

ICE Futures U.S. Inc. – Demande de dispense de reconnaissance à titre de bourse ou de marché organisé

L'Autorité des marchés financiers (l'« Autorité ») publie la demande, déposée par ICE Futures U.S. Inc., de dispense de reconnaissance à titre de bourse ou de marché organisé en vertu de la *Loi sur les instruments dérivés*, L.R.Q., c. I-14.01. L'Autorité invite toutes les personnes intéressées à lui présenter leurs observations relativement à cette demande.

(Les textes sont reproduits ci-après.)

#### Commentaires

Toute personne désirant soumettre des commentaires est invitée à les faire parvenir par écrit, au plus tard le 9 juin 2014, à :

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Dear Ms. Bouffard:

**RE: ICE Futures U.S., Inc.: Application under Section 86 of the *Derivatives Act* for Exemption from Recognition as an Exchange or as a Published Market and for Exemption from Certain Other Requirements**

We are acting as counsel to ICE Futures U.S., Inc. (“**ICE Futures US**”) in connection with matters pertaining to direct electronic access to trading in ICE Futures US Contracts (as defined below) through the ICE Platform (as defined below) to certain market participants in the Province of Québec, either by way of membership in ICE Futures US or through order-routing arrangements.

As you are aware, ICE Futures US previously submitted an application to the *Autorité des marchés financiers* (“**AMF**”) on December 20, 2007 seeking authorization to act as a foreign based exchange pursuant to section 169 of the *Securities Act* (Québec). ICE Futures US subsequently decided not to proceed with the initial application but would now like to proceed to seek an exemption in relation to its proposed activities pursuant to section 86 of the *Derivatives Act* (Québec) (the “**Act**”) and its related regulations. As you will also be aware, the AMF has recently issued a similar exemption order to ICE Futures Europe in Decision No. 2013-PDG-0033.

We are filing this application with the AMF for obtaining the following decisions:

- a decision under Section 86 of the Act exempting ICE Futures US from the requirement to be recognised by the AMF as an exchange or as a published market under Section 12 of the Act;

- a decision under Section 86 of the Act exempting ICE Futures US from the requirement of Section 82 of the Act to be qualified by the AMF as a person who creates or markets derivatives;
- a decision under Section 86 of the Act exempting ICE Futures US from *Regulation 21-101 respecting Marketplace Operation* (“**Regulation 21-101**”); and
- a decision under Section 86 of the Act exempting ICE Futures US from *Regulation 23-101 respecting Trading Rules* (“**Regulation 23-101**”).

## **BACKGROUND TO ICE FUTURES US**

ICE Futures US is a leading global futures and options exchange for trading in energy products and a range of agricultural commodities, including sugar, coffee, cotton, cocoa and frozen concentrated orange juice. ICE Futures US also lists futures and options contracts for financial products, including certain Russell Indexes, currencies and the U.S. Dollar Index<sup>®</sup>, or USDX<sup>®</sup>. ICE Futures US operates as a designated contract market (a “**DCM**”) under the U.S. Commodity Exchange Act (the “**CEA**”) and is regulated by the Commodity Futures Trading Commission (the “**CFTC**”). The National Futures Association does not have any regulatory authority over ICE Futures US. All trading on ICE Futures US is conducted electronically.

ICE Futures US is a Delaware corporation and is wholly-owned by IntercontinentalExchange, Inc. (“**ICE**”), which itself is owned by IntercontinentalExchange Group, Inc. following the completion of the merger between IntercontinentalExchange, Inc. and NYSE Euronext on November 13, 2013. ICE Futures US traces its roots in soft commodities, through its predecessor exchanges, to the late 1800s when the New York Cotton Exchange (“**NYCE**”) was founded and 1882, when the Coffee Exchange of New York City was founded. In 1914, the Coffee Exchange began trading sugar futures and, in 1916, became the New York Coffee and Sugar Exchange. In 1925, the New York Cocoa Exchange was founded to trade cocoa futures, and merged with the New York Coffee and Sugar Exchange in 1979 to form the Coffee, Sugar & Cocoa, Exchange, Inc. (“**CSCE**”). In 1998, the CSCE and the NYCE formed the New York Board of Trade (“**NYBOT**”) as their parent company. In 2004, the two exchanges merged formally into NYBOT thereby establishing one exchange known as the Board of Trade of the City of New York, Inc., a not-for-profit membership organization. On September 14 2006, ICE announced that it had entered into an agreement to acquire NYBOT for consideration of approximately \$1 billion. The merger was consummated on January 12 2007, and NYBOT became a wholly-owned subsidiary of ICE. On 3 September 2007, the certificate of incorporation was amended to change the

name from “Board of Trade of the City of New York, Inc.” (NYBOT) to “ICE Futures U.S., Inc.”.

On October 15, 2012, the cleared energy swap business of ICE was successfully transitioned to ICE Futures US, which then commenced trading in North American power, natural gas and physical environmental futures and options contracts (the “**Energy Contracts**”).

In order to maintain its designation as a contract market, ICE Futures US must comply with twenty-three (23) “Core Principles” applicable to all DCMs and set forth in Section 5(d) of the CEA and further defined in Part 38 of the CFTC regulations. These include, among other things, requirements that ICE Futures US has the capacity to prevent market manipulation through market surveillance, compliance and enforcement practices and procedures; has established trading rules to ensure fair and equitable trading through the facilities of the contract market; has the capacity to detect, investigate and discipline any person who violates the rules; can ensure the financial integrity of transactions entered into through its facilities; can provide public access to its rules, regulations and contract specifications; has the authority to obtain any necessary information to perform its regulatory functions, including the capacity to carry out international information-sharing agreements, adopts position limitations or position accountability for speculators, where necessary and appropriate; establishes and enforces appropriate fitness standards for directors; has adequate financial resources; and has adequate system safeguards.

ICE Futures US offers for trading a broad array of Energy Contracts, soft agricultural commodities such as sugar, cocoa, coffee, cotton and frozen concentrated orange juice, as well as trading in futures and options contracts based on the U.S. Dollar Index (“**USDIX**”), foreign currencies and certain Russell Equity Index products.

On February 2, 2007, ICE Futures US started offering electronic trading in its core agricultural futures products alongside traditional open outcry floor-based access and currently exclusively provides electronic trading for all of its products. The electronic trading system being used (generally known as the “**ICE Platform**”) is owned and operated by ICE and is provided to ICE Futures US under the terms of a Licensing and Technical Services Agreement to provide ICE Futures US with an electronic trading facility. ICE Futures US currently lists over 500 different contracts on its exchange (“**ICE Futures US Contracts**”).

ICE Clear Europe, a United Kingdom corporation, (“**ICE Clear Europe**”) is the designated clearinghouse for the Energy Contracts listed on ICE Futures US and ICE Clear US, Inc., a New York corporation and subsidiary of ICE Futures US (“**ICE Clear US**”) is the designated clearinghouse for all other contracts listed on ICE Futures US.

Both clearinghouses are registered as derivatives clearing organizations with, and subject to oversight by, the CFTC. As such, they perform two major functions: (i) the reconciliation and clearing of futures and options transactions made on ICE Futures US; and (ii) the monitoring of the financial integrity of such cleared transactions.

In addition to being a DCM in the United States, ICE Futures US has secured relevant regulatory approvals or statements of non-objection, or has satisfied itself that it does not require regulatory approvals, to allow direct access to the ICE Platform from a number of jurisdictions, a list of which is appended as Exhibit A. No jurisdiction has denied a request by ICE Futures US for an approval or a statement of non-objection of this type.

In Canada, ICE Futures US received confirmation from the Manitoba Securities Commission that no regulatory authorization is required for ICE Futures US to offer direct electronic access to trading in ICE Futures US Contracts through the ICE Platform to market participants in Manitoba. Furthermore, ICE Futures US received regulatory approval from the Ontario Securities Commission dated September 1, 2009 and from the Alberta Securities Commission dated February 7, 2013 to permit it to offer direct electronic access to trading in ICE Futures US Contracts through the ICE Platform to market participants in those jurisdictions.

## **PROPOSED ACTIVITIES IN THE PROVINCE OF QUÉBEC**

ICE Futures US proposes to offer direct electronic access to trading in ICE Futures US Contracts through the ICE Platform to certain market participants in Québec either by way of (i) membership in ICE Futures US as a non-Clearing Member (as defined below), (ii) through order-routing arrangements where orders are routed through a member of ICE Clear US or ICE Clear Europe (a “**Clearing Member**”) onto the ICE Platform, or (iii) direct access authorized by a Clearing Member of ICE Clear US or ICE Clear Europe to its customers (“**Direct Access Users**”).

In all cases, prior to providing direct access to other users, each Clearing Member is required to execute a Direct Access Authorization which makes the Clearing Member responsible for the financial obligations of each Direct Access User it authorizes to use the ICE Platform with respect to all orders entered and transactions executed under its Clearing Member account. This obligation is also codified in ICE Futures US’s rule 27.04. Each Clearing Member and Direct Access User must also execute the ICE Futures US Electronic User Agreement.

With respect to each Direct Access User or customer for which it provides an order routing arrangement, the Clearing Member must: (i) take any and all actions requested or required by ICE Futures US with respect to such Direct Access User or customer,

including, but not limited to, assisting ICE Futures US in any investigation into potential violations of the CEA, and requiring such Direct Access User or customer to produce documents, provide information, answer questions and/or to appear in connection with any investigation; (ii) suspend or terminate the Direct Access Users' Direct Access if the Clearing Member has reason to believe that the Direct Access User no longer meets the Direct Access User qualifications; (iii) suspend or terminate the Direct Access User or Customer if the Clearing Member has reason to believe that the actions of the Direct Access User or customer threaten the integrity or liquidity of any ICE Futures US Contract, violate the CEA, or if the Direct Access User or customer fails to cooperate in any investigation; and (iv) utilize such controls designed to facilitate the Clearing Member's management of financial risk as may be provided by ICE Futures US from time to time.

### **Membership in ICE Futures US**

Entities wishing to become Clearing Members of ICE Futures US are subject to the membership requirements and procedures outlined in Section 3.4(d) of this application. However, entities resident in the Province of Québec will only be entitled to become non-Clearing Members of ICE Futures US and therefore will have to ultimately clear through a firm in the United States that is a Clearing Member and is registered as a futures commission merchant under the CEA.

### **Order-routing Arrangements through Clearing Members**

A market participant without direct access may only access the ICE Platform indirectly, such as by sending or routing its orders through an intermediary or its Clearing Member.

Regardless of how the user's order is submitted to the ICE Platform, ICE Futures US's regulations provide that the Clearing Member takes full financial responsibility for all orders and trades submitted on the ICE Platform by any person for whom such Clearing Member has authorized access, including order-routing clients and Direct Access Users. The Clearing Member must conduct its own due diligence of prospective order-routing clients to ensure that they satisfy relevant regulatory, financial resource, risk and anti-money laundering standards.

Residents of the Province of Québec that are "accredited counterparties" would be able to trade ICE Futures US Contracts through any Clearing Member, whether or not registered with the AMF. ICE Futures US is not seeking an exemption from the registration requirement set out in Sections 54 and 56 of the Act for its Clearing Members that are not registered with the AMF and is relying on the statutory exemption granted to persons authorised to act as dealers or advisers (or authorized to exercise similar functions) under

legislation applicable in a jurisdiction outside the Province of Québec where their head office or principal place of business is located, provided they carry on business solely for “accredited counterparties” and their activities involve standardized derivatives offered primarily outside the Province of Québec, in accordance with Section 11.14 of the *Derivatives Regulation* (Québec).

Residents of the Province of Québec that are not “accredited counterparties” would be able to trade ICE Futures US Contracts only through Clearing Members having a registration with the AMF that permits them to trade derivatives.

ICE Futures US expects that any of its potential direct access users (be they non-Clearing Members of the exchange or clients of a Clearing Member) and any order-routing clients in Québec will be (i) registered brokers/dealers that are engaged in the business of trading commodity futures and commodity options in Québec, (ii) commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a soft commodity and (iii) institutional investors such as pension funds and financial institutions. As a practical matter, it is not expected that retail, non-sophisticated investors will have access to or be in a position to route orders through the ICE Platform.

### **Enforcement and Compliance**

ICE Futures US is required to comply with applicable provisions of the CEA and CFTC’s Regulations regarding the integrity of its markets. ICE Futures US members are required to comply with all provisions of ICE Futures US’s rules, the CEA and CFTC’s Regulations regarding execution of futures and options on futures transactions and their participation in ICE Futures US’s markets. ICE Futures US’s Compliance Department and Business Conduct Committee have the ability to monitor and oversee the use of its facilities, assess its members’ compliance with the rules, assess the significance of any non-compliance, take appropriate disciplinary action against members in breach of its rules, suspend a member’s access to its facilities, refer members’ or others’ conduct to other appropriate authorities for possible action or further investigation and enforce the rules against users (other than members) of its facilities by issuing orders denying access to ICE Futures US’s markets and notices to members directing them to deny such non-member market participant access to ICE Futures US’s markets.

ICE Futures US will ensure that the guidance it provides to members with respect to Québec indicates that a member is permitted to grant access to ICE Futures US to a client in Québec provided that it qualifies as an “accredited counterparty”. In addition, ICE Futures US’s regulations state that ICE Futures US expects members to assume all responsibility for keeping themselves fully apprised of all regulations, rules,

requirements, policies and laws applicable in overseas jurisdictions when authorizing direct access to ICE Futures US for clients based in such jurisdictions.

ICE Futures US enforces its rules against all market participants, which includes all persons initiating or executing transactions on ICE Futures US and all persons for whose benefit such transactions have been initiated or executed. Pursuant to ICE Futures US's rule 4.00, persons engaging in such activities expressly consent to the jurisdiction of ICE Futures US. ICE Futures US rules apply equally to all participants.

### **Permitted Activities**

Until ICE Futures US receives the requested exemptive relief under the Act, ICE Futures US intends to engage in a restricted scope of activities in Québec. In particular, it expects to offer limited marketing activities to "accredited counterparties" in support of Clearing Members who may enter into order-routing arrangements with such market participants. In addition, ICE Futures US may respond to unsolicited queries from order-routing clients relating to ICE Futures US Contracts specifications, functionality of the ICE Platform and other similar matters.

### **EXEMPTIONS FROM SECTIONS 12 AND 82 OF THE ACT AND FROM REGULATIONS 21-101 AND 23-101**

#### **Exemption from the Requirement to be Recognised as an Exchange or as a Published Market under Section 12 of the Act**

As described in greater detail in this application, ICE Futures US is subject to the requirements of the CEA as well as oversight from the CFTC. Recognition requirements to be met by DCM's such as ICE Futures US are stringent and do take into consideration elements such as governance, fees, fair and equitable access, regulation, market operations, systems and technology as well as clearing and settlement, as prescribed by the AMF.

Furthermore, ICE Futures US confirms that it has the power to co-operate fully with the AMF and self-regulatory organizations in the Province of Québec, and to provide information and documents with respect to its operations that could be reasonably requested by the AMF.

Based on the foregoing, ICE Futures US seeks an exemption from the requirement of Section 12 of the Act allowing it to carry on derivatives activities in the Province of Québec without being recognised by the AMF as an exchange, a published market or otherwise. We believe this exemption would not be detrimental to the protection of



investors in the Province of Québec and would contribute to make Québec's derivatives market more efficient.

### **Exemption from the Requirement to be Qualified under Section 82 of the Act**

Section 82 of the Act states that a person, other than a recognised regulated entity, who creates or markets a derivative, must be qualified by the AMF before the derivatives is offered to the public. ICE Futures US hereby seeks an exemption from this requirement to be qualified by the AMF in order for it to carry on derivative activities within the conditions set out in this application.

### **Exemption from Regulation 21-101 and Regulation 23-101**

ICE Futures US submits to the AMF that the application of Regulation 21-101 and Regulation 23-101 regarding marketplace operation and trading rules to ICE Futures US would result in duplication of the U.S. regulatory framework and hereby seeks an exemption from Regulation 21-101 and Regulation 23-101.

### **CONFIDENTIALITY, CONSENT AND INFORMATION**

Strict confidentiality is requested with respect to all exhibits accompanying this application as these documents contain financial, business and technical information, the disclosure of which would result in serious harm to ICE Futures US. The foregoing confidentiality request notwithstanding, permission is granted to the AMF to publish this letter of application for exemptions in the AMF Bulletin for public comment.

Enclosed is a certificate of an authorized signatory of ICE Futures US certifying the truth and accuracy of the facts contained herein. Furthermore, you will find enclosed for your reference, a draft exemption order for ICE Futures US along with a blackline indicating changes from the ICE Futures Europe order issued on March 12, 2013. Finally, you will also find enclosed a schedule to this application, together with related exhibits, that includes additional information about ICE Futures US's business and policies under the following headings:

Article 1 – Corporate Governance

Article 2 – Rules

Article 3 – Systems and Operations

Article 4 – Access

Article 5 – Listing Criteria

Article 6 – Fees and Financial Statements

Article 7 – Market Regulation and Enforcement of Rules

Article 8 – The Commodity Futures Trading Commission

Should you require any further information or have any question on the information provided in this application, please do not hesitate to contact the undersigned or our counsel Jacob Sadikman (416.862.4931, jsadikman@osler.com) or Alexandre Martin (514.904.5421, almartin@osler.com) from Osler, Hoskin & Harcourt LLP.

Yours truly,

*(signed) Jacob Sadikman and Alexandre Martin*

Osler, Hoskin & Harcourt LLP

Enclosures

c.c. Jason Fusco, *ICE Futures U.S., Inc.*

## Table of Contents

ARTICLE 1 – CORPORATE GOVERNANCE .....	1
1.1 Legal Standing of ICE Futures US (Exhibit A) .....	1
1.2 Affiliated Entities and Service Providers (Exhibit B).....	2
1.3 Directors, Members of Standing Committees and Key Officers (Exhibit C).....	3
1.4 Affiliated Entities (Exhibit D) .....	7
1.5 Ownership of ICE Futures US (Exhibit E) .....	7
ARTICLE 2 – RULES .....	7
2.1 ICE Futures US Regulations (Exhibit F) .....	7
ARTICLE 3 – SYSTEMS AND OPERATIONS .....	8
3.1 Description of the ICE Platform (Exhibit G).....	8
3.2 Access to the System .....	8
3.3 Procedures Governing Entry and Display of Orders .....	8
3.4 Procedures Governing Execution, Reporting, Clearances and Settlement of Transactions .....	10
3.5 Trading Practices .....	14
3.6 Market Making Provisions.....	15
3.7 Market Limits.....	15
3.8 Hours of Operation of the ICE Platform.....	15
3.9 Custody of Funds .....	16
3.10 Guidance Provided to Users of the ICE Platform.....	17
3.11 Capacity Estimates, Contingency and Business Continuity Plans.....	17
3.12 ICE Futures US Contracts (Exhibit H) .....	18
ARTICLE 4 – ACCESS.....	18
4.1 Membership Criteria (Exhibit I) .....	18
4.2 Direct Access Criteria.....	19
4.3 Financial Resource Requirements.....	20
4.4 Suspension or Termination of Access.....	20
4.5 Access for Québec Participants .....	22
ARTICLE 5 – LISTING CRITERIA.....	23
5.1 Requirements for Listing New Contracts .....	23
ARTICLE 6 – FEES AND FINANCIAL STATEMENTS .....	24
6.1 Fees .....	24
6.2 Financial Statements (Exhibit J).....	24
ARTICLE 7 – MARKET REGULATION AND ENFORCEMENT RULES .....	25
7.1 ICE Futures US Regulatory Department .....	25
7.2 Availability of Information to Regulators and Information Sharing and Oversight Arrangements .....	28
7.3 Record Keeping .....	28
ARTICLE 8 - THE COMMODITY FUTURES TRADING COMMISSION .....	29
8.1 Enforcement of Commodity Exchange Act and CFTC Regulations .....	29
8.2 Reporting of Trading Information to the CFTC .....	29

## SCHEDULE TO THE ICE FUTURES US APPLICATION

### ARTICLE 1– CORPORATE GOVERNANCE

#### 1.1 Legal Standing of ICE Futures US (Exhibit A)

ICE Futures U.S., Inc. (“**ICE Futures US**”) is a Delaware corporation incorporated on September 11, 2006. Its certificate of incorporation was amended twice to change the original name, “CFC Acquisition Co.”, successively to “Board of Trade of the City of New York” (“**NYBOT**”) and “ICE Futures U.S., Inc.”. ICE Futures US is a wholly-owned subsidiary of IntercontinentalExchange, Inc. (“**ICE**”) since January 12, 2007 date of the consummation of the merger between a subsidiary of ICE and the then existing Board of Trade of the City of New York, Inc. ICE itself became a wholly-owned subsidiary of IntercontinentalExchange Group, Inc. since November 13, 2013, date of consummation of the merger between IntercontinentalExchange, Inc. and NYSE Euronext, although such a merger did not affect the operations of ICE Futures US in the ordinary course.

Please refer to Exhibit A for:

- ICE Futures US’s constating documents; and
- An updated ICE Group Corporate Structure following the above mentioned merger between IntercontinentalExchange, Inc. and NYSE Euronext.

ICE Futures US is a Designated Contract Market (“**DCM**”) pursuant to Sections 5 and 6(a) of the *United States Commodity Exchange Act*, as amended (the “**CEA**”), which operates a market for the purposes of trading energy, soft commodity, financial and index futures and options. ICE Futures US is therefore subject to the supervision of the Commodity Futures Trading Commission (the “**CFTC**”), the U.S. government agency that has direct regulatory and oversight responsibility over DCMs and charged with administering and enforcing the CEA.

In order to maintain its designation as a contract market, ICE Futures US must comply with twenty-three (23) “Core Principles” applicable to all DCMs and set forth in Section 5(d) of the CEA and further defined in Part 38 of the CFTC Regulations. These include, among other things, requirements that ICE Futures US has the capacity to prevent market manipulation through market surveillance, compliance and enforcement practices and procedures; has established trading rules to ensure fair and equitable trading through the facilities of the contract market; has the capacity to detect, investigate and discipline any person who violates the rules; can ensure the financial integrity of transactions entered into through its facilities; can provide public access to its rules, regulations and contract specifications; has the authority to obtain any necessary information to perform its regulatory functions, including the capacity to carry out international information-sharing agreements, adopts position limitations or position accountability for speculators, where necessary and appropriate; establishes and enforces appropriate fitness standards for directors; has adequate financial resources; and has adequate system safeguards.

For further information on governance, specifically on the composition of the board of directors of ICE Futures US and its standing committees, please refer to Section 1.3 and to the corresponding Exhibit C.

Please refer to Exhibit A for copies of the reviews performed by the CFTC in connection with ICE Futures US's compliance with the DCM Core Principles, as well as an extract from the *United States Code*, 7 USC Section 1, et seq. (which codifies the CEA) listing those core principles.

In addition to being a DCM in the United States, ICE Futures US has secured relevant regulatory approvals or statements of non-objection, or has satisfied itself that it does not require regulatory approvals, to allow direct access to the ICE Platform (defined hereinafter) from a number of jurisdictions, a list of which is appended in Exhibit A.

In Canada, ICE Futures US received confirmation from the Manitoba Securities Commission that no regulatory authorization is required for ICE Futures US to offer direct electronic access to trading in electronically-traded contracts of ICE Futures US through the ICE Platform to market participants in Manitoba. Furthermore, ICE Futures US received regulatory approval from the Ontario Securities Commission dated September 1, 2009 and from the Alberta Securities Commission dated February 7, 2013.

## **1.2 Affiliated Entities and Service Providers (Exhibit B)**

### **(a) Affiliates Entities**

ICE Futures US is a wholly-owned subsidiary of ICE, which is also the ultimate owner of ICE Futures Europe, ICE Futures Canada<sup>®</sup>, ICE Clear US<sup>®</sup>, ICE Clear Europe<sup>®</sup> and ICE Clear Canada<sup>®</sup>. ICE is the owner and operator of the integrated electronic platform on which ICE Futures U.S.'s contracts are traded, the ICE Platform, in accordance with the terms of a Software License Agreement and a Services Agreement. Further information on the contractual relationship between ICE and ICE Futures US is provided in Exhibit B.

ICE Futures US is, in turn, the sole shareholder of ICE Clear U.S., Inc. ("**ICE Clear US**") and eCOPS, LLC ("**eCOPS**"), which maintains a database of electronic warehouse receipts relating to commodities which underlie some of the ICE Futures US Contracts.

ICE Clear US and ICE Clear Europe are registered derivatives clearing organisations ("**DCOs**") subject to the regulatory oversight of the CFTC. ICE Clear US was appointed as ICE Futures US's (and its predecessors) designated clearinghouse in 1915. ICE Clear US operated as the only ICE Futures US clearinghouse until October 2012, when ICE Clear Europe was designated to clear the Energy Contracts (as defined below) for ICE Futures US. ICE Clear Europe is also recognised as a clearing house in the U.K. by the Bank of England and a securities clearing agency supervised by the U.S. Securities and Exchange Commission.

eCOPS has been designated by the United States Department of Agriculture as a provider of electronic warehouse receipts for coffee, cocoa and orange juice and carries out the daily operations of ICE Futures US's electronic commodity operations processing system known as "eCOPS". eCOPS is governed by a Board of Managers comprised of the Chairman, Vice Chairman, Treasurer and President of ICE Futures US. The Board of Managers appoints eCOPS's officers, who are all employees of ICE Futures US.

Please refer to Exhibit A for a chart representing ICE Futures US and its affiliates and to Exhibits B and D for corporate and other information about ICE, ICE Clear US, ICE Clear Europe and eCOPS.

(b) Service Providers

In addition to ICE, which operates the ICE Platform, and the DCOs which clear all trades executed on ICE Futures US, ICE Futures US has contractual relationships with certain Index providers. The equity indexes underlying some of ICE Futures US Contracts are used under a licence granted by the third party which calculates such indexes and is identified in Exhibit B.

### 1.3 Directors, Members of Standing Committees and Key Officers (Exhibit C)

(a) Board of Directors

The governing body of ICE Futures US is its board of directors (the “**Board**”) whose composition is governed by ICE Futures US’s bylaws and rules (the “**Bylaws and/or Rules**”). In particular, the governance structure of ICE Futures US provides for: (i) appropriate, fair and meaningful representation on its Board and any committee thereof; and (ii) appropriate representation by independent directors on the Board and any committee thereof.

The size and composition of the Board has been reviewed by the CFTC in the context of Core Principles 15, 16 and 17 which regulate governance fitness requirements and with which ICE Futures US’s board structure complies. The CFTC is interested in ensuring that the Board is large enough to deal with conflicts of interest as required by the Core Principles and has the ability to act independently. The CFTC has also adopted practices for minimising conflicts of interest in decision-making by DCMs under Core Principle 16, which are intended to recognise their public-interest responsibilities as self-regulatory organisations. These acceptable practices require 35% of the directors of a DCM’s Board, or any committee having similar powers, meet a “public director” test that prohibits any person having a “material relationship” with the DCM from being deemed a public director. A “material relationship” is one that reasonably could affect the independent judgment or decision making of the director. The Board is required to make a determination on the record, each year, as to the eligibility of every director that it classifies as a public director, and records setting forth the basis for those determinations must be retained by ICE Futures US and available for review. In addition, the CFTC rules contain a bright line test under which a director fails if any specified relationships are found to exist between the director and ICE Futures US, its affiliates and its members. These relationships are examined looking back on a rolling one-year period and are examined as well as with respect to members of the director’s immediate family. Bylaw Section 4.1 requires that four of ICE Futures US’s nine-person Board meet the CFTC’s definition of a “public director”<sup>1</sup> and currently all six

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<sup>1</sup> The definition proposed by the CFTC in the Acceptable Practices for Core Principle 16 provides that a director is “public” only if the board of directors affirmatively determines that the director has no “material relationship” with the exchange. The nominating committee of the board of directors should affirmatively determine on the record that a director or nominee has no material relationship with the exchange, and should state on the record the basis for its determination and the scope of its scrutiny. The committee should reevaluate that determination at least on an annual basis. “Material relationships” are those that reasonably could affect the independent judgment or decision making of the director. Material relationships are not exclusively compensatory or financial. Any relationship between a director and the exchange that may interfere with a director’s ability to deliberate objectively and impartially on any

of its non-executive directors qualify as public directors, resulting in 66 <sup>2/3</sup>% of the entire Board being comprised of public directors.

Sections 6(a) and 8(a)(1) of the CEA give the CFTC the authority to review the organisation and structure of ICE Futures US, including the Bylaws and/or Rules establishing the corporate governance and composition of the Board to ensure that ICE Futures US will be able to comply with US statutory standards. Through By-Law Section 4.3 and Article IX of the ICE Futures US By-Laws, the Board and senior management, respectively, are empowered with all the powers and duties of managers of a Delaware corporation and are able to delegate those powers.

Under ICE Futures U.S.'s Bylaws, the number of directors currently constituting the entire Board is nine (9), consisting of two (2) individuals who are executive officers or directors of ICE (or any successor to, or successor owner of, ICE), the Chief Executive Officer or the President of ICE Futures U.S., two (2) individuals elected by the shareholder and four (4) representatives who qualify as "public directors". Although the Bylaws currently specify nine (9), the number of directors shall be the number, not less than three (3), fixed from time to time by the Board, acting by a majority vote of the total number of directors which ICE Futures US would have, prior to any increase or decrease, determined as if there were no vacancies.

The current composition of the Board is set out in Exhibit C.

ICE Futures US takes reasonable steps to ensure that each officer and director is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity. Section 5 of the CEA requires that ICE Futures US establish and enforce appropriate fitness standards for directors. A director also has fiduciary duties set forth under Delaware state law. All of the members of the Board must be over the age of majority and of sound mind, have experience in the field of the provision of futures exchange services, and be regarded in the market as being persons with integrity and competence. Accordingly, the CFTC reviews the fitness requirements applicable to the ICE Futures US's directors. Fitness and qualifications are addressed in further detail by Section 8(a) of the CEA which provides for statutory disqualification criteria with respect to registrants. CFTC regulation 1.63 separately provides, in general, that a person who has been the subject of disciplinary proceedings brought by the CFTC, an exchange or other self-regulatory organisation is barred (either permanently or for a prescribed period) from serving on an exchange's board of directors or any of its disciplinary or arbitration panels. ICE Futures US Rule 6.40 reflects the provisions of CFTC Regulation 1.63.

In addition, ICE Futures US Rule 6.40 provides that any ICE Futures US member who has been found guilty of rule violations or has settled charges relating to, or arising from, trades subject to the ICE Futures US rules which resulted in an expulsion suspension or a fine which equals or exceeds the maximum fine which may be imposed by the ICE Future US's disciplinary committee or \$25,000, whichever is less, may not serve on any ICE Futures US disciplinary or arbitration committee.

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matter is a material relationship. In this regard, material relationships are not limited to those where a director has an immediate interest in a particular matter before him or her. In addition to the general materiality test, the proposed definition of "public" director identifies specific circumstances or relationships that would preclude a determination that a person qualifies as a "public" director.

The Board of Directors is subject to a Code of Ethics and Professionalism set forth in Standing Resolution R-5 (available as part of Exhibit F, under Tab 22). Standing Resolution R-5 obligates Board members to discharge their duties as directors in compliance with all applicable laws, rules and regulations and with the highest standards of professional ethics. Standing Resolution R-5 provides general guidance on issues such as participation in decision-making, loyalty to the exchange, confidentiality and conflicts of interest. Persons found to be in violation of the Code of Ethics and Professionalism may be subject to appropriate action under ICE Futures US's Disciplinary Rules and/or removal from the Board.

All employees and officers of ICE Futures US are subject to detailed pre-employment screening which is conducted by an external, independent agency and includes, *inter alia*, credit review, verification of academic qualifications and employment history and a review of the information supplied in support of the individual's application (including references). In addition, senior management appointees are subject to further checks on their professional memberships, qualifications and directorships and, where appropriate, checks of any criminal records.

ICE Futures US also provides appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors and officers. The remuneration of directors and officers of ICE Futures US is reviewed on an annual basis by a compensation committee. Non-employee directors receive compensation for attending Board meetings and participating on ICE Futures US Board committees. The basic compensation is thirty-five thousand dollars (\$35,000) per annum for service on the Board, five thousand dollars (\$5,000) per annum for each Board committee and ten thousand dollars (\$10,000) per annum for being the chairperson of a Board committee. Those ICE Futures US directors who are also directors of ICE receive twenty-five thousand dollars (\$25,000) per annum as directors of ICE Futures US Public Directors also receive an annual equity award of ICE stock.

Furthermore, the ICE group's global insurance program provides professional indemnity and directors and officers coverage to all directors and executive officers of ICE Futures US. ICE Futures US and ICE hold quarterly insurance review meetings during which such issues are discussed with the ICE group's insurance brokers.

(b) Committees

(i) *Regulatory Oversight Committee*

In March 2007, CFTC guidelines and acceptable practices for meeting the requirements of Core Principle 16, which addresses the question of access of the regulatory department to the Board, became effective. One of the guidelines provides for the establishment by the board of directors of any DCM of a Regulatory Oversight Committee ("**ROC**") comprised of only public directors in order to assist the board in minimizing actual and potential conflicts of interest and to oversee the DCM's regulatory program on behalf of the board.

Prior to the enactment of these guidelines and acceptable practices, ICE Futures US had established a ROC comprised exclusively of its public directors as a standing committee of the Board (Rule 3.40, available in Exhibit F, under Tab 3).



The ROC oversees the fulfilment of ICE Futures US's compliance with its self-regulatory obligations and advises the Board on such matters. Among other things, the ROC is mandated to (i) review and make recommendations with respect to the responsibilities, budget and staffing of the Market Regulation Department, (ii) review the functioning of the Market Regulation Department to determine whether it is able to implement self-regulatory responsibilities independent of improper influence, interference or other factors that could interfere with its ability to fulfil its responsibilities, (iii) review ICE Futures US's compliance with its self-regulatory responsibilities as prescribed by law and ICE Futures US's Rules, and (iv) review changes and proposed changes to ICE Futures US's Bylaws and Rules to the extent that such changes are likely to impact significantly the self-regulatory functions of ICE Futures US.

ICE Futures US's chief regulatory officer, the Vice President of Market Regulation, has two reporting lines; one directly to the ROC and the other to the Senior Vice President and General Counsel.

(ii) *Trade Committees and Exchange Committees*

ICE Futures US is supportive of the view that recognized bodies should be encouraged to establish governance procedures which include a mechanism for receiving user input. ICE Futures US has substantial user input through its trade committee structure. Rule 3.00 provides for the appointment by the Board of the following Trade Committees: Board of Citrus Advisors, Cocoa Committee, Coffee Committee, Cotton Committee, Domestic Sugar Committee and World Sugar Committee. Each of these advisory committee is comprised of a broad cross section of market participants or other industry experts who are or were formerly active in the particular area in which the committee is engaged. The committees are regularly consulted with respect to material rule changes that will be considered by the Board as well as other significant decisions affecting a particular market. Committee composition is reviewed annually to ensure there is a diversity of interests reflected in its members and that its charter remains relevant.

(c) Officers

Other "key individuals" of ICE Futures US are as follows, all of them being full-time employees of ICE Futures US:

- Benjamin Jackson, President and Chief Operating Officer;
- Thomas Greene, Senior Vice President, Floor Operations and Member Relations;
- Thomas Hammond, President, ICE Clear US (responsible for supervising the clearing house); and
- Audrey R. Hirschfeld, Senior Vice President, Legal and Regulatory, General Counsel and Secretary (responsible for legal and compliance matters).

#### **1.4 Affiliated Entities (Exhibit D)**

ICE Futures US is part of a group of companies ultimately owned by ICE. See Exhibit A for the chart showing ICE Futures US and its affiliates, Exhibit B for corporate information on ICE, ICE Clear US, ICE Clear Europe and eCOPS, and Exhibit D for constating documents, by-laws, rules, composition of boards and standing committees and financial statements of entities affiliated to ICE Futures US. Furthermore, for reference purposes, we also include constating documents, by-laws, composition of boards and standing committees and financial statements of IntercontinentalExchange Group Inc. in Exhibit D.

#### **1.5 Ownership of ICE Futures US (Exhibit E)**

On September 14, 2006, ICE announced that it had entered into an agreement to acquire NYBOT for a consideration of approximately \$1 billion. The merger was approved by the members of NYBOT on December 11, 2006, and was consummated on January 12, 2007, when NYBOT became a wholly-owned subsidiary of ICE. The name “NYBOT” was changed to “ICE Futures U.S., Inc.” on September 3, 2007. Please refer to the prospectus dated November 17, 2006 containing full details of the transaction appended to Exhibit E.

### **ARTICLE 2 – RULES**

#### **2.1 ICE Futures US Regulations (Exhibit F)**

Section 5 of the CEA and Part 38 of the CFTC Regulations require generally that DCMs establish rules sufficient to satisfy the various designation criteria and Core Principles and provide sanctions, disciplinary procedures and the necessary staff to enforce such rules. ICE Futures US maintains rules, policies and other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and affairs and that such rules are designed to, in particular: (i) ensure compliance with the rules of ICE Futures US and securities legislation; (ii) prevent fraudulent and manipulative acts and practices; (iii) promote just and equitable principles of trade; (iv) foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, the products traded on ICE Futures US; (v) provide for appropriate discipline; (vi) ensure a fair and orderly market; and (vii) ensure that the ICE Futures US business is conducted in a manner so as to afford protection to investors.

ICE Futures US enforces its rules against all market participants, which includes all persons initiating or executing transactions on ICE Futures US and all persons for whose benefit such transactions have been initiated or executed. Pursuant to ICE Futures US’s rule 4.00, persons engaging in such activities expressly consent to the jurisdiction of ICE Futures US. ICE Futures US rules apply equally to all participants. Additionally, ICE Futures US rules 6.07 through 6.33 require Members to keep and maintain records, file reports and comply with prescribed position limits and accountability. ICE Futures US rule 2.29 makes it a violation of ICE Futures US rules to engage in various practices that are prohibited by the CEA.

ICE Futures US’s rules contain substantive provisions relating to membership requirements, general and electronic trading procedures and procedural provisions relating to such matters as discipline and arbitration.

A copy of ICE Futures US Bylaws and Rules are appended as Exhibit F.

## **ARTICLE 3 – SYSTEMS AND OPERATIONS**

### **3.1 Description of the ICE Platform (Exhibit G)**

#### **(a) Overview of the ICE Platform**

The electronic trading system used for the trading of ICE Futures US Contracts (as previously defined), generally known as the ICE Platform (as previously defined), is owned and operated by ICE and is provided to ICE Futures US under the terms of a Software License Agreement and a Services Agreement. The ICE Platform is also used by ICE Futures Europe, a UK Recognised Investment Exchange.

ICE developed the ICE Platform technology in compliance with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organisation of Securities Commission (“**IOSCO**”). In utilizing ICE’s technology and developing this technology in conjunction with ICE for the trading of ICE Futures US electronically-traded contracts, ICE Futures US adheres to the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of IOSCO.

### **3.2 Access to the System**

The ICE Platform is based on web browser software. ICE provides the trading ‘server’, which is where orders are matched and trades are executed. Market participants seeking to trade ICE Futures US electronically-traded contracts access the trading server using the ICE Graphical User Interface over a browser-based Internet connectivity model, via software provided by ISV or via bespoke proprietary applications which connect directly to the server via an application program interface.

An overview of ICE Futures US’s connectivity models is appended as Exhibit G.

### **3.3 Procedures Governing Entry and Display of Orders**

The ICE Platform accepts several types of orders for execution, namely calendar spread orders, limit orders, market orders, stop limit orders, stop orders with protection, trade at settlement orders, trade at index close orders and trade at morning marker orders, and offers several functionalities, such as reserve quantity orders (also known as show volume orders) and good ‘til cancelled orders.

A calendar spread order is an order to buy one month and sell an equal quantity of a second month at a specific differential. Calendar spread orders may be executed against either a matching calendar spread order or by matching with separate outright orders. When executed against outright orders, the outright contract prices are always used for each leg of the calendar spread order. When traded against another calendar spread order, the prices of the legs are generated by a calendar spread algorithm.

A limit order is an order placed to buy or sell a stated quantity at a specified price, or at a better price, if obtainable. The order will sweep through all available resting orders until the limit price is reached, the required volume is filled or the reasonability limit (described below) is reached. Unless specified otherwise, any residual volume from an incomplete limit order is retained by ETS until the end of the day unless it is withdrawn or fully executed.

A market order is an order to buy or sell at the prevailing market price. The order will sweep through the available resting orders until either the full volume of the order is filled or the reasonability level is reached. In the event of the reasonability level being hit before the full volume is filled, then the balance of the volume is not executed and is withdrawn from the market. Market orders may be combined with outright and spread order types.

An options spread order is an order to effect one (1) options contract in conjunction with one (1) or more other options contracts in the same commodity or to effect a Combination Transaction. A Combination Transaction is defined as two (2) or more commodity contracts traded simultaneously and comprised of an options contract and a related futures contract.

A stop limit order has two components: (1) the stop price and (2) the limit price. When a trade occurs on ETS at or through the stop price, the order becomes executable and enters the market as a limit order at the limit price. The order will be executed at all price levels from the stop price up to and including the limit price. If the order is not fully executed, the remaining quantity of the order will remain active in ETS at the limit price.

A stop order with protection has two components: (1) the stop price and (2) a protection limit price which is set by ICE Futures US. ICE Futures US sets the limit price by either adding the amount of the no cancellation range (described below) of the specified commodity contract to the stop price for a buy stop or deducting the amount of the no cancellation range for the specified commodity contract to the stop price for a sell stop. When a trade occurs on ETS at or through the stop price, the order becomes executable and enters the market as a limit order at the limit price set by the ICE Futures US.

A trade at settlement (“**TAS**”) order is an order to buy or sell a stated quantity at: (A) the trading session’s settlement price or up to two (2) minimum price fluctuations above or below the trading session’s settlement price; or (B) if a calendar spread, at the spread differential between the trading session’s settlement prices of the two (2) delivery months up to two (2) minimum price fluctuations above or below the spread differential between the trading session’s settlement prices of the two (2) delivery months. A TAS order may be submitted only for those commodity contracts and delivery months and during such time periods as specified by ICE Futures US from time to time.

A trade at index close (“**TIC**”) order is an order to buy or sell a stated quantity of an index-based futures contract at the end of the day spot index value for the index upon which the futures contract is based or up to a maximum number of minimum price fluctuations above or below the spot index value. A TIC order may be submitted only for those commodity contracts and delivery months, during such time periods and for such maximum number of minimum price fluctuations as specified by ICE Futures US from time to time.

A trade at morning marker (“**TAMM**”) order is an order to buy or sell a stated quantity at: (A) the morning marker price or up to two (2) minimum price fluctuations above or below the morning marker price; or (B) if a calendar spread, at the spread differential between the morning marker prices of the two (2) delivery months up to two (2) minimum price fluctuations above or below the spread differential between the morning marker prices of the two (2) delivery months. A TAMM order may be submitted only for those commodity contracts and delivery months and during such time periods as specified by ICE Futures US from time to time.

A reserve quantity order allows the trader to only show a designated volume of a limit to the market. Once this designated volume is completely filled, then a new clip of the designated volume will immediately be added to the shown order until the entire order volume is traded out. As a new clip of volume is added that clip will have new time priority.

A good ‘til cancelled order (“**GTC**”) is an order to buy or sell a stated quantity at a stated price which remains active in ETS until the order is either executed, cancelled by the trader or automatically cancelled at the commodity contract’s expiration. GTC orders may be submitted for those commodity contracts specified by ICE Futures US.

The system contains reasonability limits in all futures and options markets which limit the amount that the price can change in one trading sequence from the last traded price of that contract. For each commodity contract traded on the system, ICE Futures US sets a no cancellation range which is the price range within which a trade alleged to be an error may not be cancelled. A trader may submit orders into the trading server for a particular market if they have the correct trading rights and the trading day period for that market is valid for entering orders. A trader may reduce the volume of an order that has not fully traded or place a better price, without the time priority originally assigned to the order changing. Traders may also increase the volume or detrimentally change the price but this will change the time priority to the time the server receives the revision. A trader may delete any of their own orders that are active in the market; they cannot, however, delete the orders of another trader (unless the trader is from the same company and has permission through order security to do so).

### **3.4 Procedures Governing Execution, Reporting, Clearances and Settlement of Transactions**

#### (a) Trade Matching Algorithms

##### (i) *“Price/Time Matching Algorithm”*

The ICE Platform uses the same “price/time matching algorithm” for all contracts traded on ICE Futures US. The trading server will match orders on the basis of a price and time priority algorithm. The algorithm is a first-in, first-out (“**FIFO**”) system that matches orders in a strict time sequence. The “oldest” order in the system at any time has the highest priority and is filled prior to any subsequently placed orders. Once a standing order is completely filled, the remaining orders will be filled based upon the time of entry of the order, in accordance with the FIFO algorithm. This means that the “best” price will always have the highest order priority, for buy orders that means those orders that have the highest price and for sell orders that means

those orders that have the lowest price. If more than one order is in the market at a specific price then the trading server will give the highest priority to the order that arrived at the trading server first.

(ii) *“Uncrossing Algorithm”*

Before a market opens, all orders that are in a market are eligible to be part of the “uncrossing algorithm”. The purpose of the algorithm running is to ensure that the market opens in an orderly fashion and that the maximum possible volume of trades is generated upon the opening of the market. The algorithm cycles through all orders in the market identifying the best bid and offer and producing matches where there is price crossing. All orders that are traded within a month, whether fully or partially, as part of the uncrossing algorithm trade at the same trade price.

(iii) *“Interval Price Limits”*

For certain contracts, the ICE Platform also employs circuit breaker functionality, which diminishes the frequency and extent of short-term price spikes. The functionality, known as Interval Price Limits (“**IPL**”), works by establishing a band of specific price limits (the “**IPL Amount**”) for a contract over repeating short intervals of time. At the beginning of each interval, an “Anchor Price” is established for a contract. The duration of time between Anchor Price calculations is the IPL Recalculation Time. The functionality will prevent a contract from trading at a price level above or below the anchor price by more than the IPL Amount for that contract, within the IPL Recalculation Time. If the functionality determines that the next trade in a contract will be at a price that is outside of the limit, the functionality will trigger a Hold Period, which prevents the price of the contract from trading outside the limit. The duration of the hold period is pre-set. When the hold period ends, a new interval will commence and a new Anchor Price will be calculated.

(b) Recording and publishing details of pricing and trading

As a DCM, ICE Futures US is required to provide the public with access to ICE Futures US’s rules, regulations and contract specifications as well as to daily information on settlement prices, volume, open interest and opening and closing ranges for contracts traded on the ICE Platform.

This information is available on ICE Futures US’s Daily Market Report which is the official report of ICE Futures US market information. This report is available after 6:00 pm (New York Time) each business day and is posted on ICE Futures US’s website at [www.theice.com](http://www.theice.com). Individuals without internet access may request the DMR and contract specifications from ICE Futures US staff who will fax or mail the documents to the requestor. In addition, a Time & Sales Report which lists the time and price of every trade executed in seriatim for each commodity contract is available upon request from the Compliance Department. ICE Futures US also makes its price data available in real time by allowing the public to purchase the price data feed or through a quote vendor, such as Reuters.

(c) Information Technology Risk Management Procedures

ICE Futures US considers appropriate systems and controls to be important in reducing the likelihood of orders being entered in error, preventing the execution of trades at unrepresentative prices and reducing the market impact of such trades. As such, procedures are in place in order to handle trading errors, trading halts and circuit breakers, ensure the competence, integrity and authority of system users and ensure that the system users are adequately supervised.

ICE Futures US Electronic Trading Rules (reproduced in Exhibit F under Tab 27), require ICE Futures US's Members to have adequate arrangements to ensure that all staff involved in the trading of ICE Futures electronically-traded contracts through the ICE Platform are fit and proper, adequately trained and properly supervised.

ICE Futures US Rule 27.11 prescribes the types of orders that may be entered into the ICE Platform. The ICE Platform also uses "Reasonability Limits" to determine if an order is executable. A "Reasonability Limit" is the amount by which the price of a commodity contract may increase or decrease in one trading sequence from the last traded price (ICE Futures US Rule 27.02(ix)). A trade will be executed on the ICE Platform when all of the following conditions occur: (i) one order is a bid and the other order is an offer, (ii) the two orders are for the same commodity contract and delivery month and (iii) the price of the bid (offer) equals or is greater (less) than the price of the offer (bid) (ICE Futures US Rule 27.19).

These controls also include ICE Futures US's Error Trade Policy, appended to ICE Futures US Electronic Trading Rules, which describe configuration facilities such as price reasonability limits, volume reasonability limits, optional pre-confirmation messages which appear before the execution of all orders and an option to designate the quantity that a user may wish to expose to the market at one time rather than trading the total quantity that is available to be traded at a specified price. This policy also contains specific rules providing ICE Futures US with absolute discretion to delete orders, cancel trades or suspend the market in the interests of maintaining a fair and orderly market.

ICE Futures US's rules impose appropriate sanctions for breaches of any of the applicable trading rule and procedures.

(d) Clearing and Settlement Processes

Clearing services are provided to ICE Futures US by ICE Clear US, its designated clearinghouse with respect to its products other than Energy Contracts (as defined below), which are cleared by ICE Futures Europe. Both ICE Clear US and ICE Clear Europe are DCOs registered with, and subject to oversight by, the CFTC. ICE Clear Europe is also recognised as a clearing house in the U.K. by the Bank of England and a securities clearing agency supervised by the U.S. Securities and Exchange Commission.

Persons wishing to trade futures contracts, options or other transactions must have such transactions cleared on ICE Clear US or ICE Clear Europe, either by becoming a member of the clearinghouse (a "**Clearing Member**") or having an agreement in place with a Clearing Member which has agreed to clear such person's transactions through the Clearing Member's customer account with ICE Clear US or ICE Clear Europe, as applicable. In other words, all transactions

executed on ICE Futures US must be cleared through ICE Clear US or ICE Clear Europe, and ICE Clear US and ICE Clear Europe only transact with Clearing Members.

In order to become a Clearing Member of ICE Clear US, an entity must, among other things, meet certain eligibility requirements, have capital of at least \$5,000,000, be approved by the ICE Clear US's board of directors, execute a Clearing Member Agreement with ICE Clear U.S. and make a deposit in a security fund maintained by ICE Clear US called the "Guaranty Fund". The amount required to be so deposited is calculated by reference to a formula geared to the clearing activity and capital of the entity, with a minimum of \$2,000,000 and a maximum of \$3,500,000. Guaranty Fund deposits may be applied by ICE Clear US to meet the obligations of the depositing Clearing Member to ICE Clear US and the entire fund may be applied against any amounts owing to ICE Clear US by any other Clearing Member in the event of a default. The entire amount currently on deposit in the Guaranty Fund is approximately \$220,000,000. Membership criteria for ICE Clear US are set out in ICE Clear US By-Law 5.2 and ICE Futures US Rule 2.14, reproduced in Exhibit D and Exhibit F, respectively.

In order to become a Clearing Member of ICE Clear Europe for clearing of Energy Contracts, an entity must, among other things, meet certain eligibility requirements, have capital of at least \$20,000,000, be approved by the ICE Clear Europe board of directors, execute a Clearing Member Agreement with ICE Clear Europe. and make a deposit in a security fund maintained by ICE Clear Europe called the "Guaranty Fund". The amount required to be so deposited is calculated by reference to a formula geared to the clearing activity, with a minimum of \$1,000,000. Guaranty Fund deposits may be applied by ICE Clear Europe to meet the obligations of the depositing Clearing Member to ICE Clear Europe and the entire fund may be applied against any amounts owing to ICE Clear Europe by any other Clearing Member in the event of a default. The entire amount currently on deposit in the Guaranty Fund is approximately \$1,200,000,000. Membership criteria for ICE Clear Europe are set out in Part 2 of the ICE Clear Europe's Clearing Rules, reproduced in Exhibit D.

Clearing Members have direct access to the ICE Platform and may authorize direct access to the ICE Platform to Direct Access Members who are either non-clearing members of ICE Futures US or non-member customers.

Prior to providing access to other users, each Clearing Member is required to execute a Direct Access Authorization which makes the Clearing Member responsible for the financial obligations of each Direct Access User it authorizes to use the ICE Platform with respect to all orders entered and transactions executed using such authorization, and agrees to be a party to all disputes arising from such transactions. This obligation is also codified in Exchange Rule 27.04. The Clearing Member is responsible for conducting its own due diligence of Direct Access Users and order-routing clients to ensure that they satisfy relevant regulatory, financial resource, risk and anti-money laundering standards.

With respect to each Direct Access User or customer for which it provides an order routing arrangement, the Clearing Member must: (i) take any and all actions requested or required by the ICE Futures US with respect to such Direct Access User or customer, including, but not limited to, assisting ICE Futures US in any investigation into potential violations of the CEA, and requiring such Direct Access User or customer to produce documents, provide information,



answer questions and/or to appear in connection with any investigation; (ii) suspend or terminate the Direct Access Users' Direct Access if the Clearing Member has reason to believe that the Direct Access User no longer meets the Direct Access User qualifications; (iii) suspend or terminate the Direct Access User or Customer if the Clearing Member has reason to believe that the actions of the Direct Access User or customer threaten the integrity or liquidity of any ICE Futures US Contract, violate the CEA, or if the Direct Access User or customer fails to cooperate in any investigation; and (iv) utilize such controls designed to facilitate the Clearing Member's management of financial risk as may be provided by ICE Futures US from time to time.

The ICE Platform links directly into Post Trade Management System (PTMS). Trades are captured real-time from TIPS/PTMS and, as soon as an allocated trade is matched against the opposite side, or when two matching sides of a trade are received, the trade is processed by the Extensible Clearing System function. ICE Futures US matches each transaction and assigns one side to the Clearing Member which is or is representing the buyer (the "**Buying Clearing Member**") and the other side to the Clearing Member which is or is representing the seller (the "**Selling Clearing Member**"). Each Clearing Member has an opportunity to review the trade details of each such transaction so assigned to it and is then required to accept or reject each transaction. Each transaction rejected by one of the Clearing Members is then reassigned by the user which submitted the trade to another Clearing Member which acknowledges the transaction and accepts the trade details, or otherwise it is deemed automatically accepted by the Clearing Member that guarantees the user's transactions. The form of the Guaranty Agreement executed by Clearing Members acknowledges the guaranteeing Clearing Member's obligation in such circumstances. All transactions accepted by Clearing Members are then accepted by ICE Clear US for clearance.

When the clearinghouse accepts a transaction for clearance, a novation takes place whereby ICE Clear US assumes the place of each Clearing Member that was originally a party to such transaction, becoming the buyer to the Selling Clearing Member and the seller to the Buying Clearing Member. Such assumption by the clearinghouse terminates all liabilities and obligations of the Selling and Buying Clearing Members to each other in respect of the transaction. In other words, the clearinghouse acts as the central counterparty for all transactions effected on or subject to ICE Futures US's rules.

A failure by a Clearing Member to meet its obligations to the clearinghouse under any of its futures contracts or options constitutes an event of default and is grounds for suspension as a Clearing Member under the clearinghouse Rules and is a breach of ICE Futures US's rules.

### 3.5 Trading Practices

Chapter 4 and 27 of the Rules of ICE Futures US, included in Exhibit F, govern the trading of futures and options contracts utilizing the ICE Platform and specified types of permissible non-competitive transactions, such as exchange for physical ("**EFP**"), exchange for swap ("**EFS**"), exchange of over-the-counter options for Exchange-traded options ("**EOO**") and block trade transactions. All transactions executed through the ICE Platform are subject to these Rules. In addition, Chapter 4 contains the rules for deriving daily settlement prices or settlement premiums for all futures and options contracts.

Furthermore, the default expiration for any order placed on ICE US is a “Day” order. A “Day” order will remain valid while the participant who placed the order is logged-on to trade on the ICE Platform. All active “Day” orders will be cancelled when the participant who has placed such orders logs out of the ICE Platform.

Participants have the option of actively selecting two other types of expirations when placing an order. The “Good After Logout” order will remain active through the end of a day’s trading session regardless of whether the participant who placed the order logs out before the end of the trading session. The order will terminate at the end of the day and not be active for the following trading session unless it is manually cancelled.

The “Good ‘til Cancelled” order will remain active until it is cancelled by the participant or automatically cancelled at a commodity contract’s expiration. It will not terminate at the end of the day’s trading session and will remain active during subsequent trading sessions.

### **3.6 Market Making Provisions**

ICE Futures US’s Rule 2.39 authorizes the adoption of one or more Market Specialist Programs pursuant to which Market Specialists may be appointed and authorized to maintain two-sided markets for Commodity Contracts designated by the Board. There are currently several Market Specialist Programs in effect.

### **3.7 Market Limits**

As a DCM, ICE Futures US is required to adopt position limits or position accountability for speculators to reduce the potential threat of market manipulation or congestion. ICE Futures US rules specify the duty to report positions carried for customers and for the proprietary account of the Member firm on a daily basis, establish spot month and aggregate position limits or position accountability levels for each product underlying ICE Futures US contracts, identify when positions must be aggregated for purposes of the applicable limits, establish the duty of Members to provide such additional information as ICE Futures US may request with respect to such positions, codify the Member’s agreement not to increase positions when accountability levels have been reached, and establish a process for the request and grant of hedge exemptions in appropriate cases upon written application.

The Market Surveillance Department is responsible for monitoring market prices and trading volumes to prevent price distortion or manipulation, and for monitoring position limits and accountability.

### **3.8 Hours of Operation of the ICE Platform**

The trading hours and contract specifications for each ICE Futures US’s electronically-traded contract are available at [www.theice.com](http://www.theice.com).

### 3.9 Custody of Funds

Core Principle 11 addressing financial integrity of contracts requires, among other things, that DCM have rules to ensure the protection of customer funds. ICE Futures US does not itself safeguard or administer assets belonging to users of its facilities and the CFTC does not generally require that ICE Futures US maintain a particular level of capital or maintain any insurance policy, but generally instead insists that all transactions on ICE Futures US be cleared by a derivatives clearing organisation registered and supervised by the CFTC. ICE Clear US and ICE Clear Europe satisfy this requirement.

One of the most important safeguards used by the clearinghouses to ensure the financial performance of its Clearing Members is the collection of original margin. This money represents a performance bond and good faith deposit against positions being carried by a Clearing Member. ICE Clear US uses the SPAN margin calculation system developed by the Chicago Mercantile Exchange to calculate a margin requirement for each firm based on the futures and options positions being carried by the firm. The margin requirement for a Clearing Member can be thought of as a measure of the risk to which ICE Clear US is exposed by that Clearing Member using historical price volatility for the commodity positions being carried by the Clearing Member. ICE Clear US generally requires enough original margin to cover 97% of the daily market movements of the previous 10, 30 or 60 day period. Original margin requirements are reviewed daily by ICE Clear US and ICE Futures US staff and can be altered to address rapidly changing market conditions or a risk from a particular Clearing Member. Similarly ICE Clear Europe requires margin to be held to cover 99% of daily moves for Energy Contracts. Margins are reviewed daily against market moves and can be altered quickly to address changing market or client risk.

ICE Clear US and ICE Clear Europe hold assets deposited by their Clearing Members as original margin in various banks, subject to applicable regulatory provisions, including CFTC requirements relating to the segregation of customer funds. These requirements, set out in CEA Section 4d(a)(2) and CFTC Regulation 1.20(b), stipulate that customer margin deposits be deposited with a bank or trust company in an account that clearly shows that they are customer funds and which require the clearing organizations to obtain an acknowledgement from the bank or trust company of its awareness of the segregation requirements established by the CEA and CFTC Regulations. ICE Clear US and ICE Clear Europe will ensure that any rights arising in relation to original margin or Guaranty Fund deposits held as a result of any actions by the issuers of those assets (or other relevant persons) are held, transferred or acted upon in a timely and accurate manner in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which each, respectively, undertook to safeguard and administer those assets. ICE Clear US and ICE Clear Europe have provisions in their agreements with their custodian banks concerning the disposition of assets held in the Clearing Member margin accounts.

### **3.10 Guidance Provided to Users of the ICE Platform**

Each Clearing Member is assigned by ICE Futures US an “eBadge” which identifies that Clearing Member and oftentimes a Direct Access User as well as the person responsible for the orders and transactions entered into the ICE Platform with that eBadge, the “Responsible Individual”. The responsible individual is the person ICE Futures US contacts to resolve problems with orders being submitted under such eBadge. Responsible Individuals may be required by their employers to complete an online tutorial and examination to ensure that they have adequately trained in the use of the ICE Platform. In addition, each individual Direct Access User, employee of a Clearing Member or of a Direct Access User, automated trading system and customer that connects to the ETS by Order Routing must have a unique identification assigned to them in order to utilize ETS.

### **3.11 Capacity Estimates, Contingency and Business Continuity Plans**

The Core Principles address business continuity in the event that an information technology system fails and the CFTC reviews ICE Futures US’s systems to ensure adequate back-up systems are available in the event that the primary system fails. ICE has two separate physical spaces which house managed data centres for the ICE Platform. The primary datacenter in Chicago is a Digital Reality Trust managed facility. The backup data center in Atlanta is approximately 600 miles from the primary and is an AT&T managed facility. In both sites, ICE employees manage and maintain all hardware at the facility. Both sites are manned 24/7 by security. In addition, both the facility in Chicago and the facility in Atlanta have redundant servers within the same facility.

All facilities have diverse electrical grid feeds and sufficient generator capacity to ensure the availability of electrical power in the event of an outage.

Also, each of ICE Futures US business units and ICE Clear US maintains a business continuity plan describing its business requirements in the event of a disaster. Each department is responsible for identifying its own operational and market risks. For example, ICE Clear US is responsible for identifying clearing member and margin risk, and the technology department is responsible for systems’ back-ups.

Each plan is reviewed annually and updated as necessary. Quarterly disaster recovery tests are conducted by ICE Futures US’s Information Technology group to ensure that all back-up systems are functional, all related processes and procedures are being followed and all documentation is accurate and to train staff. At a minimum, ICE Futures US and ICE Clear US conduct an internal BCP exercise to ensure that each business unit’s plan is accurate and to verify the availability of resources to implement each plan. Additionally, both businesses participate in the annual industry-wide disaster recovery test organized by the Futures Industry Association.

### 3.12 ICE Futures US Contracts (Exhibit H)

On October 15, 2012, the cleared energy swap business of ICE was transitioned to ICE Futures US which commenced trading in North American electricity, natural gas and physical environmental futures and options (the “**Energy Contracts**”). ICE Futures US also offers a broad array of soft agricultural commodities for trading on its exchange, including sugar, cocoa, coffee, cotton, and frozen concentrated orange juice. Additionally, ICE Futures US also provides trading in futures and options contracts based on the U.S. Dollar Index<sup>®</sup> (“**USD<sup>®</sup>**”) and Russell Equity Index products.

ICE Clear US provides clearing services for contracts other than Energy Contracts whereas ICE Clear Europe provides clearing services for the Energy Contracts.

The contract specifications for these products are provided in Exhibit H.

## ARTICLE 4– ACCESS

### 4.1 Membership Criteria (Exhibit I)

Pursuant to Core Principle 15 (Governance Fitness Standards), access to ICE Futures US must be restricted to Members who satisfy certain eligibility criteria. In particular, ICE Futures US: (i) has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness; (ii) has and enforces financial integrity standards for those persons who enter orders for execution on the system, including, but not limited to, credit or position limits and clearing membership; (iii) does not unreasonably prohibit or limit access by a person or company to services offered by it; (iv) keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access; and (v) restricts access to adequately trained system users who have demonstrated competence in the functions that they perform.

ICE Futures US Membership Rules 2.01 et seq. set forth the qualifications, requirements and duties of ICE Futures US Members. Rule 2.01 provides that all Members must be “*a natural person, [at least] twenty-one (21) years of age, of good character, reputation and business integrity with adequate finances to assume the responsibilities and privileges of Membership.*” In addition, in order to be eligible to become a member firm, a firm must have at least one of its general partners, directors, officers, members, executive employees or managers who (i) is a full-time employee of such firm or an affiliated firm thereof; (ii) is an individual Member in good standing and (iii) has and exercises authority over the affairs of the firm directly related to the firm's activities on ICE Futures US, satisfactory to ICE Futures US. Furthermore, it is a violation of Rule 2.29(f) for any Member to “fail continuously to meet the criteria for eligibility for Membership”.

Individuals wishing to become Members of ICE Futures US are required to complete and submit the membership application (in this case, the application forms for non-floor trading members), available on ICE's website, together with a non-refundable application fee in the amount specified by the Board. The Member Services Department then conducts an investigation into the business reputation and financial standing of all applicants. When the application and

investigation are complete, the Member Services Department will either approve the application or refer it to the Membership Committee. A referral to the Membership Committee will occur when either ICE Futures US learns of information that is the type specified in the Rules as a condition for denial or the applicant is a suspended or expelled Member seeking reinstatement. The grounds for denial are set forth in Rule 2.07 (for individual applicants) and Rule 2.09 (for member firm applicants) and generally cover the kinds of matters that would constitute a statutory basis to refuse registration under the CEA. Where grounds to deny an application are presented, denial may only occur upon notice to the applicant and opportunity for a hearing at which the applicant may present evidence before the Membership Committee, which is comprised of both public members and ICE Futures US members. The hearing is conducted pursuant to Rule 2.06 (c) (in the case of individuals) or Rule 2.09(e) (in the case of firms). The decision of the Membership Committee is the final decision of ICE Futures US. Any refusal by ICE Futures US to grant access to an applicant is subject to appeal to the CFTC by the applicant in accordance with review procedures specified in Part 9 of the CFTC regulations under the CEA.

Each applicant for an ICE Futures US Membership must agree in writing that, if the applicant is accepted as a Member, the applicant *“will observe and be bound by and will comply with all of the provisions of the certificate of incorporation, bylaws, rules, resolutions, orders, decisions, awards, requirements and procedures of ICE Futures US as now in effect, hereafter adopted or hereafter amended”*. Furthermore, a Member must also immediately notify ICE Futures US upon the occurrence of certain events specified in Rule 2.28 which reflect upon the Member’s fitness to remain a member.

Once a member, the individual may decide that he wishes to obtain direct access to the trading floor and become a member with floor trading privileges or “Floor Member” (as defined in ICE Futures US Membership Rules 2.18 to 2.21). To qualify as a Floor Member, the member must be an individual “NYBOT Member”, “NYBOT Permit Holder”, “Energy Member” or “Lessee” in good standing, attend an ethics course as required by the CFTC, attend a sexual harassment awareness course sponsored by or acceptable to ICE Futures US and successfully complete ICE Futures US’s “Floor Trading Course”.

ICE Futures US’s Membership eligibility criteria and their application are assessed by the CFTC. For greater certainty, the same membership criteria outlined in this section will apply for Québec-based members and such members will have access to the same services as the other members of ICE Futures US.

#### **4.2 Direct Access Criteria**

Each Clearing Member and Direct Access User must execute the ICE Futures US Electronic User Agreement. In addition, Core Principle 15 (Governance Fitness Standards), access to the ICE Platform must be restricted to users who satisfy certain eligibility criteria. In order to obtain the information necessary to make this determination, each prospective Direct Access User must also complete the Direct Access Application. ICE Futures US will review each Direct Access Application. ICE Futures US may deny an application if it determines that approving an applicant for Direct Access Membership is contrary to the best interests of ICE Futures US. Any such refusal by the ICE Futures US may be appealed by the Clearing Member which seeks to

authorize the applicant and shall be considered by a panel of ICE Futures US's Business Conduct Committee ("BCC") comprised of three members of the committee.

A market participant without direct access may only access the ICE Platform indirectly, such as by sending or routing its orders through an intermediary or its Clearing Member. Regardless of how the market participant's order is submitted to the ICE Platform, it is the Clearing Member who is financially responsible for all orders and trades of the users that it authorizes to trade.

Access to trade ICE Futures US futures on the ICE Platform is therefore governed by the four (4) following documents:

- ICE Futures US Electronic User Agreement, an agreement between ICE Futures US and each user (including each Clearing Member) who has direct access to the ICE Platform for electronic trading of ICE Futures U.S.'s electronically-traded contracts;
- Direct Access Application, an application designed to elicit information necessary for ICE Futures US to determine if the provision of direct access to an applicant is contrary to the best interests of ICE Futures US;
- Responsible Individual Registration Form, a form filled out by the individual who will be responsible for all electronic transactions submitted under the eBadge of such user granted direct access; and
- Clearing Member Authorization Agreement, an agreement stating that each Clearing Member is responsible for the users they authorize.

Copies of these agreements are provided in Exhibit I. Trading on the ICE Platform is also governed by ICE Futures US electronic trading rules, which can be found in Chapter 27 of ICE Futures US's Bylaws and Rules, a copy of which is provided in Exhibit F.

#### **4.3 Financial Resource Requirements**

Except for Clearing Members who are subject to ICE Clear US' and ICE Clear Europe's financial requirements, no other Members are subject to financial criteria.

#### **4.4 Suspension or Termination of Access**

ICE Futures US is required to comply with applicable provisions of the CEA and CFTC's Regulations regarding the integrity of its markets. ICE Futures US Members are required to comply with all provisions of ICE Futures US's Rules, the CEA and CFTC's Regulations regarding futures transactions and their participation in ICE Futures US's markets.

ICE Futures US enforces its rules against all market participants, which includes all persons initiating or executing transactions on the Exchange and all persons for whose benefit such transactions have been initiated or executed. Pursuant to Exchange Rule 4.00, persons engaging in such Exchange activity expressly consent to the jurisdiction of ICE Futures US. ICE Futures US rules apply equally to all participants. ICE Futures US's Compliance

Department and Business Conduct Committee have the ability to monitor and oversee the use of its facilities, assess participant compliance with the rules, assess the significance of any non-compliance, take appropriate disciplinary action against participants in breach of its rules, suspend a participants access to its facilities, refer conduct to other appropriate authorities for possible action or further investigation and enforce the Rules against users of its facilities by issuing orders denying access to ICE Futures US's markets.

Although there is no specific rule addressing the issue, the Market Regulation Department is able to act upon information received from third parties. Complaints are received by the Department for investigation, a file is opened, a written record of the complaint is created, the complaint is investigated and a report is prepared. As provided by ICE Futures US Disciplinary Rules, investigations are conducted by the compliance staff, who must promptly provide the Business Conduct Committee with a copy of the investigation report if rule violations may have occurred. Pursuant to Rule 21.03, within a reasonable period of time not to exceed thirty days after the receipt of a completed investigation report, the Disciplinary Committee must either direct that no further action be taken or decide that disciplinary proceedings be commenced.

Under CFTC Regulation 9.13, if an exchange disciplines a member, it must make public its findings. This includes a copy of its written decision or other written notice containing a statement of the reasons for the disciplinary action.

The CFTC reviews ICE Futures US's compliance processes from investigation to discipline and specifically seeks information on the timeliness of communications with Members or users. A complainant will be advised that his or her complaint will be investigated. However, investigations are usually confidential and so the complainant may not always be informed of the specific results of the investigation. The Market Regulation Department is able to keep adequate records of complaints and investigations. Investigation reports become part of the investigation file, pursuant to CFTC Regulation 1.31, and therefore must be maintained by the Compliance Department for a period of not less than five years after the completion of such report.

Arrangements are made at each stage of the investigation for any person, who is the subject of a complaint, to respond in an appropriate manner to that complaint. The respondent is given a copy of the investigation report five days prior to the Business Conduct Committee meeting convened to determine whether or not a rule violation is likely to have occurred. The respondent may submit a written response and/or appear in person at the Business Conduct Committee meeting. ICE Futures US Disciplinary Rules detail the manner in which the respondent must provide its answer within 20 days following the service of the notice of charges.

Disciplinary Proceedings are described in ICE Futures US Disciplinary Rules and are derived from CFTC requirements set out in Core Principle 2 (Compliance with Rules) of the CEA. Penalties may only be imposed by ICE Futures US in a case of violation of one of the Rules. Where discretionary penalties may be imposed, these are strictly regulated by the CFTC and such penalties are subject to appeal to the CFTC. Any person who suffers an adverse decision has the right to appeal to the CFTC pursuant to Part 9 of the CFTC Regulations, and any penalty imposed or denial of access may be appealed to the CFTC pursuant to Part 9 of CFTC Regulations.



If a customer has a complaint against a Member, the customer may file an arbitration with ICE Futures US in order to recover any monetary claims the customer may have against the Member. Arbitrations are conducted separately from an investigation initiated by the Market Regulation Department as a result of a complaint. When notified of the receipt of his complaint by the Market Regulation Department, the customer is advised of ICE Futures US's arbitration procedures, also available in the Rulebook available on ICE's website and in Exhibit F under Tab 20.

#### **4.5 Access for Québec Participants**

ICE Futures US proposes to offer direct electronic access to trading in ICE Futures US Contracts through the ICE Platform to certain market participants in Québec either by way of (i) membership in ICE Futures US as non-Clearing Members (ii) via direct access sponsored by a Clearing Member, or (iii) through order-routing arrangements where orders are routed through a Clearing Member onto ICE Futures US. All potential Members and users authorized by a Clearing Member as well as order-routing clients in Québec will be "accredited counterparties" as defined in the Act and will be acting (or deemed to be acting) as principals. ICE Futures US expects that any of its potential direct access users (be they non clearing Members of ICE Futures US or clients of a Clearing Member) and any order-routing clients in Québec will be (i) registered brokers/dealers that are engaged in the business of trading soft commodity futures in Québec, (ii) commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a soft commodity and (iii) institutional investors such as pension funds and financial institutions. As a practical matter, it is not expected that retail, non-sophisticated investors will have access to or be in a position to route orders through the ICE Platform.

ICE Futures US will ensure that the guidance it provides to Members with respect to Québec indicates that a Member is permitted to grant access to the ICE Platform to a client in Québec provided that it qualifies as an "accredited counterparty". In addition, ICE Futures US's regulations state that ICE Futures US expects Members to assume all responsibility for keeping themselves fully apprised of all regulations, rules, requirements, policies and laws applicable in overseas jurisdictions when authorizing direct access to the ICE Platform for clients based in such jurisdictions.

Until ICE Futures US receives the requested exemptive relief under the Act, ICE Futures US intends to engage in a restricted scope of activities in Québec. In particular, it expects to offer limited marketing activities to "accredited counterparties" in support of Clearing Members who may enter into order-routing arrangements with such market participants. In addition, ICE Futures US may respond to unsolicited queries from order-routing clients relating to ICE Futures US Contracts specifications, functionality of the ICE Platform and other similar matters.

## ARTICLE 5– LISTING CRITERIA

### 5.1 Requirements for Listing New Contracts

Currently, the CEA and Regulation 40.2 allows DCMs to list new products for trading as long as (1) the rules establishing the terms and conditions are filed with the CFTC before the open of business on the business day preceding the product's listing and (2) the DCM certifies that the new product meets the requirements of the CEA and the CFTC's regulations. Once filed with the CFTC, the CFTC has the authority to stay the listing of the contract if a false certification is filed or the CFTC requires an alteration or amendment of the terms and conditions of the new product.

Furthermore, a DCM is required to provide, if requested by CFTC staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the requirements of the CEA or the regulations or CFTC policies thereunder which may be beneficial to the CFTC in conducting a due diligence assessment of the product and the entity's compliance with these requirements.

Extensive market consultation and Board approval processes to which all ICE Futures US Contracts are subject ensures that the terms and conditions of ICE Futures US Contracts are in conformity with normal business practices for trades in such products, that they meet the needs of the relevant commodity sector and have widely acceptable specifications.

As regards derivatives on agricultural products, some of them, such as coffee, sugar, cotton and cocoa, have been traded internationally for over a century and are currently traded on markets and exchanges unrelated to ICE Futures US. Other products, such as frozen concentrated orange juice, also have a mature market. As regards financial products, the foreign currency pairs traded on ICE Futures US and contracts based on the U.S. Dollar Index® are traded or used in the interbank market among banks and dealers worldwide, and currency pairs are also traded on the Chicago Mercantile Exchange and on Eurex US. The equity indexes underlying ICE Futures US Contracts are used under license from the Frank Russell Company.

ICE Futures US considers that the terms of the derivatives traded on its exchange are sufficiently precise to provide for an understandable relationship between the price of the derivative and the price of the underlying asset and that there are adequate settlement and delivery procedures for the underlying commodity to which the derivative relates. These procedures are codified in the Rules for each product traded on ICE Futures US. All settlements are made through the Clearing Members carrying the account from or to which delivery is being made. In the case of physical commodities, such as coffee and cocoa, delivery is made by transfer of negotiable documents of title such as warehouse receipts or bills of lading. In the case of a currency or index product, it is made in cash or in the foreign currency. ICE Futures US has adequate arrangements to obtain relevant information about underlying commodities.

Exhibit H lists all the contracts traded on the ICE Platform.

## ARTICLE 6– FEES AND FINANCIAL STATEMENTS

### 6.1 Fees

ICE Futures US's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by ICE Futures US on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criteria that ICE Futures US has sufficient revenues to satisfy its responsibilities.

ICE Futures US's trading fees are established based on an ongoing business analysis by the Board considering the implications of such fees on its customers and its volume-driven business. The Board considers various factors in the setting of fees including the fees of its competitor exchanges, ICE Futures US's own costs, the amount of volume and open interest in the applicable product, the temper and reactions of market participants and the impact of fee changes on ICE Futures US's various incentive programs.

ICE Futures US's Board may from time to time adopt resolutions that impose fees or charges for each commodity contract purchased or sold on the exchange. In fixing the amount of any such fees or charges, the Board may establish different rates for transactions in different commodity contracts, or for different types of transactions involving the same commodity contract. The Board may also omit any fees or charges with respect to any type of transaction or may establish different rates based on such other factors as the Board may determine are appropriate. If any person fails to pay any fee or charge required pursuant to Annex A to the Bylaws of ICE Futures US, ICE Futures US may, in addition to any other rights or remedies it may have, order that any trading in commodity contracts for such person's account be for liquidation only until such fees or charges are paid.

A full list of transaction charges and other relevant charges is available on the ICE Futures US's website at [www.theice.com](http://www.theice.com) and the same fees will apply for clients from the Province of Québec.

### 6.2 Financial Statements (Exhibit J)

ICE Futures US's accounts are prepared in accordance with U.S. GAAP. A statement of financial resources is prepared and filed quarterly with the CFTC, to demonstrate compliance with applicable financial requirements. Audited accounts of ICE Futures US are not publicly available and are not submitted to the CFTC by ICE Futures US. Each of the clearinghouses for ICE Futures US Contracts must file a quarterly statement of financial resources and an annual audited financial statement. As a subsidiary of ICE Futures U.S., ICE Clear U.S. relies on the audited statement of its parent, while ICE Clear Europe prepares independent financial statements.

Copies of the most recent financial statements and quarterly reports filed with the CFTC are provided in Exhibit J.

ICE's accounts are prepared in accordance with U.S. GAAP. Audited accounts of ICE are publicly available. Copies of financial statements and auditors' reports relating thereto are available on ICE's website at [www.theice.com](http://www.theice.com).

## ARTICLE 7– MARKET REGULATION AND ENFORCEMENT RULES

### 7.1 ICE Futures US Regulatory Department

#### (a) Member and Market Regulation

As a DCM, ICE Futures US maintains a Market Regulation Department, comprised of two (2) subgroups: the Compliance Department and the Market Surveillance Department.

The Compliance Department is responsible for monitoring and investigating trading in ICE Futures US's listed products to detect abusive and improper trading practices, and for prosecuting rule violators before ICE Futures U.S.'s BCC. The Compliance Department has a team of trained investigators who monitor the market and conduct follow-up investigations relating to suspicious trades. In addition, numerous sophisticated software programs are utilized as a means of detecting and investigating potential trade practice abuses.

The Market Surveillance Department is responsible for monitoring market prices and trading volumes to prevent price distortion or manipulation, and for monitoring position limits and accountability. To guard against corners or squeezes, the Market Surveillance Department will examine total open interest for each commodity by contract month and a listing of large traders with their respective holdings. The Market Surveillance Department will pay particular attention to causes of changes in open interest, inverted markets, spread differentials, the total exposure by a large trader in a given market, the cash price information and the current basis. The Market Surveillance Department also reviews exchange for EFP, EFS and EOO transactions. As delivery approaches, the Market Surveillance Department will analyze open positions and contact large speculative traders to determine their intentions. The Market Surveillance Department refers potential problems to the Compliance Department for follow-up investigations and possible disciplinary action.

In addition, the Market Supervision Department, which is separate and apart from the Market Regulation Department, is responsible for monitoring on a real time basis all trades executed electronically. The Department has access to view all trading activities including an order book displaying all order information and a deal book displaying all transactions as well as the users and Clearing Members from both the buyer's and seller's perspective for a given ICE Futures US contract. Additionally, the Department has the ability and responsibility to force users and Clearing Members off the system when necessary, kill individual orders, send out market notifications and resolve error trades. The Market Supervision Department refers potential violations of ICE Futures US's rules to the Compliance Department for follow-up investigations and possible disciplinary action.

The Market Regulation Department and the Market Supervision Department are periodically subject to rule enforcement reviews by the CFTC to ensure the adequacy of ICE Futures US's affirmative regulatory programs.

The Senior Vice President, General Counsel, Legal and Regulatory, currently Audrey R. Hirschfeld, is the most senior officer responsible for the Market Regulation Department. The Vice President of Market Regulation, currently Mark Fabian, reports to the Senior Vice President

and to the ROC, and is responsible for the management of the Compliance Department and the Market Surveillance Department.

Market Regulation has a non-exclusive direct reporting line to ICE Futures US's ROC. The ROC has broad responsibility for ensuring ICE Futures US's compliance with its self-regulatory obligations, and as such is responsible for ensuring that there is adequate staffing, financial and other resources for the Market Regulation Department to perform its job, and that the members of that Department are not subject to business or other outside influences with respect to the manner in which they fulfil their mandate. It is through the ROC that the Market Regulation Department has direct access to the Board.

The President and Chief Operating Officer, currently Benjamin Jackson, is the most senior officer responsible for the Market Supervision Department. The Market Supervision Department is currently managed by David Farrell (agricultural, currency and index products) and Jason Griffin (energy products), who both report to the President and Chief Operating Officer and are responsible for the management of the Market Supervision Department.

Pursuant to the Core Principles, ICE Futures US has established and enforces disciplinary procedures that authorise it to discipline, suspend or expel market participants that violate its Rules. In addition, ICE Futures US monitors and enforces the terms and conditions of any contract to be traded and any limitations on access to ICE Futures US. ICE Futures US has extensive disciplinary procedures set forth in its Rules with respect to disciplining or terminating membership for violation of its Rules. It also maintains disciplinary committees through which its Rules are enforced and a membership process that includes a review of the financial resources, character and business integrity of each applicant.

For further information on the conduct of investigations, please refer to Section 4.4 above.

**(b) Conflict of Interest and Confidentiality**

ICE Futures US has appropriate conflict of interest provisions for all directors, officers and employees. ICE Futures US is required by Core Principle 16 to establish and enforce rules to minimize conflicts of interest in the decision-making process and establish procedures for resolving any such conflicts.

No director may take any action on any matter that involves a Named Party in Interest (as defined in the CFTC Regulations), if that director is a Named Party in Interest, is an employee of a Named Party in Interest, or has a business or family relationship with a Named Party in Interest. ICE Futures US rule 6.05 addresses a Board member's participation in a matter where the person who is the subject of the matter being considered is an individual with whom the Board member has a relationship of a specified type which could influence the member's decision. This is referred to as the "Named Party-In-Interest" conflict. Rule 6.06 addresses the situation where a board member may have a financial interest (for example, a market position) in emergency or other significant market action which the Board is considering regarding a particular contract. In addition, Rule 6.47(e) prohibits Board and committee members from using or disclosing, for any purpose other than the performance of their official duties, material, non-public information obtained as a result of participation on the Board or a committee. For this

purpose, “material” information is information which, if publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity futures or options contract on ICE Futures US or a linked exchange.

The procedures applicable to decisions by ICE Futures US’s Warehouse and License Committee incorporate the named-party-in interest prohibition described above with respect to the Board. In addition, the rules applicable to the grading of cocoa and coffee for ICE Futures US delivery under a futures contract require that disinterested persons be appointed by ICE Futures US to perform such grading. For example, Rule 9.18(c)(ii)(2) provides no licensed grader may grade cocoa if such grader or an immediate family member: (i) directly or indirectly has an ownership interest in, or is a partner or employee of, a firm which has an ownership interest in the cocoa submitted for grading; (ii) commencing five business days prior to first notice day of the expiring cocoa delivery month, directly or indirectly holds or controls a position in such delivery month or is a partner or employee of a firm which holds or controls a position in such delivery month; (iii) directly or indirectly has an ownership interest in, or is an employee of, the warehouse operator where the cocoa submitted for grading is stored; or (iv) has any other business or personal relationship that poses a conflict of interest with respect to the grading of cocoa under ICE Futures US Contracts.

ICE Futures US Disciplinary Rules provide that all proceedings conducted by or before the President, the Business Conduct Committee, the Appeals Committee and the Board or any committee of the Board shall be confidential and shall not be disclosed to any person except as required by law or by the Rules, in any action or proceeding brought by or against ICE Futures US or as may be determined from time to time by the Board. It is only when a disciplinary action becomes final, either because the respondent entered into a settlement agreement or a final decision has been rendered that ICE Futures US will make its action public by posting the notice required by CFTC Regulation 9.11(b) on ICE’s website.

ICE Futures US has also implemented rules applicable to particular committees that have decision-making authority to ensure that committee members are not conflicted with respect to the decisions of those committees. In particular, the disciplinary rules of ICE Futures US contain several safeguards to ensure that hearing panels are comprised of disinterested persons. For example Rule 21.08 provides that a hearing panel appointed to adjudicate charges brought by the compliance department may not have as a member a person which has a “direct financial, personal or other interest in the matter under consideration”. Likewise, Rule 21.03 provides that the panel of the business conduct committee appointed to hear the appeal of any summary access denial may not include a person who previously participated in the decision being reviewed.

More generally, officers, committee members and all employees of ICE Futures US are prohibited under CFTC Regulation 1.59 from disclosing material non-public information for any purpose inconsistent with that person’s performance of his or her official duties. Members of governing boards, disciplinary panels or oversight panels and heads of key departments are also subject to the same conflict of interest restrictions described above.

Further, conflicts of interest which could arise at the governing board level are addressed by composition of the ICE Futures US Board, more than a majority of which is comprised of individuals who satisfy the CFTC definition of a ‘public director’ and thus bring independence to the decision-making of the Board.

## **7.2 Availability of Information to Regulators and Information Sharing and Oversight Arrangements**

ICE Futures US’s predecessor exchanges were among the original signatories to the International Information Sharing Memorandum of Understanding and Agreement of March 15, 1996, as referred to in the declaration on cooperation and supervision of international futures markets and clearing organisations (referred to as the “Boca Declaration”), and ICE Futures US has succeeded them as a party to such agreement. In addition, ICE Futures US is a party to the Intermarket Surveillance Group information-sharing agreement which calls for the sharing of information among securities and commodities exchanges in the U.S. In addition, on April 11, 2007, ICE Futures US adopted Rule 6.50 which allows ICE Futures US to disclose information to the regulatory authority of any foreign jurisdiction in which ICE Futures US has been approved to conduct business to the extent that the consent of ICE Futures US to make such disclosures was a condition of such approval.

ICE Futures US hereby confirms that it is able and willing to communicate any information relating to financial crime and market abuse to the AMF and to cooperate with the CFTC, the AMF and other relevant bodies in the prevention, investigation and pursuit of market abuse and financial crime.

## **7.3 Record Keeping**

Core Principle 10 requires ICE Futures US to maintain rules and procedures to provide for the recording and safe storage of all trade information in a manner that enables ICE Futures US to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of ICE Futures US Rules. Further CFTC Regulations require that ICE Futures US maintains (and makes available to the CFTC) records for five years showing, among other things, for each trade, the transaction date, time, quantity, underlying commodity, delivery month, price, the Member buying and selling, whether the person was trading for his own account or for a customer and the time of execution. As a DCO, ICE Clear US is also subject to record keeping obligations for a period of five years.

Accordingly, ICE Futures US and ICE Clear US can confirm such information is recorded. ICE Futures US stores audit trail information, including records from ICE Clear US so that they are readily accessible to the Market Regulation staff and the CFTC for five years.

ICE Futures US requires all its Members to keep a record, as the CFTC may direct, showing the details and terms of all ICE Futures US transactions and related cash transactions. These must be kept for a period of five years and must include details such as the parties to the transactions, any assignments or transfers thereof together with the parties thereto, and the manner in which the transactions are fulfilled, discharged or terminated. Each Member must make and file reports

with ICE Futures US at the time and containing such information as ICE Futures US may prescribe (Rule 6.07).

## **ARTICLE 8 - THE COMMODITY FUTURES TRADING COMMISSION**

### **8.1 Enforcement of Commodity Exchange Act and CFTC Regulations**

The CFTC is the U.S. government agency that has direct regulatory and oversight responsibility over DCMs and is charged with administering and enforcing the CEA. The agency has authority to enforce the Commodity Exchange Act (“CEA”) and the regulations promulgated thereunder in a variety of ways. First, the CFTC has the administrative authority to conduct investigations of potential violations of law, compel the production of documents and depose witnesses to develop evidence. If it is determined to pursue formal legal action, the CFTC can commence an administrative proceeding against the respondent, which provides for a trial to be held and permits the judge to issue sanctions against the respondent, which can include a monetary fine, a bar against the respondent trading futures and options on a registered exchange, a suspension or revocation of licenses required to act as a commodity professional (such as an advisor or trader for others) and similar sanctions. In addition, the CFTC may commence legal proceedings in the U.S. courts to seek injunctions and ancillary relief (such as a freeze of assets) to halt violations of the CEA on an expedited basis.

In the case of DCMs, such as ICE Futures U.S, the CFTC also has oversight responsibility which results in the agency having intimate knowledge of the bylaws, rules and procedures of the ICE Futures US. Specifically, all such bylaws and rules and any amendments must be filed with the CFTC before they can become effective; rules posing complex issues can be published by the CFTC for public comment and their implementation delayed pending further review; and the CFTC can commence proceedings to compel an exchange to alter its rules to render them consistent with the policies and purposes of the CEA. The CFTC staff also performs periodic reviews of the compliance of DCMs with certain of the core principles applicable to the DCMs, such as the core principles relating to financial resources, enforcement of the DCM’s own rules with respect to the conduct of its members and the surveillance of trading in its markets.

### **8.2 Reporting of Trading Information to the CFTC**

The CFTC conducts surveillance of the trading and expiration of the contracts listed on the various DCMs. In this regard it receives daily or monthly data feeds from ICE Futures US with respect to transactions in our markets. It also receives daily information directly from certain traders-referred to as Large Traders-regarding the positions they own or control in each contract that meets a specified minimum threshold. The information furnished by ICE Futures US is transmitted electronically using encrypted electronic files formats. They include the following information:

- (i) CFTC-100 Files for Futures and Options: This daily file contains aggregated information relating to each clearing member, including the position, trade volumes, transferred trades, deliveries and option exercises.



- (ii) CFTC-200: This daily file contains all active contracts along with statistical daily market information including settlement prices, volumes, open interest and price highs/lows.
- (iii) Time & Sales Report: This monthly file reports all transaction prices, for each contract month listed for trading, and the time, to the nearest second, that such price traded.
- (iv) Trade Register: This monthly report contains transaction details for each and every trade executed, including the contract quantity, price, execution time, clearing member carrying the position, identification of the broker( if any) who executed the trade, and other information specified by the CFTC.

Certain portions of the foregoing information is required to be maintained on the ICE Futures US website and, therefore, available to the general public. In addition, real-time data can be subscribed to from market data vendors for a fee.