



## **BROKERAGE PAYMENT SYSTEM™ BROKER AGREEMENT**

This Agreement, effective as of \_\_\_\_\_, 20\_\_, is entered into by and between Chicago Mercantile Exchange Inc., (“CME”), having its principal place of business at 20 South Wacker Drive, Chicago, Illinois 60606 and \_\_\_\_\_, a CME, CBOT or NYMEX/COMEX Member and/or independent broker (“Broker”), conducting business at CME.

### **RECITALS**

**WHEREAS**, CME has developed certain software known as the Brokerage Payment System or “BPS,” which calculates amounts owed by clearing members to brokers for trade execution services:

**WHEREAS**, CME has implemented a mandatory automatic brokerage billing system based upon the BPS, that calculates the amount of brokerage owed by clearing members to brokers, automatically debits and credits such amounts to the accounts of such clearing members and brokers and creates reports relating to such calculations and transfers (“Services”); and

**WHEREAS**, the undersigned Broker will receive and CME will provide such Services to the Broker;

**NOW THEREFORE**, in consideration of the mutual promises contained herein, CME and Broker hereby agree as follows:

#### **1. Authorization of Services**

Subject to the terms and conditions set forth herein, Broker hereby authorizes CME to initiate credit entries to the account specified in Exhibit A attached hereto (“Account”), in accordance with the policies for transmitting payments of brokerage fees that are owed to Broker by clearing members for which Broker provided trade execution services (“Clearing Members”). Further, Broker authorizes CME to initiate debit entries to the Account in the event of any mistake, error or omission by CME relating to any such credit entry. Broker authorizes CME to act on its behalf by instructing the Bank designated in Exhibit A attached hereto (“Bank”), to accept and act upon all credit and debit entries to the Account that are initiated by CME hereunder.

#### **2. Calculation of Brokerage Payments**

For the purposes of calculating Clearing Members’ payment obligations to Broker, CME will provide such Clearing Members with the opportunity to establish, and CME will reply upon, the brokerage rates that each such Clearing Member wishes to pay Broker for the performance of trade execution services. At the end of every month, CME will calculate the fees due to Broker for trade execution services provided to Clearing Members during such month. CME’s calculations will be based upon the number of cleared contracts executed by Broker on behalf of such Clearing Members and/or their customers during such calendar month, as indicated by such Broker’s Cleared Trades Report.

3. **Transfer of Funds**

CME will debit the Clearing Members accounts in the required amounts and will credit the Account by the amount calculated pursuant to the provisions of section 2 hereof, less the amount of service fees due in accordance with section 5 hereunder.

4. **Reports**

CME will provide reports on a periodic basis to Broker and such Clearing Members which contain a calculation of the cleared trades and the brokerage fees paid, and showing all pertinent data and related information.

5. **Fees**

Broker agrees to pay CME a monthly service fee of [twenty-five cents (\$.25)] for each Clearing Member from whom Broker receives a payment hereunder; provided, however, that no fee shall be paid for any month in which the payment of brokerage fees by any such Clearing Member to Broker is less than [\$25.00]. Broker agrees that CME shall deduct from the amount credited to Broker's account each month, all service fees incurred by Broker during such month.

CME may also collect funds due from brokers of any kind through deduction in payments from the BPS application. Such funds include, but are not limited to, CME incurred brokerage fees, floor-related fees, electronic device charges and fines.

6. **Compliance**

Broker and CME will comply with and be bound by the policies and procedures as in effect from time to time relating to the Services as well as the policies and procedures of the Bank that relate to the Agreement.

7. **Financial Institution Change**

Broker agrees that it will provide a newly executed agreement at least twenty (20) days prior to any change in the Bank or account name or number identified in Exhibit A.

8. **Termination**

This Agreement may be terminated by CME or Broker at any time by giving twenty (20) days prior written notice to the other party. Notwithstanding such termination, this Agreement shall remain in full force and effect as to all transactions that have occurred prior to the date of termination.

9. **Confidentiality**

During the term of this Agreement and at all times thereafter, Broker shall keep and maintain any Confidential Information (defined hereafter) that Broker may receive in strictest confidence and shall not disclose such information to any third party except as

required by order of a court of competent jurisdiction or pursuant to a government request. For purposes of the preceding sentence, the term Confidential Information shall include the elements of the BPS Software and all programming, systems, user documentation, technical information, know-how, technology, formulae, information, system designs, prototypes, ideas, inventions, improvements, and data and files relating thereto that are not generally known to the public.

**10. Warranties, Liability and Indemnification**

- a) BROKER ACKNOWLEDGES AND AGREES THAT THE BROKERAGE PAYMENT SYSTEM AND THE SERVICES ARE PROVIDED "AS IS" AND THAT CME DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS RELATING TO THE BROKERAGE PAYMENT SYSTEM AND THE SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
  
- b) BROKER ACKNOWLEDGES AND AGREES THAT NEITHER CME, NOR ANY OF ITS BOARD MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR AFFILIATES SHALL BE LIABLE UNDER ANY CIRCUMSTANCES WHATSOEVER TO BROKER, A SUCCESSOR OR REPRESENTATIVE THEREOF OR ANY PERSON OR ENTITY ASSOCIATED THEREWITH FOR ANY DIRECT DAMAGES, OR FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR COMMERCIAL LOSSES), ARISING OUT OF: (1) ANY DEFECT, ERROR, FAILURE OR MALFUNCTION IN THE BROKERAGE PAYMENT SYSTEM; (2) ANY FAULT, DELAY, ACT, OMISSION OR INACCURACY IN PROVIDING THE SERVICES OR ANY TERMINATION OF THE SERVICES; (3) ANY CLAIM ALLEGING THAT THE SERVICES OR ANY ACTIONS TAKEN BY CME IN CONNECTION WITH THIS AGREEMENT VIOLATE ANY RIGHTS OF BROKER, OR (4) FROM ANY OTHER CAUSE WHATSOEVER, REGARDLESS OF THE FORM(S) OF ACTION OF ANY OF THE FOREGOING, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, AND WHETHER OR NOT CME HAS RECEIVED NOTICE OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES OR LOSSES.
  
- c) Broker hereby agrees to indemnify and hold CME and its Board members, directors, officers, employees, agents and affiliates harmless from and against any and all liabilities, losses, costs, damages, interest claims, and expenses, including court costs and attorneys' fees, which CME or any of its Board members, directors, officer, employees, agents or affiliates sustains or incurs as a consequence of any claim, proceeding or action; (1) that relates directly or indirectly to Broker's use of or inability to use the Brokerage Payment System or the Services rendered or to be rendered pursuant to this Agreement; (2) alleging that CME's Services or other actions related to this Agreement violate any rights of Broker; (3) arising from any act or omission of Broker or Broker's affiliates, employees or agents; (4) arising from the misuse, disclosure or misappropriate by Broker of any Confidential Information obtained by Broker; (5) alleging any facts which, if true, would constitute a breach by Broker of any obligation,

representation or warranty contained in this Agreement, or (6) claiming damages based on Broker's use of the Brokerage Payment System pursuant to this agreement.

- d) CME will promptly correct any errors or omissions caused by CME in any debit or credit entries initiated pursuant to this Agreement.
- e) The provisions of this section 10 shall survive any termination of this Agreement.

## 11. **Notices**

Any written notice or other written communication required or permitted to be given pursuant to this Agreement shall be hand delivered or sent by United States registered mail, postage prepaid, to the parties at the addresses indicated above and, if to the Broker, directed to his or her attention (unless another person or address is substituted by Broker in the following space): and, if to CME, directed to the attention of Associate Director, Shareholder Relations and Membership Services Department.

## 12. **Miscellaneous**

- a) Headings are used for reference purposes only, and shall not be deemed to a part of this Agreement.
- b) This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Illinois without regard to any provision of Illinois law that would apply the substantive law of a different jurisdiction. The parties agree that any action, suit or proceeding arising out of or related to this Agreement shall be commenced in the United States District Court for the Northern District of Illinois, or if no federal jurisdiction exists, then in the Circuit Court of Cook County, Illinois. Each party hereby agrees to submit to the jurisdiction of such courts and to waive any objections based on venue in any action, suit or proceeding arising out of or related to this Agreement.
- c) This Agreement embodies that entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous negotiations, representations, and agreements with respect hereto, and shall be binding upon the parties hereto, and their respective successors and assigns. This Agreement may be amended only by a writing signed by both parties.
- d) No waiver or any breach hereof, of any of the terms and conditions hereof or any default hereunder, shall be deemed a waiver of any other breach or default or in any way affect any other terms or conditions hereof.
- e) If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of the Agreement shall not be affected thereby and shall be binding upon the parties hereto, and shall be enforceable as though the invalid or unenforceable provision were not contained herein.

- f) Neither party shall bear any responsibility or liability to the other party for any losses arising out of any delay in or interruption of its performance of its obligations under this Agreement due to any act of God, fire, flood, severe or adverse weather conditions, act of governmental authority, judicial decree, act of the public enemy or due to war, riot, civil commotion, insurrection, labor difficulties (including, without limitation, any strike or other work stoppage or slowdown), or other cause beyond the reasonable control of the party so affected.
  
- g) This Agreement shall not be assigned or transferred by Broker and any attempt to so assign or transfer this Agreement shall be null and void.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the date first above written.

CHICAGO MERCANTILE EXCHANGE INC.

BROKER

By: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

6186.txt

EXHIBIT A

The Account referred to in the Agreement is the following deposit Account maintained by Broker:

Financial Institution: \_\_\_\_\_

Branch Name: \_\_\_\_\_

Specific Name of Branch: \_\_\_\_\_

Bank Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Account Name: \_\_\_\_\_

Check One: Savings \_\_\_\_\_ Checking \_\_\_\_\_

Account Number: \_\_\_\_\_

Bank Routing Number: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Primary Clearing Member: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Broker's Designated Contact: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Broker Symbol: \_\_\_\_\_

**ATTACH A VOIDED CHECK OR COPY THEREOF BELOW:**

**-VOIDED CHECK OR COPY THEREOF-**

# Request for Taxpayer Identification Number and Certification

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

**Give Form to the requester. Do not send to the IRS.**

Print or type. See Specific Instructions on page 3.	<p><b>1</b> Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <hr/> <p><b>2</b> Business name/disregarded entity name, if different from above</p> <hr/> <p><b>3</b> Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.</p> <table style="width: 100%; text-align: center;"> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Individual/sole proprietor or single-member LLC</td> <td>C Corporation</td> <td>S Corporation</td> <td>Partnership</td> <td>Trust/estate</td> </tr> </table> <p><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶</p> <p><b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <p>Other (see instructions) ▶</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Individual/sole proprietor or single-member LLC	C Corporation	S Corporation	Partnership	Trust/estate	<p><b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p style="text-align: right;"><small>(Applies to accounts maintained outside the U.S.)</small></p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>								
Individual/sole proprietor or single-member LLC	C Corporation	S Corporation	Partnership	Trust/estate								
	<p><b>5</b> Address (number, street, and apt. or suite no.) See instructions.</p>	<p>Requester's name and address (optional)</p>										

## Part I

<p><b>6</b> City, state, and ZIP code</p>	<table border="1" style="margin: auto;"> <tr> <th colspan="9">Social security number</th> </tr> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table>	Social security number																	
Social security number																			
<p><b>7</b> List account number(s) here (optional)</p>																			

## Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

or									
Employer identification number									

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

### **Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return.

Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

**Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.**

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding,*