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March 28, 2011

Mr. David Stawick

Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**RE: Revisions to Rule 578 ("LIMITATION OF LIABILITY, NO  
WARRANTIES")  
CME/CBOT/NYMEX Submission No. 11-128**

Dear Mr. Stawick:

Chicago Mercantile Exchange Inc. ("CME"), The Board of Trade of the City of Chicago, Inc. ("CBOT") and New York Mercantile Exchange, Inc. ("NYMEX") (collectively, the "Exchanges") hereby notify the Commodity Futures Trading Commission that they will adopt revisions to Rule 578 ("LIMITATION OF LIABILITY, NO WARRANTIES") that will become effective on April 1, 2011.

The revisions to CME Rule 578 add reference to Participating Exchanges in Section A as a result of contractual obligations pursuant to the order routing agreement between CME and Bolsa Mexicana de Valores, S.A.B. de C.V. and in anticipation of future CME relationships. In addition, references to CME Alternative Marketplace Inc. have been eliminated as that entity is not currently operational and references to legacy CBOT Rule 5B.19 have been eliminated as that Rule is no longer applicable.

Similarly, the revisions to CBOT Rule 578 eliminate references to CBOT's legacy trading platform, e-cbot and the provisions of legacy CBOT Rule 5B.19. Finally, the revisions to NYMEX Rule 578 harmonize the language of the Rule with the language of CBOT Rule 578, and are non-substantive. Please note that the revisions to NYMEX Rule 578 apply equally to COMEX, its wholly-owned subsidiary.

The revisions begin on the next page, with additions underscored and deletions overstruck. The Exchanges certify that the revisions comply with the Commodity Exchange Act and regulations thereunder. There were no substantive opposing views to this proposal.

If you have any questions, please contact Robert Sniegowski, Market Regulation, at 312.341.5991. Alternatively, you may contact me at 312.930.8167. Please reference CME/CBOT/NYMEX Submission No. 11-128 in any related correspondence.

Sincerely,

/s/ Sean Downey  
Associated Director & Assistant General Counsel

CME

**578. LIMITATION OF LIABILITY, NO WARRANTIES**

A. EXCEPT AS PROVIDED BELOW, THE EXCHANGE, THE BOARD OF TRADE OF THE CITY OF CHICAGO, INC. ("CBOT"), THE NEW YORK MERCANTILE EXCHANGE INC. ("NYMEX"), ~~ALONG WITH THE BOARD OF TRADE OF KANSAS CITY, MISSOURI, INC., BOARD OF TRADE ("KCBT"), THE MINNEAPOLIS GRAIN EXCHANGE ("MGEX") AND ANY OTHER PARTICIPATING EXCHANGE~~CME ALTERNATIVE MARKETPLACE INC., (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, ~~CBOT OR CME ALTERNATIVE MARKETPLACE INC.~~, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, INCLUDING WITHOUT LIMITATION ELECTRONIC ORDER ENTRY/DELIVERY, TRADING THROUGH ANY ELECTRONIC MEANS, ELECTRONIC COMMUNICATION OF MARKET DATA OR INFORMATION, WORKSTATIONS USED BY MEMBERS AND AUTHORIZED EMPLOYEES OF MEMBERS, PRICE REPORTING SYSTEMS AND ANY AND ALL TERMINALS, COMMUNICATIONS NETWORKS, CENTRAL COMPUTERS, SOFTWARE, HARDWARE, FIRMWARE AND PRINTERS RELATING THERETO; OR
- (ii) ANY FAILURE OR MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION OR TERMINATION, OR ANY OTHER CAUSE, OF ANY SYSTEM OR SERVICE OF THE EXCHANGE, ~~CBOT OR CME ALTERNATIVE MARKETPLACE INC.~~, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, CAUSED BY ANY THIRD PARTIES INCLUDING, BUT NOT LIMITED TO, INDEPENDENT SOFTWARE VENDORS AND NETWORK PROVIDERS; OR
- (iii) ANY ERRORS OR INACCURACIES IN INFORMATION PROVIDED BY THE EXCHANGE, ~~CBOT OR CME ALTERNATIVE MARKETPLACE INC.~~ OR ANY EXCHANGE, ~~CBOT OR CME ALTERNATIVE MARKETPLACE INC.~~ SYSTEMS, SERVICES OR FACILITIES; EXCEPT FOR INCORRECT ORDER STATUSING INFORMATION AS PROVIDED IN RULE 579 (~~GLOBEX CONTROL CENTER AND ORDER STATUSING~~); OR
- (iv) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY EXCHANGE, ~~CBOT OR CME ALTERNATIVE MARKETPLACE INC.~~ 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.

THE FOREGOING LIMITATION OF LIABILITY SHALL BE SUBJECT TO THE COMMODITY EXCHANGE ACT AND REGULATIONS THEREUNDER. A PARTY WHO HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN WILLFUL OR WANTON MISCONDUCT MAY NOT AVAIL ITSELF OF THE PROTECTIONS IN THIS RULE.

B. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE) PROVIDED BY THE EXCHANGE, CBOT, NYMEX, ~~KCBT, MGEX OR ANY PARTICIPATING EXCHANGE~~CME ALTERNATIVE MARKETPLACE INC. (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, AND LICENSORS RELATING TO ANY SYSTEMS OR SERVICES OF THE EXCHANGE, ~~CBOT OR CME ALTERNATIVE MARKETPLACE INC.~~ OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING THE GLOBEX SYSTEM.

C. ANY DISPUTE ARISING OUT OF THE USE OF SYSTEMS OR SERVICES OF THE EXCHANGE OR ~~CME ALTERNATIVE MARKETPLACE INC.~~ OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES IN WHICH THE EXCHANGE, OR ~~CME AUCTION MARKETS~~ (INCLUDING EITHER OF ~~THEIR~~ITS SUBSIDIARIES AND AFFILIATES), OR ANY OF ~~THEIR~~ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS OR LICENSORS IS A PARTY SHALL BE ARBITRATED PURSUANT TO EXCHANGE RULES ~~RULE~~ 624. 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~~CME~~ RULES. IF FOR ANY REASON, A COURT OF COMPETENT JURISDICTION FINDS THAT SUCH DISPUTE IS NOT ARBITRABLE, SUCH DISPUTE MAY ONLY BE LITIGATED IN THE COUNTY OF COOK IN THE STATE OF ILLINOIS AND WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO ANY PROVISIONS OF ILLINOIS LAW THAT WOULD APPLY THE SUBSTANTIVE LAW OF A DIFFERENT JURISDICTION.

D. THE EXCHANGE, ~~AND WITH RESPECT TO "AUCTIONS," CME ALTERNATIVE MARKETPLACE INC.,~~ MAY, IN ~~ITS~~THEIR RESPECTIVE SOLE DISCRETION, ASSUME RESPONSIBILITY FOR DIRECT, OUT-OF-POCKET LOSSES DIRECTLY CAUSED BY THE NEGLIGENCE OF GLOBEX CONTROL CENTER OR OTHER EXCHANGE STAFF AND/OR ORDER STATUS ERRORS PROVIDED BY THE GLOBEX CONTROL CENTER OR AN EXCHANGE SYSTEMS, SERVICES OR FACILITIES~~S~~. NOTWITHSTANDING THE ABOVE, ~~i) THE EXCHANGE'S; ii) CBOT'S~~ (EXCEPT WITH RESPECT TO ANY PRODUCTS TRADED ON ~~e-cbot, WHICH WERE GOVERNED BY FORMER CBOT RULE 5B.19); AND iii) WITH RESPECT TO AUCTIONS, CME ALTERNATIVE MARKETPLACE INC.'S~~ TOTAL COMBINED AGGREGATE OBLIGATIONS SHALL NOT EXCEED \$100,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED ON A SINGLE DAY; \$200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND \$2,400,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED IN A SINGLE CALENDAR YEAR. ANY DISPUTED CLAIM PURSUANT TO THIS PARAGRAPH D MUST BE ARBITRATED PURSUANT TO EXCHANGE RULES.

E. IN NO EVENT SHALL THE EXCHANGE'S, ~~CBOT'S, AND WITH RESPECT TO AUCTIONS, CME ALTERNATIVE MARKETPLACE INC.'S,~~ TOTAL COMBINED AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF ANY NEGLIGENCE, FAILURES, MALFUNCTIONS, FAULTS IN DELIVERY, DELAYS, OMISSIONS, SUSPENSIONS, INACCURACIES, INTERRUPTIONS, TERMINATIONS, ORDER STATusing ERRORS OR ANY OTHER CAUSES, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE EXCHANGE'S, ~~CBOT'S, OR CME ALTERNATIVE MARKETPLACE INC.'S~~ SYSTEMS OR SERVICES, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, OR THE NEGLIGENCE OF EXCHANGE OR ~~CBOT~~ STAFF, EXCEED \$2,400,000 IN ANY GIVEN CALENDAR YEAR.

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

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

CBOT

578. **LIMITATION OF LIABILITY, NO WARRANTIES**

- A. EXCEPT AS PROVIDED BELOW, THE EXCHANGE AND CHICAGO MERCANTILE EXCHANGE INC. ("CME"), (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 CME, 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 CME, 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 CME OR ANY EXCHANGE OR CME SYSTEMS, SERVICES OR FACILITIES; EXCEPT FOR INCORRECT ORDER STATUSING INFORMATION AS PROVIDED IN RULE 579 (GLOBEX CONTROL CENTER AND ORDER STATUSING); OR
  - (iv) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY EXCHANGE OR CME 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.

THE FOREGOING LIMITATION OF LIABILITY SHALL BE SUBJECT TO THE COMMODITY EXCHANGE ACT AND REGULATIONS THEREUNDER. A PARTY WHO HAS BEEN FINALLY ADJUDICATED TO HAVE ENGAGED IN WILLFUL OR WANTON MISCONDUCT MAY NOT AVAIL ITSELF OF THE PROTECTIONS IN THIS RULE.

- B. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE) PROVIDED BY THE EXCHANGE OR CME (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 CME OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING THE GLOBEX SYSTEM.
- C. ANY DISPUTE ARISING OUT OF THE USE OF SYSTEMS OR SERVICES OF THE EXCHANGE OR CME OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES IN WHICH THE EXCHANGE OR CME (INCLUDING EITHER OF THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS OR LICENSORS IS A PARTY SHALL BE ARBITRATED PURSUANT TO EXCHANGE RULES ~~RULE 624~~. 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 CBOT 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. NOTWITHSTANDING THE ABOVE, ANY SUCH DISPUTE ARISING OUT OF THE USE OF e-cbot, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT e-cbot, 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. ANY SUCH ACTION, SUIT OR PROCEEDING AGAINST ANY OF THE ABOVE, ARISING OUT OF THE USE OF e-cbot, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT e-cbot, MUST BE BROUGHT WITHIN TWO YEARS FROM THE TIME THAT A CAUSE OF ACTION ACCRUED. THIS PARAGRAPH C SHALL IN NO WAY BE CONSTRUED TO CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION THAT WOULD OTHERWISE BE PROHIBITED BY CBOT RULES.

- D. THE EXCHANGE AND CME MAY, IN THEIR RESPECTIVE SOLE DISCRETION, ASSUME RESPONSIBILITY FOR DIRECT, OUT-OF-POCKET LOSSES DIRECTLY CAUSED BY THE NEGLIGENCE OF GLOBEX CONTROL CENTER OR OTHER EXCHANGE OR CME STAFF AND/OR ORDER STATUS ERRORS PROVIDED BY THE GLOBEX CONTROL CENTER OR AN EXCHANGE OR CME SYSTEMS, SERVICES OR FACILITIES. NOTWITHSTANDING THE ABOVE, THE EXCHANGE'S AND CME'S TOTAL COMBINED AGGREGATE OBLIGATIONS SHALL NOT EXCEED \$100,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED ON A SINGLE DAY; \$200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND \$2,400,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED IN A SINGLE CALENDAR YEAR. ANY DISPUTED CLAIM PURSUANT TO THIS PARAGRAPH D MUST BE ARBITRATED PURSUANT TO EXCHANGE RULES, IF SUCH AN ARBITRATION IS PERMITTED BY EXCHANGE RULES.
- E. IN NO EVENT SHALL THE EXCHANGE'S AND/OR CME'S, TOTAL COMBINED AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF ANY NEGLIGENCE, FAILURES, MALFUNCTIONS, FAULTS IN DELIVERY, DELAYS, OMISSIONS, SUSPENSIONS, INACCURACIES, INTERRUPTIONS, TERMINATIONS, ORDER STATUSING ERRORS OR ANY OTHER CAUSES, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE EXCHANGE'S OR CME'S SYSTEMS OR SERVICES, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, OR THE NEGLIGENCE OF EXCHANGE OR CME STAFF, EXCEED \$2,400,000 IN ANY GIVEN CALENDAR YEAR.

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

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

- F. ~~FORMER CBOT REGULATION 5B.19 SET FORTH THE DISCLAIMER OF WARRANTIES AND THE LIMITATION OF LIABILITY THAT APPLIED TO ANY PROVISION, USE, PERFORMANCE, MAINTENANCE OR MALFUNCTION OF THE LIFFE CONNECT<sup>®</sup> SYSTEM FOR TRADING ON e-cbot. TO THE EXTENT THAT ANY PROVISION OF RULE 578.A. THROUGH 578.E. ABOVE IS INCONSISTENT WITH THE TERMS OF FORMER CBOT REGULATION 5B.19, THE PROVISIONS OF FORMER CBOT REGULATION 5B.19 SHALL CONTROL AND SHALL SUPERCEDE SUCH INCONSISTENT PROVISION IN CONNECTION WITH ANY DISPUTE ARISING OUT OF THE USE OF e-cbot OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT e-cbot.~~

NYMEX

578. LIMITATION OF LIABILITY, NO WARRANTIES

- A. EXCEPT AS PROVIDED BELOW, THE EXCHANGE AND CHICAGO MERCANTILE EXCHANGE INC. ("CME"), (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:
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  - (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 CME, 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 CME OR ANY OF THE EXCHANGE'S OR CME'S SYSTEMS, SERVICES OR FACILITIES; EXCEPT FOR INCORRECT ORDER STATUSING INFORMATION AS PROVIDED IN RULE 579 (GLOBEX CONTROL CENTER); OR
  - (iv) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF ANY OF THE EXCHANGE'S OR CME'S SYSTEMS, SERVICES OR FACILITIES BY ANY PERSON.

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- 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, ~~THE~~ OR CME (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 CME OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, INCLUDING THE GLOBEX SYSTEM.
- C. ANY DISPUTE ARISING OUT OF THE USE OF SYSTEMS OR SERVICES OF THE EXCHANGE OR CME OR SERVICES, EQUIPMENT, OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES IN WHICH THE EXCHANGE OR CME (INCLUDING THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES), OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS OR LICENSORS IS A PARTY SHALL BE ARBITRATED PURSUANT TO EXCHANGE RULES ~~RULE 624~~ ("CERTAIN CLAIMS AGAINST THE EXCHANGE INVOLVING TRADING SYSTEMS OR SERVICES"). 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 CME OR THE EXCHANGE AND CME,~~ MAY, IN THEIR RESPECTIVE SOLE DISCRETION, ASSUME RESPONSIBILITY FOR DIRECT, OUT-OF-POCKET LOSSES DIRECTLY CAUSED BY THE NEGLIGENCE OF GLOBEX CONTROL CENTER OR OTHER EXCHANGE OR CME STAFF AND/OR ORDER STATUS ERRORS PROVIDED BY THE GLOBEX CONTROL CENTER OR AN EXCHANGE OR CME SYSTEMS, SERVICES OR FACILITIES. NOTWITHSTANDING THE ABOVE, ~~THE EXCHANGE'S AND CME'S~~ TOTAL COMBINED AGGREGATE OBLIGATIONS SHALL NOT EXCEED \$100,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED ON A SINGLE DAY; \$200,000 FOR ALL LOSSES SUFFERED FROM ALL CAUSES IN A SINGLE CALENDAR MONTH; AND \$2,400,000 FOR ALL LOSSES FROM ALL CAUSES SUFFERED IN A SINGLE CALENDAR YEAR. ANY DISPUTED CLAIM PURSUANT TO THIS PARAGRAPH D MUST BE ARBITRATED PURSUANT TO EXCHANGE RULES ~~RULE 624~~ ("CERTAIN CLAIMS AGAINST THE EXCHANGE INVOLVING TRADING SYSTEMS OR SERVICES").

E. IN NO EVENT SHALL THE EXCHANGE'S AND CME'S TOTAL COMBINED AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF ANY NEGLIGENCE, FAILURES, MALFUNCTIONS, FAULTS IN DELIVERY, DELAYS, OMISSIONS, SUSPENSIONS, INACCURACIES, INTERRUPTIONS, TERMINATIONS, ORDER STATusing ERRORS OR ANY OTHER CAUSES, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE EXCHANGE'S OR CME'S SYSTEMS OR SERVICES, OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS AND SERVICES, OR THE NEGLIGENCE OF EXCHANGE OR CME STAFF, EXCEED \$2,400,000 IN ANY GIVEN CALENDAR YEAR.

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