

# Seventh Circuit Affirms Dismissal of Class Action Suit Against Client CBOE

## News

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The Court of Appeals for the Seventh Circuit affirmed a decision issued by an Illinois federal court dismissing all counts against Cboe Global Markets, Inc. in an investor suit over the exchange's alleged failure to prevent manipulation of its volatility index.

The claims were based on the Securities Exchange Act and the Commodity Exchange Act (CEA). As to the securities claim, the Seventh Circuit found that the plaintiffs' allegations were insufficient to establish Cboe's intent to deceive. In affirming the dismissal of the plaintiffs' CEA claim, the Seventh Circuit overturned prior Seventh Circuit law and ended 35 years of precedent that negatively affected futures exchanges and self-regulatory organizations (SROs). Under the CEA, an exchange or SRO can be liable only if it acts in "bad faith." In a 1987 decision called *Bosco v. Serhant*, the Seventh Circuit opined that "bad faith" means "negligence" under certain circumstances—a ruling that made it easier for plaintiffs to bring CEA claims against futures exchanges and SROs. In the Seventh Circuit's decision in Cboe's case, the court repudiated the *Bosco* "negligence" standard and adopted a more stringent interpretation of "bad faith" under which Cboe prevailed.

Partner Adam G. Unikowsky argued the case before the court and Partners Gregory M. Boyle, and Reid J. Schar helped lead the team.

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