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**BY ELECTRONIC TRANSMISSION**

Submission No. 11-78

October 24, 2011

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

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**Re: Amendments to FAQ on Cleared Swaps -  
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 (the "Act") and Regulation 40.6 thereunder, ICE Futures U.S., Inc. ("Exchange") submits by written certification amendments to its FAQ on Cleared Swaps attached as Exhibit A. The amendments relate to Exchange of Futures for Swap ("EFS") transactions involving Cleared-Only Swaps in coffee, sugar and cocoa, as set forth in question 15 of the FAQ. As detailed in Exchange submission 11-76 and ICE Clear US ("ICUS") submission 11-77, commencing October 25, 2011 no new Cleared-Only Swap months will be available for clearing and months that have no open interest will be delisted as and when the open interest declines to zero.<sup>1</sup>

The Exchange and ICUS began offering Cleared- Only Swaps in these agricultural commodities in December 2008 pursuant to a Commission Order issued under Sections 4(c) and 4d of the Act. These instruments mirror the Exchange's physical delivery coffee, sugar and cocoa futures contracts in all respects except that they are cash settled. When a transaction is accepted by ICUS, the original swap between the parties is extinguished and replaced by a Cleared- Only Swap. Consequently, winding down open positions in Cleared-Only Swaps can only occur by holding the position to expiration or by

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<sup>1</sup> The FAQ has also been updated to reflect that coffee and cocoa Cleared-Only Swaps will have been fully delisted by the effective date of the amended FAQ. Thus, it will only apply to Sugar swaps.

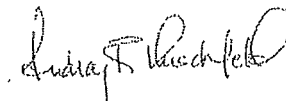
executing another Cleared-Only Swap that offsets the open position, because Cleared-Only Swaps are not fungible with the Exchange's physical delivery futures contracts.

While ICUS will continue to margin open positions until expiration, the Exchange seeks to offer traders flexibility in liquidating positions, some of which extend to 2014. To that end, the Exchange has adopted amendments to its FAQ on Cleared Swaps with respect to Rule 4.13-EFS Transactions. Under the amended FAQ, a Cleared-Only Swap can be used as the swap leg of an EFS so long as the EFS is undertaken to close an open position in a Cleared-Only Swap that exists on the effective date of the amendment, and the EFS complies with Rule 4.13 in all respects. The Exchange believes that this action will benefit market participants by not forcing them to enter into additional Cleared-Only Swaps in illiquid markets, in order to close out their positions.

The Board of Directors unanimously adopted the amendment at a meeting held on September 23, 2011 in order to facilitate the orderly and expeditious closeout of positions in this product. No substantive opposing views were expressed by members or others with respect to the Interpretation, which will become effective on November 7, 2011. The Exchange certifies that the rule amendment complies with the requirements of the Act and the rules and regulations promulgated thereunder. The Exchange further certifies that, concurrent with this filing, a notice of pending certification was posted on the Exchange's website as well as a copy of this submission, which may be accessed at (<https://www.theice.com/notices/RegulatoryFilings.shtml>).

If you have any questions or need further information, please contact me at 212-748-4083 or [audrey.hirschfeld@theice.com](mailto:audrey.hirschfeld@theice.com).

Sincerely,



Audrey R. Hirschfeld  
Senior Vice President & General Counsel

cc: Division of Market Oversight  
New York Regional Office

## EXHIBIT A

[In the text below additions are underscored and deletions struck through.]

### FAQ CLEARED SWAPS Amended November 7, 2011

Cleared swaps are over-the-counter (OTC) agreements that are eligible to be cleared by ICE Clear U.S., but which are not executed on ICE Futures U.S. (the "Exchange") either electronically or on the trading floor. A cleared swap contract is created when the parties to an off-exchange, OTC transaction agree to extinguish their OTC contract and replace it with a cleared swap contract. This will provide the same efficiencies and benefits that centralized clearing offers traders of contracts listed for trading on the Exchange – including credit risk intermediation and the ability to offset positions initiated with different counterparties.

This process is accomplished by the submission of each side of an OTC transaction to the Exchange and the acceptance of each side by the Clearing Members of each party to the swap. Cleared swap contracts will offer eligible OTC market participants in these products the ability to clear transactions through ICE Clear U.S. In addition, Clearing Members will be able to hold the cleared swaps and the margin deposited with respect to them in the same accounts as they hold positions and margin deposited with respect to futures contracts traded on the Exchange.

#### 1. - Which cleared swap contracts are offered?

~~Three~~ Cleared swap contracts are offered at this time only in : ~~Cleared Sugar No.11 Swaps; Cleared Coffee "C" Swaps, and Cleared Cocoa Swaps. Cleared swap contracts are related to the respective traded futures contracts (i.e., Sugar No. 11<sup>®</sup>, Coffee "C"<sup>®</sup> and Cocoa), but they are separate and distinct contracts from the traded futures contracts, and are cleared using separate contract symbols:~~

- ~~Cleared Sugar No. 11 Swap contract symbol – SBC~~

~~Cleared Coffee "C" Swap contract symbol – KCC~~

~~Cleared Cocoa Swap contract symbol – CCG~~

~~For each of these cleared swap contracts, listed contract months~~ Any month with no open interest will be delisted and not available for clearing when the open interest becomes zero, correspond to listed contract months for the related respective traded futures contracts (i.e., for both Sugar No. 11 and the Cleared Sugar No. 11 Swaps, listed contract months are March, May, July and October). A new cleared swap contract month becomes available to be cleared on the same day that the related traded futures contract is listed for trading.

~~Cleared swaps on additional Exchange products may be offered in the future, and the listing curve for cleared swaps will be extended beyond the listing curve for the related traded contract in the future.~~

#### 2. - What are the key features of the new cleared swap contracts?

The terms of each cleared swap product closely parallel terms of the related Exchange-traded, physical delivery contract – but with several key differences:

- Cleared swap contracts are cleared-only; they are not available for trading on-Exchange;
- Cleared swap contracts held to expiration are cash-settled, they do not provide for or allow physical delivery;

- ◉ Cleared swap contracts expire on a different schedule than Exchange-traded futures contracts.

For most other terms, such as the contract month cycles, price quotation and minimum tick size and values, the cleared swap contract terms mirror the terms of the related Exchange-traded, physical delivery contract.

**3.- What is the expiration date rule for Cleared Swap contracts?**

For each cleared swap contract month, expiry will occur on the last trading day of the regular option contract on the corresponding Exchange-traded futures contract month. ~~For example, the expiration day for the October 2009 Cleared Sugar No. 11 Swap contract month would be the last trading day of the ICE Futures U.S. October 2009 Sugar No. 11 option contract, which is September 15, 2009.~~

**- What is the cash-settlement mechanism for these Cleared Swap contracts?**

All positions in a cleared swap contract month that are held to expiration will be cash-settled on the business day following expiration, using the Daily Settlement Price of the corresponding Exchange-traded futures contract month for the expiration day of the cleared swap contract.

**5- Can cleared swap contracts be used to liquidate positions in the related traded product?**

~~No.~~ Generally, cleared swaps cannot offset or liquidate positions in the related Exchange-traded product ~~and~~. A position that has been established in a cleared swap contract month can only be liquidated prior to the expiration day of the contract by the submission of an offsetting transaction in the same cleared swap contract month. However, where an EFS is executed to closeout an existing cleared swap position as specified in Question 15, it is possible that the futures position acquired in the EFS transaction could offset and thus liquidate an existing futures position.

**6- Are there any limitations on who may transact Cleared Swap contracts?**

Yes. Since a Cleared Swap contract position is created in the process of extinguishing and replacing a prior OTC position, only Eligible Swap Participants (or "ESPs"), as defined in Part 35 of CFTC Regulations, can enter into cleared swap positions.

In general, Eligible Swap Participants include banks, investment companies subject to regulation under the Investment Company Act of 1940, commodity pools, broker dealers subject to regulation under the Securities Exchange Act, futures commission merchants subject to regulation under the Commodity Exchange Act, and corporations with assets exceeding \$10,000,000. Interested parties should consult legal counsel to determine their own eligibility.

In addition, an Exchange member who is registered with the CFTC as a floor broker or floor trader may engage in cleared swap transactions for his or her own account, provided that the member has a financial guarantee covering the trading of cleared swaps from a firm registered as a futures commission merchant that is a member of ICE Clear U.S. and which clears the transaction.

**7.- How are cleared swap contracts submitted for clearing?**

The seller completes the appropriate Cleared Swap Submission Form (which can be found at <https://www.theice.com/clear us.jhtml>) and submits the form to Market Supervision staff as instructed on the form. The form can be submitted by either the seller, the seller's Clearing Member firm, or a third party. On receipt of the completed form, Market Supervision staff will enter the details of the trade into the ICE Block system – the same system used for the entry of Exchange for Physical ("EFP") trades and block trades.

Regardless of whether cleared swaps are submitted by the customer or the Clearing Member on behalf of the customer, such submissions are accepted for clearance by ICE Clear U.S. once the Clearing Member on each side of the submission has accepted their side of the trade. If either Clearing Member rejects the submission or if either Clearing Member fails to accept a submission, the submission is not accepted for clearance by the Clearing Corporation and the Clearing Corporation will have no obligation with respect to the transaction.

**8. - In the event that a submitted Cleared Swap is not accepted for clearance, what is the status of the OTC swap agreement?**

The status of the OTC swap would depend on the terms of the swap agreement between the parties, and this issue should be addressed in advance in the confirmation document agreed between the parties to the swap. For example, a confirmation document could include language providing that if the swap is not accepted for clearing by ICE Clear U. S. for any reason, the swap will be void and no party to the swap shall have any obligation to any other party.

**9.- Are all ICE Clear U.S. Clearing Members eligible to clear swap contracts?**

ICE Clear U.S. Clearing Members that wish to clear these contracts must be specifically approved by ICE Clear U.S. The approval to do so is based on satisfying certain minimum financial and operational requirements. The Clearing Member or an affiliated firm should have a standard ISDA agreement in place with a counterparty to facilitate the ability to transact swiftly in the OTC market should the need arise. A list of Clearing Members who have met these

Eligibility requirements is available on the ICE Clear US website at:

<https://www.theice.com/publicdocs/futures us/Cleared Swaps Members List.pdf>.

Clearing Members who would like to become eligible to clear these products should contact Bruce Domash at ICE Clear U.S. at 312 214-2020.

**10. - What information is released by ICE Clear U.S. regarding cleared swap contracts?**

ICE Clear U.S. publishes a Daily Market Report (DMR) for each cleared swap contract. The DMR includes daily trading volume, end of day Open Interest, and a Daily Settlement Price for each cleared swap contract month. Neither daily high and low price information for these products, nor the prices of individual Cleared Swap contracts is published.

**11. - What are the fees for cleared swap contracts?**

The fee for cleared swap contracts is \$2.75 per side.

**12. - How are Cleared Swap contracts margined?**

ICE Clear U.S. determines and publishes Original Margin rates for each Cleared Swap contract, and Cleared Swap contract positions are marked-to-market at the end of each business day using the Daily Settlement Prices from the Exchange.

**13. - Are Cleared Swaps subject to margin offsets against positions in the related, traded futures contracts?**

Yes. The ICE Clear U.S. margin rates for these products includes a spread margin for offsetting cleared swap and traded futures contract positions. Current margins for these products can be found at:

[https://www.theice.com/publicdocs/futures\\_us\\_reports/all/Futures US Margin Requirements.pdf](https://www.theice.com/publicdocs/futures_us_reports/all/Futures_US_Margin_Requirements.pdf).

**14. - Are Cleared Swaps subject to Large Trader Reporting or Other Requirements of the Exchange?**

The Exchange has established reportable levels for open positions and cleared swaps are subject to the large trader reporting and position accountability rules of the Exchange, and to applicable CFTC regulations.

Position Accountability Levels for these contracts are as follows:

~~Cocoa Cleared Swaps — 6,000 contracts net long or short in any single month or all months combined.~~

~~Coffee "C" Cleared Swaps — 5,000 contracts net long or short in any single month or all months combined.~~

Sugar No. 11 Cleared Swaps — are 10,000 contracts net long or short in any single month or all months combined.

These Position Accountability provisions are similar to those of the traded futures contracts, but operate independently from those of the traded futures.

**15. - Can A Cleared Swap Position Be Used To Effect an Exchange For Swap (EFS) Transaction?**

~~No. Once an OTC transaction has been converted into a Cleared Swap position, the original OTC transaction is extinguished and there no longer is an outstanding OTC contract between the original parties to the transaction. At the time an EFS transaction is effected, the buyer and seller of the futures must be, respectively, the seller and buyer of the swap. Therefore, a Cleared Swap position cannot be used to effect an EFS transaction that would effectively convert a Cleared Swap position into a position in the traded futures contract. The parties to an OTC transaction who wish to convert the transaction into a cleared instrument should determine at that time whether they wish to convert it into a Cleared Swap contract or into the traded futures contract (which would be done via an EFS). A Cleared Swap Position may be used to effect an EFS transaction only if the Cleared Swap was cleared prior to the effective date of this Amended FAQ, is entered into to liquidate the open Cleared Swap position and the parties to the EFS comply with all~~

requirements for EFS transactions set forth in Rule 4.13. Otherwise, a Cleared Swap Position may not be used to effect an EFS transaction.