

ICE

Atlanta Calgary Chicago Houston London New York Singapore

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

**BY ELECTRONIC TRANSMISSION**

Submission No. 09-8  
February 10, 2009

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: **Amendments to ICE Clear U.S. By-Law Sections 1.1, 3.12, 6.5, 8.4 and Rules 901, 1001, 1002, 1004 and 1005 -  
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, ICE Clear U.S., Inc. ("ICE Clear") submits, by written certification, amendments to By-Law Sections 1.1, 3.12, 6.5, 8.4 and Rules 901, 1001, 1002, 1004 and 1005, attached as Exhibit A. The amendments are housekeeping in nature and primarily define the term "ICE Futures U.S." and substitute the term "ICE Futures U.S." for the words, "NYBOT" and "Exchange".

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

The ICE Clear Executive Committee approved the amendments by unanimous written consent in accordance with By-Law Section 3.13 on February 3, 2009. The amendments will become effective on February 12, 2009. No substantive opposing views were expressed by members or others with respect to the amendments.

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: Division of Clearing and Intermediary Oversight  
New York Regional Office

**EXHIBIT A**

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

**BY-LAWS**

**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:

\* \* \*

**Exchange**

ICE Futures U.S. [NYBOT®] and any other board of trade, exchange or market for which the Corporation acts as a clearing organization, and their respective successors, by merger or otherwise.

\* \* \*

**ICE Futures U.S.®**

ICE Futures U.S., Inc., a corporation organized and existing under the Delaware General Corporation Law, its successors and any permitted assigns.

\* \* \*

**Merger**

The merger of Board of Trade of the City of New York, Inc., a New York not-for-profit corporation into ICE Futures U.S. [NYBOT].

\* \* \*

**[NYBOT®**

~~Board of Trade of the City of New York, Inc., a corporation organized and existing under the Delaware General Corporation Law, its successor and any permitted assign.]~~

[REMAINDER OF BY-LAW SECTION UNCHANGED]

**Section 3.12. Committees**

\* \* \*

(c) Notwithstanding paragraph (a) above, the Board shall appoint a Margin Committee with full authority to set and change levels of margins, which shall be comprised of at least two (2) members of the Board and at least seven (7) individuals who need not be members of the Board but must be persons who spend a considerable portion of their day on risk management activities for their employers and do not have significant client exposure. The Chairman of the Margin Committee shall be the President of the Corporation or another individual designated by the President. The Margin Committee shall conduct its business through subcommittees which shall be appointed by the Chairman of the Margin Committee. Each subcommittee shall consist of the Chairman of the Margin Committee and a minimum of two (2) members of the Margin Committee who have been appointed to such Committee based upon their risk management experience. A member of the staff of ICE Futures U.S. [NYBOT] shall be invited to attend each meeting of the Margin Committee and of each subcommittee thereof.

**Section 6.5. Exculpation and Reimbursement of Corporation**

(a) NEITHER THE CORPORATION, [NYBOT]ICE FUTURES U.S., NOR ANY ~~[EXCHANGE, NOR ANY]~~ DIRECTOR, COMMITTEE MEMBER, OFFICER, AGENT OR EMPLOYEE OF THE CORPORATION ~~[, NYBOT]~~ OR ICE FUTURES U.S. [, OR ANY EXCHANGE,] SHALL BE LIABLE TO ANY CLEARING MEMBER FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION

WITH ANY ERROR, ACT OR OMISSION ON THE PART OF THE CORPORATION, OR ON THE PART OF ANY PERSON IN THE CAPACITY OF ~~[MEMBER OR IN THE CAPACITY OF]~~ DIRECTOR, COMMITTEE MEMBER, OFFICER, AGENT OR EMPLOYEE OF ~~[A MEMBER OR OF]~~ THE CORPORATION, WHETHER OR NOT SUCH DAMAGES ARE DUE TO NEGLIGENCE, UNLESS SUCH ERROR, ACT OR OMISSION WAS THE RESULT OF WILLFUL OR WANTON CONDUCT OR WAS IN BAD FAITH.

(b) EXCEPT IN INSTANCES WHERE THERE HAS BEEN A FINDING OF WILLFUL MISCONDUCT OR BAD FAITH, IN WHICH CASE THE PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS IN THIS PARAGRAPH (b), NEITHER THE CORPORATION, ~~[NYBOT]~~ ICE FUTURES U.S., ~~[NOR ANY EXCHANGE,]~~ NOR ANY DIRECTOR, COMMITTEE MEMBER, OFFICER, AGENT OR EMPLOYEE OF THE CORPORATION~~[, OR ANY EXCHANGE,]~~ SHALL BE LIABLE TO ANY PERSON, INCLUDING BUT NOT LIMITED TO A CUSTOMER, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES), ARISING FROM (i) ANY FAILURE OR MALFUNCTION OF ANY ~~[ELECTRONIC]~~ SYSTEM UTILIZED BY THE CORPORATION OR ANY OF~~[R]~~ THE CORPORATION'S SERVICES OR FACILITIES USED TO SUPPORT ANY SUCH SYSTEM, (ii) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF ANY ~~[ELECTRONIC]~~ SYSTEM UTILIZED BY THE CORPORATION OR ANY OF THE CORPORATION'S SERVICES OR FACILITIES USED TO SUPPORT ANY SUCH SYSTEM, OR (iii) THE USE OF THE CONTINUOUS LINKED SETTLEMENT SYSTEM ("CLS") IN THE DELIVERY OF CURRENCIES.

(c) THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY THE CORPORATION~~[, NYBOT]~~ OR ICE FUTURES U.S. ~~[OR ANY EXCHANGE]~~ TO ANY PERSON RELATING TO ANY ~~[ELECTRONIC]~~ SYSTEM, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE.

(d) ANY ACTIONS, SUITS OR PROCEEDINGS AGAINST THE CORPORATION, ~~[NYBOT]~~ ICE FUTURES U.S., ~~[OR ANY EXCHANGE,]~~ OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS OR EMPLOYEES MUST BE BROUGHT WITHIN TWO (2) YEARS FROM THE TIME THAT A CAUSE OF ACTION, SUIT OR PROCEEDING HAS ACCRUED. ANY PARTY BRINGING ANY SUCH ACTION, SUIT OR PROCEEDING CONSENTS TO JURISDICTION IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE SUPREME COURT OF NEW YORK COUNTY, NEW YORK, AND WAIVES ANY OBJECTION TO VENUE THEREIN. THIS PROVISION SHALL IN NO WAY CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION THAT WOULD OTHERWISE BE PROHIBITED BY THIS PROVISION OR THE RULES OF THE CORPORATION~~[, NYBOT]~~ OR ICE FUTURES U.S. ~~[OR ANY EXCHANGE.]~~

(e) IN ANY ACTION, SUIT OR PROCEEDING AGAINST THE CORPORATION, ~~[NYBOT]~~ ICE FUTURES U.S. ~~[OR ANY EXCHANGE,]~~ OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, EACH PARTY WAIVES ANY RIGHT IT MIGHT HAVE TO A TRIAL BY JURY.

[REMAINDER FO BY-LAW SECTION UNCHANGED]

#### **Section 8.4. Amendment and Repeal**

These By-Laws may be amended or repealed, and any other By-Laws may be adopted, amended or repealed, by the vote of a majority ~~[of the votes]~~ of the shares at the time entitled to vote in the election of

any directors. These By-Laws may also be amended or repealed, and any other By-Laws may be adopted, amended or repealed, by the Board by a vote of not less than two-thirds of all the members of the Board, but any By-Law adopted by the Board may be amended or repealed by the shareholders entitled to vote thereon.

## Rules

### Rule 901. Rule Violations

(a) Except as provided in paragraph (b) of this Rule 901, the Corporation shall refer any suspected violation of the By-Laws or these Rules by any Clearing Member to the enforcement staff of [~~any Exchange of which such Clearing Member is a member~~]ICE Futures U.S. for appropriate action, in accordance with the rules of [~~such Exchange~~] ICE Futures U.S.

[REMAINDER OF RULE UNCHANGED]

### 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 Swap

The term “Cleared Only Swap” shall mean the Contract submitted by [~~the Exchange~~] ICE Futures U.S. to, and accepted by, the Corporation for clearing in accordance with the Rules of this Chapter.

[REMAINDER OF RULE UNCHANGED]

### Rule 1002. Submission of Swaps

(a) An OTC Swap may be submitted to [~~the Exchange~~] ICE Futures U.S. by arrangement between the ESPs who are parties to the OTC Swap, in accordance with such rules and procedures as [~~the Exchange~~]ICE Futures U.S. shall specify from time to time, for clearing as a Cleared Only Swap. The buyer and seller of the OTC Swap must be the same as the buyer and seller of the Cleared Only Swap.

[REMAINDER OF RULE UNCHANGED]

### Rule 1004. Eligible Products

An OTC Swap meeting the terms and conditions as specified in this Rule and in Chapter 23 of the [~~Exchange~~] ICE Futures U.S. Rules shall be eligible for clearing as a Cleared Only Swap.

#### (a) Coffee

\* \* \*

#### (v) Daily Settlement Price

The daily settlement price shall be equal to the daily settlement price of the corresponding delivery month of the [~~Exchange~~] ICE Futures U.S. Coffee “C” futures contract.

#### (vi) Last Day of Clearing

(A) The Last Day of Clearing for Cleared Only Swaps involving Coffee shall be the second (2<sup>nd</sup>) Friday of the calendar month preceding the delivery month; provided however, that:

##### (1) in the event that

(i) [~~the Exchange~~]ICE Futures U.S. is closed on any such Friday then:

(a) if the determination that [~~the Exchange~~] ICE Futures U.S. would be closed was made more than one (1) week prior thereto, the term "Last Day of Clearing " shall mean the trading day preceding such Friday; and

(b) if such determination was made at any other time, the term "Last Day of Clearing " shall mean the first (1<sup>st</sup>) trading day after such Friday; and/or

(2) there is less than four (4) trading days between any such Friday and the first (1<sup>st</sup>) notice day of the corresponding month of the [~~Exchange~~] ICE Futures U.S. Coffee "C" Futures Contract, the term "Last Day of Clearing" shall mean the fifth (5<sup>th</sup>) Business Day preceding the first (1<sup>st</sup>) notice day of the corresponding month of the [~~Exchange~~] ICE Futures U.S. Coffee "C" Futures Contract.

(vii) Final Settlement Price

(A) The final Settlement Price shall be the settlement price of the corresponding delivery month of the ICE Futures U.S. Coffee "C" Futures Contract on the Last Day of Clearing of the Cleared Only Swap.

\* \* \*

**(b) Cocoa**

\* \* \*

(v) Daily Settlement Price

The daily settlement price shall be equal to the daily settlement price of the corresponding delivery month of the [~~Exchange~~] ICE Futures U.S. Cocoa futures contract.

(vi) Last Day of Clearing

The Last Day of Clearing for Cleared Only Swaps involving Cocoa shall be the first (1<sup>st</sup>) Friday of the calendar month preceding the delivery month; provided however, that:

(A) in the event that

(1) [~~the Exchange~~] ICE Futures U.S. is closed on any such Friday then:

(i) if the determination that [~~the Exchange~~] ICE Futures U.S. would be closed was made more than one (1) week prior thereto, the term "Last Day of Clearing " shall mean the trading day preceding such Friday; and

(ii) if such determination was made at any other time, the term "Last Day of Clearing " shall mean the first (1<sup>st</sup>) trading day after such Friday.

(vii) Final Settlement Price

(A) The final Settlement Price shall be the settlement price of the corresponding delivery month of the [~~Exchange~~] ICE Futures U.S. Cocoa Futures Contract on the Last Day of Clearing of the Cleared Only Swap.

\* \* \*

**(c) Sugar**

\* \* \*

(v) Daily Settlement Price

The daily settlement price shall be equal to the daily settlement price of the corresponding month of the [~~Exchange~~] ICE Futures U.S. Sugar No. 11 futures contract.

(vi) Last Day of Clearing

The Last Day of Clearing for Cleared Only Swaps involving Sugar shall be the fifteenth (15<sup>th</sup>) calendar day of the delivery month; provided, however, that in the event ICE Futures U.S. is closed on such day, then the Last Trading Day shall be the next succeeding Business Day.

(vii) Final Settlement Price

(A) The final Settlement Price shall be the settlement price of the corresponding month of the ~~[Exchange]~~ ICE Futures U.S. Sugar No. 11 Futures Contract on the Last Day of Clearing of the Cleared Only Swap.

[REMAINDER OF RULE UNCHANGED]

#### **Rule 1005. Reportable Positions and Daily Reports**

Each Clearing Member which owns, controls, or carries for any customer a Cleared Only Swap, shall file such reports as are specified in Chapters 6 and 23 of the ~~[Exchange]~~ ICE Futures U.S. Rules or as otherwise required by ~~[the Exchange]~~ ICE Futures U.S.