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# CME Seeks Dismissal Of Class Action Over HFT Treatment

Share us on: By **Jeff Sistrunk**

Law360, Los Angeles (September 15, 2014, 4:19 PM ET) -- [CME Group Inc.](#) and several of its executives moved on Friday in Illinois federal court to dismiss an amended class complaint alleging the operator of the world's largest futures exchange has given high-frequency traders preferential and illegal access to futures markets, contending that the suit is devoid of supporting facts.

In a bid to toss the second amended complaint brought by a group of traders, attorneys for the defendants argued that the traders have failed to plead with specificity — or otherwise lack standing to bring — their claims of violations of the Commodity Exchange Act, [Commodity Futures Trading Commission](#) rules and regulations and the Sherman Act.

"Rather than alleging actual facts to support their claims, [the plaintiffs'] now 60-page complaint is replete with implausible conspiracy theories, conjecture and excerpts of public reports and news articles that mostly postdate the alleged class period," the defendants' lawyers wrote.

The plaintiffs lodged the second amended complaint [in July](#), adding details to flesh out their allegations that CME and the Chicago Board of Trade — a designated contract maker that merged with the CME in 2007 — have entered into secret agreements with certain high-frequency trading firms, creating a "two-tiered marketplace" that disadvantages the public and other futures market participants. The traders [initially filed suit](#) in April.

According to the plaintiffs, CME and the CBOT for years sold purportedly real-time data on the price of U.S. debt instruments, agricultural products, energy, foreign exchange rates, metals and equity indexes to traders and other market participants, which is standard practice.

But traders Mark Mendelson, John Simms and William Charles Braman alleged the exchanges have also

entered into “clandestine contracts” with HFTs, illegally selling them sneak peaks of price data and unexecuted order flow and then allowing them to trade on that data.

Much of the amended complaint focused on allegations that the exchanges have allowed certain HFTs to use an exploitable strategic advantage at the CME called the latency loophole, which allows market participants to know that orders they entered were executed and at what price, and to enter many subsequent orders, all before the rest of the participants learn the statuses of their initial orders.

HFTs use the advance knowledge to discern where large orders are positioned and to anticipate price movements by engaging in exploratory trading by pinging the market with the use of multiple small orders, according to the complaint.

The latency loophole was first brought to light through a media report, and Duffy and other CME executives subsequently made false and misleading statements to the media, investing public and class regarding the exploitation of the loophole by certain HFTs, the plaintiffs claimed.

In Friday's filing, the defendants asserted that the traders disregarded the CEA's limitations on private actions and asserted some claims that aren't authorized by the statute. Moreover, the plaintiffs didn't plead actual damages resulting from any transaction on CME or CBOT, or that the exchanges or executives acted in bad faith, according to the defendants.

"Rather than pleading with particularity, plaintiffs simply generically claim that defendants concealed the existence of incentive agreements and the order confirmation latency and that this somehow operated to defraud plaintiffs and cause them to suffer trading losses," lawyers for the defendants wrote.

None of the executives' statements cited by the traders were made within the class period, and the plaintiffs therefore could not have relied upon or been harmed by the statements, the defendants argued.

The traders also lack standing to pursue their Sherman Act claims, the defendants contended, as they have "not even attempted to allege harm flowing from any conduct that would be unlawful under any recognized antitrust theory, such as price-fixing, market division or customer allocation,

"Plaintiffs have instead taken the fraud and market manipulation allegations underlying their other claims and simply tacked on antitrust jargon," defendants' lawyers wrote.

The plaintiffs are represented by R. Tamara de Silva of the Law Offices of R. Tamara de Silva and Victor E. Stewart and Robert W. Rodriguez of [Lovell Stewart Halebian Jacobson LLP](#).

CME is represented by Albert L. Hogan III, Jerrold E. Salzman, Marcella Lape and Emily A. Reitmeier of [Skadden Arps Slate Meagher & Flom LLP](#).

The case is Braman et al. v. The CME Group Inc. et al., case number [1:14-cv-02646](#), in U.S. District Court for the Northern District of Illinois.

--Additional reporting by Ed Beeson. Editing by Stephen Berg.

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### **Court**

Illinois Northern

### **Nature of Suit**

## **Judge**

[Honorable Charles P. Kocoras](#)

## **Date Filed**

April 11, 2014

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