

 **ICE FUTURES U.S.**  
World Financial Center  
One North End Avenue  
New York, New York 10282

**BY ELECTRONIC TRANSMISSION**

Submission No. 12-65  
October 1, 2012

Mr. David 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: New and Amended Definitions and Membership Rules; Direct Access Members  
-Submission Pursuant to Regulation 40.6(a)**

Dear Mr. Stawick:

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, new and amended definitions, new Rule 2.08, amendments to Rules 2.28, 27.00, 27.02 through 27.04, 27.06 through 27.09, 27.12, 27.12A, 27.19 and Appendix I of Chapter 27, attached hereto as Exhibit A.

As described in detail below, the new and amended definitions and rules codify the Direct Access Member eligibility criteria, application process and ongoing obligations. Additional corresponding amendments incorporate the term Direct Access Member into various rules in Chapter 27 (in place of the former definitions of “User with Direct Access”) and specify the obligations of Clearing Members with respect to their customers that have direct access or order routing access to the Electronic Trading System (“ETS”).

**Direct Access Member**

The Exchange recently amended the definition of the term “Member” to include those market participants which have requested and been approved for a direct connection to the Exchange’s ETS (see Submission 12-33). The Exchange is now formally codifying a member category, application process, eligibility criteria and ongoing obligations for such participants, who are identified as “Direct Access Members.” Direct Access Members do not own any type of membership in the Exchange; the category is simply descriptive of the manner in which these participants connect to the ETS. As Members, however, they are eligible for lower margin rates and some of the other benefits of being a Member under the Rules.

Amendments to Rules 2.08 establish eligibility requirements and the formal application process for Direct Access Members; and amendments to Rule 2.28 establish the continuing obligations for Direct Access Members. In addition, the terms “Direct Access” and “Direct Access Member” are

being added as definitions in the Definitions Chapter of the Rules and the defined term “Member” and “Membership” are being amended to include Direct Access Members, in the definition of the term Member while making expressly clear in the definition of the term Membership that the rights of a Direct Access Member do not constitute an Exchange “Membership” of any kind.

### **Clearing Member Obligations**

Exchange Rule 27.04 sets forth the obligations of Exchange Clearing Members with respect to the ETS. In connection with the formal definition of Direct Access Members, the amendments to Rule 27.04 redefine those obligations providing that Exchange Clearing Members are responsible: (i) for the financial obligations of Direct Access Members which have been authorized by the Clearing Member and for each customer to which they have provided with order routing access to the ETS; (ii) to clear all trades of Direct Access Members and order routing customers which have been authorized by the Clearing Member; (iii) to take any action to assist the Exchange; (iv) to suspend or terminate any Direct Access Member who no longer meets the requirements of a Direct Access Member; (v) to disconnect any Direct Access Member or customer that threatens liquidity, violates any Exchange Rule or the Commodity Exchange Act, or fails to cooperate with an Exchange investigation; and (vi) to utilize controls provided by the Exchange which have been designed to facilitate the management of financial risk.

### **Additional Corresponding Amendments**

The Exchange also made the following conforming amendments::

#### Amendments to Rule 27.00

Electronic Trading Rule 27.00 sets forth the scope of Chapter 27. The amendment to the rule expressly provides that the Chapter will cover utilization of the ETS through both Direct Access and Order Routing.

#### Amendments to Rule 27.02

Electronic Trading Rule sets forth the definitions applicable to Chapter 27. The amendments eliminate the definition of the terms “Direct Access” which was moved into the Definitions Chapter of the Rulebook and “User” which has been deleted and is no longer used in the Chapter. In addition, the amendments add a definition for the term “Order Routing.”

#### Amendments to Rule 27.03

Electronic Trading Rule 27.03 sets forth the criteria and procedures for Direct Access to the ETS. The amendments broaden the scope of the chapter to cover all ETS access and delete provisions which will be covered as a result of the amendments to Rule 2.08.

#### Amendments to Rule 27.03A

An amendment to Electronic Trading Rule 27.03A deletes the word “Exchange” as it is redundant because the word “Rules” is a defined term meaning Exchange Rules.

#### Amendments to Rule 27.06, 27.07, 27.08 and 27.09

Amendments to Electronic Trading Rule replace the terms “User” and “Users with Direct Access”, with the terms “Direct Access Member” and “Order Routing” customer.

Certifications

The Exchange certifies that the rules and amendments comply with the requirements of the CEA and the rules and regulations promulgated thereunder. The Exchange has reviewed the designated contract market Core Principles and has determined that the new and amended definitions and rules comply with Core Principle 15 (Governance Fitness Standards). As required by Core Principle 15, the new and amended definitions and rules establish minimum fitness standards for Members who have trading privileges, but no voting rights or equity in the facility. In addition, the rules establish the obligations of Clearing Member with respect to monitoring the financial risk of customers and the duty to use controls provided by the Exchange in furtherance thereof.

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 ([Jason.Fusco@theice.com](mailto:Jason.Fusco@theice.com)).

Sincerely,

A handwritten signature in black ink, appearing to read "Jason V. Fusco". The signature is fluid and cursive, with a long, sweeping underline.

Assistant General Counsel  
Market Regulation

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

## EXHIBIT A

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

# ICE FUTURES U.S.<sup>®</sup>, INC.

## DEFINITIONS

**EXCEPT WHERE THE CONTEXT REQUIRES OTHERWISE,  
THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANING WHEN  
USED IN THE BY-LAWS OR RULES. USE OF THE SINGULAR SHALL INCLUDE THE  
PLURAL AND VICE VERSA, UNLESS THE CONTEXT REQUIRES OTHERWISE.**

### **Direct Access**

The term “Direct Access” shall mean a direct connection by a Clearing Member or Direct Access Member to ETS to enter orders for Exchange Futures Contracts and Options for execution, without passing through the credit or risk control infrastructure of a Clearing Member.

### **Direct Access Member**

The term “Direct Access Member” shall mean a Customer with Direct Access that meets the requirements in Rule 2.08 and that is authorized by a Clearing Member pursuant to Rule 27.04.

### **Member**

The term “Member” shall mean and include a Permit Holder, ~~User with Direct Access~~ Member (as defined in Rule 27.03), Lessee, Member Firm, Trading Member, and Cross Margining Participant (to the extent that such Person engages in transactions in Commodity Contracts that are the subject of a Cross Margining Program implemented by the Clearing Organization).

### **Membership**

The term “Membership” shall mean any Trading Membership, any Trading Permit and any lease of a NYBOT Membership. The term “Membership” does not include the rights of a Direct Access Member to connect to the ETS through Direct Access.

# ICE FUTURES U.S.<sup>®</sup>, INC.

## MEMBERSHIP RULES

### **DIRECT ACCESS MEMBERS**

#### **Rule 2.08 Eligibility Requirements and Application Procedure**

(a) To be eligible to become and remain a Direct Access Member, an applicant must (i) be a Customer authorized by a Clearing Member pursuant to Rule 27.04, (ii) not be presently enjoined by

order, judgment or decree of any court of competent jurisdiction or of the CFTC or the Securities and Exchange Commission or of any state securities authority or agency from engaging in or continuing any conduct or practice in connection with the purchase or sale of any Commodity, security, option or similar instrument; and (iii) have adequate systems and controls for risk management and to monitor its orders and trades effected through Direct Access on a real time basis.

(b) A Customer applying to be a Direct Access Member must file with the Exchange an application in the form supplied by the Exchange.

(c) The Clearing Member authorizing such applicant must file with the Exchange such documents as required, in a form prescribed by the Exchange, setting forth the Clearing Member's obligation to clear Trades submitted by the Direct Access Member that it has authorized for Direct Access. The Clearing Member shall confirm that each applicant for which it provides Direct Access meets the Direct Access Member qualifications, and promptly shall provide to the Exchange upon request information substantiating such Direct Access Member's compliance with the Direct Access Member qualifications.

(d) The Exchange may refuse to grant, suspend or terminate a Direct Access Member's Direct Access if the Exchange determines that granting Direct Access to such Person is not consistent with the best interests of the Exchange. Any such refusal by the Exchange may be appealed by the Direct Access Member and shall be considered by a panel of the Business Conduct Committee comprised of three members of the committee. Each panel shall determine the specific procedures to be applied, provided that the Direct Access Member shall be afforded the opportunity to present such evidence as it deems relevant. Such a presentation shall be conducted informally with no transcript taken.

#### **Rule 2.28. Duties of All Members**

(a) Each Member shall immediately notify the Exchange in writing at such time as he becomes aware of the occurrence of any of the following events, *provided that* a Direct Access Member only shall be required to notify the Exchange of the occurrence of the events set forth in clauses (iii),(iv), (v), (vi), (vii), and (viii) below:

[REMAINDER OF RULE UNCHANGED]

## **ELECTRONIC TRADING RULES**

#### **Rule 27.00. Scope of Chapter**

The Rules contained in this Chapter govern the trading of Exchange Futures and Options Contracts utilizing the ICE electronic trading system ("ETS") through Direct Access or by Order Routing. To the extent that any Rule contained in this Chapter conflicts with any Rule or provision thereof contained in any other Chapter of the Rules, this Chapter shall supersede such other Rules. Transactions executed through ETS are subject to the Rules unless specifically excluded therefrom.

#### **Rule 27.02. Definitions**

As used in this Chapter the following terms shall have the meanings indicated:

(i) "Anchor Price" shall mean the price set by the Exchange from which Reasonability Limits, No Cancellation Ranges and Interval Price Limits are determined. The Anchor Price shall be based on the front month, provided however, that, when the front month nears expiration, the Anchor Price will be based on the delivery month with the most open interest. The determination as to when to shift the

Anchor Price based on open interest will be made by the Exchange. The Anchor Price may be the prior day's settlement price, the price of the Opening Match or the last traded price of the front delivery or expiration month as determined by the Exchange. The Anchor Price of each successive expiration or delivery month is determined by applying spread differentials against the Anchor Price.

(ii) "eBadge" shall mean, in the case of a Clearing Member or Direct Access Member, the number(s) assigned by the Exchange to a Clearing Member or Direct Access Member which identifies such Person, and in the case of a Person who is a Floor Broker, shall be the same as the numeric of the Floor Trading badge issued to such Floor Broker.

(iii) "Interval Price Limit" shall mean the dynamic intraday price limit established by the Exchange for an Exchange Futures Contract which limits the amount that the price of a contract delivery month may Trade above or below the applicable Anchor Price of such contract delivery month during the IPL Recalculation Time, Interval Price Limits may be changed by the Exchange in its discretion. The Exchange shall determine which contract delivery months shall have Interval Price Limits, and may change such determination, as well as the applicable Interval Price Limits, in its discretion.

(iv) "IPL Recalculation Time" shall mean the pre-set period of time, established by the Exchange, during which an Interval Price Limit shall remain in effect. At the conclusion of each IPL Recalculation Time a new IPL price range is determined, IPL Recalculation Times may be changed by the Exchange in its discretion.

(v) "IPL Hold Period" shall mean the additional period of time, as determined by the Exchange, during which the IPL price range that was in effect at the time that a trading hold is triggered will remain in effect. A trading hold is triggered when a contract delivery month seeks to trade on the ETS at a price that would be outside the permitted IPL, as specified in Rule 27.19(c).

(vi) "Market Supervision" shall mean the Department of the Exchange responsible for overseeing electronic trading.

(vii) "No Cancellation Range" shall mean the price range above and below the Anchor Price for each Exchange Commodity Contract within which a Trade alleged as an error Trade may not be cancelled.

(viii) "Order Routing" shall mean a connection to the ETS, other than Direct Access.

(ix) "Reasonability Limits" shall mean the amount by which the price of an Exchange Commodity Contract may increase or decrease in one trading sequence from the last traded price of that delivery or expiration month or the amount the price may change from a price determined by an ETS algorithm. Orders entered with prices above or below the Reasonability Limits will not be permitted to result in Trades at prices that are outside of the Reasonability Limits.

(x) "Responsible Individual" shall mean an individual who is registered with the Exchange as the individual with authority to modify or withdraw any order submitted under any of the eBadge(s) with respect to which such individual is registered, and who is able to immediately identify the source of any order submitted under such eBadge.

(xi) Trading Algorithms

(A) “Price/Time Matching Algorithm” is generally used during an ETS trading session. When used, it matches orders on the basis of a price and time priority algorithm. The “best” price order always has the highest priority, for buy orders that means those orders that have the highest price and for sell orders that means those orders that have the lowest price. If more than one order is in the market at a specific price, the highest priority is given to the order that arrived at ETS first.

(B) “Uncrossing Algorithm” is generally used during the Pre-Trading Session in accordance with Rules 27.15 and 27.16. It cycles through all orders submitted during the Pre-Trading Session identifying the best bid and best offer and produces matches where there is price crossing. All orders that are traded, whether fully or partially, as part of the Uncrossing Algorithm, trade at the same trade price.

(xii) “Trading Session” shall mean the hours of trading for one (1) trading day calculated from the Open to the Close.

## **ACCESS**

### **Rule 27.03. Access to ETS**

(a) All Clearing Members are eligible for Direct Access to the ETS upon execution of an Electronic User Agreement and such other agreements required by the Exchange.

(b) A Clearing Member may authorize its Customers to have Direct Access to the ETS. A Person is eligible for Direct Access to the ETS upon execution of an Electronic User Agreement and such other agreements required by the Exchange, and upon the authorization of a Clearing Member.

(c) Clearing Members and Direct Access Members may connect to the ETS through Direct Access by using an application provided by WebICE or another independent software vendor (“ISV”) which has been approved and authorized by the Exchange, or by developing their own application program interface (“API”) which has been approved and authorized by the Exchange

(d) A Clearing Member may permit its Customers to connect to the ETS by Order Routing, provided the Clearing Member maintains appropriate controls designed to facilitate the Clearing Member’s management of financial risk. A Customer that connects to the ETS by Order Routing does not itself have Direct Access.

### **Rule 27.03A. Access for Submitting Block Trades and Other Non-Competitive Transactions**

(a) Block Trades, EFPs, EFSs and EOOs are non-competitive Transactions that may be executed in accordance with the Rules specifically applicable to them and submitted to the Exchange by the Customer or another Person authorized to do so by the Clearing Member carrying the account for which the Transactions are submitted (an “Authorized Person”).

[Remainder of Rule Unchanged]

### **Rule 27.04. Clearing Member Responsibilities**

(a) Each Clearing Member is responsible for the financial obligations of each Direct Access Member for which it authorizes Direct Access and for each Customer for which it provides Order Routing with respect to all orders entered and Transactions executed under its Clearing Member Mnemonic.

(b) A Clearing Member is obligated to accept for clearance on the Trade date all trades executed and allocated to such Clearing Member by each Direct Access Member and for each Customer for which it provides Order Routing. Except as provided in Rule 27.08, a Clearing Member's obligation to accept such Trades for clearance shall remain in full force and effect until the Exchange terminates Direct Access and cancels all orders of the Direct Access Member or Customer for which it provides Order Routing as result of the Clearing Member's written notice to the Exchange revoking such authorization.

(c) With respect to each Direct Access Member or Customer for which it provides Order Routing, the Clearing Member shall:

(i) take any and all actions requested or required by the Exchange with respect to such Direct Access Member or Customer, including, but not limited to, assisting the Exchange in any investigation into potential violations of the Rules or of the Act, and requiring such Direct Access Member or Customer to produce documents, provide information, answer questions and/or to appear in connection with any investigation;

(ii) suspend or terminate the Direct Access Member's Direct Access if the Clearing Member has reason to believe that the Direct Access Member no longer meets the Direct Access Member qualifications;

(iii) suspend or terminate the Direct Access Member or Customer if the Clearing Member has reason to believe that the actions of the Direct Access Member or Customer threaten the integrity or liquidity of any Exchange Contract, violate the Rules or the Act, or if the Direct Access Member or Customer fails to cooperate in any investigation; and

(iv) utilize such controls designed to facilitate the Clearing Member's management of financial risk as may be provided by the Exchange from time to time.

(d) If a Clearing Member has actual or constructive notice of a violation or potential violation of the Rules or the Act in connection with the use of ETS by a Customer for which it provides Order Routing or by a Direct Access Member and the Clearing Member fails to take appropriate action, the Clearing Member may be found to have violated Rule 2.29(e) and subject to disciplinary action under the Rules.

#### **Rule 27.06. Revocation of Direct Access Authorization by Clearing Member**

A Clearing Member that authorizes Direct Access for a Direct Access Member may revoke such authorization without prior notice to the Direct Access Member. Written notice of the revocation of such authorization shall be immediately provided to the Exchange, which shall thereby terminate the Direct Access that had been authorized by such Clearing Member and cancel all orders of the Direct Access Member in the system under the revoking Clearing Member's Mnemonic.

#### **Rule 27.07. eBadges and Responsible Individuals**



(a) Each Clearing Member and Direct Access Member (other than a Floor Broker) shall request one (1) or more eBadges as it deems necessary to accommodate the nature and volume of its business.

(b) At least one (1) Responsible Individual must be registered with the Exchange for each eBadge issued. The Exchange, in its sole discretion, may limit the number of, or require additional, eBadges and Responsible Individuals. Whenever a Responsible Individual is absent and therefore not able to be contacted, a Backup Responsible Individual must be registered with the Exchange to fulfill the role of a Responsible Individual.

(c) A Responsible Individual or, in his absence, a Backup Responsible Individual, must be reachable via telephone by the Exchange at all times that any of the eBadges as to which he is registered with the Exchange are in use.

(d) A Responsible Individual may be a trader or supervisor of other individuals who are traders.

~~(e) A Clearing Member that authorizes Direct Access to a User must ensure that orders are submitted under an eBadge assigned to the Responsible Individual(s) and under the supervision of such Responsible Individual(s).~~

#### **Rule 27.08. Effect of Termination or Suspension of Clearing Member**

If a Clearing Member terminates its Clearing Membership with the Exchange or has its Clearing Member privileges terminated or suspended by the Exchange or the Clearing Organization, the Direct Access of the Clearing Member, the Direct Access authorized by such Clearing Member to any Direct Access Member, and any Order Routing provided to a Customer shall automatically terminate on the effective date of the termination or suspension of such clearing privileges.

#### **Rule 27.09. Required Identifications**

(a) Each individual Direct Access Member, employee of a Clearing Member or of a Direct Access Member, automated trading system and Customer that connects to the ETS by Order Routing must have a unique identification assigned to them in accordance with the procedure adopted by the Exchange from time to time in order to utilize ETS. Each Person or automated trading system assigned a unique identification shall be referred to as a "Registered Operator". The unique identification assigned to a Registered Operator may not be reassigned to another Registered Operator.

(b) Orders entered on the ETS must include the unique identification assigned to the Registered Operator. A Registered Operator is prohibited from allowing any other Person or automated trading system to use such unique identification to enter orders on the ETS. A Registered Operator may not enter orders on the ETS using a unique identification that has not been assigned to the Registered Operator.

(c) Each Clearing Member and Direct Access Member shall file with the Exchange, in a method and format prescribed by the Exchange, information regarding each Registered Operator for whom the Clearing Member and/or the Direct Access Member has authorized access to the ETS and who is either (i) a Member, (ii) an employee of a Member, Member Firm, Direct Access Member or Clearing Member, , (iii) individuals or employees of firms who participate in an Exchange market maker, market specialist or fee program, or (iv) any other Registered Operator as determined by the Exchange. Said information shall be filed with the Exchange prior to the date the Registered Operator is given access to

ETS. Each Clearing Member and Direct Access Member shall ensure the accuracy of the registration information on file with the Exchange regarding its Registered Operators.

(d) Each order entered through an eBadge must contain the unique identification assigned in accordance with paragraph (a) of this Rule that identifies the Registered Operator who entered the order. Each Registered Operator must utilize a client application that automatically populates the unique identification for every order.

(e) A Registered Operator shall be subject to the Rules, including, but not limited to, the Rules of this Chapter and Rules relating to order handling, trade practices and disciplinary proceedings. It shall be the duty of the Person who employs the Registered Operator to supervise the Registered Operator's compliance with the Rules, and any violation thereof by such Registered Operator may be considered a violation by the employer.

#### **Rule 27.12. Order Entry**

(a) A Registered Operator entering an order, other than in a clerical capacity, on behalf of a Customer Account, other than an order for the Registered Operator's own account must have appropriate industry registration.

(b) A Registered Operator who is registered with the CFTC as a Floor Broker, associated person or in a comparable capacity under applicable law may enter discretionary or non-discretionary orders on behalf of any account of a Clearing Member with the prior approval of the Clearing Member. A Registered Operator who is registered as a Floor Broker may enter discretionary or non-discretionary orders on behalf of any Customer Account with the prior approval of such Customer.

(c) A Registered Operator who is not registered as a Floor Broker or an associated person, or in a comparable capacity under applicable law, may enter non-discretionary orders on behalf of a Customer Account. Such Registered Operator may enter discretionary or non-discretionary orders for the account of his or her employer or for his or her own account if he or she is authorized by his employer to do so and does not enter or handle Customer orders. A Registered Operator who is a clerk employed by a Floor Broker may not enter orders for an account in his or her own name or any account in which he or she has a direct or indirect interest.

(d) Registered Operators of a Floor Broker, who are not registered as associated persons with the CFTC, may enter orders on a non-discretionary basis from trading terminals located in the Floor Broker's booth on the Trading Floor using the Floor Broker's eBadge, the Registered Operator's Log-In ID and, if applicable, authorized trader ID.

(e) Orders for a Customer Account, other than an order entered by a Customer for its own account, may only be entered from:

(i) the Trading Floor of the Exchange by a Registered Operator in accordance with paragraphs (b) and (d) above; or

(ii) the premises of an entity appropriately registered to conduct Customer business by a Registered Operator who is also registered with such entity as an associated person or in a comparable capacity under applicable law.

[Remainder of Rule Unchanged]

**Rule 27.12A. Audit Trail Requirements for Electronic Orders Submitted Through Direct Access or Order Routing Systems**

(a) Each Clearing Member connecting to the ETS by Direct Access is responsible for maintaining or causing to be maintained the audit trail for all orders submitted to the Exchange through its Direct Access connection and any Order Routing system. Each Direct Access Member connecting to the ETS by Direct Access is responsible for maintaining or causing to be maintained the audit trail for all orders submitted to the Exchange through its Direct Access connection.

(b) A Clearing Member or Direct Access Member that has arrangements for a third party to maintain audit trail information on its behalf shall remain responsible for compliance with this Rule.

[Remainder of Rule Unchanged]

**Rule 27.19. Order Execution**

\* \* \*

(e) Each matched Trade shall be transmitted to TIPS/PTMS at which time executing Floor Brokers and Clearing Members will be able to view their matched Trades.

(i) A Trade allocated to a Clearing Member will be deemed accepted by such Clearing Member unless such Trade has been challenged by the end of the Trading Session the Trade was submitted for clearance.

(ii) A Trade submitted to ETS by a Floor Broker or Direct Access Member that is not otherwise accepted by the Clearing Member to which it is allocated will automatically clear to the account of the Floor Broker's Clearing Member Guarantor (in the case of a Floor Broker) or the Clearing Member which authorized Direct Access to the Direct Access Member.

(iii) All mechanical adjustments shall be made through TIPS/PTMS. Any Registered Operator submitting a mechanical adjustment shall include all information required by TIPS/PTMS to process such mechanical adjustment.

(f) Failure of ETS to broadcast any message in respect of a Trade made in ETS, an order book, order or any part thereof, shall not invalidate any Trade recorded by the Exchange.

(g) In the event that ETS or any part of ETS fails, the Exchange's determination that a Trade has or has not been made on ETS shall be conclusive and binding. Such determination shall be made by Market Supervision.

**APPENDIX I  
ERROR TRADE POLICY**

**1. Regulatory Considerations**

The Exchange considers appropriate systems and controls to be important in reducing the likelihood of orders being entered in error, preventing the execution of trades at unrepresentative prices and reducing

the market impact of such trades. Such systems and controls should be present at both the Exchange level (on the trading system itself and within the Exchange Regulations) and at the Clearing Member level. These include:

- A. ETS configuration facilities:
  - i. price reasonability limits, set by the Exchange, which prevent the execution of trades outside of these limits;
  - ii. volume reasonability limits, set by the Exchange, which prevent volumes above a certain level to be either designated for trading or traded;
  - iii. optional pre-confirmation messages which appear before the execution of all orders; and
  - iv. an option to designate the quantity that a user may wish to expose to the market at one time rather than trading the total quantity that is available to be traded at a specified price.
  
- B. The Rules which provide the Exchange with absolute discretion to delete orders, adjust prices, cancel trades or suspend the market in the interests of maintaining a fair and orderly market.

[Remainder of Appendix Unchanged]

## **APPENDIX II EXCHANGE MESSAGING POLICY**

### **Introduction**

The level of computer-generated order-flow on the Exchange has progressively increased since the Exchange's business became fully electronic. In some circumstances, inefficient and excessive messaging can slow the performance of the ETS and increase bandwidth and other operational requirements for Members. In order to address this concern, the Exchange implemented the Exchange Messaging Policy ("the Policy").

The Policy is designed to discourage inefficient and excessive messaging without compromising market liquidity and sets out certain messaging thresholds which it expects Firms with Direct Access not to exceed. Most trading activity for Firms with Direct Access operates well within the thresholds set out in this Policy. The Exchange will levy charges on those Firms with Direct Access whose system usage per Firm as configured on the ETS exceeds certain thresholds.

### **Scope of Policy**

This Policy applies to such Exchange contracts as shall be designated from time-to-time ("the Designated Contracts"). The initial Designated Contracts are Cocoa, Cotton No. 2<sup>®</sup>, Coffee "C"<sup>®</sup>, Sugar No. 11<sup>®</sup>, the Russell 2000 Index and the U.S. Dollar Index<sup>®</sup> futures contracts. The Policy will apply to those Firms with Direct Access who enter more than 100,000 messages in any Designated Contract market on a particular trading day. For the purposes of the Policy, each order submission, revision, hold, cancel/replace and/or consummation constitutes a message. **Weighted Volume Ratio** The Weighted Volume Ratio ("WVR") is defined as the total number of messages sent to the ETS multiplied by a price-based weighting scale divided by the total number of lots traded. The result is a figure for weighted messages per executed contract.

Each message is weighted as set out below.

	Price-based weighting multiplier		Description
	Outrights	Spreads	
Price difference from best bid or offer			
None (best bid or offer)	0	0	If the price is the best bid or offer, it will not be counted
At market bid or offer	0	0	If the price equals the best bid or best offer, it will not be counted
1 tick off market	0.5	0.25	If the price is within one minimum price fluctuation (“tick”) of the best bid or best offer it will count as one half of a message for an outright market and one quarter of a message for a spread market
2 ticks off market	1.0	0.5	If the price is within two (2) ticks of the best bid or best offer it will count as one (1) message for an outright market and half (0.5) a message for a spread market
3 to 5 ticks off market	2.0	1.0	If the price is between three (3) and five (5) ticks from the best bid or best offer it will count as two (2) messages for an outright market and one (1) message for a spread market
More than 5 ticks off market	3.0	2.0	If the price is more than five (5) ticks from the best bid or best offer it will count as three (3) messages for an outright market and two (2) messages for a spread market

### **WVR Thresholds**

Firms with Direct Access who exceed a WVR of 100:1 in a Designated Contract on a particular trading day will receive an electronic notification.

Firms with Direct Access who exceed a WVR of 100:1 in any Designated Contract or spread market for seven (7) or more electronic trading days in any calendar month will be subject to a one thousand dollar (\$1,000) surcharge for that calendar month.

Firms with Direct Access who meet or exceed a WVR of 500:1 in any Designated Contract or spread market on any electronic trading day will be subject to a two thousand dollar (\$2,000) surcharge per day for every day that the WVR of 500:1 has been met or exceeded.

Firms with Direct Access may obtain information regarding their messaging at the ICE website, [www.theice.com](http://www.theice.com).

Firms with Direct Access who are enrolled in any official Exchange Market Maker Program will be monitored under the guidelines set forth in this Messaging Policy; however, such Market Makers may be exempted from the surcharges listed below with such exemption to be determined on a case-by-case basis according to specific circumstances, which include but are not limited to, the liquidity of the particular market and the volume and number of trades by such Market Maker in the particular market.

### **Restriction or suspension of access**

In addition to the surcharges, the Exchange retains the right to restrict or suspend access to Exchange markets listed on the ETS should the Exchange determine that the message usage associated with any

Firm with Direct Access becomes capable of impairing the orderly conduct of business. Such determination will be made by the Exchange in its absolute discretion and may be made at any time and, if necessary, any consequent restriction or suspension may be implemented immediately and without notice.