

ICE

Atlanta Calgary Chicago Houston London New York Singapore

Supplemental Submission No. 13-57
July 11, 2013

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

CONFIDENTIAL TREATMENT
REQUESTED

Re: New Foreign Trader Program
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)

Dear Ms. Jurgens:

Pursuant to Commission Regulation 40.6(a), ICE Futures U.S., Inc. ("Exchange") submitted Submission No. 13-57 on June 27, 2013 to self certify the Exchange's new Foreign Trader Program ("Program") which becomes effective on July 16, 2013. Submitted at the request of the Commission, a revised copy of the Program terms and conditions is attached as Exhibit A.

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 redacted 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).

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

Sincerely,



Jason V. Fusco
Assistant General Counsel
ICE Futures U.S, Inc.

Enc.

cc: Division of Market Oversight
New York Regional Office

sent.

EXHIBIT A

ICE Futures U.S. Foreign Trader Program

Program Purpose

The purpose of the Program is to incentivize participants to increase central limit order book liquidity in the products listed below; this enhanced liquidity will benefit all participants in the marketplace.

Product Scope

Sugar No. 11, Coffee "C", Cotton No. 2, Cocoa, FCOJ and Sugar No. 16 contracts, USDX and currency pair futures contracts and Russell Stock Index contracts.

Eligible Participants

In order to be considered for selection into the Program, potential participants must be located outside North America.

[PARAGRAPH REDACTED]

Program Term

The start date for the Program shall be the Effective Date; the end date shall be December 31, 2013.

Obligations

Participants are required use their best efforts to maintain a designated bid and offer in the products for which they are eligible to receive predetermined incentives.

[PARAGRAPH REDACTED]

Program Incentives

[PARAGRAPH REDACTED]

Monitoring and Termination of Status

The Exchange shall monitor trading activity and Participants' performance and shall retain the right to revoke Participants' status if it concludes from 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

30 East 52nd Street
New York, New York 10022

July 11, 2013

BY ELECTRONIC MAIL

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

Re: FOIA Confidential Treatment Request

Dear FOIA Compliance Staff:

On July 11, 2013, ICE Futures U.S., Inc. ("Exchange") filed Submission No. 13-57S ("Submission"), a supplement to the Exchange's self certification of the new Foreign Trader 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

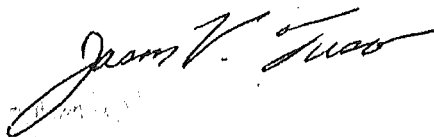
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competitive harm if released. There is no requirement that "competitive harm" be established by a showing of actual competitive harm. Rather, "actual competition and the likelihood of substantial competitive injury is all that needs to be shown." Gulf & 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.

Sincerely,



Jason V. Fusco
Assistant General Counsel
Market Regulation

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