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BY ELECTRONIC TRANSMISSION

Submission No. 14-144
December 29, 2014

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Amendments to Rule 4.02 and New FAQ on Disruptive Trading Practices - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6(a), ICE Futures U.S., Inc. ("IFUS" or "Exchange") hereby submits amendments to Rule 4.02 and a new Frequently Asked Questions on Disruptive Trading Practices (the "FAQ"), which are set forth in Exhibit A. The Exchange is amending Rule 4.02 to consolidate the rules prohibiting disruptive trading to a single subparagraph and is issuing the FAQ to provide guidance on the types of disruptive trading practices that are prohibited.

The amendments to Rule 4.02 consolidate current subparagraphs (e), (h) and (n) into new subparagraph (l), which will cover the disruptive trading practices prohibited by the Exchange. In addition, Rule 4.02(l)(1) adds new language that expressly prohibits a participant from entering an order or causing an order to be entered with:

1. the intent to cancel the order before execution, or modify the order to avoid execution;
2. the intent to overload, delay, or disrupt the systems of the Exchange or other market participants;
3. the intent to disrupt the orderly conduct of trading, the fair execution of transactions or mislead other market participants, or
4. reckless disregard for the adverse impact of the order or market message.

The language used by the Exchange in new Rule 4.02(l)(1) is similar to the language used in rules that were recently adopted by other DCMs.

The new FAQ sets forth 16 questions and answers which provide guidance on how the Exchange will interpret and apply new Rule 4.02.

The Exchange certifies that the amendments to Rule 4.02 and the new FAQ, which will become effective on January 14, 2015, comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. As required by Commission Regulation 38.152, Exchange Rule 4.02 and the FAQ clarify and prohibit the disruptive trading practices identified in Section 4c(a)(5) of the Commodity Exchange Act.

The Exchange is not aware of any substantive opposing views expressed by members or others with respect to the amendments and certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website and may be accessed at (https://www.theice.com/notices/RegulatoryFilings.shtml).

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

Sincerely,

Jason V. Fusco
Assistant General Counsel
Market Regulation

Enc.
cc: Division of Market Oversight

EXHIBIT A

Rule 4.02. Trade Practice Violations

In connection with the placement of any order or execution of any Transaction, it shall be a violation of the Rules for any Person to:

(a) Manipulate, or attempt to manipulate, the price of any Commodity traded on the Exchange;

(b) Corner, or attempt to corner, any Commodity traded on the Exchange;

(c) Execute a wash sale, accommodation Trade, fictitious sale or prearranged Trade;

(d) Commit fraudulent action on the Exchange;

~~(e) Make fictitious or trifling bids or offers, (ii) offer to buy or sell any Contract at variations less than the minimum price fluctuation permitted for such contract under the Rules, (iii) knowingly make any bid or offer for the purpose of making a market price which does not reflect the true state of the market, or (iv) knowingly enter, or cause to be entered, bids or offers other than in good faith for the purpose of executing *bona fide* Transactions;~~

~~(f)~~ (e) Withhold or withdraw from the market any order or any part of an order for the convenience of another Person;

~~(g)~~ (f) Prearrange the execution of transactions in Exchange products for the purpose of passing
or transferring equity between accounts;

~~(h) Engage in any trading practice or conduct that is intended to disrupt the orderly execution of transactions, unduly influence market prices or mislead other market participants;~~

~~(i)~~ (g) Engage in cross trading other than in accordance with the following procedures:

(1) Independently initiated orders on opposite sides of the market for different beneficial account owners that are immediately executable against each other may be entered without delay provided that the orders did not involve pre-execution communications as defined in sub-paragraph (m) of this Rule.

(2) Orders on opposite sides of the market that are simultaneously placed for different beneficial accounts by a Person with discretion over both accounts must be entered into ETS as Crossing Order ("CO") which contains both the buy and sell orders.

(3) An order that allows for price and/or time discretion, if not entered immediately upon receipt, may be knowingly entered opposite a second order received by the same intermediary only as part of a CO which contains both the buy and sell orders.

~~(j)~~ (h) Engage in front running;

~~(j)~~ (i) Disclose or divulge the buy or sell order of another Person except (1) in furtherance of executing the order, (2) at the request of an authorized representative of the CFTC or (3) pursuant
to sub-paragraph (m) of this Rule regarding certain pre-execution communications.

~~(i)~~ (j) knowingly enter, or cause to be entered, a Transaction in which the opposite side of a Customer order is executed for an account which is owned or controlled, or in which an ownership interest is held, by an intermediary handling the Customer order, or for the proprietary account of the employer of such an intermediary, without submitting to ETS a Crossing Order ("CO") consisting of both the Customer order and the order for such other account, provided, however, that any Transaction that is consummated without the knowledge of the intermediary shall not be considered to have violated this Rule.

~~(m)~~ (k) Engage in pre-execution communications, except in accordance with the following procedures:

(1) For the purposes of this Chapter, pre-execution communications shall mean communications between two (2) market participants for the purpose of discerning interest in the execution of a Transaction prior to the terms of an order being entered on the ETS and visible to all market participants on the electronic trading screen.

(2) A market participant may engage in pre-execution communications with regard to Transactions executed on ETS where a market participant wishes to be assured that another market participant will take the opposite side of an order under the following circumstances:

(A) If a Customer order is involved, the Customer has previously consented to such communications being made on its behalf;

(B) A party to pre-execution communications shall not disclose the details of such communications to any Person who is not a party to the communications;

(C) A party to pre-execution communications shall not enter an order to take advantage of information conveyed during such communications, except in accordance with this Rule;

(D) Each order that results from pre-execution communications must be executed by entry into ETS of a CO consisting of both the buy and sell orders, and

(E) Once the terms of a CO have been agreed to, the parties may not delay entry of the CO and may not enter a Request for Quote ("RFQ") until the CO is transacted.

~~(n)~~ (l) Engage in any other manipulative or disruptive trading practices prohibited by the Act or by the Commission pursuant to Commission regulation, <u>including, but not limited to:</u>

<u>(1)Entering an order or market message, or cause an order or market message to be entered, with:</u>

(A) The intent to cancel the order before execution, or modify the order to avoid execution;

(B) The intent to overload, delay, or disrupt the systems of the Exchange or other market participants;

(C) The intent to disrupt the orderly conduct of trading, the fair execution of transactions or mislead other market participants, or

(D) Reckless disregard for the adverse impact of the order or market message.

(2) Knowingly entering any bid or offer for the purpose of making a market price which does not reflect the true state of the market, or knowingly entering, or causing to be entered, bids or offers other than in good faith for the purpose of executing *bona fide* Transactions.

DISRUPTIVE TRADING PRACTICES

FAQs

January 2015

Q1: What factors may be considered in assessing a potential violation of the Rules regarding disruptive trading practices, including spoofing.

A1: Market Regulation may consider a variety of factors in assessing whether conduct violates the Rules, including, but not limited to:

- whether the market participant's intent was to induce others to trade when they otherwise would not;
- whether the market participant's intent was to affect a price rather than to change his position;
- whether the market participant's intent was to create misleading market conditions;
- market conditions in the impacted market(s) and related markets;
- the effect on other market participants;
- the market participant's historical pattern of activity;
- the market participant's order entry and cancellation activity;
- the size of the order(s) relative to market conditions at the time the order(s) was placed;
- the size of the order(s) relative to the market participant's position and/or capitalization;
- the number of orders;
- the ability of the market participant to manage the risk associated with the order(s) if fully executed;
- the duration for which the order(s) is exposed to the market;
- the duration between, and frequency of, non-actionable messages;
- the queue position or priority of the order in the order book;
- the prices of preceding and succeeding bids, offers, and trades;
- the change in the best offer price, best bid price, last sale price, or other price that results from the entry of the order; and
- the market participant's activity in related markets.

Q2: What does "mislead" mean in the context of the Rules?

A2: The language is intended to be a more specific statement of the general requirement that market participants are not permitted to act in violation of just and equitable principles of trade. This section of the Rule prohibits a market participant from entering orders or messages with the intent of creating the false impression of market depth or market interest. The Regulatory Division generally will find the requisite intent where the purpose of the participant's conduct was, for example, to induce another market participant to engage in market activity.

Q3: Is there a specific amount of time an order should be exposed to the market to demonstrate that it does not constitute a disruptive practice?

A3: Although the amount of time an order is exposed to the market may be a factor that is considered when determining whether the order constituted a disruptive trading practice, there is no prescribed safe harbor. Market Regulation will consider a variety of factors, including exposure time, to determine whether an order or orders constitute a disruptive practice.

Q4: Is it a violation of the Rules to modify or cancel an order once it has been entered?

A4: An order, entered with the intent to execute a bona fide transaction, that is subsequently modified or cancelled due to a perceived change in circumstances does not constitute a violation of the Rules.

Q5: Will orders that are entered by mistake constitute a violation of The Rules?

A5: An unintentional, accidental, or "fat-finger" order will not constitute a violation of The Rules, but such activity may be a violation of other Exchange rules, including, but not limited to rules pertaining to acts that are detrimental to the best interests of the Exchange. Market participants are expected to take steps to mitigate the occurrence of errors, and their impact on the market. This is particularly true for entities that run algorithmic trading applications, or otherwise submit large numbers of automated orders to the market.

Q6: Does a partial fill of an order demonstrate that the order did not violate the Rules?

A6: While execution of an order, in part or in full, may be one indication that an order was entered in good faith, an execution does not automatically cause the order to be considered compliant with the Rules. Orders must be entered in an attempt to consummate a trade. A variety of factors may lead to a violative order ultimately achieving an execution. Market Regulation will consider a multitude of factors in assessing whether the Rules has been violated.

Q7: Under this rule, is a market participant prohibited from making a two-sided market with unequal quantities (e.g., 100 bid at 10 offered)?

A7: No. Market participants are not precluded from making unequal markets as long as the orders are entered for the purpose of executing bona fide transactions. If either (or both) order(s) are entered with prohibited intent, including recklessness, such activity will constitute a violation of the Rules.

Q8: Is the use of iceberg orders considered misleading under the Rules?

A8: No. The use of iceberg orders, in and of itself, is not considered a violation of the Rules. However, a violation may exist if an iceberg order is used as part of a scheme to mislead other participants, for example, if a market participant pre-positions an iceberg on the bid and then layers larger displayed quantities on the offer to create artificial downward pressure that results in the iceberg being partially or completely filled.

Q9: Is a market participant allowed to enter order(s) at various price levels throughout the order book in order to gain queue position, but subsequently cancel those orders as the market changes?

A9: It is understood that market participants may want to achieve queue position at certain price levels, and given changing market conditions may wish to modify or cancel those orders. In the absence of other indicia that the orders were entered for disruptive purposes, they would not constitute a violation of the Rules.

Q10: How does Market Regulation define "orderly conduct of trading or the fair execution of transactions?"

A10: Whether a market participant intends to disrupt the orderly conduct of trading or the fair execution of transactions or demonstrates a reckless disregard for the orderly conduct of trading or the fair execution of transactions may be evaluated only in the context of the specific instrument, market conditions, and other circumstances present at the time in question. Some of the factors that may be considered in determining whether there was orderly conduct or the fair execution of transactions were described by the CFTC as follows: "[A]n orderly market may be characterized by, among other things, parameters such as a rational relationship between consecutive prices, a strong correlation between price changes and the volume of trades, levels of volatility that do not dramatically reduce liquidity, accurate relationships between the price of a derivative and the underlying such as a physical commodity or financial instrument, and reasonable spreads between contracts for near months and for remote months." Antidisruptive Practices Authority, 78 Fed. Reg. at 31,895-96. Volatility alone, however, will not be presumptively interpreted as disorderly or disruptive as market volatility can be consistent with markets performing their price discovery function.

Q11: What factors will Market Regulation consider in determining if an act was done with the prohibited intent or reckless disregard of the consequences?

A11: Proof of intent is not limited to instances in which a market participant admits its state of mind. Where the conduct was such that it more likely than not was intended to produce a prohibited disruptive consequence, intent may be found. Claims of ignorance, or lack of knowledge, are not acceptable defenses to intentional or reckless conduct. Recklessness has been commonly defined as conduct that "departs so far from the standards of ordinary care that it is very difficult to believe the actor was not aware of what he or she was doing." *See* Drexel Burnham Lambert, Inc. v. CFTC*,* 850 F.2d 742, 748 (D.C. Cir. 1988).

Q12: Are orders entered for the purpose of igniting momentum in the market prohibited by The Rules?

A12: A "momentum ignition" strategy occurs when a market participant initiates a series of orders or trades in an attempt to ignite a price movement in that market or a related market.
This conduct may be deemed to violate the Rules if it is determined the intent was to disrupt the orderly conduct of trading or the fair execution of transactions, if the conduct was reckless, or if the conduct distorted the integrity of the determination of settlement prices. Further, this activity may violate the Rules. if the momentum igniting orders were intended to be canceled before execution, or if the orders were intended to mislead others. If the conduct was intended to create artificially high or low prices, this may also constitute a violation of the Rules

Q13: Is changing from buying to selling prohibited by The Rules?

A13: Market Regulation recognizes there are many variables that can cause a market participant to change their perspective of the market. The Rules do not prohibit a market participant from changing his bias from short (long) to long (short).

However, certain activity may be considered disruptive to the marketplace. For example, repeated instances of a market participant cancelling orders on one side of the market and then entering orders in the other direction that are large enough to turn the market (i.e., being of a sufficient quantity to sweep the entire quantity on the book at the particular price level and create a new best bid or best offer price) can be disruptive to the orderly conduct of trading or the fair execution of transactions. Market Regulation

Q14: Does Market Regulation consider cancelling an order via ICE's Self Trade Prevention Functionality ("STPF") or other self-match prevention technology indicative of an order being in violation of the Rules?

A14: The means by which an order is cancelled, in and of itself, is not an indicator of whether an order violates the Rules. The use of STPF in a manner that causes a disruption to the market may constitute a violation of the Rules. Further, if the resting order that was cancelled was non-bona fide *ab initio*, it would be considered to have been entered in violation of the Rules.

Q15: What type of pre-open activity is prohibited by the Rules?

A15: As described in Q1, any activity that influences a market price may be considered when reviewing disruptive trading practices. This includes order activity during the pre-open period that influences a price visible to the market, such as the indicative opening price, if the purpose of that order activity is not to execute a bona fide transaction.

Other activity related to the pre-open may also be considered disruptive, including but not limited to the entry of orders prior to the beginning of the pre-open in an attempt to "time" the FIFO priority queue for Trade At Settlement ("TAS") transactions, or other similar purposes.

Q16: Is the creation or execution of User Defined Strategies ("UDS") for the purposes of deceiving or disadvantaging other market participants a violation of the Rules?

A16: Yes. UDS functionality requires users to exercise diligence and care in the creation of option spread instruments, including the creation of covered option strategies. Market participants are reminded that knowingly creating and/or trading UDS instruments in a manner intended to deceive or unfairly disadvantage other market participants is considered a violation of the Rules. Additionally, Market Supervision may price adjust or cancel trades that are deemed to negatively impact the integrity of the market pursuant to the provisions of the Exchange's Error Trade Policy.