

ADVISORY ON DUTY TO SUPERVISE - AMENDMENT TO RULE 4.01

Effective January 1, 2020¹ ICE Futures U.S. (“IFUS” or “Exchange”) is implementing an amendment to Rule 4.01 which specifies, in broad terms, the key elements of a satisfactory program of supervision. Firms conducting business on the Exchange have long been required to diligently supervise the Exchange-related activities of their employees and agents pursuant to IFUS Rule 4.01(a). A firm which fails to demonstrate adequate policies and procedures based on the nature and size of its Exchange-related activities has always been subject to disciplinary sanction for that deficiency separate and apart from any potential substantive rule violations.

The amendment adds new paragraph (b) to Rule 4.01 to provide guidance on how firms should discharge their supervisory duty. Specifically, the amendment requires firms to establish, administer and enforce systems, policies and procedures based on the nature and size of their Exchange-related activities, which are reasonably designed to achieve compliance with Exchange Rules. The amendment to Rule 4.01 is being made to more particularly set forth what is expected by the Market Regulation staff and to remind market participants that the adoption of written supervisory policies, alone, is not sufficient to discharge a firm’s supervisory duty under Rule 4.01(a). While detailed written policies are a starting point, such policies, standing alone, do little to instill a culture of compliance without other measures like training, monitoring and enforcement of those policies. The Exchange believes that a firm doing business on the Exchange should, at a minimum, endeavor to: (i) periodically train its employees/agents regarding Exchange Rules and Rule changes; (ii) regularly monitor its employees/agents activities for compliance with both its internal policies and procedures and Exchange Rules; (iii) review and investigate any apparent issues; and (iv) take corrective action to address any identified instances of noncompliance by its employees/agents.

It should be noted that the Exchange’s expectations under new Rule 4.01(b) are qualified. The Rule amendment requires supervisory systems, policies and procedures which are based on the size and nature of the firm’s Exchange-related business. The Exchange is not adopting a “one-size fits all” approach to supervision. For example, while regular manual review and monitoring of an employee’s trading activity may be perfectly sufficient for a proprietary trading firm with 5 traders, a larger proprietary firm with 50 traders may require an automated solution to effectively review and monitor employee activity. Firm’s engaged in voice brokerage may require more frequent training on Exchange Block Trade procedures than an end user placing orders through such a voice broker. Market Regulation recognizes that the reasonableness of any program will depend on the size and nature of the firm’s Exchange activity. The expectation is that larger firms and firms acting as intermediaries will have more sophisticated and extensive resources dedicated to their supervisory programs.

A copy of Rule 4.01 which includes the amendments follows below:

Rule 4.01. Duty to Supervise

(a) Every Person shall diligently supervise the Exchange-related activities of such Person's employees and agents. For purposes of this Rule, the term “agent” includes any Exchange-related activities associated

¹ Pending any required regulatory approvals.

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with automated trading systems that generate, submit and/or cancel messages without human intervention. Every Person shall also be responsible for the acts and omissions of such employees and agents.

(b) Each Firm shall establish, administer and enforce supervisory systems, policies and procedures, based on the nature and size of its Exchange-related activities, which are reasonably designed to achieve compliance with Exchange Rules.

(c) Each Member and Member Firm which employs a Clerk must be present or have a Member who is either an associate of the Brokers Association or Member Firm that employs such Clerk present on the premises occupied by the Exchange at all times during which such Clerk is engaged in Exchange-related activities.

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Key Information Documents for certain products covered by the EU Packaged Retail and Insurance-based Investment Products Regulation can be accessed on the relevant exchange website under the heading "Key information Documents (KIDS)," commencing January 1, 2019.