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March 11, 2010

Via Federal Express

Mr. David Stawick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 Twenty-first Street, N.W.
Washington, DC 20581

Re: Rule Certification:

Dear Mr. Stawick:

Pursuant to Commission Rule 40.6(c), the Intercontinental Exchange, Inc. ("ICE") hereby submits the following:

Amendments to the Intercontinental Exchange Participant Agreement

The majority of the amendments clarify the difference between an Eligible Commercial Entity and an Eligible Commercial Participant. ICE certifies that this amendment complies with the Commodity Exchange Act and the rules thereunder.

If you have any questions, please do not hesitate to call me at (770) 916-7832.

Sincerely,

R. Trabue Bland
Director of Regulatory Affairs and Assistant
General Counsel

IntercontinentalExchange

PARTICIPANT AGREEMENT

This Agreement ("Agreement") sets out the terms on which IntercontinentalExchange, Inc. ("ICE"), which owns and operates an electronic system (the "Exchange") for the (i) execution ("Execution") of transactions ("Exchange Transactions" or "Transactions"), (ii) the matching ("Confirmation") of previously executed trades ("Trade Confirmations" or "Trades") with other Participants, and (iii) the use of other services ("Other Services") involving physical commodities and derivative products on such commodities (collectively, the "Products"), has agreed to provide the party identified below ("Participant") with access to the Exchange. For the purposes of this Agreement, Trades submitted by Participant for Confirmation or Other Services may include either or both Exchange Transactions (executed on the Exchange) and Non-Exchange Transactions (executed on other exchanges, systems, or by non-electronic means). Other Services include (i) the matching ("Broker Confirmation") of Trade data with a third party ("Broker") responsible for arranging the Trade, (ii) the acceptance and processing ("Trade Give-Up") of a Non-Exchange Transaction submitted by a Broker on Participant's behalf and with Participant's authorization for the purposes of giving the Non-Exchange Transaction up to a clearing organization, ~~(iii) the submission of data ("Data Submission") for inclusion in market data services, and (iv) and (iii)~~ the acceptance and processing of Acting for Principal ("AFP") orders (the "AFP Service") (in which the Broker acts for and trades in the name of the Participant principal) for Exchange Transactions submitted by a Broker on Participant's behalf and with Participant's authorization in accordance with this Agreement.

- 1) **ACCESS TO EXCHANGE.** ICE hereby grants Participant a non-exclusive, non-transferable, revocable license to access the Exchange as it may exist from time to time and to utilize any hardware, software, systems and/or communications links furnished by ICE to Participant from time to time (collectively, the "System") in accordance with the Terms (as defined below), solely for the purpose of allowing Participant to electronically post bids, offers and requests for quotations (and responses to any such requests) for Exchange Transactions in the Products, to enter into Exchange Transactions with other participants, to match and confirm Trades with other participants, and to use the Other Services on the Exchange.
- 2) **TERMS OF ACCESS.** This Agreement, taken together with (i) the Service and Pricing Schedules (the "Schedules") (the current versions of which are attached hereto as Annex A), (ii) any other Annexes to this Agreement (excluding Annex B) (iii) the Transaction Procedures Guide governing Execution, (iv) the Confirmation Procedures and Product Guide governing Confirmation, (v) the Broker Confirmation Procedures Guide governing Broker Confirmation, (vi) the Trade Give-Up Procedures Guide governing Trade Give-Up, ~~(vii) the Market Data Submission Procedures and Product Guides governing Data Submission, and (viii) and (vii)~~ the AFP Procedures Guide governing the AFP Service (the current version of the above referenced guides are posted on the Exchange website), are collectively referred to herein as the "Terms" and will govern Participant's access to and use of the System and the Exchange and any and all Exchange Transactions, Trade Confirmations, and Other Services utilized by Participant. With the exception of the Confirmation Procedures Guide and the Broker Confirmation Procedures Guide, ICE may amend the Terms at any time by posting amendments on the Exchange, and any such amendments will be prospectively binding on Participant, provided that ICE will provide prior notice of any such amendments on the Exchange and provided further that ICE will provide at least two weeks' prior notice, through electronic or other direct communication with Participant, of any such amendments that are likely to materially and adversely affect Participant or its rights or obligations hereunder. Participant's use of the Exchange after the effective date of any such amendment shall constitute its ratification of and agreement to any such amendment. If ICE elects to require Participant to acknowledge and agree to an amendment, such amendment will not become effective until Participant has done so in the manner specified by ICE. The Confirmation Procedures Guide and the Broker Confirmation Procedures Guide are exempt from this amendment process and must be amended according to the terms stipulated therein.
- 3) **PARTICIPANT'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Participant hereby represents, warrants and covenants as follows:

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- a) Unless and until Participant notifies ICE otherwise, Participant is and will continue to be: (i) an "eligible commercial entity" as defined in Section 1a(11) of the U.S. Commodity Exchange Act (as amended) (together with relevant Commodity Futures Trading Commission Notices or Regulations, the "CEA") to the extent that Participant engages in Execution of Exchange Transactions; and/or (ii) an "eligible contract participant" as defined in Section 1a(12) of the CEA to the extent that Participant engages in Trade Give-Up. A summary of the CEA definitions of the terms "eligible commercial entity" and "eligible contract participant" is appended hereto as Annex B (Note: Annex B is only a summary and Participant should direct any questions regarding these definitions to its legal advisors).
- b) Participant will enter into Exchange Transactions solely as principal, and any futures commission merchant with access to the Exchange through a clearing relationship with Participant acknowledges that it is not permitted to execute Exchange Transactions on behalf of Participant.
- c) Participant acknowledges that the Exchange, the System and all information and content (including price and trading data) displayed and distributed thereon or in any way related to Exchange Transactions, Trade Confirmations, or Other Services (such information or content and information derived therefrom being referred to collectively herein as "Exchange Data") are, except as set forth in the final sentence of this Section 3(c), the exclusive proprietary property of ICE constituting trade secrets. Participant has been granted a limited license to use the System, the Exchange, and the Exchange Data solely for the purposes set forth herein and Participant will have no other rights with respect to the System, the Exchange, or the Exchange Data. Without limitation of the foregoing, Participant will access and utilize the System, the Exchange, and the Exchange Data solely for its own internal business activities in accordance with the Terms. In accordance with the foregoing, Participant will not provide access to the System, the Exchange, or any Exchange Data to any third party unless such third party is an affiliate of Participant or an ICE approved Authorized Agent as provided in Section 4 below. Participant agrees that it will not copy, modify, reverse engineer, reverse assemble or reverse compile the System or any of the Exchange Data displayed on or issued by the Exchange, that it will not distribute, rent, sell, retransmit, redistribute, release or license the System, any Exchange Data, or any part thereof to any third party (other than to its affiliates and agents subject to and in accordance with this Agreement). Participant further agrees that it will not, without limitation (other than for its own internal use in accordance with this Agreement), communicate, redistribute, or otherwise furnish, or permit to be communicated, redistributed or otherwise furnished, all or any portion of the Exchange Data, in any format, to any third party or in constructing or calculating the value of any index or indexed products. Participant will use its best efforts to ensure that its partners, officers, directors, employees and agents maintain sole control and possession of, and sole access to, Exchange Data obtained through Participant's access to the System. Notwithstanding the foregoing, it is understood and agreed that any and all data submitted to the Exchange by Participant (including but not limited to bids and offers for Exchange Transactions, Exchange Transactions from Execution, Trades to be matched for Confirmation or Broker Confirmation, and data from Other Services, such as the submission of data ("Data Submission") for inclusion in market data services) and all information related to Transactions entered into by Participant through the Exchange (or in connection with the AFP Service, by a Broker under the authorization of and on behalf of Participant in accordance with this Agreement) as well as all Trade data submitted to the Exchange by a Broker on Participant's behalf for the purposes of Trade Give-Up, shall be the non-exclusive property of ICE and Participant, and that each party shall have the right to use, sell, retransmit or redistribute such information, subject to the provisions of Section 8 hereof.
- d) Participant will comply with the Terms and any and all laws, rules, regulations or orders applicable to Participant's access to and use of the System, the Exchange, and the Exchange Data.
- e) Participant acknowledges and accepts that it shall be solely responsible for any and all costs or expenses associated with its accessing and utilizing the Exchange.

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- f) Participant acknowledges that ICE may, in its sole discretion, with or without cause or prior notice to Participant, temporarily or permanently cease to operate the Exchange, temporarily or permanently cease to make certain Products or Transactions or Other Services or Exchange Data available or suspend, terminate or restrict Participant's access to and utilization of the Exchange. Participant acknowledges that its access to and utilization of the Exchange may be monitored by ICE for its own purposes (including, without limitation, for purposes of monitoring levels of activity in categories of Exchange Transactions, Trade Confirmations, and Other Services and for purposes of maintaining the functional and operational integrity of the System and for purposes of complying with applicable laws and regulations) and not for the benefit of Participant. The Confirmation Procedures Guide and the Broker Confirmation Procedures Guide set forth additional terms and conditions under which ICE may respectively temporarily or permanently suspend each of those Services.
- g) Participant has all necessary power and authority to execute and perform this Agreement, and this Agreement is its legal, valid and binding agreement, enforceable against Participant in accordance with its terms. Neither the execution of nor performance under this Agreement by Participant violates any law, rule, regulation or order, or any agreement, document or instrument, binding on or applicable to Participant. If Participant has authorized its Clearer to enable any Broker to submit Non-Exchange Transactions on the Participant's behalf for the purpose of Broker Confirmation and/or Trade Give-Up or authorized any Broker under the AFP Service to enter or execute orders for Exchange Transactions on its behalf, Participant represents and warrants that such Broker is authorized to act on behalf of Participant in connection with the use of such Services and authorizes and instructs ICE to comply with any instructions submitted by such Broker on behalf of Participant. Participant further represents, warrants, and agrees that, by authorizing and enabling such Broker to act on its behalf through the System, Participant shall be bound by any actions taken by that Broker on behalf of Participant through the System.
- h) Participant agrees to provide ICE with information related to Participant's use of the System and the Exchange that is reasonably requested by ICE, if such information is reasonably necessary in order to enable ICE to assess the identity of persons or entities accessing the System and the Exchange through Participant's Passwords (as defined in Section 4), maintain the integrity of the System, or to comply with applicable laws or regulations, and such information will be accurate and complete in all material respects and subject to the Confidentiality provisions of Section 8. Should Participant refuse to provide information, or if the information demonstrates a potential violation of the terms and conditions of this Agreement, then ICE shall have the right, upon five (5) days notice, to conduct an on-site audit during regular business hours of Participant's compliance with this Agreement. ICE may inspect, among other things, any use of the System, the Exchange and the Exchange Data. ICE's right of inspection shall extend only so far as may be necessary to ensure compliance by Participant with the provisions of this Agreement.
- i) Participant acknowledges that the System and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. Participant will (1) comply with all legal requirements established under these controls, (2) cooperate fully with ICE in any official or unofficial audit or inspection that relates to these controls and (3) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to, or otherwise enter into any transaction or engage in any other activities with, any country, territory or Person restricted or targeted by the economic sanctions or export control laws of the United States, which would be prohibited under the laws or regulations of the United States, any Person that resides or has a place of business in any such country or territory, or any Person that otherwise appears on any U.S.-government provided list of known or suspected terrorists or terrorist organizations. A "Person" shall mean an individual, corporation, partnership, limited partnership, limited liability company, joint venture, association, trust, estate, unincorporated organization or other entity.
- j) Participant acknowledges that it is aware that ICE makes order flow incentive payments to Brokers in connection with Trade Give-Up processing. The rates presently in effect with respect to such order flow incentive payments as of the date of this Agreement are as set forth on Annex

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A, and may be amended by ICE in accordance with the terms of this Agreement from time to time. Upon written request of Participant, ICE shall make available to Participant information regarding any order flow incentive payments paid by ICE to Participant's Brokers in connection with brokerage services provided to Participant by such Brokers during the three (3) -year period preceding the date of such written request. Additional information regarding ICE's order flow incentive payment program may be found from time to time at <http://www.theice.com>.

- 4) **USER IDs AND PASSWORDS.** ICE, after receiving an executed copy of this Agreement and completing its review of the information provided in response to this Agreement, may, in its sole and absolute discretion, issue to Participant, through its employees or ICE-approved third party agents designated as its administrator(s) with respect to Participant's use of the System ("Participant User Administrator"), one or more user IDs and passwords (collectively, the "Passwords") for use exclusively by employees or ICE-approved third party agents ("Authorized Agents") of Participant or a Participant affiliate that are properly authorized to access the Exchange on behalf of Participant. In no event will Participant provide ID's or Passwords to any third parties that compete with ICE, including, without limitation, to brokers or to other market intermediaries. The initial Participant User Administrator(s) for Exchange Transactions, if applicable, and for Trade Confirmations and Broker Confirmations, if applicable, are identified, respectively, on the signature page hereof and Participant will notify ICE promptly of any change in its Participant User Administrator(s). Participant will be solely responsible for controlling and monitoring the use of the Passwords, will provide the Passwords only to its Authorized Agents, and will not provide the Passwords to any third party other than an Authorized Agent. Participant will immediately notify ICE of any unauthorized disclosure or use of the Passwords or access to the Exchange or of the need to deactivate any Passwords. Participant acknowledges and agrees that it will be bound by any actions taken through the use of its Passwords (except through the fault or negligence of ICE), including the Execution of Transactions, the Confirmation of Trades, and the use of Other Services, whether or not such actions were authorized. Participant will only use the Passwords to access and use the Exchange from the jurisdictions specified by Participant and accepted by ICE. The Participant User Administrator shall be responsible for all communications between ICE and Participant and any notices or other communications sent to the Participant User Administrator by ICE shall be binding on Participant.
- 5) **TERM.** This Agreement will commence as of the date hereof and will continue thereafter unless and until terminated by either party upon 30 days' written notice to the other, provided that this Agreement shall remain in effect with respect to any Exchange Transactions, Trade Confirmations, Broker Confirmations, Trade Give-Ups, and AFP Service for Exchange Transactions effected prior to such termination and provided that ICE complies with any additional termination requirements governing the Confirmation service as stipulated in the Confirmation Procedures Guide and governing the Broker Confirmation service as stipulated in the Broker Confirmation Procedures Guide. Termination of this Agreement shall terminate all services provided by ICE to Participant including Execution, Confirmation, and Other Services. Each party's continuing obligations under this Agreement and the Terms, including, without limitation, those relating to "Indemnification" and "Confidentiality", will survive the termination of this Agreement.
- 6) **EXECUTION OF TRANSACTIONS.**
- a) Subject to Section 6(e), upon the Execution of a binding Transaction in accordance with the Terms, Participant agrees that: (i) it will be obligated to pay to ICE the commissions due on such Transaction, in accordance with the Schedules as then in effect, regardless of whether the Transaction is performed, settled or otherwise completed by Participant and its counterparty; and (ii) the resulting Transaction will constitute a legally binding obligation of Participant, with respect to its counterparty, to complete the Transaction in accordance with its terms and subject to the terms of any master or other applicable agreements between Participant and its counterparty, provided that ICE shall have no involvement in and no responsibility or liability for any matters related to the Transaction or the completion or documentation of the Transaction subsequent to its Execution through the Exchange, including but not limited to the creditworthiness of any participant, all of which shall be the sole responsibility of Participant and/or its counterparty, as applicable. Participant acknowledges and agrees that the counterparty to any Transaction may

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rely on Participant's agreements hereunder as to the binding nature of such Transaction and agrees that the counterparty may directly enforce Participant's obligations under such Transaction against Participant.

- b) Participant agrees that Transactions Executed through the Exchange shall be deemed to be "in writing" and to have been "signed" for all purposes and that any record of any such Transaction will be deemed to be in "writing". Participant will not contest the legally binding nature, validity or enforceability of any Transaction Executed through the Exchange based on the fact that it was entered and Executed electronically and expressly waives any and all rights it may have to assert any such claim.
- c) All commissions and other charges and fees incurred by Participant hereunder in any calendar month shall be invoiced by ICE to Participant based on the Schedules, as amended from time to time and as set forth in the Terms. ICE will provide Participant with an invoice which states the amount owed by Participant, including any commissions, other charges or related taxes, which will be due and payable in the currency, timeframe, and manner specified in the Schedules. Late payments will bear interest after the due date at a rate per annum of interest equal to the Prime Rate (as published in the Wall Street Journal) plus 1.5%, to the extent that such rate shall not exceed the maximum rate allowed by applicable law.
- d) Participant shall be liable for all taxes and duties (other than franchise and income taxes owed by ICE) arising out of this Agreement or any Exchange Transactions, Trade Confirmations, or Other Services utilized by Participant through the Exchange, including, without limitation, taxes and duties levied by non-U.S. jurisdictions.
- e) ICE operates the Exchange as an Exempt Commercial Market as defined in the CEA and is subject to obligations regarding the reporting of trade and price information to regulators and to the marketplace. In addition, ICE seeks to facilitate trading in its markets in accordance with the principles articulated in the Participant Code of Conduct attached as Annex H. For Products that serve a significant price discovery function, ICE operates the Exchange according to Section 2(h)(7) of the CEA and facilitates trading through the ICE OTC Rulebook as amended by ICE from time to time, which will be posted on the Exchange website. ICE reserves the right to adjust or cancel any transaction that ICE has determined to be "off market" or to have resulted from a trading error in accordance with the "ICE Error Trade Policy" established by ICE and amended from time to time. The ICE Error Trade Policy, as amended, will be posted on the Exchange website. Notwithstanding anything to the contrary in this Agreement, as between Participant and ICE, all transactions executed through the Platts Windows Markets, as defined in Section 8.b, shall be subject to any and all policies and procedures promulgated by Platts from time to time.
- f) Participant acknowledges that excessive levels of message traffic sent to the Exchange by Participant can negatively impact System performance, and acknowledges that ICE reserves the right to, if necessary, suspend Participant's access to the Exchange pursuant to this Section 6(f) and/or charge Participant a fee for excessive System messaging in accordance with the "ICE OTC Volume Ratio Policy" as established by ICE and as amended from time to time. The OTC Volume Ratio Policy will be posted on the Exchange website.
- g) Participant acknowledges and agrees that Trade Give-Up transactions are not entered into on the Exchange and are not entered into in reliance on Section 2(h)(3) of the CEA.
- h) If Participant is a futures commission merchant ("FCM") as defined in the CEA, the FCM may obtain access for a non-Participant customer of the FCM that is an eligible contract participant ("ECP") as defined in the CEA to clear Non-Exchange Transactions at a derivatives clearing organization owned and operated by ICE or ICE's affiliates. In providing such access, the FCM represents, warrants and covenants to ICE (i) that the FCM has reason to believe such non-Participant customer is an ECP at the time such access is initially provided, and (ii) that such non-Participant customer has represented to the FCM that such non-Participant customer is an ECP at the time such Non-Exchange Transaction is cleared.

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7) LIMITATION OF LIABILITY; INDEMNITY.

- a) PARTICIPANT ACKNOWLEDGES, UNDERSTANDS AND ACCEPTS THAT ICE MAKES NO WARRANTY WHATSOEVER TO PARTICIPANT AS TO THE SYSTEM, THE EXCHANGE, OR ANY OTHER SERVICES, EXPRESS OR IMPLIED, AND THAT THE SYSTEM, EXCHANGE, AND ANY OTHER SERVICES ARE PROVIDED ON AN "AS IS" BASIS AT PARTICIPANT'S SOLE RISK. ICE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER ICE NOR ITS MANAGERS, OFFICERS, AFFILIATES, SUBSIDIARIES, SHAREHOLDERS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PARTY SHALL HAVE ANY LIABILITY TO PARTICIPANT (i) FOR THE ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE OR CONTINUED AVAILABILITY OF THE SYSTEM, THE EXCHANGE, OR ANY OTHER SERVICES (ii) FOR DELAYS, OMISSIONS OR INTERRUPTIONS THEREIN, (iii) FOR THE CREDITWORTHINESS OF ANY OTHER PARTICIPANT, (iv) FOR THE ACTS OR OMISSIONS OF ANY BROKER AUTHORIZED WITHIN THE SYSTEM BY PARTICIPANT TO UTILIZE THE SERVICES ON BEHALF OF PARTICIPANT, OR (v) FOR THE ACTS OR OMISSIONS OF PLATTS WITH REGARD TO THE PLATTS WINDOWS MARKETS. ICE SHALL HAVE NO DUTY OR OBLIGATION TO VERIFY ANY INFORMATION DISPLAYED ON THE EXCHANGE. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE EXCHANGE DOES NOT AND SHALL NOT SERVE AS THE PRIMARY BASIS FOR ANY DECISIONS MADE BY PARTICIPANT AND THAT ICE IS NOT AN ADVISOR OR FIDUCIARY OF PARTICIPANT.
- b) Subject to Section 7(c) of this Agreement, Participant shall indemnify, protect, and hold harmless ICE, its directors, officers, affiliates, employees and agents from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs (including attorney's fees) resulting from or arising out of (i) any act or omission by any person obtaining access to the Exchange through the Passwords (other than through the fault or negligence of ICE), whether or not Participant has authorized such access, and (ii) any act or omission of any Broker acting under authorization and on behalf of Participant in connection with the use of the Services.
- c) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- d) Notwithstanding the terms of Section 7(a), in the event that ICE is determined to be liable to Participant for any cause, Participant expressly agrees that in entering into this Agreement, ICE's aggregate liability, for all causes of action, will not exceed the total commissions, fees, and other amounts (excluding any applicable taxes or duties) paid to ICE by Participant in the previous six months from the date of the occurrence of the liability.

8) CONFIDENTIALITY.

- a) Any and all non-public information in any form obtained by either party or its employees arising out of or related to the provision or use of the System or the Exchange, including but not limited to trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto and Exchange Data, shall be deemed to be confidential and proprietary information. Each party agrees to hold such information in strict confidence and not to disclose such information to third parties (other than to its employees, its affiliates and their employees or its agents) or to use such information for any purpose whatsoever other than as contemplated by the Terms and to advise each of its employees, affiliates and agents who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential in accordance with this Section 8.
- b) The restrictions in Section 8(a) shall not apply to information which: (i) is in or becomes part of the public domain other than by disclosure by such party in violation of this Agreement; (ii) is known to or obtained by such party previously without an obligation of confidentiality; (iii) is indepen-