

Securities Regulation Daily Wrap Up,FRAUD AND MANIPULATION—N.D. Ill.: Traders lose bid to amend complaint, HFT suit now moves to a ruling,(May 27, 2015)

By John M. Jascob, J.D.

A closely-watched suit by three traders against a commodities exchange for allegedly giving illegal advantages to high-frequency traders (HFTs) will now move to a ruling, a federal district court in Chicago has held. In a three-page memorandum opinion issued yesterday, Judge John Robert Blakey denied the traders' leave to file a third amended complaint. The court reasoned that the proposed amendment sought to add not only new facts but new claims and thereby would cause undue delay and prejudice the defendants ([*Braman v. The CME Group, Inc.*](#), May 26, 2015, Blakey, J.).

Hyper-scalping and clandestine contracts. In April 2014, three commodity futures traders filed a [class action lawsuit](#) against The CME Group, Inc. and its subsidiary, the Chicago Board of Trade (CBOT), alleging violations of both the federal commodities laws and federal anti-trust laws. Among other things, the traders alleged that the defendant exchanges had facilitated "hyper-scalping" by HFTs by allowing them to see price and market data before other market participants and to use this data to execute trades before other traders. The traders also alleged that the defendants had entered into "clandestine contracts" with HFTs, while knowing that the activities of HFTs would adversely affect all other individuals and entities that traded the exchanges' futures contracts (see the [Securities Regulation Daily Wrap-Up](#) for April 14, 2014).

On September 12, 2014, The CME Group and CBOT moved to dismiss the traders' second amended complaint. The traders opposed the motion and the exchanges filed a reply. The motion was fully briefed as of December 10, 2014.

Undue delay and prejudice. In their motion for leave to file a third amended complaint, the traders argued that the amendment would allow them to add "new, material facts" that would provide further support for their existing claims against the exchanges, but

without adding new claims. Contrary to the traders' assertion, however, the court found that the proposed amendment did allege new claims. For example, the amendment sought to add a new claim for manipulation or false reporting under the Commodity Exchange Act while also altering the antitrust claims and expanding the class period by more than a year.

In addition, the traders' decision to wait to seek amendment forced the exchanges to incur significant costs in preparing a brief in support of their motion to dismiss. Even though some of the facts upon which the traders' amendment was purportedly based could have been known during the time when the motion to dismiss was being briefed, the traders elected to oppose the motion to dismiss rather than seeking amendment at that time. The traders then compounded the delay by waiting almost five months before seeking leave to amend. Accordingly, the court concluded that amendment under the circumstances was not appropriate and that it would rule on the motion to dismiss by mail.

The case is [No. 14 C 2646](#).

Attorneys: R. Tamara de Silva (Law Offices of R. Tamara de Silva) for William C. Braman. Albert Lee Hogan, III (Skadden, Arps, Slate, Meagher & Flom LLP) for The Board of Trade of the City of Chicago, The CME Group, Inc., and The CME Exchange, Inc.

Companies: The CME Group, Inc.; The CME Exchange, Inc.

LitigationEnforcement: FraudManipulation CommodityFutures Derivatives
ExchangesMarketRegulation IllinoisNews