


ICE FUTURES U.S.
World Financial Center
One North End Avenue
New York, New York 10282

BY ELECTRONIC TRANSMISSION

Submission No. 13-5
January 8, 2013

Mr. David Stawick
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 Exchange Rule 27.20, 27.21 and 27.22 and Pre-Execution
Communications FAQ – Cross Trade
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Mr. Stawick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6(a), ICE Futures U.S., Inc. (“Exchange”) hereby submits amendments to Electronic Trading Rules 27.20, 27.21 and 27.22 as set forth in attached Exhibit A, and the Exchange’s Pre-Execution Communication FAQ as set forth in attached Exhibit B. The amendments require all cross trades in futures contracts on Coffee “C”[®], Cotton No. 2[®], Cocoa, Sugar No. 11[®], Sugar No. 16 and FCOJ (“Agricultural Contracts), the CCI Index and Russell Index (“Index Contracts), and the USDX[®] to be executed by entry of a Crossing Order (“CO”) onto the electronic trading system (“ETS”).

In order to execute a cross trade involving these contracts under current Exchange rules, a broker must enter the first order he received (of the two offsetting orders involved in the cross trade) onto the ETS and then must wait a minimum of five seconds before hitting the bid or lifting the offer corresponding to that first order to consummate the trade. The broker must manage the five second waiting period manually. The amendments harmonize the requirements for cross trades involving futures contracts in Agricultural, Index and USDX Contracts with the requirements for cross trades of options on these contracts as well as Energy futures and options contracts (see ICE Futures U.S. Submissions 10-41 and 12-62). Cross trades of all Exchange products will now be executed by entry of a CO that contains all necessary details on the buying and selling orders.

Entry of the CO onto the ETS with respect to futures on these contracts will trigger a Request For Quote message to the market soliciting bids and offers for the relevant futures

contract and triggering the start of an automatic 5 second waiting period before the CO will be executed. During the waiting period, other market participants can submit bids and offers, which are live and tradable. At the end of the waiting period the CO will be evaluated against the order book and 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. 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.

The amendment to Rules 27.20, 27.21 and 27.22 will be effective with the start of trading on Monday, February 1, 2013. The Exchange certifies that the amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. No substantive opposing views were expressed by members or others.

The Exchange 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,

A handwritten signature in black ink, appearing to read "Jason V. Fusco". The signature is fluid and cursive, with a large loop at the end.

Jason V. Fusco
Assistant General Counsel
Market Regulation

Enc.
cc: Division of Market Oversight
New York Regional Office

EXHIBIT A

[In the text below additions are underscored and deletions struck out]

Rule 27.20. Trading Against Customer Orders

(a) ~~[During an ETS Trading Session, a]~~ A Registered Operator shall not knowingly enter ~~[into]~~, or cause to be entered ~~[into]~~, a Transaction in which the Registered Operator takes the opposite side of a Customer order for ~~[the Registered Operator's]~~ his own account, an account ~~[the Registered Operator]~~ he either controls or has an interest in, ~~[an account of an Associated Broker, an account controlled by an Associated Broker]~~ or his employer's proprietary account without submitting a Crossing Order ("CO") consisting of both the Customer order and the proprietary order into ETS. [unless the Customer Order has been entered immediately upon receipt and has first been exposed on ETS for a minimum of five (5) seconds with respect to futures orders, and for a minimum of fifteen (15) seconds with respect to Options orders, prior to the entry of the proprietary futures or Options order.] Any Transaction that is consummated without the knowledge of the Registered Operator shall not be considered to have violated this Rule.

~~[(b) A Registered Operator, who has entered an order into ETS which results in him having, either immediately or subsequently, the highest bid or lowest offer for a particular Exchange Futures Contract resting in ETS for his own account or for any account in which he has a direct or indirect interest, shall disclose the facts of the resting order to a Customer prior to accepting such Customer order for the opposite purchase or sale of the same contract.]~~

Rule 27.21. Cross Trades

(a) 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 Rule 27.22.

(b) ~~[For all products other than Energy contracts, Futures orders on opposite sides of the market for different beneficial accounts that are simultaneously placed by a Person with discretion over both accounts may be entered by the Registered Operator provided that one (1) order is exposed on ETS for a minimum of five (5) seconds.]~~

(c) ~~For all products other than Energy contracts, a futures order allowing 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 if the second order has been entered immediately upon receipt and has been exposed on ETS for a minimum of five (5) seconds.~~

~~(d) In the case of futures orders for Energy Contracts and for all Exchange Options Contracts which are listed on ETS, e]~~ Orders on opposite sides of the market that are simultaneously placed for different beneficial accounts by a Person with discretion over both accounts must have a Crossing Order ("CO") which contains both the buy and sell orders entered into ETS.

~~(c)](e) In the case of Energy futures and all Exchange Options Contracts which are listed on ETS, a]~~ 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 ~~[after]~~ as part of a CO which contains both the buy and sell orders ~~[is]~~ entered into ETS.

Rule 27.22. Pre-Execution Communications

(a) 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.

(b) 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:

(i) Any Person who engages in pre-execution communications on behalf of a Customer may do so only when the Customer has previously consented to such communications being made on its behalf;

(ii) Any Person engaged in pre-execution communications shall not (A) disclose to a Person not involved in such communications the details of such communications or (B) enter an order to take advantage of information conveyed during such communications, except in accordance with this Rule;

(iii) ~~In the case of futures orders for all contracts other than Energy contracts, subsequent to the pre-execution communication, the order of the market participant who initiated the pre-execution communication (the “first order”) must be entered into ETS and the other market participant’s order (the “second order”) may not be entered into ETS until a period of five (5) seconds has elapsed from the time of entry of the first order; provided however, that, if only one side of the futures Transaction is for a Customer, the Customer’s order must be the first order submitted to ETS;~~

(iv) ~~In the case of futures orders for Energy contracts and for all Option orders, a Transaction cannot~~ Each order that results from pre-execution communications must be executed [following a pre-execution communication unless] by entry into ETS of a Crossing Order (“CO”) [which contains] consisting of both the buy and sell orders. is entered into ETS. Once the terms of a CO have been agreed, the parties may not delay entry of the CO and may not enter a Request for Quote (“RFQ”) until the CO is transacted.

EXHIBIT B



Pre-Execution Communications FAQ

~~[October-12]~~ February 1, 2013

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PRE-EXECUTION COMMUNICATIONS FAQ

ICE Futures U.S. Inc. Rules permit pre-execution communications in all Exchange products, subject to the provisions of Rules 27.21 and 27.22. 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

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 Communication regarding Agricultural and Financial Futures contracts required to be executed?~~

~~Orders for Agricultural and financial futures contracts resulting from pre execution communications require the entry of the first order into the ETS followed by the entry of the second order after a minimum of five (5) seconds have elapsed from the time of entry of the first order.~~

~~5. In what sequence must the orders for agricultural and financial futures contracts resulting from pre-execution communications be submitted to ETS?~~

~~If only one of the orders is for a Customer, then the Customer order must be the first order submitted to ETS. Otherwise it is the order of the initiator of the pre-execution communications (the “first order”) that is submitted to ETS first followed by the opposite order (“the second order”) after the requisite five (5) seconds have elapsed.~~

~~6. Must a minimum of five (5) seconds elapse after the entry of the first order before a market participant may enter the second order?~~

~~Yes. The entry of the second order in less than five (5) seconds is a violation of the Exchange’s Rules and could result in disciplinary action being taken.~~

~~7. Can a CO be used to cross futures orders for these agricultural and financial futures contracts?~~

~~No, orders resulting from Pre Execution Communications in these futures contracts can only be executed in the manner outlined above.]~~

[8]4. How are orders resulting from Pre-Execution Communication Requirements [regarding Energy Futures and all ICE Futures U.S. Options Transactions (which include Combination Transactions)]required to be executed?

[9]5. Is a CO or a Request for Quote (“RFQ”) required to be submitted 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 CO be submitted. The ETS will create the RFQ automatically from the submitted CO.

[10]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.

[11]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.

[12]8. After submitting a CO, how much time will elapse before the CO is automatically activated?

For all futures, energy options [~~products~~] and [~~for~~] equity options, five (5) seconds will elapse after submission of the CO before the CO is automatically activated. For [~~all other~~] the

agricultural options and other financial options, fifteen (15) seconds will elapse after the submission of the CO before the CO is automatically activated.

[13]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.

[14]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.

[15]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.

[16]12. Are there any alternative methods of complying with the requirements of Rule 27.22 [~~for Energy futures and any options transactions~~] other than through the entry of a CO?

No.

[17]13. 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 or 15 second crossing window.

[18]14. Once the CO is submitted, may the submitter of the CO submit any RFQs?

No. The submitter may not submit any RFQs until the CO is transacted.

[19]15. 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 or 15 second crossing window.

[20]16. 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.

[23]17. May a submitter specify a “Reserve Quantity” on a CO?

No.

Transactions with no Pre-Execution Communications

[24]18. 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.

[25]19. 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.

~~26. For agricultural and financial futures contracts, 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 in agricultural and financial futures contracts 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 27.21 (“Cross Trades”), opposite orders in agricultural and financial futures contracts that are for different beneficial accounts and are simultaneously placed by a party with discretion over both accounts may be entered provided that one order is exposed on ETS for a minimum of five (5) seconds for futures orders.~~

~~An order in an Exchange agricultural and financial futures contract allowing for price and time discretion, if not entered immediately upon receipt, may be knowingly entered opposite a second futures order entered by the same intermediary only if the second order has been entered immediately upon receipt and has been exposed on ETS for a minimum of five (5) seconds.~~

[27]20. ~~For Energy futures and all options contracts which are listed on ETS, w~~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 in Energy futures and all options contracts that are listed on ETS 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 27.21 (“Cross Trades”), opposite orders ~~in Energy Futures and all options contracts~~ that are for different beneficial accounts and are simultaneously placed by a party with discretion over both accounts must have a Crossing Order (“CO”) which contains both the buy and sell orders entered into ETS.

An order for ~~Energy futures or any options~~ that allows for price and time discretion may be executed opposite a second order only ~~if prior to entering the such orders into ETS, the Registered Operator enters by entering a CO for the particular future, option, spread or combination into the ETS.~~

[28]21. 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 27.21 (“Cross Trades”), ~~a the Customer’s order in an agricultural and financial futures contract has been entered immediately upon receipt and has first been exposed on ETS for a minimum of five (5) seconds, and a Customer’s order in an Energy futures or any options contract and the proprietary order has been exposed on ETS by the submission of a CO.~~