



**BY ELECTRONIC TRANSMISSION**

Submission No. 14-104  
September 17, 2014

Mr. Christopher J. Kirkpatrick  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**Re: New Rule 2.35 and Amendments to Rules 21.02, 18.05, 2.34 and Bylaw Section 5.3 – Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) self certifies new Rule 2.35 and the amendments to Rules 21.02, 18.05, 2.34 and Bylaw Section 5.3, as set forth in Exhibit A.

Bylaw Section 5.3(b) sets forth a variety of obligations applicable to futures commission merchants (“FCMs”) regarding, among others, financial requirements and the handling of customer funds. These provisions have been deleted from the Bylaw and relocated as paragraph (c) of Rule 2.34 in order to have these requirements in a single place. Rule 2.34 has also been revised to delete duplicative provisions and to conform the time period for filing the annual certified financial report to the 60 day (rather than 90 day) standard.

Separately, new Rule 2.35 establishes the duty of Clearing Members to report open interest data to the relevant Clearing House, and cross references the duty to report Energy open interest data which is currently specified in Rule 18.05. Any failure to comply with the new Rule will give rise to a violation of Exchange Rules separate and apart from any violation of the rules and procedures of the relevant Clearing House. A reference to this new Rule has also been added to Rule 21.02 to allow for the issuance of summary fines by the Exchange for violation of the Rule. These amendments are based upon a recommendation by the Division of Market Oversight in a recent rule enforcement review of the Exchange’s market surveillance program. In addition, Rule 18.05 has been amended to require that corrections to energy open interest data be reported to the Exchange in addition to the Clearing House.

The amendments will become effective on October 2, 2014. The Exchange certifies that the amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. Specifically, the amendments comply with Core Principal 8 (Daily Publication of Trading Information) by facilitating the Exchange in publishing accurate open interest. In addition, the

adoption of a specific rule is consistent with Core Principal 13, as it provides an independent basis on which the Exchange can enforce accurate reporting of open interest without the need for a referral from the Clearing House. The Exchange is not aware of any substantive opposing views expressed by members or others with respect to the amendments and certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website and may be accessed at (<https://www.theice.com/notices/RegulatoryFilings.shtml>).

If you have any questions or need further information, please contact the undersigned at 212-748-4083 or [Audrey.hirschfeld@theice.com](mailto:Audrey.hirschfeld@theice.com).

Sincerely,

A handwritten signature in blue ink that reads "Audrey R. Hirschfeld". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Audrey R. Hirschfeld  
SVP and General Counsel

cc: Division of Market Oversight

## EXHIBIT A

### Bylaws

#### Section 5.3. Financial Standards, Reporting Requirements and Treatment of Customer Funds

~~{(a)}~~ The Board of Directors may from time to time adopt minimum financial standards and related reporting requirements to be complied with by Trading Members, Permit Holders and Member Firms as a continuing condition to exercising or maintaining such status as a Trading Member, Permit Holder or Member Firm and, for purposes of imposing such standards and requirements, the Board of Directors may create such categories as it deems necessary or appropriate.

~~{(b)}~~ Each Member Firm that is registered with the CFTC as a Futures Commission Merchant or an Introducing Broker shall maintain minimum capital, comply with reporting requirements and use, segregate, invest and hold customer funds in accordance with, and otherwise comply with Commodity Futures Trading Commission Regulations 1.10, 1.12, 1.14, 1.15, 1.17, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, 1.27 and 1.28 as applicable to it, provided that (i) any requirement which concerns the filing with or reporting to the Commission or the approval of the Commission shall not be considered a requirement of the Corporation; and (ii) any reference to a “designated self-regulatory organization” or “self-regulatory organization of which an FCM is a member” shall mean the Corporation unless the Corporation has notified any such Member Firm that this term shall mean another “self-regulatory organization”.]

### Rules

#### Rule 2.34. FCM Member Firm Financial and Reporting Requirements

(a) A Member Firm which is registered as a Futures Commission Merchant or which is a Clearing Member must submit to the Exchange, within sixty (60) ~~[ninety (90)]~~ days of the close of its fiscal year, or, in the case of an FCM that is also registered as a broker dealer, within sixty (60) days of the close of its fiscal year, a copy of its financial statement certified by an independent Certified Public Accountant.

(b) A Member Firm which is registered as a Futures Commission Merchant shall submit to the Exchange, as of the close of business each month, a statement of the computation of its net capital. Such statement shall be filed with the Exchange no later than seventeen (17) Business Days of the statement date.

(c) Each Member Firm that is registered with the CFTC as a Futures Commission Merchant or an Introducing Broker shall maintain minimum capital, comply with financial reporting requirements and use, segregate, invest and hold all money, securities and property received from, or held for, a Customer in connection with a Commodity Contract on the Exchange, in accordance with, and otherwise comply with, Commodity Futures Trading Commission Regulations 1.10, 1.12, 1.14, 1.15, 1.17, and 1.20 through 1.28 as applicable to it, provided that (i) any requirement which concerns the filing with or reporting to the Commission or the approval of the Commission shall not be considered a requirement of the Corporation; and (ii) any reference to a “designated self-regulatory organization” or “self-regulatory organization of which an FCM is a member” shall mean the Corporation unless the Corporation has notified any such Member Firm that such term shall mean another “self-regulatory organization”. [A Member Firm which is registered as a Futures Commission Merchant and for which the Exchange is the designated self-regulatory organization shall submit to the Exchange a copy of its Form 1-FR-FCM (as defined in Commission Regulation 1.10) for each fiscal quarter of each fiscal year including the final

~~fiscal quarter of each fiscal year; provided, however, that a Member Firm which is registered with the Securities and Exchange Commission as a securities broker or dealer may elect to file a copy of its unaudited Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II or Part IIA instead of the Form 1 FR FCM. Each Form 1 FR FCM for the fiscal quarter must be filed with the Exchange no later than seventeen (17) Business Days after the date for which the report is made. Filing the Form 1 FR FCM with the Exchange does not relieve the Member Firm from filing the Form 1 FR FCM with the Commission in accordance with Regulation 1.10.~~

~~(d) A Member Firm which is registered as a Futures Commission Merchant shall treat and deal with all money, securities and property received from, or held for, a Customer in connection with a Commodity Contract on the Exchange in accordance with applicable provisions of the Act and CFTC regulations.]~~

### **Rule 2.35 [Service of Papers] Reporting Open Interest to Clearing Organization.**

Each Clearing Member shall report to the relevant Clearing Organization, on each Exchange Business Day, the open Positions it carries in each Commodity Contract (separately by Customer and proprietary account), including Positions carried for other Clearing Members, in accordance with the Clearing Organization Rules and procedures. The reporting of open Positions in Energy Contracts shall additionally be subject to the requirements of Rule 18.05. On each Exchange Business Day, each Clearing Member shall report to the Clearing Organization any adjustments to be made in the open Positions reported on the previous Business Day, in accordance with the Clearing Organization Rules and procedures. A Clearing Member which has customer or proprietary Positions carried for it by another Clearing Member or by a futures commission merchant which is not a Clearing Member, shall provide to the Clearing Organization such notice and other information as the Clearing Organization may require.

### **Rule 2.~~35~~.36 Service of Papers**

(a) The service of papers upon a Member, or any written notification to the Exchange from a Member in accordance with the Rules may be made as follows:

(i) By personal delivery to the Member or an officer of the Member or, in the case of a notification to the Exchange, by personal delivery to the Secretary or such other officer of the Exchange as may be specified in the Rules;

(ii) By first class mail, postage prepaid, or express courier, delivery charges prepaid, in each case to the office or address on file with the Exchange or, in the case of a notification to the Exchange, to the principal office of the Exchange addressed to the Secretary or such other officer of the Exchange as may be specified in the Rules; or

(iii) By facsimile message ("FAX") to a FAX number on file with the Exchange or, in the case of notification to the Exchange, to the FAX number from time to time published by the Exchange for the purpose.

(b) Service of papers and written notification in accordance with paragraph (a) of this Rule shall be complete upon delivery, in the case of personal service, or express courier, two (2) days after depositing in the U.S. mail or, in the case of a FAX, upon receipt of confirmation of successful transmission from the transmission device.

## Rule 21.02. Compliance Staff — Powers and Duties

\* \* \*

(e) Notwithstanding the provisions of paragraph (d) of this Rule, the Vice President or his designee may issue a warning letter or impose a summary fine of no more than ten thousand dollars (\$10,000) in any case in which it is concluded that there may have been a violation of:

- (i) any trading card or order ticket record keeping rule;
- (ii) Rule 4.02(i)(2) or (i)(3);
- (iii) Rule 4.02(m)(2)(E)
- (iv) Rule 4.07 (a), (b) or (c);
- (v) Rule 6.15(a) or (b);
- (vi) Rule 2.35 or Rule 18.05(a) or (e);
- (vii) Rule 27.05(a)(i);
- (viii) paragraph (a), (b) or (c) of Rule 27.09;
- (ix) Rule 21.04, by failing to produce documents, books or records, within the time period prescribed by the Exchange; or
- (x) 27.12A(a) through (e).

The authority to impose such a summary fine does not limit the Vice President's authority to refer the matter to the BCC instead of imposing a summary fine. A summary fine imposed in accordance with this paragraph shall become final and effective and payment shall become due and owing to the Exchange fifteen (15) calendar days after the Member receives the fine.

[Remainder of Rule Unchanged]

## Rule 18.05 Open Interest in Energy Contracts

(a) Each Clearing Member shall report its open interest in Energy Contracts (separately by proprietary and Customer account) to the Clearing Organization by the close of business (or such other time as the Clearing Organization may specify) on each Exchange Business Day. On each Exchange Business Day, each Clearing Member shall report to the Clearing Organization by the time specified by the Exchange or the Clearing Organization, any adjustments to be made in the open interest reported on the previous Business Day. The open interest so reported and adjusted shall be used by the Exchange for the purpose of publishing the open interest in all outstanding Energy Contracts.

\* \* \*

(c) If a Clearing Member discovers an error in any report made pursuant to this Rule 18.05, such Clearing Member shall as soon as practicable submit to the Clearing Organization and the Exchange a correction and a written statement as to how the error occurred.

[Remainder of Rule Unchanged]