



Submission No. 23-119
September 8, 2023

Mr. Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Re: Amendments to Rules 4.08 and 6.50
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 certifies the amendments to Rules 4.08 and 6.50 set forth in Exhibit A. The amendments expressly require markets participants with Direct Access to the electronic trading system ("ETS") to execute the agreements required by the Exchange or its affiliates relating to such access and the Exchange trade data which flows through such access.¹ The amendments to Rules 4.08 and 6.50 codify the existing practices and make no changes to the substance of either Rule.

The Exchange certifies that the amendments, which will become effective on September 25, 2023, comply with the requirements of the Act and the CFTC 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 amendments comply with the following relevant Core Principles:

COMPLIANCE WITH RULES

The amendments will be enforced by the Exchange in accordance with Core Principle 2.

AVAILABILITY OF INFORMATION

As required by Core Principle 7, the text of the amended Rules will be codified in the Exchange's Rulebook and made available on the Exchange's Website.

The Exchange is not aware of any opposing views with regard to the amendments and further certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website at <https://www.theice.com/futures-us/regulation#rule-filings>

¹ The ETS utilized by ICE Futures U.S. is operated by the Exchange's parent entity. In addition, Exchange trade data on the ETS is distributed by a corporate affiliate. Accordingly, participants are required to enter into agreements with these affiliates regarding such services prior to being granted Direct Access to ICE Futures U.S.' markets.



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

Sincerely,

A handwritten signature in black ink that reads "Jason V. Fusco". The signature is fluid and cursive, with the first name being the most prominent.

Jason V. Fusco
Assistant General Counsel

Enc.
cc: Division of Market Oversight
New York Regional Office



EXHIBIT A

Rule 4.08. Access to ETS

(a) All Clearing Members are eligible for Direct Access to the ETS upon execution of a Participant Agreement and such other agreements required by the Exchange or its Affiliates relating to such ETS access.

(b) A Clearing Member may authorize any eligible Person to have Direct Access to the ETS. A Person is eligible for Direct Access to the ETS upon execution of a Participant Agreement and such other agreements required by the Exchange or its Affiliates relating to such ETS access.

[REMAINDER OF RULE UNCHANGED]

Rule 6.50. Disclosure of Information; Trade Data and Personal Data

(a) The Exchange shall not disclose any information regarding the financial condition or any Transaction, Positions, or market operations of any Member or Customer to any Person, except:

(i) to any committee, officer, employee or agent of the Exchange authorized to receive such information within the scope of its or his duties;

(ii) to any Clearing Organization;

(iii) to any third party performing a service for the Exchange, provided that such party has executed a confidentiality and non-disclosure agreement in a form approved by the Exchange;

(iv) to any duly authorized representative of the CFTC lawfully requesting the same;

(v) as may be required by legal process or by law;

(vi) as the Exchange may deem necessary or appropriate in connection with any litigation affecting it or the Clearing Organization;

(vii) in a manner in which the Member or Customer consents to such disclosure;

(viii) pursuant to the terms of an information sharing agreement with a regulatory or self-regulatory body which has been approved by the President; and

(ix) to any other Person, if, and to the extent that the Board, from time to time, may deem appropriate.

(b) Subject to each market participant's rights with respect to its own data, the Exchange shall own all rights, title and interest, database rights and trade secret rights in and to all trade data and related information submitted in connection with trading on the Exchange and which is not collected or received for the purpose of fulfilling regulatory obligations of the Exchange. The Exchange has the exclusive right to use, distribute, sub-license, disclose and sell anonymized trade data and derivative works in any manner, media and jurisdiction. Market participants shall not redistribute trade data or derivative works based thereon unless licensed by the Exchange. The restriction on redistribution shall not apply to a market participant's own data. Market participants with Direct Access to the ETS pursuant to Rule 4.08 shall execute such



agreements as may be required by the Exchange or its Affiliates relating to the receipt and use of Exchange trade data.

(c) Proprietary data or personal information collected or received by the Exchange for the purpose of fulfilling regulatory obligations (“Regulatory Data”) shall not be disclosed publicly other than on an aggregated or anonymized basis, or in a manner that does not directly or indirectly identify any market participant who has submitted such data. Regulatory Data may not be used by the Exchange for business and marketing purposes unless the market participant has clearly consented to the use of such data in such manner. Access to the Exchange shall not be conditioned upon a market participant’s consent to the use of Regulatory Data for business or marketing purposes. Nothing in this Rule shall preclude the Exchange from disclosing Regulatory Data pursuant to paragraph (a) above.

(d) Treatment of Personal Data relating to Individuals in the European Union:

(i) For the purpose of this paragraph, the terms "Process" (and derivations thereof), "Personal Data", "Data Subject" and "Controller" shall have the meaning given to such terms in the General Data Protection Regulation (EU) 2016/679 and the term “Member” includes market participants, whether or not they have become members of the Exchange.

(ii) For the purpose of this paragraph, the term “Member/User Privacy Notice” means the document setting forth how the Exchange will use any Personal Data (as defined in the General Data Protection Regulation (EU) 2016/679) received concerning Members, and other users.

(iii) The Exchange is a Controller with respect to Personal Data provided to it by Members, their clients and representatives and may collect and use Personal Data for the purposes of fulfilling contractual obligations and operating in accordance with Exchange Rules, CFTC regulations and the Act.

(iv) Each Member shall ensure that: in respect of any Personal Data that it provides to the Exchange it has a lawful basis for processing the relevant Personal Data in this manner.

(v) Each Member and the Exchange:

- (A) acknowledges that the recording of conversations between the trading, clearing and other relevant personnel of the Member and/or its affiliates and the Exchange in connection with the Rules and any Contract, potential Contract, or Transaction will take place to the extent permitted or required under applicable laws;
- (B) agrees, to the extent permitted by applicable law, that recordings may be submitted as evidence in any dispute;
- (C) acknowledges that the other provisions of this paragraph shall apply to any such recordings made by the Exchange; and
- (D) consents to such disclosures being made in accordance with Exchange Rules and as required under applicable laws including, without limitation, CFTC regulations and the Act.

