

C.F.T.C.  
OFFICE OF THE SECRETARIAT  
2010 SEP 10 PM 3 00

ICE

Atlanta Calgary Chicago Houston London New York Singapore

World Financial Center  
One North Wall Street  
New York, New York 10048

**BY ELECTRONIC TRANSMISSION**

Submission No.10-36  
September 10, 2010

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: **Amendments to Definition of "Public Director" in Annex D of Bylaws and Chapter 1 of the Rules and Rule 7.08(b)(i)(A)(1) - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Mr. Stawick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulations 40.2 and 40.6, ICE Futures U.S., Inc. ("Exchange") submits, by written certification, amendments to the definition of "Public Director" in Annex D of the Bylaws and Chapter 1 of the Rules and Rule 7.08(b)(i)(A)(1), attached as Exhibit A.

**Definition of "Public Director"**

The initial set of bylaws adopted in 2007 in connection with the acquisition of the Exchange by the IntercontinentalExchange, Inc. defined a "Public Director" as a person who met the definition that was proposed by the Commission at that time and who also met the independence requirements of the NYSE for directors serving on the boards of listed companies. Since that time the Commission has adopted a final definition which is different than the one that was proposed and which also differs from the NYSE standard. The Exchange is required only to meet the Commission's definition and is not subject to the NYSE standard. Therefore, to avoid confusion with conflicting standards, the provision requiring that a public director meet NYSE standard has been deleted both from the Bylaws and Chapter 1 of the Exchange's Rules.

Rule 7.08(b)(i)(A)(1)

Licensing Rule 7.08(b)(i)(A)(1) has been amended to increase the amount of the current required outstanding performance bond or letter of credit. Each Exchange coffee and cocoa warehouse operator is required to post a performance bond or letter of credit that is used by the Exchange when the warehouse operator is unable to pay for the movement of certificated stock to another Exchange licensed warehouse and/or damage claims made by owners of certificated stock. The cost of moving Exchange certificated coffee or cocoa exceeds the currently required performance bond or letter of credit. Therefore, the required amount of the bond or letter of credit has been increased.

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

The amendments were adopted by the Exchange's Board of Directors on September 8, 2010. The amendments to the definition of "Public Director" will become effective on September 14, 2010. The amendments to Rule 7.08 will become effective on September 14, 2010 for any new coffee and cocoa warehouse operators and for the next renewal term of May 1, 2011 through April 30, 2010 for currently licensed coffee and cocoa warehouse operators. No substantive opposing views were expressed by members or others with respect to the amendments.

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.)

### Public Director

The term "Public Director" shall mean any person who ~~[(i)]~~ qualifies as a "public" director within the meaning of the rules/regulations ~~[proposed]~~ and interpretations issued by the CFTC from time to time ~~[as of September 14, 2006]~~ for determining qualifications of public directors, ~~[or, if the CFTC adopts any such rules, within the meaning of such rules in effect from time to time and (ii) the independence requirements of the New York Stock Exchange for directors serving on the boards of listed companies, as amended from time to time.]~~

### Rule 7.08. Warehouse and Tank Facility Operators

To be eligible for an Exchange license or renewal thereof, a warehouse operator must:

\* \* \*

(b) submit to Commodity Operations proof in a form acceptable to the Warehouse and License Committee of the following minimum insurance or bond coverage and maintain such coverage in effect, as follows:

(i) for cocoa and coffee warehouse operators,

(A)(1) Outstanding performance bond coverage or an unconditional irrevocable letter of credit from a financial institution approved by the Exchange (an "Approved Financial Institution") in the amount of at least the following:

| Amount                | Exchange Licensed Storage Space       |
|-----------------------|---------------------------------------|
| <del>[\$100,000</del> | <del>Up to 250,000 Sq. Ft.</del>      |
| <del>\$175,000</del>  | <del>250,001 500,000 Sq. Ft.</del>    |
| <del>\$225,000</del>  | <del>500,001 750,000 Sq. Ft.</del>    |
| <del>\$250,000</del>  | <del>750,001 Above]</del>             |
| <u>\$125,000</u>      | <u>Up to 100,000 Sqft.</u>            |
| <u>\$200,000</u>      | <u>100,001 through 250,000 Sq.ft.</u> |
| <u>\$275,000</u>      | <u>250,001 through 500,000 Sq.ft.</u> |
| <u>\$325,000</u>      | <u>500,001 Sq.ft. and above.</u>      |

[REMAINDER OF RULE UNCHANGED]