ICE FUTURES U.S.
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New York, NY 10055

BY ELECTRONIC TRANSMISSION

Submission No. 16-165
December 29, 2016

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

Re: Amendments to the Terms and Conditions of the Cotton No. 2 Futures Contract Submitted Pursuant to Regulation 40.4(a).

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission ("CFTC" or "Commission") Regulation 40.4(a), ICE Futures U.S., Inc. ("IFUS" or "Exchange") submits the amendments to Cotton No. 2 Rule 10.32 and Rules 10.37 through 10.40 for approval by the Commission under the procedures set forth in CFTC Regulation 40.5. The amendments, which are set forth in Exhibit A, change the procedures for adjudicating claims for damages arising from the delivery of cotton against the Cotton No. 2 Futures Contracts; and the penalties for defaulting on a delivery against the Cotton No. 2 Futures Contract.

The changes arose from a review of the current Cotton No. 2 Rules, which was initiated by the Exchange and conducted with the help of an industry expert who served as an outside consultant. Each amendment was subsequently reviewed and, in certain instances, revised by the Exchange's Cotton Committee over three separate meetings. The Cotton Committee vote to recommend these amendments was unanimous, as was the vote of the Exchange's Board of Directors to adopt them.

1. AMENDMENTS TO DELIVERY CLAIM PROCEDURES

Exchange Rule 10.37 sets forth the process for adjudicating disputed delivery claims. Currently, there are three claim levels. Level One Claims, those claims for up to $450 per contract in damages, are presently adjudicated by the Exchange's Commodity Operations Department; Level Two Claims, those claims between $451 per contract and $1,950 per contract in damages, are adjudicated by a panel of the Exchange's Cotton Delivery Committee; and Level Three Claims, those claims that exceed $1,950 per contract in damages, are adjudicated by a panel of the Cotton Delivery Committee with an automatic right to appeal any decision to the Exchange's Cotton Committee.

The amendments to Rule 10.37 consolidate Level One and Level Two claims into a single tier, which will be adjudicated by the Commodity Operations Department and must be approved by the President of the Exchange. Claims exceeding $1,950 will now be adjudicated by the Cotton Committee and the automatic right to appeal the decision is being eliminated. In addition, the threshold amount to trigger a right of appeal from a claim adjudication is being increased from $50,000 in claims during a single delivery period to at least $100,000 in claims during a single delivery period. Conforming amendments to Rule 10.38, 10.32 and 10.40 delete references to the Cotton Delivery Committee, which is no longer charged with adjudicating claims with the consolidation from three claim levels to two.

The dollar amount thresholds currently in place for Level One through Level Three Claims were set many years ago. Both the Cotton Committee and the Exchange believe that claims below $1,950 per contract are minor and are most effectively and expeditiously adjudicated by the Commodity Operations Department with approval by the President of the Exchange.

Additional amendments to Rule 10.37 incorporate a limitations period for delivery default claims and for appeals of claim decisions. All claims will now have to be filed with the Exchange in writing within five (5) Business Days of the claimant having actual notice of the event giving rise to the claim. Appeals of claim determinations now must be made in writing to the Exchange within five (5) Business Days of the date on which the Exchange serves the parties to an adjudicated claim with the decision. The limitations period will guard against the spoliation of evidence available at or near the time of delivery; eliminate stale claims; and provide timely notice so that parties may protect themselves from movement in the price of cotton.

2. AMENDMENTS TO PENALTIES FOR DEFAULTS IN DELIVERY AND DELIVERY OF NON-CONFORMING COTTON

The penalties for delivery defaults and deliveries of non-conforming cotton are set forth in Exchange Rule 10.40. The Rule provides an aggrieved receiver of cotton with the following four options:

(i) accept the contract with a mutually agreed settlement without applying penalties;

(ii) accept the contract with a penalty of four cents (4¢) per pound applied on the unadjusted net invoice weight;

(iii) invoice the contract back to the Deliverer in accordance with paragraph (e) if this Rule with the four cents (4¢) per pound penalty added to the invoice; or

(iv) claim the actual amount of any additional losses that the Receiver sustained as a result of the Deliverer's Default and is able to document; the amount of the award shall be determined by the Cotton Delivery Committee and, if the Cotton Delivery Committee determines that an actual loss was sustained, the Receiver shall be entitled to reimbursement for the actual losses incurred and a penalty of four cents (4¢) per pound.

In order to deter defaults when the price of cotton is high, the amendments revise the current fixed 4 cent per pound default penalty in options (ii), (iii) and (iv) to be the larger of 4 cents per pound or 4% of the invoice price.

An amendment to Rule 10.40(e)(i) also incorporates a deadline by which an aggrieved receiver must make penalty elections and a "default" penalty election in the event the receiver fails to make its election by the prescribed deadline is being added. An aggrieved receiver must make the election by the close of business on the business day after receiving the deliverer's notification of default, and in the event that the receiver does not provide such timely notification then the receiver will be deemed to have selected to proceed under the provisions of paragraph (b)(1). The requiring for timely election by the receiver is intended to allow the deliverer to protect himself from movement in the price of cotton during the pendency of a claim.

Additional amendments to Rule 10.40 add provisions currently contained in the separate Cotton Deliverer's Guide regarding short deliveries under the Delayed Certification provisions. The amendment provides that if there is a weight deficiency in a delivery by Delayed Certification such delivery will be treated as a default to the extent of the weight deficient. Another amendment also provides for a $495 penalty per lot and an additional penalty of the larger of 4 cents per pound or 4% of the invoice price. Under this new provision, the receiver may also reject such penalty and instead avail itself of the same options otherwise available to a receiver under the default provisions in the rule.

In order to protect deliverers and make them whole in the event a receiver fails to tender full payment, the amendments to Rule 10.40 provide that the deliverer shall be entitled to a default penalty of the larger of 4 cents per pound or 4% of the invoice price and the deliverer may also claim for the amount of any additional losses sustained as a result of receiver's default.

Another amendment to Rule 10.40 defines the delivery of a lot with a total net weight over 50,500 lbs. as a nonconforming delivery, with no penalty applicable, but with the receiver not obligated to pay for any excess over the 50,500 lb. amount. This amendment is being adopted to cap the amount of cotton that may be delivered against a single contract.

Finally, several additional clarifying amendments were incorporated into Rule 10.40. The process for determining the business day that will be used for purposes of invoicing back cotton for the purpose of calculating a default penalty was clarified. Explicit language was also added stating that the adjudication of default claims does not preclude disciplinary action by the Exchange with regard to the delivery in dispute. It allows the Cotton Committee to make a referral to the Exchange's Compliance Department for further investigation.

3. AMENDMENT TO RULE 10.32

Rule 10.32 states that questions affecting the handling or delivery of cotton on a futures contract, which are not specifically covered by these Rules, may be referred to the Cotton Delivery Committee. An amendment to the Rule will provide that such questions will be referred to the Cotton Committee as opposed to the Cotton Delivery Committee. Historically, the product committee has had a greater level of authority than the delivery committee. As such, both the Cotton Committee and the Exchange believe that any interpretations under Rule 10.32 should be made by the product committee.

The Exchange is proposing to make the amendments effective upon approval by the Commission or February 22, 2017, for the March 2017 delivery month. The amendments comply with the Commodity Exchange Act, as amended, and the regulations thereunder. Specifically, the amendments comply with designated contract market core principle 2 (Compliance with Rules), 3 (Contracts not Subject to Manipulation) and 7 (Availability of information). In furtherance of the principles, the amendments clarify and improve the procedures for making claims for damages associated with cotton deliveries; and revise penalties to deter delivery defaults and make parties whole. The Exchange is not aware of any substantive opposing views to the amendments.

The Exchange further certifies that concurrent with this filing a copy of this submission was posted on the Exchange's website at (https://www.theice.com/futures-us/regulation#rule-filings).

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.

Exhibit A

(In the text below, deletions are bracketed and lined through, and additions are underscored.)

ICE Futures U.S.®, Inc.

COTTON NO. 2® RULES

FUTURES

Rule 10.32. Question of Delivery

Any question affecting the handling or delivery of cotton on a futures contract, which is not specifically covered by these Rules, may be referred to the Cotton [~~Delivery~~] Committee.

Rule 10.37. Levels of Authority for Adjudication of Claims

(a) The following levels per contract will be established for ruling on all disputed Claims:

(i) Level One: Claims up to [~~four hundred fifty dollars ($450.00)~~] <u>one thousand nine hundred fifty dollars ($1,950.00)</u> per contract will be determined by Commodity Operations and approved by the President [~~and/or Chairman of the Cotton Delivery Committee~~], and upon approval, the determination shall be final and may not be appealed to any committee or the Board.

(ii) [Level Two: [~~Claims of four hundred fifty-one dollars ($451.00) to one thousand nine hundred fifty dollars ($1,950.00) per contract will be determined by a Panel of the Cotton Delivery Committee, whose determination shall be final and may not be appealed to any committee or the Board.~~

~~(iii) Level Three:~~] Claims in excess of one thousand nine hundred fifty dollars ($1,950.00) per contract will be ruled on by a Panel of the Cotton [~~Delivery~~] Committee, <u>and may not be appealed to any committee or the Board</u> [~~and may be appealed to a Panel of the Cotton Committee. If a Level Three Two Claim is appealed to the Cotton Committee, the Exchange shall invoice the Claimant an administrative fee of three hundred seventy-five dollars ($375) per contract, provided, however, that no administrative fee shall be less than one thousand dollars ($1,000.00).~~]

(b) Notwithstanding the above, any Claim by any one (1) Customer during a delivery period in excess of <u>one hundred</u> [~~fifty~~] thousand dollars ($[~~5~~]<u>10</u>0,000) may be appealed to a Panel of the Cotton Committee.

<u>(c) All Claims under Rule 10.40 must be filed with the Exchange in writing within five (5) Business Days of the Claimant having actual notice of the event giving rise to the Claim, and any appeal pursuant to this paragraph must be made in writing to the Exchange within five (5) Business Days of the date on which the Exchange serves the parties to an adjudicated claim with the decision as per paragraph (a) above.</u>

Rule 10.38. Time Period for Payment of Disputed Claims

(a) Five (5) Business Days after receipt of written notification of final disputed Claim determination, interest at prime plus three percent (3%) shall be assessed. Payment shall be made within twenty (20) Business Days. On the twentieth (20th) Business Day, payment must be wired by 3:00 p.m. (New York Time) or an Official Teller's check or similar instrument issued by a bank or such other financial institution acceptable to the Exchange must be delivered by hand by 4:30 p.m. to the Claimant. If payment is not made in twenty (20) Business Days, the Claim payment due becomes doubled. Interest at prime plus six percent (6%) shall apply to the original Claim. The Claimant will receive the original Claim money plus interest. The Exchange will receive the penalty money from the doubled Claim. If payment is not received as outlined above, the matter shall be referred to the Compliance Staff for disciplinary proceedings.

(b) Final disputed Claim determination shall mean a decision by Commodity Operations and approved by the President [~~and/or the Chairman of the Cotton Delivery Committee~~], in the case of Level One, or a Panel of the [~~Cotton Delivery Committee if Level Two or by the~~] Cotton Committee if Level [~~Three~~] Two [~~or Claims by any one (1) Customer in excess of fifty thousand dollars ($50,000)~~].

Rule 10.39. Penalties for Frivolous Claims

Any Claims submitted to the Exchange which are determined by the Cotton Committee or a panel of the Committee [~~or the Cotton Delivery Committee (or a panel of either such Committee)~~] to be frivolous in nature shall subject the Claimant to a penalty payable to the Exchange of two thousand dollars ($2,000.00) per contract.

Rule 10.40. Defaults in Delivery and Delivery of Noncomforming Cotton

(a) For the purposes of this Rule, the term "Default" shall mean any non-performance as specified in this Chapter and Chapter 7 of the Rules with respect to the terms of payment and delivery including the delivery of cotton which cannot be retendered. Defaults include, but are not limited to, the following:

(i) the failure to issue a Delivery Notice by Last Notice Day and/or a failure to make delivery against a Delivery Notice as required in the Rules, in fulfillment of any sales contracts outstanding in its name after trading in the current month has ceased;

(ii) the failure to tender to the Clearing Organization, before 4:30 P.M. as in the case of Late Delivery authorized under Rule 10.24(d)(i) or 12:00 P.M. in all other cases on the Business Day prior to the Date of Delivery, EWRs with the appropriate classing memorandum representing the minimum N[~~n~~]et W[~~w~~]eight of forty-nine thousand five hundred (49,500) pounds of cotton;

(iii) the failure to pay in full the amount of the invoice in accordance with Rule 10.25;

(iv) delivery of cotton which:

(A) includes bales with a color grade, leaf grade, staple length, micronaire, or strength not permitted under the United States Cotton Futures Act;

(B) includes bales with a further classification of "remarks";

(C) contains bales that have been reginned or subjected to fire;

(D) contains bales with a net weight of less than four hundred (400) pounds or more than six hundred fifty (650) pounds;

(E) is a growth other than Far Western upland growth or Eastern/Memphis/Orleans/Texas (EMOT) upland growth;

(v) the tendering of a Delivery Notice which commingles Far Western upland growth with Eastern/Memphis/Orleans/Texas (EMOT) upland growth; [~~and/or~~]

(vi) the tendering of a Delivery Notice or an invoice for less than ninety-two (92) bales or more than one hundred eight (108) bale; and/or

(vii) the tendering of a Delivery Notice pursuant to the Delayed Certification provisions of Rule 10.26 for which the contract is short in weight from the 49,500 pounds minimum Net Weight by reason of untenderable cotton, in which case Deliverer shall be in default to the extent of such weight deficiency.

(b) Default Penalty –

(1) If any of the conditions described in paragraph (a)(i). (ii), (iv), (v) and/or (vi) of this Rule occur and apply to a Delivery Notice or invoice that has been tendered for delivery against the Cotton No. 2 Futures Contract, the Receiver shall have the following options:

(i) accept the contract with a mutually agreed settlement without applying penalties;

(ii) accept the contract with a penalty [~~of~~] calculated as the greater of four cents (4¢) per pound or four percent (4%) of the Notice Price applied on the unadjusted net invoice weight;

(iii) decline to accept the contract, and invoice the contract back to the Deliverer in accordance with paragraph (e) of this Rule with a penalty calculated as the greater of four cents (4¢) per pound or four percent (4%) of the Notice Price[~~the four cents (4¢) per pound penalty~~] added to the invoice; or

(iv) decline to accept the contract, and claim the actual amount of any additional losses that the Receiver sustained as a result of the Deliverer's Default and is able to document; the amount of the award shall be determined by a panel of the Cotton [~~Delivery~~] Committee and, if the panel of the Cotton [~~Delivery~~] Committee determines that an actual loss was sustained, the Receiver shall be entitled to reimbursement for the actual losses incurred and a penalty calculated as the greater of four cents (4¢) per pound or four percent (4%) of the Notice Price [~~of four cents (4¢) per pound~~].

(2) If the condition described in paragraph (a)(iii) of the Rule occurs, the Deliverer shall be entitled to a penalty calculated as the greater of four cents (4¢) per pound or four percent (4%) of the Notice Price, and the Deliverer may claim the actual amount of any additional losses that Deliverer sustained as a result of Receiver's default.

(3) If the condition described in paragraph (a)(vii) of the Rule occurs, the Receiver shall be entitled to a penalty of $495 per contract and a further penalty calculated as the greater of four cents (4¢) per pound or four percent (4%) of the Notice Price on the extent of the weight deficiency. Alternatively, the Receiver may elect to choose any one of the options listed in paragraphs (1)(i), (1)(iii) and (1)(iv) above.

(c) For the purposes of this Rule, the term "Delivery of Nonconforming Cotton" shall mean the tender of EWRs, invoice, or tag lists which do not conform to the cotton set forth in the Delivery Notice. The error(s) must be easily correctable, and the tender must otherwise meet all of the requirements for a good delivery pursuant to the Rules. Once the error(s) has been corrected, the Receiver must be able to retender said cotton without penalty. The Delivery of Nonconforming Cotton includes, but is not limited to, the following:

(i) tendering of EWRs which do not conform to the cotton set forth in the Delivery Notice with respect to color grade, leaf grade, staple, micronaire, or strength (“Nonconforming Description”);

(ii) tendering of EWRs which do not conform to the cotton set forth in the Delivery Notice with respect to growth (“Nonconforming Growth”);

(iii) tendering of EWRs for cotton warehoused at a Delivery Point other than the Delivery Point set forth in the Delivery Notice, provided that all cotton tendered is stored in one warehouse (“Nonconforming Delivery Point”); [~~and/or~~]

(iv) tendering of EWRs for a greater or lesser number of bales than the number set forth in the Delivery Notice (“Bale Variance”); and/or

(v) tendering of a lot with a total Net Weight of more than 50,500 pounds (“Overweight Delivery”).

The provisions of this paragraph (c) shall not apply with respect to grade, staple or type (rain grown or non-rain grown) to a Clearing Member who issued a Delivery Notice on delayed certification in accordance with the Rules; provided the grade, staple and type set forth in said Delivery Notice is in accordance with the Clearing Member’s best information and belief.

(d) Delivery of Nonconforming Cotton Penalty - If any of the conditions described in paragraph (c) of this Rule occur with respect to a Delivery Notice, the Deliverer shall pay the following penalties to the Receiver:

(i) for any Nonconforming Description - five dollars ($5.00) per bale;

(ii) for any Nonconforming Growth – five dollars ($5.00) per bale;

(iii) for any Nonconforming Delivery Point - five hundred dollars ($500) per contract;[~~and~~]

(iv) for any Bale Variance - five dollars ($5.00) for each bale which constitutes the Bale Variance; and

(v) for Overweight Delivery - no penalty but the Receiver shall not be obligated to pay for any excess over the 50,500 pound Net Weight amount.

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The Receiver also may claim the actual amount of any additional losses that the Receiver sustained as a result of the Delivery of Nonconforming Cotton and is able to document. The amount of the losses shall be determined by the Cotton [~~Delivery~~] Committee.

(e) Settlement in Default

(i) When a Deliverer provides written or electronic notification to the Receiver that a Default has occurred and the Receiver has subsequently elected a default penalty which requires invoicing back as per paragraph (b)(1) above, t[~~T~~]he basis of settlement and invoicing back for Defaults shall be the value of the basis for color grade Strict Low Middling White (41), leaf grade 4, staple length 1-1/16 Inch (34), micronaire 3.5 to 4.7, and Gram Per Tex[~~t~~] of twenty-five (25.0) minimum in deliverable form in the delivery market and at the closing Settlement Price on the first (1st) Business Day following notification to the Deliverer by the Receiver that a Default has occurred. The Receiver must notify the Deliverer and the Exchange which option it has selected as per paragraph (b)(1) above by the close of business on the business day after receiving Deliverer's notification of default, and in the event that Receiver does not provide such timely notification then Receiver will be deemed to have selected to proceed under the provisions of paragraph (b)(1)(iv) above. The Deliverer and the Receiver shall provide copies of any notifications referenced in this paragraph to the Exchange.

(ii) (ii) When a Receiver provides written or electronic notification to the Deliverer that a Default has occurred and the Receiver has subsequently elected a default penalty which requires invoicing back as per paragraph (b)(1) above, [~~Default arises from the failure to properly deliver a Delivery Notice~~], the basis for settlement shall be an average of the value of the basis for color grade Strict Low Middling White (41), leaf grade 4, staple length 1-1/16 Inch, micronaire 3.5 to 4.7, and Gram Per Tex[~~t~~] of twenty-five (25.0) minimum in deliverable form in the delivery market and at the closing Settlement Price on the first (1st) Business Day following such notification provided by the Receiver to the Deliverer that Receiver is claiming Default by the Deliverer pursuant this Rule. The Receiver must notify the Deliverer and the Exchange which option it has selected as per paragraph (b)(1) above by the close of business on the business day after making notification to the Deliverer that a Default has occurred, and in the event that Receiver does not provide such timely notification then Receiver will be deemed to have selected to proceed under the provisions of paragraph (b)(1)(iv) above. The Deliverer and the Receiver shall provide copies of any notifications referenced in this paragraph to the Exchange.

(iii) if either party [~~as determined by the Cotton Delivery Committee. If the Deliverer~~] disputes a Claim of Default [~~by a Receiver~~], a panel of the Cotton [~~Delivery~~] Committee shall make a determination with regard to the disputed Claim. If the panel of the Cotton [~~Delivery~~] Committee makes the determination that the Receiver or Deliverer filed a Claim for Default in error, the basis for settlement and invoicing back for the redelivery of the cotton, the refund of the four cents (4¢) per pound or four percent (4%) penalty and the compensation for any interest expense or any other additional expense that has been incurred by the opposite party in the delivery [~~Deliverer~~] shall be determined by the panel of the Cotton [~~Delivery~~] Committee.

(f) The determinations made by the Cotton [~~Delivery~~] Committee in accordance with this Rule shall be made in writing and served on each Deliverer, Receiver and each Clearing Member involved in the Default or Nonconforming Delivery.

(g) Any determination made pursuant to this Rule does not preclude disciplinary action being taken with regard to the delivery in dispute, and the President and/or the Cotton Committee may refer the disputed delivery to the Compliance Department for further investigation at any time.