

ice

Atlanta Calgary Chicago Houston London New York Singapore

15 West 52nd Street
New York, NY 10055

BY ELECTRONIC TRANSMISSION

Submission No. 14-40
May 13, 2014

Ms. Melissa Jurgens
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

CONFIDENTIAL TREATMENT
REQUESTED

**Re: New Russell Options Broker Rebate Program -
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Ms. Jurgens:

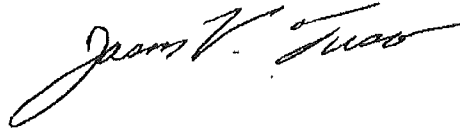
Pursuant to Commission Regulation 40.6(a), ICE Futures U.S., Inc. (“Exchange”) submits, by written certification, notice that the Exchange is implementing the Russell Options Broker Rebate Program (“Program”) on June 1, 2014. The terms of the Program are set forth in Exhibit A.

The Exchange certifies that the Program complies with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. In particular, the amendments comply with Core Principle 4 (Monitoring of Trading), Core Principle 9 (Execution of Transactions) and Core Principle 12 (Protection of Market Participants). The Program does not impact order execution priority or otherwise give participants any execution preference or advantage. In addition, the Exchange’s Market Regulation Department actively monitors for trading abuses using electronic exception reports and will take appropriate action against any participants engaging in market abuses.

The Exchange further certifies that, concurrent with this filing, a notice of pending certification was posted on the Exchange’s website. A redacted copy of this submission (consistent with the petition for Confidential Treatment filed contemporaneously with the Commission) may be accessed at (<https://www.theice.com/notices/RegulatoryFilings.shtml>). The Exchange is not aware of any opposing views respect to the Program, which was approved by the Exchange’s Board of Directors on April 9, 2014.

If you have any questions or need further information, please contact me at 212-748-4021 or at jason.fusco@theice.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason V. Fusco". The signature is fluid and cursive, with a large initial "J" and "F".

Jason V. Fusco
Assistant General Counsel
Market Regulation

Enc.
cc: Division of Market Oversight
New York Regional Office

EXHIBIT A

ICE Futures U.S. Russell Options Broker Rebate Program

Program Purpose

The purpose of the Program is to incentivize volume in the covered option contracts, to increase the overall liquidity of the products to the benefit of all market participants.

Product Scope

All Russell options contracts.

Eligible Participants

Any broker eligible to handle customer orders in Russell options contracts may register for the program.

Program Term

The start date for the Program shall be June 1, 2014 and the initial term of the program shall end on December 31, 2014. The Exchange reserves the right to revise the terms of the program and to terminate the program upon notice to all current Participants.

Obligations

[PARAGRAPH REDACTED]

Program Incentives

[PARAGRAPH REDACTED]

Monitoring and Termination of Status

The Exchange shall monitor trading activity and Participants' performance and shall retain the right to revoke Participants' status if it concludes from review that a Program Participant has failed to meet its obligations or no longer meets the eligibility requirements of this Program.



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New York, NY 10055

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May 13, 2014

BY ELECTRONIC MAIL

Assistant Secretary of the Commission
FOIA, Privacy and Sunshine Acts Compliance
Commodity Futures Trading Commission
Three Lafayette Centre, 8th Fl.
1155 21st Street, N.W.
Washington, DC 2058

CONFIDENTIAL TREATMENT
REQUESTED

Re: FOIA Confidential Treatment Request

Dear FOIA Compliance Staff:

ICE Futures U.S., Inc. ("Exchange") Submission No. 14-40 ("Submission"), a self certification of the new Russell Options Broker Rebate Program (the "Program") was filed with the Secretary of the Commission on May 13, 2014. As discussed more fully below, Appendix A to the Submission ("Appendix A") contains confidential and proprietary commercial and financial information of the Exchange which is exempt from disclosure pursuant to Section 552(b)(4) of the Freedom Of Information Act ("FOIA") and Commission Regulation 145.9(d). Copies of the Submission and Appendix A accompany this request. Pursuant to Commission Regulation 145.9(d)(1)(ii), the Exchange requests that Appendix A and its contents receive confidential treatment in perpetuity. IFUS further requests that the Commission notify the Exchange upon receiving any FOIA request, or any other court order, subpoena or summons for Appendix A. The Exchange also requests that it be notified if the Commission intends to disclose Appendix A to Congress or to any other governmental agency or unit pursuant to Section 8 of the Commodity Exchange Act ("CEA").

DETAILED WRITTEN JUSTIFICATION

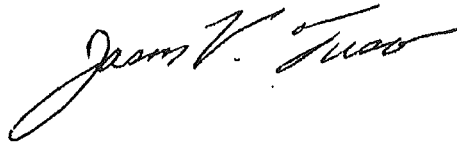
Section 552(b)(4) of the FOIA exempts from the disclosure requirements of the FOIA "trade secrets and commercial or financial information obtained from a person and privileged or confidential". The FOIA contains no definition of "privileged" or "confidential". Some courts have found there to be a presumption of confidentiality for commercial information that is (1) provided voluntarily and (2) is of a kind the provider would not customarily make available to the public. See Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 878 (D.C. Cir. 1992) (en banc); see also Center for Auto Safety v. National Highway Traffic Safety Administration, 244 F.3d 144, 147 (D.C. Cir. 2001) (applying tests from Critical Mass). Even if there were no presumption of confidentiality, the information in Appendix A still would be considered "confidential" because the Exchange would not ordinarily disclose it to the public and disclosure would cause substantial harm to the competitive position of the Exchange. In Gulf & Western Industries, Inc. v. U.S., 615 F.2d 527 (D.C. Cir. 1979), the Court of Appeals concluded that information is confidential for purposes of the FOIA if (i) it is not of the type normally released to the public by the submitter and (ii) the information is of the type that would cause substantial competitive harm if released. There is no requirement that "competitive harm" be established by a

showing of actual competitive harm. Rather, "actual competition and the likelihood of substantial competitive injury is all that needs to be shown." Gulf & Western Indus., Inc. v. U.S., 615 F.2d at 530. Thus, in National Parks and Conservation Association v. Kleppe, 547 F.2d 673 (D.C. Cir. 1976), the Court of Appeals concluded that the disclosure of certain financial information, including costs and price-related items, was likely to cause substantial harm to the disclosing party's competitive position. Such disclosure, if required, would provide competitors with valuable information relating to the operational strengths and weaknesses of the disclosing company. Such competitive harm may result from the use of such information either by direct competitors or by persons with whom one is negotiating. See American Airlines, Inc. v. National Mediation Board, 588 F.2d 863, 868 n.13 (2d Cir.1978). It is also clear that the exemption was intended to prevent the fundamental unfairness that can result from one side having confidential information about the other in a business context. Cf. National Parks, *supra*, at 678 n.18.

The information set forth in Appendix A was voluntarily provided to the Commission to support the Exchange's self certification that the new Program is in compliance with applicable provisions of the CEA and the regulations thereunder. This information is not of a type customarily made available to the public by the Exchange. The amendments to the Program took significant time, analysis and expense to develop and is an integral part of the Exchange's competitive strategy for growing the Russell complex futures markets. Consequently, disclosure of the salient terms holds the potential for significant competitive harm to the Exchange. Additionally, it should be noted that there is no regulatory requirement that such information be disclosed.

For all the foregoing reasons, the Exchange requests that the Commission grant the Exchange's request for confidential treatment for Appendix A and the information contained therein. 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:
cc: Secretary of the Commission
Division of Market Oversight
New York Regional Office