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BY ELECTRONIC TRANSMISSION

Submission No. 21-169
December 2, 2021

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: New Rule 18.01 and New Rule 18.06 (Physical Delivery - Environmental Contracts) -
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 Commission Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) hereby self-certifies new Rule 18.06 and the amendment to Rule 18.01, which are set forth in Exhibit A. The new rule and amendment define the term “Allowance”, which is used throughout Chapter 18 of the Exchange’s Rules regarding physical environmental futures contracts, specifically reference the ICE Clear Europe (“ICEU”) delivery procedures applicable to the delivery of such contracts, and provide for alternative delivery procedures (“ADP”) of environmental futures contracts.

In accordance with Exchange Rule 18.00, the procedures for delivering allowances against the Exchange’s complex of environmental futures contracts are codified in the ICEU [Delivery Procedures \(“Procedures”\)](#).¹ The Exchange is adopting new Rule 18.06, which expressly states that physical delivery against the Exchange’s complex of environmental futures contracts must be made in accordance with Part N or new Part N.1 of the Procedures (as applicable).² In addition, the new Rule also provides ADP provisions for direct and ICEU-intermediated deliveries of allowances. The ADP provisions will: (1) subject to the approval of ICEU, allow the buyer and seller in a direct bilateral delivery to mutually agree to deliver allowances on terms other than those stipulated in Part N of the Procedures; and (2) allow the seller and/or the buyer to enter into a mutually acceptable written agreement with ICEU to deliver and receive allowances under conditions other than those stipulated in Part N.1 of the Procedures.

The Exchange believes that the ADP provisions are beneficial and provide a mechanism which will allow a seller and/or a buyer to avoid a delivery default in the event of unforeseen circumstances which

¹ Physical delivery against the Exchange’s complex of environmental futures must be made in accordance with ICEU Procedures pursuant to Exchange Rule 18.00, which provides that “[t]he procedures for trading, clearing, cash settlement, physical delivery and exercise, and any other matters not specifically covered herein shall be governed by the Rules of the Exchange and the Clearing Organization Rules”

² ICEU is adopting procedures through which it will act as an intermediary in the process for delivering allowances against certain contracts. New Part N.1 of the Procedures provides for allowances to be transferred from an account identified by the Selling Clearing Member at the relevant registry to the ICEU account, and after ICEU receives payment from the buyer, from the ICEU Account to an account identified by the Buying Clearing Member at the registry ([see ICEU Submission](#), dated December 1, 2021).

impede the transfer of an allowance, such as a registry malfunction or complication, or inadvertent error. For this reason, most physical delivery contracts listed by the Exchange allow the parties to mutually agree to ADP. In addition, the ADP provision will provide ICEU with some flexibility to manage problems in deliveries flowing through their registry accounts.

It should be noted that in order to protect the integrity of the contracts, the new Rule contains a provision that expressly prohibits parties from agreeing not to deliver allowances to each other before they have actually established a position in an environmental futures contract. Lastly, paragraph (f) of the Rule provides that in the event of a conflict between the Exchange's rules and government regulations, such as those applying to the registry or transfer of Allowances, government regulations shall take precedence and become a part of the Exchange Rules.

An amendment to Rule 18.01, which contains defined terms relevant to Chapter 18 of the Rules, sets forth a definition for the term "Allowances" to mean an instrument, certificate, permit, asset, security, right, contract or allowance that is designated as a deliverable instrument for a Physical Environmental Contract in the relevant contract terms.

Certifications

New Rule 18.06 and the amendment to Rule 18.01 will become effective on December 20, 2021. The Exchange is not aware of any opposing views to the new rule or the amendment and certifies that they comply with the requirements of the Act and the 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 new Rule and amendment comply with the following relevant Core Principles:

COMPLIANCE WITH RULES--Core Principle 2

New Rule 18.06 and the amendment to Rule 18.01 are codified in the Exchange's Rules. In addition, trading of and delivery against these contracts is subject to all relevant Exchange rules which are enforced by the Exchange.

CONTRACTS NOT READILY SUBJECT TO MANIPULATION - Core Principle 3

The new ADP provisions are beneficial and provide a mechanism which will allow the seller and/or the buyer to avoid delivery defaults in the event of unforeseen circumstances. As delivery procedures are an essential term and condition of a futures contract, the amendments are consistent with the core principle and Appendix C to part 38 of the Regulations.

AVAILABILITY OF GENERAL INFORMATION-Core Principle 7

The new Rule and the amendment will be available in the Exchange Rules which are posted on the Exchange's website.

The Exchange further certifies that, concurrent with this filing, a notice of pending certification was posted on the Exchange's website as well as a copy of this submission, which may be accessed at (<https://www.theice.com/futures-us/regulation>).

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.

EXHIBIT A

(In the text of the amendments below, additions are shown underscored and deletions are shown bracketed and lined through.)

Rule 18.01 Definitions

As used in this Chapter 18, the following terms shall have the following meanings:

“Allowance” means an instrument, certificate, permit, asset, security, right, contract or allowance that is designated as a deliverable instrument for a Physical Environmental Contract in the relevant Contract Terms set forth in Chapter 18.D.

Rule 18.06 Physical Delivery - Environmental Contracts

(a) Physical delivery of Allowances shall be made in accordance with the terms and conditions for each contract in Chapter 18.D of the Exchange Rules and, as applicable, Part N or N.1 of the ICE Clear Europe Delivery Procedures. Notwithstanding the foregoing, delivery may also be made in accordance with Paragraphs (b) and (c) of this Rule.

(b) For contracts delivered under part N of the ICE Clear Europe Delivery Procedures, the seller and the buyer may enter into a mutually acceptable written agreement to deliver and receive Allowances under conditions other than those stipulated in Part N of the ICE Clear Europe Delivery Procedures and the relevant Physical Environmental Contract terms in Chapter 18.D of the Exchange Rules, subject to paragraph 13 of the ICE Clear Europe Delivery Procedures. In the event of such agreement, the seller and the buyer shall immediately notify the Exchange and the Clearing Organization. Upon receipt of the notification, the Clearing Organization shall be relieved of any further obligations to the seller and buyer with respect to any Exchange contract involved. The seller and the buyer shall indemnify the Exchange and the Clearing Organization against any liability, cost or expense either may incur for any reason as a result of the execution, delivery or performance of such contract or such agreement, or any breach thereof or default thereunder.

(c) For contracts delivered under Part N.1 of the ICE Clear Europe Delivery Procedures, the seller and/or the buyer may enter into a mutually acceptable written agreement with the Clearing Organization to deliver and receive Allowances under conditions other than those stipulated in Part N.1 of the ICE Clear Europe Delivery Procedures and the relevant Physical Environmental Contract terms in Chapter 18.D, subject to paragraph 13 of the ICE Clear Europe Delivery Procedures. In the event of such agreement, the seller or the buyer (as the case may be) shall immediately notify the Exchange. The Clearing Organization shall be relieved of any further obligations to the seller or buyer (as the case may be) with respect to any Exchange contract involved (unless the Clearing Organization expressly maintains any obligations to the seller or buyer within the agreement). The seller or buyer (as the case may be) shall indemnify the Exchange and the Clearing Organization against any liability, cost or expense either may incur for any reason as a result of the execution, delivery or performance of such contract or such agreement, or any breach thereof or default thereunder.

(d) No contract shall be entered into with any stipulation or understanding between the parties at the time of making such contract that the terms of said contract as specified in Chapter 18 or 18.D are not to be fulfilled, or that the underlying product is not to be delivered and received.

(e) All deliveries of Allowances must conform to government regulations in force at the time of delivery. If any national or international governmental agency or body issues an order, ruling, directive or law that conflicts with the requirements of these Rules, such order, ruling, directive or law shall be construed

to take precedence and become part of these Rules and all open and new contracts shall be subject to such order, ruling, directive or law.