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BY ELECTRONIC TRANSMISSION

Submission No. 10-41
October 12, 2010

Mr. David Stawick
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Amendments to Rules 27.21 and 27.22 - 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 Regulation 40.6, ICE Futures U.S., Inc. ("Exchange") submits, by written certification, amendments to Rules 27.21 and 27.22, attached as Exhibit A.

Amendments to Rule 27.22 – Pre-Execution Communications

Pre-execution communications are defined as communications between two (2) market participants for the purpose of discerning interest in the electronic execution of a trade prior to the terms of an order being entered into the market and visible to all market participants. Rule 27.22 currently prohibits pre-execution communications. Recognizing that other exchanges have adopted rules and procedures allowing such communications, the Exchange has amended Rule 27.22 to permit them.

(1) General Provisions

Amendments that apply to both futures and options transactions for which pre-execution communications may take place provide that:

(a) anyone who engages in pre-execution communications on behalf of a customer must obtain the prior consent of the customer before engaging in such communications and be able to produce records demonstrating compliance with this consent requirement;

(b) anyone who engages in pre-execution communications may not disclose the details of such communications to third parties not involved in such communications nor enter an order to take advantage of information conveyed during such communications, except to facilitate execution of the transaction in accordance with the Rule; and

(c) pre-execution communications are prohibited for all trades executed by open-outcry.

(2) Pre-Execution Communications in Futures

For transactions in futures products which involve pre-execution communications, the amendments provide that the order of the initiator of the pre-execution communication (the "first order"), *i.e.* the market participant who is seeking assurance that another market participant will take the opposite side, must be entered into the electronic trading system ("ETS") first and the other market participant's order (the "second order") may not be entered into ETS until a period of five (5) seconds has elapsed from the time of entry of the first order. However, when only one side of a futures transaction is for a Customer order and pre-execution communications have taken place, the Customer order must be the first order entered into ETS regardless of whether or not the Customer order was the first order, and the required time must elapse prior to the entry of the order for the opposite side. These provisions are essentially the same as the ones for electronic cross trades in futures products (Rule 27.21).

(3) Pre-Execution Communications in Options

For transactions in options products which involve pre-execution communications, the amendments provide that a Crossing Order ("CO") that contains the buy and sell orders arising from the pre-execution communication must be entered into ETS. From the submitted CO, ETS will automatically publish a Request For Quote ("RFQ") associated with the CO and expose the RFQ to the electronic marketplace. The RFQ will indicate the option or option strategy and the quantity the market participants are interested in trading, but will not indicate price. Any bids or offers in response to an RFQ are immediately tradable by all market participants. It should be noted that the entry of the CO and the publication of the RFQ occurs simultaneously.

ETS will automatically activate the CO once the appropriate number of seconds has elapsed from the time the CO was entered into ETS. In the case of Options other than equity Options, fifteen (15) seconds after entry of the CO, the CO will automatically be activated. In the case of equity Options, the CO will automatically be activated five (5) seconds after entry of the CO.

The orders comprising the CO must have a matching price and quantity. Once activated, the CO will be evaluated against the best prices in the order book. For purposes of determining order priority in the order book, the CO will be considered to have been entered at the time the CO was submitted to ETS. If the CO price improves the best bid and the best offer in the order book or if there is no bid/offer, 100% of the CO quantity will match at the CO price immediately upon activation. If the CO price improves either the best bid but there is a better offer or offers, the buy side of the CO will be executed first against such better offer or offers and then subsequently against the offer side of the CO if any residual quantity on the buy side remains. Similarly, if the CO price improves either the best offer but there is a better bid or bids, the sell side of the CO will be executed first against such better bid or bids and then subsequently against the buy side of the CO if any residual quantity on the sell side remains. If after matching, there is remaining quantity on either the buy or sell side of the CO, such remainder will be cancelled.

The electronic screen for submission of the CO is one in which the user has the choice of an RFQ or a CO. For the purpose of submitting orders for which pre-execution communications have taken place, the user must select CO on the RFQ/CO screen. Only by selecting CO will the order crossing process be activated. If RFQ is selected, then no CO will be activated. The RFQ selection is used by market participants to solicit interest in an option, option spread or combination trade for which pre-execution communications have not been conducted.

The amendments also provide that once the parties to a pre-execution communication agree on the terms of a CO, the CO must be entered immediately, and the parties may not enter any RFQ until the CO has been transacted.

These amendments and procedures ensure transparency and competitive execution by ensuring the solicitation of interest from all market participants via an RFQ before the CO is automatically activated and executed. The amendments to Rule 27.22 are similar to the provisions contained in CME Rule 5.39C.

Amendments to Rule 27.21

In addition to requiring the entry of a CO for option orders that are the result of pre-execution communications, a CO will also be required for the electronic crossing of option orders that either are (a) for different beneficial accounts and are simultaneously placed by a party with discretion over both accounts or (b) for an order that allows for price and time discretion which could be executed opposite a second option order received by the same intermediary. Prior to the orders comprising the CO being executed, an RFQ automatically created by ETS will be exposed to the marketplace, and the CO will be executed in the same fashion as COs submitted as a result of pre-execution communications.

Independently initiated electronic option orders that are on opposite sides of the market for different beneficial account owners and are immediately executable against each other may be entered into ETS without delay, provided that the orders did not involve pre-execution communications and that the full quantity and price of each of the orders is entered immediately upon receipt.

Existing Rule 4.19 will remain in effect for all cross trades executed by open outcry.

The Exchange certifies that the amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. No substantive opposing views were expressed by members or others with respect to the amendments.

The amendments were adopted by the Exchange's Board of Directors at its meeting held on October 6, 2010 and will go into effect on a date set by the President. The Exchange will notify the Commission of the exact date prior to the time the amendments will become effective.

If you have any questions or need further information, please contact me at 212-748-4084 or at jill.fassler@theice.com.

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.)

Rule 27.21. Cross Trades

(a) Independently initiated orders on opposite sides of the market for different beneficial account owners that are immediately executable against each other may be entered without delay provided that the orders did not involve pre-execution communications as defined in Rule 27.22.

(b) [~~O~~]Futures orders on opposite sides of the market for different beneficial accounts that are simultaneously placed by a Person with discretion over both accounts may be entered by the Registered [~~User~~] Operator provided that[~~, with respect to futures orders,~~] one (1) order is exposed on ETS for a minimum of five (5) seconds [~~and, with respect to Options orders, one (1) order is exposed on ETS for a minimum of fifteen (15) seconds, prior to the entry of the second futures or Options order~~].

(c) A[~~n~~] futures order allowing for price and/or time discretion, if not entered immediately upon receipt, may be knowingly entered opposite a second order [~~entered~~] received by the same [~~entity~~] intermediary only if the second order has been entered immediately upon receipt and[~~, respect to futures orders,~~] has been exposed on ETS for a minimum of five (5) seconds[~~, with respect to Options orders, one (1) order is exposed on ETS for a minimum of fifteen (15) seconds, prior to the entry of the second futures or Options order~~].

(d) In the case of Exchange Options Contracts which are listed on ETS, orders on opposite sides of the market that are simultaneously placed for different beneficial accounts by a Person with discretion over both accounts must have a Crossing Order ("CO") which contains both the buy and sell orders entered into ETS.

(e) In the case of Exchange Options Contracts which are listed on ETS, an order that allows for price and/or time discretion, if not entered immediately upon receipt, may be knowingly entered opposite a second order received by the same intermediary only after a CO which contains both the buy and sell orders is entered into ETS.

Rule 27.22. Pre-Execution Communications [~~Prohibited~~]

(a) For the purposes of this Chapter, pre-execution communications shall mean communications between two (2) market participants for the purpose of discerning interest in the execution of a Transaction prior to the terms of an order being entered on the ETS and visible to all market participants on the electronic trading screen.

(b) [~~Pre-execution communications and Transactions arising from such communications are prohibited in all Exchange Commodity Contracts.~~] A market participant may engage in pre-execution communications with regard to Transactions executed on ETS where a market participant wishes to be assured that another market participant will take the opposite side of an order under the following circumstances:

(i) Any Person who engages in pre-execution communications on behalf of a Customer may do so only when the Customer has previously consented to such communications being made on its behalf;

(ii) Any Person engaged in pre-execution communications shall not (A) disclose to a Person not involved in such communications the details of such communications or (B) enter an order to take advantage of information conveyed during such communications, except in accordance with this Rule;

(iii) In the case of futures orders, subsequent to the pre-execution communication, the order of the market participant who initiated the pre-execution communication (the "first order") must be entered into ETS and the other market participant's order (the "second order") may not be entered into ETS until a period of five (5) seconds has elapsed from the time of entry of the first order; provided however, that, if only one side of the futures transaction is for a Customer, the Customer's order must be the first order submitted to ETS;

(iv) In the case of Option orders, a Transaction cannot be executed following a pre-execution communication unless a Crossing Order ("CO") which contains both the buy and sell orders is entered into ETS. Once the terms of a CO have been agreed, the parties may not delay entry of the CO and may not enter a Request for Quote ("RFQ") until the CO is transacted.

(c) Pre-execution communications are prohibited in connection with Transactions executed by open outcry on the Trading Floor.

UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

([Petitioner Name - Butler Public Power District])

PETITION TO REMAIN SUBJECT TO THE EXISTING PROVISIONS OF SECTION 2(h) OF THE COMMODITY EXCHANGE ACT

I. Requested Commission Action

The above-named not-for-profit Petitioner (the "NFP Petitioner") respectfully submits this petition to the U.S. Commodity Futures Trading Commission (the "Commission") and requests that the Commission, pursuant to Section 723(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") allow the NFP Petitioner to continue to rely on the exemptions set forth in § 2(h) of the Commodity Exchange Act (the "CEA") for a period of one year after the Effective Date[1] of the Dodd-Frank Act.

The NFP Petitioner is a public power district and as such is a not-for-profit, independent electric utility that provides electric services to, and is owned by, its members. More than 900 electric cooperatives and public power districts are currently operating in the United States, serving approximately 12% of the United States electric utility customers across every state except Massachusetts, Rhode Island and Connecticut. Electric cooperatives and public power districts own approximately 43% of the distribution lines in the U.S., reaching some of the country's most sparsely populated areas, from Alaskan fishing villages to remote dairy farms in Vermont. In an electric cooperative, unlike most electric utilities, customers are "members" who are able to vote on policy decisions, directors and even stand for election to the board of directors. Customer are also owners of the cooperative so that the costs of the cooperative are directly born by its consumer-members. The NFP Petitioner regularly manages the commodity risks associated with its business by entering into contracts, agreements and transactions in energy and energy-related "exempt commodities," including, without limitation, electric power and natural gas.

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[1] The date of enactment is July 21, 2010 (the "Enactment Date") and the date of effectiveness is 360 days after the Enactment Date, or July 16, 2011 (the "Effective Date").

II. **Supporting Arguments**

A. The Grandfather Provision of the Dodd-Frank Act Permits the Filing of this Petition

Section 723(c)(1) of the Dodd-Frank Act states that "a person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act)." A petition for treatment under this "grandfather provision" is required to be submitted not later than 60 days after the Enactment Date, and the Commission, under Section 723(c)(2), may allow the NFP Petitioner to continue operating under CEA § 2(h) for up to a one year period.

B. The NFP Petitioner Currently Operates Under the Commodity Exchange Act § 2(h) Exemption

The NFP Petitioner currently enters into contracts, agreements and transactions in exempt commodities in both the over-the-counter bilateral contract markets (the "OTC markets") and in exempt commercial markets. The NFP Petitioner's contracts, agreements and transactions in exempt commodities are intrinsically related to the NFP Petitioner's business of distributing physical energy commodities and related services to the American consumers and businesses. The NFP Petitioner engages in such contracts, agreements and transactions in exempt commodities with other electric cooperatives and other not-for-profit entities as well as with for profit and/or governmental energy businesses and with financial entities.

The NFP Petitioner does not speculate in contracts, agreements and transactions in exempt commodities. The NFP Petitioner relies on these transactions to hedge its commercial risks associated with its business. This risk management activity in turn directly affects the price of power for its consumer members.

As an "end user" participant in the markets for contracts, agreements and transactions in exempt commodities, the NFP Petitioner operates subject to the provisions of CEA § 2(h), and the related rules and regulations. Over time, the NFP Petitioner has structured its commercial business processes and procedures to meet the requirements of the comprehensive Federal, state and local regulations applicable to the NFP Petitioner, and in reliance on CEA § 2(h). The Dodd-Frank Act's new compliance and reporting requirements will require changes to the NFP

Petitioner's staff, systems and structures. The NFP Petitioner's consumer-members will directly bear all costs associated with these changes and the faster these changes have to be made, the higher those costs will be. Some changes to the NFP Petitioner's commercial business may also require approval from or coordination with the NFP Petitioner's other regulators, approval from its members and coordination with NFP Petitioner's associated cooperatives.

C. Granting this Petition Does Not Conflict with the Intent of the Dodd-Frank Act

Allowing the one-year extension of CEA § 2(h) does not contravene the intent of the Dodd-Frank Act. Rather, the extension is critical for affected end users transitioning to the new rules and regulations that will be promulgated under the Dodd-Frank Act. The Commission will be drafting and finalizing rules to accompany and implement each section of the new law. After the Effective Date, the NFP Petitioner will require considerable additional time and resources to review and revise its commercial business and operating procedures in order to ensure compliance with the new regulatory scheme. In the end, every step of the NFP Petitioner's ongoing commercial business related to contracts, agreements and transactions in exempt commodities will need to be individually evaluated and overhauled after the Commission finalizes the new rules and regulations. This overhaul is not a process that can be done effectively or efficiently in a piecemeal manner as individual rules are added. It may require a comprehensive restructuring of an entire network of commercial business processes to respond to a completely new and different regulatory scheme.

Section 723(c) of the Dodd-Frank Act, the "Grandfather Provision," is a mechanism that offers market participants who have previously relied on CEA § 2(h) in conducting their commercial businesses legal certainty during the period of implementation of the new regulatory regime and its application not only to market professionals, but to end users. Granting this petition will not impede the goals of providing transparency and structure to the global derivatives markets. Rather, it will give the NFP Petitioner time to adapt and develop the additional staff, new systems and more complicated structures that may be required, thus ensuring the continued ability of the energy industry to effectively mitigate risk while maintaining system-wide reliability and stabilizing the prices for its consumer-members.

III. Conclusion

The NFP Petitioner currently relies on Section 2(h), and both time and resources will be required to implement the extensive changes to be made once the rules and regulations under the Dodd-Frank Act have been finalized. For this reason, the NFP Petitioner respectfully requests that the Commission grant this petition for continued exemption under CEA § 2(h) for the period of one year following the Effective Date, to carry out the intent of Section 723(c) of the Dodd-Frank Act, and provide the NFP Petitioner with a reasonable time to adjust itself to the new regulatory regime.

Respectfully Submitted,

[Butler Public Power District]

By: _Gary S. Westphal P. E._

Title: General Manager/ CEO

Address: 1331 N. 4th Street

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