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**BY ELECTRONIC TRANSMISSION**

Submission No. 15-126  
July 20, 2015

Mr. Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**Re: Sugar No. 11 Resolution 3--Interpretation of Sugar No. 11<sup>®</sup> Rule 11.08(2)(a) -  
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) hereby notifies the Commission of the Exchange’s self-certification of an interpretation of IFUS Sugar No. 11<sup>®</sup> Rule 11.08(2)(a), which has been codified as Sugar No. 11 Resolution 3 and is attached as Exhibit A. The Resolution, which becomes effective August 3, 2015, was adopted by the Board in response to a request for interpretation from a market participant that had asked the Board to confirm the requestor’s view that the obligations of a deliverer to nominate a berth and commence loading sugar onto the receiver’s vessel under Rule 11.08(2)(a)(i) and (ii) are subject to a “time is of the essence” standard.

The obligations of deliverers under the Rules has been the subject of periodic working group studies and recommendations, as well as clarifying interpretations and amendments adopted by the Board. These groups have sought to strike a balance between specificity and flexibility in the Rules given the FOB nature of the contract and the practical realities affecting the process for loading sugar on to a waiting vessel. Significant among them was an amendment in 2004 which removed the modifier “*promptly*” from the references to a deliverer’s obligation to nominate a berth and commence loading a receiver’s vessel, thereby removing the potential for any inference that the berth nomination and loading obligations of the deliverer were required to be fulfilled immediately upon the vessel’s readiness. Nothing in the express terms of the contract or the legislative history of these provisions supports a contrary reading.

Rather, the Rules expressly provide for demurrage and penalty demurrage to be paid by the deliverer to the receiver for loading the sugar at a rate that fails to achieve a specified minimum daily loading rate over a period of time referred to in the Rules as “lay time” for the vessel. Under this system, a deliverer might not load on each day, or at the same rate each day, but could still meet its obligations under the Rules if it loaded at a faster rate on certain days such that the minimum daily rate was achieved over the “lay time” period. It also establishes a penalty system

for failing to achieve the minimum daily loading rate over that period. In these circumstances, it would be inconsistent with the contract's terms to imply a "time is of the essence" standard.

Accordingly, for the avoidance of doubt, the Exchange has adopted Sugar No. 11 Resolution 3 to make clear that the obligations of the deliverer to nominate a berth and commence loading the receiver's vessel under Rule 11.08(2)(a) are not subject to a "time is of the essence" standard. The Exchange certifies that the Resolution complies with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder, in particular, Core Principle 7 concerning the availability of accurate information regarding the terms and conditions of Exchange contracts. The Exchange is not aware of any substantive opposing views other than those of the firm which requested the interpretation, and certifies that concurrent with this filing, a copy of this submission was posted on the Exchange's website 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 at [audrey.hirschfeld@theice.com](mailto:audrey.hirschfeld@theice.com).

Sincerely,

A handwritten signature in blue ink that reads "Audrey R. Hirschfeld". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Audrey R. Hirschfeld  
SVP and General Counsel

Enc.  
cc: Division of Market Oversight

Exhibit A

SUGAR NO. 11 RESOLUTIONS

No. 3 [~~Reserved~~] Interpretation of Sugar No. 11 Rule 11.08(2)(a)

**WHEREAS**, the Board has been requested to interpret whether Rule 11.08(2)(a) incorporates as a term of the Sugar No. 11 contract that “time is of the essence” with respect to the deliverer’s obligation to berth and commence loading a vessel;

**NOW, THEREFORE**, the Board of Directors having considered the relevant Sugar No. 11 Rules, as well as the circumstances and the history leading up to the adoption of the current Sugar No. 11 contract terms, does hereby adopt the following resolution:

**RESOLVED**, that Rule 11.08(2)(a) does not incorporate as a term of the Sugar No. 11 contract that “time is of the essence” with respect to the deliverer’s obligation to berth and commence loading a vessel.