
**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,)	<u>CLASS ACTION</u>
)	
Plaintiffs,)	
)	
v.)	Case No. 14-cv-02646
)	
THE CME GROUP, INC., and THE BOARD OF TRADE OF THE CITY OF CHICAGO)	
)	
Defendants.)	JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiffs Mark Mendelson, John Simms and William Charles Braman (“Plaintiffs”), individually and on behalf of all others similarly situated, by their undersigned attorneys, for their Complaint against the above-named defendants (“Defendants”), upon knowledge as to matters relating to themselves and upon information and belief as to all other matters allege as follows:

NATURE OF THE ACTION

2. This is a federal derivatives class action on behalf of all users of real-time futures market data and futures contracts from the Defendants The Chicago Board of Trade (“CBOT”) and the Chicago Mercantile Exchange (“CME”) from 2007 until April 10,

2014 (the “Class Period”) that are listed on the CBOT and the CME for violations of the Commodity Exchange Act (“CEA”).

3. CBOT is a designated contract market (“DCM”) registered with the Commodity Futures Trading Commission (“CFTC”). It is required pursuant to 7 U.S.C. § 7(d)(2) to regulate itself in conformity with the CEA and all regulations enacted by the CFTC including what are termed, Core Principles such as the Prevention of Market Disruption, the Protection of Markets and Market Participants, and the listing of contracts Not Readily Subject of Manipulation. The CBOT is required to operate in accordance with the strictures of the CEA.

4. At all relevant times, the CBOT and the CME together comprised the world’s largest derivatives exchange and provided what it labeled as real-time price data information on United States debt instruments, agricultural products, energy, equity indexes, foreign exchange rates and metals to the entire financial world. The CBOT and CME charged exchange fees and data-fees for this real-time price data to market users and the world’s financial marketplace falsely maintaining that the data sold was in real-time. The purchasers of real-time price data/information are ostensibly in a class of people composed of the first people to see the price data. In other words, the Defendants represented that those who paid for the data were getting it in “real-time.”

5. Throughout the Class Period, the Defendants held themselves out to the world as providing real-time and *bona fide* market data when throughout this same period, the Defendants also charged high frequency traders (“HFTs”) for the ability to see price data and unexecuted order information before anyone else in the financial world, including all

the people who had paid and continue to pay the Defendants for seeing the same data first, in real-time.

6. Throughout the Class Period, Defendants not only permitted the HFTs to see price and market data, including open orders, market orders before all other market participants and trader saw the price and market data, they permitted the HFTs to execute trades using this same non public data and order information before all other traders and market participants. In so doing, the Defendants engaged in a fraud on the marketplace, deceptive practice and failed to maintain a marketplace that is free from market disruption and market manipulation.

7. Throughout the Class Period, the Defendants concealed the fact that they were not providing real-time price information and continued to charge fees to all non HFTs for allegedly real-time data and transparent price information.

8. Throughout the Class Period, the Defendants concealed the fact that they were not providing a marketplace free of market manipulation because they were allowing the HFTs to trade based upon non-public information, specifically, the non-published and unexecuted orders of all other users of the CME and CBOT. In so doing, the Defendants failed to provide a marketplace that is free from market manipulation and established an unequal and two-tiered marketplace all the while inviting and soliciting the use of its financial trading instruments for profit.

9. Plaintiffs bring this class action under the CEA seeking recovery of damages from the Defendants' allowance and facilitation of market manipulation by the HFTs and for

exchange fees paid during the Class Period and for the recovery of all monies paid to the Defendants for real-time market data and order information during the Class Period.

JURISDICTION AND VENUE

10. (i) United States Five Year Notes, Ten Year Notes and Thirty Year Bonds are United States debt instruments and comprise the “underlying financial” of the Five Year Notes, Ten Year Notes and Thirty Year Bond financial contracts at the CBOT and CME, as these terms are defined and used in Sections 1a(3) and 22 of the CEA, 7 U.S.C. §§ 1a(3) and 25.

(ii) This Court has jurisdiction over this action pursuant to the Judicial Code, 28 U.S.C. §§ 1331 and 1337 and 7 U.S.C. § 1391 (a) and (b) and 7 U.S.C. §§ 1 et seq.

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

PARTIES

11. Plaintiffs traded financial futures contracts at the CBOT and CME during the Class Period. Plaintiffs were damaged by Defendants’ allowance and facilitation of a marketplace manipulated by HFTs. Plaintiffs were damaged by their reliance on what was falsely represented to them as real-time market data.

12. Defendant CME is a Delaware corporation that owns and operates derivatives exchanges, including financial futures contracts. The CME's principal place of business and location is in Chicago, Illinois.

13. Defendant CBOT is a Delaware corporation and subsidiary of the CME that owns and operates a number of derivatives exchanges. The CBOT's principal place of business is in Chicago, Illinois.

14. The acts alleged in this Complaint to have been committed by the Defendants CBOT and CME were authorized, ordered, or done by their directors, officers, agents, employees, or representatives while actively engaged in the management of the Defendant's governance and operation.

CLASS ALLEGATIONS

15. Plaintiffs bring this action as a class action pursuant to Rule 23 (b)(2) and 23 (b)(3) of the Federal Rules of Civil Procedure ("F.R.C.P."). The Class in this action consists of all persons and entities, other than the Defendants, their employees, affiliates, co-conspirators and HFTs, who 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 listed by the Defendants and paid exchange fees to trade financial futures contracts and other futures contracts and options listed at the CBOT and CME between January 1, 2007 and April 10, 2014 ("Class Period").

16. The CBOT and the CME are designated contract markets ("DCMs") registered with the Commodity Futures Trading Commission ("CFTC"). Pursuant to 7 U.S.C. §

7(d)(2), they are required to regulate themselves in conformity with the CEA and all regulations enacted by the CFTC including what are termed, “Core Principles” such as the Prevention of Market Disruption, the Protection of Markets and Market Participants and the listing of contracts Not Readily Subject of Manipulation. Both Defendants are required to operate in accordance with the strictures of the CEA.

17. Ten Year Notes, U.S. Treasury Bonds, Five Year Notes, and Two Year Notes are financial futures and financial futures options contracts that are standardized according to the terms specified by the CME and CBOT.

18. Thousands of financial futures contracts were traded daily during the Class Period. The number of persons or entities who purchased and/or sold futures and futures and options contracts and who purchased real-time market data on futures contracts listed by the Defendants during the Class Period is in the thousands, and those persons or entities are geographically dispersed. Therefore, joinder is impracticable pursuant to F.R.C.P. Rule 23 (a) (1).

19. Common issues of fact or law predominate over individual issues within the meaning of F.R.C.P. Rule 23 (a) (2).

20. Financial futures contracts are firm commitments to make or accept delivery of a specified quantity and type of United States Treasury debt instrument during a specific month in the future at a price agreed upon at the time the commitment is made.

21. Prices of all futures contracts are quoted in terms of the last price, the opening price, the highest price paid for the trading period and the lowest price paid for a certain

trading period. Price information is also represented in terms of a “book.” The Book shows the highest price offered to be paid for a contract, otherwise called the “bid,” along with the lowest price for which a contract is offered for sale, otherwise called the “offer.” The book also shows how many contracts are offered for sale or sought to be purchased at each offer price and bid price respectively.

22. The CME and CBOT sell this price information as accurate present and real-time price and order information. Alternatively, this information is included by the payment of exchange fees.

23. Prices for financial futures contracts like U.S. Treasury Bonds are the benchmark for the price of United States 30 year debt. This price information for the Defendant’s U.S. Treasury Bond contract is represented as being the most accurate instant reflection of the cost of owning the thirty-year debt instrument issued by the United States Treasury at any time. The U.S. Treasury Bond contract like all financial futures contracts listed at the Defendant futures exchanges are believed to be an accurate and transparent reflection of the market for the underlying government debt instrument and as such serve an important function in the financial marketplace.

24. Each and every Class member relied on the price information of futures contracts represented by the Defendant exchanges to make trades.

25. Sometime after January 1, 2007, the CBOT and CME began to allow HFTs to get a peak at all orders to buy and sell futures contracts before these orders were reflected in the Book, before the person or entity entering the buy or sell order received

confirmation that their order was received-in other words before anyone other than the HFTs were privy to this order information.

26. Sometime after the commencement of the Class Period, the CBOT and CME began to allow HFTs to enter and/or execute orders to buy and sell futures contracts based upon the price information of all non-HFT's. The CBOT and CME allowed the HFTs an exclusive position by which to profit from peaking at everyone's else's orders and price data and to act on this price and order information.

27. HFTs are generally computers that make trades in increments of a second as small as hundreds and thousandths of a single second.

28. During the Class Period, the Defendants invited HFTs to make trades ahead of all other market participants and because the HFTs' generally entered very large orders, they had the ability through their *de facto* inside trading to influence the price of financial futures artificially.

29. Defendants created a distorted trading marketplace in violation of the CEA when it permitted HFTs to see all other incoming orders-information that is not available to anyone other than the HFTs. HFTs can determine in what direction a financial futures contract will move because they can see all the orders to buy or sell coming in.

30. During the Class Period the Defendants, by permitting the HFTs to artificially affect the price of financial futures contracts, also artificially widened the "spread" between the price of the bids and the price of the offers, making trading more costly for all other market participants because when the "spread" is wider, there is a greater

discrepancy between the price buyers are willing to pay and the price at which sellers are willing to sell- making buyers have to pay up and sellers having to bring their offering prices lower.

31. In permitting the HFTs to execute trades ahead of everyone else using the order information of all the Defendants' other customers, the CME and CBOT, in violation of the CEA and the CFTC's Regulations, institutionalized market manipulation and created an opaque and hidden marketplace for financial futures. HFTs act within milliseconds, moving the market price while remaining perfectly hidden. In allowing the HFTs to use the Defendants' other customers' order information to make trading decisions, the Defendants instituted the practice of selectively allowing front-running orders in hundreds and thousandths of a second time increments for the profit of the Defendants and HFTs.

32. During the Class Period, the CME and CBOT continued to charge exchange fees and data fees, all the while representing to the world that they offered the real price of financial futures instruments and that they provided a transparent and un-manipulated trading market-however, they have already sold this information to HFTs and allowed them primacy in acting on it.

33. HFTs are represented as merely having the advantage of speed, but discussions of high frequency trading conflate speed with price. Speed, and an arms-race to build faster trading computers may not be an inherently negative thing, but giving a select group of market-participants price data before everyone else and allowing them to act on it is because it creates a entrenched two-tiered and unequal marketplace-as the Defendants have done.

34. Common issues of law and fact include but are not limited to:
- (i) whether the manipulative activities alleged herein existed;
 - (ii) whether the CME and CBOT invited and allowed the HFTs to trade ahead of everyone else based upon information that only they had;
 - (iii) whether the inside trading of the HFTs had the result of manipulating prices in the markets for the CME and CBOT's futures contracts ;
 - (iv) whether the CME and CBOT invited and allowed the practice of the HFTs seeing everyone's orders first;
 - (v) whether as a result of the any of these activities, Defendants caused prices in the CBOT and CME futures markets to be artificial during the Class Period;
 - (vi) if so, to what extent were the prices artificial;
 - (vii) whether Defendants' course of conduct in representing that the price information it sold was as represented, the Defendants were engaging in a fraud on the marketplace or simple fraud;
 - (viii) whether the Defendants' conduct resulted in market manipulation in the CME and CBOT's futures markets;
 - (ix) whether the Defendants' course of conduct violated the CEA; and

(x) whether a constructive or actual trust should be impressed upon the ill-gotten gains obtained by the Defendants as fruits of their misconduct and mismanagement.

35. The Plaintiffs' interests are typical of and not antagonistic to the interests of the Class.

36. Plaintiffs have retained competent counsel experienced with commodities law, commodities litigation, the futures industry and class actions. They fully intend to vigorously prosecute this action.

37. Common issues predominate. A class action is superior to all other methods of litigation for the fair and efficient adjudication of this controversy. Indeed, a class action is the only method by which the Plaintiffs and the Class can efficiently seek redress and obtain a uniform adjudication of their claims.

38. The size of individual claims is relatively small in comparison to the complexity and scope of the Defendants' alleged manipulation and unlawful conduct.

39. (a) Class members' identities and trades can generally be identified by looking at the records of CME and CBOT trade clearing entity, CME Clearing and trade clearing firms at the CME and CBOT.

(b) Plaintiffs do not anticipate any difficulties in the management of this action as a class action.

FRAUDULENT CONCEALMENT

40. The unlawful activity alleged herein was by its nature self-concealing. The hyper-scalping of the HFTs was not reported by the Defendants nor did the Defendants issue time and sales data in millisecond increments. In fact, the Defendants at no time during the Class Period revealed that they had given the HFTs a first glance at price data. The CME and CBOT advertised on their websites that faster speed, through the use of co-locating servers at or near the CME and CBOT's servers makes all marketplace participants equal in terms of speed. What the Defendants at no time revealed was that the HFTs had a competitive advantage not only of speed, but price- the ability to act on price data before all other market participants, even if the other market participants paid for collocation services. Nor at any time during the Class Period did the Defendants reveal that they were permitting the HFTs, unlike all other market participants, to trade ahead of everyone else using price information that was not available to anyone other than the HFTs.

41. The Defendants continued to charge the public for the costs of seeing the data first in real-time, as if no one had already seen it and been able to act on it beforehand.

42. Defendants entered into clandestine contracts with HFTs knowing that the activities of the HFTs would adversely affect all other individuals and entities that utilized the Defendants' futures contracts-if for no other reason than allowing the HFTs to see and trade ahead of all others created a trading marketplace that would always be skewed in favor of the HFTs and lead to an insurmountable and unfair competitive advantage.

43. Defendants' actions were calculated to conceal the existence of the fraud and illegal conduct such that the Plaintiffs and the Class could not have discovered the existence of the fraud any earlier than immediately before the filing of this suit.

44. Defendants through Defendants' Chairman, and CEO repeatedly gave false information to the public, to journalists and the media touting alleged advantages to the presence of HFT for price and liquidity while never mentioning that they were allowing the HFTs to get price information before everyone else and to trade on this price information.

45. 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.

**I. FIRST CAUSE OF ACTION AGAINST DEFENDANTS FOR MANIPULATION
IN VIOLATION OF THE COMMODITY EXCHANGE ACT 7 U.S.C. SECTION 1**

46. Plaintiffs re-allege paragraphs 1-45 as if fully rewritten herein.

47. Plaintiffs bought one or more financial futures contract during the Class Period and were injured as a result of the Defendants' creation of a trading marketplace where price was manipulated and distorted in violation of the CEA, 7 U.S.C. § 1 *et seq.*

48. Defendants actions alleged herein not only constitute a failure to ensure markets free of manipulation-they constitute active market manipulation of the price of the CME and CBOT's financial futures contracts, and/or the price of the government debt

underlying these contracts, in violation of Section 9 (a) and 22 (a) of the CEA, 7 U.S.C. §§ 13 (a), 25 (a).

49. As stated above, the Defendants created a marketplace fraught with manipulation and clandestine, surreptitious trading that caused the prices of futures contracts to be artificial.

50. The Defendants have perpetrated a fraud on the marketplace and intentionally concealed the activities of a select class of market participants from the rest of the Defendants' customers and marketplace users while artificially altering the published price of futures and interest rate contracts at the CME and CBOT.

51. Defendants allowed for and facilitated, for profit, transactions that caused the prices of financial futures contracts to be recorded and registered that were artificial and not true and *bona fide* prices from a transparent and manipulation free market activity in violation of Section 4c of the CEA, 7 U.S.C. §6c. Defendants participated directly in this unlawful conduct to manipulate and make artificial prices and a manipulated marketplace by establishing it and sustaining it for their profit.

52. By engaging in the aforementioned actions and practices, the Defendants continuously misled the Plaintiffs and the Class, in connection with the purchase and/or sale of futures contracts and/or defrauded and attempted to defraud the Plaintiffs and the Class. The Defendants purposefully concealed their actions and made false reports and statements and willfully attempted to and deceive and did deceive the Plaintiffs and the Class in violation of Section 4b (a) (i), (ii) and (iii) of the CEA, 7 U.S.C. § 6b (a) (i), (ii), (iii).

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

II. SECOND CAUSE OF ACTION AGAINST DEFENDANTS FOR FALSE INFORMATION IN VIOLATION OF THE COMMODITY EXCHANGE ACT 7 U.S.C. SECTION 9

54. Plaintiffs re-allege paragraphs 1-53 as if fully rewritten herein.

55. Plaintiffs paid the Defendants for data and price information on several occasions during the Class Period by paying for exchange fees and data fees and were damaged by not getting *bona fide* real-time market data and price information in violation of CEA, 7 U.S.C. § 9 *et seq.*

56. The Defendants' actions alleged herein not only constitute a failure to ensure markets free of manipulation—they constitute active market manipulation and falsification of the price of the CME and CBOT's financial futures contracts, and/or the price of the government debt underlying these contracts, in violation of Section 9 (a) and 22 (a) of the CEA, 7 U.S.C. §§ 13 (a), 25 (a).

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

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

III. THIRD CAUSE OF ACTION AGAINST DEFENDANTS FOR FRAUD

59. Plaintiffs re-allege paragraphs 1-58 as if fully rewritten herein.

60. Defendants entered into clandestine contracts with HFTs knowing that the activities of the HFTs would adversely affect all other individuals and entities that utilized the Defendants' financial futures contracts-if for no other reason than allowing the HFTs to see and trade ahead of all others created an unequal trading marketplace.

61. Throughout the Class Period, the Defendants not only permitted the HFTs to see price and market data, including open orders, market orders and orders entered by all other market participants including Plaintiffs and Class members, they permitted the HFTs to execute trades based on this same data and order information before all other market participants could do so.

62. 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" price and order information all the while knowing that it had permitted the HFTs to see and act on this price information first. What the Defendants were selling as real-time information was in essence delayed secondhand information.

63. The Defendants not only actively concealed their fraudulent practice of selling something as instant real-time information despite it not being so, they went out of their way to make false statements about their price data to the public, journalists, market participants, regulators and the media in violation of CEA, 7 U.S.C. § 9 *et seq.* Their actions constitute fraud.

64. Plaintiffs and the Class are each entitled to actual damages from Defendants' fraud on the marketplace.

65. As a further direct and proximate result of the acts of the Defendants, the Plaintiffs and the Class have been required to act to protect their interests by filing this action, and have as a result have incurred attorney fees and other expenditures and damages in a sum to be proven at trial.

JURY DEMAND

66. Plaintiffs demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand judgment:

- (a) ordering that this action proceed as class action as to all claims alleged herein, appointing Plaintiffs as representatives of the class and appointing Plaintiffs' counsel as counsel for the class;
- (b) awarding money damages, including prejudgment interest on each claim in an amount established at trial;
- (c) awarding statutory attorneys' fees and costs and other relief;
- (d) impressing a trust on the ill-gotten gains of Defendants in the ultimate res of which each Class member shall have an undivided interest;

- (e) directing further proceedings to determine distribution of the trust among Class members, inter se, and award attorneys' fees and expenses to Plaintiffs' counsel;
- (f) entering a preliminary injunction prohibiting Defendants from charging fees for Defendants' real-time futures market data and refunding fees paid by the Plaintiffs and the Class;
- (g) entering a preliminary and permanent injunction prohibiting Defendants from allowing HFTs to execute trades based on the non-public order information of the Plaintiffs and the Class; and
- (f) awarding such other relief as this Court may deem just and proper.

Dated: Chicago, Illinois
April 11, 2014

LAW OFFICES OF R. TAMARA DE SILVA

Respectfully submitted

By: **/s/ R. Tamara de Silva**

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