IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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-VCN**
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, DAVID FISHER, JONATHAN G. FLATOW, JANET P. FROETSCHER, BRADLEY G. GRIFFITH, PAUL J. JIGANTI, PAUL KEPES, STUART K. KIPNES, DUANE R. KULLBERG, JAMES P. MACGILVRAY, ANTHONY D. MCCORMICK, R. EDEN MARTIN, KEVIN MURPHY, 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.	:	

MEMORANDUM OPINION

Date Submitted: December 16, 2008
Date Decided: June 25, 2009

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Objector Peter C. Kelly, *pro se*.

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Objector William L. Allen, Trustee of the William L. Allen Trust, *pro se*.

Objectors Thomas M. Marsh, *pro se* and Jamin Nixon, *pro se*.

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NOBLE, Vice Chancellor

I. BACKGROUND

The Court recently approved the proposed Stipulation of Settlement in this class action (the "Settlement").[1] Claims of potential class members had been submitted before the Settlement was considered. The claims process was supervised and administered by Class Counsel who excluded a number of Settlement Class Members from participating in the benefits conferred under the Settlement because of their failure to comply strictly with the Settlement's conditions for eligibility.[2] Some have objected (the "Objectors") to their exclusion. The objections can be placed into five categories: (1) Objectors who, for various reasons, submitted untimely Settlement Claim Forms; (2) Objectors who failed to transfer their CME shares in book entry to Computershare during the period of October 14, 2008, through 5:00 p.m. on October 31, 2008, due to an oversight or error; (3) one Objector that falls under both categories 1 and 2 above—it filed a late Claim Form and did not comply with the Settlement's Computershare requirement; (4) Objectors who were excluded based upon Class Counsel's determination that they did not "beneficially own" the requisite Three

[1] *CME Group, Inc. v. Chicago Bd. Options Exchange, Inc.*, 2009 WL 1547510 (Del. Ch. June 3, 2009). Familiarity with that memorandum opinion is presumed.

[2] The Court overturns several of Class Counsel's decisions regarding participation in the proceeds conferred by the Settlement. Class Counsel, in the Court's judgment, fairly and accurately performed their duties. It was their responsibility to apply the terms of the Settlement strictly and consistently. They did not, however, have the Court's equitable discretion that is inherent in its supervision of the class action claims process.

Parts needed to qualify as a Participating Group A Settlement Class Member; and (5) one miscellaneous Objector. The Court addresses these objections in this memorandum opinion.

II. DISCUSSION

A. *Objections to Exclusion Based Upon Late Filing*

Pursuant to the terms of the Settlement, in order to qualify as a Participating Group A or Group B Settlement Class Member, a Settlement Class Member must have submitted a Claim Form by October 14, 2008 (the "Eligibility Date"). Class Counsel excluded certain Settlement Class Members from participating in the Settlement (as either Group A or Group B Settlement Class Members) based upon their failure to submit a Claim Form by the Eligibility Date. Several of these excluded Settlement Class Members have objected, arguing that excluding them from participating would be inequitable.

There are two types of later filers: (1) Class Members who, because of an inadvertent error—either their own, Class Counsel's, or the United States Postal Service's—submitted their Claim Forms late, but otherwise met the requirements in order to participate in the settlement; and (2) Class Members who in good faith submitted a Group A Settlement Class Member Claim Form that was rejected by Class Counsel and, upon receiving such rejection, promptly—but after October 14,

2008—sought to become Participating Group B Settlement Class Members. Both types of objector/late filer will be discussed in turn.

1. The First Category of Late Filer

The first group of Objectors[3] all claim, in essence, that their failure to file timely Claims Forms should not prohibit them from participating in the Settlement under either the "excusable neglect" or "substantial compliance" standard. It is undisputed that each of the later filers in this first category would otherwise have satisfied all ownership and registration requirements to become a Participating Group A or Group B (depending on the particular Objector) Settlement Class Member.[4]

There is substantial overlap in the facts of all Objectors' cases in this group—i.e., all of the members of this group filed late Claims Forms because of an excusable, inadvertent error. Any difference amongst them does not alter the analysis. Accordingly, the Court will assess these Objectors' claims as a group.[5]

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[3] The late filers to whom the Court refers are: Theodore Pecora, Argex, Inc., John S. Stafford, William P. Sullivan, Anthony J. McKerr and Marry C. McKerr Trust Est. 3/13/1997, Canadian Imperial Bank of Commerce, Milton Robinson and Bryan Shaughnessy, Alan Matthew, and J.P. Morgan Futures, Inc.

[4] *See* Pls.' Mem. in Supp. of Mot. for Final Approval of the Proposed Settlement at 49 ("Class Counsel acknowledges that all of the[] objectors [at issue] were in compliance except for timely filing the appropriate Participating Settlement Class Member Claim Form . . . .").

[5] Within this group of late filers, there are two subgroups. First, there are those persons who apparently timely sent off their claim forms, but the forms were never received and recorded by Class Counsel. Whether there was a problem with the delivery service or whether their forms were misplaced by Class Counsel cannot be determined. Second, there are those who did not submit their claim forms in a timely fashion because, for example, they had not received notice of the Settlement or of the claims process. It seems apparent that the position of those who sent

In determining whether to approve the Settlement, the Court was bound to exercise its own business judgment as to the fairness of the settlement.[6] "A corollary to that duty must be the duty of this Court to insure that the stockholders who are entitled to participate in the settlement are given a reasonable opportunity to file for and receive what is due to them."[7] Of course, the Court already approved as reasonable the Settlement's Eligibility Date. However, "[w]hile it is true that the function of the filing deadline is to put a time limit on the claims procedure, and . . . fair warning was given to the potential claimants concerning the deadline, nevertheless the filing deadline is not inflexible and must yield, if necessary, to the demands of equity."[8] The parties seem to dispute the legal standard—"excusable neglect" or "substantial compliance"—the Court is to employ in determining whether the filing deadline must yield to the demands of equity. The Court need not decide this issue because it holds that under either standard, equitable principles demand that the filing deadline be waived for the Objectors in this group.

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off their forms which were not received and recorded by Class Counsel is deserving of greater sympathy. Nonetheless, because the Court's analysis as to all the members of this group is unchanged by the subtle differences in facts among them, assigning blame for whatever error caused the late filing for a particular Objector is of no use.

[6] *Neponsit Inv. Co. v. Abramson*, 405 A.2d 97, 100 (Del. 1979).

[7] *Mendich v. Hunt Int'l Res., Inc.*, 1981 WL 7629, at *2 (Del. Ch. Oct. 21, 1981).

[8] *Id.* at *3.

In *Mendich v. Hunt International Resources, Inc.*, the Court of Chancery held that "although a claims procedure approved by the Court should be followed, . . . substantial compliance should be adequate."[9] The Court determined that "[t]he missing of the postmark deadline, even without excuse, is substantial compliance with the procedures for the filing of claims, when all the equities are considered, if the postmark shows mailing within a few days of the deadline."[10] Here, the facts of the Objectors' cases indicate substantial compliance under *Mendich*. The Objectors either (1) mailed the Claim Form prior to the Eligibility Date but Class Counsel, for reasons that are unclear, did not receive it; or (2) received the Claim Form from Class Counsel late, also for reasons that are unclear, but promptly mailed the Claim Form upon actual receipt of it. Therefore, these Objectors have substantially complied with the terms of the Settlement under *Mendich*.

In *Brown v. Penn Central Corp.*,[11] this Court applied the seemingly more rigorous excusable neglect standard in order to determine whether a settlement's filing deadline should be waived for late filers. Excusable neglect is a four factor test in which the Court considers: (1) the danger of prejudice to the adverse party; (2) the length of the delay and its potential effect on judicial proceedings; (3) the

[9] *Id.* at *2.
[10] *Id.* at *3.
[11] 1986 WL 5477 (Del. Ch., May 12, 1986).

reason for the delay, including whether it was within the reasonable control of the late filer; and (4) whether the late filer acted in good faith.[12] All of the factors weigh in favor of the Objectors and they are, therefore, entitled to participate as Group A or Group B Settlement Class Members.

The first factor weighs in favor of the Objectors because there is no prejudice to the other Participating Group A and Group B Settlement Class Members. Even though other Group A Members' distributions will be diminished somewhat (because Group A Members share in the proceeds of the balance of the Settlement pool, while Group B Members received the same lump sum payment), the additional proceeds from the settlement pool they would receive if the late filers were excluded is simply a windfall. Accordingly, they suffer no prejudice.[13] Factor two weighs in favor of the Objectors because the length of the delay was relatively minimal and it did not affect the proceedings in this Court. Factor three also weighs in favor of the Objectors because in all cases the delay was not reasonably in the control of the late filer. Finally, factor four weighs in favor of the Objectors because all the Objectors acted in good faith.

In sum, the Eligibility Date for the Objectors in this group must yield to the demands of equity; it is therefore waived for these Objectors.

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[12] *Pioneer Inv. Servs. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993).
[13] *See In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315, 323-24 (3rd Cir. 2001).

2. The Second Category of Late Filer

The second group of Objectors[14] all meet the requirements to become Participating Group B Settlement Class Members. However, none submitted Participating Group B Settlement Class Member Claim Forms. This is because all filed, in good faith, Participating Group A Settlement Class Member Claim Forms (believing, in good faith, that they met the requirements to become Participating Group A Settlement Class Members), and because the Settlement provided that a claimant was only permitted to use an individual ERP (the only "part" required for Group B Membership) as either one of the Three Parts[15] to support Group A Membership or to support Group B Membership, but not both. Class Counsel subsequently rejected these Objectors' Participating Group A Settlement Class

[14] Those Objectors are: WH Trading, Kottke, Daniel M. Ambrosinno, and the Bunge Companies (Bunge Chicago, Inc., Bunge Global Markets, Inc., Bunge Limited, Bunge North America (East), LLC, and Bunge North America, Inc.).

Below the Court rejects WH Trading's and Kottke's arguments that Class Counsel wrongfully excluded them from becoming Participating Group A Settlement Class Members. Both parties have argued, in the alternative, that their failed Group A Claim From be considered a claim for Group B Membership. Bunge could be seen as belonging in a somewhat different category because, although its claim to be a Group A Settlement Class Member was timely filed, its claim to be a Group B Settlement Class Member and its objection here were not submitted until several months after the Settlement hearing. That delay is attributable to the fact that it did not receive notice—the reason is not clear—of Class Counsel's rejection of Group A Claim. Bunge, nonetheless, came forward as soon as practicable and no prejudice will result from its participating, as it would otherwise have been entitled, as a Group B Settlement Class Member.

Barbara Whitlow also argues that she should be eligible for Group B Membership based upon her good faith filing of a Group A Membership Claim Form. However, because the Court determines below that Ms. Whitlow beneficially owned the requisite three parts for Group A Membership, the Court need not address her alternative argument that she is eligible for Class B Membership based on her filing of a Group A Claim Form.

[15] The Three Parts are: one B-1 Membership of the CBOT; one Exercise Right Privilege ("ERP"); and at least 10,251.75 shares of CME Group Common Stock. Stip. ¶ 30FF.

Member Claim Forms. Such rejection came after the time to submit Participating Group B Settlement Class Member Claim Forms had passed. Accordingly, Class Counsel now objects to granting these Objectors Participating Group B Settlement Class Membership.

Class Counsel concede, as they must, that Paragraph 30R of the Settlement permitted Class Members to use an individual ERP either to constitute Group A Membership or Group B Membership, but not both. Class Counsel argue, however, that this provision "does not restrict or limit filing Claim Forms in the alternative or filing Claim Forms for both a Group A Settlement Unit and a Group B Settlement Unit."[16] In other words, because it was possible for Class Members to file for both types of membership, failing to do so precludes their participation in the Settlement. But this fact demonstrates only that the Settlement's procedures for submitting claims were imperfect because it was entirely reasonable for a Class Member to do precisely what these Objectors did. They believed in good faith that they had assembled the Three Parts necessary to become Participating Group A Settlement Class Members; thus, they submitted Group A Claim Forms. There was no reason for them to assume that Class Counsel would deny those Claims. Instead, it may have been unreasonable to have

[16] Pls.' Mem. in Supp. of Mot. for Final Approval of the Proposed Settlement at 67.

expected them to file Group B Claim Forms separately. Accordingly, the Eligibility Date requirement is waived for these Objectors.

B. *Objections to Exclusion Based Upon Failure to Meet the Computershare Requirement*

Pursuant to the Settlement, in order to be eligible for Group A Membership, a Settlement Class Member must have transferred to Computershare to be held, lien-free, in book entry form, a sufficient number of CME Group shares necessary to qualify for a Group A Settlement Unit for a specified time period (from October 14, 2008 to October 31, 2008). The Objectors in this Section were excluded by Class Counsel for failure to comply with the Computershare requirement.

1. Nicholas Rapanos

Nicholas Rapanos owned the requisite Three Parts; this is undisputed. However, he did not timely transfer the sufficient number of shares of CME Group Common Stock to Computershare. Therefore, Class Counsel excluded him from Group A Membership. Mr. Rapanos has objected, arguing that he was unaware of the Computershare requirement because he never received the necessary information in the mail, and that, as soon as he became aware of it, he promptly transferred his shares to Computershare; accordingly, the balance of the equities tips in his favor, and he is therefore eligible for Group A Membership.

Class Counsel state that they initially mailed a copy of the Class Action Notice to Mr. Rapanos on August 29, 2008, at his last known address, and that such mailing was never returned to Class Counsel's offices as undeliverable. Subsequently, on September 24, 2008, Class Counsel by overnight courier sent another copy of the Class Action Notice to Mr. Rapanos at that address, and such mailing also was never returned as undeliverable.

The Court has no reason to question the truth of either version. It is entirely possible that Mr. Rapanos, through no fault of his own, did not in fact receive the Class Action Notice in time to transfer his shares. His Affidavit, which he filed under penalty of perjury, states that he was unaware of the Computershare requirement, and that as soon as he became aware, he promptly transferred his shares to Computershare.[17] The balance of the equities therefore tip in Mr. Rapanos's favor, and, accordingly, the Computershare cutoff dates must yield to the demands of equity.[18] The Court therefore finds that Mr. Rapanos must be included as a Participating Group A Settlement Class Member.[19]

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[17] *See* Aff. of Nicholas A. Rapanos at 2-3.

[18] *See* cases cited *supra* notes 7, 11.

[19] Class Counsel, if they so choose, will be entitled to take discovery on the question of whether Mr. Rapanos was on notice (actual or constructive) of the obligation to transfer his shares to Computershare. They also may take discovery on the question of whether Mr. Rapanos could have satisfied the Computershare requirement during the appropriate period. The Court's conclusions with respect to Mr. Rapanos are subject to this option.

2. Ira S. Nathan Revocable Trust dated March 23, 1979[20]

The Ira S. Nathan Revocable Trust dated March 23, 1979 (the "Nathan Trust") was also excluded by Class Counsel for failure to comply with the Computershare requirement. It is undisputed that the Nathan Trust owned the requisite Three Parts. The Nathan Trust did in fact transfer its CME Group shares to Computershare and held them there from October 14, 2008 through October 31, 2008. However, the Settlement required that the shares be held by Computershare until 5:00 p.m. on October 31. Due to an error by the Nathan Trust's investment advisors, the shares were transferred out of Computershare a few hours before 5:00 p.m. on October 31. For this reason Class Counsel excluded the Nathan Trust from participating in the Settlement.

The Nathan Trust substantially complied with the terms of the Settlement. The removal of the shares a few hours early was an error that was not within the Nathan Trust's control. Therefore, equity would not be served by excluding the Nathan Trust from participating in the Settlement. Accordingly, the Computershare requirement must yield to the demands of equity, and the Nathan Trust is eligible to become a Participating Group A Settlement Class Member.

[20] The Court's determination here renders the Nathan Trust's Motion for Clarification or Reargument, filed June 10, 2009, moot.

C. *Objection to Exclusion Based Upon Late Filing and Failure to Meet the Computershare Requirement*

Rho Trading Securities, LLC ("Rho") was excluded by Class Counsel for filing its Participating Group A Settlement Claim Form on January 28, 2009, more than three months late. Therefore, not only was Rho a late filer, but it also did not comply with the Settlement's Computershare requirement. Class Counsel argue that in the interest of fairness to all Class Members who complied with all the deadlines Rho must be excluded. Rho claims that it received neither the Class Action Notice, nor the follow-up letters regarding amendments to the Settlement. Rho's contact information maintained by the CBOT was up to date. However, Rho maintains that it never received any correspondence regarding the class action until approximately January 27, 2009. Upon learning about the action, Rho promptly filed its Participating Group A Settlement Class Member Claim Form. Rho conducted a thorough internal investigation in order to determine whether any notice of the action had been received by any Rho employee; there was no indication that there was.[21] The Court has no reason to doubt that this is true. Accordingly, Rho has substantially complied with the terms of the Settlement, and,

[21] Verified Objection of Rho Trading Securities, LLC to Proposed Settlement at ¶¶ 2, 5, 6 & 7.

therefore, the filing deadlines and the Computershare requirement must yield to the demands of equity.[22]

D. *Beneficial Ownership*

Paragraph 30AA of the Settlement provides that in order for a Settlement Class Member to become a Participating Group A Settlement Class Member, such member must have "beneficially owned" the requisite Three Parts. The Settlement, however, does not define the term "beneficial ownership," which is commonly understood to encompass the notion of having the "true" ownership interest but with title held by another. Shares of stock registered in "street name" or assets held in a trust for a beneficiary are typical examples of how beneficial interests are established.[23]

Class Counsel rejected a number of Settlement Class Members' claims based on their determination that the Class Member did not beneficially own the Three Parts. Several of those Class Members have objected, arguing that they beneficially owned the requisite Three Parts. The Court, thus, turns to their objections.

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[22] This conclusion, however, is subject to the right of Class Counsel, if they so choose, to take discovery on the question of whether Rho was on notice (actual or constructive) of the Class Action and whether Rho could have complied with the Settlement's terms, including the Computershare requirements during the appropriate period.

[23] Some of the Objectors have sought discovery from Class Counsel to determine their understanding of what constitutes a beneficial interest within the scope of the Settlement. Although the Settlement was not drafted by the Court, it is the Court's document and its interpretation is a matter for the Court's resolution. No plausible allegation of bias or even of a specific instance of inconsistent application has been lodged by the Objectors.

1. Kottke Associates and WH Trading

Objectors Kottke Associates, LLC ("Kottke") and WH Trading, LLC ("WH Trading") each owned two of the Three Parts required for a Group A Settlement Unit. Both parties claim that they beneficially owned the missing third part (a B-1 Membership for Kottke and shares of CME Group Common Stock for WH Trading) because such part was assigned to them to support their status as a clearing member firm (of the CBOT or the CME). Class Counsel rejected both claims because they concluded that neither Kottke nor WH Trading beneficially owned the missing third part. Indeed, both Kottke and WH Trading concede that they do not own the missing part. Instead, Kottke and WH Trading argue the missing part was assigned to them and the interest in the assigned part to which they claim a beneficial ownership interest is sufficient to meet the Settlement's beneficial ownership requirements.

Class Counsel correctly rejected Kottke's and WH Trading's claims. Neither Kottke nor WH Trading beneficially own the missing part they claim an ownership interest in. Under CBOT Rule 902 and CME Rule 902, the assignment of stock or a membership by an individual member to support a clearing member firm's status as a clearing member runs to the CME clearing house, not to the clearing member firm.[24] Accordingly, the clearing member firm—i.e., Kottke and

[24] *See* Pls.' Mem. in Supp. of Mot. for Final Approval of the Proposed Settlement Ex. G, H.

WH Trading—acquired no interest in the asset assigned and, therefore, do not beneficially own it.[25]

2. Geneva Trading USA and DRW Securities

Geneva Trading USA, LLC ("Geneva Trading USA") and DRW Securities LLC ("DRW Securities") both submitted Participating Group A Settlement Class Claim Forms, which were rejected by Class Counsel. Geneva Trading USA owned a B-1 Membership, an ERP, and 6,977 shares of CME Group common stock. Its Claim Form stated that it beneficially owned an additional 3,275 shares of CME Group common stock through its wholly owned subsidiary, Geneva Ireland Financial Trading Limited ("Geneva Ireland"). When combined with the 6,977 shares directly owned, the Settlement's stock ownership threshold would be met. Similarly, DRW Securities owned a B-1 Membership and an ERP, but it did not own the requisite CME Group shares. The CME Group shares of common stock DRW Securities claimed it owned were actually owned by its affiliate, DRW Investments LLC. Both DRW Securities and DRW Investments are wholly owned subsidiaries of DRW Holdings LLC ("DRW Holdings").

[25] The Settlement's concept of ownership reaches not only parts "beneficially owned" but also those "possessed by delegation." Neither Kottke nor WH Trading has relied upon delegation. Delegation of rights related to the exchange has a history that carries a specific contextual understanding, one that cannot readily be extended by analogy. For that reason, Kottke's argument that its situation is "analogous" to the specifically recognized delegator/delegatee status fails.

Class Counsel rejected both Geneva Trading USA's and DRW Securities' claims based upon their interpretation of beneficial ownership, an interpretation that does not include a parent corporation's interest in its wholly owned subsidiary's assets or a corporation's interest in its affiliate corporation's assets. Class Counsel rest their interpretation of "beneficial ownership" on two passages in Fletcher's Cyclopedia; they are: "a person who has voluntarily adopted the corporate form to engage in business may be deemed to be precluded from asking courts to disregard that form merely because the person is disadvantaged by its use";[26] and "a business enterprise's corporate structure is determined by choice, and if the owners are to accept the advantages of dividing the business into separate corporate entities, they must also be subject to the disadvantages."[27] Both Geneva Trading USA and DRW Securities voluntarily adopted a corporate form, presumably because it made business sense to do so. The Court agrees with Class Counsel that these entities, in electing a certain corporate form, cannot simply abandon that form when it is convenient. The Court must respect the corporate form chosen. Therefore, Class Counsel correctly excluded Geneva Trading USA and DRW Securities from participating in the Settlement.

[26] 1 FLETCHER'S CYCLOPEDIA CORPORATIONS § 41.70 n.9 (West 2006).
[27] *Id.* at § 43.50.

3. Barbara Whitlow

Barbara Whitlow is the widow of Richard Whitlow, a long time member of the CBOT. Mr. Whitlow died on April 3, 2008. For many years Mr. Whitlow owned what is now the requisite Three Parts for a Participating Group A Settlement Unit. In late 2007 or early 2008, Mr. Whitlow transferred his shares of CME stock into joint ownership with Ms. Whitlow. Shortly before his death, Mr. Whitlow and Ms. Whitlow sold 3,000 of their CME shares, which brought their ownership below the level required for Participating Group A Membership. Pursuant to the Settlement, however, a Class Member seeking to participate in the Settlement who had transferred a portion of the components of CBOT membership was entitled to recombine those components on or before October 14, 2008.

In July 2008, Mr. Whitlow's estate was opened, and Ms. Whitlow was appointed the personal representative of the estate. Under the terms of Mr. Whitlow's will, Ms. Whitlow was to succeed to all of her late husband's assets. On July 17, 2008, an Indiana probate court directed the transfer of the B-1 Membership and the ERP to Ms. Whitlow. The CME Group shares automatically passed to Ms. Whitlow as the surviving joint tenant. Ms. Whitlow then began repurchasing the 2,951 shares she needed to be eligible for a Participating Group A Settlement Unit. She did so by September 6, 2008, and deposited her shares in Computershare under her name. Upon receiving her Participating Group A

Settlement Class Claim Form, Class Counsel excluded Barbara Whitlow from participating in the Settlement because she had not at any time prior to August 22, 2008 simultaneously beneficially owned or possessed by delegation the Three Parts required by Paragraph 30AA of the Settlement.[28]

A court of equity is a court of conscience, and the Court cannot, in good conscience, let this result stand. Were Ms. Whitlow not allowed to participate in the Settlement, it would be because of her husband's death, which would also result in a minor windfall to the other Group A Members. Moreover, Class Counsel cannot be concerned about overlapping claims based upon the same Three Parts owned by Mr. Whitlow. It is clear that Ms. Whitlow is the sole owner of the Three Parts and will be the only person submitting a claim based upon those parts. And the purpose of the Settlement's stringent ownership requirements is to protect against parties submitting claims based upon overlapping ownership interests in the CBOT. Accordingly, no harm will result by allowing her to participate. Therefore, the Court, in the exercise of its discretion, determines that Ms. Whitlow must be deemed to have held a Participating Group A Settlement Unit, and, thus, she is entitled to participate as a Group A Settlement Class Member.[29]

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[28] As a joint tenant, she had once held the necessary number of CME Group shares. She did not acquire the B-1 Membership or the ERP until after she could no longer claim ownership of the minimum number of shares.

[29] *Brown v. Penn Central Corp.*, 1986 WL 5477, at *2 ("Until the fund created by the settlement is actually distributed, the court retains its traditional equity powers. It is not novel law to announce that a court supervising the distribution of a trust fund has the inherent power and duty

5. The Kolton Family Limited Partnership

The Kolton Family Limited Partnership's (the "Kolton Partnership") Participating Group A Settlement Class Member Claim Form was rejected by Class Counsel because the records indicated that the Kolton Partnership owned only the CME Group shares, but neither a B-1 Membership nor an ERP. The B-1 Membership and the ERP relied upon by the Kolton Partnership claims are owned individually by its general partner and 46% owner, Bradley Kolton. Mr. Kolton was a long time member of the CBOT. Mr. Kolton established the Kolton Partnership in 1987, and shares of CME Group Common Stock are its only assets. The Partnership was created for the benefit of Mr. Kolton's three sons, the limited partners of the Kolton Partnership.

The Settlement provides that natural persons submitting Group A Claims satisfy the requirement that they own CME Group Common Stock if such shares

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to protect unnamed but interested persons. In the words of Professor Chafee, the dean of equity law, these individuals are akin to 'wards of court.'").

Because of the complexity of the Settlement's structure, a relatively large number of claimants who "came close" to meeting the various requirements must be considered. It is obvious that those who are deemed to have satisfied the requirements and those who are not allowed to share (or to share fully) in the Settlement are on something of a continuum. It is also obvious that, in light of the various factual circumstances of those seeking relief from strict application of the Settlement's conditions, some "line drawing" by the Court is inevitable. It is even more obvious that those persons close to, but on the "wrong side" of, the line are likely to chafe at the Court's conclusions. But, perhaps unfortunately, just because some who did not strictly qualify under the Settlement are, as a matter of equity, allowed to participate in the benefits of the Settlement, does not mean that all who can find some nexus to the Settlement's conditions should be entitled to participate. At some point, a further relaxing of the Settlement's requirements in the name of equity would run the risk of undermining the carefully designed settlement standards that have previously been approved by this Court.

are owned of record by "one or more trusts for the benefit of such Group A Settlement Class Member or such Group A Settlement Class Member's spouse, *children*, stepchildren, or grandchildren . . . not formed for the purpose of participating in the Settlement . . . ."[30] Although not within the scope of the trust exception because the Kolton Partnership is not a "natural person," family wealth transfer is the obvious purpose behind the creation of the Kolton Partnership. In this instance, the partnership, owned by family members, serves purposes parallel to those of the trusts expressly allowed to participate in the Settlement. As such, for purposes of the Settlement, there is no material basis for distinguishing between the Kolton Partnership and the trusts that are otherwise allowed to share in the proceeds of the Settlement. Further, as is the case with Ms. Whitlow, there is no potential for abuse here. Accordingly, the Court finds that equity would not be served if the Kolton Partnership were excluded from participating in the Settlement.

E. *Miscellaneous Objector*

SKYT Trading, LLC ("SKYT") was excluded by Class Counsel because Class Counsel had no evidence of ownership of a sufficient number of CME Group shares by SKYT and that such shares were duly deposited with Computershare. This was due to a clerical error by either ABN/AMRO (the clearing entity through

[30] Stipulation of Settlement ¶ 30T(3) (emphasis added).

which SKYT purchased its CBOT membership in 2005) or Computershare which resulted in the record ownership of the CME Group shares being listed as held by "SKYT LLC." In November 2008, SKYT brought this error to Class Counsel's attention, but Class Counsel declined SKYT's request to include it as a Participating Group A Settlement Class Member. Class Counsel claims that it "lacks sufficient information to verify the accuracy of SKYT's assertion."[31] The Court is satisfied with SKYT's representations to the Court, both in its brief and at the hearing on their objection, and the supplemental documents it submitted,[32] that SKYT Trading, LLC is the record owner of the shares transferred to Computershare. Accordingly, having met all of the Settlement's requirements, SKYT is entitled to become a Participating Group A Settlement Class Member.

III. CONCLUSION

Accordingly, the various objections are resolved as set forth above. An implementing order will be required.

[31] Pls.' Mem. in Supp. of Mot. for Final Approval of the Proposed Settlement at 61.
[32] These documents include Form 1099-DIV and an employer identification form, Form SS-4.