


ICE FUTURES U.S.
55 East 52nd Street
New York, NY 10055

BY ELECTRONIC TRANSMISSION

Submission No. 16-35
March 25, 2016

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

**Re: Amendments to Rule 11.09 –Arbitration of Disputes-- Submission Pursuant to Commission
Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Regulation 40.6(a) ICE Futures U.S., Inc. (“IFUS” or “Exchange”) submits by written certification amendments to Rule 11.09 (contained in Exhibit A) which will become effective on April 11, 2016, commencing with the March ’17 contract month.

Rule 11.09 provides for the arbitration of certain Sugar No. 11[®] delivery disputes on an expedited basis, while requiring all other Sugar No. 11 delivery disputes to be arbitrated in accordance with the general arbitration rules of the Exchange (which are set forth in Chapter 20 of the Rules) as modified by the procedures set forth in paragraph (c) of Rule 11.09. Disputes which are a proper subject for expedited treatment are defined in paragraph (b) of the Rule as those “arising out of circumstances occurring at or near the time for delivery, where a rapid determination as to whether and on what terms a Deliverer and Receiver must make and/or take delivery is necessary in order to minimize disruption in the delivery process”. A notice must be filed with the Exchange within 3 days of becoming aware of the facts constituting the dispute, and a panel of the Sugar Delivery Committee is appointed to resolve the matter through arbitration as quickly as possible. In the event the panel determines that a party has in fact defaulted, the Rules currently obligate the panel to award essentially punitive damages to the aggrieved party of no less than 10% of the value of the sugar or \$0.35 per pound, whichever is greater, in addition to the other settlements specified in the Rule regarding payment for actual damages.

The Exchange has determined to remove the automatic award of punitive damages, in favor of the existing language in renumbered paragraph (b)(vii) which allows the arbitration panel to ‘grant any

remedy or relief which it deems just and equitable', including the award of money in an amount which exceeds the settlement calculations required by re-numbered subparagraphs (b)(v) and (vi) of the Rule. Although the punitive damages provision has been in the Rules for many years, Exchange staff could not confirm any instance when a panel convened under the expedited sugar arbitration rules had found a default to have occurred, and consequently no instance in which such damages were awarded. It has been our experience that disputes initiated by a party under the expedited hearing procedures either are declared by the arbitration panel as not proper subjects for expedited procedures (but may proceed under the Chapter 20 arbitration process), or are otherwise resolved by actual delivery or resolution directly between the parties. In this regard, it is possible that the automatic nature and the amount of this provision served as a deterrent to a panel finding that a default has occurred, as its application would require the arbitrators to award a large sum without regard to the underlying facts and circumstances, including in cases where the default was technical in nature.

Importantly, elimination of the punitive damages provision does not impact the ability of the arbitrators, in an appropriate case, to award such damages as they deem just and proper in the circumstances, whether greater or less than 10% of the settlement price. Accordingly, the amendment does not impact the ability of a market participant to receive special or consequential damages, it simply allows the arbitrators to tailor the amount of any such award to the facts of the case, rather than requiring them to award a particular minimum amount.

In setting the effective date of the amendments the Board considered Bylaw section 17.1, which provides that an amendment may be made effective to contracts months with open interest so long as the amendment "does not materially affect the amount of money to be paid or the quality of the merchandise to be received" under the commodity contract. It was the consensus of the Board and the World Sugar Committee that the amendments (which were recommended by the Committee) would not have such an affect. However, in order to allow market participants to consider the changes before they took effect, it was determined to implement the amendments with the March 2017 contract month.

The Exchange certifies that the amendments comply with the Commodity Exchange Act, as amended, and the regulations thereunder, including in particular Core Principles 3, 4, 7 and 14. There were no substantive opposing views to the amendments. The Exchange further certifies that concurrent with this filing a copy of this submission was posted on the Exchange's website at (<https://www.theice.com/futures-us/regulation#rule-filings>).

If you have any questions or need further information, please contact me at Audrey.hirschfeld@theice.com.

Sincerely,



Audrey R. Hirschfeld
SVP and General Counsel

cc: Division of Market Oversight

EXHIBIT A

[in the text additions are underscored and deletions overstruck]

Rule 11.09. Arbitration of Disputes

(a) Any delivery dispute arising between Members under a Sugar No. 11 Futures Contract traded on the Exchange shall be settled by arbitration in accordance with the provisions of this Rule.

(b) Expedited Arbitration – For the purposes of this Rule, the term “Expedited Arbitration” shall mean a dispute arising out of circumstances occurring at or near the time for delivery, where a rapid determination as to whether and on what terms a Deliverer and Receiver must make and/or take delivery is necessary in order to minimize disruption in the delivery process. Expedited Arbitrations shall be conducted as follows:

(i) The Claimant shall notify the Exchange of its request for an Expedited Arbitration within three (3) Business Days of the date on which such Member becomes aware of the facts constituting the dispute (hereinafter referred to as the “Notice”). Said Member shall be deemed to have waived his rights under paragraph (b) of this Rule, without prejudice to any other rights or remedies at law or under any other provisions of the Rules, if Claimant does not so notify the Exchange.

(ii) Each Notice filed pursuant to subparagraph (i) hereof shall be accompanied by a non-refundable check payable to the Exchange in the amount of one thousand dollars (\$1,000).

(iii) Upon receipt by the Exchange of the Notice, the Exchange shall forward one (1) copy of said Notice to all interested parties.

(iv) A Special Arbitration Committee of three (3) disinterested members of the Sugar Delivery Committee shall be appointed by the Chairman of the Board within one (1) Business Day, or as soon thereafter as possible, of the Exchange's receipt of the Notice. The Special Arbitration Committee shall establish the date, time and place for a hearing. Each Special Arbitration Committee shall determine the procedures to be followed in any hearing before it, except that the following shall apply in every case:

(A) each of the parties shall be entitled to appear personally at the hearings;

(B) each of the parties, at his own expense, shall have the right to be represented by counsel in any aspect of the proceeding;

(C) each of the parties shall be entitled to (1) prepare and present all relevant facts in support of the Claims and grievances, defenses or counterclaims which arise out of the Transaction or occurrence that is the subject matter of the Claim or grievance and does not require for its arbitration the presence of third (3rd) parties of whom the Exchange cannot acquire jurisdiction and to present rebuttal evidence to such Claims or grievances, defenses or counterclaims made by the other parties, (2) examine the other parties, (3) examine any witnesses appearing at the hearing, and (4) examine all relevant documents presented in connection with the Claim or grievance, or any defense or counterclaim applicable thereto;

(D) the formal rules of evidence shall not apply;

(E) no verbatim record shall be made of the proceedings, unless requested by a party who shall bear the cost of such record. If such a request is made, a stenographic transcript shall be taken, but not transcribed unless requested by a party who shall bear the cost of such transcription.

(F) *Ex parte* contacts by any of the parties with members of the Special Arbitration Committee shall not be permitted.

(G) The Special Arbitration Committee shall have the power, on the request of any party or on its own motion, to require any Person to testify and/or produce documentary evidence in the proceedings as and to the extent provided for in Rule 21.04.

~~[(v) To compensate the aggrieved party for the necessary adjustments in his position, the party adjudged in default shall be required to pay to the aggrieved party no less than ten percent (10%) of the settlement price determined by the Special Arbitration Committee, or 35/100 of one cent per pound, whichever shall be greater, to the aggrieved party in addition to the settlements outlined below.]~~

(v[i]) In the case where a Deliverer is determined to be in default by the Special Arbitration Committee then:

(A) where the settlement price (to be the price for Raw Sugar at the place of default, which represents the value of such sugar on the day for which the price is determined) determined by the Special Arbitration Committee is higher than the price stated on the Multiple Delivery Notice, the Deliverer shall be required to pay to the Receiver named on the Multiple Delivery Notice, the difference between the settlement price determined by the Special Arbitration Committee and the price stated on the Multiple Delivery Notice;

(B) where the settlement price determined by the Special Arbitration Committee is lower than the price stated on the Multiple Delivery Notice, the Receiver who received such Multiple Delivery Notice shall be required to pay to the Deliverer the difference between the settlement price determined by the Special Arbitration Committee and the price stated on the Multiple Delivery Notice.

(vi[i]) In the case where a Receiver is determined to be in default by the Special Arbitration Committee then:

(A) where the settlement price determined by the Special Arbitration Committee is higher than the price stated on the Multiple Delivery Notice received by such Receiver, the Deliverer named on the Multiple Delivery Notice shall be required to pay to the Receiver the difference between the settlement price as determined by the Special Arbitration Committee and the price stated on the Multiple Delivery Notice;

(B) where the settlement price determined by the Special Arbitration Committee is lower than the price stated in the Multiple Delivery Notice received by such Receiver, the Receiver shall be required to pay to the Deliverer named on the Multiple Delivery Notice the difference between the settlement price determined by the Special Arbitration Committee and the price stated on the Multiple Delivery Notice.

(vii[i]) The Special Arbitration Committee shall render its award in writing adjudging which, if any, party is in default, declaring the settlement price, awarding the amount of money, if any, to be paid by the party in default, and granting any further remedy or relief which it deems just and equitable, which may include the award of money in ~~the~~ an amount which exceeds the amounts to be paid pursuant to subparagraphs (v) and (vi) ~~and (vii)~~ of this Rule. The award of the Special Arbitration Committee shall be final and binding upon each of the parties to the arbitration, and judgment upon such award may be entered by any court having jurisdiction. In addition, any award, if not complied with within the time specified in the award, shall be enforceable by disciplinary proceedings pursuant to the Rules.

(~~ix~~viii) The payment as prescribed above shall be made without any setoff or deduction whatsoever by the close of business on the second (2nd) Business Day after notification in writing of the Special Arbitration Committee's award. Payment and settlement of any default as determined above shall be effected through the President. Such payment shall be accepted as final payment, provided the net amount of any variation Margins collected by either party in respect of the contracts with respect to which such payment is made from the time the Multiple Delivery Notice for such contracts was issued shall be collected from such party by the Clearing Organization and paid to the other party.

(ix) The parties to an expedited arbitration shall pay each individual appointed to the Special Arbitration Committee at the rate of \$500 per day. In each such matter, the Exchange shall determine the amount of time for which the Special Arbitration Committee is compensated and the Special Arbitration Committee shall determine the proportion in which such compensation shall be paid by each of the parties.

(c) Regular Arbitration – For the purposes of this Rule, the term “Regular Arbitration” shall mean a Sugar No. 11 Futures Contract delivery dispute which does not qualify as an Expedited Arbitration under paragraph ~~b~~(a) of this Rule. Regular Arbitrations shall be conducted in accordance with the Arbitration Rules of Chapter 20, except that:

(i) the dispute may be decided on the papers, supporting documents, affidavits and other materials submitted to the Exchange in accordance with the procedures set forth in Rule 20.03(a)(ix), if all of the parties agree to such procedure, provided that, notwithstanding such agreement, the Chairman of the Arbitration Committee or his designee, in his sole discretion, may require that a hearing be held;

(ii) the arbitration panel shall be comprised of three (3) arbitrators and have outside counsel appointed by the Chairman of the Arbitration Committee, provided that the Chairman of the Arbitration Committee or the arbitration panel appointed to hear and determine the matter may decide that outside counsel is not necessary; and

(iii) the decision of the arbitration panel shall be contained in writing and shall reflect the panel’s reasoning.