

## Traders Blast CME's Bid To Toss Suit Over Secret HFT Deals

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Law360, New York (October 31, 2014, 4:24 PM ET) -- Traders alleging [CME Group Inc.](#) gave certain high-frequency trading firms preferential and illegal access to futures markets told an Illinois federal court Thursday that they have adequately alleged their claims and that even more evidence has come to light since their complaint's filing.

Plaintiff traders Mark Mendelson, John Simms and William Charles Braman claim that options and futures exchange company CME and the Chicago Board of Trade — a designated contract maker that merged with 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.

But CME last month [sought to dismiss](#) the traders' amended class complaint, [filed in July](#), saying their claims lacked specificity and were "replete with implausible conspiracy theories" based on public reports and news articles that came after the alleged class period.

The traders said CME had not met its burden to show that the claims were not adequately pled given that their allegations are assumed to be true with all reasonable inferences. In their memorandum against dismissal filed Thursday.

"Further, since the filing of the challenged complaint, important facts and information from news reports and other sources continue to be revealed," the memorandum said. "These ongoing disclosures provide important additional facts which plaintiffs could now plead in order to further support their allegations and claims."

The plaintiffs sought leave to make further allegations based on this new information if their amended complaint is found to be lacking in any respect.

The traders' second amended complaint included claims of violations of the Commodity Exchange Act, [Commodity Futures Trading Commission](#) rules and regulations, and the Sherman Act. They [initially filed suit](#) in April.

Much of the amended complaint focused on allegations that the exchanges have allowed

certain HFTs to use an exploitable strategic advantage at 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.

They argued in their memorandum Thursday that these allegations are enough to show bad faith under the Commodities Exchange Act.

“Plaintiffs allege with greater particularity the latency loophole and the manner in which defendants allowed certain preferred HFT clients to take illegal advantage of the rest of the market in order to generate high volume and more revenues for the exchange defendants,” the memorandum said.

“Plaintiffs also allege with particularity how defendants knowingly permitted and indeed encouraged the illegal and manipulative practice of wash trades and other manipulative conduct that would swell the transaction volume on the exchange defendants and increase profitability while at the same time illegally disadvantaging other innocent market participants.”

Attorney R. Tamara de Silva representing the traders told Law360 on Friday that the case shows that CME should not be a self-regulatory body.

“I think this case is significant because of the importance of the futures market,” she said. “The conflicts of interest with the CME management are so severe that this is not practical as a self-regulatory model and has not been practical for a long time.”

Representatives of the defendants did not immediately respond to a request for comment Friday.

The plaintiffs are represented by R. Tamara de Silva of the Law Offices of R. Tamara de Silva; and Christopher Lovell, Victor E. Stewart, Robert W. Rodriguez and Christopher



Mooney of [Lovell Stewart Halebian Jacobson LLP](#).

CME is represented by Albert L. Hogan III, Jerrold E. Salzman, Marcella L. 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.

--Editing by Edrienne Su.