

July 16, 2019

IFUS Amends Rule 4.07 and Block Trade FAQ to Expand the Range of Market Participants Eligible to Engage in Block Trades

ICE Futures U.S., Inc. (“IFUS” or “Exchange”) is amending Rule 4.07 and the Exchange’s Block Trade FAQ to include as eligible block trade participants certain individuals and entities that meet the threshold of a qualified eligible person (a “QEP”) under CFTC regulation 4.7, as described below. The amendments will become effective for trade date July 29, 2019, subject to the completion of the regulatory review period under CFTC regulations. The Exchange rule submission can be found [here](#).

Core Principle 9 and CFTC Regulation 1.38 permit exchanges to establish the rules under which trades may be executed away from the centralized market. Currently, block trades may be executed on IFUS by eligible contract participants (“ECPs”), as such term is defined in the Commodity Exchange Act, as amended. The Exchange Rule amendments expand the categories of market participants that are eligible to engage in block trades on IFUS to include traders that are not encompassed by the ECP definition but who clearly possess the expertise to participate in privately negotiated futures transactions (subject to the approval of their FCM).

Specifically, the amendments to Exchange Rule 4.07 and FAQ allow the following additional participants to engage in block trades on the Exchange:

I. Non-U.S. Persons

Non-US persons, as defined in CFTC Regulation 4.7, may execute block trades without meeting any specific income, asset, portfolio or other requirement. The amendments to the Exchange Rule would allow the following additional persons, among others, to execute block trades:

- 1-Natural persons not resident in the US,
- 2-Corporations, partnerships and other entities organized under the laws of a foreign jurisdiction with their principal place of business in a foreign jurisdiction,
- 3-Estates or trusts, the income of which is not subject to US income tax, and
- 4-Employee pension plans of entities organized and having their principal place of business outside of the U.S.

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II. Other QEPs:

The amendments to Rule 4.07 and the FAQ also permit the following additional persons, who, at the time they first enter into a block trade: (i) meet at least one of the financial requirements specified in Paragraphs 1-3 below; and (ii) satisfy at least one of the portfolio requirements set forth in CFTC Regulation 4.7:

Financial Requirements

1. a corporation, business trust, partnership, limited liability company or similar business venture (other than a commodity pool), which has **total assets** in excess of \$5 million.
2. a natural person with **net worth**, or joint net worth with a spouse, that qualifies as an accredited investor (“AI”) under SEC regulation 501(a)(5). The AI net worth qualification test is \$1 million.
3. an individual that would qualify as an AI under the **income test** of SEC regulation 501(a)(6). The AI income qualification test is \$200,000 income in the prior 2 years (or \$300,000 if joint with spouse) along with a reasonable expectation of earning the same in the current year.

Portfolio Requirements

As stated above, traders who qualify under one of the forgoing financial requirements would also need to meet one of three **portfolio requirements** derived from CFTC Regulation 4.7 (with minor contextual modifications). These portfolio requirements can be summarized as follows:

(i)-the trader owns securities and other investments with an aggregate market value of \$2 million, or

(ii)-the trader has had on deposit with an FCM for their own account at any time during the 6 months preceding the date of *the first block trade*, at least \$200,000 initial margin and option premiums together with required minimum security deposits for retail forex transactions for commodity interest transactions; or

(iii) -the trader meets a combination of the alternatives in (i) and (ii) above, such that the sum of the amounts from both alternatives, when expressed as a % of the minimum \$ requirement specified in each alternative, equals 100% (e.g., \$1 million in securities owned and \$100,000 in futures margin and premiums).

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A Clearing Member carrying an account for which a block trade is executed is responsible, under Rule 4.07, for exercising due diligence to determine the customer is eligible to engage in such trades.

FOR MORE INFORMATION

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The text of the amended rule follows below:

Rule 4.07. Block Trading

(a) Privately negotiated Transactions may be entered into with respect to Commodity Contracts designated by the Exchange for such purpose (hereinafter referred to as "Block Trades"), provided that all of the following conditions are satisfied:

(i) Each party to a Block Trade must be:

(A) an eligible contract participant as that term is defined in Section 1a(18) of the Act; *provided that*, if the Block Trade is entered into on behalf of Customers by (1) a commodity trading advisor registered under the Act ("CTA"), including without limitation any investment advisor registered as such with the Securities and Exchange Commission that is exempt from regulation under the Act or CFTC regulations ("Exempt Investment Adviser"), with total assets under management exceeding US \$25 million, or by (2) a foreign entity performing a similar role or function to a CTA or investment advisor that is subject to foreign regulation ("Foreign Adviser"), with total assets under management exceeding US \$50 million, the individual Customers need not so qualify, or

(B) a corporation, business trust, partnership, limited liability company or similar business venture (other than a commodity pool), which, at the time of entering into the first block trade on the Exchange, has total assets in excess of \$5 million and meets one of the portfolio requirements specified in CFTC Regulation 4.7(a)(1)(v), or

(C) a natural person whose individual net worth, or joint net worth with that person's spouse, at the time of entering into the first block trade on the Exchange, would qualify the individual as an 'accredited investor' as defined in SEC Rule 230.501(a)(5) and who meets one of the portfolio requirements specified in CFTC Regulation 4.7(a)(1)(v); or

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(D) a natural person whose income, at the time of entering into the first block trade on the Exchange, would qualify the individual as an ‘accredited investor’ as defined in SEC Rule 230.501(a)(6) and who meets one of the portfolio requirements specified in CFTC Regulation 4.7(a)(1)(v), or

(E) a ‘Non-United States person’, as such term is defined in CFTC Regulation 4.7(a)(1)(iv).

(ii) Each buy or sell order underlying a Block Trade must:

(A) state explicitly that it is to be, or may be, executed by means of a Block Trade; and

(B) be for at least the applicable minimum threshold as specified by the Exchange; *provided that* only a CTA, including without limitation an Exempt Investment Adviser, with total assets under management exceeding US \$25 million or a Foreign Adviser with total assets under management exceeding US \$50 million, may satisfy this requirement by aggregating orders for different accounts.

(iii) The price at which a Block Trade is executed must be fair and reasonable in light of (A) the size of such Block Trade, (B) the price and size of other Trades in the same contract at the relevant time; and (C) the price and size of Trades in other relevant markets, at the relevant time.

(iv) Block Trades shall not set off conditional orders, including but not limited to, stop orders, limit orders or market-if-touched orders, or otherwise affect orders in the regular market.

(v) Block Trades executed on the Last Trading Day for any delivery month in Sugar No. 11 Futures Contract must be executed and reported before the final five (5) minutes of trading.

(b) Block Trades may be executed in Exchange Futures and Options Contracts as determined by the Board and must meet the applicable minimum thresholds for such contracts as determined by the Board from time to time.

(c) The parties to a Block Trade shall cause the Transaction to be reported to the Exchange in accordance with such procedure as are determined by the Exchange from time to time.

(d) A Clearing Member carrying an account for which a Block Trade is executed is responsible for exercising due diligence to determine that the requirements of paragraph (a)(i) of this rule are satisfied.

(e) Block Trades may not be used to establish positions upon which a cash and carry exemption request made in accordance with Rule 6.29 is based.

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