lawsuits in cases where the liable party purchased or sold a contract of sale of any commodity for future delivery through the use or employment of any prohibited "manipulative device or contrivance" or caused "manipulation of the price" of a contract of sale of any commodity for future delivery. 7 U.S.C. §25(a)(1)(D)(i-ii).

136. Plaintiffs bought at least twenty-two different futures contracts during the Class Period and suffered losses as a direct result of the Defendants' creation of a trading marketplace where prices were manipulated and distorted by fraud.

137. Plaintiffs and the Class purchased and sold futures contracts during the Class Period on Defendants' exchanges, and as a result of Defendants' unlawful activities: (a) transacted at the resulting artificial and unlawful prices; and (b) were further legally injured in that they transacted in an artificial and manipulated market operating under the artificial price signals caused by Defendants.

138. Under the cover of these false reports, the John Doe Defendants traded ahead and manipulated prices.

139. As a direct result, Plaintiffs and members of the Class who purchased and sold futures contracts during the Class Period were injured and are entitled to their actual damages.

B. Second Cause of Action Against Defendants For Manipulation And/Or False Reporting In Violation Of The Commodity Exchange Act, 7 U.S.C. §§ 9(1)(A) and 6b

140. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs as if fully set forth herein.

141. Plaintiffs and the Class paid Defendants for data and price information during the Class Period including by paying for exchange fees as well as data fees. Plaintiffs did so based upon the omission by Defendants to disclose the material fact that rendered Defendants' representations about such data and price information false and misleading. Similarly, Plaintiffs

then transacted in futures contracts and other contracts based upon such material omissions and suffered losses as a result.

142. Defendants knew that their data was reported and transmitted to members of the Class as real time data was NOT real time data and that other market participants were receiving faster data. Defendants knew their statements were misleading and inaccurate, and the data was stale.

143. Defendants' statements deceived members of the Class into believing that Defendants' exchanges were being conducted in a fair and honest manner under the rules and regulations of the CFTC and CEA, including the Core Principles, as well as the Rules of the Exchange Defendants.

144. Under the cover of these false reports, the John Doe Defendants traded ahead and manipulated prices.

145. By engaging in the aforementioned actions and practices, Defendants continuously misled Plaintiffs and the Class in connection with the purchase and/or sale of futures contracts.

146. Plaintiffs and the Class are each entitled to actual damages for violations of the CEA alleged in this complaint.

C. Third Cause Of Action Against Defendants For Violations Of The Commodity Exchange Act, 7 U.S.C. §§ 25(a) and 25(b).

147. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs as if fully set forth herein.

148. Section 25(a)(1) of the CEA provides that: "[a]ny person (other than a registered entity or registered futures association) who violates this chapter or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this chapter shall be liable for

actual damages resulting from one or more of the transactions referred to in subparagraphs (A) through (D) of this paragraph and caused by such violation to any other person.'

149. Section 25(a)(1)(B) then refers to transactions made "through such person any contract of sale of any commodity for future delivery (or option on such contract or any commodity)…", and Section 25(a)(1)(D) further defines "who purchased or sold a contract referred to in subparagraph (B) hereof…if the violation constitutes – (i) the use or employment of, or an attempt to use or employ…any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate …; or (ii) a manipulation of the price of any such contract…" Here Plaintiffs have alleged with specificity the 22 separate types of futures contracts in which Plaintiffs transacted during the Class Period, and that Defendants were directly responsible for the losses suffered by Plaintiffs when they transacted in those futures contracts, because Defendants were actively involved in promoting and aiding and abetting in the manipulation of those futures contracts through their preferred HFT customers.

150. The Exchange Defendants are registered entities and were statutorily required to have in place provisions and capacities for the "prevention of market manipulation" (7 U.S.C. §§7(b)(2)), "fair and equitable trading" (7 U.S.C. §§7(b)(3)), "financial integrity of transactions" (7 U.S.C. §§7(b)(5)), "compliance with (its) rules" (7 U.S.C. §§7(d)(2)), and the "monitoring of trading" "to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process." (7 U.S.C. §§7(d)(4)).

151. The Exchange Defendants were also required, pursuant to 7 U.S.C. §2l(b)(7), to have rules "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, in general, to protect the public interest…." As alleged with

particularity herein, the Exchange Defendants failed to protect the public interest and to preserve fair and unmanipulated markets for the trading of futures contracts.

152. The Exchange Defendants are required pursuant to 7 U.S.C. § 7(d)(2) to regulate themselves in conformity with the CEA and all regulations enacted by the CFTC, including what are termed "Core Principles," and in particular **Core Principle 2** (establishing compliance with rules of the contract market and prohibiting abusive trade practices thereon); **Core Principal 4** (ensuring that exchanges have the capacity and responsibility to prevent manipulation and price distortion); **Core Principle 7** (making sure that any information required to be transmitted or made available to market participants be accurate and complete, with no material omissions); **Core Principle 12** (requiring exchanges to establish and enforce rules to protect markets and market participants from abusive practices committed by any party); together with the further rules and regulations passed by Congress under Dodd-Frank to strengthen the protections provided to futures market participants, 17 C.F.R. 118 Part II (June 19, 2012), such as **Sections 38.152(a)(1)** (Protection of market participants and the public) and **Section 38.152(a)(3)** (Price discovery), and **Section 38.401(b)** (Accuracy requirement). Furthermore, Defendants knowingly failed to enforce, for the ulterior motive of greatly increasing their own profits, numerous Rules of the Exchange Defendants, among others: CBOT and CME Rules 402 (Business Conduct Committee) (specifically the required treatment of manipulations), Rules 530 (Priority of Customers' Orders), Rules 531 (Trading Against Customers' Orders Prohibited), Rules 532 (Disclosing Orders Prohibited); and Rules 534 (Wash Trades Prohibited). Accordingly, the CME and CBOT have failed to operate in accordance with the strictures of the CEA.

153. The conduct of Defendants complained of herein results not from ordinary or even gross negligence but rather from Defendants' bad faith and knowing and active conduct. It was

undertaken for Defendants' own economic gain and in furtherance of no credible discharge of the Exchange Defendants' legal duties to maintain a fair and manipulation free exchange in compliance with the CEA and CFTC Rules and Regulations.

154. Accordingly, Plaintiffs are entitled to recover from Defendants under Sections 22(a) and 22(b) of the Commodity Exchange Act, 7 U.S.C. §§25(a) and 25(b).

D. Fourth Cause of Action Against Defendants For Aiding And Abetting Manipulation In Violation Of The Commodity Exchange Act 7 U.S.C. §1 et seq.

155. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs as if fully set forth herein.

156. Defendants also each knowingly aided and abetted the violations of the CEA alleged herein. Further, each Defendant counseled, induced and/or procured the violations by the other Defendants and the preferred HFT firms as alleged herein.

157. Under Section 13c(a) of the CEA, 7 U.S.C. §13, Defendants are liable for willfully intending to assist and actually assisting in the manipulative activities as alleged herein.

158. Under Section 25(a)(1), "[a]ny person (other than a registered entity or a registered futures association) who … willfully aids, abets, counsels, induces, or procurers the commission of a violation of this chapter shall be liable for actual damages resulting from one or more of the transactions referred to in subparagraphs (A) through (D) of this paragraph…" Here Plaintiffs have alleged with particularity the many ways in which Defendant CME Group and the Individual Defendants aided and abetted in the manipulative activities of the preferred customer HFTs, and performed other acts in furtherance of this unlawful manipulative activity, together with the knowing and intentional assistance of the John Doe Defendants.

159. Defendant Exchanges and their officers and directors aided and abetted in the manipulative activities of the preferred customer HFTs through multiple failures to enforce existing CEA and CFTC rules and regulations, together with CEA core principles and specific Rules of the Defendant Exchanges, all designed to prevent manipulative and other unlawful activity in the futures markets.

160. Plaintiffs and Class Members are each entitled to actual damages from Defendants for the violations alleged herein.

E. Fifth Cause of Action Against Defendants For Fraud.

161. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs as if fully set forth herein.

162. Defendants entered into clandestine contracts with certain preferred HFTs knowing that the activities of these HFTs would adversely affect all other individuals and entities that utilized the Exchange Defendants' futures contracts. Defendants knew full well that allowing certain preferred HFTs to use structural and hidden advantages to trade against and exploit the Exchange Defendants' other market users would create an unfair and manipulated marketplace in violation of the CEA and Defendants' obligations thereunder as previously alleged herein.

163. Throughout the Class Period, Defendants not only permitted certain preferred HFTs to see and detect price and market data not available to other market participants, including price information about the Plaintiffs and other Class Members, Defendants also permitted the HFTs to execute trades based on this same data on terms that guaranteed these HFTs an overwhelming and illegal trading advantage.

164. During the Class Period, the CME and CBOT sold price information to the Plaintiffs and the Class as accurate, instant, *bona-fide* and "real-time" prices and order information,

all the while knowing that they had permitted certain preferred HFTs to see and act on this price information before Plaintiffs and the Class could act. What Defendants were representing and selling as real-time information was in essence delayed secondhand information. Defendants never disclosed this highly material information to Plaintiffs and the Class.

165. Plaintiffs and the Class are entitled to actual damages from Defendants based upon Defendants' fraud on the marketplace that caused Plaintiffs and the Class severe financial losses.

F. Sixth Cause Of Action For Violations Of Section 1 Of The Sherman Antitrust Act, 15 U.S.C. §1 *et seq.*, ("Sherman Act")

166. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs as if fully set forth herein.

167. Beginning at a time unknown to Plaintiffs, in violation of Section 1 of the Sherman Act, Defendants have entered into and engaged in conspiratorial agreements in unreasonable restraint of trade with various HFTs.

168. Plaintiffs disclaim any requirement to plead a relevant market in connection with their Section 1 price-fixing claim, as to which Defendants are liable *per se*. Plaintiffs transact in a relevant market composed of trading in the United States in financial futures and options contracts offered by Defendants CME and CBOT whose price execution and volume reporting are controlled by the engines of the CME and CBOT, respectively. Defendants exclusively offer numerous contracts traded therein.[32] The dominant amount of trading in most of the remaining contracts

[32] Such exclusive contracts include, for example, 10-Year T-Note Futures (CBOT); E-mini S&P 500 Futures (CME); 5-Year T-Note Futures (CBOT); U.S. Treasury Bond Futures (CBOT); E-mini NASDAQ 100 Futures (CME); E-mini Dow ($5) Futures (CBOT); Live Cattle Futures (CME); Lean Hog Futures (CME); 30 Day Federal Funds Futures (CBOT); E-mini S&P MidCap 400 Futures (CME); Class III Milk Futures (CME); E-mini Health Care Select Sector Futures (CME); E-mini Industrial Select Sector Futures (CME).

occurs on the CME or CBOT. Defendants have the prices and quality power for trading services in this market.

169. Defendants' agreements and associated anticompetitive and exclusionary conduct have had the following adverse effects, on competition among others:

a. Preferring certain HFTs to receive notice of transaction prices and volumes sufficiently in advance of Plaintiffs' receipt of such information as to allow the HFTs systematically to trade ahead of and obtain better prices than Plaintiffs and Class members.

b. Preferring certain HFTs by defraying their transaction costs incurred in the high amount of trading that provides them with the faster price reports;

c. Otherwise preferring HFTs through their payment through undisclosed and anticompetitive incentive payments.

d. Causing Plaintiffs and Class members to pay more for each contract they traded, to receive lower quality services, and to lose money on their trades.

e. Causing the prices charged to and received by Plaintiffs for futures and options contract transactions on the CBOT and the CME at non-competitive levels different than those which would have prevailed in a free market but for the contract, combination or conspiracy.

170. Plaintiffs have been deprived of the benefits of equal access and level playing field competition in such markets.

171. As a direct and proximate result of the foregoing, Plaintiffs and members of the Class have suffered injury to their property. Absent injunctive relief, these violations may continue or recur in the future.

172. Plaintiffs are entitled to recover treble damages, attorneys' fees, reasonable expenses, and costs of suit for the violations of the Sherman Act alleged herein.

G. Seventh Cause Of Action For Monopolization, Attempt to Monopolize, and Conspiracy to Monopolize in Violation of Section 2 of the Sherman Act

173. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs as if fully set forth herein.

174. Defendant CME Group operates the largest exchange in the United States in commodity futures, commodity options, and other derivatives. The open interest in the CME contracts is the largest of any exchange on earth.

175. Plaintiffs disclaim any need to plead a definitive relevant market prior to obtaining full discovery. Defendants' monopoly power, which they abused to unlawfully exclude competitors, reduce competition and cause noncompetitive prices for financial futures and option contracts, is adequately alleged through the power of Defendants to control prices.

176. In violation of Section 2 of the Sherman Act, Defendants monopolized, attempted to monopolize and conspired or agreed to monopolize in the relevant markets previously alleged.

177. Defendants perpetuated and increased their monopoly power in such market and monopoly revenues not by reason of superior services or business acumen, but the restrictive anticompetitive and exclusionary conduct alleged herein.

178. This includes by exercising their monopoly power to prefer various HFTs and enter secret agreements with, all as previously alleged herein.

179. By diverting monies away from Plaintiffs and the Class to certain preferred HFTs in the performance of Defendants' web of agreements with these HFTs, Defendants have increased their monopoly power to set prices in the market for trading in the United States in financial futures and options contracts, offered by Defendants CME and CBOT to HFTs, whose price execution

and volume reporting are performed by computerized trading engines not operated in a manner to create a "latency loophole" aspect, and directly caused injury to Plaintiffs and the Class in the inextricably-intertwined trading market in which Plaintiffs transact.

180. This conduct and its resulting impact on the market occurred in or affected interstate commerce. Defendants possessed or actually achieved a serious threat to possess monopoly power that, directly and proximately, fixed and made artificial transaction prices.

181. At all times pertinent hereto, the CME Group and CME controlled access to trading in financial futures and options offered by them and the CME Group. They similarly controlled their computer programs and trading engines operated in a manner to create the "latency loophole."

182. As a direct and foreseeable result that was proximately caused by Defendants' aforesaid conduct, Plaintiffs and members of the Class have been injured in their property. Plaintiffs are entitled to recover threefold their damages proximately caused by Defendants' violation of Section 2 of the Sherman Act.

183. The CME Group and other Defendants should be ordered to make the disclosures revealed to be appropriate by discovery herein. These include, at a minimum, (a) disclosing the duration of the latency loophole in each type of futures and options contract traded on the CME or CBOT; (b) disclosing the rebates or payments the CME Group provides to HFTs and in what contracts, and why; (c) disclosing the other incentives and relationships that the CME or its officers or directors have with the preferred HFTs; and (d) disclosing whether the CME's Real Time data provides reports of prices in real time or, for example, other reports provide faster information about prices than does the inaptly-named Real Time data.

184. Additionally or alternatively, the CME should be ordered to correct its computer code so as to eliminate the latency loophole.

185. Other injunctive relief regarding the CME Group's ownership and operation of four commodity exchanges may be considered equitable, required, and appropriate after discovery.

H. Eighth Cause Of Action For Unjust Enrichment.

186. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs as if fully set forth herein.

187. Plaintiffs transacted on the Exchange Defendants relying upon Defendants to enforce the rules and regulations of the CEA and CFTC, including all of the Core Principles, as well as to enforce in a fair and equitable manner the various Rules of the Exchange Defendants. Plaintiffs therefore relied on the accuracy, completeness and timeliness of the transaction data that they received from Defendants, and that all participants on the Exchange Defendants were being treated in an equal and fair manner.

188. Unbeknownst to Plaintiffs, Defendants were providing faster access to critical transaction and order data to certain preferred HFTs, which enabled those HFTs consistently to deprive Plaintiffs of the best executions on their transactions that Plaintiffs were entitled to receive but for Defendants' deliberate and wrongful conduct. At the same time that the preferred HFT customers were receiving the better executions that should have belonged to Plaintiffs, Defendants were receiving greatly enhanced transaction fees from the HFTs, who in turn increased the volume of their transactions on the Exchange Defendants in direct relation to the level of undisclosed and preferential treatment that they received from Defendants.

189. Furthermore, Plaintiffs were paying Defendants valuable consideration throughout the Class Period for transaction data that Defendants represented was the same as that provided to all other market participants that paid such access fees, when in reality the data purchased by Plaintiffs was not the same as that secretly provided to Defendants' preferred HFT customers and

thus worth much less than what Plaintiffs had paid, if anything at all, considering that if Plaintiffs had known the true nature of how market data was being provided to different market participants, Plaintiffs might well have not transacted in such manipulated markets and suffered damages thereby.

190. Defendants have unjustly retained the financial benefits that they have received both directly from Plaintiffs in the payment of data access fees as well as the greatly increased transaction revenues gained from Defendants' preferred HFT customers based upon the HFTs' ability to disadvantage Plaintiffs and the Class from obtaining fair execution prices for their transactions on the Exchange Defendants.

191. It would violate fundamental principles of justice, equity and good conscience to permit Defendants to retain such ill-gotten gains, and Plaintiffs and the Class are entitled to restitution of all such revenues wrongfully received by Defendants during the Class Period.

JURY DEMAND

192. Plaintiffs demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. Determining that this action is a proper class action as to all claims alleged herein, appointing Plaintiffs' counsel as counsel for the class and certifying Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages, including interest, in favor of Plaintiffs and the other members of the Plaintiff Class against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding treble damages on those claims brought under the provisions of the federal antitrust laws;

D. Awarding equitable restitution of investors' monies of which they were defrauded and disgorgement and/or the imposition of a constructive trust on Defendants' ill-gotten gains;

E. Awarding forfeiture in favor of the Plaintiff Class against all Defendants for all illicit fees, commissions and any other compensation paid by Plaintiffs and Plaintiff Class Members;

F. Awarding equitable and/or injunctive relief pursuant to 28 U.S.C. §2201(a) in favor of the Plaintiff Class against Defendants and their counsel, agents and all persons acting under, in concert with, or for them, including: (i) an accounting of and the imposition of a constructive trust and/or an asset freeze on Defendants' illicit profits from the conduct detailed herein; (ii) prohibiting HFT traders from engaging in preferential order placement, electronic front-running, rebate arbitrage, slow-market arbitrage, spamming, spoofing, and/or quote spamming on the Defendants' exchanges; (iii) prohibiting Defendants from charging fees for Defendants' real-time futures market data and refunding fees paid by the Plaintiffs and the Class; and (iv) prohibiting Defendants from allowing HFTs to execute trades based on the non-public order information of the Plaintiffs and the Class; and

G. Awarding such other relief as this Court may deem just and proper.

Dated: Chicago, Illinois
May 8, 2015

LAW OFFICES OF R. TAMARA DE SILVA

Respectfully submitted
By: **/s/ R. Tamara de Silva**
R. Tamara de Silva
(Attorney #6244445)
980 N. Michigan Avenue, Suite 1400
Chicago, Illinois 60611
rtamaradesilva@uchicago.edu
(312) 913-9999

LOVELL STEWART HALEBIAN JACOBSON LLP
Christopher Lovell
clovell@lshllp.com
Victor E. Stewart
victornj@ix.netcom.com
Robert W. Rodriguez
rbrodr@aol.com
Merrick S. Rayle
msrayle@sbcglobal.net
Christopher Mooney
cmooney@lshllp.com
61 Broadway, Suite 501
New York, New York 10006
(212) 608-1900