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

BY ELECTRONIC TRANSMISSION

Submission No. 13-26
March 8, 2013

Ms. Melissa Jurgens
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: New EFRP FAQ
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6

Dear Ms. Jurgens:

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") self certifies the Exchange for Related Position Frequently Asked Questions ("EFRP FAQ") attached as Exhibit A. The EFRP FAQ will be posted as a resource for market participants on the Exchange's website and will become effective on March 25, 2013.

The Exchange certifies that the EFRP FAQ complies with the requirements of the Commodity Exchange 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 EFRP FAQ complies with the Core Principles 2 (Compliance with Rules) and 9 (Execution of Transactions), and is made in furtherance of Core Principle 7 (Availability of Information). The EFRP FAQ provides guidance regarding Exchange rule interpretations and acceptable procedures by answering frequently asked questions related to EFRP transactions.

The Exchange further 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). No substantive opposing views were expressed by members or others with respect to the amendments.

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

Sincerely,

Jason V. Fusco
Assistant General Counsel
Market Regulation

cc: Division of Market Oversight
New York Regional Office

EXHIBIT A

ICE FUTURES U.S.®

EFRP FAQs

March 2013

Subject to CFTC review, the information provided in this document will be effective as of Monday, March 25, 2013

EFRP FAQs

The following document provides answers to frequently asked questions regarding rules and procedures related to Exchange for Related Position (“EFRP”) transactions executed at ICE Futures U.S. (“IFUS”).

1. What are EFRP transactions?

EFRPs include Exchange for Futures (EFP), Exchange for Swaps (EFS), Exchange for Risk (EFR) and Exchange of Options for Options (EOO). EFRP transactions are permitted as exceptions to CFTC Regulation 1.38 which requires all futures trades to be executed “openly and competitively.” The trades are bilaterally negotiated off-exchange and must comply with IFUS Rule 4.06, which governs such transactions.

An Exchange for Physical (“EFP”), also sometimes referred to as Against Actuals (“AA”) or “Futures for Cash”, are off-exchange bilaterally negotiated transactions involving the simultaneous exchange of an Exchange futures position for a corresponding cash or physical position. In such a transaction the buyer (seller) of the futures transaction is the seller (buyer) of a corresponding amount of the cash commodity or related Over the Counter (“OTC”) derivative, as appropriate, at a price difference mutually agreed upon.

An Exchange for Swap (“EFS”) and an Exchange for Risk (“EFR”) are the same type of transaction. An EFS/EFR is an off-exchange bilaterally negotiated transaction involving the simultaneous exchange of an Exchange futures position for a corresponding OTC swap or other OTC derivative in the same or related product.

An Exchange of Options for Options (“EOO”) is an off-exchange bilaterally negotiated transaction involving the simultaneous exchange of an Exchange option position for a corresponding OTC option position or other OTC instrument with similar characteristics in the same or a related instrument.

2. Are all IFUS futures and options contracts eligible for EFRP transactions?

EFRPs may be executed in all IFUS contracts provided that the transaction complies with the requirements of IFUS Rule 4.06 and any applicable CFTC requirements.

3. Who may participate in EFRP transactions?

The Exchange does not set any specific qualifications for participation in EFP transactions. However, to participate in an EFS/EFR or an EOO, the parties must be Eligible Contract Participants (as that term is defined in Section 1a(18) of the Commodity Exchange Act) and any other CFTC requirements regarding eligibility to transact the OTC component of the EFS/EFR or EOO. Market participants considering the use of EOO transactions should consult appropriate counsel to determine whether or not they are eligible to enter into OTC options transactions.

EFP transactions include a bona fide cash market transaction, and these transactions therefore typically will be transacted by commercial market participants (e.g. producers, merchants, dealers, financial institutions) who customarily transact business in the relevant cash market. Therefore, EFPs conducted by non-commercial participants should be subject to additional scrutiny to determine the bona fide nature of the cash market transaction.

4. Are there any price restrictions on EFRP transactions?

EFRP transactions may be executed at any commercially reasonable price agreed upon by both parties provided that such price conforms to the minimum tick increment for the relevant exchange contract. However, EFRPs executed at off-market prices are more likely to be examined by the Exchange to determine the purpose for the pricing.

EFRPs may not be priced off-market with the intent to shift substantial sums of cash from one party to another, to allocate gains and losses between the futures and cash or OTC derivative components of the EFRP, to evade taxes, to circumvent financial controls by disguising a firm's financial condition, or to accomplish some other unlawful purpose.

5. What are the requirements for a bona fide EFRP?

An EFRP must have two components: a futures contract or option on futures and either a cash commodity, OTC derivative (e.g. swap), or OTC option. In addition:

- The buyer (seller) of the cash commodity or OTC component was the seller (buyer) of the futures or options contract.
- The quantity of the exchange contract(s) must be approximately equivalent to the quantity of the cash commodity or OTC component.
- The cash commodity or OTC component should involve the product underlying the exchange contract or a derivative, by-product or a related product that has a reasonable price correlation with the exchange contract.
- The price must conform to the minimum tick increment of the futures contract.
- The accounts must be for different beneficial owners or be under separate decision-making and control.

6. What are the documentation requirements for EFRPs?

The parties to an EFRP are required to prepare and/or maintain all documents in connection with both the futures and cash or OTC components of the EFRP. Upon request, any participant in an EFP transaction must provide the Exchange with such material, information and documents, which evidence title to, or the contract(s) to buy or sell, the cash commodity (or the derivative, by-product or related product) involved in the transaction. The cash market transaction documents should demonstrate that a change in ownership occurred. Similarly, any participant in an EFS/EFR transaction, when requested, must provide the material, information and/or documents that demonstrate that the EFS/EFR is legitimate including, but not limited to, the master swap agreement and any supplements to it. Swap documents should contain all of the terms of the transaction, including quantity, fixed price, and settlement price and the identity of the counterparty. For an EOO transaction, participants must provide documentation demonstrating that the OTC component is a legitimate OTC option transaction conducted by a person eligible to transact OTC options.

The documentation should demonstrate that the buyer (seller) of the cash commodity or OTC component was the seller (buyer) of the futures or options contract. The cash commodity or OTC component should involve the product underlying the exchange contract or a derivative, by-product or a related product that has a reasonable price correlation with the exchange contract. The quantity of the exchange contract(s) must be approximately equivalent to the quantity of the cash commodity or OTC component.

The parties to an EFRP or each party's Clearing Member, must also maintain, and provide upon Exchange request, all documents relevant to the futures or options component of the EFRP including account statements and order tickets (or other electronically time-stamped record).

The Exchange may also require the participants to produce additional documents related to the negotiation of the terms of the EFRP, such as emails, instant messages, or recorded audio communications, if they exist.

7. Who is responsible for submitting documentation to the Exchange when requested?

Exchange requests for EFRP documentation are commonly directed to the Clearing Member(s) that cleared the transaction. The carrying Clearing Member is responsible for providing the requested documents and information on a timely basis. Clearing Members are responsible for exercising due diligence as to the bona fide nature of the EFRPs they clear. However, all market participants are subject to the jurisdiction of the Exchange and may be requested to furnish information.

8. How many parties participate in an EFRP transaction?

There may only be two parties involved in an EFRP transaction. The documentation for all EFRP transactions must demonstrate that the buyer (seller) of the IFUS contract is the seller (buyer) of the physical or OTC component of the transaction. Multi-party EFRPs are prohibited.

9. May affiliated accounts execute EFRPs with each other?

The accounts involved in the execution of an EFRP transaction must be:

1. Independently controlled with different beneficial owners; or

2. Independently controlled accounts of separate legal entities with the same beneficial owners, provided the account controllers operate in separate business units; or

3. Independently controlled accounts within the same legal entity, provided that the account controllers operate in separate business units; or

4. Commonly controlled accounts of separate legal entities, provided that the separate legal entities have different beneficial owners

"Independently controlled" means that the parties have separate accounts with separate operations (whose positions, even when exactly opposite, cannot be offset except by trading on the electronic platform) and that there is independent control of decision making with respect to transactions for such accounts.

The term "same beneficial ownership" means the same person or entity, or a parent and its wholly owned subsidiaries, or subsidiaries that are wholly owned by the same parent.

10. Can an EFRP transaction initiate or offset a position?

Yes, EFRP transactions generally can be used to either initiate or offset futures and/or cash/OTC positions. The impact of an EFRP transaction depends upon the existing futures or options positions of the parties to the transaction at the time the EFRP is executed.

11. What commodities can be used for the cash or OTC derivative component of the transaction?

ICE Futures U.S. Rule 4.06 requires that "the related position must involve the commodity underlying the Exchange Futures Contract or Option (or any derivative, by-product or related product)." According to CFTC guidance, the item that is deliverable on the futures contract may always be used for the cash or OTC derivative component of the transaction. If the commodity used to fulfill the cash or OTC derivative component is not deliverable against the futures contract, it must be an item that is reasonably equivalent in terms of its physical and economic properties. The cash commodity or OTC derivative component also should have a reliable and demonstrable price relationship with the futures contract. It should exhibit price movement that parallels the price movement of the futures contract (reasonable correlation). The lack of a consistent price relationship between the cash commodity or OTC derivative component and the futures contract can undermine the utility of the transaction and may indicate that the parties' motive for the EFRP was to circumvent Exchange rules or regulatory requirements.

12. Are transitory EFRPs permitted?

Yes. Transitory EFRPs are <u>only permitted in IFUS foreign currency products and energy products</u>. In these transactions, the supporting documentation should demonstrate that either the buyer (seller) of the cash commodity was the seller (buyer) of the futures contract or that a corresponding end of life message was reflected for the OTC component of the transaction.

13. What are transitory EFRPs?

Transitory EFRPs are transactions in which two parties execute an EFRP and an additional cash or OTC derivative transaction that offsets the cash or OTC derivative component of the EFRP. Both parties to the transaction end up with the same position in the cash market or OTC market as they had before the trade took place.

14. What documentation is required for <u>transitory</u> EFRPs?

For transitory EFRPs in foreign currency products, the Exchange would expect to see confirmation statements for the cash leg of the transaction issued by the participating bank/foreign exchange dealer. The confirmations should be the type normally produced by the bank/foreign exchange dealer for confirmation of "stand-alone" currency deals and must identify the counterparty principal to the transaction by name or account number (or other account specific designation).

For EFRPs in energy products, the documents typically generated for "stand-alone" OTC transactions must be generated and maintained, including the master swap agreement, if such agreement exists, or the confirmation supplied by the broker must be retained to substantiate the bona fide nature of the transaction. The documentation should identify the counterparties by name or account number (or other account specific designation), the date of the OTC transaction, commodity, quantity, duration and price. Further, the participants to the EFRP must maintain records that reflect the OTC transactions were actually booked to them. A confirmation may include other terms, such as a stipulation defining the obligations of the counterparties to the swap in the event the OTC transaction does not become part of an EFRP. For example, an OTC confirmation could include language providing that it is the intention of the counterparties in entering the swap that it be part of an EFRP and that if the EFRP does not occur for any reason, the swap will be void and neither party will have any obligation to the other party.

The documentation for the OTC derivative component of an EFRP in an energy product may provide that if the EFRP is accepted by the relevant futures exchange or clearing house, that the OTC component shall be simultaneously booked out with an opposite or contra OTC transaction at the same price upon clearance by the clearing house or if the EFRP fails to be accepted by the relevant futures exchange, that the OTC transaction will be considered null and void and of no legal effect, except as the counterparties may agree. The documentation may also reflect that a corresponding end of life message was generated to terminate the OTC derivative component of the transaction.

15. What factors should be considered in examining the offsetting cash or OTC transaction of a transitory EFRP?

The offsetting cash or OTC transaction should be examined to determine whether the transaction can stand on its own as an independent transaction exposed to market risk.

16. Is there a minimum amount of time that must transpire between the execution of the underlying physical or OTC transaction and a related EFRP for a transaction not to be considered transitory?

No. The length of time between the underlying physical or OTC transaction and the EFRP may be considered when determining whether a transaction is transitory, but the primary consideration, however, is determining whether the underlying transaction can stand on its own as an independent transaction exposed to market risk.

17. Can two opposing EFPs/AAs be used to facilitate inventory financing for storable physical commodities?

In connection with inventory financing in agricultural products, an EFP/AA may be executed with the agreement that a second EFP/AA will be executed between the same parties at a future date at the conclusion of the financing of the physical commodity. A market participant may enter into an EFP/AA transaction in which there is a purchase of the physical commodity and the sale of futures contracts representing the equivalent amount of the physical commodity and simultaneously grant to the same counterparty a nontransferable right (but not the obligation) to transact a second AA/EFP on a date certain in the future which will have the effect of reversing the original AA/EFP, so long as both transactions are entered into by a producer, merchant or other user of the underlying physical commodity for the purpose of obtaining inventory financing on physical commodities.

18. How are EFRP transactions submitted to the Exchange?

EFRP transactions must be submitted via the ICE Block® system.

19. What are the trading hours for EFRP transactions?

EFRP transactions should be submitted to the Exchange as soon as possible following agreement to the terms by the relevant parties.

EFRPs in energy products may be submitted through ICE Block during the trading hours for the corresponding energy contract market only.

EFRP transactions in agricultural and financial products may be submitted through ICE Block from the opening of the corresponding contract market until 30 minutes after the close of that market. The only exception is for EFRP transactions executed on the last trading day for any delivery month in any Sugar No. 11® or Sugar No. 16 futures contract which must be executed and entered into ICE Block no later than five (5) minutes prior to the close of trading.

20. What are the recordkeeping requirements for EFRPs?

EFRP transactions do not require submission of a separate time of execution provided that they are submitted through ICE Block immediately upon execution. If such transactions are not entered to ICE Block immediately, the date and the time of execution of the EFRP transaction must be captured and recorded on a separate record containing the other trade details related to the EFRP, as required under Exchange Rule 6.08.

EFRP transactions must be accurately identified as such on confirmation and monthly account statements produced by FCMs and delivered to customers.

21. Do EFRPs have to be separately identified and submitted in a firm's daily Large Trader position file?

Yes. In accordance with Exchange Rule 6.15, a firm's daily Large Trader position file must include for each reportable account the EFRP volume bought and sold in the reportable instrument, by contract month, and for EOOs by put and call strike.

22. What types of transactions would the Exchange consider to be non-bona-fide EFRPs?

Use of non-bona-fide EFRPs, for which the cash/ OTC derivative component cannot be documented or does not exist, to circumvent the competitive central futures or options market is prohibited and would be considered a violation of Exchange Rules and CFTC regulations. Transactions that would be considered non-bona-fide EFRPs include, but are not limited to, the following scenarios:

- Executing EFRPs on behalf of two customers or between an FCM's proprietary trading desk and a customer to avoid exposure to the competitive exchange-traded futures or options market when there are no corresponding bona-fide cash or OTC transactions.

- Execution of EFRP transactions between two separate commercial suppliers by a trader with control over the trading for both entities in which the trades did not involve the actual transfer of ownership of the cash or OTC derivative component, but instead were done with the intent to transfer funds from one company to the other.

- Execution of EFRP transactions between two separate market participants under separate control for the purpose or intent to transfer funds from one company to the other without legitimate bona-fide cash/ OTC market transactions.

- Execution of non-bona fide EFPs for the purpose of moving funds or P&L between futures and cash or OTC accounts of the same entity in order to conceal losses.

For more information please contact:

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