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OFFICE OF THE SECRETARIAT

*New York Clearing Corporation*

*One North End Avenue, 13<sup>th</sup> Floor*

*New York, New York 10282*

**BY ELECTRONIC TRANSMISSION**

07-01

January 11, 2007

Ms. Eileen A. Donovan  
Acting 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 NYCC By-Law Sections 1.1, 5.2 and 6.5, and Submission of NYCC Board Resolution Authorizing the Clearing and Fungible Nature of Pre and Post Merger NYBOT Contracts.**  
**Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Ms. Donovan:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6(a), the New York Clearing Corporation ("NYCC") submits, by written certification, amendments to NYCC By-Law Sections 1.1, 5.2 and 6.5, attached as Exhibit A. In order to provide notice to the Commission, NYCC also submits the resolution of the Board of Directors authorizing the clearing and fungible nature of the pre and post merger contracts traded at the Board of Trade of the City of New York, Inc. ("NYBOT"), attached as Exhibit B.

The amendments to By-Law §§1.1 and 5.2(a) were adopted by NYCC to accommodate the merger of the Board of Trade of the City of New York, Inc. and the IntercontinentalExchange, Inc. By-Law §1.1 was amended to add a definition of the term "Merger", change the definition of the term "NYBOT" and delete the definition of the term "NPCL". Section 5.2(a) was amended to require Clearing Members to satisfy Exchange clearing member requirements in order maintain their status and have the privilege of clearing contracts at NYCC.

By Law §6.5(b) was amended to delete the last sentence of the sub-section which expressly: (i) preserved both NYCC's and NYBOT's right to exculpation from a clearing member regardless of the nature of the underlying claim; and (ii) stated that paragraph provided no limits on the liability of a clearing member, their officers, employees or agents.

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

NYCC's Board of Directors approved the amendments on December 11, 2006. No substantive opposing views were expressed by members or others with respect to the amendments. The amendments will go into effect on January 12, 2007.

If you have any questions or need further information, please contact me at 212-748-4084.

Sincerely,

Jill S. Fassler  
NYBOT®  
Vice President  
Associate General Counsel

cc: John Lawton  
CFTC, Division of Clearing and Intermediary Oversight  
Allen Cooper  
CFTC, New York Regional Office

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

### **Section 1.1. Definitions**

Unless the context otherwise clearly requires, the following terms as used in the By-Laws and Rules shall have the following meanings:

\* \* \*

#### **Merger**

The merger of Board of Trade of the City of New York, Inc., a New York not-for-profit corporation, into NYBOT.

\* \* \*

#### **NYBOT**

Board of Trade of the City of New York, Inc., a corporation organized and existing under the [~~NPCL~~] Delaware General Corporation Law, its successor and any permitted assign.

#### **[~~NPCL~~]**

~~[The Not for Profit Corporation Law of the State of New York, as in effect from time to time.]~~

[Remainder of By-Law remains unchanged]

### **Section 5.2. Eligibility Requirements**

To become and remain a Clearing Member and to have the privilege of clearing Contracts effected on or subject to the rules of one or more Exchange or Exchanges a Person must:

(a) Be an entity that is a member firm of such Exchange or Exchanges and satisfy the clearing member requirements of the Exchange or Exchanges;

[Remainder of By-Law remains unchanged]

## **EXHIBIT A**

## NEW YORK CLEARING CORPORATION

### Section 6.5. *Exculpation and Reimbursement of Corporation*

\* \* \*

(b) EXCEPT IN INSTANCES WHERE THERE HAS BEEN A FINDING OF WILLFUL MISCONDUCT OR BAD FAITH, IN WHICH CASE THE PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS IN THIS PARAGRAPH (b), NEITHER THE CORPORATION, NYBOT NOR ANY EXCHANGE, NOR ANY DIRECTOR, COMMITTEE MEMBER, OFFICER, AGENT OR EMPLOYEE OF THE CORPORATION, NYBOT OR ANY EXCHANGE, SHALL BE LIABLE TO ANY PERSON, INCLUDING BUT NOT LIMITED TO A CUSTOMER, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES), ARISING FROM (i) ANY FAILURE OR MALFUNCTION OF ANY ELECTRONIC SYSTEM UTILIZED BY THE CORPORATION OR ANY OF THE CORPORATION'S SERVICES OR FACILITIES USED TO SUPPORT ANY SUCH SYSTEM, (ii) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY ELECTRONIC SYSTEM UTILIZED BY THE CORPORATION OR ANY OF THE CORPORATION'S SERVICES OR FACILITIES USED TO SUPPORT ANY SUCH SYSTEM, OR (iii) THE USE OF THE CONTINUOUS LINKED SETTLEMENT SYSTEM ("CLS") IN THE DELIVERY OF CURRENCIES. ~~[THE FOREGOING PROVISIONS OF THIS PARAGRAPH (b) SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. THE FOREGOING SHALL NOT LIMIT THE LIABILITY OF ANY CLEARING MEMBER OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS FOR ANY ACT, INCIDENT OR OCCURRENCE WITHIN THEIR CONTROL.]~~

[Remainder of By-Law remains unchanged]

## **NEW YORK CLEARING CORPORATION**

### **Board Resolution Re Clearing NYBOT-Delaware Contracts**

WHEREAS, this Corporation has acted as the clearing organization for Board of Trade of the City of New York, Inc. ("NYBOT") since June 10, 2004, and as such has accepted for clearance futures contracts and options on futures contracts on various commodities traded on or subject to the rules of NYBOT ("Exchange Contracts"); and

WHEREAS, NYBOT plans to merge into CFC Acquisition Co. (hereafter referred to as "NYBOT-Delaware") in connection with the proposed merger transaction with IntercontinentalExchange, Inc., whereupon NYBOT will cease to exist; and

WHEREAS, upon the consummation of such merger, NYBOT-Delaware plans to commence trading futures contracts and options on futures contracts on such commodities (the "NYBOT Contracts") and to designate this Corporation as the clearing organization to clear NYBOT Contracts; and

WHEREAS, the terms and provisions of the NYBOT Contracts on each such commodity will (until further action by NYBOT-Delaware) be identical to the terms and provisions of the Exchange Contracts on such commodity pursuant to the rules of NYBOT;

NOW THEREFORE, BE IT RESOLVED that from and after the commencement of trading in NYBOT Contracts on or subject to the rules of NYBOT-Delaware: (a) all open positions in Exchange Contracts shall remain open, (b) any NYBOT Contracts on any commodity entered into on or subject to the rules of NYBOT-Delaware shall be offset against such open positions in Exchange Contracts on such commodity in the same manner and to the same extent as if such positions had originally been established as NYBOT Contracts on or subject to the rules of NYBOT-Delaware, (c) all margins held by the Corporation in connection with such positions shall continue to be held and disposed of in the same manner as if such positions had been established on or subject to the rules of NYBOT-Delaware, and (d) all rights and obligations of Clearing Members with respect of such open positions shall continue in full force and effect; and

BE IT FURTHER RESOLVED that the officers of the Corporation are authorized to execute and deliver such instruments and documents and to take such other action as they may deem necessary or appropriate in order to implement the language and purposes of the foregoing resolution.

## **EXHIBIT B**