

investors, to grant the Trust an exemption from Rule 101 of Regulation M, pursuant to paragraph (d) of Rule 101 of Regulation M, with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.<sup>3</sup>

#### Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption from Rule 102 of Regulation M, pursuant to paragraph (e) of Rule 102 of Regulation M, with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

#### Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). Based on the representations and facts in the Letter, in particular that the concerns that the Commission raised in adopting Rule 10b-17 generally will not be implicated if exemptive relief, subject to the conditions below, is granted to the Trust because market participants will receive timely notification of the existence and timing of a pending distribution,<sup>4</sup> we

<sup>3</sup> Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

<sup>4</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten

find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b-17.

#### Conclusion

*It is hereby ordered*, pursuant to Rule 101(d) of Regulation M, that the Trust is exempt from the requirements of Rules 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution as described in its letter dated February 27, 2013.

*It is further ordered*, pursuant to Rule 102(e) of Regulation M, that the Trust is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares as described in its letter dated February 27, 2013.

*It is further ordered*, pursuant to Rule 10b-17(b)(2), that the Trust, subject to the conditions contained in this order, is exempt from the requirements of Rule 10b-17 with respect to transactions in the Shares of the Fund as described in its letter dated February 27, 2013.

This exemption from Rule 10b-17 is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemption is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemption shall discontinue transactions involving the Shares of the Fund under the circumstances described above and in the Letter in the event that any material change occurs with respect to any of the facts presented or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility

days in advance what dividend, if any, would be paid on a particular record date.

for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 7, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

- institution and settlement of injunctive actions;
- institution and settlement of administrative proceedings; and
- other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

<sup>5</sup> 17 CFR 200.30-3(a)(6) and (9).

Dated: February 28, 2013.

Elizabeth M. Murphy,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68996; File No. SR-NYSE-2013-13]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relocating Certain Futures and Options Trading Conducted on ICE Futures U.S. From Rented Space at the New York Mercantile Exchange to the Exchange's Facilities at 20 Broad Street and Amending NYSE Rule 6A, Which Defines the Terms "Trading Floor" and "NYSE Amex Options Trading Floor"

February 27, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that February 13, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to relocate certain futures and options trading conducted on ICE Futures U.S. ("IFUS")<sup>4</sup> from rented space at the New York Mercantile Exchange ("NYMEX") to the Exchange's facilities at 20 Broad Street and amend NYSE Rule 6A, which defines the terms "Trading Floor" and "NYSE Amex Options Trading Floor" (together, the "Proposal"). The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of

the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to make trading space at 20 Broad Street, commonly known as the "Blue Room", available to IFUS to accommodate electronic trading of certain futures and options contracts currently conducted on IFUS in space rented from the NYMEX. The arrangement would be pursuant to an arms-length commercial lease. IFUS's lease on its NYMEX trading space expires in June 2013. The Exchange notes that on December 20, 2012, Intercontinental Exchange, Inc. ("ICE") entered into a merger agreement to acquire the Exchange's parent, NYSE Euronext (the "Transaction"). IFUS, a wholly-owned subsidiary of ICE, requested assistance in relocating its remaining trading floor following announcement of the Transaction.

IFUS trades its products exclusively on an electronic trading platform and no longer utilizes open outcry trading. Approximately 40 traders (the "IFUS Traders")<sup>5</sup> currently utilize the IFUS trading floor (along with a small group of clerical staff they employ) as a place from which they may accept customer orders and execute electronic transactions in IFUS contracts. The IFUS Traders that are proposed to relocate to the Blue Room can execute transactions electronically in all products listed for trading by the IFUS, including futures and options on futures on cotton, frozen concentrated orange juice, coffee, sugar, cocoa, energy, foreign currencies, and certain Russell Indices.<sup>6</sup> However, most of the IFUS

Traders predominantly execute transactions in options on cotton futures. The IFUS Traders, collectively, transact less than 5% of average daily IFUS volume excluding IFUS energy contracts (which account for approximately 83% of IFUS's daily volume)<sup>7</sup> and a fraction of 1% of the total average daily IFUS volume (which includes the energy contracts transacted on IFUS). The IFUS Traders do not engage in trading in equity securities or securities options through IFUS.

Further, six of the forty IFUS Traders engage in proprietary-only trading while the rest execute customer orders<sup>8</sup> in addition to proprietary trading. IFUS customer orders may be accepted by telephone or electronically; however, the IFUS Traders cannot verbally discuss orders or transactions with each other while on the trading floor. Communications between traders on the floor must be made via instant message, email, or recorded telephone line. Order tickets are prepared and time-stamped for each customer order, and IFUS, as it does today, would have a compliance officer from IFUS Market Regulation in the Blue Room performing on-site surveillance on a regular basis.

The IFUS Traders will be sitting together in dedicated space in the Blue Room. A small group of NYSE Floor brokers, currently in the Blue Room, will have their booths nearby.<sup>9</sup> Both the space to be assigned to the IFUS Traders and the NYSE Floor broker booths have privacy barriers consisting of eight foot walls which provide visual and sound insulation to reduce the likelihood that trading screens can be viewed or conversations overheard between firms and traders.<sup>10</sup> Consequently, the Exchange believes that the combination of these visual and acoustical barriers, coupled with the IFUS limitations on verbal communications related to an order, substantially eliminate the risk that either the IFUS Traders or NYSE Floor brokers could overhear each

as broad-based indices. The Exchange understands, however, that the IFUS Traders primarily trade Russell 2000 mini-contracts.

<sup>7</sup> In other words, the IFUS Traders transact less than 5% of the 17% of IFUS's average daily volume that is not related to energy contracts.

<sup>8</sup> Pursuant to the definition of the term "floor broker" in Section 1a(22) of the Commodity Exchange Act, the Floor Traders can only execute customer orders from a trading floor that is operated and supervised by a contract market such as IFUS.

<sup>9</sup> However, the Exchange expects to relocate the NYSE Floor brokers to an area adjacent to the Garage once certain ongoing renovations are complete.

<sup>10</sup> The booths are approximately 40 feet long by 10 feet wide. The barriers are eight feet high on both sides except for the two gated and badge access entry and exit points at the front and back of the booth, which are four feet high.

<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> IFUS is a Designated Contract Market pursuant to the Commodity Exchange Act, as amended, and is regulated by the U.S. Commodity Futures Trading Commission ("CFTC"). IFUS was formerly known as the New York Board of Trade ("NYBOT").

<sup>5</sup> None of the IFUS Traders are members of the Exchange, NYSE MKT or NYSE Amex Options.

<sup>6</sup> These include the Russell 2000, Russell 1000, and Russell Value and Growth, all of which qualify