

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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11:05 am, Mar 16, 2015

In the Matter of:)
)

ICE Futures U.S., Inc.,)

Respondent.)

CFTC Docket No. 15 - 17

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from at least in or about October 2012 to at least May 2014 (“Relevant Period”), ICE Futures U.S., Inc. (“Respondent”) violated Commission Regulations (“Regulations”) 16.00, 16.01, and 16.02, 17 C.F.R. §§ 16.00, 16.01, & 16.02 (2014). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

ICE Futures U.S. is a designated contract market (“DCM”). As a DCM, ICE Futures U.S. is required to submit certain trading and market-related reports and data to the Commission. In particular, ICE Futures U.S. is required to submit, for each business day, clearing member reports “showing for each clearing member, by proprietary and customer account,” certain information for each future or option contract, including among other things, the quantity of contracts currently open, the quantity of contracts bought and sold throughout the day, and the quantity of delivery notices. 17 C.F.R. § 16.00. ICE Futures U.S. is also required to provide the Commission permanent record data relating to trading volume, open contracts, prices, and certain critical dates, and transaction-level trade data and related order information for each futures or options contract. 17 C.F.R. §§ 16.01 and 16.02.

Reporting is at the heart of the Commission’s market and financial surveillance programs, which are critical to the Commission’s mission to protect market participants and promote market integrity. The Commission’s market surveillance programs analyze market data to detect and prevent market disruptions and enforce speculative position limits. The Commission’s financial surveillance programs use market data to measure the financial risks that large contract positions may pose to Commission registrants and clearing organizations. All of these programs, along with much of the Commission’s other work, rely on accurate and complete market reports and data.

Throughout the Relevant Period (which consisted of approximately 325 reporting days), ICE Futures U.S. failed to meet its reporting obligations to the Commission by submitting reports and data that, in aggregate, contained thousands of errors and omissions. According to ICE Futures U.S., these errors and omissions resulted primarily from technology upgrades and data migration projects, and while they affected data provided to the Commission, they did not affect data published by ICE Futures U.S. on its website. Many of the inaccurate and incomplete reports made by ICE Futures U.S. occurred after Commission staff informed ICE Futures U.S. of the reporting problems and requested that the problems be corrected. With respect to permanent record data, ICE Futures U.S. failed to report any data (including delivery notices) for certain expiring futures contracts after the last trading day, and it reported incorrect intraday futures prices, numbers of delivery notices, option strike prices, and volumes for exchanges of futures. ICE Futures U.S. also failed to submit clearing member reports for the expiring futures contract after the last trading day, and it failed to submit any transaction-level data on six separate days for certain energy contracts.

B. RESPONDENT

ICE Futures U.S. is and was, at all times during the Relevant Period, a Delaware corporation, a board of trade designated as a contract market, and self-regulatory organization. ICE Futures U.S. is located in New York, New York and lists approximately 500 futures and

options contracts on a wide range of products, including natural gas and power, agricultural commodities, equity indexes, and currencies.

C. FACTS

1. **Regulatory Requirements for DCM Reporting**

The Commission oversees a comprehensive reporting system by which it collects information on (1) the prices and volume of trading in the different futures and options markets; (2) individual transactions in those markets; and (3) market participants. This information forms the foundation of the Commission's market and financial surveillance programs.

Each DCM is required to submit to the Commission clearing member reports for each business day. Specifically, each DCM must submit:

The following information separately for futures by commodity and by future, and, for options, by underlying futures contract (for options on futures contracts) or by underlying commodity (for other commodity options), and by put, by call, by expiration date, and by strike price: (1) The total of all long open contracts and the total of all short open contracts carried at the end of the day covered by the report . . . ; (2) The quantity of contracts bought and the quantity of contracts sold during the day of the report . . . ; (4) The quantity of purchases of futures for commodities or for derivatives positions and the quantity of sales of futures for commodities or for derivative positions . . . ; (5) For futures, the quantity of the commodity for which delivery notices have been issued by the clearing organization of the reporting market and the quantity for which notices have been stopped during the day covered by the report.

17 C.F.R. § 16.00(a) (2014). For each clearing member, therefore, each DCM must report, among other things, the number of open futures or option positions and the number of delivery notices issued or stopped. *Id.*

Each DCM also must submit to the Commission permanent record data, which consists of summary data for each futures contract, option, swap, and option on swap, including the following volume data:

(i) the option delta, where a delta system is used; (ii) the total gross open contracts for futures, excluding those contracts against which delivery notices have been stopped; (iii) for futures products that specify delivery, open contracts against which delivery notices have been issued on that business day; (iv) the total volume of trading, excluding transfer trades or office trades; . . . (v) the total volume of futures/options/swaps/swaptions exchanged for commodities or for derivative positions that are included in the total volume of trading; and (vi) the total volume of block trades included in the total volume of trading.

17 C.F.R. § 16.01(a) (2014). Permanent record data also includes specific price information, reported separately for each futures contract, "by commodity and by futures expiration," and for

each option, “by underlying futures contract[] for options on futures or by underlying commodity for options on commodities, and by put, by call, by expiration date and by strike price.” 17 C.F.R. § 16.01(b)(1)(i) & (2) (2014). Additionally, each DCM must submit, for the trading session and for the opening and closing periods of trading:

- (i) The opening and closing prices of each futures [or] option . . . ; (ii) The price that is used for settlement purposes, if different from the closing price; and (iii) The lowest price of a sale or offer, whichever is lower, and the highest price of a sale or bid, whichever is higher, that the reporting market reasonably determines accurately reflects market conditions

17 C.F.R. § 16.01(b)(2). As such, for each contract, the Commission receives information about open interest, delivery notices, and various price points.

Finally, each DCM is required to submit to the Commission certain transaction-level data daily. 17 C.F.R. § 16.02. This data gives a transaction-by-transaction picture of what occurred in each market that day. It includes all transactions that happened on any day, regardless of size.

The Commission uses the clearing member reports, permanent record data, and transaction-level data, among other things, as part of its market and financial surveillance programs, to detect and prevent situations that could pose a threat to the markets and to keep the Commission informed of significant market developments. The effectiveness of the Commission’s market and financial surveillance programs depends on accurate and timely reporting from DCMs.

2. ICE Futures U.S.’s Data Reporting Errors

Beginning as early as October 2012 and continuing throughout 2013, Commission staff identified a series of errors and omissions in ICE Futures U.S.’s clearing member reports, permanent record data, and transaction-level data. In some instances, data was missing—such as trading dates for which the Commission received no reports for ICE Futures U.S.’s energy markets. In other instances, the errors only became apparent when Commission staff discovered discrepancies between the transaction-level data and the summary data reported for certain trading days. Commission staff identified further errors by detecting differences between the data the Commission received and the data ICE Futures U.S. published on its website in its Daily Market Reports. Finally, some errors were apparent on the face of the reported data (*e.g.*, certain natural gas settlement prices in October-November 2012 were reported at 1000 times their actual level).

From October 2012 and continuing until April 2013, ICE Futures U.S. was engaged in significant technology upgrades related to the Commission’s then-upcoming requirement of a new data-reporting format and ICE Futures U.S.’s own transition of existing over-the-counter energy swaps into listed energy futures. These projects involved migrating data from ICE Futures U.S.’s old reporting system to a new system, and the associated technology upgrades introduced software logic errors that resulted in most of the reporting errors and omissions made by ICE Futures U.S. to the Commission.

These reporting errors and omissions cumulatively numbered in the thousands and affected certain data in ICE Futures U.S.'s Part 16 reports for every reporting day over the Relevant Period and included:

- reporting incorrect high/low and open/close options prices in a variety of contracts, including coffee, cocoa, sugar, cotton, frozen concentrated orange juice, and the U.S. dollar index;
- reporting incorrect settlement prices in natural gas options;
- reporting incorrect strike prices or failing to report strike prices in certain natural gas options;
- reporting inaccurate information in currency and cross-rate futures;
- reporting inaccurate delivery notices in numerous contracts, including coffee, cocoa, cotton, and frozen concentrated orange juice;
- reporting inaccurate volumes in Exchange for Related Product trades;
- failing to report any information after the last trading day for certain futures contracts, including clearing member reports for those dates; and
- failing to submit any transaction-level data for certain energy contracts.

3. ICE Futures U.S.'s Communications with the Commission Regarding Data Reporting Deficiencies

At the beginning of the Relevant Period and at various times during 2013, Commission staff notified ICE Futures U.S. about the data errors and omissions. ICE Futures U.S. responded that its data reporting deficiencies would be corrected with the conversion to the new data-reporting format that was set to be implemented by the Commission in September 2013 (but later delayed). Commission staff represented to ICE Futures U.S. that continuing to report faulty data in the interim was unacceptable. Nevertheless, ICE Futures U.S. continued to submit inaccurate and incomplete reports. Further, even after the Commission implemented the new data-reporting standards in February 2014, certain ICE Futures U.S. reports still contained previously identified data errors; although, the quality of ICE Futures U.S.'s data reports overall did improve after the data-reporting conversion.

During the Relevant Period and extending through much of the Division of Enforcement's investigation of this matter, ICE Futures U.S. did not respond in a timely and satisfactory manner to inquiries from Commission staff—including staff from the Division of Market Oversight, the Office of Data Technology, and the Division of Enforcement—about these data reporting issues. Eventually, ICE Futures U.S. did cooperate fully with the Division of Enforcement's investigation and took corrective actions to address these reporting deficiencies. The Commission has taken that cooperation and those actions into account in settling this matter.

IV.

LEGAL DISCUSSION

ICE Futures U.S. violated Regulations 16.00, 16.01, and 16.02 when it submitted inaccurate and incomplete reports and data during the Relevant Period. As described more fully in the Regulatory Requirements for DCM Reporting section above, these Regulations require a DCM to submit to the Commission daily clearing member reports (Regulation 16.00), permanent record data (Regulation 16.01), and transaction-level data (Regulation 16.02). Inherent in these requirements is the fundamental notion that all reports and data provided to the Commission must be accurate and complete. See *In re JP Morgan Securities LLC*, CFTC No. 14-19 (July 29, 2014); *In re Bielfeldt*, CFTC No. 96-1 (Feb. 12, 1999).

The accuracy and completeness of these reports and data are critical to the Commission's mission to protect market participants and to ensure market integrity. See, e.g., *In re JP Morgan Securities LLC*, CFTC No. 14-19 (July 29, 2014); *In re Newedge USA, LLC*, CFTC No. 12-06 (Jan. 9, 2012). The effectiveness of the Commission's market and financial surveillance programs, as well as other Commission work, hinge upon correct and thorough reporting data. Without accurate and complete data, the Commission's ability to detect and prevent market disruptions, to enforce speculative position limits, and to measure the financial risks that large contract positions may pose to Commission registrants and clearing organizations is compromised.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, ICE Futures U.S. violated Regulations 16.00, 16.01, and 16.02.

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 1. the filing and service of a complaint and notice of hearing;

2. a hearing;
 3. all post-hearing procedures;
 4. judicial review by any court;
 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2011), relating to, or arising from, this proceeding;
 7. any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondent violated Regulations 16.00, 16.01, and 16.02;
 2. orders Respondent to cease and desist from violating Regulations 16.00, 16.01, and 16.02;
 3. orders Respondent to pay a civil monetary penalty in the amount of \$3,000,000, plus post-judgment interest;
 4. orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.
ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent and its successors and assigns shall cease and desist from violating Regulations 16.00, 16.01, and 16.02.
- B. Respondent shall pay a civil monetary penalty in the amount of three million dollars (\$3,000,000) within ten (10) days of the date of entry of this Order (“CMP Obligation”). Post-judgment interest shall accrue on the CMP Obligation beginning ten days from the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012). Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

- If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision

shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

3. Staffing:

- a. As a condition of the services agreement between Respondent and its parent Intercontinental Exchange, Inc. ("ICE"), ICE shall create and maintain a new senior position of Chief Data Officer who will have direct responsibility for systems and procedures relating to regulatory reporting;
- b. As a condition of the services agreement between Respondent and ICE, ICE shall hire and maintain at least three additional quality assurance staff who will be dedicated to regulatory reporting. These quality assurance staff will have dual-line reporting to both the Senior Director of Quality Assurance in ICE's technology group and to ICE's Vice President of Regulation;

4. Data Reconciliation:

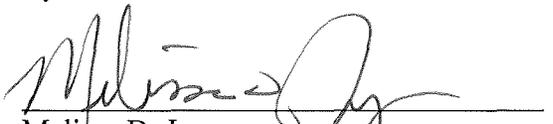
- a. Respondent shall undertake an internal review of its data submissions to the Commission for purposes of identifying violations of Regulations 16.00, 16.01, and 16.02 from February 17, 2014 to the date of this Order. This review shall consist of a statistically significant sample of data provided by Respondent to the Commission and include a reconciliation of Respondent's summary data submissions and its transaction-level data, as well as a reconciliation of all data Respondent provided to the Commission with the data published in its Daily Market Reports on its website. Respondent will produce a report detailing its findings to the Commission within six months of the date of this Order.
- b. Beginning one hundred and twenty days from the date of this Order, Respondent shall, for every reporting day: (1) capture a statistically significant number of individual product and instrument Daily Market Report files published on its website and reconcile their contents with the corresponding files provided to the Commission; and (2)(a) reconcile the data within Respondent's clearing providers' (ICE Clear U.S.'s and ICE Clear Europe's) systems and ICE's post-trade and clearing central data repository (the "Data Warehouse"); (b) reconcile relevant data between

Respondent's trading system and the Data Warehouse; and (c) reconcile relevant data between the Data Warehouse and Respondent's Part 16 reports. Respondent shall maintain logs of any error messages resulting from such reconciliations and shall provide such logs to the Commission within two business days of receipt of a request by the Commission.

5. Future Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto. This cooperation shall include correcting errors or omissions in data provided to the Commission pursuant to ICE Futures U.S.'s Part 16 obligations within one week of discovery or notification of the errors or omissions, or in the event such corrections will take more than a week's time, reporting to the Commission why additional time will be necessary.
6. Certificate of Compliance: Respondent shall submit a statement certifying compliance with the above undertakings within two weeks of completion of the undertakings.

The provisions of this Order shall be effective as of this date.

By the Commission.


Melissa D. Jurgens
Chief, Executive Secretariat Branch
Office of the Executive Director
Commodity Futures Trading Commission

Dated: March 16, 2015