

ice

World Financial Center
One North End Avenue
New York, New York 10022

Atlanta Calgary Chicago Houston London New York

CONFIDENTIAL TREATMENT
REQUESTED

BY ELECTRONIC TRANSMISSION

Submission No. 13-34
April 5, 2013

Ms. Melissa Jurgens
Assistant Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Re: Amendments to the Russell Futures Market Maker Program
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)**

Dear Ms. Jurgens:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6(a), ICE Futures U.S., Inc. ("Exchange") self certifies amendments to the Russell Futures Market Maker Program (the "Program"). The amendments include the new Russell 2000® Growth Index Mini and Russell 2000®¹ Value Index Mini futures contracts being listed on April 22, 2013 in the Program. A copy of the Program application is attached as Exhibit A.

The Russell Futures Market Maker Program allows participants to earn discounted rates if they agree to make two sided markets in Russell Index contracts. **[Remainder of Paragraph Redacted]**

The Exchange certifies that the amendments to the Program comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. The Exchange further certifies that, concurrent with this filing, a redacted copy of this submission was posted on the Exchange's website at (<https://www.theice.com/notices/RegulatoryFilings.shtml>). The Exchange is not aware of any opposing views with respect to the amendments, which will become effective on April 3, 2013.

¹ Russell 2000® is a trademark and service mark of the Russell Investment Group, used under license.

If you have any questions or need further information, please contact me at 212-748-4021 or at jason.fusco@theice.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason V. Fusco". The signature is written in a cursive style with a large, sweeping initial "J".

Jason V. Fusco
Assistant General Counsel
Market Regulation

Enc.

cc: Division of Market Oversight
New York Regional Office

EXHIBIT A

ICE Futures U.S.[®] Inc. Russell Futures Market Maker Program

This Application and Agreement is submitted by _____ (“Market Specialist”) to become a Market Specialist for ICE Futures U.S., Inc. (“ICE Futures”) in order to provide a liquid and orderly marketplace for Russell 1000[®] Index, Russell 2000[®] Index, Russell 1000 Growth Index, Russell 1000 Value Index, Russell 2000 Growth Index, and Russell 2000 Value Index Futures Contracts traded on the ICE electronic trading system (the “Designated Contracts”).

The Market Specialist understands and agrees that:

1. It will execute all documents and agreements required by ICE Futures in order that the Market Specialist is able to input orders into the ICE electronic trading system.
2. It will use its best efforts to continuously maintain in the appropriate Designated Contracts a current bid and offer as specified in Schedule A, which is attached and made a part of this Application, for the hours specified in Schedule A. **[REMAINDER OF PARAGRAPH REDACTED]**
3. It will make and conduct all trading activity as a Market Specialist through the Market Specialist’s proprietary account which the Market Specialist will identify to appropriate ICE Futures personnel.
4. **[PARAGRAPH REDACTED]**
5. **[PARAGRAPH REDACTED]**
6. **[PARAGRAPH REDACTED]**
7. This Application and Agreement supersedes any and all prior and contemporaneous market specialist agreements, understandings, negotiations and discussions, written or oral, between ICE Futures and the Market Specialist, relating to any transactions contemplated by this Agreement.
8. The term of this Agreement shall commence on the Effective Date and end on December 31, 2013. ICE Futures, in its sole discretion, may either extend the term of the Agreement for a period not to exceed three (3) years in total or terminate the Market Specialist Program at any time prior to December 31, 2013. The Market Specialist further acknowledges that ICE Futures retains the right to revoke the Market Specialist’s status if ICE Futures concludes from its review that the Market Specialist is not complying with the obligations of the Market Specialist.

Effective Date: _____

ICE Futures U.S.

(Market Specialist)

By: _____

By: _____

Name:

Name:

Title:

Title:

SCHEDULE A

Product _____

	Front Month	Second Month	Third Month	Calendar Spread
Bid/Offer Spread				
Size				
Trading Hours				

Product _____

	Front Month	Second Month	Third Month	Calendar Spread
Bid/Offer Spread				
Size				
Trading Hours				

Product _____

	Front Month	Second Month	Third Month	Calendar Spread
Bid/Offer Spread				
Size				
Trading Hours				

Product _____

Bid/Offer Spread				
Size				
Trading Hours				

Clearing Member Information

Name: _____

Acct #: _____

CM Contract: _____

Phone or email: _____

I hereby certify that the information provided above is true and correct. I hereby acknowledge and understand that ICE Futures, including but not limited to the Market Regulation Department, will be reviewing trading in my proprietary account(s) listed above in order to determine whether I am continuing to meet the requirements of the Market Specialist Program and if I should continue or be renewed as a participant in the Market Specialist Program. I authorize ICE Futures to contact my clearing member from time to time to confirm my continued eligibility for the program and authorize my clearing member to release all trading information related to my proprietary account(s) listed below to ICE Futures.

I hereby agree that the above bid/offer spreads and trading hours listed for certain of the above ICE Futures US Commodity Contracts are the spreads I, as a Market Specialist, will use its best efforts to maintain in accordance with paragraph 2 of the Market Specialist Application.

Date: _____

By: _____

Name: _____

Title: _____

**CONFIDENTIAL TREATMENT
REQUESTED**

ice

Atlanta Calgary Chicago Houston London New York Singapore

World Financial Center
One North End Avenue
New York, New York 10280

April 5, 2013

BY ELECTRONIC MAIL

Assistant Secretary of the Commission
FOIA, Privacy and Sunshine Acts Compliance
Commodity Futures Trading Commission
Three Lafayette Centre, 8th Fl.
1155 21st Street, N.W.
Washington, DC 2058

Re: FOIA Confidential Treatment Request

Dear FOIA Compliance Staff:

ICE Futures U.S., Inc. ("Exchange") Submission No. 13-34 ("Submission"), a self certification of amendments to the Exchange's Russell Futures Market Maker Program (the "Program") was filed with the Secretary of the Commission on April 5, 2013. As discussed more fully below, Appendix A to the Submission ("Appendix A") contains confidential and proprietary commercial and financial information of the Exchange which is exempt from disclosure pursuant to Section 552(b)(4) of the Freedom Of Information Act ("FOIA") and Commission Regulation 145.9(d). Copies of the Submission and Appendix A accompany this request. Pursuant to Commission Regulation 145.9(d)(1)(ii), the Exchange requests that Appendix A and its contents receive confidential treatment in perpetuity. IFUS further requests that the Commission notify the Exchange upon receiving any FOIA request, or any other court order, subpoena or summons for Appendix A. The Exchange also requests that it be notified if the Commission intends to disclose Appendix A to Congress or to any other governmental agency or unit pursuant to Section 8 of the Commodity Exchange Act ("CEA").

DETAILED WRITTEN JUSTIFICATION

Section 552(b)(4) of the FOIA exempts from the disclosure requirements of the FOIA "trade secrets and commercial or financial information obtained from a person and privileged or confidential". The FOIA contains no definition of "privileged" or "confidential". Some courts have found there to be a presumption of confidentiality for commercial information that is (1) provided voluntarily and (2) is of a kind the provider would not customarily make available to the public. See Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 878 (D.C. Cir. 1992) (en banc); see also Center for Auto Safety v. National Highway Traffic Safety Administration, 244 F.3d 144, 147 (D.C. Cir. 2001) (applying tests from Critical Mass). Even if there were no presumption of confidentiality, the information in Appendix A still would be considered "confidential" because the Exchange would not ordinarily disclose it to the public and disclosure would cause substantial harm to the competitive position of the Exchange. In Gulf & Western Industries, Inc. v. U.S., 615 F.2d 527 (D.C. Cir. 1979), the Court of Appeals concluded that information is confidential for purposes of the FOIA if (i) it is not of the type normally released to the public by the submitter and (ii) the information is of the type that would cause substantial

competitive harm if released. There is no requirement that "competitive harm" be established by a showing of actual competitive harm. Rather, "actual competition and the likelihood of substantial competitive injury is all that needs to be shown." Gulf & Western Indus., Inc. v. U.S., 615 F.2d at 530. Thus, in National Parks and Conservation Association v. Kleppe, 547 F.2d 673 (D.C. Cir. 1976), the Court of Appeals concluded that the disclosure of certain financial information, including costs and price-related items, was likely to cause substantial harm to the disclosing party's competitive position. Such disclosure, if required, would provide competitors with valuable information relating to the operational strengths and weaknesses of the disclosing company. Such competitive harm may result from the use of such information either by direct competitors or by persons with whom one is negotiating. See American Airlines, Inc. v. National Mediation Board, 588 F.2d 868, 868 n.13 (2d Cir. 1978). It is also clear that the exemption was intended to prevent the fundamental unfairness that can result from one side having confidential information about the other in a business context. Cf. National Parks, *supra*, at 678 n.18.

The information set forth in Appendix A was voluntarily provided to the Commission to support the Exchange's self certification that the amendments to the Program are in compliance with applicable provisions of the CEA and the regulations thereunder. This information is not of a type customarily made available to the public by the Exchange. The Program took significant time, analysis and expense to develop and is an integral part of the Exchange's competitive strategy for growing the agricultural futures markets. Consequently, disclosure of the salient terms holds the potential for significant competitive harm to the Exchange. Additionally, it should be noted that there is no regulatory requirement that such information be disclosed.

For all the foregoing reasons, the Exchange requests that the Commission grant the Exchange's request for confidential treatment for Appendix A and the information contained therein. If you have any questions or need further information, please contact me at 212-748-4021 or at jason.fusco@theice.com.

Sincerely,



Jason V. Fusco
Assistant General Counsel
Market Regulation

Enc.

cc: Secretary of the Commission
Division of Market Oversight
New York Regional Office