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BY ELECTRONIC TRANSMISSION

Submission No. 23-112
July 12, 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: Amendment to Rule 4.06 and the Exchange for Related Position FAQ Submission Pursuant to Section 5c(C)(1) of the Act and Regulation 40.6(a)

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(C)(1) of the Commodity Exchange Act, as amended (the "Act") and Commodity Futures Trading Commission ("Commission") Regulation 40.6(a), ICE Futures U.S., Inc. ("IFUS" or "Exchange") hereby self-certifies clarifying amendments to IFUS Rule 4.06 and the Exchange's guidance on Exchange for Related Position ("EFRP") transactions, which is reflected in the Exchange's EFRP Frequently Asked Question ("EFRP FAQ"), as set forth in Exhibit A.

An EFRP involves the simultaneous exchange of an Exchange futures position for a corresponding, economically offsetting physical or over-the-counter ("OTC") position ("Related Position"). The transaction type is permitted to allow market participants to effectively manage risk arising from the Related Position, often a forward or swap contract, by offsetting such risk with an Exchange future or option contract. Specifically, the parties to the physical or OTC deal can utilize the EFRP mechanism to establish positions in an Exchange contract opposite one another using privately negotiated quantities and price levels, which are tailored to manage the risk associated with such Related Position.

Exchange procedures, which are set forth in Rule 4.06 and the EFRP Frequently Asked Questions ("FAQ") document on the Exchange website, provide for tri- party EFRP transactions when: (i) the third party is the principal to the Related Position transaction, (ii) is acting on behalf of a customer who will be a party to the futures leg of the EFRP and (iii) the Related Position transaction which the third party executes passes through to the customer that is a party to the futures leg of the EFRP.

Thus, currently, both IFUS Rule 4.06 and the FAQ require that the third-party facilitator act as a principal to the Related Position transaction on behalf of a "customer." The use of the word "customer" in this context may be read to imply that there must be some agency relationship between the facilitator and the party to the EFRP which ultimately receives the Related Position from the facilitator, which is not the case and can be confusing to market participants. Consistent with its purpose to facilitate "risk management," the essential component of a permissible tri-party EFRP is the passthrough of the Related

Position from the facilitator to the party to the EFRP so that the risk being managed is actually that of the party to the EFRP and not the facilitator. The relationship between the facilitator and the party to the EFRP is irrelevant. Accordingly, the amendments delete the word "customer" from both Rule 4.06 and the FAQ, to make clear that the third-party facilitator need not have an agency relationship with the ultimate party receiving the Related Position.

The Exchange is not aware of any opposing views and certifies that the amendments to Rule 4.01, which will become effective on July 31, 2023, comply with the requirements of the Act and the rules and regulations promulgated thereunder. Specifically, Core Principle 9 and CFTC Regulation 38.500 (as well as Regulation 1.38) expressly provide that the rules of a board of trade may authorize, for bona fide business purposes, an exchange of futures in connection with a cash commodity transaction. Tri-party EFRPs are currently permitted by the Exchange and other designated contract markets under similar circumstances. The Exchange further certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website, which may be accessed at (https://www.theice.com/futures-us/regulation#rule-filings).

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

Sincerely,

Jason V. Fusco
Assistant General Counsel
Market Regulation

Enc.

EXHIBIT A

Rule 4.06. Exchange for Related Position

(a) The following transactions shall be permitted by arrangement between the parties in accordance with the requirements of this Rule, each type of transaction being referred to as an Exchange for Related Position ("EFRP"):

(i) AA or EFP Transaction: A privately negotiated and simultaneous exchange of an Exchange futures position for a corresponding related cash position;

(ii) EFS or Exchange for Risk ("EFR"): A privately negotiated and simultaneous exchange of an Exchange futures position for a corresponding related OTC swap or other OTC instrument;

(iii) Exchange of Options for options ("EOO"): A privately negotiated and simultaneous exchange of an Exchange Option position for a corresponding related OTC option position or other OTC instrument with similar characteristics.

(b) EFRP Transaction Requirements

(i) An EFRP Transaction shall consist of two discrete but related simultaneous transactions in which one party must be the buyer of (or the holder of the long market exposure associated with) the related position and seller of the corresponding Exchange contract, and the other party to the EFRP Transaction must be the seller of (or the holder of the short market exposure associated with) the related position and the buyer of the corresponding Exchange contract. The related position must involve the commodity underlying the Exchange Futures Contract or Option (or any by-product or related product) in a quantity that is approximately equivalent to the quantity covered by the Exchange Futures Contract or Option. Exchange Traded Funds ("ETFs") are an acceptable cash or physical component of an EFP. Notwithstanding the foregoing, a third party may facilitate an EFRP by acting as the principal on the cash or OTC component of the transaction (the "Related Position") [~~on behalf of a customer~~]. Except as provided in paragraph (b)(vii)(A) below, the Related Position must pass through to the [~~customer~~] <u>Person</u> that receives the Exchange Futures Contract as part of the EFRP transaction.

(ii) Each EFRP requires a bona fide transfer of ownership of the Cash Commodity between the parties or a bona fide, legally binding contract between the parties consistent with relevant market conventions for the particular related product transaction.

(iii) The execution of an EFRP transaction may not be contingent upon the execution of another EFRP or related position transaction between the parties where the transactions result in the offset of the related position without the incurrence of market risk that is material in the context of the related position transactions.

(iv) The accounts involved in the execution of an EFRP Transaction must be (A) independently controlled with different beneficial ownership; or (B) independently controlled accounts of separate legal entities with the same beneficial ownership; or (C) independently controlled accounts within the same legal entity, provided that the account controllers operate in separate business units.

(v) The parties to an EFRP Transaction shall maintain all documents relevant to the Exchange contract and the related position including all documents customarily generated in accordance with the relevant market practices, including, as applicable, copies of the documents evidencing title to, or the contract or contracts to buy or sell, the Cash Commodity (or the by-product or related product) involved in such Transaction, and master swap agreements and any supplements thereto. Any such documents and information shall be furnished to the Exchange upon request. The carrying Clearing Member shall be responsible to provide such requested documents and EFR information on a timely basis.

(vi) EFRP Transactions executed on the Last Trading Day for any delivery month in any Sugar No. 11 or Sugar No. 16 Futures Contract must be executed and reported before the final five (5) minutes of trading.

(vii) EFPs which result in the parties immediately offsetting (i) a foreign currency cash transaction with the cash leg of a foreign currency EFP and (ii) an ICE Benchmark Administration ("IBA") London Gold Auction ("Auction") delivery obligation with the cash leg of a Gold Futures Daily Futures Contract EFP are permitted. Such transactions are not permitted for any other asset classes or Commodity Contracts.

Foreign Currency EFP Transactions

The Exchange would expect to see confirmation statements issued by the bank/foreign exchange dealer party to the Transaction. These confirmation statements should be the type normally produced by the bank/foreign exchange dealer for confirmation of currency deals and must indicate, by name or account number, the identity of the counter party principal to the Transaction. However, in circumstances where the EFP Transaction is between a bank/foreign exchange dealer and a CTA, account controller, or other Person ("Account Controller") facilitating, as principal, the cash/OTC component of the transaction, the confirmation statement issued by the bank/foreign exchange dealer or a written allocation instruction issued by the Account Controller as soon as practicable after the entire transaction is complete, must identify, at minimum, the name of the Account Controller, the name of the Carrying Clearing Member and the account number (or other account specific designation), but need not identify the customer of the Account Controller by name.

(A) Daily Gold EFP Transactions

The Exchange requires documentation to be furnished upon request evidencing the IBA matching of the parties in the Auction. Such documentation should indicate the date of the Auction, the date of delivery and amount of gold to be delivered. Documentation may be in the form of a standard confirmation statement issued by a party or may be furnished directly by IBA. A party should be able to demonstrate that it, or its Clearing Member, has the capability to settle transactions in the spot loco London gold market.

(viii) A Person providing inventory financing may enter into an AA/EFP Transaction in which there is a purchase of the storable agricultural, energy or metals commodity and the sale of an equivalent quantity of Exchange Futures Contracts and simultaneously grant to the same counterparty the nontransferable right, but not the obligation, to effectuate a second AA/EFP Transaction during a specified time period in the future which will have the effect of reversing the original AA/EFP Transaction.

(c) Reporting Requirements

The parties to an EFRP Transaction shall cause the Transaction to be identified and reported to the Exchange in accordance with such procedures as are determined by the Exchange from time to time.

(d) All Commodity Contracts effected as part of EFRP Transactions shall be cleared in the usual manner. Clearing Members are responsible for exercising due diligence as to the bona fide nature of EFRPs submitted on behalf of their Customers.

EFRP FAQ

10. How many parties participate in an EFRP transaction?

Generally, 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 Futures Contract is the seller (buyer) of the physical or OTC component of the transaction (the "Related Position"). However, a third party may facilitate an EFRP by acting as the principal of the Related Position transaction [~~for a customer~~]. Except as provided below for foreign currency transactions involving a CTA, the Related Position must pass through to the Person [~~customer~~] that receives the Exchange Futures Contract as part of the EFRP transaction.

A CTA or other account controller may facilitate, as principal, the cash/OTC component of an immediately offsetting foreign currency EFP. In such case, the CTA or other account controller must, upon request of the Exchange, furnish an agreement, account statement or other document which demonstrates that the risk of loss on the cash/OTC component would be borne by the customer of the account controller if the EFP were void as a consequence of the futures leg not clearing, in accordance with Question 14 below.