August 13, 2019

NOTICE

Amendments to ICE Futures U.S. Rule 4.02(k)(2)(D) and Pre-execution Communication FAQ

Beginning with the start of trading on August 23, 2019, the Exchange is implementing an amendment to Rule 4.02 and the Exchange's Pre-Execution Communication FAQ ("FAQ') to allow a participant to an options cross trade to immediately enter an order in a related market to hedge its exposure after agreeing to the cross trade. Specifically, the Exchange is amending Rule 4.02(k)(2)(D) to allow participants to an options Crossing Order ("CO") to enter an order in a related market to manage their risk immediately after they agree to the cross trade. This will allow the involved parties to manage risk in the related futures market or a related options market.

However, the amendments to Rule 4.02(k)(2)(D) and a corresponding amendment to the FAQ prohibit an intermediary that has brokered a cross-trade between a customer and an account in which the intermediary has a direct or indirect interest from hedging before the CO has fully transacted on the trading platform.

The text of the amendments to the Rule and FAQ follows below.

FOR MORE INFORMATION

Shawn Somers
shawn.somers@theice.com
(212) 748-4025

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 Options order that results from pre-execution communications must be executed by entry into the ETS of a CO consisting of both the buy and sell orders. <u>A party that has agreed to an Options CO resulting from pre-execution communications may enter an order in a related market to hedge the risk associated with the pending CO, except for an intermediary taking the opposite side of its own Customer order. The CO must transact in the ETS before an order to hedge may be entered for: (i) any account in which the intermediary has a direct or indirect interest; or (ii) the account of any Person(s) that holds a relationship to the intermediary of a type enumerated in the definition of "proprietary account" in CFTC Regulation 1.3.</u>

(E) Each Futures order that results from pre-execution communications may be entered as a CO, which contains both the buy and sell order; or by separately entering one order and allowing it to be exposed on the ETS for a minimum of five (5) seconds before entering the opposing order.

(F) 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") with the intent to distract other participants from the pending CO

[REMAINDER OF RULE UNCHANGED]

****

Pre-Execution Communications FAQ

Question 3:

Q. If a Person has participated in a pre-execution communication where non-public information has been disclosed about an order or a potential order, may such Person subsequently enter an order into the market to take advantage of the non-public information derived during the communication?

A: No. However, an exception exists in the case of parties to an option CO. Such parties may hedge the risk associated with a pending Option CO by entering a risk-mitigating order in a related market as soon as they have agreed to the CO, except for an intermediary taking the opposite side of its own Customer order. In such instances, the CO must transact in the ETS before an order to hedge may be entered for: (i) any account in which the intermediary has a direct or indirect interest; or (ii) the account of any Person(s) that holds a relationship to the intermediary of a type enumerated in the definition of "proprietary account" in CFTC Regulation 1.3. Exchange Rules 4.02(h) and 4.03 prohibit intermediaries from front running and/or trading ahead of an executable customer order. Further, it shall be a violation of Exchange Rule 4.02(h) for any Person to engage in the front running of a CO when acting on material non-public information regarding an impending transaction by another person, acting on non-public information obtained through a confidential employee/employer relationship, broker/customer relationship, or in breach of a pre-existing duty.

The Exchange may proceed with enforcement action when the facts and circumstances of the pre-cross hedging suggest deceptive or manipulative conduct by any of the involved parties, including when an intermediary handling a Customer order acts against its Customer's best interests.

*The submission of a CO does not guarantee a fill as it will interact with the central limit order book based on the prescribed CO functionality, leaving the potential for a non-hedged position

[REMAINDER OF FAQ UNCHANGED]