



EXHIBIT 1

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

CME GROUP, INC., a Delaware
Corporation, as successor by merger to CBOT
HOLDINGS, INC., a Delaware Corporation; THE
BOARD OF TRADE OF THE CITY OF CHICAGO)
INC., a Delaware Corporation; and MICHAEL
FLOODSTRAND and THOMAS J. WARD and
All Others Similarly Situated,

Plaintiffs,

v.

C.A. No. 2369-N

CHICAGO BOARD OPTIONS EXCHANGE,
INC., a Delaware non-stock corporation,
WILLIAM J. BRODSKY, JOHN E. SMOLLEN,
ROBERT J. BIRNBAUM, JAMES R. BORIS,
MARK F. DUFFY, JONATHAN G. FLATOW,
JANET P. FROETSCHER, BRADLEY G.
GRIFFITH, PAUL J. JIGANTI, STUART K.
KIPNES, DUANE R. KULLBERG, JAMES P.
MacGILVRAY, JR., ANTHONY D. McCORMICK,
EDEN MARTIN, RODERICK PALMORE,
THOMAS H. PATRICK, JR., SUSAN M.
PHILLIPS, WILLIAM R. POWER, SAMUEL K.
SKINNER, CAROLE E. STONE, HOWARD L.
STONE, and EUGENE S. SUNSHINE,

Defendants.

THIRD AMENDED COMPLAINT

Plaintiffs CME Group, Inc. ("CME Group"), the Board of Trade of the City of Chicago, Inc. ("the Board of Trade"), Michael Floodstrand and Thomas J. Ward hereby allege against Defendant Chicago Board Options Exchange, Inc. (the "CBOE") and the individual Defendants as follows:

INTRODUCTION

1. The CBOE is one of the largest stock option exchanges in the world. It was incorporated on February 8, 1972. It was established and directly funded by the Board of Trade

and its membership. For this and other reasons, the Board of Trade, CME Group and most Board of Trade Full Members (as described in Paragraph 36 *infra*) have a direct interest in the outcome of this dispute. From its creation, the CBOE's Certificate of Incorporation ("the Charter") has provided that, "[i]n recognition of the special contribution made to the organization and development of the [CBOE] by the members of the Board of Trade," members of the Board of Trade have the right to become members of the CBOE without having to purchase such a membership. Article Fifth(b) of the Charter is attached hereto in its entirety as Exhibit 1. This Article remains in effect today. The right afforded each Full Member of the Board of Trade under this provision ("the Exercise Right") has substantial value.

2. On September 1, 1992, the Board of Trade and the CBOE entered into an agreement ("the 1992 Agreement") that reaffirmed essential terms of the Charter. The 1992 Agreement is attached hereto as Exhibit 2. The CBOE agreed, *inter alia*, that each holder of an Exercise Right — *i.e.*, each Full Member of the Board of Trade or his or her delegate — is entitled to share equally with all other members of the CBOE in the offer or distribution by the CBOE to other CBOE members, including any "cash or property distribution, whether in dissolution, redemption, or otherwise" so long as the Full Member or the delegate meets certain conditions. 1992 Agreement at ¶¶ 3(a), 3(b). The 1992 Agreement provides explicitly that Full Members of the Board of Trade or their delegates possess this right without regard to whether or not they have actually exercised their Exercise Rights, and that the CBOE is obligated to give notice to the Board of Trade 90 days prior to any such distribution so that holders of an Exercise Right can exercise it for the limited purpose of participating in such offer or distribution. *Id.* at ¶ 3(b).

3. The 1992 Agreement also expressly provides that Full Members of the Board of Trade or their delegates who have exercised have the same rights and obligations as regular

CBOE members. *Id.* at ¶ 3(a). The 1992 Agreement and subsequent agreements, including the agreement dated February 14, 2005, further provide that eligible Board of Trade Full Members and their lessees (“Full Member delegates”) remain entitled to become CBOE members in accordance with Article Fifth(b) and the subsequent agreements between the parties. The February 14, 2005 agreement is attached hereto as Exhibit 3.

4. The CBOE and its senior management have announced that the CBOE intends to initiate a series of transactions as part of its plan to reorganize as a for-profit entity. As part of these proposed transactions, the CBOE created a holding company. The CBOE has made clear that it will distribute an equal number of shares in that holding company only to certain members of the CBOE, but Full Members of the Board of Trade or their delegates will receive nothing. If the CBOE completes these steps, the CBOE would wrongfully deprive Full Members or their delegates of their right to an equal share in such distribution, in breach of the 1992 Agreement and the Director Defendants’ (as defined in Paragraph 31 *infra*) fiduciary duties to Full Members of the Board of Trade or their delegates.

5. To purportedly determine the rights of Full Members of the Board of Trade or their delegates to share in any distribution connected with the proposed CBOE transactions, the CBOE appointed a CBOE Special Committee, which solicited both written and oral testimony regarding the value of the Exercise Right in relation to the proposed CBOE transactions. One month after conducting an open forum soliciting oral testimony, the Special Committee nevertheless suspended its work based upon a declaration by the CBOE Board of Directors that the then-proposed merger between CBOT Holdings, Inc. (“CBOT Holdings”), of which the Board of Trade was a subsidiary, and Chicago Mercantile Exchange Holdings, Inc. (“the CBOT-CME Merger”) would terminate the Exercise Right. As a result and without any notice to Full Members of the Board of Trade or their delegates, on December 12, 2006, the CBOE unilaterally

decreed that, upon consummation of the CBOT-CME Merger, Full Members of the Board of Trade or their delegates who had not exercised their Exercise Right prior to the close of business on December 11, 2006 would no longer be permitted to exercise or have trading access to the CBOE without first obtaining a separate CBOE membership. Further, the CBOE unilaterally and without notice decreed that, following consummation of the CBOT-CME Merger, Full Members of the Board of Trade or their delegates who had exercised their Exercise Right prior to the close of business on December 11, 2006 would continue only to have trading access to the CBOE and only during an interim period. Then, prior to any action by the SEC with regard to this December filing, on July 2, 2007, CBOE filed an "Interpretation" with the SEC. This "Interpretation" purported to terminate the Exercise Right upon the close of the CBOT-CME Merger. These decrees were made in furtherance of CBOE's efforts to unilaterally extinguish the Exercise Right and thereby wrongfully deprive Board of Trade Full Members and their delegates of their rights to exercise, to trade, to participate in any CBOE distribution, or to enjoy any of the other rights and privileges appurtenant to regular membership in the CBOE, in breach of CBOE's own Charter, the parties' agreements and the Director Defendants' (as defined in Paragraph 31 *infra*) fiduciary duties to the Full Members of the Board of Trade or their delegates.

PARTIES

6. Plaintiff CME Group is a holding company with its principal place of business at 20 South Wacker Drive, Chicago, Illinois. CME Group is a Delaware stock, for-profit corporation and the successor by merger to CBOT Holdings, Inc.

7. Plaintiff the Board of Trade is a commodity futures and futures options exchange with its principal place of business at 141 West Jackson Boulevard, Chicago, Illinois. It is a

Delaware non-stock, for-profit corporation. Until July 12, 2007, it was a subsidiary of CBOT Holdings and is now a subsidiary of CME Group.

8. Plaintiffs Michael Floodstrand and Thomas J. Ward are stockholders of CME Group and Full Members of the Board of Trade. Plaintiff Ward owns an Exercise Right Privilege and satisfies all other conditions to exercise that Exercise Right. Plaintiff Floodstrand has already exercised his Exercise Right.

9. Defendant CBOE is a stock options exchange with its principal place of business at 400 South LaSalle Street, Chicago, Illinois. The CBOE is a Delaware non-stock, not-for-profit corporation.

10. Defendant William J. Brodsky is the Chairman of the Board of Directors, and the Chief Executive Officer of the CBOE. He serves at the pleasure of the rest of the Board of Directors, including the regular CBOE members thereon, and is ultimately beholden to the regular CBOE members.

11. Defendant John E. Smollen is a member of the Board of Directors of the CBOE. From August through December 2006, he was also Vice Chairman of the Board of Directors of the CBOE.

12. Defendant Robert J. Birnbaum is a member of the Board of Directors of the CBOE.

13. Defendant James R. Boris is a member of the Board of Directors of the CBOE.

14. Defendant Mark F. Duffy is a member of the Board of Directors of the CBOE.

15. Defendant Jonathan G. Flatow is a member of the Board of Directors of the CBOE.

16. Defendant Janet P. Froetscher is a member of the Board of Directors of the CBOE.

17. Defendant Bradley G. Griffith is a member of the Board of Directors of the CBOE. Since January 1, 2007, Defendant Griffith has also been Vice Chairman of the CBOE.

18. Defendant Paul J. Jiganti is a member of the Board of Directors of the CBOE.

19. Defendant Stuart J. Kipnes is a member of the Board of Directors of the CBOE.

20. Defendant Duane R. Kullberg is a member of the Board of Directors of the CBOE.

21. Defendant James P. MacGilvray is a member of the Board of Directors of the CBOE.

22. Defendant R. Eden Martin is a member of the Board of Directors of the CBOE.

23. Defendant Anthony D. McCormick is a member of the Board of Directors of the CBOE.

24. Defendant Roderick Palmore is a member of the Board of Directors of the CBOE.

25. Defendant Thomas H. Patrick, Jr. is a member of the Board of Directors of the CBOE.

26. Defendant Susan M. Phillips is a member of the Board of Directors of the CBOE.

27. Defendant William R. Power is a member of the Board of Directors of the CBOE.

28. Defendant Samuel K. Skinner is a member of the Board of Directors of the CBOE.

29. Defendant Carole E. Stone is a member of the Board of Directors of the CBOE.

30. Defendant Howard L. Stone is a member of the Board of Directors of the CBOE.

31. Defendant Eugene S. Sunshine is a member of the Board of Directors of the CBOE. (The Defendants identified in Paragraphs 10-31 are referred to collectively herein as “the Director Defendants”).

32. Certain Director Defendants are either members of the CBOE or, in the case of Defendant Brodsky, are beholden to such members. These Director Defendants have a personal financial interest in denying the rights of Eligible CBOT Full Members (as defined *infra*).

JURISDICTION AND VENUE

33. Because CME Group, the Board of Trade, and the CBOE are all Delaware corporations, and this lawsuit involves the rights of their shareholders under Delaware General Corporation Law and Delaware common law, Delaware law governs all or some of the claims brought herein under the CBOE's Charter. This Court has jurisdiction over the claims asserted herein pursuant to 8 Del. C. §111(a).

34. The 1992 Agreement contains an Illinois choice-of-law provision (See Ex. 2 at ¶6(b)) but also implicates shareholder rights in the CBOE. Thus, claims for the breach of the 1992 Agreement may be governed by either Delaware or Illinois law.

BACKGROUND FACTS

35. Organized in 1848, the Board of Trade is one of the largest futures and options exchanges in the world, providing facilities for the trading of a wide variety of futures and options contracts ranging from contracts on corn, wheat and soybeans to contracts on U.S. Treasury Securities and the Dow Jones Industrial Average.

36. Over the years, the Board of Trade has formed various membership categories. The original category, known as a Full Membership, entitles anyone holding that category of membership to trade as principal and broker any and all futures or options contracts traded at the Board of Trade. There are 1,402 Full Memberships at the Board of Trade. These memberships may be sold, leased or held for the benefit of an individual member or member firm.

The CBOE "Exercise Right"

37. The CBOE was established in 1972 in order to provide a market for stock options trading. The CBOE's Charter specifically recognized the "special contribution made to the organization and development of the [CBOE] by the members of the Board of Trade of the City of Chicago." Ex. 1. That special contribution included direct funding and Board of Trade members actively trading on the CBOE.

38. In consideration of this special contribution, and to promote growth and liquidity of the CBOE, the CBOE's Charter provides that a member of the Board of Trade is entitled to become a member of the CBOE without having to purchase a CBOE membership. Specifically, Article Fifth(b) provides:

[E]very present and future member of said Board of Trade who applies for membership in the [CBOE] and who otherwise qualifies shall, so long as he remains a member of said Board of Trade, be entitled to be a member of the [CBOE] notwithstanding any such limitation on the number of members and without the necessity of acquiring such membership for consideration or value from the [CBOE], its members or elsewhere. Members of the [CBOE] admitted pursuant to this paragraph (b) shall, as a condition of membership in the [CBOE], be subject to fees, dues, assessments and other like charges, and **shall otherwise be vested with all rights and privileges and subject to all obligations of membership**, as provided in the by-laws.

Ex. 1 (emphasis added). The ability of a Board of Trade Full Member to exercise this right to become a member of the CBOE is known as the Exercise Right. Each Exercise Right has significant value to its holder.

The 1992 Agreement

39. After the creation of the Exercise Right, the Board of Trade and the CBOE had periodic disputes about the definition and scope of the Right. One of these disputes concerned whether a Full Member of the Board of Trade who leased his Board of Trade membership

retained the Exercise Right or whether that Right passed to the lessee (called a delegate). The 1992 Agreement, which was signed on September 1, 1992, resolved this and other disputes between the exchanges regarding the Exercise Right.

40. The Board of Trade and the CBOE entered into the 1992 Agreement not only for their own benefit, but “on behalf of their respective members.”

41. Under the 1992 Agreement, the Board of Trade agreed that the Exercise Right would be limited to the 1,402 Full Memberships (and any delegates thereof) existing at the time of the Agreement. *See* Ex. 2 at ¶ 2(c). No new memberships created subsequently by the Board of Trade would qualify for the Exercise Right.

42. The Board of Trade further agreed that, in order to hold the Exercise Right, Board of Trade Full Members or their delegates would have to own or possess all trading rights and privileges appurtenant to Board of Trade Full Memberships as defined in the 1992 Agreement. *See* Ex. 2 at ¶¶ 1(a), 1(b) and 2(a). These trading rights and privileges are defined as:

(i) the rights and privileges of a CBOT Full Membership which entitle a holder or delegate to trade as principal and broker for others in all contracts traded on the CBOT, whether by open outcry, by electronic means, or otherwise, during any segment of a trading day when trading is authorized; and (ii) every trading right or privilege granted, assigned or issued by CBOT after the effective date of this Agreement to holders of CBOT Full Memberships, as a class, but excluding any right or privilege which is the subject of an option granted, assigned or issued by CBOT to a CBOT Full Member and which is not exercised by such CBOT Full Member.

Ex. 2 at ¶ 1(c).

43. In return for these and other agreements by the Board of Trade, the CBOE acknowledged that all Full Members of the Board of Trade or their delegates (“Eligible CBOT Full Members”) hold an Exercise Right. Ex. 2 at ¶ 3(c) (“[A]ny Eligible CBOT Full Member or Eligible Full Member delegate is entitled to become an Exerciser Member pursuant to Article

Fifth(b), provided such individual qualifies to be a CBOE Regular Member in accordance with the rules of the CBOE applicable generally to CBOE Regular Membership.”). In fact, in a September 1, 2001, letter from Defendant Mark F. Duffy, at the time CBOE’s Vice Chairman and Chairman of CBOE’s Executive Committee, the CBOE acknowledged that it lacked the authority to terminate the Exercise Right:

We do not have the authority to do away with the Exercise [R]ight. It was granted to CBOT members in our Articles of Incorporation and **absent a vote to do away with it or a court determination to do away with it, it will always exist.**

A copy of Mark F. Duffy’s September 1, 2001 Letter to CBOT members is attached hereto as Exhibit 4 (emphasis added).

44. Furthermore, the CBOE expressly agreed that Eligible CBOT Full Members who become CBOE members by exercising their Exercise Right (“Exerciser Members”) have the same rights and obligations as all other CBOE members. Paragraph 3(a) of the 1992 Agreement provides that:

The CBOE acknowledges and agrees . . . that all Exerciser Members, including Exerciser Members who are Eligible CBOT Full Member delegates, **have the same rights and privileges of CBOE regular membership as other CBOE Regular Members**, including the rights and privileges with respect to the trading of all CBOE products.

Ex. 2 at ¶ 3(a) (emphasis added).

45. The 1992 Agreement specifically provides that the “same rights and privileges of CBOE regular memberships” include rights to any distribution made by the CBOE. In particular, the CBOE agreed that:

Notwithstanding the foregoing, all Exerciser Members shall have the right to purchase or to participate in the offer or distribution of any optional or additional CBOE membership or any transferable or nontransferable trading right or privilege offered or distributed by the CBOE after the effective date of this Agreement to other

CBOE Regular Members, as a class, on the same terms and conditions as other CBOE Regular Members, and any such additional membership, trading right or privilege so acquired by an Exerciser Member shall be separately transferable by such Exerciser Member on the same basis as the same may be separately transferable by other CBOE Regular Members.

In the event the CBOE makes a cash or property distribution, whether in dissolution, redemption or otherwise, to other CBOE Regular Members as a class, which has the effect of diluting the value of a CBOE Membership, including that of a CBOE membership under Article Fifth(b), **such distribution shall be made on the same terms and conditions to Exerciser Members.**

Ex. 2 at ¶ 3(a) (emphasis added).

46. Furthermore, the CBOE agreed to give the Board of Trade at least 90 days notice prior to making any cash or property distribution in order to give Eligible CBOT Full Members and their delegates who have not yet exercised their Exercise Right the opportunity to do so. *See* Ex. 2 at ¶ 3(b) (“The CBOE agrees to notify the CBOT no less than ninety (90) days prior to every offer, distribution or redemption subject to Paragraph 3(a). . .”).

47. The 1992 Agreement further provides that “either party . . . may bring suit (on its own behalf or on behalf of its members, or both) to enforce the terms of this Agreement and to recover damages for any breach of this Agreement.” Ex. 2 at ¶ 6(c). The 1992 Agreement is governed by Illinois law. *See* Ex. 2 at ¶ 6(b).

Board of Trade Restructuring and Subsequent Agreements Between Board of Trade and CBOE

48. Starting in 1999, the Board of Trade began developing a plan that ultimately resulted in a decision by its Board of Directors to restructure the Board of Trade by creating CBOT Holdings, a Delaware stock, for-profit company, and distributing shares of the common stock of CBOT Holdings to the current members of the Board of Trade. Pursuant to this restructuring, the Board of Trade became a non-stock, for-profit subsidiary of CBOT Holdings in which the members hold memberships entitling them to certain trading rights and privileges on

the exchange. These restructuring transactions were completed on April 22, 2005. As part of the restructuring, each of the 1,402 Full Members of the Board of Trade received 27,338 shares of Class A common stock of CBOT Holdings, one Series B-1 Membership in the Board of Trade and one Exercise Right Privilege (“ERP”).

49. During this same period, the CBOE, the Board of Trade, and CBOT Holdings entered into a series of letter agreements providing that the restructuring transactions would not diminish in any way the Exercise Right held by the Full Members or their delegates. Specifically, they agreed that, after the Board of Trade’s restructuring, including an IPO in October 2005, a Board of Trade Full Member would continue to hold the Exercise Right if the member owns: (1) 27,338 shares of Class A Common Stock of CBOT Holdings; (2) one Series B-1 membership of the Board of Trade; and (3) one ERP and meets certain other conditions. A Full Member delegate would still hold the Exercise Right if he or she was in possession of the same three components by reason of delegation. Within the meaning of the 1992 Agreement, these three components represented all of the parts of a Board of Trade Full Membership in the specific context of the Board of Trade restructuring.

50. According to the latest such agreement, dated February 14, 2005, “Eligible CBOT Full Members and Eligible CBOT Full Member delegates will continue to be entitled to become Exerciser Members in the CBOE in accordance with Article Fifth(b), the 1992 Agreement, the August 7, 2001 Agreement as amended and this letter agreement.” Ex. 3 at 1.

CBOT Holdings Announces Merger with Chicago Mercantile Exchange Holdings, Inc.

51. On October 17, 2006, CBOT Holdings and Chicago Mercantile Exchange Holdings, Inc. (“CME”) announced that they had signed a definitive agreement to merge, thereby creating an extensive and diverse global derivatives exchange company. This merger closed on July 12, 2007.

52. As part of the CBOT-CME Merger, all CBOT Holdings stockholders received 0.375 shares of CME Group Class A common stock per share of CBOT Holdings Class A common stock, or to elect an amount in cash. The merger did not impact any core membership rights or privileges at either the CME or the Board of Trade, including the Exercise Rights of Full Members or their delegates. The Board of Trade survived the transaction, and Board of Trade Full Members, who continue to hold a membership interest in the Board of Trade, continue to have full trading rights in all products then or thereafter traded on the Board of Trade. Someone who owned 27,338 shares of CBOT Holdings Class A Stock received, in consideration for those shares, 10,251.75 shares of CME Group Class A Stock. Someone who owned a B-1 membership in the Board of Trade prior to the transaction's closing continued to hold a B-1 membership in the Board of Trade after the transaction closed. Someone who owned an ERP prior to the transaction's closing continued to own an ERP after the transaction closed.

CBOE Treatment of Exerciser Members

53. As of July 1, 2007, approximately 229 of the 1,402 Full Members or Full Member delegates had exercised their Exercise Right and have become members of the CBOE. From the time that the Board of Trade created the CBOE until July 2007, as required by the CBOE's Charter and the 1992 Agreement, the CBOE recognized that these exercising Full Members of the Board of Trade and Full Member delegates were members of the CBOE, subject to the same privileges and obligations as any other member of the CBOE.

54. From the time that the Board of Trade created the CBOE until July 2007, Full Members and Full Member delegates who had exercised paid the same fees and dues assessed against all other CBOE members and, except for certain restrictions on transferability, agreed upon in the 1992 Agreement, were treated generally the same as all other CBOE members.

55. From the time that the Board of Trade created the CBOE until July 2007, Full Members and Full Member delegates who had exercised had the same right to vote on all decisions of the CBOE subject to member vote, including the election of the Board of Directors, as other members of the CBOE.

CBOE Restructuring

56. The CBOE has long acknowledged that the large number of Exercise Rights implicated the CBOE's autonomy and presented a potential obstacle to any plans it might have to demutualize. In recognition of this fact, the CBOE announced in April 2004 that it planned to purchase, through a modified Dutch auction process, 500 outstanding ERPs for a price ranging between \$60,000 and \$100,000 each. The CBOE's offer to purchase was intended to reduce the number of potential CBOE shareholders if the CBOE decided to restructure, and the offer was made without any distinction between Full Members who have exercised and Full Members who were eligible to exercise. In connection with the Dutch auction, in January 2005, CBOE publicly announced that it was considering demutualizing and reorganizing as a for-profit entity.

57. The Dutch auction was conducted in the Spring of 2005. Only 69 Full Members offered to redeem their ERPs during the auction. The CBOE purchased those rights for \$100,000 each. The CBOE later purchased two more ERPs, paying \$135,000 on August 25, 2006, and then \$127,000 on February 2, 2007.

58. On September 14, 2005, the CBOE announced that its Board of Directors had approved a plan to begin the process of converting the CBOE to a for-profit stock corporation. At the same time, the CBOE stated that part of this reorganization plan included "the need to address the exercise rights held by Chicago Board of Trade (CBOT) Full Members." Since then, the CBOE has reiterated that it intends to become a for-profit stock corporation.

59. In furtherance of Defendants' scheme to deny the rights of Eligible CBOT Full Members, beginning on or about September 21, 2005 and continuing to the date of this complaint, CBOE management has stated that Full Members and Full Member delegates of the Board of Trade should either receive no equity, much less equity, or a different form of equity than all other CBOE members in any restructuring transactions. These statements conflict with the terms of the 1992 Agreement between the Board of Trade and the CBOE and settled principles of Delaware corporate law.

60. In furtherance of Defendants' scheme to deny the rights of Eligible CBOT Full Members, on September 25, 2006, the CBOE Board of Directors announced that it had appointed a CBOE Special Committee, purportedly composed of independent directors of CBOE's Board of Directors, to determine the value of the Exercise Right in relation to the CBOE's planned demutualization. A copy of CBOE Information Circular IC06-132 is attached hereto as Exhibit 5. The CBOE Special Committee solicited written and oral testimony from all CBOE members, Board of Trade Full Members, and other interested parties. *Id.* at 1. On November 2, 2006, the CBOE Special Committee held an Open Forum in which oral testimony was presented.

61. In furtherance of Defendants' scheme to deny the rights of Eligible CBOT Full Members, on December 12, 2006, the CBOE submitted to the Securities and Exchange Commission ("SEC") a proposed rule change that purported to "present[] an interpretation of" Article Fifth(b) as amended by the 1992 Agreement and subsequent agreements between the Board of Trade and the CBOE. The CBOE's "interpretation is that upon the consummation of the [merger] of [CBOT and] CME [], the right of members of the Board of Trade to become or remain members of CBOE without having to purchase a [separate] CBOE membership will be terminated[.]" In conjunction with that "interpretation," the CBOE unilaterally and without notice decreed that, upon consummation of the CBOT-CME Merger, Eligible Members of the

Board of Trade who had not exercised prior to the close of business on December 11, 2006 “would not be permitted to exercise or have trading access to CBOE during the interim period without obtaining a separate CBOE membership.” Furthermore, the CBOE unilaterally and without notice decreed that, following consummation of the CBOT-CME Merger, Full Members of the Board of Trade or their delegates who had exercised their Exercise Rights prior to the close of business on December 11, 2006 would be allowed only to trade on the CBOE and only during an undefined interim period “[t]o prevent any risk that the loss of [Full Members who had exercised] upon the termination of the [E]xercise [R]ight might adversely affect liquidity in the CBOE’s market[.]” By submitting its proposed rule change, the CBOE improperly sought to move this state law dispute to the SEC rather than have this Court consider the issues and properly resolve the scope of the parties’ agreements, shareholder rights, and board fiduciary duties under State corporate and contract law.

62. In furtherance of Defendants’ scheme to deny the rights of Eligible CBOT Full Members, on December 12, 2006, the CBOE Board of Director publicly declared that the Exercise Right would terminate as a result of the then-proposed CBOT-CME Merger and that the CBOE intended to “move ahead with its own demutualization.” The CBOE News Release dated December 12, 2006 is attached hereto as Exhibit 6. The Board of Directors also announced that the CBOE Special Committee would suspend its work with regard to the Exercise Right, as there was no longer a need to ascribe a value to the Exercise Right because of the CBOE Board’s “decree” that the merger transaction eliminates the Board of Trade Full Members’ membership interests in the CBOE. *Id.* As a result, there is an actual and continuing dispute between the CBOT, its Full Members and Full Member delegates who have or are eligible to exercise, and the CBOE that is ripe for adjudication.

63. In furtherance of Defendants' scheme to deny the rights of Eligible CBOT Full Members, on June 29, 2007, the CBOE Board adopted, and on July 2 the CBOE Board put into immediate effect a rule change "to address the status of exerciser members in the event that the proposed acquisition of CBOT by CME Holdings is approved and consummated before the SEC takes final action on" CBOE's December 2006 rule filing. This rule change provides, among other things, that:

- Each person who was an Exerciser Member on July 1, 2007 and on July 11, 2007 and satisfies certain conditions is granted "temporary CBOE membership status." In substance and effect, CBOE has created a temporary permit program that allows the purchasers of the permit certain trading rights at CBOE but otherwise strips the Exerciser Members of their CBOE membership, including their rights under Delaware law and CBOE's charter.
- The Board of Trade B-1 membership and Exercise Right Privilege, which were previously essential for a "lessee" to become an Exerciser Member of CBOE, will no longer be necessary. A new "temporary" CBOE member is not required to either hold an Exerciser Membership or lease an Exerciser Membership from a Class Member. Instead, the "temporary" CBOE member now has to pay directly to CBOE an amount to be determined by CBOE "on a monthly basis, based on published lease fee information."¹ CBOE began charging this access fee on September 1, 2007. The initial access fee is \$4,700 per month. The economic consequences to the Class are very substantial. First, beginning on September 1, 2007, a Class Member who has leased his B-1 membership and Exercise Right Privilege to someone trading at CBOE will lose approximately \$5,000 in monthly rent. (There are approximately 147 such leases.) Under the CBOE plan, these fees will now go to CBOE coffers instead of to the lessors. Second, the pool of leases available for rent will increase by some estimated 221 memberships, thus decreasing the rent received by all Class Members who are lessors. And, third, since a significant portion of the value of B-1 memberships is attributable to the potential lease value, the value of all B-1 memberships will decline materially. All Class Members own B-1 memberships.
- Commencing July 1, 2007, no additional person will be granted "temporary CBOE membership" status. This bar has an immediate financial impact on some Board of Trade members, and adversely and profoundly affects the value of all B-1 memberships.

¹ CBOE says the fees will be held in escrow. The terms of the escrow and the beneficiaries thereof are not disclosed. The lessor will not be repaid out of the escrow if the lessees were the payors.
(BMF-W0069796.)

This action was in violation of CBOE's Charter, the 1992 Agreement, and the Director Defendants' fiduciary duties to the Class.

CLASS ALLEGATIONS

64. This action is brought pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware and satisfies the prerequisites set forth therein.

65. Plaintiffs Michael Floodstrand and Thomas J. Ward are Full Members of the Board of Trade who bring this action individually and on behalf of a class consisting of Full Members and Full Member delegates of the Board of Trade who own or possess by delegation as of a date set by the Court: (1) at least 10,251.75 shares of Class A Common Stock of CME Group stock; (2) one series B-1 membership of the Board of Trade; and (3) one ERP.

66. The Class consists of as many as 1,331 members, and thus is so numerous that joinder of all members in a single action is impracticable.

67. There are numerous questions of law and fact that are common to the Class, including the following:

- (a) Whether the CBOE's Charter and the 1992 Agreement conveys to Full Members of the Board of Trade and Full Member delegates an unextinguishable right to a full CBOE membership;
- (b) Whether the Full Members of the Board of Trade and Full Member delegates within the Class own rights in the CBOE equal to the rights enjoyed by other members of the CBOE;
- (c) Whether Full Members and Full Member delegates within the Class are entitled to share, on terms equal with all other CBOE members, in any cash or property distribution or redemption made by the CBOE;
- (d) Whether the CBOE's distribution of shares in connection with any proposed restructuring would constitute a cash or property distribution or redemption under the 1992 Agreement;
- (e) Whether the CBOE breached the 1992 Agreement by determining that the Full Members of the Board of Trade and Full Member delegates within the Class will not receive the same number and type of shares that CBOE

distributes to other CBOE members as part of its reorganization transaction;

- (f) Whether the CBOE would breach the 1992 Agreement by failing to give the Board of Trade 90 days advance notice of the distribution/redemption that will be part of its restructuring transaction;
- (g) Whether the CBOE breached the CBOE's Charter, the 1992 Agreement, and the February 14, 2005 agreement by seeking to unilaterally extinguish, upon consummation of the CBOT-CME Merger, the Exercise Rights, and the corresponding rights and privileges of CBOE membership, of Class Members who had not exercised prior to the close of business on December 11, 2006;
- (h) Whether the CBOE breached the CBOE's Charter and the 1992 Agreement by seeking to unilaterally extinguish, upon consummation of the CBOT-CME Merger, the CBOE membership rights of Exerciser Members other than CBOE trading rights during an undefined interim period;
- (i) Whether the CBOE and its Directors violated Delaware law by discriminating against the Full Members of the Board of Trade and Full Member delegates within the Class by declaring that other CBOE members will be treated in a materially different manner in connection with its reorganization transaction;
- (j) Whether the CBOE and its Directors violated Delaware law by discriminating against Eligible Full Members of the Board of Trade and Full Member delegates within the Class by seeking to extinguish, upon consummation of the CBOT-CME Merger, the Exercise Rights of Class Members who had not exercised prior to the close of business on December 11, 2006;
- (k) Whether the CBOE and its Directors violated Delaware law by discriminating against the Full Members of the Board of Trade and Full Member delegates within the Class by seeking to extinguish, upon consummation of the CBOT-CME Merger, the CBOE membership rights of Exerciser Members other than CBOE trading rights during an undefined period.
- (l). Whether the CBOE and its Directors violated Delaware law by filing and implementing CBOE's July 2, 2007 rule filing.

These common issues predominate over any questions affecting only individual members.

68. The claims of Michael Floodstrand and Thomas J. Ward are typical of the claims of the Class.

69. Michael Floodstrand and Thomas J. Ward will fairly represent and adequately protect the interests of the Class. They are represented by counsel of their choice who are experienced in class action litigation and fully able to act as counsel for the Class.

70. This action may be maintained as a Rule 23b(1), b(2) and b(3) class action because the requirements of all subsections of Rule 23(b) are satisfied by the Class.

COUNT I: INJUNCTIVE RELIEF
(CME Group, Board of Trade, Michael Floodstrand and
Thomas J. Ward, Individually and on Behalf of the Class)

71. Plaintiffs CME Group, the Board of Trade, Michael Floodstrand, and Thomas J. Ward reincorporate and reallege Paragraphs 1 through 70 as set forth above.

72. As alleged in Paragraphs 37 through 47 and Paragraphs 49 through 50 above, the Full Members of the Board of Trade and Full Member delegates are intended third party beneficiaries of the Charter, the 1992 Agreement, and the February 14, 2005 agreement.

73. Plaintiffs and Plaintiff Class Members have a protectible right under the terms of the Charter, the 1992 Agreement, and the February 14, 2005 agreement.

74. Plaintiffs and Plaintiff Class Members have and continue to suffer irreparable harm as a result of the CBOE's declaration, unilaterally and without notice to Plaintiffs or Plaintiff Class Members, that the Exercise Right terminated upon consummation of the CBOT-CME Merger, as described in Paragraphs 61 through 63 above. Moreover, Plaintiffs lack an adequate remedy at law for this wrongful conduct.

75. Plaintiffs and Plaintiff Class Members also stand to suffer significant injury flowing from such wrongful conduct.

**COUNT II: BREACH OF THE 1992 AGREEMENT
(CME Group, Board of Trade, Michael Floodstrand and
Thomas J. Ward, Individually and on Behalf of the Class)**

76. Plaintiffs CME Group, the Board of Trade, Michael Floodstrand, and Thomas J. Ward reincorporate and reallege Paragraphs 1 through 75 as set forth above.

77. As alleged in Paragraphs 37 through 47 above, the Full Members of the Board of Trade and Full Member delegates are intended third party beneficiaries of the 1992 Agreement.

78. The CBOE's position, as described in Paragraph 59 above, constitutes a breach of Paragraph 3(a) of the 1992 Agreement, which guarantees that Full Members of the Board of Trade and Full Member delegates have the same rights as all other CBOE members and gives Full Members and Full Member delegates the right to share equally in all cash or property distributions made by the CBOE to its other members. The CBOE has breached Paragraph 3(a) by determining that Class Members will not share equally in the proceeds of any distribution awarded to CBOE regular members as part of the reorganization transactions.

79. The CBOE's position, as described in Paragraph 59 above, would constitute a breach of Paragraph 3(b) of the 1992 Agreement by failing to give notice to CME Group, the Board of Trade, and the Class of its intent to distribute cash or other property to its other members.

80. Therefore, there is an actual controversy between the Plaintiffs and the Defendants with regard to these matters.

81. Plaintiffs and Plaintiff Class Members have a protectible right under the terms of the 1992 Agreement.

82. Plaintiffs and Plaintiff Class Members stand to suffer irreparable harm if the CBOE is permitted to go ahead with its distribution of stock in its holding company as planned. Moreover, Plaintiffs lack an adequate remedy at law for this wrongful conduct.

83. Plaintiffs and Plaintiff Class Members also stand to suffer significant injury flowing from such breach.

**COUNT III: BREACH OF THE CERTIFICATE OF INCORPORATION,
THE 1992 AGREEMENT AND THE FEBRUARY 14, 2005 AGREEMENT
(CME Group, Board of Trade, Michael Floodstrand and
Thomas J. Ward, Individually and on Behalf of the Class)**

84. Plaintiffs CME Group, the Board of Trade, Michael Floodstrand, and Thomas J. Ward reincorporate and reallege Paragraphs 1 through 83 as set forth above.

85. As alleged in Paragraphs 37 through 47 and Paragraphs 49 through 50 above, the Full Members of the Board of Trade and Full Member delegates are intended third party beneficiaries of the Charter, the 1992 Agreement, and the February 14, 2005 agreement.

86. The CBOE's position, as described in Paragraphs 61 through 63 above, constitutes a breach of Article Fifth(b) of the Charter, Paragraph 3(c) of the 1992 Agreement, and the February 14, 2005 agreement, each of which guarantee that eligible Full Members of the Board of Trade and Full Member delegates shall be entitled to become CBOE members without obtaining a separate CBOE membership. Ex. 1 at Article Fifth(b); Ex. 2 at ¶ 3(c); Ex. 3 at 1. The CBOE breached Article Fifth(b) of the Charter, Paragraph 3(c) of the 1992 Agreement, and the February 14, 2005 agreement by seeking to unilaterally extinguish, upon consummation of the CBOT-CME Merger, the Exercise Rights, and the corresponding rights and privileges of CBOE membership, of Class Members who had not exercised prior to December 11, 2006.

87. The CBOE's position, as described in Paragraphs 61 through 63 above, constitutes a breach of Paragraph 3(a) of the 1992 Agreement, which guarantees that Exerciser Members have the same rights and obligations as all other CBOE members. Ex. 2 at ¶ 3(a). The CBOE breached the 1992 Agreement by seeking to extinguish, upon consummation of the CBOT-CME Merger, the CBOE membership rights of Exerciser Members other than CBOE

trading rights during an undefined interim period. Moreover, CBOE's actions, as described in Paragraphs 61 through 63 above, also constitute breaches of the Paragraph 3(a) of the 1992 Agreement for the same reasons.

88. Therefore, there is an actual controversy between the Plaintiffs and the Defendants with regard to these matters.

89. Plaintiffs and Plaintiff Class Members have a protectible right under the terms of the Charter, the 1992 Agreement, and the February 14, 2005 agreement.

90. Plaintiffs and Plaintiff Class Members have suffered and continue to suffer irreparable harm if the CBOE is permitted to unilaterally extinguish the Exercise Right and its corresponding CBOE membership rights and privileges upon consummation of the CBOT-CME Merger. Moreover, Plaintiffs and Plaintiff Class Members lack an adequate remedy at law for this wrongful conduct.

91. Plaintiffs and Plaintiff Class Members also stand to suffer significant injury flowing from such breach.

**COUNT IV: BREACH OF FIDUCIARY DUTY
(Michael Floodstrand and Thomas J. Ward on behalf of the Class)**

92. Plaintiffs reincorporate and reallege Paragraphs 1 through 91 as set forth above.

93. The CBOE is governed by a Board of Directors, consisting of the Director Defendants. The Director Defendants owe a fiduciary duty to the Full Members and Full Member delegates of the Board of Trade within the Class, including Michael Floodstrand and Thomas J. Ward.

94. The CBOE's Charter expressly provides that Full Members and Full Member delegates of the Board of Trade who have exercised and those eligible to exercise are to be treated in the same way as all other members of the CBOE.

95. Despite these fiduciary duties and the express language of the CBOE's Charter, as alleged in Paragraphs 37 through 38 above, the Director Defendants have eliminated the access rights and attempted to eliminate the property rights of the Class Members in the CBOE. The overt actions taken in furtherance of this breach include the filing of the December 2006 and July 2007 rule filings, the implementation of the July 2007 rule filing, and the board votes on both filings.

96. Indeed, the actions by CBOE's board with regard to both the December 2006 and July 2007 filing were apparently made by boards dominated by interested directors who in both cases acted in their self-interest.

97. Specifically, a total of 14 directors voted on the December 2006 filing. Five of these directors (Defendants Duffy, Griffith, Kipnes, Power, and Smollen) were interested directors because they hold regular CBOE memberships. Defendant Brodsky was an interested director because he is the Chairman of CBOE who serves ultimately at the pleasure of the CBOE members. Defendant Flatow, who is an "industry" director but who CBOE has claimed is an Exerciser Member only, voted for the proposal. Three other "industry" directors (Defendants MacGilvray and Patrick and then-Director Petrone) participated in the meeting but abstained from the vote for unexplained reasons. Moreover, the seven remaining voting directors (Defendants Birnbaum, Froetscher, Palmore, Phillips, Skinner, Stone, and Stone), while "public" directors, did not have independent financial or legal advisors. Rather, they were apparently advised by the full board's financial and legal advisors. The four members of the CBOE Special Committee (Defendants Boris, Kullberg, Martin, and Sunshine) recused themselves from both the discussion of and the vote on the filing.

98. Moreover, a total of 18 directors voted on the July 2007 filing. Of these, eight directors (Defendants Brodsky, Duffy, Jiganti, Kipnes, MacGilvray, McCormick, Murphy, and

Smollen) were interested because they were either regular CBOE members or the Chairman of CBOE. Defendant Flatow abstained from the vote, while Defendants Griffith, Patrick, and Power were not present for the vote. The ten remaining voting directors (Defendants Birnbaum, Boris, Froetscher, Kullberg, Martin, Palmore, Skinner, Carole Stone, and Sunshine), while “public” directors, did not have independent financial or legal advisors. Rather, they were apparently advised by the full board’s financial and legal advisors.

99. Finally, as mentioned above, the four members of the CBOE Special Committee (Defendants Boris, Kullberg, Martin, and Sunshine) recused themselves from the vote on the December 2006 filing. The proffered reason for this recusal was that they did not know whether the CBOT-CME Merger would close. However, at the time of the vote on the July 2007 filing – which took place 11 days before either company’s shareholder vote on the CBOT-CME Merger – the CBOE Special Committee still did not know if the merger would be consummated. Notwithstanding this fact, *none* of the four Special Committee members recused themselves from the vote on the July 2007 filing; rather, they voted *for* the proposal.

100. Despite these fiduciary duties and the express language of the CBOE’s Charter, as alleged in Paragraphs 61 through 63 above, the Director Defendants have acted and will continue to act in their self-interest by seeking to extinguish the rights of the Class Members and otherwise discriminate against the Class Members in favor of all other CBOE members in the CBOE’s allocation of shares of the holding company.

101. In so doing, the Director Defendants have breached their fiduciary duties under Delaware law to Michael Floodstrand, Thomas J. Ward, and the other Plaintiff Class Members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs CME Group, the Board of Trade, Michael Floodstrand and Thomas J. Ward, individually, and on behalf of the Class, pray for injunctive relief and judgment against Defendants CBOE and the Director Defendants as follows:

- (a) Issuing injunctive relief barring the CBOE and the Director Defendants from terminating the Exercise Right upon consummation of the CBOT-CME Merger;
- (b) Issuing injunctive relief barring the CBOE and the Director Defendants from limiting or eliminating the CBOE membership rights and privileges, including but not limited to the trading and property rights, of Exerciser Members of the Class upon consummation of the CBOT-CME Merger;
- (c) Declaring that CBOE breached the 1992 Agreement by determining that Michael Floodstrand, Thomas J. Ward and other members of the Class do not have the right to participate in the distribution effected as part of CBOE's reorganization on the same terms and conditions as all other CBOE members;
- (d) Declaring that CBOE would be in breach of the 1992 Agreement if it fails to give CME Group, Inc. and the Class 90 days notice of the distribution so as to allow Thomas J. Ward and other members of the Class the opportunity to exercise their Exercise Right if they have not already done so;
- (e) Declaring that the CBOE's Certificate of Incorporation bars the CBOE from issuing any stock to any member without allowing the Class to participate equally in any such stock issuance or distribution;
- (f) Declaring that the CBOE breached its Charter, the 1992 Agreement, and the February 14, 2005 agreement by seeking to unilaterally extinguish, upon consummation of the CBOT-CME Merger, the Exercise Rights and the corresponding rights and privileges of CBOE membership of Thomas Ward and other Eligible Members of the Class who had not exercised prior to the close of business on December 11, 2006;
- (g) Declaring that the CBOE breached Article Fifth(b) and the 1992 Agreement by seeking to unilaterally extinguish, upon consummation of the CBOT-CME Merger, the CBOE membership rights of Michael Floodstrand and other Exerciser Members of the Class, other than trading rights during an undefined interim period;

- (h) Declaring that the Director Defendants breached their fiduciary duties and the express language of the CBOE's Charter by eliminating the access and property rights of the Class Members to the CBOE;
- (i) Issuing an injunction barring the CBOE and the Director Defendants from issuing any stock to any members of the CBOE unless they allow the members of the Class to participate, or the opportunity to participate, equally with all other CBOE members in such distribution;
- (j) Ordering Defendants to pay all damages to Plaintiffs resulting from their wrongful conduct described above;
- (k) Ordering Defendants to pay all attorney's fees, costs of suit and expenses by these Plaintiffs; and
- (l) Ordering such further relief as this Court may deem necessary or appropriate.

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