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Chicago Mercantile Exchange

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December 15 2005

Ms. Jean A. Webb  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**RE: CME Rulebook Chapter 8-D Part II (Auction Markets)  
Submission No. 05-85A (Addendum to Submission No. 05-85)**

Dear Ms. Webb:

Chicago Mercantile Exchange Inc. ("CME" or "Exchange") hereby notifies the Commission that the Exchange is filing an addendum to Submission No. 05-85 that was submitted on September 2, 2005. Chapter 8-D Part II (Auction Markets) was inadvertently omitted from the original submission. CME previously approved Chapter 8-D to govern the Alternative Marketplace Inc. ("CME AM").

The Exchange certifies that Part II of Chapter 8-D neither violates nor is inconsistent with any provision of the Commodity Exchange Act or of the rules and regulations thereunder.

If you have any questions regarding this matter, please call me at (312) 648-5422.

Sincerely,

/S/ Stephen M. Szarmack  
Director and Associate General Counsel

## CHAPTER 8-D

### PART II.

#### AUCTION MARKETS

The rules contained in this Chapter 8-D govern the Auctions that occur on CME AM. To the extent that any provisions of this Chapter conflict with other Rules, this Chapter supersedes such Rules and governs the manner in which Auction Instruments on CME AM are matched through the Auction System. Otherwise, CME AM Auctions are fully subject to the Rules of CME, as applicable, unless specifically and expressly excluded therefrom.

#### 8D21. DEFINITIONS

"Accepted Order" means an order in an Auction Instrument that has been processed into the Auction System to the point that Indications offered through an Auction have been updated.

"Auction" means a market through which CME AM makes Auction Instruments available to Auction Participants through the Auction System.

"Auction Broker" means a person authorized by CME AM to enter orders to an Auction on behalf of Auction Participants.

"Auction Close" means the time specified by CME AM in the Auction Details at which orders will no longer be accepted for processing in a particular Auction.

"Auction Details" shall mean the information published by CME AM in advance of an Auction as described in Rule 8D28 hereof.

"Auction Instrument(s)" means any agreement, contract, or transaction that is a forward, swap, or option on one or more occurrences of any event, rate, currency, commodity, economic, or other indices or measure of economic or other risk or value.

"Auction Open" means the time at which orders will be accepted for processing in a particular Auction.

"Auction Participant" means a person or entity approved by CME AM to participate in an Auction including, but not limited to –

1. Auction Brokers;
2. Designated Clearing Members; and
3. Customers of an Auction Broker or Designated Clearing Member that satisfy the following criteria:
  - i. Qualify as an eligible contract participant ("ECP"), as defined in the Commodity Exchange Act, and
  - ii. Maintain a customer relationship and account with a Designated Clearing Member prior to participating in an Auction.

"Auction System" means the electronic auction system operated by CME AM or by its vendors including without limitation all of its human, physical, electronic and communication components attendant thereto, whether provided by CME or its vendors, by means of which CME AM:

1. Accepts orders from Auction Participants;
2. Processes orders;
3. Publishes Indications during the Auction process;
4. Completes the Auction;
5. Publishes the results of the Auction; and

6. Provides transaction information to the CME Clearing House.

"CME AM" means "CME Alternative Marketplace Inc." CME AM is a subsidiary of Chicago Mercantile Exchange Inc. CME AM is not regulated by the Commodity Futures Trading Commission. CME AM has filed a notice with the CFTC that it intends to operate as an exempt board of trade pursuant to Section 5d of the Commodity Exchange Act. An exempt board of trade is not registered with, or designated, recognized, licensed, or approved by the Commodity Futures Trading Commission. CME AM will not be registered with, or designated, recognized, licensed or approved by the Commodity Futures Trading Commission. Certain instruments traded on CME AM may be subject to Sections 4b, 4c(b), 4o, 6(c) and 9(a)(2) of the Commodity Exchange Act and the Commission may have the authority to enforce those provisions in connection with such instruments.

"Designated Clearing Member" means a CME Clearing Member approved for the purpose of entering orders to an Auction on behalf of Auction Participants together with the duties, rights and privileges attendant to membership in the Clearing House.

"Electronic Platform" means a website, web-based or other electronic platform commonly used for disseminating information.

"Force Majeure Event" means any of the following that renders it impossible or reasonably impracticable for CME AM to continue, maintain or complete an Auction or settle the resulting Auction Instrument: (i) earthquake, fire, flood, extraordinary weather conditions or other Act of God; (ii) labor dispute, riot, insurrection, war, accident, act of terrorism or act of government; (iii) failure of systems, communications lines, software, hardware or other equipment of the Auction System, CME AM or any third-party service provider, including WebET and any other Electronic Platform; (iv) market disruptions affecting the Statistic or instruments traded on such Statistic in other markets; (v) information regarding the level of the underlying Statistic becoming known to certain market participants prior to the release of such Statistic to the public; or (vi) any other events beyond the reasonable control of CME AM or CME, including without limitation, events that prevent the determination of filled order sizes and Trading Levels.

"Forward" means an instrument that does not have a specified Strike Level or Premium. A Forward exposes the buyer to the risk that the value will decrease and exposes the seller to the risk that the value will increase after the price has been established. Each Forward offered in an Auction will be executed at its own "Trading Level," determined on the basis of orders for all Auction Instruments collectively entered by Auction Participants.

"Indications" means indicative Trading Levels that approximate the Trading Levels at which each Auction Instrument would be executed if the Auction was closed at that time.

"Options" means vanilla-style options (which include vanilla options, vanilla option spreads and vanilla option strategies) and digital-style options (which include digital options, digital option ranges and digital option strategies), as well as other Option structures. Each type of Option offered in an Auction, at each Strike Level offered, will be executed at its own Trading Level, determined on the basis of orders for all Auction Instruments collectively entered by Auction Participants in the Auction.

"Pending Order" means an order entered by or on behalf of an Auction Participant prior to the point in time when it has been integrated into the process by which CME AM adjusts the current Indications for each instrument offered through an Auction.

"Pro Rata Fills" means a partial fill of an Accepted Order as described in Rule 8D37 hereof.

"Publish" or "Published" means a communication by CME AM or Auction Brokers to Auction Participants through one or more of the means used by CME AM or CME to transmit information generally regarding Auctions, Auction Instruments or related matters, which may include, without limitation, posting such information on an Electronic Platform, e-mail, fax or telephone communications.

"Replacement Statistic" means a Statistic selected by CME AM in the event that the original Statistic is unavailable which Replacement Statistic would, in CME's sole discretion, preserve

for the parties to any Auction Instrument (after suitable adjustment, if necessary) substantially the economic equivalent of the terms of the Auction Instrument on the original Statistic and which therefore serves as an acceptable substitute for the original Statistic.

"Statistic" means the event, statistic, measure, value or other data point underlying the Auction Instrument as specified in the Auction Detail attached hereto.

"Statistic Event" means any of the following: (i) a cessation by the government agency or other entity responsible for publication of the Statistic of its calculation or dissemination of the Statistic, or a public announcement by such agency or entity that it intends to cease such calculation or dissemination prior to the Statistic Release Date; (ii) a material change is announced or made with respect to the calculation or methodology of the Statistic that, in the reasonable judgment of CME AM, renders the Statistic a fundamentally different Statistic than that on which the relevant Auction was based; or (iii) a material change is made in the schedule with respect to calculation or publication of the Statistic that, in the reasonable judgment of CME AM, represents a fundamental change in the nature of the relevant Auction.

"Statistic Level" means the number or level at which a Statistic is released and published by the entity charged with calculating or compiling the Statistic upon which an Auction is based.

"Statistic Release Date" means the specific date upon which a Statistic is scheduled to be released.

"Trade Confirmation" means the binding confirmation of a transaction to an Auction Participant as described in Rule 8D40 hereof.

"Trade Notice" means the non-binding confirmation of a transaction to an Auction Participant as described in Rule 8D39 hereof.

"Trading Levels" means the event, statistic, measure, value or other data point at which each Auction Instrument is executed.

## **CONDITIONS FOR PARTICIPATION IN AUCTIONS**

### **8D22. DOCUMENTATION**

Prior to an Auction, each Designated Clearing Member must execute a CME Auction Markets Agreement.

### **8D23. ACCOUNT REGISTRATION**

It is the responsibility of each Designated Clearing Member to register each Auction Participant with CME AM. The following information must be provided for each Auction Participant:

- i) A representation from the Designated Clearing Member that the Auction Participant is an Eligible Contract Participant, as defined in the CEA;
- ii) An acknowledgement from the Designated Clearing Member or a signed statement from the Auction Participant that it has read and understood the Rules governing the Auction, the Risk Disclosure pertinent to Auctions set forth below, and all other relevant Rules of CME and CME AM, and agrees to be bound thereby and by any amendments thereto;
- iii) Credit limits; and
- iv) A description of the means by which orders will be entered including the use of an Auction Broker.

### **8D24. CREDIT LIMITS**

Each Designated Clearing Member will establish credit limits for each Auction Participant for which it acts as the Designated Clearing Member in connection with a particular Auction. An Auction Participant is not eligible to submit orders until CME AM determines that the credit limit is acceptable and the Designated Clearing Member is notified that the Credit Limit for that Auction Participant has been activated. Regardless of any Credit Limits established, Designated Clearing Members are obligated to accept for clearing any executed orders for its guaranteed Auction Participants.

**8D25. ORDER IN EXCESS OF CREDIT LIMIT**

Any dispute respecting execution of an order entered by an Auction Participant in excess of its Credit Limit must be resolved through arbitration proceedings conducted in accordance with Chapter 6 of CME's Rulebook. The Designated Clearing Member, Auction Broker and Auction Participant may govern the consequence of such behavior by private agreement. In the absence of an agreement, such disputes shall be resolved in accordance with ordinary commercial practices at CME.

**8D26. MARGIN**

The CME Clearing House will establish and publish the margin requirements for each contract executed as a result of an Auction, mark-to-market open positions daily where applicable, and collect the applicable margin amounts from the Designated Clearing Member that guarantees performance of that contract. The Designated Clearing Member shall make commercially reasonable arrangements to collect such amounts from its customers.

**AUCTION PROCEDURES**

**8D27. EFFECT OF AUCTION PROCEDURES**

Participants in Auctions, and all orders submitted and transactions entered into by Auction Participants in connection with Auctions, will be governed by these Auction Procedures and such other CME Rules as may be applicable, all as amended from time to time. CME AM will use reasonable efforts to publish any amendments to the Auction Procedures at least one week before the effectiveness of any such amendments. Any amendments to the Auction Procedures or the CME Rules will become binding on Auction Participants upon their effectiveness.

**8D28. AUCTION DETAILS**

Prior to the opening of each Auction, CME AM will Publish the relevant "Auction Details" which will include the following and such other information as may be appropriate:

- i. the Statistic and the Statistic Release Date and Time;
- ii. the date of the Auction;
- iii. the scheduled time for the opening and closing of the Auction;
- iv. the available Strike Levels (applicable to Options);
- v. the relationship between each Index Point and the unit of measure of the Statistic on which the instrument will be based (e.g., for Auctions on non-farm payrolls one Index Point per thousand jobs);
- vi. the currency in which the instrument executed through the Auction are denominated, if not U.S. dollars;
- vii. the minimum order size, if any;
- viii. the conditions that must be satisfied in order for the Statistic to be deemed to have been released on the Statistic Release Date, which may include the manner and timing of publication of the Statistic and other criteria;
  - (x) the applicable fee and the manner in which it will be calculated; and
  - (xi) the public Uniform Resource Location, or "URL" (the World Wide Web address of a site on the Internet), at which the Trading Levels and Pro Rata Fills, if any, will be published.

**8D29. STRIKE LEVELS**

CME AM will Publish opening prices for an Auction before the Auction Open. The Strike Levels for an Auction will include, without limitation, any Strike Levels with respect to which there are outstanding instruments sold in any previously held Auction for instruments on the same Statistic

for the same Statistic Release Date. The Strike Levels and other Auction Details provided to Auction Participants by CME AM, including through an Electronic Platform, will be definitive, notwithstanding any contrary information contained elsewhere.

**8D30. SUBMISSION OF ORDERS**

By submitting an order in connection with an Auction, and by entering into an Auction Instrument executed through an Auction, an Auction Participant will be deemed to have represented and warranted that (i) it is an Eligible Contract Participant, (ii) it is submitting such order, and entering into such Auction Instrument in good faith and for a bona fide business purpose; (iii) it intends to complete a transaction on the terms set forth in such order; and (iv) its actions are in compliance with all applicable laws and regulations and subject to the terms of the Auction Procedures and the Rules of CME AM and CME, as in effect from time to time.

**8D31. ORDER SUBMISSION DETAILS**

Orders may be submitted in an Auction by Auction Participants, either through their Auction Broker, Designated Clearing Member or directly into the Auction System through an Electronic Platform made available to Auction Participant by their Auction Broker. Any order submitted through an Electronic Platform must be submitted in accordance with the rules or procedures applicable to CME AM. All orders must in any event be submitted prior to the Auction Close. Regardless of the manner in which orders are entered, orders must specify at least the following:

- (i) The Statistic and Auction;
- (ii) Whether the order is a purchase or a sale and, in the case of an Option, a put or a call;
- (iii) The type of Auction Instrument (e.g., Option or Forward and, if an Option, vanilla or digital put or call, vanilla spread, straddle, strangle or risk reversal, or digital range, strangle or risk reversal);
- (iv) The Strike Level or Levels (with respect to Options);
- (v) The limit price (expressed in terms of a Trading Level);
- (vi) The order size (expressed in terms of currency amount per Index Point) for vanilla Options and Forwards or size of payout for Digital Options; and,
- (vii) An Auction Participant unique account identifier.

**8D32. REFUSAL, CANCELLATION AND EXPIRATION OF ORDERS**

CME AM, Designated Clearing Members and Auction Brokers are under no obligation to accept an order from an Auction Participant and may, in their sole and absolute discretion, reject or refuse to accept any such order. CME AM, Designated Clearing Members and Auction Brokers may, in their sole and absolute discretion, cancel any Pending Order received at any time before the Auction Close for any reason. Accepted Orders may also be cancelled prior to the Auction Close, but only if CME AM or the relevant Designated Clearing Member or Auction Broker concludes that the Auction Participant has engaged in activity that may be in violation of applicable law, regulation or the Rules hereof, or that the Auction Participant's conduct may be detrimental to the Auction. Any Pending Order that has not been classified as an Accepted Order before the Publication of Trading Levels will expire.

Any Accepted Order that has not been executed in accordance with the Auction Procedures will automatically expire upon Publication of the Trading Levels. Neither CME AM, a Designated Clearing Member, nor an Auction Broker, is under any obligation to notify Auction Participants that their orders were not executed.

**8D33. CANCELLATION AND MODIFICATION OF ORDERS BY AUCTION PARTICIPANT**

An Auction Participant may cancel or modify an order at any time before, but not after, the Auction Close, directly on the Auction System or by submitting a request for cancellation or modification to the designated representative of the relevant Auction Broker or Designated Clearing Member. When an Auction Broker or Designated Clearing Member receives a request for modification before the Auction Close, the Auction Broker or Designated Clearing Member will treat the modified order as a new Pending Order (which will be subject to the Auction Procedures applicable to new

Pending Orders) and the original order will be deemed cancelled if and when the new Pending Order becomes an Accepted Order. Prior to that time, the original order remains in effect. An order may be cancelled or modified using the Electronic Platform through which the original order was entered, subject to any applicable requirements of the applicable Auction Broker, including (without limitation) the Rules hereof, and the foregoing procedures will apply, as appropriate, to any such cancellation or modification.

**8D34. MARKET MAKER FUNCTION**

CME AM may authorize one or more of the Auction Brokers to perform a market-making function for specific Auctions. CME may provide such designated market makers with the ability to enter orders for Options, including types of Options and at Strike Levels that may not be available to other Auction Participants. These orders will not confer any order execution or informational advantage to the market-making Auction Brokers or their customers but are merely intended to increase the likelihood that orders submitted by Auction Participants will be executed.

**8D35. INDICATIONS**

CME AM will publish the current Indications for each instrument offered during the period that an Auction is open. The Indications published at the Auction Close may not reflect the Trading Levels for each instrument as finally determined by CME AM after the Auction Close because CME AM may revise Accepted Orders which contain errors. Each Auction will be conducted on the basis of a single Trading Level for each type of Auction Instrument offered through the Auction, and not on the basis of spreads.

**8D36. FILLS OF ACCEPTED ORDERS**

CME AM will publish Trading Levels and, if applicable, Pro Rata Fills promptly after each Auction Close. Accepted Orders will be executed and filled based on Trading Levels and the Pro Rata Fill. The Trading Levels published by CME AM will be definitive (absent manifest error) and will supersede any verbal notifications provided by CME, CME AM, Auction Brokers, Designated Clearing Members or any other Auction Participants.

**8D37. PRO-RATA FILLS**

If an Accepted Order in an Auction to buy/sell an Auction Instrument has a limit price below/above the Trading Level for the relevant Auction Instrument, then no portion of that Accepted Order will be filled. If an Accepted Order in an Auction to buy/sell an Auction Instrument has a limit price above/below the Trading Level, the Accepted Order will be filled in its entirety. If an Accepted Order in an Auction to buy/sell an Auction Instrument has a limit price at the applicable Trading Level for the relevant Auction Instrument, and not all Accepted Orders can be executed at that Trading Level, then each Accepted Order entered at the Trading Level will be filled on the basis of a pro rata percentage ("Pro Rata Fill"), based on the order size of the Accepted Order and the sum of all order sizes for all Accepted Orders at that Trading Level. For example, if 65% of the Accepted Orders to buy an Auction Instrument at a given Trading Level are filled, then each buy order entered at that Trading Level will be filled with respect to 65% of the order (e.g., an order size of 100 will result in a filled order size of 65), and in such case all Accepted Orders to sell, if any, at that same Trading Level will be fully filled. The Pro Rata Fill percentage, if applicable, will be published along with the Trading Level for each Auction Instrument.

**8D38. FINALITY**

Each executed Accepted Order will become final and binding on the relevant Designated Clearing Member when Trading Levels and Pro Rata Fills, if applicable, are Published. The guarantee of CME's Clearing House will apply to executed Accepted Orders when Trading Levels and Pro Rata Fills, if applicable, are Published. No obligation of the CME Clearing House arises in respect of any Accepted Order until Trading Levels and Pro Rata Fills, if applicable, are Published.

**8D39. TRADE NOTICE**

After Trading Levels have been Published, the Designated Clearing Member or Auction Broker may provide its customers with an electronic or oral notice of the Auction Participant's Trading Level and filled amount of the Accepted Orders that resulted from the Auction (a "Trade Notice"). However, Trade Notices are provided as a courtesy for Auction Participants, are not definitive or binding and do not invoke the guarantee of CME's Clearing House.

**8D40. TRADE CONFIRMATION**

Each Designated Clearing Member will deliver a Trade Confirmation to each of its customers that is an Auction Participant with an executed order in the Auction, in accordance with, and at the time specified by, the Designated Clearing Member's ordinary commercial practice or the agreement in place between the Auction Participant and the Designated Clearing Member. The terms set forth in a Trade Confirmation will constitute the definitive terms of each transaction entered into by an Auction Participant and in the event of any conflict between a Trade Notice, or any other transaction notice, provided to an Auction Participant and a Trade Confirmation, the Trade Confirmation will control (in the absence of manifest error). The Auction Participant will be bound by the terms of each Trade Confirmation as it relates to a transaction entered into by the Auction Participant and cleared by its Designated Clearing Member. The prices set forth in a Trade Confirmation provided to an Auction Participant, and the resulting payment obligations, may differ slightly from the published final Trading Levels as a result of system rounding conventions.

## **CANCELLATION AND MODIFICATION OF AUCTIONS**

### **8D41. CANCELLATION OF AN AUCTION AND MODIFICATION OF AUCTION DETAILS BEFORE THE AUCTION OPEN**

An Auction may be cancelled or Auction Details may be modified at the discretion of CME AM, at any time prior to the Auction Open.

If an Auction has been cancelled, CME AM will cancel all Accepted and Pending Orders for that Auction. If CME AM modifies the Statistic, strike prices or currency published as part of the Auction Details for an Auction, CME AM will cancel all Accepted and Pending Orders for that Auction and any Auction Participants wishing to resubmit their Pending Orders will be permitted to do so in accordance with the Auction Procedures. Other changes to the Auction Details will not result in the cancellation of Accepted or Pending Orders.

CME AM will Publish notice of the cancellation of an Auction or any modification to the Auction Details before the scheduled Auction Open (and will use reasonable efforts to otherwise provide notice to Auction Participants, Auction Brokers, and Designated Clearing Members that have Pending Orders).

### **8D42. SUSPENSION, EXTENSION, CANCELLATION OR REOPENING OF AN AUCTION AFTER THE AUCTION OPEN AND BEFORE THE PUBLICATION OF TRADING LEVELS**

After an Auction Open, CME AM may, upon the occurrence of a Force Majeure Event: (i) suspend or extend the Auction only if such suspension or extension occurs before the Auction Close, or (ii) cancel or reopen the Auction, but only if such cancellation or reopening occurs before the Publication of Trading Levels.

CME AM will cancel an Auction if Trading Levels cannot be Published by the earlier to occur of: (i) five minutes prior to the scheduled Statistic Release Date and Time, as set forth in the Auction Details, (ii) the official publication of the Statistic, or (iii) three hours after the Auction Close, provided that CME AM may establish a shorter or longer time period with respect to certain Auctions, if warranted or appropriate under the circumstances. CME AM will also have the right, but not the obligation, during the period after the Auction Close and prior to the Publication of Trading Levels, to revise any data entry issues that have been identified.

If an Auction has been cancelled, CME AM will cancel all orders for that Auction. CME AM will promptly Publish notice of any suspension, extension, cancellation or reopening of an Auction (and use reasonable efforts to otherwise notify Auction Participants, Auction Brokers, and Designated Clearing Members that have orders for that Auction).

Notwithstanding the foregoing, CME AM will make all reasonable efforts to suspend, extend or reopen, rather than cancel, an Auction upon the occurrence of a Force Majeure Event, provided that CME AM will cancel the Auction if the Force Majeure Event continues for more than three hours (or such shorter or longer time period as CME AM may establish with respect to certain Auctions, if warranted or appropriate under the circumstances). Any such suspension, extension or reopening shall be for such period as CME AM, in its sole and reasonable discretion, determines to be necessary to address the circumstances giving rise to the need for action. If an Auction is suspended, extended or reopened upon the occurrence of a Force Majeure Event, CME AM will determine the action(s) to be taken with respect to such suspension, extension, or reopening including, without limitation: (i) in the case of a suspension, ceasing to receive new Pending Orders, or (ii) in the case of an extension or reopening, modification of the scheduled Auction Close. Notwithstanding the foregoing, CME AM may, in its sole and absolute discretion, continue to

accept orders, or permit Auction Brokers or Designated Clearing Members to continue to enter orders, in the event of a suspension and, if it elects to do so, enter such orders, or permit Auction Brokers and Designated Clearing Members to enter such orders, into the Auction System.

**8D43. AFTER THE PUBLICATION OF TRADING LEVELS – MODIFICATIONS OR CANCELLATIONS**

The Trading Levels of Auction Instruments executed in Auctions will be determined and published following the Auction Close and, except as set forth in these Auction Procedures, an Auction may not be cancelled after Trading Levels have been Published. Notwithstanding the foregoing, CME AM may cancel an Auction, after Trading Levels have been Published, if it determines in its sole and absolute discretion that the results of the Auction were adversely affected by an Auction Participant's possession of advance information regarding the Statistic Level.

**8D44. DELAY OF CALCULATION AND SETTLEMENT**

Provided that Trading Levels have been Published and the Auction has not been cancelled pursuant to Rule 8D44, the amounts due under executed contracts are determined on the basis of the Statistic Level, as released on the relevant Statistic Release Date. CME AM may, however, delay the determination of the amounts due under executed contracts if it determines in its reasonable judgment that the Statistic Level reflects manifest error. In addition, if publication of the relevant Statistic is delayed, then the determination of amounts due under outstanding contracts and the settlement of such contracts may be similarly delayed.

**8D45. STATISTIC EVENT**

If a Statistic Event occurs with respect to the Statistic that underlies an Auction Instrument that is the subject of an Auction, and Trading Levels for that Auction have been published, CME AM may, but will not be obligated to, use reasonable efforts to identify a Replacement Statistic. If CME AM identifies a Replacement Statistic, CME AM will promptly Publish notice of the Replacement Statistic (and use reasonable efforts to otherwise notify Auction Participants). Such Auction Instrument will be settled on the basis of the Replacement Statistic on the announcement date for that Replacement Statistic.

If CME AM is unable to identify a Replacement Statistic, or determines that it is not feasible or advisable to do so, CME AM will promptly publish notice thereof (and use reasonable efforts to otherwise notify Auction Participants with open Auction Instruments on the affected Statistic). In such instances, if only one Auction has been conducted on the affected Statistic (for the same Statistic Release Date), CME AM will cancel any open positions on that Statistic and return any related amounts paid by Designated Clearing Members. In addition, each Designated Clearing Member will be required to return to CME AM any related amounts received from CME AM by such Designated Clearing Member. If, however, more than one Auction has been conducted on the affected Statistic (for the same Statistic Release Date), CME will settle open positions on the affected Statistic based on the Trading Levels determined in the most recent Auction for the relevant Statistic (for the same Statistic Release Date) (the "Previous Trading Levels"). Specifically, open Auction Instruments on the affected Statistic will be settled by the sellers of Options paying to CME, and CME paying to the buyers of Options, in each case through the Auction Participants' respective Designated Clearing Members, an amount equal to: (i) in the case of a vanilla Option, the Previous Trading Levels multiplied by the filled order size; and (ii) in the case of a digital or digital range Option, the Previous Trading Levels multiplied by filled order size. Open Forwards will be settled by treating the Previous Trading Level for Forwards as the Statistic Level. Buyers or sellers of Forwards, as the case may be, will therefore pay to the sellers or buyers, respectively, an amount equal to the difference between the Previous Trading Level and the Trading Level for the current Auction, multiplied in each case by the filled order size.

**8D46. SETTLEMENT**

The settlement of outstanding instruments based on the Statistic as released on the Statistic Release Date (or, if applicable, Replacement Statistic on the announcement date for that Replacement Statistic or failure to obtain a Replacement Statistic) as determined by CME for settlement purposes will be binding on all Auction Participants. Subsequent to the publication of the Statistic, CME AM will determine the settlement amounts due to and from CME Clearing House in connection with each Auction Instrument and will publish such amounts and notify the applicable Designated Clearing Members (and it is expected that the Designated Clearing Member will collect such amount from, or pay such amount to, its customers that are Auction Participants under arrangements between such parties) in accordance with the CME AM Rules.

## **AUCTION FEES**

### **8D47. AUCTION FEES**

CME AM will Publish the auction fees ("Auction Fees") applicable to a given Auction as part of the Auction Details. Each Designated Clearing Member will pay to CME AM the applicable Auction Fees for itself and its Auction Participants. The fee for Forward transactions shall be included as an adjustment to the Trading Level as provided in Rule 8D51.

### **8D48. OPTION PREMIUM**

The Designated Clearing Member shall pay to CME AM the Option premium due in connection with an Option executed as a result of an Auction for itself or its Auction Participant to buy an Option.

### **8D49. FORWARD FEES**

The Designated Clearing Member shall pay to CME AM a fee for each Forward (the "Forward Fee") executed for itself or its Auction Participant as a result of an Auction. CME AM will calculate the Forward Fee after the Auction Close by increasing or decreasing, as appropriate, the single Forward Trading Level (at which each Forward was executed) by the Forward Fee to arrive at the adjusted Forward Trading Level. Because the Forward Fee is reflected in this adjustment, no separate payment of the Forward Fee is required.

## **RISK FACTORS**

**Although the principal risks presented by the trading in Auctions of Auction Instruments are described below, this document does not describe all of the risks that may be presented by such trading and does not include a full description of those risks that are identified below. Auction Participants should consult with their own advisors, including tax and financial advisors, and carefully consider these risks, the mechanics of the Auctions, the terms of the Auction Instrument, the applicable CME Rules and CME AM Rules and the Auction Participants' own objectives and circumstances, before trading in Auctions.**

## **STATUS OF CME AM**

**CME AM is not regulated by the CFTC. CME AM has filed a notice with the CFTC that it intends to operate as an exempt board of trade pursuant to Section 5d of the CEA. An exempt board of trade, such as CME AM, is not registered with, or designated, recognized, licensed, or approved by the CFTC.**

## **DERIVATIVES BASED ON PUBLISHED STATISTICS**

The Auction Instruments that are the subject of the Auction are subject to the same basic risks as other derivatives plus certain additional risks related to the underlying Statistics upon which they are based. The trading of Auction Instruments based on published Statistics is subject to the risk that the underlying Statistic will no longer be calculated or published, or that the Statistic will be substantially modified or that other changes to the Statistic will be made. The possibility exists that the agency or entity responsible for publication of the Statistic might cease publication of, or materially modify, the Statistic subsequent to the Auction but prior to the relevant Statistic Release Date. If CME is able to identify a Replacement Statistic for the purposes of settling Auction Instruments in that Statistic, the Auction Instrument will be settled based on the Replacement Statistic. Auction Participants with executed Auction Instruments will therefore be parties to transactions based on a Statistic that may differ from the Statistic on which the Auction was based. In addition, if CME AM is unable to identify a Replacement Statistic, the Auction Instrument will either be cancelled (if there have been no prior Auctions on the same Statistic and Statistic Release Date) or will be settled based on the Trading Levels of the most recent Auction on the same Statistic and Statistic Release Date, in accordance with the Auction Procedures. Cancellation of Auction Instruments will not, and settlement of Auction Instruments based on the Trading Levels of the most recent Auction may not, result in Auction Participants obtaining the benefits that might have been realized if the Statistic had remained available and such settlement could result in losses to certain Auction Participants.

In addition, it is possible that the agency or entity responsible for publication of the Statistic might, subsequent to the completion of the relevant Auction but prior to the release of the Statistic, alter the content of the Statistic or modify the underlying indicators or indicia on which the Statistic is

based in a manner that does not constitute a Statistic Event. Such alterations or modifications could nevertheless affect the value of open Auction Instruments or the amount paid under such Auction Instruments. Moreover, the agency or entity responsible for publication of the Statistic may, after release of the Statistic, determine that an adjustment to or recalculation of the Statistic is warranted. Notwithstanding any such alterations, modifications, adjustments or recalculations, open Auction Instruments will be settled on the basis of the Statistic as most recently published by the relevant agency or entity as of three hours after publication of the original Statistic, or such longer or shorter time as CME AM announces in the Auction Details or otherwise, if CME AM deems such action necessary under the circumstances in order to allow for the possibility of revisions to the Statistic.

It is possible that some market participants will obtain information regarding a Statistic. CME AM and CME have no responsibility for or involvement in the determination or publication of the relevant Statistics and has no control over the Statistic Levels or the release of information regarding the Statistics. It is possible that information regarding Statistic Levels will become known to certain Auction Participants prior to the release of such Statistics to the public and that such Auction Participants will be able to use such information to their advantage, and to the detriment of other Auction Participants, in entering orders in an Auction.

Reports on which certain Statistics are based may be inaccurate. Certain of the Statistics on which Auction Instruments are based are compiled on the basis of reports submitted by industry participants. This presents a risk that one or more of the reporting companies will submit inaccurate reports, either intentionally or inadvertently, which could impact the level of the Statistics.

Initially, there may be no market for the Auction Instrument other than the Auctions. Initially, Auction Instruments may be traded only through Auctions conducted by CME AM that are subsequently cleared through the CME Clearing House. CME AM has no obligation to conduct subsequent Auctions on the same Statistic and Statistic Release Date, or to maintain any other secondary market for an Auction Instrument. As a result, there will likely be no liquid market for Auction Instruments and there can be no assurance that it will be possible to liquidate Auction Instruments previously entered into.

## **ELECTRONIC TRADING SYSTEMS**

The Auction System that will be used for Auctions may not always operate and function as designed. The Rules under which the Auctions are conducted preclude or severely limit the liability of CME, CME AM, the CME Clearing House and all other persons providing any component of the Auction System in connection with system failures or malfunctions.

An Auction and its results are subject to the risk of systems and communications failures or other events that may cause the suspension, extension, reopening or cancellation of the Auction. Upon the occurrence of a Force Majeure Event, CME AM may be unable to conduct or continue an Auction or to accept orders. Before an Auction begins, a Force Majeure Event could result in the postponement or cancellation of the Auction. If the Auction has already begun, one or more of these types of events could occur and result in the suspension, extension or reopening of the Auction and, in some cases, the cancellation of the Auction. If CME AM suspends or cancels an Auction before the publication of Trading Levels, CME AM may cancel all outstanding Orders, in which case no Auction Instrument will be executed and Auction Participants will not be entitled to any compensation. Participants in Auctions will therefore be subject to the risk that orders that would otherwise be executable cannot be executed.

Upon the occurrence of a Force Majeure Event, CME AM might also be delayed or prevented by such event from determining and publishing Indications, or from determining those orders that can be filled or the Trading Levels of Auction Instruments executed in an Auction. The occurrence of a Force Majeure Event could also adversely affect the accuracy or completeness of Indications or Trading Levels. If the Force Majeure Event occurs after the relevant Auction Close, Auction Participants may not modify or cancel their orders and, as a result, might not be able to determine whether their orders have been executed until the Force Majeure Event has been rectified.

## **CAPS AND PAYMENT LIMITS**

The payouts on "vanilla" Options and Forwards are subject to caps and floors. CME AM generally determines the total payout due on a vanilla Option by multiplying the differential between the Statistic Level and the Strike Level by the Auction buyer's filled order size. In the case of a Forward, CME AM generally determines the total payout due by multiplying the differential between the Statistic Level and the Adjusted Forward Trading Level by the Auction buyer's or seller's filled

order size, as the case may be. However, the total payout due on vanilla Options and Forwards are each subject to a cap or floor. If the Statistic Level exceeds the maximum Strike Level or is below the minimum Strike Level, the total payout due on a vanilla Option or a Forward will be limited to an amount equal to: (i) in the case of a call Option, the differential between the maximum Strike Level and the call's Strike Level, multiplied by the buyer's filled order size, (ii) in the case of a put Option, the differential between the minimum Strike Level and the put's Strike Level, multiplied by the buyer's filled order size, or (iii) in the case of a Forward, the differential between the maximum Strike Level or minimum Strike Level, as the case may be, and the Adjusted Forward Trading Level, multiplied by the filled order size of the buyer or the seller, respectively.

## **CLEARING**

Each Designated Clearing Member to an Auction Instrument will be subject to the benefits and costs of cleared instruments. Each Auction Instrument that becomes final and binding will have the benefit of the CME Clearing House guarantee. In order to facilitate the clearing of Auction Instruments, the CME Clearing House will decompile elements of the Auction Instruments into "Book Instruments" consisting of two or more Option legs. The Book Instrument decompilation of the Auction Instruments permits straight-through processing into the facilities of book keeping systems, while maintaining the economic characteristics of the Auction Instrument subject to minor discrepancies due to rounding.

As a result, any Auction Participant purchasing or selling any such Auction instrument will be subject to the credit restrictions on participation, and the margin and other credit requirements, imposed by the Clearing House and that party's Designated Clearing Member, and will be further subject to the risk that this credit restriction may be inadvertently misapplied or misutilized when the Auction Participant's order is entered. The performance guarantee provided by the CME Clearing House applies pursuant to the CME rules and procedures for such products.

The clearing of Auction Instruments exposes each Auction Participant to the credit risk of the CME Clearing House and the Auction Participant's Designated Clearing Member. By entering into an Auction transaction, an Auction Participant in an Auction will not be subject to the direct credit risk of an over-the-counter counterparty, as is typically the case with respect to other over-the-counter transactions. However, an Auction Participant with a position will be subject to the risk of the bankruptcy of its Designated Clearing Member or the CME Clearing House. In that event, the Auction Participant might experience substantial delays in recovering any amounts due to it from the Designated Clearing Member or the CME Clearing House, and might never recover the full amount due.

Funds deposited with a Designated Clearing Member or the CME Clearing House in connection with an Auction will not be segregated. The Commodity Exchange Act requires futures commission merchants and clearing houses to hold customer funds deposited in connection with futures and commodity option trading in segregated accounts. Such accounts are maintained separately from all other non-segregated customer accounts and all proprietary assets of the futures commission merchant or clearing house. These rules are designed to protect customers in the event of an insolvency or financial instability of their futures commission merchant or clearing house. However, if another customer of the same futures commission merchant defaults, the clearing house may apply funds held in segregated customer accounts, which could expose non-defaulting customers of the futures commission merchant to risk of loss. Auction Participants will be subject to these same risks. In addition, however, because Auction Instruments entered into through Auctions will be cleared as over-the-counter contracts, funds deposited as margin or for other purposes in connection with such transactions will not be held in segregation. As a result, in contrast to participants in the regulated futures and commodity option markets, Auction Participants will not have the same protection against a bankruptcy of a CME Clearing Member or the CME Clearing House, with respect to funds on deposit with a Designated Clearing Member or the CME Clearing House.

## **CONFLICTS OF INTEREST**

The roles of the Auction Brokers in connection with Auctions and resulting Auction Instrument transactions present certain conflicts of interest and other risks. It is intended that CME AM will generally operate the Auctions and will be responsible for all aspects of the Auctions, including the establishment of the terms of the Auction Instruments to be traded (such as the opening prices, strike prices, schedule, etc.), the acceptance and entry of orders, publication of Trading Levels, determination of executed orders, order submission processes, and other Auction-related matters. The roles of the Auction Brokers in connection with the Auctions and the execution and clearing of

transactions could present certain conflicts of interest. For example, the Auction Brokers, in addition to entering orders submitted by Auction Participants, may participate in the Auctions as principals. Because of the mutualized process used by CME AM to conduct the Auctions, the Auction Brokers will not have the ability to influence the determination of Trading Levels, except as a result of bona fide orders entered by such Auction Brokers as principals. However, they will have an interest in the outcome of an Auction, which could conflict with their duties as brokers to Auction Participants. The Auction Brokers, as participants in Auctions, may also be competing with other Auction Participants for the execution of orders.

CME AM and the Auction Brokers may also engage in other business activities, outside of their roles in connection with the Auctions, with respect to the Statistics underlying Auction Instruments traded or related instruments. For example, CME AM or the Auction Brokers may offer other types of derivative products, such as futures, indexed securities or swaps, on these Statistics, and may have incentives to promote such products instead of Auction Instruments. It is also possible that trading in these other types of products could affect the volume of activity and consequently the pricing of Auction Instruments traded through Auctions, or the market expectations or views of Auction Participants.

### **NO FIDUCIARY RESPONSIBILITIES**

Neither CME AM nor an Auction Broker that enters an order on behalf of an Auction Participant acts as an advisor or fiduciary to any Auction Participants with respect to the Auctions. Each Auction Participant is responsible for making its own evaluations and decisions with respect to all orders and Auction Instruments. Without limitation of the foregoing, neither CME AM nor any Auction Broker makes any representation whatsoever with respect to: (i) the suitability of any Economic Derivative transaction for an Auction Participant or the advisability of participating in an Auction or entering into an Economic Derivative; (ii) whether an Economic Derivative will satisfy the trading or hedging objectives of an Auction Participant; (iii) the legality or permissibility of transactions in Auction Instruments for an Auction Participant; (iv) the appropriate tax or accounting treatment or consequences of Auction Instruments; or (v) the future value or profitability of Auction Instruments. Auction Participants should consult their own tax, financial or other advisors with respect to participation in Auctions or entering into Auction Instruments.

### **LIMITATION OF LIABILITY**

Auction Instruments, Auctions and the Auction System offered through CME AM are subject to all the disclaimers and limitations contained in the CME Rules.