

such court, waives any objection to venue therein, and waives any right it may have to a trial by jury.

- 9.9.3 In the event that a Person or an Affiliate, if applicable, of such Person who fails to prevail in a lawsuit or other legal proceeding instituted by such Person or such Affiliate, if applicable, against (i) the Exchange or (ii) any Affiliate of the Exchange or any of their respective officers, directors, equity holders, employees, agents, or any member of any committee, and related to the business of the Exchange, such Person shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding. This Rule 9.9.3 shall not apply to Exchange disciplinary actions, appeals thereof, or an instance in which the Board has granted a waiver of the provisions hereof.

9.10 LIMITATION OF LIABILITY; NO WARRANTIES

- 9.10.1 PERSON'S USE OF THE SERVICES, THE SYSTEM, THE NODAL PROPERTY AND ANY OTHER INFORMATION AND MATERIALS PROVIDED BY NODAL, IS AT PERSON'S OWN RISK, AND THE SERVICES, THE NODAL PROPERTY AND ANY OTHER INFORMATION AND MATERIALS PROVIDED BY NODAL HEREUNDER ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, BY STATUTE, COMMON LAW OR OTHERWISE INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. NODAL DOES NOT GUARANTEE THAT (i) THE NODAL PROPERTY OR THE SERVICES WILL OPERATE IN AN ERROR FREE, SECURE OR UNINTERRUPTED MANNER, OR (ii) ANY INFORMATION OR MATERIALS PROVIDED BY NODAL OR ACCESSIBLE THROUGH THE NODAL PROPERTY WILL BE ACCURATE, COMPLETE, RELIABLE, OR TIMELY, OR (iii) THE NODAL PROPERTY OR ANY ASPECTS OF THE SERVICES WILL BE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. NODAL SHALL HAVE NO LIABILITY FOR THE CREDITWORTHINESS OF ANY PERSON OR FOR THE ACTS OR OMISSIONS OF ANY AUTHORIZED BROKER UTILIZING THE SERVICES OR ANY ASPECT OF THE SERVICES OR SYSTEM. SUCH PERSON IS SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF SUCH PERSON'S TECHNOLOGY. SUCH PERSON ACKNOWLEDGES THAT SUCH PERSON'S ACCESS TO THE SYSTEM AND THE SERVICES IS INTERNET-BASED AND THAT NODAL HAS NO CONTROL OVER THE INTERNET OR SUCH PERSON'S CONNECTIONS THERETO. SUCH PERSON FURTHER ACKNOWLEDGES THAT THE INTERNET, COMPUTER

NETWORKS, AND COMMUNICATIONS LINKS AND DEVICES NECESSARY TO ENABLE A PERSON TO ACCESS AND USE THE SYSTEM AND THE SERVICES ARE INHERENTLY INSECURE AND VULNERABLE TO ATTEMPTS AT UNAUTHORIZED ENTRY AND THAT NO FORM OF PROTECTION CAN ENSURE PERSON'S DATA, HARDWARE, OR SOFTWARE OR THE SYSTEM OR OTHER NODAL PROPERTY WILL BE FULLY SECURE. FURTHERMORE, NODAL SHALL HAVE NO OBLIGATION TO MONITOR OR VERIFY ANY INFORMATION DISPLAYED THROUGH THE SYSTEM.

9.10.2. EXCLUDING ANY LIABILITY FOR SUCH PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, AND EXCLUDING, IN THE CASE OF A PARTICIPANT, OR FCM PARTICIPANT, OR AUTHORIZED BROKER THE INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 10 OF THE PARTICIPANT AGREEMENT OR AUTHORIZED BROKER AGREEMENT, RESPECTIVELY, EACH PARTY AGREES THAT IN NO EVENT SHALL NODAL EXCHANGE (INCLUDING EACH OF ITS SUBSIDIARIES AND AFFILIATES), ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, LICENSORS, AND ANY PARTICIPANTS (INCLUDING FCM PARTICIPANTS), AUTHORIZED BROKERS, CLEARING MEMBERS, AND THEIR RESPECTIVE AUTHORIZED USERS ~~EITHER PARTY~~ BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OR CORRUPTION OF DATA, TRADING LOSSES OR BUSINESS INTERRUPTION AND THE LIKE, ARISING IN ANY MANNER WHATSOEVER OUT OF OR IN CONNECTION WITH ITS RESPECTIVE AGREEMENT OR ANY USE (WHETHER OR NOT AUTHORIZED) OR INABILITY TO USE THE NODAL PROPERTY OR ANY OTHER INFORMATION OR MATERIALS PROVIDED TO THE PARTY BY NODAL OR ACCESSIBLE THROUGH THE SERVICES, INCLUDING:

(a) ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION, TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OPERATION, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY OF THE SYSTEM AND SERVICES OF THE EXCHANGE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEM AND SERVICES, INCLUDING WITHOUT LIMITATION ELECTRONIC ORDER ENTRY/DELIVERY, TRADING THROUGH ANY ELECTRONIC MEANS, ELECTRONIC COMMUNICATION OF MARKET DATA, OR INFORMATION, COMMUNICATIONS NETWORKS, PRICE REPORTING

SYSTEMS, AND ANY AND ALL TERMINALS, INCLUDING CENTRAL COMPUTERS, SOFTWARE, HARDWARE, FIRMWARE AND PRINTERS, RELATING THERETO; OR

(b) ANY FAILURE, MALFUNCTION, FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY, INTERRUPTION OR TERMINATION, OR ANY OTHER CAUSE, OF ANY SYSTEM OR SERVICE OF THE EXCHANGE OR SERVICES, EQUIPMENT OR FACILITIES USED TO SUPPORT SUCH SYSTEMS OR SERVICES, CAUSED BY ANY THIRD PARTIES INCLUDING, BUT NOT LIMITED TO INDEPENDENT SOFTWARE VENDORS AND NETWORK PROVIDERS; OR

(c) THE ACCURACY, COMPLETENESS, RELIABILITY, TIMELINESS, QUALITY, SECURITY, PERFORMANCE, OR PRICING OF THE SERVICES, INCLUDING ORDER STATUS ERRORS PROVIDED BY ANY EXCHANGE STAFF, OR ANY FAILURES, DEGRADATIONS OR DELAYS ASSOCIATED THEREWITH, REGARDLESS OF WHETHER SUCH DAMAGES ARISE IN TORT, CONTRACT, OR OTHERWISE, AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(d) ANY UNAUTHORIZED ACCESS TO OR UNAUTHORIZED USE OF THE SYSTEM, 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.

NOTWITHSTANDING THE FOREGOING, IF A COURT OR OTHER TRIBUNAL OF COMPETENT JURISDICTION SHOULD FIND NODAL LIABLE FOR ANY LOSS, DAMAGE OR EXPENSES UNDER THE RESPECTIVE AGREEMENT, THE AGGREGATE LIABILITY OF NODAL UNDER THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED THE GREATER OF (i) \$10,000 AND (ii) THE TOTAL COMMISSIONS, FEES, OR OTHER AMOUNTS (EXCLUDING ANY APPLICABLE TAXES AND DUTIES) PAID TO NODAL BY THE PARTY DURING THE SIX MONTHS PRECEDING THE DATE ON WHICH THE EVENTS GIVING RISE TO SUCH LIABILITY AROSE.

~~9.10.29.10.3~~ ANY CLAIM FOR REDRESS OR DAMAGES HEREUNDER SHALL BE FILED IN A COURT OF COMPETENT JURISDICTION WITHIN TWO (2) YEARS OF THE DATE ON WHICH SUCH CLAIM ALLEGEDLY AROSE. FAILURE TO INSTITUTE LITIGATION WITHIN SUCH TIME PERIOD SHALL BE DEEMED TO BE A WAIVER OF SUCH CLAIM AND THE CLAIM SHALL BE OF NO FURTHER FORCE OR EFFECT. THE ALLOCATIONS OF LIABILITY IN THIS RULE 9.10 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY'S RIGHTS AND OBLIGATIONS HEREUNDER REFLECT SUCH ALLOCATIONS. THE PARTIES AGREE THAT THEY WILL NOT ALLEGE THAT THIS REMEDY FAILS ITS ESSENTIAL PURPOSE.

THE PARTY FURTHER AGREES THAT THE PROVISIONS OF THE RULES OF THE CLEARING HOUSE LIMITING THE LIABILITY OF THE CLEARING HOUSE TO ITS MEMBERS SHALL APPLY TO THE PARTY AS FULLY AS IF THE PARTY WERE A MEMBER OF THE CLEARING HOUSE MUTATIS MUTANDIS.

9.11 Requirements for Non-U.S. Participants and Customers

- 9.11.1 Nodal Exchange is permitted to allow Participants organized or located outside of the United States to place Orders and Transactions on the Exchange subject to the requirements in this Rule 9.11. Please see the document entitled “Non-U.S. Jurisdictions” available on the Nodal Exchange website for additional guidance on these topics, accessible at: <https://www.nodalexchange.com/regulation/nodal-exchange-regulation/jurisdictions/>.
- 9.11.2 FCM Participants shall ensure that Customers organized or located outside of the United States do not place Orders and Transactions on the Exchange from any non-U.S. jurisdiction except for: (i) Denmark, *provided that* the Customer meets the definition of a “*per se* professional client” or a “eligible counterparty” under Danish law; (ii) Dubai International Financial Centre, the Netherlands and Switzerland; and (iii) Spain, *provided that* if such Customer is an “Investment Firm” as defined under Spanish law, the Customer must obtain authorization from the Comisión Nacional del Mercado de Valores (CNMV) prior to placing Orders and Transactions on the Exchange.
- 9.11.3 FCM Participants shall not allow a Person to become a Customer from any non-U.S. jurisdiction, including those jurisdictions listed on the Nodal website, unless permitted under these Rules.
- 9.11.4 Participants and Customers are at all times responsible for ensuring that they are acting in compliance with Applicable Law and/or regulatory