

ICE

Atlanta Calgary Chicago Houston London New York Singapore

Submission No. 13-47  
May 30, 2013

Ms. Melissa Jurgens  
Assistant Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

CONFIDENTIAL TREATMENT  
REQUESTED

**Re: New Credit Index Market Maker Program**  
**Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)**

Dear Ms. Jurgens:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6(a), ICE Futures U.S., Inc. ("Exchange") self certifies the new Credit Index Market Maker Program ("Program") described in Exhibit A hereto, under which participants will receive a rebate of Exchange and Clearing fees for maintaining a current bid and offer in specified credit index futures contracts. The Program will commence on June 17, 2013 with the launch of trading in Credit Index futures contracts by the Exchange.

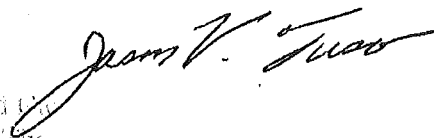
The Exchange certifies that the Program complies with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. In particular, the amendments comply with Core Principle 4 (Prevention of Market Disruption), Core Principle 9 (Execution of Transactions) and Core Principle 12 (Protection of Market Participants). The Program is structured so that it does not create incentives for participants to engage in market abuses such as manipulative trading or wash sales. Furthermore, the Program does not impact order execution priority or otherwise give participants any execution preference or advantage. Participants in the Program are subject to the Exchange's rules which prohibit abusive trading practices as set forth in Chapters 4 and 27 of the Rules, which are enforce by the Market Regulation Department.

The Exchange is not aware of any substantive opposing views to the Program and further certifies that a copy of this submission has been posted on the Exchange's website at <https://www.theice.com/notices/RegulatoryFilings.shtml>, (consistent with the petition for Confidential Treatment filed contemporaneously with the Commission).

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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,



Enc.  
cc: Division of Market Oversight  
New York Regional Office

Jason V. Fusco  
Assistant General Counsel  
Market Regulation

Exhibit A  
**ICE Futures U.S., Inc. Credit Index Futures Market Maker Program**

**Program Purpose**

The purpose of the Program is to provide liquidity to the central limit order book in the covered products; this increased liquidity will benefit all participants in the marketplace.

**Product Scope**

Credit Index Futures and Options Contracts.

**Eligible Participants**

Paragraph Redacted

**Program Term**

The term of the Program shall end at the end of the sixth full calendar month following the initial listing of Credit Index Contracts by the Exchange, unless extended by the Exchange. The Exchange reserves the right to amend the terms of, or end, the Program and/or to terminate any participant at any time prior to that date.

**Obligations**

Participants are required to use best efforts to maintain in specified Credit Index Contracts a current bid and offer, at a specified minimum spread and quantity, for the number of covered hours and during a specified trading window each day, except during times when normal market conditions do not prevail. Participants must execute such agreements as the Exchange requires with respect to the Program and provide the Exchange with information acceptable to the Exchange detailing Participants' trading activity under the Program. The Exchange may require additional third party verification reports.

**Program Incentives**

Paragraph Redacted

**Monitoring and Termination of Status**

The Exchange shall monitor trading activity and Participants' performance and retains the right to revoke Participant's status if it concludes from such review that a Program Participant has failed to meet its obligations or no longer meets the eligibility requirements of this Program.

CONFIDENTIAL TREATMENT  
REQUESTED

ICE

Atlanta Calgary Chicago Houston London New York Singapore

55 East 52<sup>nd</sup> Street  
New York, New York 10055

May 30, 2013

**BY ELECTRONIC MAIL**

Assistant Secretary of the Commission  
FOIA, Privacy and Sunshine Acts Compliance  
Commodity Futures Trading Commission  
Three Lafayette Centre, 8<sup>th</sup> Fl.  
1155 21st Street, N.W.  
Washington, DC 2058

**Re: FOIA Confidential Treatment Request**

Dear FOIA Compliance Staff:

On May 30, 2013, ICE Futures U.S., Inc. ("Exchange") filed Submission No. 13-47 ("Submission"), a self certification of the Exchange's new Credit Index Market Maker Program (the "Program"). As discussed more fully below, Appendix A to the Submission ("Appendix A") contains confidential and proprietary commercial and financial information of the Exchange which is exempt from disclosure pursuant to Section 552(b)(4) of the Freedom Of Information Act ("FOIA") and Commission Regulation 145.9(d). Copies of the Submission and Appendix A accompany this request. Pursuant to Commission Regulation 145.9(d)(1)(ii), the Exchange requests that Appendix A and its contents receive confidential treatment in perpetuity. IFUS further requests that the Commission notify the undersigned upon receiving any FOIA request, or any other court order, subpoena or summons for Appendix A. The Exchange also requests that it be notified if the Commission intends to disclose Appendix A to Congress or to any other governmental agency or unit pursuant to Section 8 of the Commodity Exchange Act ("CEA").

**DETAILED WRITTEN JUSTIFICATION**

Section 552(b)(4) of the FOIA exempts from the disclosure requirements of the FOIA "trade secrets and commercial or financial information obtained from a person and privileged or confidential". The FOIA contains no definition of "privileged" or "confidential". Some courts have found there to be a presumption of confidentiality for commercial information that is (1) provided voluntarily and (2) is of a kind the provider would not customarily make available to the public. See Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 878 (D.C. Cir. 1992) (en banc); see also Center for Auto Safety v. National Highway Traffic Safety Administration, 244 F.3d 144, 147 (D.C. Cir. 2001) (applying tests from Critical Mass). Even if there were no presumption of confidentiality, the information in Appendix A still would be considered "confidential" because the Exchange would not ordinarily disclose it to the public and disclosure would cause substantial harm to the competitive position of the Exchange. In Gulf & Western Industries, Inc. v. U.S., 615 F.2d 527 (D.C. Cir. 1979), the Court of Appeals concluded that information is confidential for purposes of the FOIA if (i) it is not of the type normally released to the public by the submitter and (ii) the information is of the type that would cause substantial

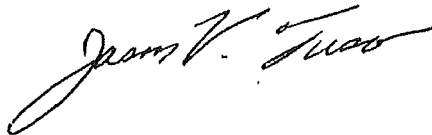
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competitive harm if released. There is no requirement that "competitive harm" be established by a showing of actual competitive harm. Rather, "actual competition and the likelihood of substantial competitive injury is all that needs to be shown." Gulf & Western Indus., Inc. v. U.S., 615 F.2d at 530. Thus, in National Parks and Conservation Association v. Kleppe, 547 F.2d 673 (D.C. Cir. 1976), the Court of Appeals concluded that the disclosure of certain financial information, including costs and price-related items, was likely to cause substantial harm to the disclosing party's competitive position. Such disclosure, if required, would provide competitors with valuable information relating to the operational strengths and weaknesses of the disclosing company. Such competitive harm may result from the use of such information either by direct competitors or by persons with whom one is negotiating. See American Airlines, Inc. v. National Mediation Board, 588 F.2d 863, 868 n.13 (2d Cir.1978). It is also clear that the exemption was intended to prevent the fundamental unfairness that can result from one side having confidential information about the other in a business context. Cf. National Parks, *supra*, at 678 n.18.

The information set forth in Appendix A was voluntarily provided to the Commission to support the Exchange's self certification that the Program was in compliance with applicable provisions of the CEA and the regulations thereunder. This information is not of a type customarily made available to the public by the Exchange. The Program took significant time, analysis and expense to develop and is an integral part of the Exchange's competitive strategy for growing the agricultural futures markets. Consequently, disclosure of the salient terms holds the potential for significant competitive harm to the Exchange. Additionally, it should be noted that there is no regulatory requirement that such information be disclosed.

For all the foregoing reasons, the Exchange requests that the Commission grant the Exchange's request for confidential treatment for Appendix A and the information contained therein. 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: Secretary of the Commission  
Division of Market Oversight  
New York Regional Office