

**NOTICE**

October 28, 2010

**Summary of Content:**

Amendments to Electronic Trading Rule 27.22 permitting pre-execution communications for trades on the electronic trading system.

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**Pre-Execution Communications**

Amendments to Electronic Trading Rule 27.22 will become effective in two stages. On **November 15, 2010**, the amendments will become effective for the Russell, Currency and USDX<sup>®</sup> futures and options contracts; and on **November 22, 2010**, the amendments will become effective for all of the agricultural futures and options contracts (Cocoa, Coffee “C”<sup>®</sup>, Cotton No. 2<sup>®</sup>, FCOJ, Sugar No. 11<sup>®</sup>, Sugar No. 16 and the Commodity Indexes). The amendments permit pre-execution communications for futures and options transactions made on the electronic trading system (“ETS”) in all ICE Futures U.S. products. Transactions arising from pre-execution communications must be executed in accordance with the requirements set forth in amended Rule 27.22. Such requirements are fully described below and in the FAQ which can be found at

[https://www.theice.com/publicdocs/futures\\_us/Pre\\_execution\\_Communication\\_FAQ.pdf](https://www.theice.com/publicdocs/futures_us/Pre_execution_Communication_FAQ.pdf)

It should be noted that the amendments to Rule 27.22 only apply to electronic trading. Pre-execution communications are still prohibited in open-outcry trading executed on the trading floor.

**General Requirements**

Pre-execution communications are defined as 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. A market participant may engage in pre-execution communications when a market participant wants to be assured that another market participant will take the opposite side of his order.

Any Person who engages in pre-execution communications on behalf of a Customer must obtain the prior consent of the Customer before engaging in such communications and be able to produce records demonstrating compliance with the consent requirement.

Any Person who engages in pre-execution communications may not disclose the details of such communications to Persons not involved in such communications nor enter an order to take advantage of information conveyed during such communications, except to facilitate execution of the transaction in accordance with

Rule 27.22.

**Pre-Execution Communications in Futures**

For transactions in futures products which involve pre-execution communications, the order of the initiator of the pre-execution communication (the “first order”), i.e., the market participant who is seeking assurance that another market participant will take the opposite side, must be entered into ETS first and the other market participant’s order (the “second order”) may not be entered into ETS until a period of five (5) seconds has elapsed from the time of entry of the first order. However, when only one side of a futures transactions is for a Customer order and pre-execution communications have taken place, the customer order must be the first order entered into ETS and the required time must elapse prior to the entry of the order for the opposite side.

**Pre-Execution Communications in Options (which includes Combination Transactions)**

For transactions in options products which involve pre-execution communications, a Crossing Order (“CO”) that contains the buy and sell orders arising from the pre-execution communication must be entered into ETS using WebICE or FIX API. The CO is one of the selections located on the Request for Quote/Crossing Order (“RFQ/CO”) screen. When submitted, CO must be selected. Upon submission of a CO, ETS will automatically create and publish an RFQ for the option contract or option strategy contained in the CO and expose the RFQ to the electronic marketplace. The RFQ will indicate the option or option strategy and the quantity the market participant is interested in trading, but will not indicate price. Any bids or offers in response to an RFQ are immediately tradable by all market participants.

ETS, then, will automatically activate the CO once the appropriate number of seconds has elapsed from the entry of the CO. In the case of equity Options, the CO will automatically be activated five (5) seconds after entry of the CO. In the case of all other Options, the CO will automatically be activated fifteen (15) seconds after entry of the CO.

The orders comprising the CO will have a matching price and quantity. Once activated, the CO will be evaluated against the best prices in the order book. For purposes of determining priority in the order book, the CO will be considered to have been entered as of the time it was submitted to ETS. If the CO price improves the best bid and the best offer in the order book or if there is no bid/offer, 100% of the CO quantity will match at the CO price immediately upon activation. If the CO price improves

the best bid but there is a better offer or offers, the buy side of the CO will be executed first against such better offer or offers and then subsequently against the sell side of the CO if any residual quantity on the buy side remains. Similarly, if the CO price improves the best offer but there is a better bid or bids, the sell side of the CO will be executed first against such better bid or bids and then subsequently against the buy side of the CO if any residual quantity on the sell side remains. If after matching, there is remaining quantity on either the buy or sell side of the CO, such remainder will be cancelled.

It should be noted that only by selecting CO on the RFQ/CO screen will the order crossing process be activated. If RFQ is selected, then no CO will be activated, and the orders cannot be executed.

Once a transaction has been agreed upon using pre-execution communications, the agreed upon CO must be entered into the ETS immediately with no delay, and the parties may not enter any RFQ until the CO has been transacted.

These procedures ensure transparency and competitive execution by ensuring the solicitation of interest from all market participants via an RFQ before the CO is automatically activated and executed.

Since pre-execution communications in options require the entry of a CO to remain in compliance with Rule 27.22, at least one of the persons engaging in pre-execution communications involving options must be able to enter the required CO or have another party enter the required CO on their behalf.

COs are supported on WebICE and by numerous Independent Software Vendors that support RFQ and CO functionality. For information on ISV support contact your ISV directly or Jeanette Pasciolla at [jeanette.pasciolla@theice.com](mailto:jeanette.pasciolla@theice.com) or at 212-938-3957.

The text of amended Rule 27.22 follows below. If you would like a copy showing language additions and deletions, contact the Corporate Secretary's Office at 212.748.4082.

### **Rule 27.22. Pre-Execution Communications**

(a) 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.

(b) 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:

(i) Any Person who engages in pre-execution communications on behalf of a Customer may do so only when the Customer has previously consented to such communications being made on its behalf;

(ii) Any Person engaged in pre-execution communications shall not (A) disclose to a Person not involved in such communications the details of such communications or (B) enter an order to take advantage of information conveyed during such communications, except in accordance with this Rule;

(iii) In the case of futures orders, subsequent to the pre-execution communication, the order of the market participant who initiated the pre-execution communication (the “first order”) must be entered into ETS and the other market participant’s order (the “second order”) may not be entered into ETS until a period of five (5) seconds has elapsed from the time of entry of the first order; provided however, that, if only one side of the futures transaction is for a Customer, the Customer’s order must be the first order submitted to ETS;

(iv) In the case of Option orders, a Transaction cannot be executed following a pre-execution communication unless a Crossing Order (“CO”) which contains both the buy and sell orders is entered into ETS. Once the terms of a CO have been agreed, the parties may not delay entry of the CO and may not enter a Request for Quote (“RFQ”) until the CO is transacted.

(c) Pre-execution communications are prohibited in connection with Transactions executed by open outcry on the Trading Floor.