



## Special Executive Report

**Date:** January 30, 2019

**SER#:** 8303

**SUBJECT:** Administrative Amendments to Chapter 12 (CME Spot Call Trading – Electronic) in Connection with Spot Call Butter, Nonfat Dry Milk and Dry Whey Contracts

Effective Sunday, February 24, 2019 for trade date Monday, February 25, 2019, Chicago Mercantile Exchange Inc. (“CME” or “Exchange”) will amend Chapter 12 (“CME Spot Call Trading – Electronic”) for Spot Call Butter (AAX), Spot Call Nonfat Dry Milk (NMX) and Spot Call Dry Whey (WHX) (the “Contracts”).

Specifically, the Exchange will harmonize and clarify existing language resulting from the Contracts’ transition from floor auctions to the CME Direct Auction Platform (collectively, the “Rule Amendments”).

Summation of the Rule Amendments:

- Deletion of references to CME Registrar’s Office approval of changes to Butter plants
- Definitions:
  - COA (Nonfat and Whey) – new requirements: legible, endorsed by lab tech and/or quality manager, bags in each subplot and total bags in the warehouse lot, date in storage and storage type.
  - COA (Butter) – new requirements: legible, endorsed by lab tech and/or quality manager, number of boxes in each churn and total boxes in the warehouse lot, and storage type.
  - Clarify “Carlot” (Butter)
    - Adding - not more than “four churn” lots produced by a single plant
    - Removing - “three lots none under 100 boxes, produced by different plants and no Carlot shall consist of more than three brand names”
    - Adding - butter plants must be on the surveyed and approved USDA Grading Services list or the Food and Drug Administration IMS list at the time of production
  - Define “day of tender (Nonfat and Whey) - first business day after day of sale”
  - Define “day of invoice (Butter) – second business day after day of sale”
  - Define “day of delivery (Nonfat and Whey)– sixth business day after the day of sale”
  - Define “day of delivery (Butter) – fourth business day after the day of sale”
- Seller’s Duties:
  - (Butter)
    - Supply COA on the “day of tender” from “the day of sale” to Clearing House and Buyer
    - Remove entry of identity of seller
  - (Nonfat and Whey):
    - Supply COA on the “day of tender” from “third business after the day of sale” to Clearing House and Buyer
    - Remove entry of identity of seller
    - Remove language that is now included with the COA definition
    - Remove payment before shipment
    - Remove proof of delivery
- Buyer’s Duties (All):
  - Remove entry of identity of buyer

- Change grading notification time to 5 p.m. from 3 p.m. Adjustment for timing conflict with seller's submission of same documents
- Change payment to "day of invoice" from "day of tender"
- Add language to clarify - buyer's clearing firm shall make payment by 3:00 p.m. Chicago time on the first business day after the day of invoice
- Inspection (All):
  - Clarify - Buyer pays 90% of invoice "one" business day after the day of invoice
  - Buyer or Seller enters pass or fail grading result into Clearing Online deliveries system within one business day of issuance
- Delivery Procedure (Nonfat and Whey):
  - Add language - the buyer submits shipping and routing instructions by 12:00 p.m. Chicago time within one (1) business day of receipt of a replacement load or passing grading result
- Appeal Grading (All):
  - After grading at destination "buyer shall enter grading results into Clearing Online deliveries system within one business day of issuance."
- Delivery from Warehouse (Nonfat and Whey):
  - Add language – Seller shall assume storage charges until 5:00 p.m. on the fifth business day after the day of tender.
- Delivery from Plant (Nonfat and Whey):
  - Change removal from fifth day after the day of "sale" to "tender"

The Rule Amendments are provided in Exhibit A below in blackline format.

The Commodity Futures Trading Commission (CFTC) will be notified of the Rule Amendments during the week of March 4, 2019, via the weekly notification procedures set forth in Part 40 of the CFTC Regulations.

Questions regarding this Special Executive Report may be directed to:

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**Exhibit A**

**CME Rulebook**

**Chapter 12**

**CME Spot Market Trading - Electronic**

(additions underlined and deletions ~~overstruck~~)

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## Chapter 12

### CME Spot Market Trading – Electronic

Electronic trading of a spot commodity contract on the CME Spot Market via the CME Direct Auction Platform (“CDAP”) is facilitated by Chicago Mercantile Exchange Inc. and governed by the Rules of this Chapter. Unless otherwise specified in this Chapter, CME Spot Market trades are not subject to the Rules applicable to trading of other contracts offered by CME or any of the CME Group designated contract markets. Defined terms of this Chapter are included in the Definitions Section of the CME Rulebook.

#### **DISCLAIMER**

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

#### **1200. ENFORCEMENT OF RULES**

##### **1200.A. General Provisions**

The Board has adopted Rules, and from time to time adopts amendments and supplements to such Rules, to promote a free and open market on CME Spot Market and to maintain appropriate business conduct. The Board has delegated responsibility for the investigation and imposition of penalties for violations of CME Spot Market Rules to staff of the CME Group Market Regulation Department (“Market Regulation Department”) and to certain committees as set forth in these Rules. The delegation of such responsibility and authority shall in no way limit the authority of the Board with respect to all Rule violations.

For purposes of Chapter 12, the term "Member" shall mean: 1) individuals or entities trading in CME Spot Market, including individuals and entities described in CME Rule 106; 2) employees, authorized representatives, contractors, and agents of a Member in regard to the CME Spot Market related activities of such individuals or entities; 3) warehouses and plants deemed regular for delivery of CME Spot Market contracts; and 4) individuals and entities that have agreed in writing or via electronic signature to comply with the Rules of CME Spot Market.

Members are deemed to know, consent to and be bound by all CME Spot Market Rules. Former Members shall be subject to the continuing jurisdiction of the Board and the Market Regulation Department including, without limitation, the application of Rule 1200.H., with respect to any conduct that occurred while a Member.

##### **1200.B. The Chief Regulatory Officer**

It shall be the duty of the Chief Regulatory Officer of the Market Regulation Department to enforce CME Spot Market Rules, and he shall have available to him at all times the resources of the Market Regulation Department and such other resources as may be necessary to conduct investigations of potential or alleged Rule violations and market conditions. The Chief Regulatory Officer shall have the authority to inspect the books and records of all parties subject to the jurisdiction of CME Spot Market pursuant to CME Spot Market Rule 1200.F. and the authority to require any such party to appear before him and produce his or its books and records and answer questions regarding alleged violations of CME Spot Market Rules, at the time, place and in the manner he designates. The Chief Regulatory Officer may also delegate his authority to staff of the Market Regulation Department.

##### **1200.C. Sanctions**

If the Market Regulation Department finds that a party, including a Member, has violated a CME Spot Market Rule, the Market Regulation Department may take one or more of the following actions:

1. Order the party to cease and desist from the conduct found to be in violation of these Rules;
2. Restrict, suspend or terminate the party’s access to CME Spot Market, the CME Direct Auction Platform (“CDAP”), the Globex platform, the Trading Floor or any other trading or clearing platform or facility owned or controlled by CME Group, or right to supervise the entry of any orders into such platforms by others;
3. Impose a fine upon the party not to exceed \$100,000 per violation;
4. Order a party to disgorge any monetary benefit resulting from a violation of a CME Spot Market Rule whether by that party or another party. For purposes of this provision benefit includes, without limitation, profit, whether realized or unrealized, and avoided losses,

5. Prescribe limitations on transactions of the party as may be appropriate;
6. Order a party to make restitution to the account of anyone damaged by the conduct;
7. Order a party or its legal counsel or other representative to pay out of pocket expenses incurred by the Market Regulation Department in connection with the matter if such party or counsel engaged in vexatious, frivolous or bad faith conduct during the course of an investigation or enforcement proceeding; and/or
8. Order such action as is necessary to prevent a threat to the contract or violation of these Rules.

**1200.D. Emergency Actions**

1. The Chief Regulatory Officer, or his designee, is authorized to determine whether an emergency exists and whether emergency action is warranted. The following events and/or conditions may constitute emergencies:

- a. Any actual, attempted, or threatened market manipulation;
- b. Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;
- c. Any action taken or considered by the United States or any foreign government or any state or local government body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have an impact on trading on CME Spot Market;
- d. The actual or threatened bankruptcy or insolvency of any Member or the imposition of any injunction or other restraint by any government agency, self-regulatory organization, court or arbitrator upon a Member which may affect the ability of that Member to perform on its contracts;
- e. Any circumstance in which it appears that a Member or any other Person or entity has failed to perform contracts or is in such financial or operational condition or is conducting business in such a manner that such Person or entity cannot be permitted to continue in business without jeopardizing the safety of Members or CME Spot Market;
- f. Any other circumstance which may have a severe, adverse effect upon the functioning of CME Spot Market, except that declarations of Force Majeure and actions taken with respect to such declarations will be governed by the provisions of CME Spot Market Rule 1203.B.

2. In the event that the Chief Regulatory Officer determines, in the good faith exercise of his sole discretion, that an emergency exists, he may take any of the following emergency actions or any other action that may be appropriate to respond to the emergency:

- a. Suspend, curtail or terminate trading in any or all spot contracts;
- b. Restrict, suspend or terminate a party's access to the CDAP, the Globex platform, the Trading Floor, or any other trading or clearing platform or facility owned or controlled by CME Group, or right to supervise the entry of any orders into such platforms by others;
- c. Order liquidation or transfer of delivery obligation when a holder is unwilling or unable to make or take delivery;
- d. Modify the trading days or hours;
- e. Modify conditions of delivery; and/or
- f. Order any other action or undertaking to address or relieve the emergency.

The Market Regulation Department shall give appropriate notice of such action. As soon as practicable, the Board shall be notified of the emergency action. Nothing in this section shall in any way limit the authority of the Board, other committees, or other appropriate officials to act in an emergency situation as defined by these Rules.

**1200.E. Investigations**

The Market Regulation Department shall investigate potential or alleged Rule violations. Investigations and all information and documents obtained during the course of an investigation shall be treated as non-public and confidential and shall not be disclosed by any party, except as necessary to further an investigation by the Market Regulation Department or as required by law. The Market Regulation Department is authorized to take recorded interviews pursuant to an investigation. Parties and witnesses being interviewed shall have the right to representation, at their own cost, by legal counsel or anyone other than a member of the Board or an employee of CME Group or a Person related to the investigation.



Upon conclusion of an investigation, the Market Regulation Department may issue a warning letter to any party as a result of the investigation. Such letter shall not constitute either the finding of a Rule violation or a penalty. The Market Regulation Department may also impose one or more of the sanctions set forth in CME Spot Market Rule 1200.C. on the party. The decision of the Market Regulation Department shall be final and the party sanctioned shall not have any right to appeal.

#### **Investigation File**

The Market Regulation Department shall maintain a file once an investigation is initiated. The file shall include any materials in the possession of the Market Regulation Department that are relevant to the conduct being investigated.

#### **1200.F. Consent to Exchange Jurisdiction**

Any Member initiating or executing a transaction on or subject to the Rules of CME Spot Market directly or through an intermediary, and any Member for whose benefit such a transaction has been initiated or executed, agrees to be bound by and comply with the Rules of CME Spot Market in relation to such transactions, including, but not limited to, Rules requiring cooperation and participation in investigatory and disciplinary processes, and expressly consents to the jurisdiction of the Exchange and its Market Regulation Department in order to enforce such Rules.

#### **1200.G. Contract Modification**

All deliveries must conform to government regulations in force at the time of delivery. Unless specifically provided otherwise in the applicable product section of this chapter, if any duly authorized U.S. government agency or body with appropriate jurisdiction issues an order, ruling, directive or law that conflicts with the requirements of these Rules, such order, ruling directive or law shall be construed to take precedence and become part of these Rules, and all contracts shall be subject to such government orders.

#### **1200.H. General Offenses**

It shall be an offense:

1. a. to engage in fraud or bad faith;  
b. to engage in conduct or proceedings inconsistent with just and equitable principles of trade;
2. to engage in dishonest conduct;
3. to create or report a false or fictitious trade;
4. to extort or attempt extortion;
5. to buy or sell any CME Spot Market contracts with the intent to default on such purchase or sale;
6. to engage in, or attempt to engage in, the manipulation of prices of CME Spot Market contracts; to corner or squeeze, or attempt to corner or squeeze, the market; or to purchase or sell, or offer to purchase or sell CME Spot Market contracts for the purpose of upsetting the equilibrium of the market or creating a condition in which prices do not or will not reflect fair market values;
7. to make a verbal or written material misstatement to a committee, or any Market Regulation Department employee;
8. to knowingly disseminate false, misleading or inaccurate information concerning market information or conditions that affect or may affect the price of any CME Spot Market contract.
9. a. to fail to appear before Market Regulation Department staff or any committee at a duly convened hearing, scheduled staff interview or in connection with any investigation;  
b. to fail to fully answer all questions or produce all books and records at such hearing or in connection with any investigation, or to make false statements;  
c. to fail to produce any books or records requested by duly authorized Market Regulation Department staff, in the format and medium specified in the request, within 10 days after such request is made or such shorter period of time as determined by the Market Regulation Department in exigent circumstances;
10. to use or disclose, for any purpose other than the performance of an individual's official duties as a member of any committee any non-public information obtained by reason of participating in any committee meeting or hearing;

11. for a Member to permit the use of facilities in a manner that is detrimental to the interest or welfare of CME Spot Market or results in a violation of CME Spot Market Rules;
12. to commit an act which is detrimental to the interest or welfare of CME Spot Market or to engage in any conduct which tends to impair the dignity or good name of CME Group;
13. to fail to submit to arbitration any dispute which Market Regulation Department staff or an arbitration panel decides should be arbitrated pursuant to the Rules of this Chapter; or to fail to comply with a final arbitration award;
14. to fail to comply with an order of the Market Regulation Department staff or any hearing committee;
15. to engage in dishonorable or uncommercial conduct;
16. except where a power of attorney or similar document has been executed, for any party to accept or transmit a customer order which has not been specifically authorized;
17. for any party to fail to diligently supervise its employees and agents in the conduct of their business relating to CME Spot Market; and/or
18. to aid or abet the commission of any violation of CME Spot Market Rules.

**1200.I. Strict Liability for the Acts of Agents**

Notwithstanding Rule 1200.H.17., the act, omission, or failure of any official, agent, or other Person acting for any party within the scope of his employment or office shall be deemed the act, omission or failure of the party, as well as of the official, agent or other Person who committed the act.

**1200.J. Effect of Suspension or Expulsion**

Unless otherwise determined by the Market Regulation Department with jurisdiction over such matters, a suspended or expelled Member shall not be entitled to any of the privileges of membership during the period of such suspension or expulsion, including, but not limited to, the right to access any trading floor or electronic trading platform owned or controlled by CME Group.

**1200.K. Member's Indemnification Liability**

A Member or former Member shall indemnify and hold harmless Chicago Mercantile Exchange Inc., including each of its respective affiliates (collectively, the indemnified parties) and their officers, directors, employees, and agents, for any and all losses, damages, costs and expenses (including attorneys' fees) incurred by the indemnified parties as a result (directly or indirectly) of such Member's use of the CDAP and any violation or alleged violation of these Rules or state or federal law.

Any monetary obligations arising out of this Rule shall be subject to liens as provided in CME Rule 110(a).

**1200.L. Claims by Members**

A Member who commences a legal action against Chicago Mercantile Exchange Inc., its directors, officers, employees, or agents, or another Member of the Exchange without first resorting to and exhausting the procedures and the mandatory arbitration provisions of CME Spot Market Rule 1202, or any other Rules relating to settlement of disputes arising out of transactions or matters pertaining to CME Spot Market shall be deemed to have committed an act detrimental to the interest or welfare of the CME Spot Market.

**1200.M. Notification of Significant Events**

Each Member shall provide immediate notice to the Market Regulation Department in writing upon becoming aware of any of the following events relating to such Member:

1. any suspension, expulsion, revocation or restriction of such Member's trading privileges or any fine in excess of \$25,000, through an adverse determination, voluntary settlement or otherwise, by any court, commodity or securities exchange or related clearing organization, the Securities and Exchange Commission, the Commodity Futures Trading Commission or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, the National Futures Association, the Financial Industry Regulatory Authority, Inc. or any self-regulatory or regulatory organization;
2. any indictment of the Member or any of its officers for, any conviction of the Member or any of its officers of, or any confession of guilt or plea of guilty or nolo contendere by the Member or any of its officers to 1) any felony or 2) any misdemeanor involving, arising from, or related to the purchase or sale of any

commodity, security, futures contract, option or other financial instrument or involving or arising from fraud or moral turpitude; and/or

3. any filing of a bankruptcy petition or insolvency, receivership or equivalent proceeding of which the Member is a subject. In the case of a voluntary bankruptcy, insolvency, receivership or equivalent proceeding, the Member also shall notify the Market Regulation Department when such Member forms a definite intention to file such proceeding.

Nothing in this Rule shall limit or negate any other reporting obligations that any Member may have to CME, the other CME Group exchanges or any other regulator or Person.

#### **1200.N. Payments of Disciplinary Fines, Disgorgement Orders and Restitution**

Disciplinary fines, disgorgement and restitution amounts ordered by the Market Regulation Department must be submitted to the Market Regulation Department no later than the date specified in the notice of decision. An individual who fails to provide proof of payment within the time prescribed will forfeit the following privileges until the payment has been received: 1) access to all CME Group markets; 2) access to the Globex platform; and 3) access to any other electronic trading or clearing platform or facility owned or controlled by CME Group. Any Member Firm that fails to make the required payment within the time prescribed will automatically forfeit preferred fee treatment for its proprietary trading until the payment has been received. Any party that fails to make the required payment shall immediately forfeit eligibility for any incentive or rebate program until the amount is paid in full. Any party that fails to pay a disciplinary fine, disgorgement order or restitution within the prescribed time period may also be subject to sanctions pursuant to CME Spot Market Rule 1200.H.14.

Parties may, subject to a determination by the sanctioning entity, be liable for unpaid fines or unpaid disgorgement and restitution orders imposed upon their employees.

### **1201. TRADING QUALIFICATIONS AND PRACTICES**

#### **1201.A. Requirement for Spot Transactions to be Executed on CME Direct Auction Platform**

All CME Spot Market transactions must be executed electronically on the CME Direct Auction Platform ("CDAP").

#### **1201.B. Priority of Customers' Orders**

All CME Spot Market transactions shall be made competitively on the CDAP designated for the trading of CME Spot Market contracts. No bid or offer shall be specified for acceptance by a particular trader. CME Spot Market transactions may take place only at the best price available on the CDAP at the time the trade occurs.

A member shall not buy (sell) a CME Spot Market contract for his own account, an account in which he has a direct or indirect financial interest, or an account over which he has discretionary trading authority when he is in possession of an executable order for another Person to buy (sell) a CME Spot Market contract.

The foregoing shall not apply to DRT orders provided that the customer has previously consented in writing and evidence of such general consent is indicated on the order with the "WP" (with permission) designation. In the case of a party holding a discretionary order for an account described in Rule 1201.N., a "WP" designation on the order shall constitute sufficient evidence of prior consent.

#### **1201.C. Trading Against Customers' Orders**

No Person in possession of a customer order shall knowingly take, directly or indirectly, the opposite side of such order for his own account, an account in which he has a direct or indirect financial interest, or an account over which he has discretionary trading authority, unless the customer order has been entered immediately upon receipt and has first been exposed on the CDAP for a minimum of 5 seconds.

#### **Exceptions**

The foregoing restriction shall not apply to transactions where the customer has consented in writing no more than 12 months prior to the transaction to waive the application of CME Spot Market Rule 1201.F.. Such transactions shall further be subject to the following requirements: (i) the member complies with the requirements set forth in Rule 1201.H.; (ii) the member clearly identifies, by appropriate descriptive words, all such transactions, and (iii) the member ensures that it is reported to Exchange price reporting staff for entry into the Exchange Price Reporting System as a cross trade.

#### **1201.D. Disclosing Orders Prohibited**

No Person shall disclose another Person's order to buy or sell except to a designated Exchange official and no Person shall solicit or induce another Person to disclose order information. No Person shall take action or direct another to take action based on non-public order information, however acquired. The mere statement of opinions or indications of the price at which a market may open or resume trading does not constitute a violation of this Rule.

**1201.E. Simultaneous Buy and Sell Orders for Different Beneficial Owners**

Opposite orders for different beneficial owners that are simultaneously placed by a party with discretion over both accounts may be entered into the CDAP provided that one order is exposed for a minimum of 5 seconds. An order allowing for price and/or time discretion, if not entered immediately upon receipt, may be knowingly entered opposite another order entered by the same firm only if this other order has been entered immediately upon receipt and has been exposed on the CDAP for a minimum of 5 seconds

**1201.F. Wash Trades Prohibited**

No Person shall place or accept buy and sell orders in the same contract where the Person knows or reasonably should know that the purpose of the orders is to avoid taking a bona fide market position exposed to market risk (transactions commonly known or referred to as wash sales). Buy and sell orders for different accounts with common beneficial ownership that are entered with the intent to negate market risk or price competition shall also be deemed to violate the prohibition on wash trades. Additionally, no Person shall knowingly execute or accommodate the execution of such orders by direct or indirect means.

**1201.G. Prearranged, Pre-Negotiated and Noncompetitive Trades Prohibited**

No Person shall prearrange or pre-negotiate any CME Spot Market purchase or sale or noncompetitively execute any transaction.

**1201.H. Responsibility for Customer Orders**

**Standard of Responsibility**

A Member shall exercise due diligence in the handling and execution of customer orders. Failure to act with due diligence shall constitute negligence. In the case of a dispute as to whether a Member has exercised due diligence, the appropriate arbitration panel or Chief Regulatory Officer or his designee is authorized to determine whether the Member was negligent and, if so, whether an adjustment is due to the customer. The panel or Chief Regulatory Officer or his designee may take into consideration the nature of the order and existing market conditions at the time the Member acted or failed to act. However, no market condition nullifies a Member's responsibility to exercise due diligence.

A Member is prohibited from directly or indirectly guaranteeing the execution of an order or any of its terms such as the quantity or price. A Member may only report an execution that has been effected through the CDAP. This rule shall not be construed to prevent a Member from assuming or sharing in the losses resulting from an error or the mishandling of an order.

**Liability for Negligence**

A Member may not adjust the price at which an order was executed or be held responsible for executing or failing to execute an order unless such Member was negligent or is settling a bona-fide dispute regarding negligence.

A Member Firm may not compel an adjustment from a Member in the absence of a bona-fide dispute regarding negligence.

**1201.I. Discretionary Orders**

Other than DRT orders, no Member shall accept an order that gives more latitude than price and time in execution of the order.

The above restriction shall not apply to those orders:

1. placed by another member for an account owned by such member;
2. placed by the member's immediate family which includes a spouse, parent, child, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece or in-law;
3. placed for proprietary accounts of Member Firms.

**1201.J. Priority of Execution**

A member shall not execute a discretionary order, including, without limitation, an order allowing the member discretion as to time and price, while in possession of an executable customer order. No Person shall allocate executions in any manner other than an equitable manner.

Non-discretionary customer orders received by a CDAP terminal operator shall be entered into CDAP in the sequence received. Non-discretionary orders that cannot be immediately entered into CDAP must be entered when the orders become executable in the sequence in which the orders were received.

#### **1201.K. Recordkeeping Requirements for CME Spot Market Trading**

##### **General Requirements**

Each CDAP terminal operator entering orders into the CDAP shall accurately input for each order: a) the user ID b) the price, quantity, product, and account number.

With respect to orders received by a CDAP terminal operator which are capable of being immediately entered into CDAP, no record other than that set forth above need be made. However, if CDAP terminal operator receives an order which cannot be immediately entered into CDAP, the CME Spot Market terminal operator must prepare a written order and include the account designation, date, time of receipt. The order must be entered into CDAP when it becomes executable.

##### **Retention of Records**

Each member must keep full, complete and systematic records, including records created or transmitted electronically, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in spot contracts and related cash or forward transactions. Written and electronic records must be retained for a minimum of five years in permanent form. Oral communications must be recorded and must be retained for a minimum of one year past the date on which the oral communication occurred. All records required to be retained shall at all times be open to inspection by Exchange staff.

#### **1201.L. Trade Data Submitted to the Exchange**

Subject to each market participant's rights with respect to its own data, the Exchange and CME Spot Market shall own all rights, title and interest, database rights and trade secret rights in and to all trade data and related information submitted in connection with trading on CME Spot Market. CME Spot Market has the exclusive right to use, distribute, sub-license, disclose and sell anonymized trade data and derivative works in any manner, media and jurisdiction. Market participants shall not redistribute trade data or derivative works based thereon unless licensed by the Exchange. The restriction on redistribution shall not apply to a market participant's own data.

#### **1201.M. Disruptive Practices Prohibited**

All orders must be entered for the purpose of executing bona fide transactions. Additionally, all non-tradeable messages must be entered in good faith for legitimate purposes.

1. No Person shall enter or cause to be entered an order with the intent, at the time of order entry, to cancel the order before execution or to modify the order to avoid execution;
2. No Person shall enter or cause to be entered an actionable or non-tradeable message or messages with intent to mislead other market participants;
3. No Person shall enter or cause to be entered an actionable or non-tradeable message or messages with intent to overload, delay, or disrupt the systems of the Exchange or other market participants; and
4. No Person shall enter or cause to be entered an actionable or non-tradeable message with intent to disrupt, or with reckless disregard for the adverse impact on, the orderly conduct of trading or the fair execution of transactions.

#### **1201.N. Spot Market Trading Agreement**

All users must submit a completed and signed spot market trading agreement to the Exchange before gaining trading access to the CDAP.

#### **1201.O. Error Trades**

If a participant consummates a CME Spot Market trade in error, such participant must adhere to the following procedures to attempt to transfer the trade and the corresponding delivery obligation to another party:

1. The participant must report the erroneous trade execution to Market Regulation and CME Clearing no later than 30 minutes after execution.

2. The participant must make every effort to find another party willing to accept the trade and the corresponding delivery obligation, which must occur prior to the delivery deadline established by CME Spot Market.
3. The party accepting the trade and delivery obligation must assume the trade at the original execution price.
4. The error maker must notify the Exchange of the identity of the party willing to accepting the trade and the corresponding delivery obligation.

The error maker will be assessed a fee of \$500.00.

All error notifications are subject to review and approval by the Exchange. Notwithstanding the error procedures set forth above, if an error maker does not identify another party willing to accept the trade and the corresponding delivery obligation, all deliveries must be completed within the delivery timelines established by CME Spot Market.

## **1202. ARBITRATION**

### **1202.A. Disputes Subject to CME Spot Market Arbitration**

#### **Disputes Among Members**

Disputes between and among Members that are described below and that are based upon facts and circumstances that occurred at a time when the parties were Members shall be subject to mandatory arbitration in accordance with the Rules of this Chapter:

1. claims between Members that relate to or arise out of any transaction on or subject to the Rules of CME Spot Market;
2. claims between or among Members relating to trading rights on CME Spot Market; and
3. claims against the Exchange, CME Group and any subsidiaries and affiliates related to CME Spot Market.

#### **Permissive Arbitrations**

The following may be submitted for arbitration under this Rule and, in the event such a claim is submitted against a Member, that Member is required to arbitrate the dispute under these rules, unless otherwise provided:

1. claims of a customer against a Member that relate to or arise out of any transaction on or subject to the Rules of CME Spot Market;
2. claims of a customer against a Member responsible for the spot-call delivery performance of a transaction on or subject to the Rules of CME Spot Market;
3. At the discretion of the Chief Regulatory Officer, any claim involving the interests of CME Spot Market, its Members, their business relations or CME Spot Market trading in general not otherwise arbitrable under these Rules, provided the parties have consented to such arbitration.

#### **Waiver of Any Objection to Jurisdiction**

Any party who submits a claim or grievance to arbitration shall be conclusively presumed to have voluntarily recognized and agreed to the jurisdiction of the arbitration panel to hear and determine the claim.

A customer who submits a claim for arbitration in accordance with these Rules consents thereby to the jurisdiction of the arbitrators and agrees to the arbitration of any counterclaims, cross-claims or third-party claims by any respondent which arise out of the transaction that is the subject of the customer's claim. The claim shall comply with the requirements of this Rule.

#### **Hearing Panel**

Any arbitration, whether mandatory or permissive, shall be heard by a Member Panel and its decision shall be rendered in accordance with this Rule. A Member Panel shall mean an arbitration panel consisting of a co-chairman of the subcommittee of the CME and CBOT Arbitration Committee established for hearing arbitrations under this Rule and three Member panelists from such subcommittee.

#### **Refusal to Hear Certain Disputes**

A chairman may, but shall not be required to, order that a dispute that is otherwise arbitrable under these Rules not be arbitrated hereunder if the dispute requires for adjudication the presence of essential witnesses or third parties over whom the Panel has no jurisdiction or who are not otherwise available, or if the dispute

requires the application of the rules of another exchange.

**1202.B. Initiating an Arbitration Claim**

In the event that a complaint is received it shall be referred to the Market Regulation Department, which shall, when appropriate, forward to the complainant a Consent Form for arbitration under this Rule. Such form shall inform the claimant, by attachment of all pertinent Rules, of his or her rights and obligations, including costs associated with arbitration.

A claimant may initiate a claim by submitting a written description of the dispute, a completed Arbitration Cover Sheet and depositing the appropriate arbitration fee with the Market Regulation Department within the period of eligibility for arbitration claims. The written claim shall include a clear description of the facts and circumstances involved in the dispute, including the transaction(s) or agreement(s) complained of, the names of the Persons and firms alleged to be responsible for any loss to the claimant, the dates of all acts or omissions relevant to the claim, a detailed calculation of the amount claimed and any other information necessary to fully describe the dispute. In the case of a request for punitive damages, the claim shall set forth the facts the party intends to present in support of the claim that the misconduct was willful and wanton.

Notice shall then be given by the Market Regulation Department to the party against whom the claim is asserted, who shall respond to the claim in accordance with this Rule.

The Market Regulation Department shall reject for filing any claim that does not fully describe the dispute, is clearly filed after the period of eligibility has expired or is clearly not arbitrable under this Rule. Such a claim will be promptly returned to the filing party with a notice describing the deficiency. A claimant seeking to correct the deficiency and file an amended claim may do so within 30 days of receiving notice describing the deficiency despite any expiration of the period of eligibility prescribed by this Rule during that 30-day period. The acceptance for filing by the Market Regulation Department shall not preclude a challenge to the arbitrability of the claim nor create a presumption that the claim is arbitrable.

**1202.C. Answering an Arbitration Claim**

Each respondent shall file a written response within 21 days after receipt of the written claim. However, if a party has timely filed a challenge to the arbitrability of the dispute, its response shall be due 21 days after receipt of the written decision confirming the arbitrability of the dispute.

The written answer must admit the claim or describe the respondent's basis for denying liability to the claimant(s). The answer may include an admission or denial of each specific allegation contained in the claim and/or the respondent's narrative description of the facts and circumstances involved in the dispute. A respondent may assert in an answer any defense that would be available in a court of law or equity, including any affirmative defense.

**1202.D. Failure to Answer**

A respondent's unexcused failure to file a timely answer shall constitute an admission of the facts alleged in a claim.

**1202.E. Counterclaims, Cross-Claims and Third-Party Claims**

A respondent may assert any counterclaim, cross-claim and/or third-party claim to the extent such claim would be allowable as an original claim under these Rules and, in response to claims by a customer against a Member, the Member may assert any counterclaim, cross-claim and/or third-party claim arising out of the same transaction or incident that is the subject of the customer's claim. Each respondent must file any counterclaim, cross-claim or third-party claim at the same time an answer to a claim is due. Initiating counterclaims, cross-claims, third-party claims and answers thereto shall conform to the requirements for initiating and answering original claims.

A respondent who believes that another Member may have a claim to any money or property which is the subject of a dispute in arbitration and that the failure of that other Member to assert a claim in the pending arbitration could prejudice the interests of the respondent may submit a request to the chairman to compel the participation of the other Member. If a Member fails to file such claim after being ordered to assert that claim in the pending arbitration, then notwithstanding any other Rule, that Member shall be barred from asserting in the future any claim against the respondent that is based on the same transaction, occurrence or subject.

**1202.F. Review of Arbitrability**

Any party may file a challenge to the arbitrability of a dispute submitted for arbitration under this Rule. A party's failure to file a timely challenge to arbitrability shall waive any right to object thereafter to the arbitrability of the dispute.

A challenge to arbitrability by a claimant must be filed no later than 5 days after the claim is submitted for arbitration. A challenge to arbitrability by a respondent must be filed no later than 10 days after the respondent has received notice of the claim. The request must be in writing and state the reasons why the dispute is not arbitrable. Any other party may file a written response in support of or opposition to the challenge no later than 10 days after receiving notice of the challenge to arbitrability.

The chairman may decide the arbitrability of a dispute based on his consideration of the written submissions of the parties. The chairman's decision shall be final and is not appealable.

**1202.G. Consolidation of Arbitration Disputes**

If a chairman receives notice that two or more arbitration disputes are related, the chairman may order that any or all of the disputes be consolidated for purposes of conducting a hearing on the disputes. In determining whether to consolidate the disputes the chairman may consider the efficiencies of consolidation as well as the burdens and benefits to the parties in consolidating the disputes.

**1202.H. Withdrawal of Claims**

- A. A party may voluntarily withdraw its claim, counterclaim, cross-claim or third-party claim without prejudice at any time before an answer thereto has been filed by notifying the Market Regulation Department in writing of such withdrawal.
- B. After an answer to any claim, counterclaim, cross-claim or third-party claim has been filed, the claimant seeking to withdraw the claim, counterclaim, cross-claim or third-party claim must submit to the chairman a written request to withdraw with prejudice or upon such terms and conditions as may be imposed by the chairman.
- C. A withdrawal with prejudice under this Rule shall bar the claimant from re-filing any claim based on the same acts, transactions or omissions as the dismissed claim.

**1202.I. Period of Eligibility for Arbitration**

An arbitration must be initiated within one year of the date the claimant knew or should have known of the dispute on which the claim is based.

Counterclaims, cross-claims and third-party claims must be submitted no later than the date on which the answer is due.

**1202.J. Parallel Proceedings**

No claim will be accepted for arbitration if the Market Regulation Department receives notice that another arbitration, reparations action or civil court proceeding based on the same act, transaction or omission as the arbitration claim is pending at the time of filing.

No claim, counterclaim, cross-claim or third party-claim will be accepted for arbitration against a respondent if the Market Regulation Department has received notice that a stay exists due to the pendency of any bankruptcy proceeding against that respondent. If such a stay arises after a claim is accepted for arbitration or if the Market Regulation Department subsequently learns that such a stay is pending, the claim shall be dismissed without prejudice as to each respondent who is the subject of the stay. Nothing in this Rule shall prevent a claim in arbitration from proceeding against any remaining respondent.

**1202.K. Requests for Documents, Information or Testimony**

- A. The initial schedule for document requests by parties and responses will be set by the Market Regulation Department. The chairman may require any Member, or any Person employed by or associated with a Member to produce relevant documents in his possession or control at any time after a claim has been filed.

Upon the failure of a party or Member to voluntarily produce relevant documents in its possession or control upon request by a party, the party seeking the documents may submit a written request to the



chairman for an order compelling the production of such documents.

1. Any request for an order compelling production of documents must:
    - a. identify each document or type of document sought with as much specificity as possible;
    - b. explain the relevance of each document or type of document sought; and
    - c. include a representation that the requesting party has attempted to obtain the documents from the responding party before resorting to a request to the chairman.
  2. The party or Member against whom an order compelling production is sought shall:
    - a. produce copies of the requested documents to the requesting party and the Market Regulation Department; or
    - b. represent in writing that the documents are not in his possession or control and explain the basis for such representation, and, if applicable, identify who is in possession or control of the requested documents; or
    - c. object in writing to a request and provide the basis for each objection.
- C. The chairman may require any Member, or any Person employed by or associated with a Member, to appear and to testify at a hearing.
- D. Whenever such production or appearance results from the request of a party, all reasonable costs and expenses incurred shall be borne by the party making the request, unless directed otherwise by the panel. A party who incurs costs and expenses recoverable under this Rule may, no later than the close of the last hearing date in the matter, submit an application to the panel for such costs and expenses. Such application shall contain a detailed explanation of amounts claimed. The panel may grant or deny all or any portion of the application.
- E. Any Member or employee thereof failing to appear, testify or produce documents in accordance with this Rule may be charged with a violation of Rule 1200.H.

**1202.L. Documents and Witnesses to be Presented at Hearing**

No later than 10 business days prior to the first scheduled hearing, each party must provide every other party and the Market Regulation Department with copies of all documents that the party intends to offer into evidence and a list of the names of all witnesses, including party-witnesses, who the party intends to call at the hearing in support of a claim or defense. Parties are not required under this Rule to provide copies of those documents that they may use, or to identify any witnesses whom they may call, only in cross-examination or rebuttal.

**1202.M. Additional Procedures**

The chairman may establish any procedures not otherwise contemplated by these Rules necessary to establish a just, equitable and efficient method of resolving a particular dispute, except that motions to dismiss and motions for summary judgment are not permitted under these Rules.

**1202.N. Arbitration Panel**

**Appointment of Arbitration Panel**

The Market Regulation Department shall select a Member Panel as set forth in Rule 1202.A. to hear and decide a dispute.

**Requests to Remove an Arbitrator**

1. Each party may request the removal of any arbitrator(s) from a panel for good cause shown. Such request must be made at least 7 days before the start of the first scheduled hearing. Failure of a party to timely request the removal of any arbitrator(s) will be deemed a waiver of that party's right to any further objection to the arbitrator's participation in the hearing and decision of the dispute.
2. The chairman, after considering a request to remove an arbitrator, another party's objections thereto and/or the statements of an arbitrator whose removal is sought, may deny the request or excuse the arbitrator. The chairman's decision shall be final and may not be appealed.
3. If an arbitrator is excused prior to the date of the first scheduled hearing, the Market Regulation

Department shall select another Arbitration Committee member to replace the excused arbitrator at the hearing. Parties may make any appropriate request for the removal of the replacement arbitrator under this Rule.

4. If an arbitrator is excused on or after the date of the first scheduled hearing, the dispute may, at the election of the non-requesting party and with the consent of the chairman be heard and decided by the remaining arbitrators.

#### **1202.O. Hearing Procedures**

##### **Arbitrations Resolved Without a Hearing**

Arbitration claims, cross-claims third-party claims or counterclaims that do not exceed \$10,000 may, in the interests of efficiency and economy, be resolved without hearing. The panel shall render its decision based upon the parties' written submissions and any other relevant information obtained and provided to the panel and the parties at the direction of the chairman and/or the panel.

##### **Chairman**

The panel chairman shall preside over the proceeding and shall make such determinations on relevancy and procedure as will promote a fair and expeditious adjudication of any claim. The chairman may administer oaths or affirmations by witnesses. Upon request of the panel chairman, the Market Regulation Department shall submit any documents to the panel and parties that are relevant and readily available.

##### **Arbitrators**

The arbitration panel shall consider all relevant, probative testimony and documents submitted by the parties. The panel shall be the sole judge of the law and the facts, but if the panel is in doubt as to any questions of law, it may refer the question to its legal counsel who shall be one of the Market Regulation Department's Enforcement Counsel for an opinion. The panel shall not be bound by the formal rules of evidence. The final decision of the panel shall be by majority vote of the arbitrators, and the chairman shall vote only to resolve a tie.

##### **Parties and their Representatives**

Each party and his representative has the right to examine all relevant documents prior to and during the hearing, to present all relevant evidence in support of a claim or defense or as rebuttal to a claim or defense, and to question during the hearing witnesses presented in connection with a claim or defense. An entity may have one corporate representative of the entity, in addition to any counsel of record, attend the arbitration hearing. Such corporate representative is not precluded from testifying in the matter.

##### **Witnesses**

All testimony offered to the panel will be under oath or affirmation. Witnesses will be permitted in the hearing room only while providing testimony to the panel. Witnesses shall testify in person at the hearing, except that for good cause shown and in the discretion of the chairman, a witness may be allowed to testify by telephone or other appropriate means.

##### **Hearing Record**

An audio recording or transcription of the proceeding shall be made by the Market Regulation Department. Unless otherwise ordered by a chairman of the CME and CBOT Arbitration Committee, a copy of the audio recording or transcript will be released to a party only for the purpose of an application to confirm, vacate, modify or correct an award in a court of law. The requesting party shall bear the cost of copying the recording or transcript.

#### **1202.P. Awards**

##### **Decision by Panel**

After a hearing, or, on customer claims that do not exceed \$10,000 upon consideration of the pleadings and other relevant information, the arbitration panel shall issue a written decision signed by the panel chairman and at least a majority of the panel. The panel may decide any matter in controversy and issue any order the panel deems necessary to fully resolve the dispute. The Market Regulation Department shall promptly serve copies on all parties. The decision of the panel shall be final and not appealable. A monetary award made by the panel may include the following:

1. Actual damages;

2. Interest thereon;
3. Punitive damages of no more than two times the amount of actual damages.;
4. The arbitration fee incurred by a prevailing party, or a portion thereof; and
5. All or any portion of the administrative costs of the proceeding and any other reasonable and necessary expenses, including, but not limited to, attorneys' fees (a) incurred by a party by reason of another party's frivolous or bad faith claim, defense, or conduct during the arbitration or (b) where a statutory or contractual basis exists for awarding such fees. Requests for attorneys' fees and costs incurred in the arbitration proceeding must be raised in the proceeding or they are waived.

**Failure to Prosecute**

The chairman may order a party who fails to prosecute or defend a claim to pay all or a portion of its administrative costs incurred in connection with the arbitration claim.

**1202.Q. Correction of Award**

Any party may, within three days after receipt of the notice of decision, request the arbitration panel to modify or correct its decision where there has been an obvious material miscalculation or misdescription or where the notice is imperfect in a matter of form not affecting the merits of the dispute or decision.

**1202.R. Satisfaction of Award**

A party directed to pay an award shall submit payment of the amount due directly to the party receiving the award. An arbitration award must be satisfied within 15 days of receipt of the notice of decision. If a request is made to correct an award pursuant to Rule 1202.Q., the award must be satisfied within 15 days of receipt of the corrected notice of decision.

A party making payment must submit proof of payment to the Market Regulation Department no later than the business day following payment. An individual member who fails to provide proof of payment within the time prescribed will forfeit the following privileges until proof of payment has been provided: 1) access to all CME Group markets; 2) access to the Globex platform; and 3) access to any other electronic trading or clearing platform owned or controlled by CME Group. A Member Firm that fails to provide proof of payment within the time prescribed will forfeit preferred fee treatment for its proprietary trading. Any Member that fails to pay an arbitration award within the time prescribed may be subject to sanctions pursuant to Rule 1200.H.13. and may be immediately removed from any trading floor owned or controlled by CME Group.

**1202.S. Right to Counsel**

Every Person is entitled to represent his own interests, be represented by an attorney at law of his choosing and at his own expense who is admitted to practice before the highest court in any State, or be represented by any other non-compensated representative at any stage of an arbitration proceeding. An entity must be represented by an officer or owner of the entity or by an attorney at law.

**1202.T. Computation of Time**

For the purposes of Rule 1202, when a period of time is prescribed by a number of days, and not a specific date, the first day counted for the time prescribed is the day after notice is received or other event giving rise to the period of time occurs. Any submission is due or the time to take action shall lapse by the close of business on the last day counted, unless the last day is a weekend or CME Group exchange holiday, in which case the due date shall be the next following day the CME Group exchange is open for business.

For time periods of five days or less, only days the CME Group exchange is open for business will be counted. For all other time periods calendar days will be counted.

**1202.U. Submissions to or Communications with the Panel**

Any submission for consideration by a chairman or panel must be submitted to the Market Regulation Department with copies simultaneously served on each other party or designated representative of a party.

After a dispute has been submitted for arbitration, a Person filing the claim or required to respond to the claim and any Person asked to provide documents, information or testimony in connection with such claim shall not contact any member of a panel appointed to hear the claim for any purpose related to the dispute described by the claim.

**1202.V. Arbitration Fees**

Any Person submitting an arbitration claim shall remit the applicable fees as may be determined by the Market Regulation Department at the time of submission in order for such action to be effective.

**1202.W. Confidentiality**

Any and all documents, data, testimony, or other information obtained as part of an arbitration pursuant to this Rule shall be treated as strictly confidential by the parties to the Arbitration and the Member Panel. Such documents, data, testimony or other information may only be used for purposes of the arbitration or to confirm, vacate, modify or correct an award in a court of law and for no other purpose.

**1203. DELIVERY FACILITIES AND DELIVERY PROCEDURES**

**1203.A. Scope of Rule**

Deliveries and delivery facilities shall be governed by this Rule and, where applicable, the Section of Chapter 12 which includes contract specifications for the commodities being delivered and such other requirements as CME Spot Market may prescribe.

**1203.B. Declarations of Force Majeure**

If a determination is made by the Chief Executive Officer, President, President of Global Operations, Technology & Risk or Chief Operating Officer, or their designee, that delivery or final settlement of any spot contract cannot be completed as a result of Force Majeure, he shall take such action as he deems necessary under the circumstances, and his 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 Rule 1200.D.

**1203.C. Regular Warehouses and Plants**

**Conditions for Approval**

Warehouses ~~or plants~~ (hereafter "facilities") may be declared regular for delivery with the approval of CME Spot Market. Persons operating facilities who desire to have such facilities made regular for delivery shall make application for a declaration of regularity annually on a form prescribed by CME Spot Market prior to October 31.

Initial regularity shall be effective either thirty days after CME Spot Market posts a notice that a bona fide application has been received or the day after the application is approved by CME Spot Market, whichever is later.

CME Spot Market may establish such requirements and conditions for approval of regularity as it deems necessary. The application for regularity prescribed by CME Spot Market shall set forth conditions of regularity as well as other agreements with which the operator of the regular facility shall comply. In addition to any conditions and agreements contained in such application or in the relevant product section, the following shall constitute conditions for regularity and requirements with which the operator of a regular facility shall comply:

1. Facilities shall be a licensed, public, cold and/or dry storage warehouse and meet all local, state and federal requirements.
2. The operator of such facility shall be in good financial standing and credit. Financial statements must be reviewed or audited in accordance with U.S. Generally Accepted Accounting Principles or other international financial standards as deemed acceptable by CME Spot Market. On an annual basis, the facility shall provide CME Spot Market with copies of reviewed or audited financial statements of the facility, and its parent company (as applicable), as the reviewed or audited financial statements become available. Additionally, the facility must provide CME Spot Market with notice of any substantial reduction in capital as compared to the most recent filing of a financial report.
3. The operator of the facility shall promptly advise the Registrar of any issues at the facility which may cause damage to product held in store by it, whenever such damage shall occur to an extent that will render the product undeliverable.
4. The operator of the facility shall make such reports, keep such records and permit such facility visitation as CME Spot Market, or any other applicable government agency may require.

5. No facility shall be declared regular unless it has in force and effect warehouseman's legal liability insurance issued by such insurance companies and upon such terms and conditions as are satisfactory to CME Spot Market.
6. Facilities shall provide such guarantees, bonds or other financial instruments to CME Spot Market as may be required to guaranty the performance of its obligations pursuant to these Rules and any conditions set forth in the conditions for approval.
7. The facility is not required to own the storage facility and may lease the storage facility from the owner upon such terms and conditions as are satisfactory to CME Spot Market. The facility may also enter into a service arrangement pursuant to which an agent or contractor performs the daily operations of the storage facility upon such terms and conditions as are satisfactory to CME Spot Market. The facility shall be responsible for the conduct of its agents or contractors.
8. All officers, directors, employees and agents of a facility shall be prohibited from revealing any information regarding customers who have dealings with the facility except as permitted by CME Spot Market.  
In the event the facility or any of its respective parent, subsidiaries or affiliates, engage in any trading activity, whether directly or indirectly, for which the facility has received approval for regularity, the facility shall institute such controls as CME Spot Market, at its discretion, deems necessary to protect the confidentiality of the users of the facility.
9. The operator of the facility shall not engage in unethical or inequitable practices, and shall comply with all applicable federal or state statutes, rules or regulations.
10. Members operating regular facilities shall be subject to CME Spot Market Rules and shall abide by and comply with the terms of any disciplinary decision imposed against it pursuant to CME Spot Market Rules.
11. Members operating regular facilities shall consent to the disciplinary jurisdiction of CME Spot Market for five years after such regularity lapses, for conduct which occurred while the facility was regular.

CME Spot Market, in its sole discretion, may determine not to approve facilities for regularity, regardless of whether such facilities meet the preceding requirements and conditions.

#### **1203.D. Revocation, Expiration or Withdrawal of Regularity**

The Chief Regulatory Officer or his designee may revoke a declaration of regularity whenever a regular facility fails to comply with the conditions specified in this section, any other conditions to which it has agreed in its application for regularity, or any other CME Spot Market Rule.

Unless a shorter notification period is otherwise authorized by CME Spot Market, a facility shall give six (6) months prior written notice to withdrawing from regularity.

If the designation of a facility as regular is withdrawn or revoked, a notice shall be posted announcing such revocation and also the period of time.

#### **1203.E. Liability for Negligence of Graders**

CME Spot Market shall not be liable for any error or negligence of any grader, and all claims for liability relating to grading or certificates of analysis shall be waived.

#### **1203.F. Finality of USDA or Other Required Grading Certificate or Certificate of Analysis**

CME Spot Market assumes no responsibility and disclaims all liability on account of the grade, quantity or specifications of any commodity delivered on the basis of a USDA or other required grading certificate or certificate of analysis.

#### **1203.G. Appendix**

##### [Service Providers](#)

## **1204. SPOT CALL NONFAT DRY MILK**

### **1204.A. Commodity Specifications**

The nonfat dry milk shall be free flowing and manufactured using the spray process with a low heat treatment classification. It shall not show less than 6.0 milligrams undenatured whey protein nitrogen per gram. On the day of sale, the nonfat dry milk shall be less than 180 days old. All nonfat dry milk shall be certified Kosher by a Rabbinical Service that provides Kosher classification. The methods of analysis shall be those specified by the USDA.

All nonfat dry milk sold on CME Spot Market shall have been produced in facilities that at the time of production have been surveyed and approved by the Grading Service of the USDA and are on the eligible list of that Service or on the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration IMS List, Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers.

#### **Definitions**

1. The "spot call" is the procedure for trading and delivering nonfat dry milk as more fully set forth in this Rule.
- ~~2.~~ The "day of sale" is the day on which trading on the spot call is conducted.
- ~~2-3.~~ The 'day of tender' is the first business day after the day of sale.
- ~~3-4.~~ The "day of invoice" is the second business day after the day of sale.
- ~~4-5.~~ The "day of delivery" is the sixth business day after the day of sale.
- ~~5-6.~~ A "carlot" consists of between 41,000 and 45,000 pounds, net weight, of nonfat dry milk which must be manufactured on or before the day of sale. No carlot shall consist of more than 3 sublots and each carlot shall be manufactured by a single plant.
- ~~6-7.~~ "Certificate of Analysis" means a legible document, endorsed by a lab technician and/or quality manager, certifying the following with respect to the Grade A Nonfat Dry Milk being offered for sale: (a) the warehouse or plant location; (b) the storage lot, and if applicable, release number; (c) the number of bags in each sublot and total number of bags in the warehouse lot and the marked weight; (d) the date in storage and storage type; (e) that the butterfat content of the nonfat is not more than 1.25%; (f) a moisture content of not more than 4.00%; (g) its titratable acidity shall be not more than 0.15%; (h) its solubility index shall be not more than 1.2 milliliters; (i) that it shall have a bacterial estimate of not more than 10,000 per gram; (j) coliform of less than 10 per gram; (k) its scorched particle content shall be not more than 15.0 grams; (l) yeast and mold; (m) salmonella; (n) whey protein nitrogen; (o) and heat process.

#### **Grade \_\_\_\_\_**

#### **Grade A**

Nonfat dry milk sold as Grade A shall have a butterfat content of not more than 1.25% and a moisture content of not more than 4.00%. Its titratable acidity shall be not more than 0.15% and its solubility index shall be not more than 1.2 milliliters. It shall have a bacterial estimate of not more than 10,000 per gram and coliform of less than 10 per gram. Its scorched particle content shall be not more than 15.0 per gram.

#### **1204.B. Spot Call**

##### **Trading Schedule**

Contracts shall be scheduled for trading and delivery during such hours and days as may be determined by CME Spot Market.

##### **Price Fluctuations**

The minimum price fluctuation shall be \$.0025 per pound.

The first posted bid (offer) of each trading session shall not be more than \$.01 higher (lower) than the last market price noted for the previous session. Subsequent bids (offers) that would establish or change the market price for the current session, or any responses to posted offers (bids) higher (lower) than the last market price, shall be made in price increments not to exceed \$.01 per pound from the last market price.

##### **Posting Bids and Offerings**

A spot load can only be sold on CME Spot Market when, at the time of offering, the seller has documented possession/ownership of a deliverable load.

##### **Quantities Bid and Offered**

An offer to sell or bid to buy more than one carlot may be accepted in part or in full.

##### **Contract Modifications**

All deliveries must conform to government regulations in force at time of delivery. If any federal governmental agency issues an order, ruling, directive or law that conflicts with the requirements of these Rules, such order, ruling, directive or law shall be construed to take precedence and become part of these Rules.

#### **1204.C. Settlement Procedures**

##### **Seller's Duties**

1. The seller shall provide details about the nonfat dry milk, i.e., Certificate of Analysis, to the Clearing House

- ~~and Buyer, by 3:00 p.m. (Chicago time) on the day of tender sale, submit to CME Spot Market the identity of the seller.~~
2. The seller shall, by 3:00 p.m. (Chicago time) on the day of tender, ~~which shall be the third business day after the day of sale,~~ deliver to the Clearing House the following:
    - a. ~~A tender notice~~
    - b. ~~The Certificate of Analysis that shows the results of the tests for fat and moisture content, titratable acidity, solubility, bacterial estimate, coliform, scorched particles, yeast and mold, grade, heat process, salmonella and whey protein nitrogen. The requirements of this section (1204.C.2.b.) will be met if the information necessary to affect delivery is communicated to the Clearing House by the seller prior to 3:00 p.m. (Chicago time) on the day of tender and if the Certificate of Analysis is sent the same day by mail.~~
    - e. Any other documentation required by CME Spot Market.
  33. ~~The seller may demand payment in full by wire transfer before making shipment. Such demand must be made by the seller upon the date of sale and evidence of the receipt of such demand by the buyer must be filed with the Clearing House in the form of either an electronic acknowledgment or a copy of a wire sent to the seller on the date of the sale.~~
  443. Upon receipt of buyer's instructions, seller shall immediately make shipment in accordance therewith. If the seller is unable to obtain shipping facilities, seller shall promptly notify buyer of its inability to obtain shipping facilities and ship at the earliest opportunity. Nonfat dry milk shall be loaded on truck and shipped as directed by the buyer. All other transportation charges shall be borne by the buyer.
  55. ~~Proof of delivery (i.e. bill of lading or warehouse form showing ownership transfer) shall accompany the invoice and seller shall submit copies of the documents to the Clearing House no later than 5 business days after the buyer receives the product.~~

#### **Buyer's Duties**

1. The buyer shall, by ~~35:00~~ 3:00 p.m. (Chicago time) on the day of ~~tender sale,~~ notify the Clearing House ~~if the nonfat dry milk is to be inspected~~ identity of the buyer.
2. ~~The buyer shall, by 3:00 p.m. (Chicago time) on the business day after the day of sale, notify the Clearing House if the nonfat dry milk is to be inspected.~~ The buyer shall be responsible for arranging and providing transportation for the nonfat dry milk. The buyer shall deliver instructions for shipping and routing to final destination via the Clearing House's online deliveries system by 12:00 noon (Chicago time) on the third business day after the day of sale. If the buyer fails to deliver such instructions within the required time or if the buyer fails to pick up the nonfat dry milk at the specified date and time, the seller shall either store the nonfat dry milk and charge the buyer the generally accepted commercial monthly rate or ship the nonfat dry milk by truck or rail to the buyer at the buyer's main warehouse.
3. ~~The buyer's clearing firm shall make payment by certified check or wire transfer of same day funds to the seller's clearing firm in the amount due as shown by the seller's tender notice by 3:00 p.m. (Chicago time) on the first business day after the day of invoice.~~
4. ~~The buyer shall pay for the nonfat dry milk within 3 business days after the date of the invoice covering the nonfat dry milk~~

#### **Clearing House Responsibilities**

The Clearing House shall make available an invoice that specifies the date and price of sale. The freight differential, if any, shall be credited to the buyer on the invoice.

#### **1204.D. Deviations and Allowances Weight**

The delivered carlot may vary between 41,000 and 45,000 pounds in net weight. Payment shall be made on the basis of the exact net weight delivered.

#### **Delivery Points**

Delivery may be made only from approved plants or approved warehouses within the 48 contiguous states. Par delivery of nonfat dry milk shall be made from approved warehouses or approved plants in Chicago. Deliveries made from approved warehouses or approved plants outside of Chicago shall be subject to a freight allowance determined by CME Spot Market as follows: up to 400 miles outside Chicago with a discount of \$.0125 per pound; between 400 and 800 miles outside Chicago with a discount of \$.025 per pound; between

800 and 1200 miles outside of Chicago with a discount of \$.0325 per pound; between 1200 and 1600 miles outside Chicago with a discount of \$.040 per pound; and beyond 1600 miles outside Chicago with a discount of \$.055 per pound. The allowance shall be calculated on the net weight delivered.

#### **1204.E. Packaging**

The nonfat dry milk shall be packaged in multiwall paper bags of 25 kilogram net capacity. The bag shall be constructed of a minimum of 3 walls of flat or extensible kraft paper and a minimum 2.0 mil (guaranteed) low density polyethylene food grade liner. The total basis weight of the walls of paper shall be a minimum of 160 pounds when flat kraft or extensible paper is used. All bags shall show the name and location of the manufacturing plant or a USDA plant number, the manufacturer's lot and subplot number, net weight, the date of manufacture, and the grade.

The closure for the bag shall meet one of the two following descriptions:

1. The bottom and top closures of the bag shall be closed by sewing through all walls of the outer bag with 12/6 needle and 12/5 cotton looper thread, or a comparable strength or with a single thread chain stitch with a 12/6 thread. The stitches shall be spaced 3.0 to 3.6 to the inch and not less than 3/8 inch and not more than 3/4 inch from the top and bottom ends of the bag. The stitches along the bottom and top of the bag shall be covered with not less than 70-pound basis weight flat extensible or low stretch creped kraft tape.
2. The bottom and top of the bag shall be closed to provide a tight seal using hot-melt or thermoplastic adhesive applied along the top edge of the long side of the bag extending downward at least 1-3/8 inches. The fold line of the closure shall be 1-5/8 inches plus or minus 3/8 inch below the top edge of the long side of the bag. The outer wall of the bag shall be stepped at the bottom and top foldover flap beyond all inner walls in order to provide a positive seal over the ends of the inner walls.

#### **1204.F. Inspection**

Buyer or seller may demand inspection of nonfat dry milk for grade before it is shipped. Such inspection shall be made prior to shipment at seller's facilities or at a warehouse near the seller's facilities and cost to be borne by the party requesting the grade. Such inspection shall be made by an independent lab and the results of such inspection shall be final and binding to both parties.

If an inspection is requested the following deadlines shall apply.

1. Buyer shall pay 90% of the amount invoiced within one (1) 3 business days after the day of invoice, and the balance when inspection is complete.
2. ~~If the nonfat dry milk delivered fails to meet specifications as stated in these Rules a claim shall be made in writing to the seller with a copy delivered to the Clearing House within two business days of inspection issuance. Buyer or seller shall enter the grading results into the Clearing House's online deliveries system within one business day of grading issuance.~~

If the buyer inspects and accepts the nonfat dry milk or if he waives inspection, he cannot thereafter dispute the grade of the nonfat dry milk delivered to him.

Any nonfat dry milk in dispute shall be properly stored by the Person having possession.

#### **1204.G. Delivery Procedures**

The buyer must pick up the nonfat dry milk no later than 6 business days after the date of sale, unless an inspection is called for by the buyer or seller, in which case, the buyer will receive an additional 16 calendar days for pick up.

For loads that receive a failing grade, the following will take place:

1. Nonfat dry milk failing to meet the requirements will be replaced with nonfat dry milk meeting the requirements as stated in these Rules.
2. A seller will have a replacement load available for pick up 3 business days after issuance of the inspection certificate.
3. ~~The buyer shall submit shipping and routing instruction by 12:00 p.m. (Chicago Time) within one (1) business day of receipt of a replacement load or a passing grading result.~~
34. A buyer will pick up the replacement load 3 business days after the load is made available from the seller.



45. Documentation of replacement and pick up will be sent to the Clearing House within two business days after pick up.

~~5.5-~~ Any claim regarding performance by the buyer or seller of the Rules of this Section shall be reporting to the Clearing House within Ten (10) calendar days of delivery.

The Market Regulation Department has the authority to perform audits of all market participants.

#### **Proper Handling by the Seller**

If an inspection is requested at buyer's location, the seller shall be responsible for loading according to industry practice. The bill of lading shall be prepared by the seller. The seller and the driver shall jointly seal the truck promptly upon completion of loading. The buyer may, at his option, request check loading by the USDA at origin.

#### **Proper Handling by the Buyer**

If an inspection is requested at buyer's location, the buyer shall be accountable for proper handling during transit and storage until the conclusion of the grading at the buyer's location and appeal grading, if any. Upon arrival at the buyer's location, the buyer and the driver shall jointly unseal the truck. The seller may, at his option, request check loading by the USDA at the buyer's location.

#### **Appeal Grading**

Following an inspection at the buyer's location, the buyer shall enter the grading results into the Clearing House's online deliveries system within one (1) business day of grading issuance. ~~shall promptly inform the Clearing House and seller of the results.~~ A request may then be made by the seller for an appeal inspection. Requests for such appeal must be presented to the Clearing House no later than 11:00 a.m. (Chicago time), one business day after notification to the seller of the results of the inspection at the buyer's location.

Appeal inspections shall be conducted by an independent lab. Applications for appeal inspections will be accepted or rejected in accordance with industry regulations and the results of the appeal inspection shall be final.

#### **Revocation of Plant Approval**

If upon valid inspection at the buyer's location according to these Rules, portions of three or more carlots which have been shipped directly from the same manufacturing plant fail to meet the contract requirements within a single 12-month period, then the delivery approval of the plant may be revoked. Any nonfat dry milk originating in such plant after the date of such revocation and put into storage shall also be ineligible for delivery on the spot call.

#### **1204.H. Associated Costs**

##### **Delivery from Warehouse**

The seller shall assume storage charges until 5:00 p.m. on the fifth business day after the day of tender.

If an inspection is requested, and it indicates that the product is not equal to or better than the requirements specified by the terms of sale, the seller shall be responsible for storage charges until the seller or buyer provides the Clearing House with a certificate of analysis indicating that the product is equal to or better than the requirements specified by the terms of sale. At that point, the buyer shall be responsible for storage charges for the remainder of the storage month. The buyer's share shall be computed by dividing the prevailing monthly storage rate by 30, raising the quotient to the nearest five cents and multiplying by the number of days remaining until the next expiration date (all months figured as 30 days). Storage charges shall be paid in advance by the seller and the pro rata share due from the buyer shall be added to and shown on the tender notice. All charges for handling prior to the day that the seller or buyer provides the Clearing House with a certificate of analysis indicating that the product is equal to or better than the requirements specified by the terms of sale shall be borne by the seller. All charges incurred thereafter shall be borne by the buyer.

##### **Delivery from Plant**

If the buyer does not remove the nonfat dry milk from the plant of the seller on or before 3:00 p.m. local time on the fifth business day after the day of ~~sale~~ tender, the buyer shall be obligated to pay \$.005 per pound for each subsequent calendar day, up to and including the day the nonfat dry milk is removed. The seller must, within two business days after removal of the nonfat dry milk, invoice such amounts to the buyer and send a copy of such invoice to CME Spot Market. The buyer shall make payment to the seller.

Only the original manufacturing plant can deliver the carlot from its plant. If that carlot is to be resold on CME Spot Market it must be moved to an approved warehouse before it can be sold.

#### **Costs of Grading and Appeal Grading**

The costs of all examinations, documentation and related services performed by independent labs for inspection at the buyer's or seller's location and appeal grading, if any, and the costs of CME Spot Market documentation and related services, such as repackaging after examination, shall be borne by the buyer if the requirements for each subplot specified by the terms of sale is upheld, and by the seller if it is not.

#### **Container and Pallet Charges**

Nonfat Dry Milk must be loaded on pallets for shipping. Buyer must make payments at \$12.50 per pallet.

#### **1204.I. Settlement of Disputes**

All disputes arising from the operation of this Section shall be arbitrated under the provisions of the Rules of CME Spot Market.

#### **1204.J. CME Spot Market Fees**

A fee of \$25.00 per carlot shall be paid to CME Spot Market by both the buyer and the seller.

#### **1204.K. Failure to Perform**

If the seller fails to deliver at the required time, he shall be in default, except that the Chief Regulatory Officer or his designee may extend the time to deliver for good cause shown, an additional three hours. In the event a seller defaults, he shall be penalized \$.10 per pound plus the advance, if any, from the purchase price to the full market price on the day of tender. The Chief Regulatory Officer or his designee, at its sole discretion, shall determine such market price by taking account of bona fide sales and quotations on such date including any purchase by the buyer to replace the defaulted delivery.

If the buyer fails to accept delivery, he shall be penalized \$.10 per pound plus the decline, if any, from the purchase price to the full market price on the day of tender, as determined by the Chief Regulatory Officer or his designee in the above stated manner. Payment shall be made as above.

With the exception of Force Majeure, any failure to meet the deadlines set forth within this Section will subject one or both parties to a penalty of \$500 per contract, per calendar day payable to CME Spot Market at the close of each day. Repeated failure may result in suspension of trading privileges or expulsion for one or both parties.

Sellers or Buyers who submit late, materially incomplete or erroneous delivery information or who cause material adjustments to delivery information shall be fined \$200 per contract per day, payable to the buyer or seller depending on the party that is harmed.

### **1205. SPOT CALL BUTTER**

#### **1205.A. Commodity Specifications**

##### **Definitions**

1. The "spot call" is the procedure for trading and delivering cash butter as more fully set forth in this chapter.
2. "Butter means salted butter that conforms to the definition of butter contained in 21 U.S.C. § 321a, is made entirely from sweet cream, and, if graded by USDA, would be certified Grade AA Butter. All butter shall be certified Kosher by a Rabbinical Service that provides Kosher classification.
3. A "carlot" consists of between 40,000 and 43,000 pounds, net weight, of salted butter in not more than three four churn lots, ~~none under 100 boxes, which may be manufactured by different plants produced by a single plant. No carlot shall consist of more than three brand names.~~ The butter must be uniform in color and salt. The butter must be manufactured on or before the date of sale. All butter sold on CME Spot Market shall have been produced in facilities that at the time of production have been surveyed and approved by the Grading Service of the USDA and are on the eligible list of that Service or on the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration IMS List, Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers.
4. "Certificate of Analysis" means a legible document, endorsed by a lab technician and/or quality manager, certifying the following with respect to the butter being offered for sale: (a) the warehouse or plant location; (b) the storage lot, and if applicable, release number; (c) the number of boxes in each churn, and total number of boxes in the warehouse lot and the marked weight; (d) the date in storage and storage type; (e) that the butterfat content of the butter is equal to or greater than eighty (80) percent by weight of

- milkfat; (f) that the moisture content is less than or equal to eighteen (18) percent by weight; (g) that the salt content is not less than 1.2 percent nor more than two (2) percent by weight; (h) that the standard plate count is less than five thousand (5,000) per gram; (i) that coliforms are less than 10 per gram; and that the yeast and mold count is less than twenty (20) per gram.
5. "Fresh Butter" shall be butter that, on the day of sale, has been in cooler rooms or freezer rooms of approved plants for 15 calendar days or less, or cold storage warehouses for 24 calendar days or less from date of manufacture of the earliest churning in the carlot at temperatures not to exceed 45 degrees Fahrenheit.
  6. "Storage Butter" shall be butter that, on the day of sale, has been in cold storage or an approved plant 25 calendar days or longer from the date of manufacture of the earliest churning in the carlot at temperatures not to exceed 45 degrees Fahrenheit. Commencing on the 30th calendar day after the date of manufacture of the earliest churning in the carlot, the butter shall be held at temperatures not to exceed 0 degrees Fahrenheit. Storage butter may not be delivered if the day of sale is later than the 10th business day of the 12th month after the month of manufacture of the earliest churning in the carlot. Effective March 1, 2001, to be eligible for sale on or after March 1 of a given year, the butter shall not have been produced or stored prior to December 1 of the previous year.
  7. The "day of sale" is the day on which trading on the spot call is conducted.
  8. The "day of tender" is the first business day after the day of sale.
  9. The "day of invoice" is the second business day after the day of sale.
  10. The "day of delivery" is the fourth business day after the day of sale.

## **1205.B. SPOT CALL**

### **Trading Schedule**

Contracts shall be scheduled for trading and delivery during such hours and days as determined by CME Spot Market.

### **Price Fluctuations**

The minimum price fluctuation shall be \$.0025 per pound.

The first posted bid (offer) of each trading session shall not be more than \$.01 higher (lower) than the last market price noted for the previous session. Subsequent bids (offers) that would establish or change the market price for the current session, or any responses to posted offers (bids) higher (lower) than the last market price, shall be made in price increments not to exceed \$.01 per pound from the last market price.

### **Posting Bids and Offerings**

A spot load can only be sold in CME Spot Market when, at the time of offering, the seller has documented possession/ownership of a deliverable load.

### **Quantities Bid and Offered**

An offer to sell or bid to buy more than one carlot may be accepted in part or in full.

### **Contract Modifications**

All deliveries must conform to government regulations in force at time of delivery. If any federal governmental agency issues an order, ruling, directive or law that conflicts with the requirements of these Rules, such order, ruling, directive or law shall be construed to take precedence and become part of these Rules.

## **1205.C. SETTLEMENT PROCEDURES**

### **Seller's Duties**

1. The seller shall provide details about the butter i.e. Certificate of Analysis, to the Clearing House by 3:00 p.m. (Chicago time) on the day of sale tender.  
~~The seller shall also, by 3:00 p.m. (Chicago time) on the day of sale, submit to the Clearing House the identity of the seller.~~
2. The seller shall make the butter available for shipment on the day of sale.
3. The seller shall, by 3:00 p.m. (Chicago time) on the day of tender deliver to the Clearing House the following:
  - a) ~~A tender notice.~~
  - b) ~~A copy of the USDA grading certificate or a copy of the USDA worksheet indicating that the carlot grades USDA grade AA or a copy of the Certificate of Analysis that shows the results of the tests for butterfat, moisture content, standard plate count, coliform, yeast and mold, and salt. The seller shall deliver to the buyer either the USDA grading certificate, or a copy of the USDA worksheet, or the Certificate of Analysis.~~

- e) Any other documentation required by the Spot Call Market.
4. A keeping quality test shall not be necessary for delivery on the spot call. However, the seller of a carlot of Fresh Butter warrants that, should a 7-day 72 degree Fahrenheit keeping quality test be completed by the USDA within 14 calendar days of day of tender, the tendered carlot would pass such test. Failure to pass such test, if conducted within the prescribed period, shall result in replacement of the failed churnings by the seller and compensation to the buyer for expenses and losses, according to normal industry practices. If the seller elects to have USDA conduct such test the results shall be final and binding on both the Buyer and the Seller.
- ~~55. Sellers who submit late, materially incomplete or erroneous delivery forms or who cause material adjustments to delivery forms shall be fined \$200 per contract per day, payable to the buyer.~~

#### **Buyer's Duties**

- ~~14. The buyer shall, by 3:00 p.m. (Chicago time) on the day of sale, submit to the Clearing House the identity of the buyer.~~
- ~~21. The buyer shall, by 3:00 p.m. (Chicago time) on the day of tender, notify the Clearing House if the butter is to be inspected.~~
- ~~32. The buyer shall be responsible for arranging and providing transportation for the butter.~~
- ~~34. The buyer's clearing firm shall make payment by certified check or wire transfer of same day funds to the seller's clearing firm in the amount due as shown by the seller's tender notice by 3:00 p.m. (Chicago time) on the first business day after the day of tender invoice.~~

#### **Clearing House Responsibilities**

The Clearing House shall make available an invoice that specifies the date and price of sale. The freight differential or discount, if any, shall be credited to the buyer on the invoice.

#### **1205.D. DEVIATIONS AND ALLOWANCES**

##### **Discounts for Frozen and for Storage Butter**

If the carlot tendered is fresh butter located in a freezer room, it shall be discounted \$.005 per pound. If the carlot tendered is storage butter located in a cooler room, it shall be discounted \$.005 per pound. If the carlot tendered is storage butter located in a freezer room, it shall be discounted \$.01 per pound.

##### **Discount for In-Plant Delivery**

If the carlot tendered is located in a plant, it shall be discounted \$.03 per pound.

##### **Weight**

The delivered carlot may vary between 40,000 and 43,000 pounds in net weight. Payment shall be made on the basis of the exact weight delivered.

##### **Delivery Points**

Delivery may be made only from approved locations in the contiguous 48 states.

Par delivery of butter shall be made from approved warehouses or approved plants in Chicago. Deliveries made from approved warehouses or approved plants outside of Chicago shall be subject to a freight allowance determined by the CME Spot Market as follows: up to 400 miles outside Chicago with a discount of \$.0125 per pound; between 400 and 800 miles outside Chicago with a discount of \$.025 per pound; between 800 and 1200 miles outside Chicago with a discount of \$.0325 per pound; between 1200 and 1600 miles outside Chicago with a discount of \$.040 per pound; and beyond 1600 miles outside Chicago with a discount of \$.055 per pound. The allowance shall be figured on the net weight delivered plus a two pound per box tare.

#### **1205.E. PACKAGING**

Butter shall be packaged to conform to the packaging specifications of the Commodity Credit Corporation for bulk butter in force on the date of manufacture, as contained in "Announcement DAIRY-7, Purchase of Bulk Dairy Products", as amended, or in such other document or announcement as may supersede this publication. In addition, each carlot shall contain only one type and marked weight of box 25 kilograms or 68 pounds net capacity; all the boxes in a churning shall be consecutively numbered; the butter in each box shall be one solid piece and no bulging or misshapen boxes shall be permitted.

#### **1205.F. INSPECTION**

Buyer may require that seller obtain an inspection for grade of the butter before it is shipped. Such inspection for grade shall occur prior to shipment at seller's facilities or at a warehouse near the seller's facilities. Inspection for grade shall include completion of keeping quality test and may be performed either by a USDA grader or by an independent laboratory chosen or agreed to by the buyer. The results of such grading shall be final and binding on both parties.

If buyer requires that the butter be inspected for grade, the following deadlines shall apply:

1. Buyer shall pay 90% of the amount invoiced ~~within three (3)~~ one (1) business days after the day of invoice, and the balance when inspection is complete.
2. Seller shall contact USDA grading service or the independent laboratory within one (1) business day of buyer's demand and shall arrange for the inspection for grade. Seller shall notify buyer and Clearing House of the date on which the inspection for grading is scheduled to occur.
3. If the butter fails inspection for grade:
  - a. Seller shall make a replacement load available for pick-up not later than three (3) business days after USDA or independent laboratory discloses the results of the inspection for grade. Seller shall enter the grading result into the Clearing House's online delivery's system within one business day of grading issuance.
  - b. Buyer shall pick up the replacement load not later than three (3) business days after the load is made available by the seller; and
  - c. Buyer shall send documentation of replacement and pick-up to the Clearing House within two (2) business days after pick-up.

The costs of all inspections, documentation and related services performed by USDA grading services or by the independent laboratory, the costs of CME Spot market documentation, and the costs of any related services, such as repackaging after inspection, shall be borne by the buyer if USDA certifies the butter Grade AA, or if the independent laboratory certifies that the butter meets the standards in seller's Certificate of Analysis; or by the seller, if USDA or inspection service, whichever has been chosen, does not certify.

If the buyer inspects and accepts the butter or waives inspection, the buyer cannot therefore dispute the grade of the butter delivered.

Any butter in dispute shall be properly stored by the person having possession.

A USDA grading certificate shall not be valid for delivery if the butter has been moved from the location indicated on the certificate. The USDA grading certificate shall indicate state(s) of manufacture. Sample containers shall be drawn randomly in conformance with DA Instruction 918 00 of the Dairy Division, Agricultural Marketing Service (AMS), USDA, or in such other document or announcement as may supersede this publication.

#### **1205.G. DELIVERY PROCEDURES**

The buyer shall have the right to call for one grading of the carlot at the buyer's destination, either by a USDA grader or by an independent laboratory. The buyer shall within one (1) business day, request USDA or independent laboratory to conduct the grading at the buyer's destination and notify the seller. Grading at destination shall be completed within 16 calendar days of the day of tender, including completion of a keeping quality test.

Failure of any churning to meet all the requirements of this Section shall result in replacement of the failed churnings by the seller and compensation to the buyer for expenses, or reimbursement to the buyer of the entire contract price

Any claim regarding performance by the buyer or seller of the Rules of this Section shall be reporting to the Clearing House within Ten (10) calendar days of delivery.

#### **Proper Handling by the Seller**

The seller shall be responsible for loading according to industry practice. The bill of lading shall be prepared by the seller and shall provide instructions regarding trailer precooling and temperature maintenance during transit. In addition, the bill of lading shall state the time of completion of loading and shall be signed by the seller and the driver, with the seller retaining one copy and the driver three copies. The seller and the driver shall jointly seal the truck promptly upon completion of loading. The buyer may, at his option, request check loading by the USDA at origin.

#### **Proper Handling by the Buyer**

The buyer shall be accountable for proper handling during transit and storage until the conclusion of the grading at destination and appeal grading, if any.

In particular, the truck shall be a properly refrigerated vehicle and shall be cooled prior to loading to a temperature not to exceed 45 degrees Fahrenheit if the butter is fresh and to a temperature not to exceed 0 degrees Fahrenheit if the butter is frozen.

The bill of lading shall state that the truck was properly pre-cooled and that the applicable temperature was maintained throughout transit. Transit time between origin and destination, as evidenced by ICC logs, shall be normal for the weather and other conditions prevailing. Upon arrival at destination, the buyer and the driver shall jointly unseal the truck. The seller may, at his option, request check loading by the USDA at destination.

The driver's copies of the bill of lading shall be endorsed by both the driver and the buyer upon arrival stating

the time of arrival at destination, the time unloading commenced and the time unloading was completed. The buyer shall indicate the condition of the butter upon arrival at destination on the bill of lading and the driver shall indicate the place of unloading (i.e. dock, cooler or freezer). The buyer shall keep one copy, the driver one copy and one copy shall be sent by the buyer to the Clearing House.

The buyer shall be able to produce evidence in the form of affidavits that unloading into proper refrigerated storage with temperatures prevailing as above was prompt and according to normal industry practice. The buyer shall be able to produce evidence in the form of affidavits that storage thereafter until completion of grading at destination and appeal grading, if any, was within applicable temperatures as above and in all other ways conformed to normal industry practice.

Failure by the buyer to meet the conditions of Rule 1205.G shall result in forfeiture of the right to compensation for expenses and losses.

#### **Appeal Grading**

Following grading at destination, ~~the buyer shall enter the grading results into the Clearing House's online deliveries system within one business day of grading issuance, the Clearing House buyer shall promptly inform the Clearing House and seller of the results.~~ A request may then be made by the seller for appeal grading. Requests for such appeal must be presented to the Clearing House no later than 11:00 a.m. Chicago time, one business day after notification to the seller of the results of the grading at destination.

Appeal grading shall be conducted by a grader(s) assigned by the Regional Director of Dairy Inspection and Grading, AMS, USDA. Applications for appeal grading will be accepted or rejected in accordance with AMS regulations. The results of the appeal grading shall be final.

#### **Revocation of Plant Approval**

If upon valid grading at destination according to these Rules, portions of three or more carlots from the same manufacturing plant grade lower than USDA Grade AA within a single 12-month period, then the delivery approval of the plant may be revoked. Any butter originating in such plant after the date of such revocation and put into storage shall also be ineligible for delivery on the spot call.

#### **1205.H. ASSOCIATED COSTS**

##### **Delivery from Warehouse**

The seller shall assume storage charges until 5:00 p.m. on the third business day after the date of tender. The buyer shall be responsible for charges for the remainder of the storage month. The buyer's share shall be computed by dividing the prevailing monthly storage rate by 30, raising the quotient to the nearest five cents and multiplying by the number of days remaining until the next expiration date (all months figured as 30 days). Storage charges shall be paid in advance by the seller and the pro rata share due from the buyer shall be added to and shown on the tender notice. All charges for handling prior to the date of tender shall be borne by the seller. All charges incurred thereafter shall be borne by the buyer.

##### **Delivery from Plant**

If the buyer does not remove the butter from the plant of the seller on or before 3:00 p.m. local time on the third business day after the day of tender, the buyer shall be obligated to pay \$.005 per pound for each calendar day subsequent thereto, up to and including the day the butter is removed. The seller must within two business days after removal of the butter invoice such amounts to the buyer and send a copy of such invoice to CME Spot Market. The buyer shall make payment through CME Spot Market.

The original manufacturing plant can only deliver the carlot from its plant. If that carlot is to be resold on CME Spot Market it must be moved to an approved warehouse before it can be sold.

##### **Costs of Grading and Appeal Grading**

The costs of all examinations, documentation and related services performed by the USDA grader for grading at destination and appeal grading, if any, and the costs of CME Spot Market documentation and related services, such as repackaging after examination, shall be borne by the buyer if the original grade for each churning is upheld, and by the seller if it is not.

##### **1205.I. Settlement of Disputes**

All disputes arising from the operation of this shall be arbitrated under the provisions of CME Spot Market.

The Market Regulation Department has the authority to perform audits of all market participants.

##### **1205.J. CME Spot Market Fees**

A fee of \$25.00 per carlot shall be paid to CME Spot Market by both the buyer and the seller.

##### **1205.K. Failure To Perform**

If the seller fails to deliver at the required time, he shall be in default, except that CME Spot Market Chief Regulatory Officer or his designee may extend the time to deliver for good cause shown, an additional three hours. In the event a seller defaults, he shall be penalized \$.10 per pound plus the advance, if any, from the



purchase price to the full market price on the day of tender. The Chief Regulatory Officer or his designee, at its sole discretion, shall determine such market price by taking account of bona fide sales and quotations on such date including any purchase by the buyer to replace the defaulted delivery.

If the buyer fails to accept delivery, he shall be penalized \$.10 per pound plus the decline, if any, from the purchase price to the full market price on the day of tender, as determined by the Chief Regulatory Officer or his designee in the above stated manner. Payment shall be made as above.

With the exception of Force Majeure, any failure to meet the deadlines set forth within this Section will subject one or both parties to a penalty of \$500 per contract, per calendar day payable to the ~~CME Spot Market Chief Regulatory Officer or his designee~~ at the close of each day. Repeated failure may result in suspension of trading privileges or expulsion for one or both parties.

Sellers or Buyers who submit late, materially incomplete or erroneous delivery information or who cause material adjustments to delivery information shall be fined \$200 per contract per day, payable to the buyer or seller depending on the party that is harmed.

## **1206. SPOT CALL CHEESE**

### **1206.A. Commodity Specifications**

#### **Definitions**

1. The "spot call" is the procedure for trading and delivering cash cheese as more fully set forth in this Rule.
2. A "carload" consists of between 40,000 and 44,000 pounds, gross weight.
3. The "day of sale" is the day on which trading on the spot call is conducted.

#### **Varieties**

The following "Varieties" of cheese, as defined in the standards of identity established by the Food & Drug Administration in Code of Federal Regulations, Title 21, Part 133 (21 CFR 133), as amended from time to time, may be traded on the spot call:

Cheddar cheese  
Cheddar cheese for manufacturing  
Granular cheese  
Granular cheese for manufacturing

#### **Styles**

Trading in the several varieties shall be limited to the following "styles":

Variety	Style
Cheddar cheese (Manufactured from pasteurized milk only.)	40# blocks
Cheddar cheese, cheddar cheese for manufacturing, granular cheese, granular cheese for manufacturing	Barrels

#### **Grades**

Cheese in 40# block style shall meet the requirements of Wisconsin State Brand, USDA Grade A or better.

Cheese in barrel style shall meet the requirements of Wisconsin State Brand, USDA Extra Grade or better.

#### **Age**

Unless a bid or offer specifies otherwise, on date of sale cheese shall be not less than four days or more than one month (30 calendar days) of age.

#### **Moisture Content**

Moisture content for cheese in 40# block style shall not be less than 36.5%.

#### **Color**

Cheese in barrels shall be white. Cheese in 40# block style shall be colored and shall fall within the color range of 6-8 on the NCI color chart.

#### **Marking**

All cheese sold on CME Spot Market shall show upon each package the shipper's lot number, net weight, vat number, and date and shall not contain upon the cheese and package any brand or printed information except such information as is required by this Rule and by law.

#### **Approved Factories**

All cheese sold on CME Spot Market shall have been produced in factories which at the time of production have been surveyed and approved by the Grading Service of the USDA and are on the eligible list of that

Service.

#### **1206.B. Spot Call**

##### **Trading Schedule**

Contracts shall be scheduled for trading and delivery during such hours and days as determined by CME Spot Market.

##### **Price Fluctuations**

All bids and offers shall be at a stated price per pound. Fractions of a cent shall be stated in multiples of a quarter of a cent. The minimum price fluctuation shall be \$.0025 per pound.

The first posted bid (offer) of each trading session shall not be more than \$.01 higher (lower) than the last market price noted for the previous session. Subsequent bids (offers) that would establish or change the market price for the current session, or any responses to posted offers (bids) higher (lower) than the last market price, shall be made in price increments not to exceed \$.01 per pound from the last market price.

##### **Posting Bids and Offerings**

A spot load can only be sold on CME Spot Market when, at the time of offering, the seller has documented possession/ownership of a deliverable load.

##### **Quantities Bid and Offered**

An offer to sell or bid to buy more than one carload may be accepted in part or in full.

##### **Restriction on Bids and Offers**

No principal shall enter a bid (offer) for cheese of the same variety, style, grade and age at the same price that is currently being offered (bid) by that principal.

##### **Contract Modifications**

All deliveries must conform to government regulations in force at time of delivery. If any federal governmental agency issues an order, ruling, directive or law that conflicts with the requirements of these Rules, such order, ruling, directive or law shall be construed to take precedence and become part of these Rules.

#### **1206.C. Settlement Procedures**

##### **Seller's Duties**

1. The seller shall, by 3:00 p.m. (Chicago time) on the day of sale submit to the Clearing House the identity of the seller.
2. The seller shall provide details about the cheese, to the Clearing House by 12:00 noon (Chicago time) on the business day after the date of sale.
3. The seller shall, by 3:00 p.m. (Chicago time) on the business day after the day of sale, notify the Clearing House if the cheese is to be graded.
4. The seller may demand payment in full by wire transfer before making shipment. Such demand must be made by the seller upon the date of sale and evidence of the receipt of such demand by the buyer must be filed with the Clearing House in the form of either an electronic acknowledgment or a copy of a wire sent to the seller on the date of the sale.
5. Upon receipt of buyer's instructions, seller shall immediately make shipment in accordance therewith. If the seller is unable to obtain shipping facilities, seller shall promptly notify buyer of its inability to obtain shipping facilities and ship at the earliest opportunity. Cheese shall be loaded on truck and shipped as directed by the buyer. All other transportation charges shall be borne by the buyer.
6. Proof of delivery (i.e. bill of lading or warehouse form showing ownership transfer) shall accompany the invoice and seller shall submit copies of the documents to the Clearing House no later than 5 business days after the buyer receives the product.

##### **Buyer's Duties**

1. The buyer shall, by 3:00 p.m. (Chicago time) on the day of sale, submit to the Clearing House the identity of the buyer.
2. The buyer shall, by 3:00 p.m. (Chicago time) on the business day after the day of sale, notify the Clearing House if the cheese is to be graded.
3. The buyer shall be responsible for arranging and providing transportation for the cheese. The buyer shall deliver instructions for shipping and routing to final destination via the Clearing Houses online deliveries system by 12:00 noon (Chicago time) on the third business day after the day of sale. If the buyer fails to deliver such instructions within the required time or if the buyer fails to pick up the cheese at the specified date and time, the seller shall either store the cheese and charge the buyer the generally accepted commercial monthly rate or ship the cheese by truck or rail to the buyer at the buyer's main warehouse.



4. The buyer shall pay for the cheese within 3 business days after the date of the invoice covering the cheese.

#### **Clearing House Responsibilities**

The Clearing House shall make available an invoice that specifies the date and price of sale, adjusted for moisture content when applicable. The freight differential, if any, shall be credited to the buyer on the invoice.

#### **1206.D. Deviations And Allowances**

##### **Adjustment for Moisture Content**

Adjustments in price for moisture content shall be made for carloads of cheese in barrel style in accordance with this Rule. Cheese in the 40# block style shall not be subject to price adjustment for moisture content. No cheese exceeding 37.7% moisture content shall be invoiced on the moisture basis.

Where applicable, the price adjustment for moisture content shall be invoiced according to the following Rules:

The price specified on the board, which shall be known as the stated price, shall be adjusted for moisture content in accordance with the moisture price adjustment tables as provided by CME Spot Market.

In adjusting the stated price for moisture content the measured moisture shall be rounded to the nearest one-half percent. For example, if the measured moisture is 36.2 percent, it shall be considered to be 36 percent moisture, while if the measured moisture is 36.3 percent, it shall be rounded to 36.5 percent moisture.

The seller of cheese on the moisture basis shall furnish the buyer and to CME Spot Market, a manifest showing for each vat the seller's lot number, date and vat number, number of boxes, weight, moisture test, price per pound and extension in dollars and cents.

##### **Weight**

The delivered carload may vary between 40,000 and 44,000 pounds in gross weight. Payment shall be made on the basis of the exact net weight delivered, with cheese delivered in steel barrels receiving a 3-cent per pound discount.

##### **Delivery Points**

Cheese may be delivered at any point within the continental United States. Cheese delivered from points more than 300 miles from Green Bay, Wisconsin, shall be subject to a freight differential. The freight differential shall be deducted from the gross weight and shall be the amount by which the cost of shipment from the shipping point to Green Bay, Wisconsin, exceeds the cost of shipment for 300 miles. To comply with this Rule, distance from the shipping point to Green Bay shall be arrived at by reference to the current issue of the Household Goods Carriers' Bureau Mileage Guide. The cost of shipment shall be determined by reference to a table provided from time to time by CME Spot Market based on reasonable competitive rates per mile for minimum load of 44,000 pounds gross weight. In no event shall the deduction for the freight differentials exceed the actual cost of shipment as noticed by the buyer's shipping and routing instructions. The freight differential to be deducted is the lower of the Green Bay delivery point or the actual mileage exclusive of the first 300 miles to the noticed delivery point. See the notes at the end of this chapter for tables used in determining freight differentials and for examples of calculations.

#### **1206.E. Packaging**

All containers used in the packaging of cheese sold on CME Spot Market shall meet the requirements of all applicable Federal and State laws and the applicable requirements of the Consolidated Freight Classification, sometimes known as the Uniform Freight Classification, and of the National Motor Freight Classification.

Cheese shall be packed according to the following specifications:

##### **1. 40# Block**

Cheese in 40# block style shall be wrapped in a sealed film resulting in an airtight package and shall be packed in corrugated or solid fiberboard containers with a reinforcing inner liner or sleeve.

##### **2. Steel Barrels**

The barrel shall be an airtight 16 gauge steel, straight side, universal style drum with full open removable head and bolt locking ring closure. It shall be 55 gallon capacity with inside dimensions of 22 ½" diameter by 33 ½" depth.

The closing ring shall be 12 gauge steel, type 17-H, either dipped or sprayed with aluminum enamel, with forged lugs—one flanged and the other drilled and threaded to accommodate a 5/8" National Coarse, zinc or cadmium plated bolt.

The barrel cover or head shall have 2" I.P.S. Reike zinc plated fitting with rubber plug gasket (No. GK-43-W supplied by Reike Metal Products Co., Auburn, Indiana), or equivalent.

The barrel cover gasket shall be white, odorless, tasteless, non-toxic, fat resistant rubber. Gasket dimensions shall be 3/8" outside diameter, 1/8" inside diameter, approximately 70" long, vulcanized endless, 75 to 80

durometer on "A" scale. It shall be free of extrusion marks or ridges.

Barrels shall be lined with not less than .0015" thick polyethylene bag liner not less than 36" wide by 62" long.

### **3. Barrels Other than Steel**

Barrel cheese in containers other than steel shall meet the specifications of USDA as set forth in "Announcement DAIRY-7, Purchase of Bulk Dairy Products", as amended from time to time or as such specifications are modified as follows:

#### **A. Fiber barrels**

- (1) Sidewalls shall consist of Kraft liner board or equivalent which has been convolutely or spirally wound using sodium silicate adhesive or equivalent, shall be constructed with a minimum of six plies and have a thickness of not less than .07 inches. Bursting strength of the sidewall shall be a minimum of 600 lbs. PSI.
- (2) Inside dimensions of the sidewalls shall measure between 22½" and 23½" in diameter with a height of between 33" and 35".
- (3) Sidewalls may be manufactured with one open end to use one cover or two open ends which require two covers.
- (4) Top and bottom covers shall be manufactured of Kraft liner board with a minimum of six plies glued together with the same adhesive as sidewalls. Bursting strength of the covers shall be a minimum of 800 lbs. PSI.
- (5) Covers shall be coated, waxed or laminated for protection from the effects of free whey.
- (6) Top and bottom covers shall be secured to the sidewall body with ½" to ¾" wide flat steel strapping with a minimum breaking strength of 300 lbs. Strapping shall be applied straight and sufficiently taut to embed into the edges of the barrel, but not to the extent of cutting, tearing or damaging the barrel.
- (7) Fiber barrels which are pallet loaded shall be strapped together, 4 barrels per pallet. The steel banding shall have a minimum breaking strength of 1,400 lbs. and be applied straight around the 4 barrels 8" to 10" from the top.

#### **B. Corrugated Fiberboard Barrels**

Body construction may be comprised of one or two parts. The shape may be round, hexagonal or octagonal. The covers may be an integral folding part of the barrel body or may be a separate part of the barrel.

##### **(1) Two Body Parts**

Barrels which are comprised of two body parts (body and inner sleeve or tube) shall meet the following minimum specifications:

- a. The outer body may consist of a single wall corrugated fiberboard 180 lb. natural Kraft B flute with a minimum bursting strength of 350 lbs. PSI. The body joint shall be overlapped a minimum of 3 inches and glued.
- b. The inner corrugated fiberboard tube shall be made of double wall 106 lb. natural Kraft, A-B or B-C flute with a minimum bursting strength of 350 PSI. This liner shall be the same height as the body of the barrel.
- c. Top and bottom cover material shall meet the minimum standards for body construction. The covers shall be coated, waxed or laminated to protect them from the effects of free whey. Covers shall be designed with an interlocking feature of cover to barrel body. Both covers shall be secured to the barrel body with steel strapping.
- d. When the sidewall body does not contain a minimum of three strands of sesame tape or equivalent reinforcing as an integral part of the body, then those barrels shall have two straps of steel banding around the body. This strapping shall be sufficiently taut, applied straight and equally spaced for added body strength.
- e. Steel strapping shall be ½" or larger with a minimum breaking strength of 300 lbs.
- f. Maximum overhang on a standard 40 X 48 pallet shall be four inches. Pallet loaded barrels shall be banded together as required by subparagraph 3A of this Rule.
- g. Barrel liners shall be USDA approved as outlined in "Announcement DAIRY-7, Purchase of Bulk Dairy Products as amended from time to time."

##### **(2) Single Body**

Barrels which are comprised of one body part shall meet the following minimum specifications:

- a. Double wall corrugated material which has B, AB or BC flutes. Minimum bursting strength shall be 500 PSI.
- b. Barrels with folding covers but without an interlocking feature shall be taped closed with a wide

waterproof tape of adequate strength to hold the closure securely.

- c. Covers which are a separate part of the barrel shall comply with subparagraph 3B(1)c.
- d. Barrels manufactured without sesame tape or equivalent body reinforcement shall be body banded as in B(1) above.
- e. Maximum overhang on a standard 40 X 48 pallet shall be 3 inches. Pallet loaded barrels shall be banded together as required by subparagraph 3A of this Rule.
- f. Barrel liners shall be USDA approved as outlined in "Announcement DAIRY-7, Purchase of Bulk Dairy Products as amended from time to time."

C. Performance Criteria for Fiber and Corrugated Fiberboard Barrels:

- (1) Barrels shall be clean and dry. They may contain stains from free whey providing the area has dried out and has not damaged the barrel.
- (2) Barrels may not be split, torn or contain any holes except for the sampling hole.
- (3) Barrels shall maintain their original shape, however, hexagonal and octagonal barrels may show slight rounding of the body.
- (4) Barrels must withstand a minimum stacking height of 3 pallet loads without distorting or damaging the bottom barrels.
- (5) The maximum head space on all types of barrels shall be 1 ½ inches.
- (6) Whenever in these Rules a bursting strength is specified, it shall refer to the Mullen test.

Any claim that cheese containers do not meet the above stated performance criteria must be made within thirty calendar days of delivery to buyer and any dispute shall be reported to CME Spot Market and settled by arbitration by a Member Panel as set forth in Rule 1202.A. which may, in addition to other sanctions permitted by these Rules, require seller to replace barrels not meeting said performance criteria and/or compensate buyer for any damages buyer has sustained by virtue of the barrels not meeting performance criteria.

**1206.F. Inspection**

Buyer or seller may demand inspection of cheese for grade and weight before it is shipped. Such inspection shall be made prior to shipment at seller's facilities or at a warehouse near the seller's facilities and cost to be borne by the party requesting the grade. Such inspection shall be made by an independent third party grader such as a Wisconsin State Grader or a U.S. Government Grader. The results of such inspection, grading or weighing shall be final and binding to both parties.

If an inspection is requested the following deadlines shall apply.

1. Buyer shall pay 90% of the amount invoiced within 3 business days after the day of invoice, and the balance when grading is complete.
2. If the cheese delivered fails to meet specifications as stated in these Rules a claim shall be made in writing to the seller with a copy delivered to the Clearing House within two business days of grading issuance.

If the buyer inspects and accepts the cheese or if he waives inspection, he cannot thereafter dispute the grade or weight of the cheese delivered to him.

Any cheese in dispute shall be properly stored by the Person having possession.

**1206.G. Delivery Procedures**

The buyer must pick up the cheese no later than 6 business days after the date of sale, unless an inspection is call for by the buyer or seller. In which case, the buyer will receive additional calendar days for pick up depending on the age of cheese on the day of sale.

1. Seven (7) additional calendar days for cheese between ten and thirty days old.
2. Ten (10) additional calendar days for cheese between four and nine days old.

For loads that receive a failing grade, the following will take place:

3. A seller will have a replacement load available for pick up 3 business days after issuance.
4. A buyer will pick up the replacement load 3 business days after the load is made available from the seller.
5. Cheese failing to meet grade will be replaced with cheese meeting the requirements as stated in these Rules or should be of like requirements of the original load.
6. Documentation of replacement and pick up sent to the Clearing House within two business days.
7. Any claim regarding performance by the buyer or seller of the Rules of this Section shall be reported to the Clearing House within Ten (10) calendar days of delivery.

The Market Regulation Department has the authority to perform audits of all market participants.

**1206.H. Associated Costs**

**Container and Pallet Charges**

Seller shall invoice and buyer shall deposit with seller the sum of \$34.00 per steel barrel plus the amount of any sales or other tax which would be imposed in the event of a forfeiture of said deposit. If he notifies seller at or prior to delivery, the buyer may, within 60 calendar days of receipt thereof, return to seller on a freight prepaid basis, identical barrels or barrels of like specification and in approximately the same condition. All returned barrels must have been cleaned, and washed and waxed. Seller shall, upon receipt of such barrels, refund to buyer the amount deposited with seller plus any excess freight charge. The excess freight charge shall be the amount by which the actual return freight on empty barrels exceeds the freight cost from buyer's shipping point to Green Bay, Wisconsin.

Failure of buyer to return containers within the time and in the condition called for in this Rule shall be reported to CME Spot Market and settled by arbitration by a Member Panel as set forth in Rule 1202.A. which may assess damages in favor of seller for double the value of the containers.

Seller shall invoice and buyer shall pay to the seller the sum of \$5 per barrel for cheese in containers other than steel.

Cheese in block style must be loaded on pallets for shipping. Seller must note whether barrel style cheese is floor or pallet loaded. Buyer must arrange for full exchange of pallets or make payment at \$7 per pallet.

**1206.I. Settlement of Disputes**

All disputes arising from the operation of this Section, except for disputes noted under Rule 1206.F., shall be arbitrated under the provisions of the Rules of CME Spot Market Inc.

**1206.J. CME Spot Market Fees**

A fee of \$25 per carlot shall be paid to CME Spot Market by both the buyer and the seller.

**1206.K. Failure to Perform**

If the seller fails to deliver at the required time, he shall be in default, except that the Chief Regulatory Officer or his designee may extend the time to deliver for good cause shown, an additional three hours. In the event a seller defaults, he shall be penalized \$.10 per pound plus the advance, if any, from the purchase price to the full market price on the day of tender. The Chief Regulatory Officer or his designee, at its sole discretion, shall determine such market price by taking account of bona fide sales and quotations on such date including any purchase by the buyer to replace the defaulted delivery.

If the buyer fails to accept delivery, he shall be penalized \$.10 per pound plus the decline, if any, from the purchase price to the full market price on the day of tender, as determined by the Chief Regulatory Officer or his designee] in the above stated manner. Payment shall be made as above.

With the exception of Force Majeure, any failure to meet the deadlines set forth within this Section will subject one or both parties to a penalty of \$500 per contract, per calendar day payable to CME Spot Market at the close of each day. Repeated failure may result in suspension of trading privileges or expulsion for one or both parties.

Sellers or Buyers who submit late, materially incomplete or erroneous delivery information or who cause material adjustments to delivery information shall be fined \$200 per contract per day, payable to the buyer or seller depending on the party that is harmed.

**INTERPRETATIONS AND SPECIAL NOTICES  
RELATING TO RULE 1206**

**INTERPRETATION TO RULE 1206.D. ADJUSTMENT FOR MOISTURE CONTENT**

The method used in computing the moisture price adjustment tables noted in Rule 1206.D.. is as follows:

1. Legal cheddar cheese may contain 39% moisture; therefore, 61% of solids. A cheese containing 37% moisture would have 63% solids, etc.
2. Price to be paid for 37% cheese on a "dry basis" where market level is 52.75 cents for 39% moisture would be figured: multiply solids (100 less 37 equals 63) by market price (52.75) and divide by 61 (100 less 39).

This gives the price per pound of 37% cheese as compared to 39% cheese at the 52.75 cent market level (54.48 cents)

3. For 35% cheese on basis of 52.75 cents for 39% cheese: 65 times 52.75 divided by 61 equals 56.21 cents.

## INTERPRETATION TO RULE 1206.D. DELIVERY POINTS

Table for use in determining freight differential to be deducted from the sale price pursuant to Rule 1206.D.:

Miles from delivery point to Green Bay, WI	Deduction per hundredweight on gross weight of invoice
300-319	\$.03
320-339	.07
340-359	.11
360-379	.15
380-399	.20
400-419	.24
420-439	.29
440-459	.34
460-479	.40
480-499	.45
500-519	.50
520-539	.55
540-559	.61
560-579	.66
580-599	.71
600-619	.76
620-639	.82
640-659	.87
660-679	.92
680-699	.97
700-729	1.03
730-759	1.10
760-789	1.17
790-819	1.25
820-849	1.34
850-879	1.42
880-909	1.50
910-939	1.57
940-969	1.64
970-999	1.73
1000-1029	1.80
1030-1059	1.88
1060-1089	1.94
1090-1119	2.02
1120-1159	2.10
1160-1199	2.18
1200-1239	2.26
1240-1279	2.36
1280-1319	2.45
1320-1359	2.54
1360-1399	2.62
1400-1439	2.72
1440-1479	2.82
1480-1519	2.90
1520-1559	3.00
1560-1599	3.09
1600-1649	3.18
1650-1699	3.28
1700-1749	3.39
1750-1799	3.50
1800-1849	3.62
1850-1899	3.72
1900-1949	3.83
1950-1999	3.93
2000-2049	4.05
2050-2099	4.16

2100–2149	4.27
2150–2199	4.38
2200–2249	4.49
2250–2299	4.60
2300–2349	4.71
2350–2399	4.82
2400–2449	4.93

Examples of calculations for freight differentials:

		Example 1	Example 2	Example 3	Example 4	Example 5
A.	Seller location	Eau Claire, WI	Twin Falls, ID	Dallas, TX	Fresno, CA	Mankato, MN
B.	Seller mileage to Green Bay	194	1,586	1,095	2,218	343
C.	Seller deduction per cwt. gross wt. vs. Green Bay	\$0.00	\$3.09	\$2.02	\$4.49	\$0.11
D.	Buyer location	Milwaukee, WI	Ogden, UT	Springfield, MO	Mankato, MN	East Atlantic City, NJ
E.	Buyer mileage to Seller	234	184	421	1,895	1,230
F.	Seller deduction per cwt. gross wt. vs. buyer	\$0.00	\$0.00	\$0.29	\$3.72	\$2.26
G.	Net Seller deduction per cwt. (lesser of C. or F.)	\$0.00	\$0.00	\$0.29	\$3.72	\$0.11

Example 1: The seller to buyer mileage (E) is greater than the seller to Green Bay mileage (B). Both are less than 300 miles. The seller pays \$0 freight differential.

Example 2: The seller to buyer mileage (E) is less than the seller to Green Bay mileage (B). The seller to buyer mileage is also less than 300 miles. The seller pays \$0 freight differential.

Example 3: The seller to buyer mileage (E) is less than the seller to Green Bay mileage (B). Both are greater than 300 miles. The seller to buyer mileage applies. The seller pays \$0.29 freight differential.

Example 4: The seller to buyer mileage (E) is less than the seller to Green Bay mileage (B). Both are greater than 300 miles. The seller to buyer mileage applies. The seller pays \$3.72 freight differential.

Example 5: The seller to buyer mileage (E) is greater than the seller to Green Bay mileage (B). Both are greater than 300 miles. The seller to Green Bay mileage applies. The seller pays \$.11 freight differential.

## 1207. SPOT CALL DRY WHEY

### 1207.A. Commodity Specifications

The dry whey is the product resulting from drying fresh whey which has been pasteurized and to which nothing has been added as a preservative. It shall conform to the applicable provisions of 21 CFR 184.1979. On the day of sale, the dry whey shall be less than 120 days old. All dry whey shall be certified Kosher by a Rabbinical Service that provides Kosher classification. The methods of analysis shall be those specified by the USDA.

All dry whey sold on the CME Spot Market shall have been produced in facilities that at the time of production have been surveyed and approved by one or more of the following: The Grading Service of the USDA and are on the eligible list of that Service or on the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration IMS List, Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers, or on the appropriate state agency inspection list.

#### Definitions

1. The "spot call" is the procedure for trading and delivering dry whey as more fully set forth in this Rule.
2. The "day of sale" is the day on which trading on the spot call is conducted.
3. The "day of tender" is the first business day after the day of sale.
- 3-4. The "day of invoice" is the second business day after the day of sale
- 4-5. The "day of delivery" is the sixth business day after the day of sale.

~~5.~~

6. A "carlot" consists of between 41,000 and 45,000 pounds, net weight, of dry whey, which must be manufactured on or before the day of sale. No carlot shall consist of more than 3 sublots and each carlot shall be manufactured by a single plant.
7. "Certificate of Analysis" means a legible document, endorsed by a lab technician and/or quality manager, certifying the following with respect to the U.S. Extra Grade Dry Whey being offered for sale: (a) the warehouse or plant location; (b) the storage lot, and if applicable, release number; (c) the number of bags in each sublot and total number of bags in the lot and the marked weight; (d) the date in storage and storage type; (e) that the U.S. Extra Grade shall have a milkfat content of no more than 1.50%; (f) a moisture content of not more than 5.0%; (g) its bacterial estimate of not more than 30,000 per gram standard plate count; (h) its coliform count of less than 10 per gram; (i) its scorched particles content shall be not more than 15.0 gram; and its titratable acidity shall not be more than 15.0 mg.

#### **Grade**

##### **U.S. Extra Grade**

~~Dry Whey sold as U.S. Extra Grade shall have a milkfat content of no more than 1.50 percent and a moisture content of not more than 5.0 percent. Its bacterial estimate of not more than 30,000 per gram standard plate count and its coliform count of less than 10 per gram. Its scorched particles content shall be not more than 15.0 per gram and its titratable acidity shall not be more than 15.0 mg.~~

#### **1207.B. Spot Call**

##### **Trading Schedule**

Contracts shall be scheduled for trading and delivery during such hours and days as may be determined by CME Spot Market.

##### **Price Fluctuations**

The minimum price fluctuation shall be \$0.0025 per pound. The first posted bid (offer) of each trading session shall not be more than \$0.01 higher (lower) than the last market price noted for the previous session. Subsequent bids (offers) that would establish or change the market price for the current session, or any responses to posted offers (bids) higher (lower) than the last market price, shall be made in price increments not to exceed \$0.01 per pound from the last market price.

##### **Posting Bids and Offerings**

A spot load can only be sold on CME Spot Market when, at the time of offering, the seller has documented possession/ownership of a deliverable load.

##### **Quantities Bid and Offered**

An offer to sell or bid to buy more than one carlot may be accepted in part or in full.

##### **Contract Modifications**

All deliveries must conform to government regulations in force at time of delivery. If any federal governmental agency issues an order, ruling, directive or law that conflicts with the requirements of these Rules, such order, ruling, directive or law shall be construed to take precedence and become part of these Rules.

#### **1207.C. Settlement Procedures**

##### **Seller's Duties**

- ~~1. The seller shall, by 3:00 p.m. (Chicago time) on the day of sale, submit to CME Spot Market: the identity of the seller.~~
- ~~1. The seller shall provide details about the dry whey i.e. Certificate of Analysis, to the Clearing House and Buyer, by 3:00 p.m. (Chicago time) on the day of tender, which shall be the third business day after the day of sale, deliver to the Clearing House the following:~~
- ~~4. -2. The seller shall, by 3:00 p.m. (Chicago Time) on the day of tender deliver to the Clearing House the following:~~
  - ~~a)~~
  - ~~3. A tender notice~~
    - ~~b) The Certificate of Analysis - that shows the results of the tests for fat and moisture content, bacterial estimate, coliform, scorched particles, and titratable acidity. The requirements of this section (1207.C.2.b.) will be met if the information necessary to affect delivery is communicated to the Clearing House by the seller prior to 3:00 p.m. (Chicago time) on the day of tender and if the Certificate of Analysis is sent the same day by e-mail.~~
    - ~~1. e) Any other documentation required by CME Spot Market.~~



~~3. The seller may demand payment in full by wire transfer before making shipment. Such demand must be made by the seller upon the date of sale and evidence of the receipt of such demand by the buyer must be filed with the Clearing House in the form of either an electronic acknowledgment or a copy of a wire sent to the seller on the date of the sale.~~

~~4. 4.3~~ Upon receipt of buyer's instructions, seller shall immediately make shipment in accordance therewith. If the seller is unable to obtain shipping facilities, seller shall promptly notify buyer of its inability to obtain shipping facilities and ship at the earliest opportunity. Dry whey shall be loaded on truck and shipped as directed by the buyer. All other transportation charges shall be borne by the buyer.

~~2. 5~~ Proof of delivery (i.e. bill of lading or warehouse form showing ownership transfer) shall accompany the invoice and seller shall submit copies of the documents to the Clearing House no later than 5 business days after the buyer receives the product.

#### **Buyer's Duties**

1. The buyer shall, by 3:00 p.m. (Chicago time) on the day of tender sale, ~~submit to notify~~ the Clearing House: if the dry whey is to be inspected, the identity of the buyer.

~~2. The buyer shall, by 3:00 p.m. (Chicago time) on the business day after the day of sale, notify the Clearing House if the dry whey is to be inspected.~~

~~2.~~ ~~3.~~ The buyer shall be responsible for arranging and providing transportation for the dry whey. The buyer shall deliver instructions for shipping and routing to final destination via the Clearing House's online deliveries system by 12:00 noon (Chicago time) on the ~~third~~ second business day after the day of sale. If the buyer fails to deliver such instructions within the required time or if the buyer fails to pick up the dry whey at the specified date and time, the seller shall either store the dry whey and charge the buyer the generally accepted commercial monthly rate or ship the dry whey by truck or rail to the buyer at the buyer's main warehouse.

3. ~~4. The buyer shall pay for the dry whey within 3 business days after the date of the invoice covering the dry whey. The buyer's clearing firm shall make payment by certified check or wire transfer of same day funds to the seller's clearing firm in the amount due as shown by the seller's tender notice by 3:00 p.m. (Chicago time) on the first business day after the day of invoice.~~

#### **Clearing House Responsibilities**

The Clearing House shall make available an invoice that specifies the date and price of sale. The freight differential, if any, shall be credited to the buyer on the invoice.

#### **1207.D. Deviations and Allowances**

The delivered carlot may vary between 41,000 and 45,000 pounds in net weight. Payment shall be made on the basis of the exact net weight delivered.

#### **Delivery Points**

Delivery may be made only from approved plants or approved warehouses within the 48 contiguous states. Par delivery of dry whey shall be made from approved warehouses or approved plants in Chicago. Deliveries made from approved warehouses or approved plants outside of Chicago shall be subject to a freight allowance determined by CME Spot Market as follows: up to 400 miles outside Chicago with a discount of \$0.0125 per pound; between 400 and 800 miles outside Chicago with a discount of \$0.025 per pound; between 800 and 1200 miles outside Chicago with a discount of \$0.0325 per pound; between 1200 and 1600 miles outside Chicago with a discount of \$0.040 per pound; and beyond 1600 miles outside Chicago with a discount of \$0.055 per pound. The allowance shall be calculated on the net weight delivered.

#### **1207.E. Packaging**

The dry whey shall be packaged in multiwall paper bags of either 25-kilogram or 50-pound net capacity. The bag shall be constructed of a minimum of 3 walls of flat or extensible kraft paper and a minimum 2.0 mil (guaranteed) low-density polyethylene food grade liner. The total basis weight of the walls of paper shall be a minimum of 160 pounds when flat kraft or extensible paper is used. All bags shall show the name and location of the manufacturing plant or a USDA plant number, the manufacturer's lot and subplot number, net weight, the date of manufacture, and the grade.

The closure for the bag shall meet one of the two following descriptions:

1. The bottom and top closures of the bag shall be closed by sewing through all walls of the outer bag with 12/6 needle and 12/5 cotton looper thread, or a comparable strength or with a single thread chain stitch with a 12/6 thread. The stitches shall be spaced 3.0 to 3.6 to the inch and not less than 3/8 inch and not more than 3/4 inch from the top and bottom ends of the bag. The stitches along the bottom and top of the bag shall be covered with not less than 70-pound basis weight flat extensible or low stretch creped kraft tape.

2. The bottom and top of the bag shall be closed to provide a tight seal using hot-melt or thermoplastic adhesive applied along the top edge of the long side of the bag extending downward at least 1-3/8 inches. The fold line

of the closure shall be 1-5/8 inches plus or minus 3/8 inch below the top edge of the long side of the bag. The outer wall of the bag shall be stepped at the bottom and top foldover flap beyond all inner walls in order to provide a positive seal over the ends of the inner walls.

#### **1207.F. Inspection**

Buyer or seller may demand inspection of dry whey for grade before it is shipped. Such inspection shall be made prior to shipment at seller's facilities or at a warehouse near the seller's facilities and cost to be borne by the party requesting the grade. Such inspection shall be made by an independent lab and the results of such inspection shall be final and binding to both parties.

If an inspection is requested the following deadlines shall apply.

1. Buyer shall pay 90% of the amount invoiced one(1) within 3 business days after the day of invoice, and the balance when inspection is complete.
2. ~~If the dry whey delivered fails to meet specifications as stated in these Rules a claim shall be made in writing to the seller with a copy delivered to the Clearing House within two business days of inspection issuance. Buyer or seller shall enter the grading results into the Clearing House's online deliveries system within one business day of grading issuance.~~
3. If the buyer inspects and accepts the dry whey or if he waives inspection, he cannot thereafter dispute the grade of the dry whey delivered to him.

Any dry whey in dispute shall be properly stored by the person having possession.

#### **1207.G. Delivery Procedures**

The buyer must pick up the dry whey no later than 6 business days after the date of sale, unless an inspection is called for by the buyer or seller, in which case, the buyer will receive an additional 16 calendar days for pick up.

For loads that receive a failing grade, the following will take place:

1. Dry whey failing to meet the requirements will be replaced with dry whey meeting the requirements as stated in these Rules.
2. A seller will have a replacement load available for pick up 3 business days after issuance of the inspection certificate.
- ~~2-3.~~ The buyer shall submit shipping and routing instructions by 12:00 p.m. (Chicago Time) within one (1) business day of receipt of a replacement load or a passing grading result.
- ~~3.~~ 4. A buyer will pick up the replacement load 3 business days after the load is made available from the seller.
5. Documentation of replacement and pick up will be sent to the Clearing House within two business days after pick up.
- ~~4-5.~~ Any claim regarding performance by the buyer or seller of the Rules of this Section shall be reporting to the Clearing House within Ten (10) calendar days of delivery.

The Market Regulation Department has the authority to perform audits of all market participants.

#### **Proper Handling by the Seller**

If an inspection is requested at buyer's location, the seller shall be responsible for loading according to industry practice. The bill of lading shall be prepared by the seller. The seller and the driver shall jointly seal the truck promptly upon completion of loading. The buyer may, at his option, request check loading by the USDA at origin.

#### **Proper Handling by the Buyer**

If an inspection is requested at buyer's location, the buyer shall be accountable for proper handling during transit and storage until the conclusion of the grading at the buyer's location and appeal grading, if any. Upon arrival at the buyer's location, the buyer and the driver shall jointly unseal the truck. The seller may, at his option, request check loading by the USDA at the buyer's location.

#### **Appeal Grading**

Following an inspection at the buyer's location, the buyer shall enter the grading results into the Clearing House's online deliveries system within one (1) business day of grading issuance. the Clearing House shall promptly inform the seller of the results. A request may then be made by the seller for an appeal inspection. Requests for such appeal must be presented to the Clearing House no later than 11:00 a.m. (Chicago time), one business day after notification to the seller of the results of the inspection at the buyer's location. Appeal inspections shall be conducted by an independent lab. Applications for appeal inspections will be accepted or rejected in accordance with industry regulations and the results of the appeal inspection shall be final.

### **Revocation of Plant Approval**

If upon valid inspection at the buyer's location according to these Rules, portions of three or more carlots which have been shipped directly from the same manufacturing plant fail to meet the contract requirements within a single 12-month period, then the delivery approval of the plant may be revoked. Any dry whey originating in such plant after the date of such revocation and put into storage shall also be ineligible for delivery on the spot call.

### **1207.H. Associated Costs**

#### **Delivery from Warehouse**

The seller shall assume storage charges until 5:00 p.m. on the fifth business day after the day of tender.

If an inspection is requested, and it indicates that the product is not equal to or better than the requirements specified by the terms of sale, the seller shall be responsible for storage charges until the seller or buyer provides the Clearing House with a certificate of analysis indicating that the product is equal to or better than the requirements specified by the terms of sale. At that point, the buyer shall be responsible for storage charges for the remainder of the storage month. The buyer's share shall be computed by dividing the prevailing monthly storage rate by 30, raising the quotient to the nearest five cents and multiplying by the number of days remaining until the next expiration date (all months figured as 30 days). Storage charges shall be paid in advance by the seller and the pro rata share due from the buyer shall be added to and shown on the tender notice. All charges for handling prior to the day that the seller or buyer provides the Clearing House with a certificate of analysis indicating that the product is equal to or better than the requirements specified by the terms of sale shall be borne by the seller. All charges incurred thereafter shall be borne by the buyer.

#### **Delivery from Plant**

If the buyer does not remove the dry whey from the plant of the seller on or before 3:00 p.m. local time on the fifth business day after the day of tender sale, the buyer shall be obligated to pay \$0.005 per pound for each subsequent calendar day, up to and including the day the dry whey is removed. The seller must, within two business days after removal of the dry whey, invoice such amounts to the buyer and send a copy of such invoice to CME Spot Market. The buyer shall make payment to the seller.

Only the original manufacturing plant can deliver the carlot from its plant. If that carlot is to be resold on CME Spot Market it must be moved to an approved warehouse before it can be sold.

#### **Costs of Grading and Appeal Grading**

The costs of all examinations, documentation and related services performed by independent labs for inspection at the buyer's or seller's location and appeal grading, if any, and the costs of CME Spot Market documentation and related services, such as repackaging after examination, shall be borne by the buyer if the requirements for each subplot specified by the terms of sale is upheld, and by the seller if it is not.

#### **Container and Pallet Charges**

Dry whey must be loaded on pallets for shipping. Buyer must make payments at \$12.50 per pallet.

### **1207.I. Settlement of Disputes**

All disputes arising from the operation of this Section shall be arbitrated under the provisions of the Rules of CME Spot Market.

### **1207.J. CME Spot Market Fees**

A fee of \$25.00 per carlot shall be paid to CME Spot Market by both the buyer and the seller.

### **1207.K. Failure to Perform**

If the seller fails to deliver at the required time, he shall be in default, except that the Chief Regulatory Officer or his designee may extend the time to deliver for good cause shown, an additional three hours. In the event a seller defaults, he shall be penalized \$0.10 per pound plus the advance, if any, from the purchase price to the full market price on the day of tender. The Chief Regulatory Officer or his designee, at its sole discretion, shall determine such market price by taking account of bona fide sales and quotations on such date including any purchase by the buyer to replace the defaulted delivery.

If the buyer fails to accept delivery, he shall be penalized \$0.10 per pound plus the decline, if any, from the purchase price to the full market price on the day of tender, as determined by the Chief Regulatory Officer or his designee in the above stated manner. Payment shall be made as above.

With the exception of Force Majeure, any failure to meet the deadlines set forth within this Section will subject one or both parties to a penalty of \$500 per contract, per calendar day payable to CME Spot Market at the close of each day. Repeated failure may result in suspension of trading privileges or expulsion for one or both parties.

Sellers or Buyers who submit late, materially incomplete or erroneous delivery information or who cause material adjustments to delivery information shall be fined \$200 per contract per day, payable to the buyer or seller depending on the party that is harmed.

## **1208. LIMITATION OF LIABILITY**

- A. 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:
- 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 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 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 OR ANY EXCHANGE SYSTEMS, SERVICES OR FACILITIES; OR
  - iv. 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.

- 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, 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.

- C. 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.
- D. 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.
- E. 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.