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BY ELECTRONIC TRANSMISSION

Submission No. 22-126

July 26, 2022

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 Block Trade Procedures - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) self-certifies the amendments to the Exchange’s Block Trading Procedures (the “Procedures”), which are reflected in the Exchange’s Block Trade FAQ (“FAQ”), set forth in Exhibit A. As discussed below, the amendments provide clarification to market participants regarding permissible anticipatory hedging by parties acting principally in block trade negotiations.

As background, FAQ #24 of the Exchange’s Block Trade FAQ provides that parties to a potential block trade may engage in pre-hedging or anticipatory hedging of the position that they believe in good faith will result from the consummation of the block trade, except for an intermediary or any of its affiliates that takes the opposite side of its own customer order. An intermediary may enter into transactions to offset the position only after the block has been consummated. Amendments to FAQ #24 clarify that an intermediary may enter into negotiations or transactions to offset the positions established in such transactions only after the block has been consummated.

The Exchange has observed that some market participants have employees that act in a principal capacity or dual role, while employing others that act in an agency capacity with customers. Such market participant’s configurations present a conflict regarding the permissibility of anticipatory hedging by those employees acting in a principal capacity. The amendments to FAQ

#24, provided in Exhibit A, make clear that where a party acting principally in a block trade negotiation that plans on engaging in pre-hedging activity, upon request from the Exchange, must provide sufficient documentation to support that the persons employed by the party involved in the trade were not acting in an agency capacity during the negotiation and execution of such block trade. Failure by a party to provide sufficient documentation to support its actions in a principal capacity may constitute a violation of Exchange rules. Further, the amendments provide clarity in instances where representations or communications by a party that appear to suggest an order is being worked on behalf of a counterparty, or block trade negotiations where the price of the block trade is derived by the price of the party's pre-hedging activity plus a "markup," are viewed by the Exchange as implying that such agency duties are owed to the counterparty. In such scenarios, pre-hedging is prohibited. The Exchange believes that the amendments to FAQ #24 will reduce any conflicts or ambiguity regarding the permissibility of anticipatory hedging by parties to block trades.

Additional amendments to FAQ #24 are intended to provide clarity to market participants active in block markets, and prescribe that a Person solicited to provide a two-sided block market is not deemed to be in possession of nonpublic information provided that "side of market interest" is not disclosed in the context of such solicitation.

The Exchange is not aware of any opposing views expressed with respect to the amendments. The Exchange certifies that the amendments to the FAQs, which will become effective on August 10, 2022, 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, comply with the requirements of the Act and the rules and regulations promulgated thereunder. Specifically, the amendments comply with the following Core Principles, as set forth in the Act:

COMPLIANCE WITH RULES

The amendments regarding permissible anticipatory hedging of block trades are codified in the Exchange's Block Trade FAQ and will be enforced by the Exchange.

AVAILABILITY OF GENERAL INFORMATION

The Exchange is publicly posting the amendments to the FAQ, in furtherance of Core Principle 7 and CFTC Regulation § 38.401, to ensure that market participants have updated information related to anticipatory hedging of block trades.

EXECUTION OF TRANSACTIONS

The amendments to the FAQ comply with Core Principle 9 and CFTC Regulation 38.500, which allows designated contract markets ("DCM") to authorize transactions, such as block trades, that are executed away from the DCM's centralized marketplace.

The Exchange further certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website; it 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.swartzer@ice.com.

Sincerely,



Patrick Swartz
Director
Market Regulation

Enc.

EXHIBIT A



~~[November 5, 2021]~~ August 10, 2022

For More Information
Please Contact:

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ICE FUTURES U.S. BLOCK TRADE – FAQs

* * *

24. Is pre-hedging or anticipatory hedging of a block trade permitted?

Parties to a potential block trade may engage in pre-hedging or anticipatory hedging of the position that they believe in good faith will result from the consummation of the block trade, except for an intermediary that takes the opposite side of its own ~~[Customer]~~customer order. In such instances, prior to the consummation of the block trade the intermediary is prohibited from engaging in a negotiation to offset the position or offset[ing] the position established by the block trade in any account which is owned or controlled, or in which an ownership interest is held, or for the proprietary account of the employer of such intermediary. The intermediary may enter into negotiations and/or transactions to offset the position only after the block has been consummated.

It shall be a violation of Exchange Rule 4.02(h) for a Person to engage in the front running of a block trade when acting on material non-public information regarding an impending transaction by another person, acting on non-public information obtained through a confidential employee/employer relationship, broker/customer relationship, or in breach of a pre-existing duty. It should be noted that a Person solicited to provide a two-sided block market is not deemed to be in possession of nonpublic information provided that "side of market interest" is not disclosed in the context of such solicitation.

A party acting principally in a block trade negotiation that plans on engaging in pre-hedging activity, upon request from the Exchange, must provide sufficient documentation to support that the persons employed by the party (or its affiliates) involved in the transaction were not acting in an agency capacity during the negotiation and execution of such block trade. Representations or communications by a party that appear to suggest an order is being worked on behalf of a counterparty, or block trade negotiations where the price of

the block trade is derived by the price of the party's pre-hedging activity plus a "markup" are viewed by Market Regulation to imply that such agency duties are owed to the counterparty. In such scenarios, pre-hedging is prohibited. Failure by a party to provide sufficient documentation to support its actions in a principal capacity may constitute a violation of Exchange rules, including, but not limited to, rules pertaining to acts that are detrimental to the best interests of the Exchange.

The Exchange may proceed with enforcement action when the facts and circumstances of pre-hedging suggest deceptive or manipulative conduct by any of the involved parties, including when an intermediary handling a [~~Customer~~customer] order acts against its [~~Customer's~~customer's] best interests.

This guidance only applies in the context of pre-hedging of block trades. This guidance does not affect any requirement under the CEA or Commission Regulations.

[REMAINDER OF FAQ UNCHANGED]