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BY ELECTRONIC TRANSMISSION

Submission No. 18-325

April 6, 2018

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 Rules 4.02 and 21.02
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 amendments set forth in Exhibit A, to: (i) Rule 4.02(k), to add an “intent” requirement that must be met before a violation of the Rules regarding the submission of crossing orders can be sustained; and (ii) Rule 21.02(e) which change the list of infractions for which the Exchange can issue summary fines.

Amendment to Rule 4.02(k)

Exchange Rules permit market participants to engage in pre-execution communications with each other to discern interest and arrange block or cross trades for submission to the trading platform. Any transactions arising from such communications must either be executed as a block trade¹ or by a cross trade. A cross trade must be executed by submission of a Crossing Order (“CO”) to the platform. The CO triggers a Request For Quote (“RFQ”) message for the respective future, option or combination; the RFQ remains exposed to the market for a prescribed time period of 5 seconds before the platform seeks to execute the cross trade. Submission of a CO allows other traders to participate and better the price at which the CO otherwise would transact. The opportunity to improve upon the price is intended to comply with

¹ Transactions submitted as block trades must meet all specified requirements in Exchange Rule 4.07 and the Exchange’s Block FAQ.

CFTC Regulation 1.38 which requires open and competitive trading except for specified transactions which are permitted to be privately negotiated, such as block trades.

Currently, Exchange Rule 4.02(k)(2)(E) prohibits the parties who submit a CO from entering additional RFQs while the RFQ from the CO is still live (i.e. during the 5 second request period.) The prohibition is intended to prevent participants from entering COs and RFQs to distract other market participants from the RFQ that is pending. The vast majority of violations of the prohibition on placing additional RFQs identified by the Exchange have been unintentional. While the Exchange's Market Regulation Department has identified a handful of instances where a party to a cross trade has entered RFQs with the apparent intent to divert attention away from the pending CO, these violations are generally inadvertently committed by traders who are legitimately trying to trade other strategies or trade in different, unrelated markets. Furthermore, with the increase in the use of automated trading systems that react to numerous markets in milliseconds, attempts to create a distraction by entering additional RFQs while a CO is pending may not have the desired impact.

As such, the Exchange is amending to Rule 4.02(k)(2)(E) to add a scienter requirement. In order to violate the amended rule, the parties to the CO will have to enter the subsequent RFQ with the intent to divert attention of other participants away from the pending CO. The Exchange believes this requirement is consistent with the purpose of Rule 4.02(k)(2)(E) and will also remove impediments to legitimate trading during the pendency of an CO.

Amendments to Rule 21.02(e)

As a corollary to the foregoing amendment, the Exchange is also amending Rule 21.02(e), to eliminate the authority of the Vice President of Market Regulation to issue summary fines for violations of Rule 4.02(k)(2)(E). The type of misconduct which is subject to summary fining involves violations which are readily discernable as noncompliant without the exercise of any judgment or discretion. With the addition of a scienter requirement, violations of Rule 4.02(k)(2)(E) would no longer be readily discernable and apparent infractions should be presented to the Exchange's Business Conduct Committee ("BCC") for adjudication.

Lastly, the Exchange is also amending Rule 21.02(e) to add additional infractions to the list of offenses for which summary fines may be issued. The amendments will allow summary fines for two additional types of violations:

1. Failure to obtain consent from a customer prior to engaging in pre-execution communications on the customer's behalf [Exchange Rule 4.02(k)(2)(A)]; and
2. Failure to submit a Crossing Order to the platform to execute a transaction arising from pre-execution communications [Exchange Rule 4.02(k)(2)(D)].

These additional violations are readily discernible as noncompliant, and for that reason it is inefficient to burden the Market Regulation Staff and the BCC with the prosecution and adjudication such incidents. If, in a particular case, the violation is significant or there is a

chronic problem with a particular firm or individual, the matter can always be referred to the BCC for more significant action.

The Exchange is not aware of any opposing views and certifies that the amendments to Rules 4.02 or 21.02, which will become effective on April 23, 2018, comply with the requirements of the Act and the rules and regulations promulgated thereunder. In particular, the amendments comply with Core Principles 2 (Compliance with Rules) 9 (Execution of Transactions) 12 (Protection of Markets and Market Participants) and 13 (Disciplinary Procedures). As explained above, the amendments to Rule 4.02(k)(2)(E) allow legitimate trading without compromising the purpose of the rule, which is to prohibit participants from diverting attention of other participants from a pending CO. In this regard, the amended Rule remains consistent the requirements of Core Principle 9, competitive, open and efficient markets, Core Principle 12, fair and equitable trading; and Core Principle 2, the prohibition of abusive trading practices. Furthermore, the amendments to Rule 21.02 comply with Core principle 13 as the imposition of minor sanctions for minor readily apparent violations is consistent with the Commission's guidance in Appendix B to Part 38.

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,

A handwritten signature in black ink, appearing to read "Jason V. Fusco". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Jason V. Fusco
Assistant General Counsel
Market Regulation

Enc.
cc: Division of Market Oversight

EXHIBIT A

Rule 4.02. Trade Practice Violations

In connection with the placement of any order or execution of any Transaction, it shall be a violation of the Rules for any Person to:

(k) Engage in pre-execution communications, except in accordance with the following procedures:

(1) For the purposes of this Chapter, pre-execution communications shall mean communications between two (2) market participants for the purpose of discerning interest in the execution of a Transaction prior to the terms of an order being entered on the ETS and visible to all market participants on the electronic trading screen.

(2) A market participant may engage in pre-execution communications with regard to Transactions executed on ETS where a market participant wishes to be assured that another market participant will take the opposite side of an order under the following circumstances:

- (A) If a Customer order is involved, the Customer has previously consented to such communications being made on its behalf;
- (B) A party to pre-execution communications shall not disclose the details of such communications to any Person who is not a party to the communications;
- (C) A party to pre-execution communications shall not enter an order to take advantage of information conveyed during such communications, except in accordance with this Rule;
- (D) Each order that results from pre-execution communications must be executed by entry into ETS of a CO consisting of both the buy and sell orders, and
- (E) Once the terms of a CO have been agreed to, the parties may not delay entry of the CO and may not enter a Request for Quote (“RFQ”) [~~until the CO is transacted~~] with the intent to distract other participants from the pending CO.

[REMAINDER OF RULE UNCHANGED]

Rule 21.02. Compliance Staff — Powers and Duties

(e) Notwithstanding the provisions of paragraph (d) of this Rule, the Vice President or his designee may issue a warning letter or impose a summary fine of no more than ten thousand dollars (\$10,000) upon

a Member or other market participant in any case in which it is concluded that there may have been a violation of:

- (i) any record keeping rule;
- (ii) Rule 4.02(g)(2) or (g)(3);
- (iii) Rule 4.02(k)(2)(A) or (D)~~(E)~~
- (iv) Rule 4.07 (a), (b) or (c);
- (v) Rule 6.15(a), (b), (d)(1), (d)(2), (d)(3) or (d)(4);
- (vi) Rule 2.22 or Rule 18.05(a) or (d);
- (vii) Rule 4.37(a)(i);
- (viii) paragraph (a), (b) or (c) of Rule 4.15;
- (ix) Rule 21.04, by failing to produce documents, books or records, within the time period prescribed by the Exchange; or
- (x) 4.19 (a) through (e).

The authority to impose such a warning letter or summary fine does not limit the Vice President's authority to refer the matter to the BCC instead of imposing such sanction. A summary fine imposed in accordance with this paragraph shall become final and effective and payment shall become effective fifteen (15) calendar days after receipt. A Member or non-member market participant may present evidence to the Market Regulation Department and request the summary fine be rescinded or reduced during the fifteen (15) calendar day period until the fine has become effective. The decision to cancel, modify or affirm a summary fine imposed in accordance with this paragraph shall be made at the sole and absolute discretion of the Vice President or his designee.