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**BY ELECTRONIC TRANSMISSION**

Submission No. 18-367
June 29, 2018

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 Rules 4.02 (Crossing Procedures) and 21.02 (Summary Fine Authority) and the Exchange's Pre-Execution Communication FAQ- Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the "Act"), and Commodity Futures Trading Commission ("Commission") Regulation 40.6(a), ICE Futures U.S., Inc. ("IFUS" or "Exchange") hereby self-certifies the amendments set forth in Exhibit A to Rules 4.02(g), 4.02(k) and 21.02(e) and the Exchange's guidance on pre-execution communications, which is provided in the Pre-Execution Communication FAQ ("FAQ"). As described in detail below, the amendments to Rule 4.02 and the FAQ provide for an additional method of order entry to execute a futures cross trade. Corresponding amendments to Rule 21.02(e) update the list of rule violations for which the Exchange can issue summary fines to reflect the changes to Rule 4.02.

**Amendments to Rule 4.02**

In accordance with IFUS Rules 4.02(g) and 4.02(k)(2)(D), participants are required to use a Crossing Order ("CO") when submitting futures or options orders: (1) resulting from pre-execution communications between participants; or (2) on opposite sides of the market for the accounts of different beneficial owners, when such orders are entered by a person with discretion over both accounts. In addition, a CO is also required when a futures or options order providing an intermediary with price and/or time discretion is knowingly entered opposite another order that had been previously entered by the same intermediary. The entry of the CO triggers a

Request For Quote ("RFQ") message for the respective future or option; the RFQ remains exposed to the market for 5 seconds before the trading platform executes the cross trade. During the 5 second window, the CO is exposed to other market participants, one or both orders submitted via the CO may transact opposite any resting orders at better bids (offers) or any new bids/ offers entered during the 5 second window that improve upon the price at which the CO was submitted. The opportunity to improve upon the price is intended to comply with CFTC Regulation 1.38 which requires open and competitive trading except for specified transactions which are permitted to be privately negotiated, such as block trades.

The Exchange believes that the required use of COs in futures in certain circumstances can be cumbersome and inefficient. Under such circumstances, the Exchange believes that participants would benefit from having the alternative to manually enter one of the futures orders to be crossed and exposing it the market for a minimum of 5 seconds before entering the opposing order. Participants would still be permitted to utilize the CO functionality for futures cross trades, should they elect, but would now have an additional alternative for crossing futures orders. Furthermore, this would align the cross trade practices of IFUS with other DCMs. The CO requirement for options cross trades would not change.

The amendments to Rule 4.02(g) and 4.02(k)(2)(D) and the FAQ separate the procedures for entering futures and options cross trades. Specifically, Rule 4.02(g) will allow futures orders for different beneficial accounts placed by a person with discretion over both accounts to be entered as a CO, or by exposing one order to the Electronic Trading System ("ETS") for a minimum of 5 seconds. Similarly, a futures order allowing for price and/or time discretion may be knowingly entered opposite a second order received by the same intermediary by using a CO or exposing one order to the ETS for a minimum of 5 seconds before entering the opposing order. Rule 4.02(k)(2)(D) is being amended to allow futures orders that are a result of pre-execution communications to be entered as a CO or by exposing one order to the ETS for a minimum of 5 seconds before entering the opposing order.

**Amendments to Rule 21.02(e)**

In connection with the foregoing amendments, the Exchange is also amending Rule 21.02(e) regarding summary fining authority to reflect the additional rule numbers resulting from the abovementioned amendments. Specifically, due to the separation of futures and option cross trade procedures, Market Regulation expanded its summary fining authority to include 4.02(g)(4) and 4.02(g)(5).

The Exchange is not aware of any opposing views and certifies that the amendments to Rules 4.02 and 21.02 and the FAQ, which will become effective on July 17, 2018, comply with the requirements of the Act and the rules and regulations promulgated thereunder. In particular, the amendments comply with Core Principles 2 (Compliance with Rules) 9 (Execution of Transactions) 12 (Protection of Markets and Market Participants) and 13 (Disciplinary Procedures). As explained above, the amendments to Rules 4.02(g) and 4.02(k) allow for more efficient trading without compromising the purpose of the rule, which is to expose a cross trade to the market and allow other participants to participate by improving the price at which the cross is executed. . In this regard, the amended Rules remain consistent the requirements of Core

Principle 9, competitive, open and efficient markets, Core Principle12, fair and equitable trading; and Core Principle 2, the prohibition of abusive trading practices. Furthermore, the amendments to Rule 21.02 comply with Core principle 13 as the imposition of minor sanctions for minor readily apparent violations is consistent with the Commission's guidance in Appendix B to Part 38.

The Exchange further certifies that concurrent with this filing a copy of this submission was posted on the Exchange's website, which may be accessed at (https://www.theice.com/futures-us/regulation#Rule-Filings).

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:

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(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 (k) of this Rule.

(2) Futures orders on opposite sides of the market that are simultaneously placed for different beneficial accounts by a Person with discretion over both accounts ~~must~~ may be entered into ETS as Crossing Order ("CO") which contains both the buy and sell orders; or by separately entering one order and allowing it to be exposed on the ETS for a minimum of five (5) seconds before entering the opposing order.

(3) A futures 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~~ using a CO which contains both the buy and sell orders; or by entering the second order immediately upon receipt and allowing it to be exposed on the ETS for a minimum of five (5) seconds before entering the opposing order.

(4) In the case of Options which are listed on the ETS, 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 the ETS as a CO which contains both the buy and sell orders.

(5) In the case of Options which are listed on the ETS, 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.

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(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 Options order that results from pre-execution communications must be executed by entry into the ETS of a CO consisting of both the buy and sell orders, and each Futures order that results from pre-execution communications may be entered as a CO, which contains both the buy and sell order; or by separately entering one order and allowing it to be exposed on the ETS for a minimum of five (5) seconds before entering the opposing order.

(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") with the intent to distract other participants from the pending CO

**[REMAINDER OF RULE UNCHANGED]**

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**Rule 21.02. Compliance Staff — Powers and Duties**

(e) Notwithstanding the provisions of paragraph (d) of this Rule, the Vice President or his designee may issue a warning letter or impose a summary fine of no more than ten thousand dollars ($10,000) upon a Member or other market participant in any case in which it is concluded that there may have been a violation of:

(i) any record keeping rule;
(ii) Rule 4.02(g)(2), (3), (4) or (5);
(iii) Rule 4.02(k)(2)(A) or (D)
(iv) Rule 4.07 (a), (b) or (c);
(v) Rule 6.15(a), (b), (d)(1), (d)(2), (d)(3) or (d)(4);
(vi) Rule 2.22 or Rule 18.05(a) or (d);
(vii) Rule 4.37(a)(i);
(viii) paragraph (a), (b) or (c) of Rule 4.15;
(ix) Rule 21.04, by failing to produce documents, books or records, within the time period prescribed by the Exchange; or
(x) 4.19 (a) through (e).

The authority to impose such a warning letter or summary fine does not limit the Vice President's authority to refer the matter to the BCC instead of imposing such sanction. A summary fine imposed in accordance with this paragraph shall become final and effective and payment shall become effective fifteen (15) calendar days after receipt. A Member or non-member market participant may present evidence to the Market Regulation Department and request the summary fine be rescinded or reduced during the fifteen (15) calendar day period until the fine has become effective. The decision to cancel, modify or affirm a summary fine imposed in accordance with this paragraph shall be made at the sole and absolute discretion of the Vice President or his designee.

# Pre-Execution Communications FAQ

June 2018

# <u>PRE-EXECUTION COMMUNICATIONS FAQ</u>

ICE Futures U.S. Inc. Rules permit pre-execution communications in all Exchange products, subject to the provisions of Rules 4.02(i)[1] and 4.02(k)[2]. This document is intended to provide information on the permission required to allow pre-execution communication on behalf of a customer, and on how orders resulting from pre-execution communication must be executed on the electronic trading system ("ETS"). (Please note that requirements vary depending on the product).

## Required Permission and restrictions for Pre-Execution Communications

1. Is a customer's consent to pre-execution communications necessary?

    Yes. If a Person is acting on behalf of another, i.e. a Customer, such Person must obtain the Customer's consent prior to engaging in pre-execution communications. Records evidencing that such consent was obtained should be available for production upon request of the Exchange. Such consent may be in the form of blanket consent from a customer acknowledging its consent for the broker to engage in pre-execution communications on its behalf and would be considered in force until revoked by such customer.

2. May a Person involved in pre-execution communications disclose the details of those communications to other parties?

    No. Pre-execution communications are confidential and may not be disclosed to anyone else.

3. If a Person has participated in a pre-execution communication where non-public information has been disclosed about an order or a potential order, may such Person subsequently enter an order into the market to take advantage of the non-public information derived during the communication?

    No.

## Execution of orders resulting from Pre-Execution Communication

4. How are orders resulting from Pre-Execution Communications required to be executed?

    <u>Cross trades resulting from pre-execution communications</u> ~~Such orders~~ must be executed by <u>the</u> submission of a Crossing Order ("CO") into the ETS. The CO must contain the quantity and price at which the cross trade execution is sought. Entry of the CO will trigger a Request For Quote ("RFQ") message for the respective future, option or combination, which will automatically be exposed to the market for the prescribed time period before the ETS will seek to execute the CO.

    <u>Alternatively, a Person may opt to transact a cross trade only in futures (**not options**) by separately entering one order and allowing it is to be exposed on the ETS for a minimum of five (5) seconds before entering the opposing order.</u>

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[1] Formerly Exchange Rule 27.21
[2] Formerly Exchange Rule 27.22

5. Is a CO, ~~or a~~ Request for Quote ("RFQ") or bid/offer required to be submitted to the ETS prior to engaging in pre-execution communications?

   No. Only after the market participants have agreed to the execution of a crossing transaction as a result of pre-execution communications, must a participant transact the cross in accordance with Question 4 above. ~~CO be submitted. The ETS will create the RFQ automatically from the submitted CO~~

**Use of Crossing Order Functionality**

6. Is the price or quantity of the orders on the CO displayed to the marketplace in the resulting RFQ?

   No. The price of the orders will not be displayed, but the quantity will be displayed.

7. Is there any information in the RFQ that identifies that a CO may be forthcoming?

   No. The purpose of the RFQ is to notify all market participants that there is interest in executing a trade or strategy.

8. After submitting a CO, how much time will elapse before the CO is automatically activated?

   Five (5) seconds will elapse after submission of the CO before the CO is automatically activated.

9. Once the CO has been activated, are the buy and sell orders automatically executed against each other?

   No. Once activated, the CO will be evaluated against the best prices in the limit order book. If the CO price improves the best bid and the best offer in the order book or if there is no bid/offer, 100% of the CO quantity will match at the CO price immediately upon activation. If the CO price improves the best bid but there is a better offer or offers, the buy side of the CO will be executed first against such better offer or offers and then subsequently against the sell side of the CO if any residual quantity on the buy side remains. Similarly if the CO price improves the best offer but there is a better bid or bids, the sell side of the CO will be executed first against such better bid or bids and then subsequently against the buy side of the CO if any residual quantity on the sell side remains.

10. What priority will the CO have in the order book?

    For purposes of determining priority in the order book, the CO will be considered to have been entered at the time the CO is submitted to ETS.

11. What happens if there are unfilled quantities of the CO after the CO has been matched?

    Any remaining volume of the CO will be cancelled by ETS.

~~12. Are there any alternative methods of complying with the requirements of Rule 4.02(k) other than through the entry of a CO?~~

~~No~~

1[~~3~~]2. Once the CO is submitted and quotes are made, may the submitter of the CO trade opposite the bids or offers entered in response to the RFQ?

Yes. However, the parties to the CO cannot enter bids or offers that would improve the bids or offers made in the corresponding market during the respective 5 second crossing window. This would violate the provisions of Rule 4.02(k)(2)(C) which prohibit the parties to pre-execution communications from entering orders that take advantage of information obtained through the pre-execution communication, such as the price at which the CO will execute.

1[~~4~~]3. Once the CO is submitted and active, may the parties to the CO submit any RFQs?

Yes. The parties to the CO (including the submitter of the CO in the case of a broker) may submit RFQs provided that they are not entering the RFQs with the intent to divert attention of other participants away from the pending CO.

1[~~5~~]4. Once the CO is submitted and quotes are made, may the submitter of the CO change the CO?

No. The submitter of the CO cannot change the originally submitted CO and may not submit another CO until the original CO is transacted. Further, the parties to the CO cannot enter bids or offers that would improve the bids or offers made in the corresponding market during the respective 5 second crossing window.

1[~~6~~]5. Once a transaction is agreed upon via pre-execution communications, how much time does the submitter have before the submitter must enter the CO?

None. Once a transaction has been agreed upon, the submitter must immediately enter the CO.

1[~~7~~]6. May a submitter specify a “Reserve Quantity” on a CO?

No.

**Transactions with no Pre-Execution Communications**

1[~~8~~]7. Is it permissible to contact other market participants to obtain general market color without engaging in pre-execution communications?

Yes. Communications to obtain general market color or simply to obtain a quote are permissible provided there is no express or obviously implied arrangement to execute a specified trade and no non-public information is communicated regarding an order or potential order.

1[~~9~~]8. If an order has been submitted to ETS, are there any restrictions on communicating with potential counterparties?

With a resting order exposed on ETS, it is permissible to contact potential counterparties to solicit interest in trading against the order. In any such communications, no non-public information (i.e. information not represented in the terms of the order exposed to the market) may be disclosed. For example, if the represented offer is for 250 contracts, it would be a violation of the Rules to disclose that there are an additional 500 contracts to sell because that information has not been disclosed to the market.

[~~20~~]19. What are the requirements for handling simultaneous buy and sell orders for different beneficial owners that do not involve pre-execution communications?

Independently initiated orders that are on opposite sides of the market for different beneficial account owners and are immediately executable against each other may be entered without delay provided that the orders did not involve pre-execution communications and that each of the orders is entered immediately upon receipt.

In accordance with Rule 4.02(g) (“Cross Trades”), opposite futures orders that are for different beneficial accounts and are simultaneously placed by ~~or for~~ a party with discretion over both accounts, or orders that allow for price and/or time discretion, ~~must~~ may be entered as ~~have a Crossing Order (“CO”)~~ which contains both the buy and sell orders, or by separately entering one order and allowing it to be exposed on the ETS for a minimum of five (5) seconds before entering the opposing order~~entered into ETS.~~

Opposite options orders that are for different beneficial accounts and are simultaneously placed by a party with discretion over both accounts, or orders that allow for price and/or time discretion, must be entered as a CO which contains both the buy and sell orders.
~~An order for that allows for price and time discretion may be executed opposite a second order only by entering a CO into the ETS.~~

2[~~1~~]0. If there have been no pre-execution communications, is it permissible for a firm to knowingly trade for its proprietary account against a Customer order entered by the firm?

Yes, provided that in accordance with Rule 4.02(i) [~~(“Cross Trades”)~~], the Customer’s order and the proprietary order have been exposed on the ETS by the submission of a CO.