

**ICE Clear US, Inc.**  
World Financial Center  
One North End Avenue  
New York, New York 10282

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**BY ELECTRONIC TRANSMISSION**

Submission 07-73  
November 21, 2007

Mr. David Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Re: Amendments to bylaws 5.1, 5.2, 5.4 and the Definitions -  
Submission Pursuant to Section 5c(c)(1) of the Act and  
Regulation 40.6

Dear Mr. Stawick:

Pursuant to Sections 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6, ICE Clear U.S., Inc. submits by written certification amendments to bylaw sections 5.1, 5.2, 5.4 and the Definitions.

The Board of Directors is amending bylaws to increase the Clearing Member minimum deposit to the Guaranty Fund to \$2 million from \$500,000, and to eliminate self-clearing Clearing Members, which is a category that has become defunct over the years.

ICE Clear US, Inc. certifies that the amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder.

The amendments were adopted by the Board of Directors on November 8, 2007. No substantive opposing views were expressed by members or others with respect to the amendments. The amendments will become effective on a date set by the President.

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,

Audrey R. Hirschfeld  
Senior Vice President and  
General Counsel-ICE Futures US

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

## ARTICLE V

### Clearing Members

#### Section 5.1. Status of Clearing Members

(a) Only Clearing Members shall be entitled to clear Contracts with the Corporation, except that, if the Board so determines, the Corporation may clear contracts, options or other instruments for members of any other clearing organization in connection with the linkage of an Exchange with another board of trade, exchange or market which is not an Exchange. Each Clearing Member shall have the privilege of clearing with the Corporation all Contracts traded on or subject to the rules of each Exchange of which it is a member or member firm, whether for customer or proprietary account, as specified in paragraph (b) of this Section 5.1.

~~(b) A Self-Clearing Clearing Member may clear Contracts effected on or subject to the rules of an Exchange, but only for the proprietary account of such Self-Clearing Clearing Member.~~

~~(c)~~ Each Clearing Member shall have the privileges, rights and obligations provided for in and pursuant to these By-Laws and the Rules. Such privileges, rights and obligations may be terminated or altered in any respect at any time as provided in these By-Laws or the Rules.

#### 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.

#### Section 5.4. Guaranty Fund

The Corporation shall establish and maintain a Guaranty Fund.

(a) For the purposes of this Section 5.4, the following terms shall have the following meanings:

\* \*

(b) Each Clearing Member ~~[(other than a Self-Clearing Clearing Member)]~~ shall deposit and maintain in the Guaranty Fund an amount calculated as follows:

\* \* \*

(v) For each Clearing Member, the amount to be deposited and maintained in the Guaranty Fund shall be the sum of the Clearing Member's Base Margin Amount, Margin Surcharge, Base Volume Amount and Volume Surcharge computed pursuant to subsections (b)(i), (ii), (iii) and (iv) of this Section 5.4, provided that:

(A) the amount that any Clearing Member shall be required to deposit in the Guaranty Fund which is attributable to the aggregate of the Clearing Member's Base Margin Amount and Base Volume Amount (but excluding the Clearing Member's Margin Surcharge and Volume Surcharge) shall not exceed three million five hundred thousand dollars (\$3,500,000) or such other amount as the Board may fix from time to time;

(B) ~~no each~~ Clearing Member ~~[other than a Self-Clearing Member]~~ shall be required to deposit and maintain in the Guaranty Fund at least \$2 million dollars(\$2,000,000) ~~less than five hundred thousand dollars (\$500,000)]~~, or such other amount as the Board may fix from time to time;

(C) ~~Reserved[no Self-Clearing Member shall be required to deposit and maintain in the Guaranty Fund less than thirty thousand dollars (\$30,000), all of which shall be in the form of cash, or such other amount as the Board may fix from time to time];~~ and

(D) each new Clearing Member shall be required to deposit the lesser of (1) 10% of its Capital and (2) three million five hundred thousand dollars (\$3,500,000); provided, however, that in no event shall the amount of the deposit be less than the amount ~~[(X)]~~ set forth in or determined by the Board pursuant to subsection (b)(v)(B) of this Section 5.4 ~~.[in the case of Clearing Members other than Self-Clearing Members, and (y) set forth in or determined by the Board pursuant to subsection (b)(v)(C) of this Section 5.4 in the case of Self-Clearing Members.]~~ Each new Clearing Member must be a Clearing Member for one calendar month before its Guaranty Fund requirement is calculated as described in subsections (b)(i),(ii) (iii) and (iv) of this Section 5.4. In making such calculations for the period before the new Clearing Member has been a Clearing Member for three calendar months, the new Clearing Member's Net Margin and Volume will be determined based on the actual number of calendar months (one (1) or two (2)) that the new Clearing Member has been a Clearing Member at the time of the calculation.

\* \* \*

The Board shall have the authority to cause the Base Margin Amount, Margin Surcharge, Base Volume Amount and Volume Surcharge of all Clearing Members to be recalculated at any time, and to require the Clearing Members to immediately deposit in the Guaranty Fund any amounts required to meet the recalculated Guaranty Fund deposit requirements, taking into account the minimum deposit requirements set forth in subsections (b)(v)(B) ~~and (C)~~ of this Section 5.4.

(c) Except as provided in paragraph (b)(v) of this Section 5.4, deposits in the Guaranty Fund may be made by any Clearing Member in the form of cash or securities which are (i) direct obligations of the United States Government, and which have such maximum time to maturity as the Corporation may prescribe, or (ii) interests in money market mutual funds which are permitted for customer funds for purposes of Rule 1.25(a)(viii) of the Commodity Futures Trading Commission (as amended from time to time) and approved by the Board for this purpose or pursuant to Rule 505(a)(i), provided, however, that through March 31, 2008, a Clearing Member that was a member of the Corporation on November 8, 2007 and does not have \$2 million on deposit in the Guaranty Fund on the effective date such minimum requirement becomes effective, may deposit shares of Intercontinental Exchange, Inc. stock, but only to the extent necessary to bring the Clearing Member's deposit to the \$2 million minimum amount; and provided further, that each Clearing Member shall deposit a minimum of \$50,000 in the form of cash. Any permitted securities shall be valued in accordance with such methodology as may be adopted by the Board. Deposits of securities shall be made by such means and subject to such agreements and undertakings as may be prescribed by the Corporation.

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## **BY-LAWS OF ICE Clear US, Inc. (A New York Corporation)**

### **ARTICLE I**

#### **Definitions; Offices; Time References**

##### **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:

\* \* \*

~~[Self-Clearing Clearing Member~~

~~A Clearing Member entitled under these By-Laws to clear with the Corporation Contracts effected on or subject to the rules of one or more Exchanges, but only for such Clearing Member's own account]~~