



**World Financial Center  
One North End Avenue  
New York, New York 10282**

**BY ELECTRONIC TRANSMISSION**

Submission No. 12-60  
October 1, 2012

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 Section 3 of Annex A of the Exchange's Bylaws and Exchange Rules 3.02, 4.02, 6.07, 6.08, 21.02 through 21.04, 21.15 and 27.33  
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)**

Dear Sir or Madam:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the "CEA") and Commission Regulations 40.6(a), ICE Futures U.S., Inc. ("IFUS" or "Exchange") submits by written certification amendments to Section 3 of Annex A of the Exchange's Bylaws and Exchange Rules 3.02, 4.02, 6.07, 6.08, 21.02 through 21.04, 21.15 and 27.33, as set forth in Exhibit A.

Described in detail below, the Exchange is adopting the amendments to comply with new Commission Regulations 38.1 *et seq.* which apply to the designation and operation of contract markets and became effective on August 20, 2012. The amendments: (i) impose on FCM and IB members financial requirements and standards; (ii) prohibit disruptive trading practices and money passes; (iii) expand recordkeeping requirements; (iv) establish a procedure to summarily deny market access to any person where the Vice President of Market Regulation determines that to do so is in the best interest of the Exchange; (v) establish a review procedure whereby a market participant that has been summarily denied access may present evidence to the Business Conduct Committee ("BCC") seeking to overturn the decision; (vi) establish composition requirements for disciplinary panels whereby, among other things, the Chairperson of each panel will be a public member of the committee; and (vii) eliminate the Exchange's Appeals Committee.

**Section 3 of Bylaw Annex A**

New Commission Regulation 38.603 requires designated contract markets ("DCMs") to have rules which address: (i) appropriate minimum financial standards for intermediaries; (ii) the segregation of customer and proprietary funds; (iii) custody and investment standards for customer funds; (iv) intermediary default procedures; and (v) related recordkeeping. Amendments to Section 3 of Annex A address the foregoing by requiring Exchange Members who are Futures Commission Merchants and Introducing Brokers to comply with relevant Commission Regulations regarding capital requirements, treatment of customer funds and related recordkeeping.

#### Rule 4.02

New Commission Regulation 38.152 requires DCMs to prohibit abusive trading practices on its markets by members and market participants. The regulation also provides a list of practices which must be prohibited by DCMs. Amendments to Rule 4.02 add two abusive trading practices not currently addressed by expressly prohibiting (1) money passes and (2) any trading, practice or conduct that is intended to disrupt the orderly execution of transactions, unduly influence market prices or mislead other market participants.

#### Rule 21.00

The amendment to Rule 21.00 eliminates a reference to the definition of “Public Director” in old Part 38 which is no longer valid.

#### Rules 21.03 (b) and 21.08

New Commission Regulation 38.702 requires DCM disciplinary panels to meet the composition requirements of Part 40. Amendments to Rule 21.02(b) and 21.08 change the Exchange’s disciplinary committee composition requirements to comply with proposed amendments to Part 40, which have not yet become final, by providing that the such committees be chaired by an individual who would qualify as a public director as that term is defined in Commission Regulations.

#### Rules 21.02(f), 21.03(f) and 27.33

The guidance for Core Principle 13 (Disciplinary Procedures) in new Appendix B to Part 38, provides that a DCM may take emergency disciplinary action and impose sanctions upon a reasonable belief that such immediate action is necessary to protect the best interest of the marketplace. Amendments to Rules 21.02 and 21.03 establish the procedure and review process for such action. The amendments provide that the Vice President of Market Regulation may deny any person access to the trading floor, electronic trading system (“ETS”) and/or any Exchange market for a period of 60 days upon a good faith determination that there are substantial reasons to believe that such immediate action is necessary to protect the best interests of the Exchange. The amendments also provide for an expedited review before the Exchange’s Business Conduct Committee. Conforming amendments were made to Electronic Trading Rule 27.33 which provides for termination of ETS access.

#### Rule 21.04

New Commission Regulation 38.707 provides that DCMs have the ability to require persons within its jurisdiction who are called as witnesses to participate in hearing procedures and produce evidence. Accordingly, amendments to Exchange Rule 21.04 extends the Exchange’s power to compel testimony and production of documents to non-member market participants.

Rules 3.02 and 21.15

Amendments to Rules 3.02 and 21.15 delete the Exchange's Appeals Committee and the provisions for appealing an expulsion from the Exchange. In all instances, the final decision in a disciplinary action shall be made by the Exchange's Business Conduct Committee and such decision shall only be appealable to the Commission in accordance with Part 9.

Rules 6.07 and 6.08

New Commission Regulation 38.254 provides that DCMs must have rules that require traders in its contracts to keep records of their trading activity. The amendment to Regulatory Rule 6.07 requires all Persons (as such term is defined in the Rules) to make and retain records as prescribed by the CFTC, including records of Cash Commodity Transactions. The amendments to Regulatory Rule 6.08 requires all futures commission merchants, introducing brokers and equivalent foreign intermediaries to generate order tickets when receiving a customer order. Previously, both rules had applied only to Exchange Members.

The amendments shall become effective with the start of trading for trade date Wednesday, October 17, 2012.

Certifications

The Exchange certifies that the rules and amendments comply with the requirements of the CEA and the rules and regulations promulgated thereunder. No substantive opposing views were expressed by members or others with respect to the rules or the amendments. The Exchange further certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website at (<https://www.theice.com/notices/RegulatoryFilings.shtml>).

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  
New York Regional Office

## EXHIBIT A

### Rule 21.00. Definitions

For the purposes of this Chapter, the following terms shall have the following meanings:

\* \* \*

#### (e) Public Committee Member

The term “Public Committee Member” shall mean an individual who would qualify as a public director as that term is defined in ~~[Appendix B(15)(b)(2)(i) and (ii) of Part 38 of the]~~ CFTC Regulations.

### Bylaw Annex A

#### Section 3. Financial Standards, ~~[ and ]~~ Reporting Requirements and Treatment of Customer Funds.

(a) The Board of Directors may from time to time adopt minimum financial standards and related reporting requirements to be complied with by Trading Members, Permit Holders, Member Firms and Lessees as a continuing condition to exercising or maintaining such status as a Trading Member, Permit Holder, Member Firm or Lessee, and, for purposes of imposing such standards and requirements, the Board of Directors may create such categories as it deems necessary or appropriate.

(b) Each Member Firm that is registered with the CFTC as a Futures Commission Merchant or an Introducing Broker shall maintain minimum capital, comply with reporting requirements and use, segregate, invest and hold customer funds in accordance with, and otherwise comply with Commodity Futures Trading Commission Regulations 1.10(a)(3), 1.10(b), 1.10(c), (d), (e) and (f) 1.12, 1.14, 1.15, 1.17, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, 1.27 and 1.28~~[17 of the Regulations promulgated under the Commodity Exchange Act.]~~ as applicable to it, provided that (i) any requirement ~~[specified in said Sections 1.10 or 1.17 concerning]~~ which concerns the filing with or reporting to the Commission or the approval of the Commission shall not be considered a requirement of the Corporation; and (ii) any reference to a “designated self-regulatory organization” or “self-regulatory organization of which an FCM is a member” shall mean the Corporation unless the Corporation has notified any such Member Firm that this term shall mean another “self-regulatory organization”.

#### Rule 3.02. Reserved ~~[Appeals Committee]~~

~~The Appeals Committee shall be an Exchange Committee and shall consist of eight (8) NYBOT Members or employees of Member Firms and two (2) Public Directors of the Board, none of who are members of the Business Conduct Committee. The Appeals Committee shall have the authority to decide any appeal of an order of expulsion issued by a Hearing Panel pursuant to Rule 21.25.]~~

#### Rule 4.02. Trade Practice Violations

In connection with the placement of any order or execution of any Transaction, it shall be a violation of the Rules for any Person to:

\* \* \*

(g) Prearrange the execution of transactions in Exchange products for the purpose of passing or transferring equity between accounts.

(h) Engage in any trading, practice or conduct that is intended to disrupt the orderly execution of transactions, unduly influence market prices or mislead other market participants.

#### **Rule 6.07. General Requirements**

(a) Each ~~[Member]~~Person shall make and file reports and maintain records in accordance with the rules and regulations of, and in such manner and form and at such times as may be prescribed by, the CFTC, showing the details and terms of all Transactions~~[, in Cash Commodities Transactions,]~~ involving Exchange Futures or Option Contracts consummated on the Exchange or subject to the Rules and all related Cash Commodity Transactions. All such records must [tø] be in permanent form, showing the parties to all such Transactions, including the Persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said Transactions are fulfilled, discharged or terminated. Such record shall be kept for a period of five (5) years from the date thereof, or for a longer period if the CFTC shall so direct, and shall at all times be open to the inspection of any representative of the CFTC or the United States Department of Justice.

\* \* \*

(c) Each ~~[Member]~~Person shall make and file reports with the Exchange, and maintain such records for such length of time, in such manner and form and at such times as the Rules or the Board may prescribe. Such records shall at least consist of the following if applicable:

**[REMAINDER OF RULE UNCHANGED]**

#### **Rule 6.08. Order Ticket Requirements**

\* \* \*

(b)(i) Each ~~[Member]~~Person who is a Futures Commission Merchant,~~[or]~~ an introducing broker or an equivalent foreign intermediary receiving a Customer's or Option Customer's order shall immediately upon receipt thereof prepare a written record of such order in non-erasable ink, including the account identification and order number, and shall record thereon, by time-stamp or other timing device, the date and time to the nearest minute, the order is received, and in addition, for Option Customer's orders the time, to the nearest minute, the order is transmitted for execution. When transmitting a Customer's or Option Customer's order to the Floor of the Exchange, such ~~[Member]~~Person must transmit the account identification to the Member receiving the order. Corrections or additions to the information recorded on the written record of the order shall be made in a manner that does not obliterate or otherwise make illegible the originally recorded information.

**[REMAINDER OF RULE UNCHANGED]**

#### **Rule 21.02. Compliance Staff — Powers and Duties**

\* \* \*

(f) The Vice President or his delegate, upon a good faith determination that there are substantial reasons to believe that such immediate action is necessary to protect the best interests of the Exchange, may order that any Person be denied access to the Trading Floor, any or all Exchange Markets and/or denied access to the Exchange's electronic trading system for a period not to exceed 60 days. Notice shall promptly be given to the Person subject to the access denial. Such notice shall state

the reasons for the denial, the effective date, time and the duration of the denial and advise the Person of his right to an expedited hearing before the Exchange's Business Conduct Committee in accordance with the procedures set forth in Rule 21.03(f) by filing a request with the Vice President within 10 Business Days after receiving the notice.

### **Rule 21.03. The Business Conduct Committee**

(a) The Business Conduct Committee shall have the power to direct that an investigation of any suspected violation of the Rules be conducted by the Compliance staff, pursuant to Rule 21.02, shall have the authority to hear any summary denial of access pursuant to Rule 21.02, and shall have the authority to hear any matter referred to it by the Executive Floor Committee. ~~[, provided, however, that] any member of the Business Conduct Committee who is also a member of the Executive Floor Committee and participated in such matter pursuant to Rule 21.25, shall be disqualified from serving on any panel of the Business Conduct Committee hearing such matter.]~~

(b) The Business Conduct Committee shall act through a subcommittee chaired ~~[either by the Chairman or Vice Chairman of the Business Conduct Committee]~~ by a Public Committee Member. Each subcommittee shall be comprised of no less than ~~[seven (7)]~~ five (5) individuals, such that ~~[four (4)]~~ at least two are Members or employees of Member Firms and ~~[three (3)]~~ at least two (2) are not Members or employees of Member Firms. Three (3) ~~[Five (5)]~~ subcommittee members shall constitute a quorum so long as the ~~[re]~~ subcommittee chair and ~~[are in attendance]~~ at least ~~[three (3) who are]~~ one (1) Member[s] or employee[s] of a Member Firm[s] is in attendance. ~~[, at least one (1) of whom must qualify as a Public Committee Member. Notwithstanding the provisions of this paragraph, each subcommittee shall be comprised of members who possess sufficiently diverse interests so as to ensure fairness in accordance with CFTC Regulation 1.64.]~~ Any committee member who has previously participated in a matter pursuant to Exchange Rule 21.25 or paragraph (f) of this Rule shall be disqualified from serving on a subcommittee hearing such matter.

\* \* \*

(f)(i) Any hearing to review a summary access denial pursuant to Rule 21.02(f) shall be conducted by a subcommittee of the Business Conduct Committee within 10 days of receipt of a request.

(ii) The subcommittee shall conduct a de novo review solely on the issue of the denial of access and shall determine the procedures to be followed, except that the following shall apply in every case: (1) at the hearing, the Compliance staff shall present such evidence and considerations as it deems relevant to show that the continued denial of access is necessary to protect the best interest of the Exchange; (2) the Person denied access shall be allowed to appear personally and/or to be represented by legal counsel or any other representative of his choosing and, either personally or through such representative, to present witnesses and documentary evidence and to cross-examine witnesses; (3) the formal rules of evidence shall not apply, and the subcommittee shall be free to accept or reject any and all evidence as it considers proper; and (4) a substantially verbatim record capable of being transcribed shall be made of the proceeding, provided, however, that such record need not be transcribed unless the Person denied access requests such transcript or the Exchange so determines.

(iii) The subcommittee may affirm, rescind or modify the summary access denial, provided, however, under no circumstances may a summary denial of access pursuant to Rule 21.02(f) exceed 120 days.

(iv) Promptly following any hearing the subcommittee shall render a written decision based on the weight of the evidence contained in the record of the proceeding and shall provide a copy of the decision to the Member. The decision shall include (i) a summary of the charges ; (ii) a summary of the answer or other response; (iii) a brief summary of the evidence produced at the hearing; (iv) a statement of findings and conclusions with respect to each charge, including any specific rules found to have been violated; and (v) a declaration of the subcommittee's findings and order. The decision of the hearing panel shall constitute the final action of the Exchange with respect to the summary access denial.

#### **Rule 21.04. Power to Compel Testimony [~~by Members~~] and Production of Documents**

The President, the Board, the Vice President, the Compliance staff, any committee or subcommittee and any panel of any committee or subcommittee, engaged in any investigation of, examination into, or hearing or appeal involving any matter pursuant to the Rules shall have the power to summon any Member, [~~and~~] any employee of any Member and any non-member market participant to appear before him or it, to give testimony under oath or in any other manner required by him or it and to produce any documents, books or records. A Firm so summoned shall appear by a partner, officer or responsible employee fully acquainted with the relevant facts. If any Member, [~~or~~] any employee of any Member, or non-member market participant fails to obey any such summons or to give any such testimony or to produce any such documents, books or records, such failure shall constitute a violation of this Rule [~~by such Member~~] and shall be reported to the Business Conduct Committee for appropriate action.

#### **Rule 21.08. Selection of Hearing Panel**

(a) Formal hearings on any alleged Rule violation shall be conducted by a Hearing Panel selected by the Chairman of the Business Conduct Committee from members of the Business Conduct Committee who did not receive and review the written report concerning such alleged violation as provided for in Rule 21.03 (the "Hearing Panel"). Subject to the provisions of Rule 21.03, paragraphs (b) and (c), the Chairman of the Business Conduct Committee, in his sole discretion, shall appoint a Hearing Panel comprised of [~~either~~] three (3) individuals which shall be chaired by a Public Committee Member. At least one (1) individual on each Hearing Panel shall be a Member or employee of a Member Firm. [~~or five (5) members as follows:~~

(i) ~~a panel of three (3) members shall consist of two (2) who are Members or employees of Member Firms and one (1) who is a Public Committee Member; or~~

(ii) ~~a panel of five (5) members shall consist of four (4) who are Members or employees of Member Firms and one (1) who is a Public Committee Member.]~~

#### **Rule 21.15. [~~Expulsion of a Member; Permissible Appeal~~] Reserved**

\* \* \*

~~[(c) In the event the Respondent appeals the order of expulsion, the Office of the General Counsel shall promptly notify the Chairman of the Appeals Committee, who shall appoint a subcommittee to hear and determine the appeal. The subcommittee of the Appeals Committee shall be no more than five (5) and no less than three (3) members, provided, however, that more than fifty percent (50%) of the members~~

~~shall be comprised of individuals representing participant interests other than that of the Respondent who is appealing the order of expulsion. Notwithstanding the foregoing, at least one (1) member of the subcommittee of the Appeals Committee shall be an individual who is a Public Committee Member.]~~

[REMAINDER OF RULE UNCHANGED]

### **Rule 27.33. Termination of ETS Connection**

Subject to the limitations and requirements of Rule 21.02(f), the Vice President of Market Regulation or his delegate ~~[The Exchange, at its sole discretion]~~, shall have the right to summarily deny electronic trading access to~~[terminate the connection of]~~ any Clearing Member or Direct Access Member ~~[User, or the access of any eBadge. Additionally, the Exchange, at its sole discretion,]~~ and shall have the right to direct a Clearing Member ~~[, User or Responsible Individual with Direct Access]~~ to immediately deny any Person ~~[terminate the]~~ access to ETS ~~[of any User]~~.