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**BY ELECTRONIC TRANSMISSION**

Amended Submission No.11-12  
March 4, 2011

Mr. David A. Stawick  
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: **Amendment to Rule 2.38 -**  
**Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Mr. Stawick:

In Submission No. 11-12 dated March 3, 2011, ICE Futures U.S., Inc. ("Exchange") submits, by written certification, an amendment to Rule 2.38, in accordance with Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6. The Exchange is amending Submission No. 11-12 by rewording the amended language of Rule 2.38, attached as Exhibit A.

As stated in the original Submission No. 11-12, currently, pursuant to Rule 2.38, an Exchange Options Permit Holder has the right to execute, either electronically (away from the trading floor) or on the trading floor, proprietary trades in all Exchange Options Contracts and execute only **from the trading floor** Options Contracts for other persons, such as customers or other floor traders. Rule 2.38 prohibits an Options Permit Holder from executing trades on the trading floor that involve futures contracts.

The provisions of Rule 2.38 were adopted at a time when the Exchange had no electronic trading. The purpose was to prevent a Permit Holder from competing with floor traders who had full memberships and thriving futures and options floor brokerage businesses. It should be noted that combination transactions, which are related trades in both the options contract and its underlying futures contract, can only be executed by a floor trader who holds full trading rights for all contracts (see Rule 4.23).

However, since April 1, 2008, the only way most of the Exchange's futures transactions can be executed is electronically, limiting the floor brokerage business exclusively to options trading.

Most floor traders are only registered with the Commission as floor brokers which allows such traders to trade futures and options contracts for other persons solely from the floor under the supervision of the Exchange. Hence, if there are no futures traded on the floor, the floor broker registration essentially allows only options to be executed. However, some floor brokers are also registered as associated persons of a futures commission merchant ("FCM") or introducing broker ("IB"). Usually associated persons trade from an office of the FCM or IB employing them as the FCM or IB is responsible for supervising them. Thus, if a floor broker is registered as an AP and supervised on the floor of the Exchange by the FCM or IB, he should be able to enter futures orders for customers into the electronic trading platform from the trading floor—even if he only held an option permit rather than a full trading permit, because he is relying on the AP status, rather than the permit, for his trading. However, Exchange Rule 2.38 does not allow for this situation.

The amendment to Rule 2.38 allows an Exchange Options Permit Holder who is registered as an associated person to electronically submit futures orders for customers from the trading floor.

The Exchange certifies that the amendment complies with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder.

The amendment was adopted by the Exchange's Board of Directors on March 2, 2011 and will become effective on March 9, 2011. The rewording of the amendment is authorized by the Board as a non-material change. No substantive opposing views were expressed by members or others with respect to the amendment.

If you have any questions or need further information, please contact me at [jill.fassler@theice.com](mailto:jill.fassler@theice.com) or 212-748-4084.

Sincerely,

Jill S. Fassler  
Vice President  
Associate General Counsel

cc: Division of Market Oversight  
New York Regional Office

## EXHIBIT A

(In the text of the amendments below, additions are underlined and deletions are bracketed and lined out.)

### Rule 2.38. Exchange Trading Permits

#### (1) Authorization

(a) The Board of Directors may issue the following NYBOT Trading Permits:

(i) FINEX<sup>®</sup> Trading Permits, which authorize the Permit Holder to trade Financial Contracts and Index Contracts;

(ii) Option Trading Permits, which authorize the Permit Holder to trade all Exchange Options; and

(iii) FINEX-Europe Trading Permits, which authorize the Permit Holder to trade only those Commodity Contracts that are listed by the Exchange for trading in Dublin, Ireland.

#### (2) Trading Limitations

(a) A Trading Permit issued hereunder authorizes the Permit Holder to:

(i) enter into proprietary trades in those Commodity Contracts which are authorized by the particular type of Permit held; and

(ii) execute from the Floor of the Exchange, for the account of other Persons, those Commodity Contracts which are authorized by the particular type of Permit held.

(b) A Permit Holder shall not execute or attempt to execute, or participate in any manner in any activity on the Floor of the Exchange involving Commodity Contracts other than those Commodity Contracts that are authorized by the Trading Permit held by him.

(c) A Permit Holder shall not represent by word or conduct that he is a Trading Member.

(d) Notwithstanding the above, a Permit Holder who is also registered with the CFTC as an associated person, may submit to the Exchange's electronic trading system trades for customer (but not for proprietary) accounts in Commodity Contracts which are not authorized by the particular type of Permit held, subject to compliance by the associated person with all applicable law.

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