



55 East 52nd Street
New York, NY 10055

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BY ELECTRONIC TRANSMISSION

Submission No. 23-109
July 6, 2023

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 Exchange Rules 4.18 and 6.08 - 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 amendments to certain of the Exchange’s recordkeeping requirements codified in Exchange Rules 4.18 and 6.08. The amendments, taken together, alter such rules to account for the use of electronically generated records, which may satisfy the Exchange’s recordkeeping requirements, while continuing to recognize the practice of utilizing written methods to satisfy the Exchange’s longstanding recordkeeping requirements. The amendments to Exchange Rules 4.18 and 6.08 are provided in Exhibit A.

a. Amendments to Rule 6.08, “Order Ticket Requirements”

The amendments to Rule 6.08 align the recordkeeping requirements for futures commission merchants, introducing brokers, and equivalent foreign intermediaries who receive customer orders with current practices (e.g. the use of instant message). Existing Rule 6.08 requires market intermediaries to prepare written order records in ink and makes reference to practices for time-stamping with timing devices that, while still used, are not the only way order records are generated. With increasing frequency, such communications are done via instant message and email. While not specifically contemplated in the existing Rule, such electronic communications appear to satisfy the Exchange’s recordkeeping requirements. As such, the amendments to the Rule incorporate such practices where order records are generated and maintained in an electronic format, in addition to the existing practice of written records. While the purpose of the Rule remains unchanged, the amendments to the Rule which are described further below provide clarity

and context to market intermediaries that have recordkeeping obligations and who use electronic means in satisfaction of such obligations.

Firstly, references to the recordkeeping requirements of Floor Brokers have been removed from Rule 6.08, as no such market participants currently exist at the Exchange.

Secondly, new paragraph (a)(i) describes examples of what is meant by an “Order Record” that may be used to satisfy the recordkeeping requirements. Specifically, the amendments to the Rule provide examples of Order Records that may satisfy the Exchange’s recordkeeping requirements, such as written order tickets in non-erasable ink, emails, instant messages, and/or other electronic records or communications. Amendments to paragraph (a)(i) also insert into Rule 6.08 a requirement from Rule 4.18 related to market intermediaries receiving orders that are immediately entered into the Exchange’s ETS. In such circumstances, an Order Record is not required to be generated, unless a suspense account is utilized for the order.

Additionally, new paragraph (a)(ii) makes clear that the information contained in an Order Record must be accurately recorded, identifiable, and unalterable; it also sets out the requirements for the content of the Order Record, including, at a minimum, that the Record contain the terms of the order and have an electronic or automated time-stamp of the date and time, to the nearest minute the order was placed, received, and executed.

New paragraph (a)(iii) mimics the language of existing paragraph (a)(i) and governs modifications of existing orders. Specifically, the paragraph provides that any corrections, additions, or changes to the terms of the order or other information originally communicated and recorded in an Order Record or entered in the ETS must be separately and contemporaneously memorialized in the existing Order Record or a new Order Record and must reflect an electronic or automated timestamp, to the nearest minute, of the time at which such correction, addition, or change occurred. The modifications must be made in a manner that does not obliterate or otherwise make illegible any of the originally recorded information. The amendment is consistent with the existing requirement that corrections or additions to information recorded on a written order record be made in a manner that does not obliterate or make illegible the originally recorded information.

New paragraph (a)(iv) makes clear that should a record produced to the Exchange be found to have been intentionally altered or modified in any respect from its original form in bad faith, or is otherwise incomplete, it shall constitute a violation of Exchange Rules.

Lastly, new paragraph (a)(v) provides that a customer account designation is not required to be recorded on an Order Record at the time the order is received, if the order is to be allocated after its execution and meets the requirements of paragraph (b) of Rule 6.08 regarding post-execution allocation. This provision mirrors the existing language of paragraph (b)(ii) of the Rule. As a result of the amendments, existing paragraph (b) will be consolidated with new paragraph (a), as there will be no distinction in recordkeeping standards among intermediaries who handle customer orders.

b. Amendments to Rule 4.18, “Order Entry”

Amendments to Rule 4.18 remove outdated references to recordkeeping practices pertaining exclusively to Floor Brokers. Additionally, amendments to new paragraph (h) of Rule 4.18 make clear that an order record must be generated if the order received is not immediately entered into the ETS. Lastly, amendments to paragraph (g)(ii) of Rule 4.18 align the legacy requirements to make a “written order ticket” with the new requirements to make an “order record.”

The Exchange is not aware of any opposing views and certifies that the amendments to Rules 4.18 and 6.08, which will become effective on July 21, 2023, or 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.

COMPLIANCE WITH RULES

The amended recordkeeping requirements will be enforced by the Exchange. The amendments will not affect the Exchange’s ability to ensure compliance with its rules and fulfill its obligations under the Act.

AVAILABILITY OF GENERAL INFORMATION

The amended recordkeeping requirements will be provided to market participants in the Exchange’s rulebook, which is publicly available on the Exchange’s website.

TRADE INFORMATION

The amended recordkeeping rules continue to require that market intermediaries maintain a record of customer orders that reflect the terms of the order, and such other information required under CFTC Regulation 38.552.

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 312-836-6745 or at patrick.swartz@ice.com.

Sincerely,



Patrick Swartz
Director
Market Regulation

Enc.

EXHIBIT A

(Additions are underlined and deletions are [~~struck through~~].)

**ICE Futures U.S.[®], Inc.
REGULATORY REQUIREMENTS**

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RECORDS

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Rule 6.08. Order [~~Ticket~~] Record Requirements

~~[(a)(i) Each Member receiving on the Floor of the Exchange a Customer's or Option Customer's order or an order from another Floor Broker who is present on the Floor of the Exchange shall immediately upon receipt thereof prepare a written record of such order in non erasable ink, including the account identification and order number, and shall record thereon, by time stamp or other timing device, the date and time, to the nearest minute, the order is received on the Trading Floor, and in addition, the time, to the nearest minute, the report of execution is made from the Trading Floor, except that such written record shall not be required if, and to the extent that, such order is in the form of a written record containing all information (except for the time of report of execution) specified herein. Corrections or additions to the information recorded on the written record of the order shall be made in a manner that does not obliterate or otherwise make illegible the originally recorded information.~~

~~(ii) Notwithstanding the provisions in subparagraph (a)(i) above, a Customer account designation is not required at the time the order is received on the Trading Floor, if the order is to be allocated after its execution and meets the requirements of paragraph (c) of this Rule.]~~

(a)(i) Each Person receiving an order from a customer shall, upon receipt, be responsible for the contemporaneous generation of a record of such order and its terms in a form acceptable to the Exchange which contains the information specified in this Rule (hereinafter referred to as an "Order Record"). The following are acceptable forms of Order Records:

(A) a written order ticket in non-erasable ink; or

(B) email(s), instant message(s) and/or other electronic record(s) or communication(s).

(For the avoidance of doubt, an electronic recording of an oral communication with only a corresponding call log is not an acceptable form of Order Record.) Notwithstanding the foregoing, a Person receiving an order shall not be required to generate an Order Record if, upon receipt, the order is immediately entered into the Exchange's Electronic Trading System (ETS), provided that a suspense account is not utilized for such order.

(ii) The information contained in each Order Record must be accurately recorded, identifiable, and unalterable. Each Order Record must include, at a minimum, the terms of the order (such as side of market, expiration, price, quantity, etc.), the account identification (if applicable), and have recorded thereon, by electronic or automated time-stamp, the date and time, to the nearest minute, the order was placed, received and executed.

(iii) Any corrections, additions, or changes to the terms of the order or other information originally communicated and recorded in an Order Record or entered into the ETS must be separately and contemporaneously memorialized in the existing Order Record or a new Order Record and must reflect an electronic or automated timestamp, to the nearest minute, of the time at which such correction, addition, or change occurred, and must be made in a manner that does not obliterate or otherwise make illegible any of the originally recorded information.

(iv) If any record produced to the Exchange is found to have been intentionally altered or modified, in any respect, from its original form in bad faith, or is otherwise incomplete, it shall constitute a violation of Exchange rules.

(v) Notwithstanding the provisions in paragraph (a)(i-iii) of this Rule, a customer account designation is not required to be recorded on the Order Record at the time the order is received, if the order is to be allocated after its execution and s complies with the requirements of paragraph (b) of this Rule.

~~[(b)(i) Each Person who is a Futures Commission Merchant, an introducing broker or an equivalent foreign intermediary receiving a Customer's or Option Customer's order shall immediately upon receipt thereof prepare a written record of such order in non-erasable ink, including the account identification and order number, and shall record thereon, by time stamp or other timing device, the date and time to the nearest minute, the order is received, and in addition, for Option Customer's orders the time, to the nearest minute, the order is transmitted for execution. When transmitting a Customer's or Option Customer's order to the Floor of the Exchange, such Person must transmit the account identification to the Member receiving the order. Corrections or additions to the information recorded on the written record of the order shall be made in a manner that does not obliterate or otherwise make illegible the originally recorded information.~~

~~-(ii) Notwithstanding the provisions in subparagraph (b)(i) above, a Customer account designation is not required at the time the order is received, if the order is to be allocated after its execution and meets the requirements of paragraph (c) of this Rule.]~~

[(e)b] Orders Eligible for Post-Execution Allocation.

(i) An order that is eligible for post-execution allocation must be an order that is placed by an Eligible Account Manager for accounts that are owned by Eligible Customers as defined by CFTC Regulation 1.35(a-1)(5)(i).

(ii) An "Eligible Account Manager" is one (1) of the following Persons who has been granted investment discretion with regard to the account of Eligible Customers:

(A) A commodity trading advisor registered with the CFTC pursuant to the Act or excluded or exempt from registration under the Act or CFTC regulations, except for entities exempt under section 4.14(a)(3) or section 4.14(a)(6) of the CFTC's regulations;

(B) An investment advisor registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law;

(C) A bank, insurance company, trust company or savings and loan association subject to federal or state regulation; or

(D) A foreign adviser that exercises discretionary trading authority solely over accounts of non-U.S. persons as defined in section 4.7(a)(1)(iv) of the CFTC's regulations.

(iii) Orders eligible for post-execution allocation must be allocated by the Eligible Account Manager in accordance with and subject to the following requirements:

(A) Allocations must be made only to the accounts of Eligible Customers;

(B) Allocations must be made as soon as practicable after the entire Transaction is executed, but in any event Eligible Account Managers must provide allocation information to Futures Commission Merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate Customer for each Trade;

(C) Allocations must be fair and equitable, and no account or group of accounts may receive consistently favorable or unfavorable treatment; and

(D) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

(iv) Eligible Account Managers shall make the following information available to Customers upon request:

(A) The general nature of the allocation methodology the Eligible Account Manager will use;

(B) Whether accounts in which the Eligible Account Manager may have any interest may be included with Customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that Customer to compare its results with those of other comparable Customers and, if applicable, any account in which the Eligible Account Manager has an interest.

(v) The following record keeping requirements apply to the post-execution allocation of orders:

(A) Eligible Account Managers shall keep and must make available upon request by the CFTC, Department of Justice, the Exchange's Compliance Department or other appropriate self-regulatory organization the information specified in subparagraph (c)(iv) of this Rule.

(B) Eligible Account Managers shall keep and make available upon request by the CFTC, Department of Justice, the Exchange's Compliance Department or other appropriate self-regulatory organization records sufficient to demonstrate that all allocations meet the standards of subparagraph (c) of this Rule and to permit the reconstruction of the handling of the order from the time of placement by the Eligible Account Manager to the allocation to individual accounts.

(C) Futures Commission Merchants that execute orders or that carry accounts eligible for post-execution allocation, and Members that execute such orders must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.

(vi) In addition to any other penalties available in accordance with the Exchange's Disciplinary Rules, the Exchange may prohibit the Eligible Account Manager from submitting orders for execution except for liquidation of open Positions and may prohibit its Members from accepting orders for execution from the Eligible Account Manager except for liquidation of open Positions, upon receipt by the Exchange of a letter, order or directive from the CFTC directing the Exchange to take such action.

* * *

Rule 4.18. Order Entry

(a) A Registered Operator entering an order, other than in a clerical capacity, on behalf of a Customer Account, other than an order for the Registered Operator's own account must have appropriate industry registration.

(b) A Registered Operator who is registered with the CFTC as a Floor Broker, associated person or in a comparable capacity under applicable law may enter discretionary or non-discretionary orders on behalf of any account of a Clearing Member with the prior approval of the Clearing Member. A Registered Operator who is registered as a Floor Broker may enter discretionary or non-discretionary orders on behalf of any Customer Account with the prior approval of such Customer.

(c) A Registered Operator who is not registered as a Floor Broker or an associated person, or in a comparable capacity under applicable law, may enter non-discretionary orders on behalf of a Customer Account. Such Registered Operator may enter discretionary or non-discretionary orders for the account of his or her employer or for his or her own account if he or she is authorized by his employer to do so and does not enter or handle Customer orders. A Registered Operator who is a clerk employed by a Floor Broker may not enter orders for an account in his or her own name or any account in which he or she has a direct or indirect interest.

(d) Registered Operators of a Floor Broker, who are not registered as associated persons with the CFTC, may enter orders on a non-discretionary basis from trading terminals located in the Floor Broker's booth on the Trading Floor using the Floor Broker's eBadge, the Registered Operator's Log-In ID and, if applicable, authorized trader ID.

(e) Orders for a Customer Account, other than an order entered by a Customer for its own account, may only be entered from:

(i) the Trading Floor of the Exchange by a Registered Operator in accordance with paragraphs (b) and (d) above; or

(ii) the premises of an entity appropriately registered to conduct Customer business by a Registered Operator who is also registered with such entity as an associated person or in a comparable capacity under applicable law.

(f) It shall be the duty of each Registered Operator to:

(i) submit orders that include his Log-In ID and, if applicable, authorized trader ID; and

(ii) input the price, quantity, Exchange Commodity Contract, expiration month, correct CTI code and appropriate account designation for each order.

(g) The account designation must be an account number, account name or other identifying notation that is uniquely tied to a specific account owner for whom the order is placed.

(i) A suspense account may be utilized at the time of order entry for bunched orders that are eligible for post-trade allocation and which are made, time-stamped and executed pursuant to and, in accordance with, Rule 6.08 and CFTC Regulation 1.35(a-1) (5), provided that the appropriate account designation is entered by the end of the Trading Session into ACT or such other system as may be designated by the Exchange from time to time.

(ii) A suspense account may be utilized at the time of order entry for any other order, provided, however, that a contemporaneous ~~[written]~~ order ~~[ticket]~~ record containing the correct account designation is made, time-stamped and maintained in accordance with Rule 6.08 and the appropriate account designation is entered, by the end of the Trading Session into ACT or such other system as may be designated by the Exchange from time to time.

~~[(h) A Floor Broker receiving an order for electronic execution on the Trading Floor shall immediately upon receipt thereof prepare a written record of such order in non-erasable ink, including the account identification, order number, the notation "ETS", and shall record thereon, by time stamp or other timing device, the date and time, to the nearest minute, the order is received on the Trading Floor, except that such written record shall not be required if, and to the extent that, such order is in the form of a written record containing all information (except for the time of report of execution) specified herein. Corrections or additions to the information recorded on the written record of the order shall be made in a manner that does not obliterate or otherwise make illegible the originally recorded information.]~~

~~[(i)h] With respect to orders received by a Registered Operator who is not a Floor Broker, or a Floor Broker's Registered Operator[, which are immediately entered in ETS and for which a suspense account is not utilized, no separate record need be made. However, if a Registered Operator] who receives an order that is not immediately entered into ETS, an order ~~[ticket]~~ record which includes the order instructions, account designation, date, time of receipt and any other information that is required by the Exchange must be made in accordance with Rule 6.08. The order must be entered into ETS when it becomes executable.~~

[REMAINDER OF RULEBOOK UNCHANGED]