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World Financial Center  
One North End Avenue  
New York, New York 10282

**BY ELECTRONIC TRANSMISSION**

Amended Submission No. 08-70  
January 7, 2009

Mr. David 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: Instant Message Policy and Amendments to Rule 4.34 -  
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Mr. Stawick:

On December 16, 2008, ICE Futures U.S., Inc. ("Exchange") submitted, by written certification, the Exchange's Instant Message Policy and amendments to Rule 4.34 in accordance with Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6.

The amendment submitted with respect to Rule 4.34(d) and the related provision of the Instant Message Policy required the floor broker to retain all instant messages ("IMs") relating to transactions executed on the floor of the Exchange. However, not all orders received using IMs are executed. Therefore, the Exchange is submitting a revised amendment to Rule 4.34(d) and the related provision of the Instant Message Policy which will require the floor broker to retain all IMs relating to any transaction or order whether or not such order was executed. The applicable amendments are attached as Exhibit A.

The Exchange certifies that the amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder and became effective on January 6, 2009.

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

Sincerely,

Jill S. Fassler  
Vice President  
Associate General Counsel

cc: Division of Market Oversight  
New York Regional Office

## EXHIBIT A

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

### Rule 4.34. Electronic Devices

\* \* \*

(d) An order transmitted through IM may not be bid, offered or executed until a separate, written order ticket is prepared in accordance with Rule 6.08 and is subject to all applicable audit trail requirements. All IMs relating to any Transaction or order ~~[executed at the Exchange]~~ must be retained for a minimum of five (5) years in accordance with Commission Regulations and are subject to review by the Market Regulation Department.

[REMAINDER OF RULE UNCHANGED]

### INSTANT MESSAGE (IM) POLICY

In conjunction with ICE Futures U.S., Inc. ("Exchange") Rule 4.34 – Electronic Devices, the following policy shall govern the use of Instant Message ("IM") on Electronic Devices on the Trading Floor by Members and their employees to communicate with other Exchange Members, clerks, Exchange employees or parties outside of the Exchange, including customers:

\* \* \*

- All IMs relating to any Transaction or order ~~[executed on the Trading Floor]~~ must be retained by the Member for a minimum of five (5) years in accordance with Commission Regulations and are subject to review by the Market Regulation Department or other authorized Exchange personnel.

[REMAINDER OF POLICY UNCHANGED]