

# BAKER BOTTS LLP

ONE SHELL PLAZA  
910 LOUISIANA  
HOUSTON, TEXAS  
77002-4995

TEL +1 713.229.1234  
FAX +1 713.229.1522  
BakerBotts.com

ABU DHABI HOUSTON  
AUSTIN LONDON  
BEIJING MOSCOW  
BRUSSELS NEW YORK  
DALLAS PALO ALTO  
DUBAI RIO DE JANEIRO  
HONG KONG RIYADH  
WASHINGTON

May 5, 2014

079778.0103

**USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: MAY 06 2014**

Scott Partridge  
TEL +1 713-229-1569  
FAX +1 713-229-7769  
scott.partridge@bakerbotts.com

The Honorable Katherine B. Forrest  
United States District Court Judge  
Southern District of New York  
500 Pearl Street, Room 745  
New York, NY 10007-1312

Re: *Realtime Data LLC v. CME Group, Inc. et al.*, Case Nos. 1:11-cv-6697 (KBF),  
1:11-cv-6699 (KBF), and 1:11-cv-6702 (KBF) (S.D.N.Y.)

Dear Judge Forrest:

In response to the Court's request earlier today (per its endorsement of a letter dated May 1, 2014 from Realtime's counsel Dirk Thomas), CME Group, Inc., Board of Trade of the City of Chicago, and the New York Mercantile Exchange ("CME") respectfully disagrees that the underlying issue is only whether the case qualifies as "exceptional." While that is the test for the first potential basis for recovering fees under section 285 of the patent statute, it is not the test for the second and third potential bases for recovering fees: section 1927 of title 28 and the Court's inherent powers. The tests for recovery under those bases are different. Additionally, the potentially liable parties are different under each of the bases as follows: (1) Realtime itself is potentially liable under 285; (2) the McKool firm is potentially liable under 1927; and (3) each is potentially liable under the Court's inherent powers.

CME understands Plaintiffs to have requested that the Court first determine whether liability exists under each of the asserted bases for fees, but delay determining the amount of fees each would pay until resolution of all liability issues. If Plaintiff's request is so limited, CME does not oppose. CME does, however, oppose any procedure by which the individual bases for its requested relief are not each addressed or are addressed iteratively, as each basis allows for a different recovery and liability.

Very truly yours,

Scott F. Partridge

Ordered

All arguments are preserved.  
The court's point is  
that first we will determine  
if fees are warranted under  
any theory; then we will move on to  
the question of "who pays".

5/6/14

K.B. Forrest  
USDC