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**BY ELECTRONIC TRANSMISSION**

Submission No.10-52  
December 6, 2010

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

Re: **Amendments to Rules 2.16, 2.24, 2.26, 2.31, 2.32, 4.32, 27.03-27.06 and 27.12A(a) -  
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 2.16, 2.24, 2.26, 2.31, 2.32, 4.32, 27.03-27.06 and 27.12A(a), attached as Exhibit A.

The Exchange requires every trader with direct access to the electronic trading system ("ETS") to have a clearing member guarantor. The guarantor is obligated to accept for clearance every trade executed by the trader that is not otherwise accepted for clearing by another clearing member. This system of guarantees mirrors the system that was implemented for floor brokers more than a decade ago when the Exchange eliminated financial requirements for floor brokers and other members. In the context of electronic trading, however, the concept of a single clearing member that acts as a default guarantor for all transactions of the guaranteed trader is ineffective and poses unnecessary risk.

Any trader can gain direct access to the ETS upon authorization by a clearing member. There is no limit on the number of different clearing members that may authorize the same trader to have direct access, just as there is no limit on the number of firms at which a trader can establish accounts and carry positions. Each order submitted to ETS contains the trader's log-in identification which is unique for each clearing member that has authorized direct ETS access to that trader. Consequently, at the time of order entry, the clearing member that granted access to the trader with respect to that order and the resulting transaction is known. In these

circumstances, there is no reason to have a single default guarantor for each trader and the rules have been amended to require that each clearing member that has authorized direct ETS access to a trader be obligated to clear any trade that is executed by the trader using the login that was so authorized. In this way, each clearing member would be the guarantor of the trades that it enabled, and no single clearing member would be liable to bear the financial risk of trades that were enabled by another clearing member. Notably, the Exchange's ETS facilitates the establishment of credit limits by clearing members at the time a trader is authorized in the system, and those limits can be adjusted at any time to control the risk that the clearing member is willing to accept on a trader by trader basis.

The amendments for ETS trades will not affect trades executed by open outcry, which will continue to operate under the existing clearing member default regime.

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

The amendments were adopted by the Exchange's Board of Directors on September 8, 2010. The amendments will become effective on December 13, 2010. No substantive opposing views were expressed by members or others with respect to the new rules and rules amendments.

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

Sincerely,

Jill S. Fassler  
Vice President  
Associate General Counsel

cc: Division of Market Oversight  
New York Regional Office

## EXHIBIT A

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

### Rule 2.16. Qualification for Guarantors, Procedure and Guarantee Termination

(a) A Clearing Member in good standing may become a guarantor of any Trading Member, Permit Holder or Lessee upon approval by the Exchange for all Trades executed by open outcry by such Trading Member, Permit Holder or Lessee. To be so approved, a Clearing Member must file with the Exchange an application in a form supplied by the Exchange, accompanied by a non-refundable application fee in the amount specified by the Board, and such other documents as the Exchange may deem necessary or appropriate, including but not limited to a copy of its financial statements as of the Clearing Member's most recent fiscal year end, certified by an independent public accountant and an agreement, in the form provided by the Exchange, whereby the guarantor agrees:

(i) to accept for clearance any Transaction effected by the Guaranteed Member by open outcry on or subject to the Rules, when and as provided in the Rules or the Clearing Organization Rules;

(ii) to duly and timely pay:

(A) any Claim by any present or future Member against the Guaranteed Member arising from any order or Transaction for the purchase, sale, exercise or expiration of a Commodity Contract executed by open outcry, or to be executed by open outcry, on the Exchange or subject to the Rules, or arising from cash market transactions which are part of, or directly connected with, any Transaction executed by open outcry on the Exchange or subject to the Rules; and

[REMAINDER OF RULE UNCHANGED]

### Rule 2.24 Security Interest in Disposition of Proceeds from Sale of a Membership

\* \* \*

(b) The distribution by the Exchange of the proceeds from the sale of a NYBOT Membership and the corresponding Required Shares or of funds deposited with the Exchange pursuant to Rule 2.26(b) shall be made as follows:

(i) First, in satisfaction pro rata of any amounts which have been determined to be payable out of such proceeds or funds to the Clearing Member guarantor of the Member whose NYBOT Membership has been sold for Claims arising directly from (A) any payment by such guarantor pursuant to the Clearing Member guarantee, (B) the clearance by such guarantor of any Transaction executed by such Member by open outcry on the Exchange or subject to the Rules, or (C) a documented loan made to the Member by the Clearing Member guarantor for the express purpose of acquiring the NYBOT Membership.

[REMAINDER OF RULE UNCHANGED]

### Rule 2.26. Sole Membership Transfer Procedure

(a) If a NYBOT Member wishes to transfer a NYBOT Membership and such Membership is the only NYBOT Membership owned by such Member, such Membership shall not be transferred unless and until:

\* \* \*

(iii) All Claims of the Clearing Member guarantor of such Member, if any, arising directly from (A) any payment by such guarantor pursuant to the guarantee, or (B) the clearance by such Clearing Member guarantor of any Transaction executed by such Member by open outcry on the Exchange or subject to the Rules, which in either case are filed with the Exchange within ten (10) days after the

Exchange has posted notice of the receipt of the Notice of Intention to Transfer on the Member Page of the Exchange's website, have been paid or resolved in accordance with the Rules;

[REMAINDER OF RULE UNCHANGED]

**Rule 2.31. Duties of Guaranteed Member**

Each Guaranteed Member shall notify his guarantor in writing of every commodity account which he maintains for carrying Trades executed by open outcry and the name of the Futures Commission Merchant maintaining that account, whether such account is maintained with a Member or non-member.

**Rule 2.32. Duties of all Members to Clearing Member Guarantors**

(a) No Member that is an FCM shall open or accept Trades executed by open outcry for an account for any Guaranteed Member without first obtaining the written authorization from the guarantor authorizing such Firm to open an account and accept Trades for such Guaranteed Member. Any Trades executed by open outcry and accepted for a Guaranteed Member without such authorization as specified hereunder shall release such Guaranteed Member's guarantor from any responsibility or liability for such accepted Trades.

(b) To facilitate compliance with this Rule, the Exchange shall publish from time to time a list of all Guaranteed Members.

**Rule 4.32. Submission of Open Outcry Trade Data for Clearing Purposes**

(a) With respect to any Transaction in any Commodity Contract which is executed by open outcry and is to be cleared by the Clearing Organization, no Person except a Clearing Member or a duly authorized representative of a Clearing Member acting on behalf of that Clearing Member may submit any information or reports for the purpose of clearing such Transactions ("Clearing Submission") to the Clearing Organization. Every Clearing Submission must be made in accordance with applicable Exchange and Clearing Organization Rules. It is the responsibility of each Clearing Member to insure that every Clearing Submission in its name is reviewed and authorized. A Clearing Member must make a Clearing Submission for each Commodity Contract Transaction for which it has received information or reports required by the Clearing Organization for such purpose from a non-clearing member or notify such Member that such submission will not be made.

(b) Every Clearing Submission for Transactions in a Commodity Contract which is executed by open outcry must be input into the Trade Input Processing System ("TIPS<sup>®</sup>") as follows:

\* \* \*

(vi) Clearing Member designations must be made no later than one (1) hour after the close of trading by open outcry in the contract market in which the Trade was made. Whenever possible, the Clearing Member designation shall be assigned upon Trade entry.

\* \* \*

(ix) Any Trade executed by a Floor Broker and matched in TIPS shall automatically be cleared to the account of the Clearing Member guarantor of such Floor Broker on the date executed, unless such Trade is otherwise accepted for clearance by another Clearing Member on such trade date.

[REMAINDER OF RULE UNCHANGED]

**Rule 27.03. Direct Access**

(a) All Clearing Members are eligible for a direct connection to the ICE ETS upon execution of an Electronic User Agreement with the Exchange.

(b) A Clearing Member may authorize Direct Access to Users who are non-Clearing Members and non-member Customers. Such authorization shall be submitted by the Clearing Member [~~in writing~~] to the Exchange[~~s~~] by [~~submitting~~] entering the required information in the Clearing Administration function of ETS for each identif[ying]ied [the] User[s]. [and such other information as the Exchange may require. The Clearing Member shall also execute a Clearing Member Guaranty Agreement, in the form prescribed by the Exchange, with respect to each such User.] The Clearing Member shall execute such documents, as required and in a form prescribed by the Exchange, setting forth the Clearing Member's obligation to clear Trades submitted by the Users that it has authorized.

[REMAINDER OF RULE UNCHANGED]

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

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~~[(d) The Clearing Member Guarantor, if any, of an Authorized Person who submits Trades in accordance with this Rule shall have no obligations under Rule 27.04(b) with respect to the clearance of such Trades.]~~

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

(a) [~~The~~] Each Clearing Member [~~guarantees~~] is responsible for the financial obligations of each User for which it authorizes Direct Access with respect to all orders entered and Transactions executed under its Clearing Member Mnemonic and shall be a party to all disputes arising from such Transactions.

(b) [~~Any Trades executed by a User with Direct Access that are not accepted by the Clearing Member to whom the User has allocated the Trades shall be cleared on the Trade date by the Clearing Member that executed the Guaranty Agreement referred to in Rule 27.03.~~] A Clearing Member is obligated to accept for clearance on the Trade date all Trades executed and allocated to such Clearing Member by each User that has been authorized by the Clearing Member to have Direct Access to ETS. 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 User as result of the Clearing Member's written notice to the Exchange revoking such authorization.

(c) With respect to each non-member User for wh[om]ich [~~the~~] a Clearing Member has authorized Direct Access, the Clearing Member shall:

(i) [~~provide such User with information concerning the use of ETS and the Rules of the Exchange and obtain a written agreement from such non-member that the use of the ETS is governed by such Rules and that the non-member is subject to the jurisdiction of the Exchange;~~

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

(ii) suspend or terminate the non-member's Direct Access if the Exchange determines that the actions of the User threaten the integrity or liquidity of any Exchange Contract, violate Exchange Rules or the Act, or if the non-member fails to cooperate in any investigation.

[REMAINDER OF RULE UNCHANGED]

#### **Rule 27.05. ETS Access From the Trading Floor**

(a) A Floor Member may have Direct Access from the Trading Floor, provided that [the] a Clearing Member [~~Guarantor~~] authorizes Direct Access of such Floor Member [~~executes a Clearing Member Guaranty with respect to electronic trading by such Floor Member~~] in accordance with Rule 27.03(b). A Floor Member shall execute such documents, register personnel and furnish such other information as the Exchange may require in connection therewith.

\* \* \*

(d) [~~All Trades entered by a Floor Broker or his Registered Operator and not accepted by the Clearing Member to whom the Floor Broker allocated the Trade shall be cleared on the Trade date by the Clearing Member Guarantor of such Floor Broker.~~] A Clearing Member is obligated to accept for clearance on the Trade date all Trades executed and allocated to such Clearing Member by each Floor Broker or his Registered Operator authorized by the Clearing Member to have Direct Access to ETS.

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

A Clearing Member that authorizes Direct Access for a User may revoke such authorization without prior notice to the User. 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 User in the system under the revoking Clearing Member's Mnemonic. [~~If the revocation is by a Floor Broker's Clearing Member Guarantor, all Direct Access of the Floor Broker shall be terminated until another Clearing Member has designated itself as the Floor Broker's Clearing Member Guarantor and authorizes Direct Access in accordance with the Rules. Unless otherwise specified by the Clearing Member revoking authorization, a Floor Broker whose Direct Access has been terminated shall not automatically be denied access to the Trading Floor for open outcry transactions.~~]

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

(a) Each Clearing Member [~~guaranteeing~~] authorizing a connection to the ETS is responsible for maintaining or causing to be maintained the audit trail for all orders submitted to the Exchange through any order routing/front end system.

[REMAINDER OF RULE UNCHANGED]