

## NOTICE

December 19, 2008

### Summary of content

The Exchange IM policy permits the transmission of orders to the trading floor by Instant Message as long as order tickets are prepared prior to the order being bid, offered or executed. IM records relating to such orders are retained by the Member for five (5) years.

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## Amendments to Exchange Rule 4.34 – Electronic Devices and Implementation of a new Instant Message Policy

**Effective with the start of business for trade date January 5, 2009**, the Exchange will implement amendments to Exchange Rule 4.34 – Electronic Devices and a new Instant Message (“IM”) Policy that will permit IM communications, including the receipt of customer orders on the Exchange trading floor.

IM communications may be received or sent using Exchange approved electronic devices. Orders received through IMs may not be bid, offered or executed until a separate, written order ticket is prepared in accordance with Rule 6.08 and are subject to all applicable audit trail requirements. Members will be required to retain all IMs relating to any transaction executed at the Exchange for a minimum of five (5) years in accordance with Exchange Rules and CFTC Regulations. Such IMs will be subject to review by the Market Regulation Department.

Cell phones, personal digital assistants and other similar devices with IM capabilities may be used only for non-business purposes and/or placement of orders for the Member’s own account, provided, however, that such devices may not be used in the trading rings.

The text of the amended Rule 4.34 and the new Instant Message Policy follows below. If you would like a copy showing language additions or deletions, please call 212 748-4082.

### Rule 4.34. Electronic Devices

(a) For purposes of this Rule, the following definitions shall apply:

(i) “Electronic Device” shall mean any type of voice or data communications interface, including but not limited to a computer, headset, hand-held device, microphone, telephone or two-way radio.

(ii) "Electronic Information" shall mean the data made available to each Member or Member Firm by virtue of such Member's or Member Firm's access to any Electronic Device, including, without limitation, (A) the identity of other Persons transacting business on, with or through the Exchange and the price and quantity of pending or filled orders and (B) any database, software, programs, protocols, displays and manuals relating thereto, including the selection, arrangement and sequencing of the contents thereof.

(b) No Electronic Device may be used on the Trading Floor unless such device and/or use has been authorized by the Exchange and does not interfere with any Exchange system. The Exchange may, in its sole discretion, impose restrictions on the use of any authorized Electronic Device by a Member or Member Firm, and may limit, suspend or terminate any Person’s right to use an authorized Electronic Device at any time, without prior notice and without any liability therefore. The

Exchange shall have the right, at any time, to audit the use of any authorized Electronic Device by a Member or Member Firm.

(c) Cell phones, personal digital assistants and other similar devices with instant message (“IM”) capabilities may be used only for non-business purposes and/or placement of orders for the Member’s own account, provided, however, that such devices may not be used in the trading rings.

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

(e) No Electronic Device may be used by any Person except in accordance with this Rule and such terms and conditions of use as may be established from time by the Board, any committee appointed by the Board or Exchange staff empowered to establish and review terms and conditions of use. Each Member and Member Firm shall pay any fees and/or other charges assessed by the Exchange for the use of an Electronic Device.

(f) In addition to the specific terms and conditions of use established for an Electronic Device pursuant to paragraph (e) above, the use of an Electronic Device that has been supplied by the Exchange to a Member or Member Firm for use on the Trading Floor shall be subject to the following terms and conditions:

(i) The Member or Member Firm shall properly secure and safeguard the Electronic Device so as to prevent damage, loss or theft, and shall be liable for any damage beyond normal wear and tear, until it is returned to the Exchange.

(ii) The Member or Member Firm shall implement appropriate procedures to ensure the only Persons authorized by the Member or Member Firm have access to and/or use of the Electronic Device.

(iii) Upon termination for any reason of a Member’s or Member Firm’s right to use an Electronic Device, it shall be returned to the Exchange in working condition. The Member or Member Firm shall pay to the Exchange the replacement cost for any Electronic Device that is lost, stolen, damaged or destroyed while in the Member’s or Member Firm’s possession or while it is otherwise responsible for the Electronic Device.

(iv) The Board and/or the relevant committee or Exchange staff responsible therefore may impose restrictions on the use of any Electronic Device by a Member or Member Firm without prior notice and without liability to any Person.

(v) Electronic Information that is disclosed to, or otherwise obtained by a Member or Member Firm while accessing an Electronic Device, shall be deemed to constitute a trade secret of the Exchange (or its licensors), as to which copyright and patent rights of the Exchange may also exist. The Member or Member Firm shall

keep all such Electronic Information confidential, and shall utilize such Electronic Information solely for such Member's or Member Firm's own trading activities and the trading activities of Persons for whom the Member or Member Firm is authorized to act. All copies and expressions of such trade secrets, works, processes, and methods are the exclusive property of the Exchange, and shall be returned to the Exchange upon termination of such Member's or Member Firm's right to use the Electronic Device for any reason whatsoever. Each Member or Member Firm shall take all reasonable precautions to maintain the secrecy and confidentiality of such Electronic Information. Except as otherwise permitted elsewhere in the Rules, the Member or Member Firm shall not disclose and shall use reasonable efforts not to permit the disclosure of, any part of such Electronic Information to any other Person.

(vi) Except as authorized by the Board and/or the applicable committee or Exchange staff responsible for establishing the terms and conditions of use of any Electronic Device, a Member or Member Firm shall not make, and shall not permit others to make any alterations, additions, subtractions, upgrades or improvements to, or affix or attach any foreign object to, in or on, any Electronic Device.

(g) The Exchange accepts no responsibility for loss, theft or damage to any equipment or device authorized for use on Exchange premises.

#### **INSTANT MESSAGE (IM) POLICY**

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

- The use of wireless communication devices is permitted on the Exchange's Trading Floor as long as the Member has received authorization from the Exchange's Department of Technology ("Department"). The Department will only approve those devices that receive live data feeds, enable two-way communication and have audit trail capability. Once authorization is received from the Department, the Member, when requested, must allow the Department and/or the Market Regulation Department to examine the wireless device to determine that it is being used appropriately.
- MEMBERS HAVE A DUTY TO SUPERVISE THEIR EMPLOYEES' IM USE AND ARE RESPONSIBLE FOR ENSURING THAT THEIR EMPLOYEES COMPLY WITH THE TERMS AND CONDITIONS OF THIS POLICY.
- **Each order transmitted by IM to the Trading Floor must have a separate order ticket prepared in accordance with Exchange Rule 6.08 before the order is bid, offered or executed. IMs are subject to all applicable audit trail requirements. AS SET FORTH BELOW, NEITHER THE**

**EXCHANGE NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL BE LIABLE TO ANY PARTY FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES IN ANY WAY RELATING TO THE USE OF IM TO TRANSMIT ORDERS.**

- All IMs relating to any Transaction executed on the Trading Floor must be retained by the Member for a minimum of five (5) years in accordance with Commission Regulations and are subject to review by the Market Regulation Department or other authorized Exchange personnel.
- Material that is fraudulent, harassing, embarrassing, sexually explicit, profane, obscene, intimidating, defamatory, or otherwise unlawful may not be sent through IM.
- Disclosure of any Exchange confidential data or information to other parties via IM is strictly prohibited.
- Disclosure of any confidential or non-public information relating to customer orders is strictly prohibited as provided in Exchange Rule 4.18.
- The Member is fully responsible for his or her trading activity and communications, including but not limited to, compliance with all applicable laws, rules and regulations in addition to Exchange requirements. All violators of Exchange Rules and procedures will be subject to disciplinary action.
- **THE USE OF IM INVOLVES CERTAIN RISKS. BY USING IM TO COMMUNICATE THE USER IS AGREEING TO ASSUME ALL SUCH RISKS, AND ACKNOWLEDGES THAT THE EXCHANGE IS NOT ENDORSING OR RECOMMENDING THE USE OF IM. THE USER AGREES THAT NEITHER THE EXCHANGE NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL BE LIABLE TO ANY PARTY FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES IN ANY WAY RELATING TO THE USE OF IM, REGARDLESS OF THE CAUSE OF ANY SUCH LOSS, DAMAGE, COST OR EXPENSE.**