

# Limitation of Liability



## NEW HAND-HELD USERS ONLY

Please read this document in its entirety and sign page three.

Hand-held user (print name) \_\_\_\_\_ Symbol \_\_\_\_\_

### Limitation of Liability, No Warranties

- A. EXCEPT AS PROVIDED BELOW, THE EXCHANGE, THE BOARD OF TRADE OF THE CITY OF CHICAGO, INC. ("CBOT"), THE NEW YORK MERCANTILE EXCHANGE INC. ("NYMEX"), THE KANSAS CITY BOARD OF TRADE ("KCBT"), THE MINNEAPOLIS GRAIN EXCHANGE ("MGEX") AND CME ALTERNATIVE MARKETPLACE INC., (INCLUDING EACH OF THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR 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:
- (i) 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, CBOT OR CME ALTERNATIVE MARKETPLACE INC., 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
  - (ii) 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, CBOT OR CME ALTERNATIVE MARKETPLACE INC., 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
  - (iii) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE EXCHANGE, CBOT OR CME ALTERNATIVE MARKETPLACE INC. OR ANY EXCHANGE, CBOT OR CME ALTERNATIVE MARKETPLACE INC. SYSTEM, SERVICE OR FACILITY; EXCEPT FOR INCORRECT ORDER STATusing INFORMATION AS PROVIDED IN RULE 579 (GLOBEX CONTROL CENTER AND ORDER STATusing); OR
  - (iv) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY EXCHANGE, CBOT OR CME ALTERNATIVE MARKETPLACE INC. SYSTEM, SERVICE OR FACILITY 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.

THE FOREGOING LIMITATION OF LIABILITY SHALL BE SUBJECT TO THE COMMODITY

EXCHANGE ACT AND REGULATIONS THEREUNDER. 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.

- B. 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, NYMEX, KCBT, MGEX OR CME ALTERNATIVE MARKETPLACE INC. (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, AND LICENSORS RELATING TO ANY SYSTEMS OR SERVICES OF THE EXCHANGE, CBOT OR CME ALTERNATIVE MARKETPLACE INC. OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING THE GLOBEX SYSTEM.
- C. ANY DISPUTE ARISING OUT OF THE USE OF SYSTEMS OR SERVICES OF THE EXCHANGE OR CME ALTERNATIVE MARKETPLACE INC. OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES IN WHICH THE EXCHANGE, OR CME AUCTION MARKETS (INCLUDING EITHER OF THEIR SUBSIDIARIES AND AFFILIATES), OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS OR LICENSORS IS A PARTY SHALL BE ARBITRATED PURSUANT TO RULE 621. 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 CME 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.
- D. THE EXCHANGE, AND WITH RESPECT TO "AUCTIONS," CME ALTERNATIVE MARKETPLACE INC., MAY, IN THEIR RESPECTIVE SOLE DISCRETION, ASSUME RESPONSIBILITY FOR DIRECT, OUT-OF-POCKET LOSSES DIRECTLY CAUSED BY THE NEGLIGENCE OF GLOBEX CONTROL CENTER OR OTHER EXCHANGE STAFF AND/OR ORDER STATUS ERRORS PROVIDED BY THE GLOBEX CONTROL CENTER OR AN EXCHANGE SYSTEM, SERVICE OR FACILITY. NOTWITHSTANDING THE ABOVE, i) THE EXCHANGE'S; ii) CBOT'S (EXCEPT WITH RESPECT TO ANY PRODUCTS TRADED ON e-cbot, WHICH ARE GOVERNED BY CBOT RULE 5B.19); AND iii) WITH RESPECT TO AUCTIONS, CME ALTERNATIVE MARKETPLACE INC.'S TOTAL COMBINED AGGREGATE OBLIGATIONS SHALL NOT EXCEED \$100,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED ON A SINGLE DAY; \$200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND \$2,400,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED IN A SINGLE CALENDAR YEAR. ANY DISPUTED CLAIM PURSUANT TO THIS PARAGRAPH D MUST BE ARBITRATED PURSUANT TO EXCHANGE RULES.
- E. IN NO EVENT SHALL THE EXCHANGE'S, CBOT'S, AND WITH RESPECT TO AUCTIONS, CME ALTERNATIVE MARKETPLACE INC.'S, TOTAL COMBINED AGGREGATE LIABILITY 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, CBOT'S, OR CME ALTERNATIVE MARKETPLACE INC.'S SYSTEMS OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, OR THE NEGLIGENCE OF EXCHANGE OR CBOT STAFF, EXCEED \$2,400,000 IN ANY GIVEN CALENDAR YEAR.

IF THE NUMBER OF ALLOWED CLAIMS ARISING OUT OF ANY FAILURES OR MALFUNCTIONS ON A SINGLE DAY OR SINGLE MONTH CANNOT BE FULLY SATISFIED BECAUSE OF THE ABOVE DOLLAR LIMITATIONS, ALL SUCH CLAIMS SHALL BE LIMITED TO A PRO RATA SHARE OF THE MAXIMUM AMOUNT FOR THE RESPECTIVE

PERIOD.

A CLAIM AGAINST THE EXCHANGE, CBOT, OR WITH RESPECT TO AUCTIONS, CME ALTERNATIVE MARKETPLACE INC., ARISING OUT OF ANY FAILURE OR MALFUNCTION SHALL ONLY BE ALLOWED IF SUCH CLAIM IS BROUGHT IN ACCORDANCE WITH THIS RULE.

**Signature of Hand-held user** \_\_\_\_\_

**Date:** \_\_\_\_\_