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**BY ELECTRONIC TRANSMISSION**

Submission No. 24-139  
September 20, 2024

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

**Re: Amendments to ICE Futures U.S Guidance on Position Limits FAQ and Exchange Rule 6.13 and Related Amendments - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“Exchange”) hereby certifies amendments to the Exchange’s Guidance on Position Limits FAQ (hereafter, the “FAQ”) and Exchange Rule 6.13(a)(i), as set forth in Exhibits A and B, respectively. The amendments to the FAQ and Rule 6.13 provide clarity as to the location of the delta ratios published by the Exchange for the determination of futures-equivalent options positions. As background, the delta ratios published by the Exchange in the ICE Report Center are utilized by the Exchange and market participants to determine the futures-equivalency of an options position. Such futures-equivalent options positions are aggregated with applicable futures positions held and subject to Exchange-set position limits, as described in Exchange Rule 6.13 and various other Exchange rules. While Exchange Rule 6.13 and the FAQ have always indicated that the delta ratios published by the Exchange should be utilized for position limits purposes, the amendments make clear that the delta ratios published by the Exchange and available in the ICE Report Center, which has always been the location of the Exchange-published delta ratios, are the ratios utilized by the Exchange to calculate the futures-equivalency of a market participant’s options position.

The amendments to the FAQ and Exchange Rule 6.13 will be effective on October 7, 2024, or such other date as the Exchange may determine, which shall be no sooner than 10 business days after receipt of this submission by the Commission.

## **Certifications**

The Exchange certifies that the amendments to the FAQ and Rule 6.13 comply with the requirements of the Act and the rules and regulations promulgated thereunder. The Exchange has reviewed the designated contract market core principles ("Core Principles") as set forth in the Act and has determined that the amendments to the FAQ comply with the following relevant Core Principles:

### **COMPLIANCE WITH RULES**

The Exchange's Guidance on Position Limits FAQ provides guidance to market participants on the requirements related to the Exchange's position limits. The guidance included in the FAQ is intended to assist market participants in avoiding position limit infractions and the applicability of position limit exemptions. Exchange Rule 6.13 describes the Exchange's position limits and accountability rules and related violations of such rules. It is the Exchange's belief that the amendments will provide additional clarity and certainty to market participants regarding the Exchange's position limits requirements.

### **AVAILABILITY OF GENERAL INFORMATION**

The Exchange is publicly posting the amended Guidance on Position Limits FAQ and amended Rule 6.13 to ensure that market participants have updated guidance and information related to the Exchange's requirements related to position limits. The FAQ and Rule 6.13 will be available on the ICE Futures U.S. website.

### **POSITION LIMITS**

The Exchange's amendments to the Guidance on Position Limits FAQ and Rule 6.13 are in furtherance of and comply with Core Principle 5 and CFTC Regulation 38.300, which provides that to reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), a board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

The Exchange is not aware of any substantive opposing views expressed by members or others with respect to the amendments to the FAQ and Rule 6.13 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/futures-us/regulation>).

If you have any questions or need further information, please contact me at 312-836-6745 or at [patrick.swartz@theice.com](mailto:patrick.swartz@theice.com).

Sincerely,



Patrick Swartz  
Director  
Market Regulation

Enc.

cc: Division of Market Oversight

New York Regional Office

**EXHIBIT A**



# **Guidance on Position Limits**

[~~June~~] October 2024

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## Guidance on Position Limits

The ICE Futures U.S. (“Exchange”) Market Regulation Department (“MRD”) is issuing the following guidance on the Exchange rules pertaining to position limits and position accountability levels. Note that the Rules should always be consulted in conjunction with any guidance document and supersede any information in this guidance document.

### Position Limits and Position Accountability Levels

Position limits are levels that may not be exceeded on an intraday or end-of-day basis unless an exemption has been obtained from the MRD. If a position limit is exceeded without an exemption, it is considered to be a violation of Exchange Rule 6.13 or 6.20.<sup>1</sup>

Position accountability levels may be exceeded without an exemption and will not be deemed a violation of Rule 6.13. Market participants who hold a position in excess of an accountability level may be subject to a position accountability review and asked by the MRD to provide information regarding the trading and/or hedging strategy and purpose underlying the position. In addition, Exchange rules provide that a market participant holding or controlling a position in excess of a position accountability level automatically consents to not increase further and to decrease those positions when so ordered by the MRD. Generally, a market participant will be contacted by the MRD to obtain information about the position before such instructions are issued.

Depending on the product, position limits or position accountability levels may be implemented during the following periods:

1. **Spot Month:** a period of days prior to the expiry of the front month contract, or, for physically delivered contracts, during the notice period or a defined period of time prior to expiry.
2. **Single Month:** any single contract month outside of the period the spot month position limit is in effect.
3. **All Months Combined:** net open positions held in all contract months of a product, including the spot month.

The dates on which spot month position limits are in effect vary by contract and market participants should reference the definitions provided for each product in Chapter 6 of the Exchange Rulebook. Additionally, the Exchange publishes a notice each month with the upcoming compliance dates for spot month position limits, which may be found at <https://www.theice.com/futures-us/notices>.

For position limits and position accountability levels, the Exchange aggregates (i.e. combines and nets) positions held in certain energy contracts with positions in other contracts on a positive or negative basis. The Exchange Position Limit Table indicates whether a contract has a positive or negative aggregate. Options positions are aggregated with the underlying futures contract on a futures-equivalent basis using the delta ratio published by the Exchange in the End of Day Reports located in the [ICE Report Center](#).

Certain energy contracts are defined as diminishing balance contracts. Generally, diminishing balance contracts are those where the final settlement price is based on the average of daily index prices during the contract month. For those contracts, the front month position decreases by a proportionate amount each day as the contract month nears expiration. Typically, the spot month position will begin to diminish prior to the date on which spot month position limits become effective.

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<sup>1</sup> There are limited circumstances when an exemption may be obtained after a position limit is exceeded. Further information is provided in the Exchange Rule 6.29 and the FAQs that follow.

Exchange position limits, accountability levels, aggregation codes, and diminishing balance identification can be found in the Exchange Position Limit Tables at:

[https://www.theice.com/publicdocs/otc/advisory\\_notices/IFUS Energy Position Limit Accountability and Reportable Levels.xls](https://www.theice.com/publicdocs/otc/advisory_notices/IFUS_Energy_Position_Limit_Accountability_and_Reportable_Levels.xls)

[https://www.theice.com/publicdocs/futures\\_us\\_reports/all/IFUS Position Limits Accountability and Reportable Levels for Non-Energy Products.xlsx](https://www.theice.com/publicdocs/futures_us_reports/all/IFUS_Position_Limits_Accountability_and_Reportable_Levels_for_Non-Energy_Products.xlsx)

#### Aggregation of Positions

Position limits and position accountability levels apply to all positions in accounts under common ownership (ownership interest of 10% or greater) or control. In addition, where two or more participants trade pursuant to an expressed or implied agreement, the participants' positions will be aggregated as if the positions were held by a single person.

As provided in Exchange Rule 6.12, certain exemptions from aggregation are available. To obtain an exemption, a written request should be submitted to the MRD detailing the circumstances supporting the exemption. If a market participant has filed an exemption from aggregation request with the CFTC, a copy should be provided to the Exchange.

#### Exemptions from Position Limits

As provided in Exchange Rule 6.29, the Exchange may grant position limit exemptions for positions held for the purposes of (i) enumerated bona fide hedging, as defined in CFTC Regulation 150.1 and listed in Appendix A to Part 150 of the CFTC Regulations, non-enumerated bona fide hedging strategies which are determined by the Exchange to be consistent with the purposes of hedging and are approved in accordance with Exchange rules and CFTC Regulations 150.1 and 150.9, where applicable, and pass-through swaps (as referenced in CFTC Regulation 150.1), (ii) spread positions as defined in CFTC Regulation 150.1 and Appendix G to CFTC Regulation Part 150, and (iii) risk management strategies. For those contracts subject to CFTC Regulation 150.2, exemptions from position limits for risk management strategies may only be provided for positions up to, but not in excess of, the applicable federal position limit, as defined in CFTC Regulation 150.2. On a case-by-case basis, and depending on the facts and circumstances involved, the Exchange may approve an exemption based on positions held by an applicant pursuant to the financial distress of another market participant. To request an exemption for contracts not subject to CFTC Regulation 150.2, an exemption request form should be completed and submitted to the MRD no later than five business days before the first day the position limit is in effect. To request an exemption for contracts subject to CFTC Regulation 150.2, a completed exemption request form must be submitted to and approved by the MRD prior to exceeding the applicable position limit. The form for requesting annual exemptions for energy, foreign exchange, and certain agricultural contracts may be found at the link below.

[https://www.theice.com/publicdocs/otc/advisory\\_notices/IFUS Energy Position Limit Exemption Form.doc](https://www.theice.com/publicdocs/otc/advisory_notices/IFUS_Energy_Position_Limit_Exemption_Form.doc)

Additionally, Exchange Rule 6.20(c) allows for a Conditional Limit in the Henry Hub LD1 Fixed Price Future that allows a market participant to hold up to 40,000 contracts net long or short while position limits are in effect. The form for requesting a Conditional Limit for Henry Hub LD1 along with the corresponding requirements may be found at the link below.

[https://www.theice.com/publicdocs/otc/advisory\\_notices/IFUS Energy Conditional Limit Form.doc](https://www.theice.com/publicdocs/otc/advisory_notices/IFUS_Energy_Conditional_Limit_Form.doc)

For exemption request forms for non-energy contracts, the MRD should be contacted using the information provided below.

## QUESTIONS

- 1. Is it a violation of Exchange rules if a market participant exceeds position limits as a result of changes in option delta(s) or as a result of an option assignment?**

The Exchange will allow a one-day grace period to bring a position within position limits in connection with position limit overages resulting from delta change(s) based on the price movement of the underlying futures contract or the assignment of an option position, provided the applicable futures equivalent position does not exceed position limits when evaluated under the previous business day's delta(s).

For contracts subject to federal limits, this grace period does not apply on the last day of the spot month for the corresponding referenced futures contract for either changes in delta(s) or option assignments.

- 2. If a market participant currently holds a position limit exemption, do they need to refile before the exemption expires?**

Market participants currently holding a position limit exemption may rely on that exemption until the expiration date noted in their approval letter, which will not exceed one year from the date of such approval, unless communicated otherwise by the Exchange. Failure to submit an application and be approved by Market Regulation for renewal of an existing exemption prior to the expiration of the exemption will result in a lapse of the market participant's exemption. Market participants looking to hold a position in excess of position limits using strategies not previously filed, allowed or approved by the Exchange must file a new position limit exemption application. For further information on retroactive exemptions, please see FAQ #9.

- 3. Are position limits effective intraday?**

Yes, any positions, including positions established intraday, in excess of those permitted under the rules are deemed to be position limit violations.

- 4. What happens if a market participant 1) exceeds a position limit and does not qualify for an exemption or 2) reduces the elevated position (while limits are in effect) to at or below the applicable position limit, but does not apply for an exemption?**

MRD would consider any of the above circumstances to be a violation of the Exchange's applicable position limit Rules. The Department will consider a number of factors in determining the appropriate regulatory action, including, but not limited to, the size of the position in excess of the limit, previous violations, length of the violation, the circumstances that resulted in the violation and profitability.

- 5. How is a market participant able to identify what Exchange contracts are deemed core referenced futures contracts or referenced contracts for federal position limits (150.2)?**

Please refer to the Exchange's position limit Excel table(s) located on the **Market Resources** page, which identify whether a futures or options contract is deemed a "core referenced futures contract" or "referenced contract" (as defined in CFTC Regulation 150.1) for federal position limits (CFTC Regulation 150.2). For the avoidance of doubt, contracts deemed referenced contracts will have position limits in effect during the same time periods as the core-referenced futures contracts, or as otherwise determined by the Exchange.

- 6. How are positions in multiple contracts aggregated for purposes of position limits?**

For position limits, the Exchange aggregates (i.e., combines and nets) positions held in certain contracts with positions in other contracts on a positive or negative basis. The Exchange Position Limit Table indicates whether a contract has a positive or negative aggregate. Positions held in aggregated contracts are converted to a futures-equivalent position in the parent contract, which is identified by

commodity code in the Position Limit Table. Options positions are aggregated with the underlying futures contract on a futures-equivalent basis using the delta ratio published by the Exchange [in the ICE Report Center](#) and subsequently aggregated with positions held in the parent contract. Compliance with Exchange position limits for the aggregated position is assessed with relation to the parent contract's position limit.

Equivalent spot month position limits are provided as a courtesy in the Position Limit Table using the relevant commodity's contract size.

**7. What information is required to be provided to the Exchange to support an enumerated bona fide hedge exemption?**

The applicant must provide: (1) an explanation or description of the hedging strategy including any information needed to enable MRD to determine whether the facts and circumstances demonstrate that it may grant an exemption, such as a description of the applicant's activity in the cash markets and swaps markets for the commodity underlying the position for which the application is submitted, which includes, but is not limited to, information regarding the offsetting cash positions; (2) a statement that the strategy complies with the bona fide hedge definition requirements; and (3) the relevant information that shows why or how the strategy meets the bona fide hedge definition requirements.

**8. Is the fixed-price cash market information previously submitted on Form 304 to the Commission required to be submitted to the Exchange?**

Yes, the Commission requires the Exchange to collect month-by-month fixed-price cash market positions in cotton in connection with bona fide hedging applications at least annually. This information will be shared with the Commission upon request and, as a result, is not required to be submitted to the Commission by such market participants. The requirement to submit Unfixed-Price Cotton "On Call" data to the Commission under CFTC Part 19 still exists.

**9. What is an allowable retroactive exemption?**

There are certain sudden or unforeseen circumstances in which a market participant may have to exceed the speculative limit or the level of a previously granted exemption prior to filing for exemptive relief with the Exchange. In those circumstances, the market participant may apply for a retroactive exemption within five (5) business days after it established such position. The applicant, must include, in its filing a detailed explanation of the circumstances warranting the sudden or unforeseen increases to its bona fide hedging needs.

For contracts subject to CFTC Regulation 150.2, such retroactive exemptions are not available for spread exemptions or inadvertent overages and may only be provided for unforeseen increases in bona fide hedging and, for risk management needs for positions up to, but not in excess of the federal position limit defined in CFTC Regulation 150.2. If the retroactive exemption is requested due to unforeseen bona fide hedging needs subject to CFTC Regulation 150.9, an approval by the Exchange will be subject to a 2-day review period by the CFTC before being considered approved for purposes of federal position limits.

However, for contracts **not** subject to federal limits, the Exchange will continue to recognize retroactive exemptions for bona fide hedge, spread positions or risk management strategies, provided the applicant applies within the prescribed period noted above and such exemption is ultimately approved by the Exchange.

**10. What if the retroactive exemption is denied by the Exchange?**

If MRD ultimately denies the request for a retroactive exemption, the applicant must bring its position under the speculative limit within a commercially reasonable time and in an orderly manner that does not cause disruption to the market. The Exchange, in its discretion and based on the facts and

circumstances, may determine whether to impose a position limit violation for any retroactive exemption request for Exchange-set limits that the Exchange ultimately denies.

In accordance with CFTC Rule 150.9, the CFTC has a 2-day review process for a request for a retroactive exemption during which they can deny the request.

**11. May a market participant request a spread exemption related to positions held pursuant to an arbitrage strategy?**

Yes, an arbitrage strategy that is carried out and executed *simultaneously* or *contemporaneously* in two steps would be considered an allowable spread exemption. If the Exchange approves such requested exemption, it should be noted that the size of each “leg” of the arbitrage would have to be similar in size and must represent a correlated market.

For example, positions held as a result of the purchase (sale) of an ICE Henry Hub futures contract and the simultaneous sale (purchase) of a NYMEX Natural Gas futures contract would be deemed an allowable spread position.

**12. For what markets may a market participant request a risk management exemption?**

The Exchange does not recognize risk management exemptions for quantities *above* the federal position limit levels prescribed in CFTC Regulation 150.2 for contracts subject to federal limits. A market participant could, if applicable, request a pass-through swap exemption from the Exchange, provided it complies with CFTC Regulations. For contracts with Exchange position limits that are less than federal position limits, a market participant may request a risk management exemption for a quantity up to, but not exceeding, the federal position limit.

For futures or options contracts that are **not** subject to federal position limits, the Exchange will continue to recognize risk management exemptions. A market participant must file an application and receive approval from MRD on at least a yearly basis.

**13. What documentation is required for a pass-through swap to qualify as a bona fide hedge?**

The pass-through swap counterparty must receive from the bona fide hedging swap counterparty a “written representation” that the pass-through swap qualifies as a bona fide hedging transaction as defined in CFTC Regulation 150.1. The pass-through swap counterparty may rely in good faith on such written representation, unless the pass-through swap counterparty has information that would cause a reasonable person to question the accuracy of the representation. This written representation must be accessible and maintained in accordance with CFTC recordkeeping requirements.

Although the Exchange does not require a prescribed form or manner by which the pass-through swap counterparty obtains the written representation, the pass-through swap counterparty may not rely solely upon the fact that the counterparty is a commercial end user.

**14. May a market participant request an exemption related to positions held pursuant to a non-enumerated bona fide hedge?**

Yes, provided that the positions meet the definition of bona fide hedge in CFTC Regulation 150.1 and, for those contracts subject to federal position limits under CFTC Regulation 150.2, are requested in accordance with CFTC Regulation 150.9 and Exchange rules. Regulation 150.9 was intended to streamline the process by which non-enumerated bona fide hedge exemption applications are addressed. Once the Exchange receives a request for exemptive relief in accordance with CFTC Regulation 150.9, it will internally review the application, request additional information if needed and then determine whether to recognize and approve, partially-approve, or deny the non-enumerated bona fide hedging strategy.



For those contracts **not** subject to federal position limits, a market participant may request a non-enumerated bona fide hedge exemption from the Exchange, in accordance with Exchange Rule 6.29.

**15. What information does the Exchange require in an application for a non-enumerated bona fide hedge exemption?**

The requirements include, but are not limited to the following:

- a. A description of the position in the commodity derivative contract for which the application is submitted (which would include the name of the underlying commodity and the position size);
- b. An explanation of the hedging strategy, including a statement that the position complies with the requirements of CEA section 4a(c)(2) and the definition of bona fide hedging transaction or position in CFTC Regulation 150.1, and information to demonstrate why the position satisfies such requirements and definition;
- c. A statement concerning the maximum size of all gross positions in derivative contracts for which the application is submitted (in order to provide a view of the true footprint of the position in the market);
- d. Information regarding the applicant's activity in the cash markets and the swaps markets for the commodity underlying the position for which the application is submitted; and
- e. Any other information the Exchange requires, in its discretion, to enable the Exchange or the Commission to determine whether such position should be recognized as a bona fide hedge.

**16. What's the Exchange's process once it approves a non-enumerated bona fide exemption?**

For those contracts subject to federal position limits under CFTC Regulation 150.2, the Exchange will, in parallel, send the approval letter to both the market participant and the CFTC. At which point, the CFTC will have 10 business days (or 2 business days, if deemed a retroactive exemption associated with sudden or unforeseen increases in its bona fide hedging needs) to review the exemption.

For those contracts **not** subject to federal position limits, the exemption is effective at the time of approval by the Exchange.

**16. Can a market participant exceed the speculative position limit once the Exchange approves an application for a non-enumerated bona fide hedge exemption, but before the 10-day (2-day) review period has lapsed?**

The applicant may elect, at their own risk, to exceed the speculative limit(s) only *after* MRD notifies the applicant and Commission of MRD's approval of the application for purposes of Exchange-set speculative limits.

**17. After the 10-day (2-day retroactive) review period has passed is the non-enumerated bona fide hedge exemption in effect?**

Yes, provided the Commission does not notify the Exchange or applicant that the Commission has determined to deny, amend or "stay" the application during the review period.

**18. If an application for a non-enumerated bona fide exemption is denied by the Commission during the review period, will the applicant be in violation of Exchange position limit rules?**

Any applicant that exceeds the speculative position limit before the Commission's 10-day review period ends, bears market risk for that position. As such, if the Commission denies the application, the applicant will be required to bring its position back into compliance with the position limits within a commercially reasonable amount of time, as determined by the Commission in consultation with MRD and the applicant.

Although certain facts and circumstances may apply, MRD will generally not pursue an enforcement action against the applicant so long as the application was filed in good faith and the applicant brings its position into compliance within a commercially reasonable amount of time and in orderly manner that does not cause disruption to the market.

**19. Will applications for non-enumerated bona fide hedge exemptions have to go through the 10-day (2-day) review process each time the applicant files for relief?**

The Commission's review and determination conducted under CFTC Regulation 150.9(e) is required only for **initial** applications for non-enumerated bona fide hedge exemptions, provided that the facts and circumstances underlying the original application approved by the Commission remain effective and there were no other material changes.

Additionally, like any exemption, the applicant must submit and receive approval by MRD at least on an annual basis for the applicant to continue relying on such recognition for purposes of the non-enumerated bona fide exemption.

**FOR MORE INFORMATION**

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## **EXHIBIT B**

### **Rule 6.13. Enforcement of Position Limits and Position Accountability Levels**

(a) No Person may for itself or any Customer maintain a combination of Futures Contracts and Futures Equivalent Contracts which is, or which when aggregated in accordance with Rule 6.12 is, in excess of the limits established by this Chapter. For the purpose of the Rules contained in this Chapter:

(i) the futures equivalent of each Option Contract is the delta ratio published daily by the Exchange in the ICE Report Center, or any successor location;

(ii) a long Futures Contract, a long Call Option and a short Put Option are on the same side of the market; similarly, a short Futures Contract, a short Call Option and a long Put Option are on the same side of the market;

(iii) in calculating a Futures Equivalent Contract position, all serial and regular Options for the Underlying Futures Contract shall be combined.

(iv) if a Person exceeds its position limit on any given Business Day due to changes in the deltas of the Options, or as the result of an Option assignment, the Person holding or controlling such position shall have one (1) Business Day to bring the position within the limit;

(v) in accordance with CFTC Regulation 150.1, paragraph (a)(iv) of this Rule shall not apply to contracts subject to federal limits under CFTC Regulation 150.2 on the last trading day for the corresponding futures contract.

(vi) All Persons are responsible for maintaining their position and their Customers' positions within the limits contained in this Chapter on both an intraday and end-of-day basis.