

## **Chapter 12**

### **Spot Aluminum Transactions**

- 1200. SCOPE OF CHAPTER**
- 1201. DEFINITIONS**
- 1202. EXCHANGE OBLIGATIONS**
- 1203. APPLICABILITY OF ADDITIONAL RULES**
- 1204. PERMITTED USERS AND CLEARING MEMBERS**
  - 1204.A. Permitted User Qualifications**
  - 1204.B. Agreement with Warehouse**
- 1205. COMMODITY SPECIFICATIONS**
- 1206. ELIGIBLE ALUMINUM DESIGNATED FOR AUCTION**
- 1207. AUCTIONS**
- 1208. ADDITIONAL RESPONSIBILITIES**
  - 1208.A. Buyer's Responsibilities**
  - 1208.B. Seller's Responsibilities**
  - 1208.C. Warehouse Responsibilities**
  - 1208.D. Clearing Member Responsibilities**
  - 1208.E. CME Spot Market Responsibilities**
- 1209. FAILURE TO PERFORM**
- 1210. DELIVERY WARRANTY**
- 1211. SETTLEMENT OF DISPUTES**
- 1212. ERROR POLICY**
- 1213. DECLARATIONS OF FORCE MAJEURE**
- 1214. LIMITATION OF LIABILITY**

## Chapter 12

### Spot Aluminum Transactions

#### 1200. SCOPE OF CHAPTER

This Chapter governs Spot Aluminum Transactions facilitated by the CME Spot Market. Spot Aluminum Transactions are facilitated through auctions conducted via the CME Direct Auction Platform (“CDAP”). Unless otherwise specified in this Chapter, Spot Aluminum Transactions are not subject to the Rules applicable to trading of other contracts offered by COMEX or any of the CME Group Designated Contract Markets. Capitalized terms that are used in the Chapter but that are not specifically defined herein have the same meaning as defined in the [COMEX Chapter iii. \(“Definitions”\)](#).

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate Eastern Time (ET).

#### DISCLAIMER

**CME SPOT MARKET IS NOT REGISTERED WITH, OR DESIGNATED, RECOGNIZED, LICENSED, OR APPROVED BY THE CFTC.**

#### 1201. DEFINITIONS

**Affiliate** means any entity that controls, is controlled by, or is under common control with the Exchange.

**CME Direct Auction Platform (“CDAP”)** means the electronic auction platform of the CME Spot Market for transacting in spot commodities.

**CME Spot Market** means the spot marketplace administered by the Exchange and its Affiliates.

**Buyer** means a Permitted User that submits a bid in an auction and, if the bid is matched with a Seller’s offer, becomes a counterparty to a Spot Aluminum Transaction.

**Eligible Aluminum** means aluminum stored in a Warehouse that meets the specifications set forth in Rule 1205. (“Commodity Specifications”) of this Chapter.

**Exchange** means Commodity Exchange, Inc. (“COMEX”), a contract market designated by the Commodity Futures Trading Commission.

**Inventory ID** means the record designating Eligible Aluminum for auction as further described in Rule 1206. (“Eligible Aluminum Designated for Auction”) of this Chapter.

**Invoice** means an invoice as defined in Rule 1207. (“Auctions”) of this Chapter.

**Permitted User** means a Person that is authorized to participate in Spot Aluminum Transactions under the Rules of this Chapter.

**Platform User Agreement** means the Aluminum Spot Market Trading Agreement that Permitted Users must enter into and comply with to access CDAP.

**Seller** means a Permitted User that submits an offer in an auction and, if the offer is matched with a Buyer’s bid, becomes a counterparty to a Spot Aluminum Transaction.

**Spot Aluminum Transaction** means a transaction for the purchase and sale of aluminum that is intended to be, and is, physically settled (a) at the Seller’s final price which is a reference price, a basis to a reference price, or an average thereof, and (b) within a period of time that is consistent with the typical commercial practice for spot aluminum transactions with similar pricing terms.

**Warehouse** means a warehouse that is regular for the delivery of aluminum pursuant to [COMEX Chapter 7 \(“Delivery Facilities and Procedures”\)](#).

**Warrant** means a warrant issued for physical aluminum pursuant to [COMEX Rule 705. \(“Metal Warrants”\)](#).

#### 1202. EXCHANGE OBLIGATIONS

1. The CME Spot Market is solely a provider of the CDAP and, and with respect to Spot Aluminum Transactions, the limited services and functions specified in this Chapter.
2. Auctions for Spot Aluminum Transactions shall be administered and scheduled by the CME Spot Market or, as it may permit, scheduled by a Permitted User for such hours and days as determined by the CME Spot Market.
3. Auctions may result in a single Spot Aluminum Transaction between a Buyer and a single Seller or multiple Spot Aluminum Transactions between multiple Buyers and a single Seller.
4. The CME Spot Market, the Exchange, or its Affiliates are not parties to any auction or Spot Aluminum Transaction and do not in any way guarantee the performance of any transaction or obligation thereunder, or any obligation of any Permitted User, Clearing Member or Warehouse set forth in this Chapter.

#### 1203. APPLICABILITY OF ADDITIONAL RULES

1. Permitted Users, Warehouses, and Clearing Members must comply with the Rules of this Chapter as applicable, [CME Spot Market Trading Rule 1200. \(“Enforcement of Rules”\)](#), and [CME Spot Market Trading Rule 1202. \(“Arbitration”\)](#), which Rules are incorporated by reference and shall apply as if fully set forth in this Chapter.
2. A Permitted User’s activity during an auction, including its submission of a bid order and/or an offer order to CDAP shall be subject to [CME Spot Market Trading Rule 1201.M. \(“Disruptive Practices Prohibited”\)](#), which Rule is incorporated by reference into this Chapter.

## **1204. PERMITTED USERS AND CLEARING MEMBERS**

### **1204.A. Permitted User Qualifications**

The CME Spot Market recognizes as a Permitted User any Person that satisfied the fulfilling the following conditions:

1. has submitted a completed and signed Platform User Agreement to the CME Spot Market;
2. is permitted by its Clearing Member to clear the aluminum futures contract specified in [COMEX Chapter 107 \("Aluminum Futures"\)](#);
3. has an agreement in place with its Clearing Member authorizing the Clearing Member to settle a Spot Aluminum Transaction on its behalf; and
4. at all times is authorized by its Clearing Member in the form and manner prescribed by the CME Spot Market to participate in an auction.

### **1204.B. Agreement with Warehouse**

Each Permitted User, or its Clearing Member as applicable, must have an agreement with the Warehouse at which delivery is to occur that enables the making or taking of delivery at such Warehouse pursuant to a Spot Aluminum Transaction.

## **1205. COMMODITY SPECIFICATIONS**

1. Aluminum delivered against a Spot Aluminum Transaction must consist of primary aluminum meeting all of the requirements of the P1020A in the North American and International Registration Record entitled "International Designation and Chemical Composition Limits for Unalloyed Aluminum" (revised March 2007), or its latest revision.
2. If the North American and International Registration Record adopts a change in the standard specifications for the aforementioned deliverable grade and such change is adopted and confirmed by the Exchange, aluminum conforming to the change so adopted, as well as aluminum conforming to the previous specifications if placed in a Warehouse prior to the date of the adoption and confirmation by the Exchange of the new specifications, will be deliverable against a Spot Aluminum Transaction.
3. Aluminum delivered against a Spot Aluminum Transaction must conform to one of the following shapes: (1) Sows weighing up to 787.5 kgs.; (2) T-bars weighing up to 787.5 kgs.; or (3) Ingots weighing from 9 kgs. to 26 kgs. Ingots are to be secured in bundles suitable for stacking not to exceed 2 metric tons (2 MT) per bundle. There is one smelter (heat) number per bundle.
4. Aluminum delivered against a Spot Aluminum Transaction must consist of any of the Exchange approved brand, as provided in [COMEX Chapter 7 \("Delivery Facilities and Procedures"\)](#), current at the date of delivery of the Spot Aluminum Transaction.
5. The brand must be permanently marked on each piece of aluminum delivered in fulfillment of a Spot Aluminum Transaction. The cast number must be permanently marked on t-bars and sows and labeled on each bundle of ingots of aluminum delivered in fulfillment of a Spot Aluminum Transaction.

## **1206. ELIGIBLE ALUMINUM DESIGNATED FOR AUCTION**

1. Eligible Aluminum ready or available for sale at auction shall be designated by an Inventory ID.
2. An Inventory ID may only be used on an auction-by-auction basis.
3. Each Inventory ID shall include the quantity of Eligible Aluminum, its weight, brand, shape, duty status, relevant facility code, storage location, and such other information as may be required by the CME Spot Market.
4. Each Inventory ID shall exclusively identify the deliverable grade in one of the shapes listed in Rule 1205. ("Commodity Specifications") of this Chapter and must derive from one smelter. Each Inventory ID issued shall be for Eligible Aluminum from a single approved brand that is stored and to be delivered at a single Warehouse.
5. Prior to the scheduling of an aluminum auction, a Permitted User that intends to sell Eligible Aluminum at auction shall instruct a Warehouse to create an Inventory ID with respect to (and only with respect to) the Permitted User's Eligible Aluminum stored in the Warehouse creating the Inventory ID.
6. A Permitted User shall only offer for sale Eligible Aluminum that is specifically identified by an Inventory ID.
7. Upon a Permitted User's request, a Warehouse shall create an Inventory ID for Eligible Aluminum based on the Permitted User's instructions and provide the Inventory ID to the CME Spot Market prior to the scheduling of an auction for the identified Eligible Aluminum.
8. A Warehouse shall generate an Inventory ID in the form and manner prescribed by the CME Spot Market solely at the request of the Permitted User that owns and stores aluminum at the Warehouse, and only with respect to Eligible Aluminum.
9. A Warehouse shall issue the Inventory ID in the name of the Permitted User's Clearing Member.
10. An Inventory ID shall identify and label specific Eligible Aluminum ready or available for auction only and is not and shall not act as a Warrant or other document of title.
11. Each Permitted User, Clearing Member and Warehouse understands and agrees that (a) a transfer of ownership of Eligible Aluminum identified by an Inventory ID that has not been cancelled shall occur only pursuant to the Rules of this Chapter, and (b) Eligible Aluminum identified by an Inventory

ID that has not been cancelled shall not be removed from the Warehouse by the Seller or the Seller's Clearing Member.

## **1207. AUCTIONS**

1. Auctions for Spot Aluminum Transactions are facilitated by the CME Spot Market on a non-disclosed (anonymous) basis.
2. A Spot Aluminum Transaction between a Buyer and a Seller results from an auction when the bid of the Buyer for Eligible Aluminum is matched at auction with the offer of the Seller.
3. Spot Aluminum Transactions shall take place in accordance with the terms and conditions publicly prescribed by the CME Spot Market prior to an auction.
4. After the conclusion of an auction in which a Buyer or Buyers and a Seller have been matched, the CME Spot Market shall deliver to the Buyer and the Seller (a) an anonymized electronic confirmation specifying such trade detail as may be determined by the CME Spot Market and (b) an anonymized invoice ("Invoice").
5. The Invoice shall specify such trade detail as may be determined by the CME Spot Market including the applicable payment date, settlement date, and final price, which may be based on a reference price or a basis to a reference price (or an average thereof).
6. Upon receipt of the Invoice, the Buyer's Clearing Member and the Seller's Clearing Member shall facilitate physically settling the Spot Aluminum Transaction on behalf of the Buyer and Seller, respectively, on the settlement date specified in and in accordance with the terms of the Invoice by undertaking the following actions in the sequential order set forth below:
  - a. the Buyer's Clearing Member shall remit the full amount due Seller to the Seller's Clearing Member;
  - b. as prescribed by the CME Spot Market, the Seller's Clearing Member or the CME Spot Market on behalf of the Seller's Clearing Member shall identify the Buyer's Clearing Member on the Inventory ID and cause the delivery of the same to the Buyer's Clearing Member;
  - c. the Buyer's Clearing Member shall present the Inventory ID to the Warehouse;
  - d. the Warehouse shall transfer ownership of the Eligible Aluminum from the Seller to the Buyer and cancel the Inventory ID in the form and manner prescribed by the CME Spot Market; and
  - e. the Seller's Clearing Member shall remit the full amount due Seller to the Seller.
7. Each Seller authorizes the CME Spot Market to instruct a Warehouse to transfer its ownership of Eligible Aluminum designated by an Inventory ID to the Buyer in accordance with the Rules of this Chapter.

## **1208. ADDITIONAL RESPONSIBILITIES**

### **1208.A. Buyer's Responsibilities**

1. The Buyer that is matched at auction with a Seller shall take delivery of Eligible Aluminum from the Seller in accordance with the Rules of Chapter.
2. The Buyer shall take delivery of Eligible Aluminum without procuring the identity of the Seller.
3. The Buyer shall pay the amount due Seller as indicated in the Invoice to the Buyer's Clearing Member at such time and in such manner as prescribed by the Buyer's Clearing Member.
4. Upon taking delivery against a Spot Aluminum Transaction, a Buyer shall thereafter be responsible for all charges directly due and payable to the Warehouse that are associated with the storage and handling of Eligible Aluminum.

### **1208.B. Seller's Responsibilities**

1. The Seller that is matched in an auction with a Buyer shall deliver Eligible Aluminum to the Buyer in accordance with the Rules of this Chapter.
2. The Seller shall make delivery of Eligible Aluminum without procuring the identity of the Buyer.
3. The Seller shall be responsible for all charges directly due and payable to the Warehouse that are associated with the storage and handling of Eligible Aluminum prior to making delivery against a Spot Aluminum Transaction.

### **1208.C. Warehouse Responsibilities**

1. Upon generating an Inventory ID and prior to the relevant auction, the Warehouse shall promptly provide a copy of the Inventory ID to the CME Spot Market.
2. Upon receiving instructions and the Inventory ID from the Buyer's Clearing Member or the CME Spot Market on behalf of the Buyer's Clearing Member, a Warehouse shall transfer ownership of the Eligible Aluminum identified in the Inventory ID from the Seller to the Buyer by 5:00 p.m. ET on the date specified in the Invoice.
3. A Warehouse shall cancel the Inventory ID upon transferring ownership of the Eligible Aluminum from the Seller to the Buyer in the form and manner prescribed by the CME Spot Market.

4. In the event the auction does not result in the sale of Eligible Aluminum, a Warehouse as applicable shall cancel the Inventory ID in the form and manner prescribed by the CME Spot Market after receiving cancel instructions from the CME Spot Market.
5. A Warehouse shall transfer ownership of Eligible Aluminum from the Seller to the Buyer without disclosing the Buyer to the Seller or the Seller to the Buyer.

**1208.D. Clearing Member Responsibilities**

1. A Buyer's Clearing Member shall make payment by same day funds to the Seller's Clearing Member in the amount due as noted in the Invoice by 10:00 am ET on the Business Day specified in the Invoice.
2. A Seller's Clearing Member shall deliver the Inventory ID to a Buyer's Clearing Member by 11:00 a.m. ET on the Business Day payment is received from the Buyer's Clearing Member.
3. Upon receipt of the Inventory ID, a Buyer's Clearing Member shall provide instructions to the Warehouse for transferring the ownership of the Eligible Aluminum from the Seller to the Buyer by 1:00 p.m. ET on the Business Day the Inventory ID is delivered.
4. Throughout an auction and the settlement process, a Buyer's Clearing Member shall not disclose the Buyer to the Seller's Clearing Member or the Seller, and the Seller's Clearing Member shall not disclose the Seller to the Buyer's Clearing Member or the Buyer.

**1208.E. CME Spot Market Responsibilities**

1. Upon receiving an Inventory ID from a Warehouse, the CME Spot Market shall in turn promptly provide the Inventory ID to the relevant Permitted User's Clearing Member.
2. The CME Spot Market shall provide the confirmation required under Rule 1207. ("Auctions") of this Chapter to a Buyer and a Seller promptly after the conclusion of the auction in which the Buyer and the Seller have been matched.
3. The CME Spot Market shall provide the Invoice required under Rule 1207. ("Auctions") of this Chapter to the relevant Clearing Members by 5:00 p.m. ET on the date of the auction.
4. The CME Spot Market shall prescribe and make publicly available the form and manner in which Inventory IDs are to be cancelled.

**1209. FAILURE TO PERFORM**

1. If the Seller fails to deliver Eligible Aluminum at the required time, the Seller shall be in default. In the event a Seller defaults, the Seller's Clearing Member shall be liable to the Buyer's Clearing Member for reasonable damages suffered by Buyer that are proximately caused by such delivery obligation failure, in an amount which shall not exceed the difference between the reasonable market price of Eligible Aluminum at the time delivery is required and the delivery price of the aluminum.
2. If the Buyer's Clearing Member fails to make payment at the required time, the Buyer's Clearing Member shall be in default. In the event of a Buyer's Clearing Member's default, the Buyer's Clearing Member shall be liable to Seller's Clearing Member for reasonable damages suffered by Seller that are proximately caused by such delivery obligation failure, in an amount which shall not exceed the difference between the delivery price of the aluminum and the market price of Eligible Aluminum at the time delivery is required.
3. If the Buyer's Clearing Member fails to make payment at the required time, or the Seller fails to deliver at the required time, the Buyer's Clearing Member or Seller shall be in default, except that the CME Spot Market may in its sole discretion extend the time to make payment or deliver for good cause shown, an additional three (3) hours.

**1210. DELIVERY WARRANTY**

1. By the generating an Inventory ID for aluminum, the Warehouse warrants that the metal meets the specifications set forth in the Inventory ID ("Delivery Warranty").
2. The Delivery Warranty shall continue for the benefit of a Buyer who shall have taken delivery of the aluminum in fulfillment of its obligations under a Spot Aluminum Transaction.
3. In the event that a Buyer shall claim a breach of the Delivery Warranty, the aluminum shall be immediately submitted to an assayer for sampling and assaying.
4. The expense of sampling and assaying shall, in the first instance, be borne by the Buyer.
5. If the assayer shall determine a deficiency in quality, the Buyer's Clearing Member on behalf of the Buyer shall have the right to recover the difference in the sampling and assaying and any cost of replacement of the aluminum.
6. The Buyer's Clearing Member may, at the Buyer's Clearing Member's option, proceed directly against the Warehouse without seeking recovery from the Seller's Clearing Member.
7. If the Warehouse satisfies the claim, the Seller's Clearing Member will be thereby discharged from liability to the Buyer.
8. The Buyer's Clearing Member may, at the Buyer's Clearing Member's option, proceed against the Seller's Clearing Member without seeking recovery from the Warehouse. If the Buyer's Clearing Member seeks recovery from the Seller's Clearing Member, and the Buyer's Clearing Member's claim is satisfied by the Seller's Clearing Member, the Warehouse will be thereby discharged from liability to the Buyer.
9. The liability of a Seller's Clearing Member as provided herein shall not be deemed to limit the rights of such Seller's Clearing Member against the Warehouse issuing the Inventory ID or the Seller.

10. The liability of a Warehouse as provided herein shall not be deemed to limit the rights of the Warehouse against a Seller or Seller's Clearing Member.

#### **1211. SETTLEMENT OF DISPUTES**

1. Damages payable by a Clearing Member for a default or payable by a Warehouse for breach of a Delivery Warranty may be increased, to account for interest charges, punitive damages and fees and expenses associated with arbitration proceedings, by an arbitration panel pursuant to [CME Spot Market Trading Rule 1202. \("Arbitration"\)](#).
2. The remedies available under this Chapter shall be the exclusive remedies for Buyer and/or Seller in connection with any disputes arising out of a Spot Aluminum Transactions. Any disputes or claims arising out of relating to a Spot Aluminum Transaction shall be resolved solely through Buyer's Clearing Member and Seller's Clearing Member in accordance with Rules of this Chapter while retaining the anonymity of the Buyer and Seller to the extent practicable. Buyer and Seller each waive any right to directly claim or otherwise bring an action against the Buyer or Seller counterparty, as applicable, to a Spot Aluminum Transaction other than through their respective Clearing Member.

#### **1212. ERROR POLICY**

1. Any Buyer or Seller alleging that a Spot Aluminum Transaction has resulted in error from an auction may request the CME Spot Market to review the auction progression and results, provided that such request is made within one (1) hour after the conclusion of an auction.
2. Upon a Permitted User's request, or on its own initiative, the CME Spot Market reserves the right within four (4) hours following the conclusion of an auction to determine in its sole discretion that a Spot Aluminum Transaction has resulted in error from an auction.
3. The CME Spot Market reserves the right in its sole discretion to cancel a Spot Aluminum Transaction it has determined to have resulted in error from an auction.
4. The CME Spot Market's cancellation of a Spot Aluminum Transaction shall be final and binding on the Buyer and the Seller.
5. The CME Spot Market reserves the right to cancel or postpone a scheduled auction, and to suspend or terminate a live auction or a Permitted User's access to the CDAP without cause or notice.

#### **1213. DECLARATIONS OF FORCE MAJEURE**

If a determination is made by the Chief Executive Officer or Chief Operating Officer, or their designee, that delivery or final settlement of any Spot Aluminum Transaction cannot be completed as a result of Force Majeure, such person shall take such action as the person deems necessary under the circumstances, and the decision shall be binding upon all parties to the contract. It shall be the duty of Members and regular facilities to notify CME Spot Market of any circumstances that may give rise to a declaration of Force Majeure. Nothing in this Rule shall in any way limit the authority of the Chief Regulatory Officer to act in a Force Majeure situation pursuant to [CME Spot Market Trading Rule 1200.D. \("Emergency Actions"\)](#).

#### **1214. LIMITATION OF LIABILITY**

1. EXCEPT AS PROVIDED BELOW, CHICAGO MERCANTILE EXCHANGE INC, INCLUDING THE CME SPOT MARKET (THE "EXCHANGE"), THE BOARD OF TRADE OF THE CITY OF CHICAGO, INC. ("CBOT"), NEW YORK MERCANTILE EXCHANGE, INC. ("NYMEX") (INCLUDING EACH OF THEIR RESPECTIVE SHAREHOLDERS) (INCLUDING EACH OF THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, LICENSORS, MEMBERS, AND CLEARING MEMBERS, SHALL NOT BE LIABLE TO ANY PERSON FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, AND DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), ARISING FROM:
  - a. ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION, TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE SYSTEMS AND SERVICES OF THE EXCHANGE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, INCLUDING WITHOUT LIMITATION ELECTRONIC ORDER ENTRY/DELIVERY, TRADING THROUGH ANY ELECTRONIC MEANS, ELECTRONIC COMMUNICATION OF MARKET DATA OR INFORMATION, WORKSTATIONS USED BY MEMBERS AND AUTHORIZED EMPLOYEES OF MEMBERS, PRICE REPORTING SYSTEMS AND ANY AND ALL TERMINALS, COMMUNICATIONS NETWORKS, CENTRAL COMPUTERS, SOFTWARE, HARDWARE, FIRMWARE AND PRINTERS RELATING THERETO; OR
  - b. ANY FAILURE OR MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION OR TERMINATION, OR ANY OTHER CAUSE, OF ANY SYSTEM OR SERVICE OF THE EXCHANGE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, CAUSED BY ANY THIRD PARTIES

INCLUDING, BUT NOT LIMITED TO, INDEPENDENT SOFTWARE VENDORS AND NETWORK PROVIDERS; OR

c. ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE EXCHANGE OR ANY EXCHANGE SYSTEMS, SERVICES OR FACILITIES; OR

d. ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY EXCHANGE SYSTEMS, SERVICES OR FACILITIES BY ANY PERSON.

THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, CONTRIBUTION OR OTHERWISE AND WHETHER THE CLAIM IS BROUGHT DIRECTLY OR AS A THIRD-PARTY CLAIM.

A PARTY WHO HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN WILLFUL OR WANTON MISCONDUCT MAY NOT AVAIL ITSELF OF THE PROTECTIONS IN THIS RULE.

2. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE) PROVIDED BY THE EXCHANGE, CBOT, OR NYMEX (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, AND LICENSORS RELATING TO ANY SYSTEMS OR SERVICES OF THE EXCHANGE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES INCLUDING THE CME DIRECT AUCTION PLATFORM.
3. ANY DISPUTE ARISING OUT OF THE USE OF SYSTEMS OR SERVICES OF THE EXCHANGE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES IN WHICH THE EXCHANGE (INCLUDING ITS SUBSIDIARIES AND AFFILIATES), OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS OR LICENSORS IS A PARTY SHALL BE ARBITRATED PURSUANT TO EXCHANGE RULES. ANY ARBITRATION SHALL BE BROUGHT WITHIN THE PERIOD PRESCRIBED BY EXCHANGE RULES. ANY OTHER ACTIONS, SUITS OR PROCEEDINGS AGAINST ANY OF THE ABOVE MUST BE BROUGHT WITHIN TWO YEARS FROM THE TIME THAT A CAUSE OF ACTION HAS ACCRUED. THIS PARAGRAPH C SHALL IN NO WAY BE CONSTRUED TO LIMIT A PARTY'S OBLIGATION TO ARBITRATE ITS CLAIM OR TO CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION THAT WOULD OTHERWISE BE PROHIBITED BY EXCHANGE RULES. IF FOR ANY REASON, A COURT OF COMPETENT JURISDICTION FINDS THAT SUCH DISPUTE IS NOT ARBITRABLE, SUCH DISPUTE MAY ONLY BE LITIGATED IN THE COUNTY OF COOK IN THE STATE OF ILLINOIS AND WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO ANY PROVISIONS OF ILLINOIS LAW THAT WOULD APPLY THE SUBSTANTIVE LAW OF A DIFFERENT JURISDICTION.
4. THE EXCHANGE, CBOT AND NYMEX MAY, IN THEIR SOLE DISCRETION, ASSUME RESPONSIBILITY FOR DIRECT, OUT-OF-POCKET LOSSES DIRECTLY CAUSED BY THE NEGLIGENCE OF GLOBAL COMMAND CENTER OR OTHER EXCHANGE STAFF AND/OR ORDER STATUS ERRORS PROVIDED BY THE GLOBAL COMMAND CENTER. IF SUCH LIABILITY IS ACCEPTED, THE TOTAL AGGREGATE OBLIGATIONS FOR THE EXCHANGE, CBOT AND NYMEX SHALL NOT EXCEED \$200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH. ANY DISPUTED CLAIM MADE UNDER THIS RULE MUST BE ARBITRATED PURSUANT TO EXCHANGE RULES.
5. IN NO EVENT SHALL THE COLLECTIVE TOTAL AGGREGATE LIABILITY FOR THE EXCHANGE, CBOT AND NYMEX FOR ALL CLAIMS ARISING OUT OF ANY NEGLIGENCE, FAILURES, MALFUNCTIONS, FAULTS IN DELIVERY, DELAYS, OMISSIONS, SUSPENSIONS, INACCURACIES, INTERRUPTIONS, TERMINATIONS, ORDER STATusing ERRORS OR ANY OTHER CAUSES IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE EXCHANGE'S SYSTEMS OR SERVICES, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, OR THE NEGLIGENCE OF EXCHANGE STAFF, EXCEED \$200,000 IN ANY CALENDAR MONTH. IF THE NUMBER OF ALLOWED CLAIMS ARISING OUT OF ANY FAILURES OR MALFUNCTIONS IN A SINGLE CALENDAR MONTH CANNOT BE FULLY SATISFIED BECAUSE OF THE MONTHLY LIABILITY LIMITATION, ALL SUCH CLAIMS SHALL BE LIMITED TO A PRO RATA SHARE OF THE MAXIMUM AMOUNT AVAILABLE FOR THAT MONTH.