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**BY ELECTRONIC TRANSMISSION**

Submission No. 19-374  
November 20, 2019

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: Amendments to Rules 12.10 and 12.13 (Financial Requirements for Canola Merchant Participants) - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the “Act”) and Commission Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) hereby self-certifies the amendments to Rules 12.10 and 12.13 set forth in Exhibit A. The amendments to Rules 12.10 and 12.13 change the financial eligibility and financial reporting requirements for canola Merchant Participants (“MPs”) of the Exchange and give the Exchange express authority to collect additional indemnification funds for issued delivery Warrants in certain circumstances as a means to more efficiently secure the delivery obligation under the Warrants. As discussed in detail below, the proposed amendments will:

- (i) allow the Exchange to register firms as MPs subject to such restrictions or additional requirements as the Exchange deems appropriate based on the MP’s financial condition, in lieu of using the current minimum financial requirement for registration as an MP;
- (ii) require each MP to immediately report to the Exchange any material adverse change to its financial condition in lieu of the requirement that an MP submit unaudited financial reports to the Exchange on a quarterly basis; and
- (iii) expressly allow the Exchange to collect additional indemnification funds to secure a Warrant from an MP when the Exchange deems it appropriate based upon such MP’s financial condition or based on special/volatile market conditions.

### **Amendments to Rule 12.10**

Pursuant to the terms and conditions of the canola contract, only a registered MP may issue a Warrant for delivery of canola. Currently, a firm must satisfy two minimum financial requirements on an ongoing basis to be eligible for registration as an MP. Pursuant to Rule 12.10(d), each firm must have:

1. adjusted net capital (“ANC”) of at least \$2,000,000 (CAD); and
2. a net worth that is greater than the total capacity of all its elevators multiplied by \$50 (CAD).

In addition, each MP is currently required to submit to the Exchange a copy of its annual audited financial statement as well as copies of unaudited financial statements on a quarterly basis to demonstrate compliance with the capital and net worth requirements. MPs are also required to immediately notify the Exchange anytime the MP falls below the aforementioned minimum financial thresholds.

Exchange Rule 12.10(f) provides an exception which allows any firm that fails to meet the aforementioned minimum financial standards (or falls below such standards after registration) to continue to be registered as an MP. Firms which fail to meet the “bright-line” financial requirements in Rule 12.10(d) may still be registered as MPs, but are subject to such additional restrictions as the Exchange deems reasonable to ensure they will be able to meet their obligations under the contract’s terms. For example, the MP may be precluded from issuing Warrants, limited to a certain number of Warrants which may be issued or may be required to post additional indemnification funds to secure its outstanding Warrants. Currently there are registered MPs that are operating under such exemptions and remain registered by the Exchange pursuant to the provisions of Rule 12.10(f).

The amendments to Rule 12.10 eliminate the bright-line financial standards set forth in Rule 12.10(d) but retain the rules which allow the Exchange to review each MP on a case-by-case basis and place such additional restrictions/conditions/requirements as the Exchange deems appropriate as a condition to being registered as an MP. The amendments also eliminate the requirement for MPs to file quarterly unaudited financial statements. MPs will continue to be required to provide audited annual financial statements within 3 months of the end of their fiscal year and, in addition, an MP will now be required to immediately notify the Exchange of any material adverse change to its financial condition.

### **Amendments to Rule 12.13**

Indemnification is collected from an MP issuing a Warrant (hereinafter a “Warrant Issuer” or “WI”) and held by the Exchange to secure each Warrant issued by the WI and to protect Delivery Certificate (“DC”) Holders in the event of a -shipment or post-shipment default by such WI.<sup>1</sup> Indemnification funds held on deposit at the Exchange are available to offset losses sustained by the DC Holder in such circumstances. As further described below, the Exchange intentionally over-collateralizes Canola Warrants and they are marked-to-market each day to maintain such overcollateralization, which helps ensure that DC Holders can be made whole in the event of a pre-shipment or post-shipment default.

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<sup>1</sup> An MP is not financially responsible for losses until after Initial Indemnification has been posted and the Warrant has been issued (when the MP becomes a Warrant Issuer). The failure to post Initial Indemnification is a “Delivery Default” (as opposed to a pre-shipment or post-shipment default) and the Clearing Member carrying the MP’s short position (not the MP) is financially responsible to the long Clearing Member for any damages resulting from such a failure.

The Exchange currently collects and holds an additional 10-20% above the prior day's settlement price for the front month Canola futures contract to secure each Warrant.

Prior to issuing any Warrant, the MP must first post "Initial Indemnification," which is an amount equal to the sum of the:

- (i) settlement price on the day prior to the Warrant being issued, multiplied by the number of metric tonnes for which Warrants are issued and outstanding ("Base Indemnification"); and
- (ii) an additional 10-20% of the Base Indemnification ("Tonnage Surcharge") that varies depending on the number of metric tonnes to be delivered.

In addition to the collection of Initial Indemnification, Warrants are marked-to-market each subsequent day using the settlement price for the front month Canola futures contract to calculate the amount of Base Indemnification. Additional indemnification will be collected from the WI if the sum of the Base Indemnification and the Tonnage Surcharge exceed the amount the WI has on deposit with the Exchange on any given day. Such "Additional Indemnification" must be paid to the Exchange no later than 10:30 am New York Time. The failure to make payment by that time will result in a pre-shipment default.

The amendments to Rule 12.13 define the terms "Base Indemnification" and "Tonnage Surcharge" to more clearly define the calculation of Initial Indemnification. In addition, the amendments expressly state that the Exchange may collect additional Initial Indemnification and Additional Indemnification in periods of high volatility in the nearby futures contracts. This amendment gives the Exchange greater flexibility to ensure that there are sufficient funds available to compensate DC Holders.

### **Rationale for the Amendments**

The Exchange conducted a review of the financial requirements of MPs and the indemnification levels required to secure canola delivery Warrants, which were adopted from ICE Futures Canada at the time of the contract migration to IFUS (June 2018). The purpose of the Exchange's review, after listing the contract for a year and gaining familiarity with the product, was to ensure that the Canola rules effectively protect the integrity of the contract and the interests of DC Holders without unduly burdening MPs or creating an unnecessary cost barrier to entry. Having completed the review, the Exchange believes the financial interests of DC Holders and the integrity of the contract are best protected by the daily collection and maintenance of sufficient indemnification funds to secure the MPs obligations under the Warrant, rather than by periodically measuring compliance with static minimum financial requirements. As explained above, the rules already provide for the Exchange to hold a cash cushion of 10-20% above the full market value of the canola to be delivered against the Warrant, and those funds are available to offset a DC Holder's pre and post-shipment losses. As noted above, an MP is not financially responsible for losses until after Initial Indemnification has been posted and the Warrant has been issued (when the MP becomes a Warrant Issuer). Consequently, the Indemnification regime described above is more than adequate to cover losses for which an MP could be held liable under the Rules.

Furthermore, as a part of the review, the Exchange also analyzed more than three years (January 2016 through March 2019) of front month futures pricing data to determine if the Tonnage Surcharge was sufficient to secure a Warrant and protect DC Holder interests. The average daily price change for the contract during that time period was less than 0.75%, the largest single day price increase was a little over 4% and the largest 7 trading day price increase was a little over 9%. Each number was below the minimum 10% Tonnage Surcharge calculated and paid daily, which appears to be more than

sufficient in normal market conditions; and, as noted above, the Exchange has the authority to collect additional indemnification in the event of special market circumstances.

The Exchange believes that the authority to impose additional restrictions and collect additional indemnification have rendered the minimum financial requirements unnecessary and place undue costs and burdens on the MPs, which may have to put guarantees or financing arrangements in place to reach the required financial level. Without the minimum financial requirement, the production and submission of unaudited quarterly financials exclusively for the Exchange also constitutes an unnecessary burden. By codifying the flexible approach which the Exchange has always had the discretion to utilize, along with the addition of an immediate duty to notify the Exchange of a material adverse change in financial condition, the amendments collectively provide a more timely and cost-effective means to identify and address an MP in financial distress. We note that a similar structure is in place with respect to coffee, cocoa and cotton warehouses under the current Exchange Rules. In that context, the Exchange does not set forth minimum financial requirements for such warehouse operators. Rather, the Exchange reviews the financial condition of each warehouse on a case-by-case basis and requires security in the form of a performance bond or letter of credit that is tied to its storage capacity and serves as a financial backstop.

The amendments were presented to the Exchange's Canola Contract Committee, which recommended Board approval. The Exchange is not aware of any opposing views and certifies that the amendments to Rules 12.10 and 12.13 comply with the requirements of the Act and the rules and regulations promulgated thereunder. Specifically, the amendments comply with core principles 3 (contracts not readily subject to manipulation), 4 (prevention of market disruption) and 11 (financial integrity of transactions). Pursuant to core principle 1, a designated contract market has reasonable discretion in establishing the manner in which it complies with the core principles. As explained above, the Exchange believes that the approach reflected in the amendments protects DC Holder Interests without imposing arbitrary and burdensome financial requirements, and are within the purview of the Exchange to implement.

The Exchange further certifies that concurrent with this filing, a notice of pending certification was posted on the Exchange's website as well as a copy of this submission, which may be accessed at (<https://www.theice.com/futures-us/regulation#rule-filings>). The amendments will become effective on December 6, 2019.

If you have any questions or need further information, please contact me at 212-748-4021 or at [jason.fusco@theice.com](mailto:jason.fusco@theice.com).

Sincerely,



Jason V. Fusco  
Assistant General Counsel  
Market Regulation

Enc.  
cc: Division of Market Oversight

## EXHIBIT A

(Additions are underlined and deletions have been struck through)

### 12.10 - Merchant Participant Registration and Financial Requirements; Supervision

(a) Registration and Financial Reporting: Merchant Participants shall register with the Exchange as such, and shall provide such [financial] information, in such form, as is required by the Exchange from time to time. ~~[to the Exchange and maintain financial standing in conformity with the Rules and procedures of the Exchange. [Specifically]. Without limiting the generality of the foregoing in any way,~~ each Merchant Participant shall file an application for registration and the following additional documents:

- (i) with their written Merchant Participant application, audited financial statements for the most recent year ended and unaudited financial statements for the most recent quarter ended.
- (ii) after acceptance as a Merchant Participant, annual audited financial statements within one hundred and twenty (120) days from the end of the fiscal period to which they refer ~~and unaudited financial statements on a quarterly basis, within forty five (45) days of each quarter end, including the fourth quarter.~~

An applicant or a registered Merchant Participant may apply, in writing, to the Exchange, seeking permission to file unaudited annual financial statements and must provide reasons for the failure to have its financial statements audited. The decision of the Exchange as to whether or not to accept unaudited financial statements, and for what period of time, will be final.

- (iii) ~~The financial statements referred to herein shall be accompanied by a completed “Financial Questionnaire and Report Form” as specified by the Exchange, and an adjusted net capital calculation in the form prescribed by the Exchange.]~~

(b) Extension of Time: The Exchange may agree to extend the time for filing any required financial information if, in the opinion of the Exchange, it is appropriate to do so. Failure to file the required financial information, by the date prescribed without obtaining an extension, or failure to provide the notifications required under this Rule, may result in the imposition of a Summary Fine by the Exchange not to exceed ten thousand dollars (\$10,000) or referral for disciplinary action.

(c) Subsidiaries: If a Merchant Participant is or becomes a subsidiary, then the Person exercising voting control (the “Controlling Entity”) over it may be required to file an agreement to indemnify the Exchange and all other participants for all acts and transactions of the subsidiary. In addition, the Controlling Entity may be required to file financial statements. Failure of the Controlling Entity to agree to file such financial statements will result in immediate suspension of the Merchant Participant.

(d) Approval: The Exchange may approve an application for registration as a Merchant Participant and, in its absolute discretion, place any restrictions or conditions on such registration that the Exchange deems appropriate, including but not limited to those specified in paragraph (g) of this Rule.

(e) Exchange may deny an application for registration as a Merchant Participant if any of the requirements specified in this Rule have not been satisfied, and/or if the Exchange determines that, based on the information disclosed in the application, registration would not be in the best interests of the Exchange, *provided, however*, that prior to denying the application, the Exchange shall provide the applicant with (i) written notice setting forth its intention to deny the application and the grounds for denial and (ii) an opportunity to be heard by a Special Committee appointed in accordance with Rule 7.25 to present evidence as to why the application should be granted. A request to be heard by a Special Committee shall be furnished in writing to the Exchange General Counsel within two (2) Business Days following issuance of the notice of intention to deny the application. The evidence to be considered by the Special Committee shall be presented by written submission in accordance with procedures specified by the Special Committee, and the decision rendered by the Special Committee shall be final.

~~(e) [Merchant Participants shall have a financial position of at least CAD \$2,000,000 of adjusted net capital and a net worth that exceeds the total capacity of all its elevators registered with the Exchange multiplied by \$50.00 (in metric tonnes). Adjusted net capital shall be determined by aggregating the following:~~

~~(A) The sum of the following at 100%;~~

- ~~(i) total equity identified on financial statements,~~
- ~~(ii) long term liabilities excluding loans from partners, officers or shareholders,~~
- ~~(iii) postponement of obligations,~~
- ~~(iv) committed unused long term facilities,~~

~~(v) market value of securities in excess of cost if not otherwise included in (i) above~~

~~————— (B) Less the sum of the following at 100%;~~

- ~~(i) property, plant and equipment~~
- ~~(ii) all other long term assets~~
- ~~(iii) the minimum guaranty fund deposit if the Merchant is also a Clearing Participant,~~

~~————— (C) Less the sum of the following:~~

- ~~(i) Cash deposits at 0% (zero percent);~~
- ~~(ii) Marketable Securities~~
  - ~~A. Canadian or US Government Securities maturing within 1 year at 0% (zero percent) of market value;~~
  - ~~B. all other marketable securities at 20% of quoted market value;~~
- ~~(iii) All inventories at 8% of the lower of cost or market value;~~
- ~~(iv) Accounts Receivable arising in the ordinary course of business, inclusive of a reasonable reserve for doubtful accounts, at 2.5%; and~~
- ~~(v) Other current assets at 100%.]~~

(f) A Merchant Participant must advise the Exchange, in writing, immediately upon becoming aware [that there is an indication that it will fall below the required capital requirements] of the occurrence or likely occurrence of any material adverse change in its financial condition. The Merchant Participant must provide detailed information as to how and why its financial

situation has fallen [~~has~~] or is expected to fall [~~below the minimum capital standards required for its status~~]. The Merchant Participant shall provide the Exchange with such further information as the Exchange may require. Failure to advise the Exchange as required under this Rule is a violation of the Rules and shall result in Disciplinary Action.

- (g) In the event of a material adverse change in financial condition, [~~T~~]the Exchange will review all financial information and shall make such determination as to [~~additional requirements~~] any requirements to be met by the Merchant Participant as it shall, in its absolute discretion, deem reasonable. In the event that the Merchant Participant has Warrants outstanding, the Exchange will immediately call for such additional indemnification as it deems reasonable. If time and circumstances permit, the Exchange may consult with the Merchant Participant and work with it to determine the most appropriate next steps. ~~Without in any way limiting the generality of the foregoing, the Exchange may,~~ in its absolute discretion, determine;
- (i) that the Merchant Participant be permitted to retain its status on conditions that restrict certain privileges of the Merchant Participant status, such as not being permitted to issue Warrants or being permitted to issue Warrants in such amounts as the Exchange deems appropriate, and/or that any Warrants issued be subject to additional amounts of indemnification above those amounts defined in the Rules;
  - (ii) that the Merchant Participant provide additional [~~each~~] Initial Indemnification and/or Additional Indemnification in such amounts and on such terms and conditions, as the Exchange determines reasonable;
  - (iii) that the Merchant Participant provides a postponement agreement, which agreement postpones any claim or demand that a partner, officer, or shareholder may have against the assets of the Merchant Participant. Any postponement agreement shall be in such form as the Exchange shall stipulate;
  - (iv) that the Merchant Participant provides a written guarantee executed by a parent company or other entity. Any guarantee shall be in such form as the Exchange shall stipulate;
  - (v) that the Merchant Participant's status be suspended or terminated, effective on such date(s) as the Exchange determines; or
  - (vi) any combination of the foregoing.
- (h) The right to pursue all claims against any entities on the executed guarantee and/or postponement agreements is strictly that of the Exchange. The President or his designate shall [~~in his or her sole discretion,~~] make all determinations respecting all matters concerning claims against entities that are liable under guarantee and/or postponement agreements and such determinations shall be final. Without limiting the generality of the foregoing, the President or his designate will not be required to provide notice of any hearing considering any matter to any entity, nor [~~shall it~~] be required to give any entity an opportunity to be heard prior to making any determination.
- (i) In the event that the Exchange obtains any funds from any entity under the provisions of a guarantee or postponement agreement, the President or his designate shall distribute such proceedings [~~as follows~~] first[~~ly~~] to pay all fines, dues, assessments and charges due to the

Exchange by the Merchant Participant who was the subject of the agreement, including full payment of any or all legal fees, accountant's charges and any other expenses whatsoever incurred by the Exchange as the President or his designate in his or her absolute discretion may determine.

- (j) All Merchant Participants shall adopt written policies and procedures to be followed by their directors, officers, employees, representatives and agents who are involved in or engage in business activities related to the Exchange, that are adequate, taking into account the nature, scope and complexity of ~~[its]~~ their business, to ensure compliance with the Rules and applicable law.

### 12.13 Warrants – Indemnification

- a. All Warrant Issuers must provide Initial Indemnification and Additional Indemnification as and when requested by the Exchange for all Issuer-Owned and third party Warrants issued and outstanding.

- b. Initial Indemnification is paid by the Warrant Issuer as provided in Rule 12.11 in an amount that is no less than the sum of the base indemnification plus the tonnage surcharge calculated as follows~~[ing]~~:

- (1) ~~for tonnage up to 25,000 metric tonnes — base indemnification plus 10% of base indemnification; and~~

- (2) ~~for tonnage more than 25,000 and less than 50,000 metric tonnes — base indemnification plus 15% of base indemnification; and~~

- (3) ~~for tonnage that is 50,000 metric tonnes or more — base indemnification plus 20% of base indemnification.~~

- (1) Base indemnification for canola is the ~~[nearby]~~ daily settlement price for the nearby contract, or a preliminary settlement price estimate to be determined by the Exchange in its absolute discretion if ~~[the final]~~ such settlement price is not timely available after the close of trading, ~~[marked to market on a daily basis and]~~ adjusted for deliverable grade, and multiplied by the number of metric tonnes for which Warrants are issued and outstanding.

- (2) Tonnage surcharge:

- i. for tonnage up to 25,000 metric tonnes – 10% of base indemnification; and

- ii. for tonnage more than 25,000 and less than 50,000 metric tonnes – 15% of base indemnification; and

- iii. for tonnage that is 50,000 metric tonnes or more – 20% of base indemnification.

~~[AND PROVIDED THAT the base indemnification for canola is the nearby settlement, or a preliminary settlement price estimate to be determined by the Exchange in its sole discretion if the final settlement price is not available within 30 minutes of the close of trading, [marked to~~



~~market on a daily basis and] adjusted for deliverable grade, and multiplied by the number of metric tonnes for which Warrants are issued and outstanding.~~

~~AND PROVIDED under special circumstances, including but not limited to an inverse between the cash market for immediate delivery and the nearby futures prices, additional Initial Indemnification may be required by the Exchange.]~~

- c. The Exchange will mark-to-market each Warrant each Trading Day to ensure that the amount of indemnification held by the Exchange is no less than the sum of the base indemnification, calculated in accordance with paragraph (b)(1) of this Rule, plus the tonnage surcharged, calculated in accordance with paragraph (b)(2) of this Rule. [and] Warrant Issuers will be required to provide Additional Indemnification as market circumstances require. Where a Warrant Issuer is notified by the Exchange that it has to make payment of Additional Indemnification it shall satisfy the requirements no later than 10:00 am on the Trading Day following the notification. Initial Indemnification and Additional Indemnification must be provided by [cash] payment in Canadian dollars via bank wire. Any excess indemnification held by the Exchange shall be returned in accordance with paragraph (g) of this Rule.
- d. The Exchange may require such additional Initial Indemnification or Additional Indemnification that it deems appropriate under special circumstances, including but not limited to an inverse between the cash market for immediate delivery and the nearby futures prices; or periods of high price volatility of nearby futures prices.
- e. ~~[Cash provided for]~~ Initial and/or Additional Indemnification shall be maintained by the Exchange in a segregated account and shall not be commingled with Exchange funds.
- f. Failure to provide Initial or Additional Indemnification as required under these Rules is a violation of the Rules. The Exchange shall take whatever steps it deems appropriate in the circumstances.
- g. Requests for the return of excess indemnification must be received by the Exchange no later than 1:00 pm for processing the next Business Day. Requests received after 1:00 pm will not be processed until the second Business Day after receipt.