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C.F.T.C.

Mr. David A. Stawick  
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: **Amendment to By-Law Section 5.2 and New Rules 1000 through 10013 -  
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Mr. Stawick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6(a), ICE Clear U.S., Inc. ("ICE CLEAR" or the "Clearing House") submits, by written certification, an amendment to By-Law Section 5.2 and new Rules 1000-1013, attached as Exhibit A.

The new Rules govern the substitution process in which an over-the-counter transaction executed on a bilateral basis is submitted to ICE CLEAR in exchange for an equivalent number of futures contracts that are "cleared only" – that is – not listed for trading on ICE Futures U.S., Inc. ("ICE Futures U.S."). Although the Rules contain provisions applicable to certain currency and U.S. Dollar Index<sup>®</sup> substitution transactions, those provisions of the Rules will not be made effective until ICE CLEAR petitions the Commission for a 4d Order with respect to those transactions and notifies the Commission that the currency and U.S. Dollar Index provisions will be going into effect. The amendment to By-Law Section 5.2 requires a clearing member to be approved by the Clearing House in order to clear and carry "cleared-only" futures positions.

We note initially that the introduction of the substitution process will provide significant benefits to market participants and is in furtherance of the over-the-counter clearing mechanisms that were expressly contemplated by the President's Working Group on Financial Markets

ICE Futures U.S., Inc., a designated contract market  
under the Commodity Exchange Act, as amended.

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through a registered DCO, the parties will be able to substitute the creditworthiness of the DCO for that of their counterparties. In addition, they will be able to carry their transactions as futures with the same DCO that carries their related positions executed on a designated contract market. These factors will serve to support the credit of market participants, reduce systemic risks and facilitate new entrants participating in over-the-counter trading, thereby enhancing market liquidity. As the PWG noted, "[c]learing of OTC derivatives has the potential to reduce counterparty risks associated with such transactions through risk management techniques that may include mutualizing risks, facilitating offset and netting." The PWG therefore recommended legislation that would permit DCOs to clear over-the-counter transactions without affecting the status of the transactions or the parties to the transactions. The CFMA, based in part on the PWG's recommendations, enacted amendments to the Act to facilitate the clearing of over-the-counter transactions by DCOs. The ICE CLEAR proposal is fully consistent with, and was in fact expressly contemplated by, the PWG and the CFMA.

### Overview

ICE CLEAR seeks to offer eligible swap participants ("ESPs"), as defined in Part 35 of the Regulations under the Act, the opportunity to enter into substitution transactions involving coffee, sugar and cocoa—all of which are commodities underlying futures and options contracts listed for trading on ICE Futures U.S. and cleared by ICE CLEAR. The substitution process with respect to transactions involving these commodities (hereinafter referred to as the "Eligible Products") involves an OTC transaction executed on a bilateral basis, which is submitted to the Clearing House in exchange for an equivalent number of cash-settled futures contracts that are "cleared-only"—that is—not listed for trading on ICE Futures U.S. In the substitution process, the original OTC contract is extinguished and replaced by the "cleared-only" futures contract. The substitution process will afford the clearing members which carry the "cleared-only" contracts all the same efficiencies and benefits that centralized clearing affords clearing members that carry futures contracts that are listed for trading on a designated contract market ("DCM").

At the same time, because the terms of the cleared only contracts incorporate the essential terms of the corresponding ICE Futures U.S.-listed futures contract (except for physical delivery), the risks associated with the cleared only positions can be readily managed through the same activities used by the Clearing House and its clearing members to manage the risks associated with ICE Futures U.S.'s futures contracts in the same underlying commodities.

The new Rules specify that the acceptable maturity dates of the cleared-only contracts issued in the substitution process must be the business day prior to the first (1<sup>st</sup>) day a delivery notice may be issued for the corresponding physical delivery futures contracts listed for trading by ICE Futures U.S. Once established, a cleared-only contract involving an Eligible Product can be offset only by another "cleared only" contract created through the substitution process, or by final

cash settlement. It will not be fungible with any futures contracts listed for trading on ICE Futures U.S. because cleared-only contracts provide only for cash settlement. As such, they cannot affect deliveries under ICE Futures U.S. contracts. Open interest and settlement prices will be separately reported and the Clearing House rules call for clearing members to report accounts holding positions in cleared-only contracts to the Clearing House (for financial surveillance purposes) on the same basis as such reports are filed with ICE Futures U.S. with respect to traders holding positions in ICE Futures U.S. futures contracts. This reporting function is one of the tools that will be used by the Clearing House to monitor the financial risk associated with cleared-only positions.

The Clearing House, in conjunction with the ICE Futures U.S. Market Surveillance Department, will determine the requirements with respect to the nature and character of the initiating OTC transactions. In particular, as specified in the rules, the OTC transaction must involve the commodity underlying the cleared-only contract issued in the substitution transaction, or be a derivative, by-product or related product of such commodity, and the quantity must be approximately equivalent to the quantity covered by the cleared-only contract.

The Clearing House will manage risk associated with the cleared-only contracts in the same manner as it manages risks associated with all of its other products. Margins will be calculated in the same manner as the Clearing House currently margins ICE Futures U.S. futures contracts involving the Eligible Products. Original margin requirements will be combined with all other margin calculations and compared to each clearing member's margin on deposit, and any margin deficiencies will generate a margin call and the collection of fund from the clearing member's settlement bank. As with any other contract cleared by it, the Clearing House will monitor and change original margins as needed based on market moves and variation margin will generally be calculated and processed at least twice a day. Settlement prices for clear-only contracts will be identical to the settlement prices for the corresponding ICE Futures U.S. futures contracts. Real-time monitoring of positions as they relate to Clearing House position limits imposed on clearing members and appropriate stress testing will include consideration of cleared-only contracts.

In the event of a default associated with a cleared-only contract, the Clearing House is confident in its ability to control risk in either the relevant OTC market or with offsetting positions in the corresponding ICE Futures U.S. futures contract. ICE CLEAR does not anticipate any particular operational problems associated with the risk management function, in light of the fact that any such activity, in the context of cleared-only contracts, is analogous to the Clearing House's risk management activities associated with ICE Futures U.S. futures contracts, all of which function effectively today. Nonetheless, ICE CLEAR is amending the clearing member eligibility requirements of By-Law Section 5.2 to provide that a clearing member must demonstrate to the satisfaction of ICE CLEAR that it has the operational capacity to measure and manage the risks associated with carrying cleared-only positions for its customers who qualify as ESPs, before they will be authorized by ICE CLEAR to carry such

positions. This determination will include consideration as to whether the clearing member has an appropriate risk management program in place, the extent of its dealings in the OTC markets, the nature of its clearing business and the size of the position limits granted to it. In addition, ICE CLEAR will conduct periodic reviews to monitor an approved clearing member's operational capacity to measure and manage the risks associated with carrying cleared-only positions. Through this approval and periodic review process, the Clearing House believes that the clearing members carrying cleared-only positions will be able to manage the position either through the OTC market or in the ICE Futures U.S. futures market, in the event of a default by one of their customers.

ICE CLEAR believes that the substitution facility will benefit the marketplace by providing ESPs with the ability to meld the flexible negotiation and matching capabilities associated with OTC markets with the financial assurances and capital efficiencies offered by ICE CLEAR's multi-lateral clearing facility. Flexibility, or the capacity to tailor a contract to individual risk-management needs, has long been an important benefit associated with OTC derivative markets. Implementation of a cleared-only contract creates additional flexibility, extending the utility of OTC contracts. The Section 4(c) relief sought hereunder will allow OTC swap participants to substitute the creditworthiness of ICE CLEAR for that of their counterparties, reducing their systemic risks.

#### **Eligible Products and Overview of the Relevant OTC Markets**

ICE CLEAR intends to permit the use of the substitution process for coffee, sugar and cocoa—all of which are international commodities traded on exchanges throughout the world. The unit size for each Eligible Product will be approximately equivalent to the size of the corresponding physical delivery ICE Futures U.S. futures contract—Cocoa – ten (10) metric tons net of cocoa beans; Coffee "C" – thirty-seven thousand five hundred (37,500) pounds of washed Arabica coffee; and Sugar No. 11 – fifty (50) long tons of two thousand two hundred forty (2,240) pounds each of raw sugar—and it will comport with the quality and other specifications set forth in the ICE Futures U.S. rules for the corresponding physical delivery contract traded on ICE Futures U.S.

The OTC markets in each of sugar, coffee and cocoa are active and liquid with many market participants, although they are smaller and at an earlier stage of development than the OTC energy, equity and FX markets. Market participants include the trade house community and the commodity lending community as offerors of OTC contracts to producers and end users of the products, to sophisticated large speculative entities such as hedge funds, and to investors. In some instances the participants (especially in the case of sugar producers and refiners) are active in only one of the markets, but in other cases the same trade houses, commodity lenders, trading firms and product end-users are active in the OTC arena across several of these products.

Participants in the OTC marketplace have represented to ICE Futures U.S. that transactions in these markets are negotiated without benefit of the prior development of common terms that can be adopted by reference and customized as necessary. The most common OTC transactions referenced by participants are swaps (which are frequently long-dated) in which the parties exchange a fixed-price over time for a floating-price tied to a reference, with the reference price set at a discount/premium/par to a specified settlement price or several days of settlement prices of an ICE Futures U.S. futures contract.

There is limited data on the number of participants in and the size of the agricultural OTC marketplace. However, in the course of discussions with market participants, most observed that some share of the swaps result in exchange for swap ("EFS") transactions in sugar, coffee and cocoa pursuant to ICE Futures U.S. rules. Therefore, ICE Futures U.S. has access to EFS data that enables us to approximately measure the size of the market. Consensus estimates of the share of total OTC transactions that lead to EFS trades in sugar are in the area of 5% - 25%.

If we assume 10% of the swaps transacted in the over-the-counter market become ICE Futures U.S. EFS transactions, the approximate 2006 annual total market size for coffee, sugar and cocoa cash-settled swaps based upon contract notional value is \$13.057 billion.

Market participants have expressed a desire for credit intermediation and transparency in the OTC markets involving these commodities. In response to this, ICE CLEAR has determined to introduce cash-settled, cleared-only contracts that share certain characteristics of the OTC transactions.

ICE CLEAR certifies that the amendment and the new Rules comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder.

ICE CLEAR's Board of Directors approved the amendment and new Rules on September 11, 2007. No substantive opposing views were expressed by members or others with respect to the amendments. The amendment and new Rules will go into effect on a date set by ICE CLEAR after Commission approval of petitions by the Clearing House for a 4d Order to commingle segregated funds and a 4(c) Order to extend the relief of Part 35 to swaps for which a "cleared-only" futures contract is substituted in accordance with ICE CLEAR's Rules.

If you have any questions or need further information, please contact me at 212-748-4084 or at [jill.fassler@theice.com](mailto:jill.fassler@theice.com).

Sincerely,

Jill S. Fassler  
ICE Futures U.S., Inc.  
Vice President  
Associate General Counsel

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

## **EXHIBIT A**

### **Rule 1000. Scope of Chapter**

The Rules in this Chapter govern the process whereby futures contracts are substituted for OTC Transactions (the "SUB Process"). The SUB Process is subject to the Corporation's By-Laws and Rules, including the terms and conditions set forth in this Chapter. In the event of any inconsistency between the Rules in this Chapter and any other provisions of the By-Laws or Rules, the provisions of this Chapter shall govern with respect to transactions utilizing the SUB Process.

### **Rule 1001. Definitions**

(a) In this Chapter and in all procedures and resolutions adopted by the Board hereunder, the following terms shall have the meanings indicated, unless the context otherwise requires:

#### **(i) Cleared-Only Futures Contract**

The term "Cleared-Only Futures Contract" shall mean a futures contract which is substituted for an OTC Transaction submitted pursuant to the SUB Process and which (A) has a Termination Day that is not identical to the Last Trading Day of the corresponding NYBOT futures contract and (B) does not have the same delivery or final settlement process as the corresponding NYBOT futures contract.

#### **(ii) Eligible Contract Participant or ECP**

The term "Eligible Contract Participant" or "ECP" shall have the meaning set forth in Section 1a(12) of the Act and shall include any other person that the Commission determines to be eligible pursuant to section 1(a)(12)(C) of the Act.

#### **(iii) Eligible Swap Participant or ESP**

The term "Eligible Swap Participant" or "ESP" shall have the meaning set forth in Commission Regulation 35.1(b)(2) and shall include any other person that the Commission determines to be eligible to engage in swap transactions pursuant to section 4(c) of the Act or otherwise.

#### **(iv) OTC Transaction**

The term "OTC Transaction" shall mean a forward contract (in the case of foreign currencies) or a swap (in the case of foreign currencies or agricultural commodities) entered into in the over-the-counter market on a bilateral basis between two ECPs or ESPs, as applicable, or such other transactions as the Corporation may specify from time to time.

#### **(v) Substitution Process or SUB Process**

(A) The term "Substitution Process" or "SUB Process" shall mean the submission of an OTC Transaction to, and the issuance of either an ICE Futures U.S. futures contract or a Cleared-Only Futures Contract in substitution therefor by, the Corporation.

(B) A futures contract established by the SUB Process that has a Termination Day that is identical to the Last Trading Day of the corresponding ICE Futures U.S. futures contract and has the same delivery or final settlement process as such corresponding ICE Futures U.S. futures contract shall, for all purposes, constitute an ICE Futures U.S. futures contract and shall be subject to all of ICE Futures U.S.'s By-Laws and Rules concerning futures contracts.

**(vi) Termination Day**

(A) With respect to a Cleared-Only Futures Contract involving an agricultural commodity that is issued utilizing the SUB Process, the term "Termination Day" shall mean the Business Day prior to the first (1<sup>st</sup>) day delivery notices may be issued for the delivery month of the corresponding ICE Futures U.S. futures contract.

(B) With respect to a futures contract involving currencies that is issued utilizing the SUB process, the term "Termination Day" shall mean the Business Day which is mutually agreed to by the buyer and seller for termination of the futures contract.

(b) Any capitalized terms not defined in this Chapter or in the By-Laws and Rules of the Corporation shall have the meanings set forth in the By-Laws and Rules of ICE Futures U.S.

**Rule 1002. Substitutions Involving Agricultural Commodities**

(a) A substitution of futures contract for OTC Transaction involving agricultural commodities shall be permitted by arrangement between ESPs and shall consist of two discrete transactions where the buyer and seller of the OTC Transaction must be the buyer and seller of the futures contract. The OTC Transaction shall involve the commodity underlying the futures contract (or a derivative, by-product or related product of such commodity) and the quantity covered by the OTC Transaction must be approximately equivalent to the quantity covered by the futures contract(s). The OTC Transaction must comply with applicable OTC regulatory requirements, if any, of the Commission. The Corporation shall determine which OTC Transactions and futures contracts are eligible for the SUB Process.

(b) A Cleared-Only Futures Contract involving an agricultural commodity may only be liquidated by either (A) final settlement as determined on the Termination Day or (B) entering into an offsetting Cleared-Only Futures Contract through the SUB Process.

**Rule 1003. Substitutions Involving Currencies**

(a) A substitution of futures contract for OTC Transaction involving currencies shall be permitted by arrangement between ECPs and shall consist of two discrete transactions where the buyer and seller of the OTC Transaction must be the buyer and seller of the futures contract. The OTC Transaction shall involve the commodity underlying the futures contract (or a derivative, by-product or related product of such commodity) and the quantity covered by the OTC Transaction must be approximately equivalent to the quantity covered by the futures contract(s). The OTC Transaction must comply with applicable OTC regulatory requirements, if any, of the Commission. The Corporation shall determine which OTC Transactions and futures contracts are eligible for the SUB Process.

(b) A Cleared-Only Futures Contract involving currencies may only be liquidated by either (A) making or taking delivery of the currency on the Delivery Date or (B) entering into an offsetting Cleared-Only Futures Contract through the SUB Process.

**Rule 1004. Submission of SUB Process Transactions to the Corporation**

(a) The submission of a SUB Process transaction to the Corporation shall constitute the agreement of the parties to the transaction to substitute their OTC Transaction with a futures contract.



(b) All SUB Process transactions shall be submitted to the Corporation in accordance with such rules and procedures as the Corporation shall specify from time to time.

(c) It is the responsibility of the Clearing Member carrying the account in which futures contracts are substituted pursuant to the SUB Process, to determine that the owner of such account is eligible to enter into the OTC Transaction exchanged in the SUB Process and to engage in the SUB Process in accordance with the Rules.

#### **Rule 1005. Effect of Clearance**

Upon issuance of a futures contract by the Corporation pursuant to the SUB process, the Corporation shall be substituted as, and assume the position of, the buyer to the Clearing Member which is the seller and the position of the seller to the Clearing Member which is the buyer; and thereupon the Corporation shall have all the rights and obligations with respect to such futures contract as the parties for which it is substituted.

#### **Rule 1006. Eligible Products**

(a) Except as otherwise provided herein, Cleared-Only Futures Contracts involving agricultural commodities may be issued by the Corporation in SUB Process transactions in coffee, sugar and cocoa having the same specifications as the ICE Futures U.S. Coffee "C", Sugar No. 11 and Cocoa futures contracts.

(b) Except as otherwise provided, futures contracts involving currencies may be issued by the Corporation in SUB Process transactions in the currencies set forth below, having the same specifications as the ICE Futures U.S. futures contracts in such currencies:

(i) US Dollar Index<sup>®</sup> ("USD<sup>®</sup>");

(ii) Euro Based Currency Pairs – Euro-Japanese yen, Euro-British pound sterling, Euro-Swiss franc and Euro-US Dollar, whereby the euro is the base currency and the Japanese yen, the British pound sterling, the Swiss franc and the US dollar are the quoted currencies;

(iii) Pound Sterling Based Currency Pairs – Pound sterling-Japanese yen and Pound sterling-US dollar, whereby the pound sterling is the base currency and the Japanese yen and US dollar are the quoted currencies; and

(iv) US Dollar Based Currency Pairs – US dollar-Japanese yen, US dollar-Swiss franc and US dollar-Canadian dollar, whereby the US dollar is the base currency and the Japanese yen, Swiss franc and Canadian dollar are the quoted currencies.

#### **Rule 1007. Unit Size**

(a) Futures contracts on agricultural commodities shall have the following unit sizes:

(i) Cocoa – ten (10) metric tons net of cocoa beans meeting the specifications of the ICE Futures U.S. Cocoa futures contract;

(ii) Coffee – thirty-seven thousand five hundred (37,500) pounds of washed arabica coffee meeting the specifications of the ICE Futures U.S. Coffee "C" futures contract; and

(iii) Sugar – fifty (50) long tons of two thousand two hundred forty (2,240) pounds each of raw sugar, meeting the specifications of the ICE Futures U.S. Sugar No. 11 futures contract.

(b) Futures contracts in currencies shall have the following unit sizes:

(i) USDX – one thousand US dollars (\$1,000) times the USDX;

(ii) Euro Based Currency Pairs

- (A) Euro-Japanese yen – 100,000 euros;
- (B) Euro-British pound sterling – 100,000 euros;
- (C) Euro-Swiss franc – 100,000 euros;
- (D) Euro-US dollar – 200,000 euros.

(iii) Pound Sterling Based Currency Pairs

- (A) Pound sterling-Japanese yen – 125,000 Pounds sterling;
- (B) Pound sterling-US dollar – 125,000 Pounds sterling.

(iv) US Dollar Based Currency Pairs

- (A) US dollar-Japanese yen – 200,000 US dollars;
- (B) US dollar-Swiss franc – 200,000 US dollars;
- (C) US dollar-Canadian dollar – 200,000 US dollars.

#### **Rule 1008. Settlement Prices**

The daily settlement price for a Cleared-Only Futures Contract in an agricultural commodity shall be equal to the settlement price of the corresponding ICE Futures U.S. futures contract. The daily settlement price for a Cleared-Only Futures Contract in currency shall be determined utilizing the Corporation's Quarterly Expiration Settlement system or such other system as the Corporation may specify.

#### **Rule 1009. Final Settlement of Agricultural Cleared-Only Futures Contracts**

(a) The final settlement price for a Cleared-Only Futures Contract in an agricultural commodity shall be the settlement price of the corresponding ICE Futures U.S. futures contract on the Termination Day.

(b) Final settlement for each Cleared-Only Futures Contract involving an agricultural commodity shall be made on the Business Day following the Termination Day of such contract and shall be made in the same manner, and in accordance with the same procedures, as the payment of variation margin.

(c) The amount to be paid in final settlement shall be determined as follows:

(i) Cocoa – by multiplying ten dollars (\$10) times the basis point difference between the settlement price of the Business Day prior to the Termination Day and the final settlement price;

(ii) Coffee – by multiplying three dollars and seventy-five cents (\$3.75) times the basis point difference between the settlement price of the Business Day prior to the Termination Day and the final settlement price; and

(iii) Sugar - by multiplying eleven dollars and twenty cents (\$11.20) times the basis point difference between the settlement price of the Business Day prior to the Termination Day and the final settlement price.

(d) Upon final settlement of a Cleared-Only Futures Contract as provided in this Rule, the parties shall have no further obligations hereunder with respect to such Cleared-Only Futures Contract.

#### **Rule 1010. Delivery Procedure for Currency Cleared-Only Futures Contracts**

Cleared-Only Futures Contracts involving currencies shall be settled by physical delivery of the underlying currencies through the Continuous Linked Settlement system (“CLS”) and in accordance with the procedures of ICE Futures U.S. Rules 15.07 and 16.04, as applicable. The Delivery Date for each such contract shall be the date two (2) Business Days following the Termination Day, provided, however, that if a Delivery Date is a bank holiday in New York, New York or the United Kingdom, the Delivery Date shall be the next Business Day that is not such a bank holiday.

#### **Rule 1011. Delinquency in Performance**

If a Clearing Member fails to perform all the acts required by this Chapter, or is deemed to be in default, it shall be liable to the Corporation and subject to the provisions of Part 8 of the Rules.

#### **Rule 1012. Reportable Positions and Daily Reports**

##### **(a) Currencies**

Each Clearing Member which owns, controls, or carries for any customer fifty (50) or more Cleared-Only Futures Contracts in the USDX or four hundred (400) or more Cleared-Only Futures Contracts in a currency specified in Rule 1005, net long or short, shall submit daily reports with respect to such positions to the Corporation containing such information as is prescribed by the Commission for the reporting of futures and futures equivalent positions.

##### **(b) Cocoa**

Each Clearing Member which owns, controls, or carries for any customer one hundred (100) or more Cocoa Cleared-Only Futures Contracts, net long or short, shall submit daily reports with respect to such positions to the Corporation containing such information as is prescribed by the Commission for the reporting of futures and futures equivalent positions.

##### **(c) Coffee**

Each Clearing Member which owns, controls, or carries for any customer fifty (50) or more Coffee Cleared-Only Futures Contracts, net long or short, shall submit daily reports with respect to such positions to the Corporation containing such information as is prescribed by the Commission for the reporting of futures and futures equivalent positions.

##### **(d) Sugar**

Each Clearing Member which owns, controls, or carries for any customer five hundred (500) or more Sugar Cleared-Only Futures Contracts, net long or short, shall submit daily

reports with respect to such positions to the Corporation containing such information as is prescribed by the Commission for the reporting of futures and futures equivalent positions.

(e) Without limiting any provisions of the Rules, Clearing Members shall provide such additional information with respect to Cleared-Only Futures Contracts and the ownership of such contracts as may be requested by the Corporation or by ICE Futures U.S.

### **Rule 1013. Force Majeure**

The term "Force Majeure" shall mean any circumstance (including, but not limited to a strike, lockout, national emergency, governmental action, computer malfunction causing loss of data, or act of God) which is beyond the control of a Clearing Member making or taking delivery of a Cleared-Only Futures Contract in the manner provided for in the Rules.

(In the text of the amendments below, additions are underlined.)

### **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 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;

(b) Have one person, satisfactory to the Corporation, who is (i) a director, general partner, trustee or officer (or person occupying a similar status or performing similar functions), (ii) responsible for the clearing operations of such Person and (iii) authorized to act on behalf of such Person in all transactions with or involving the Corporation, and effective October 1, 2004 for all Entities, have a second person who meets the requirements of this subsection 5.2(b)(i) and who is authorized to act on behalf of such Person in all transactions with or involving the Corporation in the event of death, incompetence or other inability of the first person to so act;

(c) Have Capital of at least \$5,000,000 or, in the case of a Self-Clearing Member, \$600,000;

(d) Have, in the judgment of the Board, such qualities of financial responsibility, operational capacity, experience, business integrity, reputation and competence as the Board, in its discretion, may consider necessary or appropriate to be a Clearing Member; and

(e) If an Entity which is subject to Control by any other Person or Persons, have on file with the Corporation a Guaranty in such form as the Corporation may prescribe from such other Person or from one or more of such other Persons (as the Corporation may specify) guaranteeing payment of all amounts owing by such Entity under or in connection with any proprietary account carried by the Corporation for such entity; provided, however, that the Board may, for good cause shown, waive or modify the requirements of this paragraph (e) with respect to any such Entity. Notwithstanding the foregoing, the Board shall not waive the Guaranty requirement for any Entity that has chosen one (1) or more of its Affiliates as the Approved Financial Institution to maintain its original margin accounts, to issue letters of credit to the Corporation or for any other purpose pursuant to the Rules of the Corporation.

(f) Notwithstanding the provisions of paragraphs (a) through (e) of this Rule, with respect to Cleared-Only Futures Contracts, only those Clearing Members that have been approved by the Corporation may clear and carry Cleared-Only futures positions.

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

**Section 3.4. Election, Appointment and Term of Office**

\* \* \*

(b) At each annual meeting of Shareholders, the Shareholders shall elect directors to succeed those whose terms of office expire at such meeting. Not less than 90 days prior to each such annual meeting, the Board shall appoint a Nominating Committee consisting of five Affiliated Persons of Clearing Members, none of whom shall be members of the Board. Not less than 80 days prior to such annual meeting, the Nominating Committee shall nominate one or more candidates to be recommended by the Clearing Members to succeed each of the directors whose terms will expire at such annual meeting (other than the Exchange Directors) and shall report the names of such candidates to the President. At least one of such candidates shall be in the category of an Affiliated Person of a Clearing Member having Capital of \$[2]75,000,000 or less, and at least one of such candidates shall be in the category of an Affiliated Person of a Clearing Member having Capital of \$1,000,000,000 or more. The President shall forthwith notify the Clearing Members of the names of the candidates so nominated. Any five Clearing Members may nominate any other candidates by filing a petition with the President not later than 70 days prior to such annual meeting. The list of all candidates nominated as hereinbefore provided shall be sent to the Clearing Members, and a meeting shall be held at which Clearing Members may vote for candidates to be recommended to succeed each of the directors whose terms are expiring at such annual meeting (other than the Exchange Directors). The results of such voting shall be reported to the Shareholders, but shall be advisory only. At the annual meeting, the Shareholders shall elect directors who may but need not include any or all of the individuals so recommended by the Clearing Members; provided that all but one of the directors so elected must be Affiliated Persons of Clearing Members, at least one of whom shall be in the category of an Affiliated Person of a Clearing Member having Capital of \$[2]75,000,000 or less, and at least one of whom shall be in the category of an Affiliated Person of a Clearing Member having Capital of \$1,000,000,000 or more.

[REMAINDER OF BY-LAW UNCHANGED]

**EXHIBIT A**