



**BY ELECTRONIC TRANSMISSION**

Submission No. 14-34  
April 22, 2014

Ms. Melissa Jurgens  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**Re: Amendments to Pre-Execution Communication FAQ  
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)**

Dear Ms. Jurgens:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6(a), ICE Futures U.S., Inc. (“Exchange”) self certifies clarifying amendments to the Exchange’s Pre-Execution Communication FAQ (“FAQ”), as set forth in Exhibit A.

In accordance with Exchange Rules, all orders which result from pre-execution communications that are submitted to the electronic trading system (“ETS”) for execution, must be entered as a cross trade using the Crossing Order (“CO”) functionality. Entry of the CO onto the ETS will trigger a Request For Quote (“RFQ”) message to the market soliciting bids and offers for the relevant futures for the contracts being crossed and will trigger the start of an automatic waiting period before the CO will be executed. During that waiting period while the CO is being executed, the parties to the transaction are prohibited from engaging in certain activities under Exchange rules.

Currently, the FAQ provides that parties to a cross trade are prohibited from entering better bids and offers in the contract(s) while the CO transacts. Such activity is prohibited under Rule 4.02(m)(2)(C), which provides that the parties to pre-execution communications may not enter orders that take advantage of information obtained through the pre-execution communication, such as the price at which the CO will execute. The amendment to question 13 of the FAQ expressly provides that if a party to the CO enters a bettering bid or offer it is a violation of that Rule.

Question 14 of the FAQ is being amended to conform with Exchange Rule 4.02(m)(2)(E), which provides that the parties to a CO may not submit RFQs while the CO is transacting. This prohibition is in place to prevent the parties from diverting the attention of potential participants away from a pending CO. Question 14 of the FAQ currently does not track the language of the rule and limits the prohibition to the submitter of the CO rather than applying it to the parties.

Additional amendments to the FAQ update cross references to Exchange rules that recently were

moved and renumbered.

The amendments will become effective on May 7, 2014. The Exchange certifies that the amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. The Exchange has reviewed the designated contract market core principles ("Core Principles") as set forth in the Commodity Exchange Act.

The Exchange is not aware of any substantive opposing views expressed with respect to this filing and certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website and may be accessed at (<https://www.theice.com/notices/RegulatoryFilings.shtml>).

If you have any questions or need further information, please contact me at 212-748-4021 or at [jason.fusco@theice.com](mailto:jason.fusco@theice.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Jason V. Fusco", written in a cursive style.

Jason V. Fusco  
Assistant General Counsel  
Market Regulation

Enc.

cc: Division of Market Oversight  
New York Regional Office

## **EXHIBIT A**

(In the text of the amendments below, additions are underlined and deletions are bracketed and lined out.)



# **Pre-Execution Communications FAQ**

**April, 2014**

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## **PRE-EXECUTION COMMUNICATIONS FAQ**

ICE Futures U.S. Inc. Rules permit pre-execution communications in all Exchange products, subject to the provisions of Rules [27.21] 4.02(i)<sup>1</sup> and [27.22] 4.02(m)<sup>2</sup>. This document is intended to provide information on the permission required to allow pre-execution communication on behalf of a customer, and on how orders resulting from pre-execution communication must be executed on the electronic trading system (“ETS”). (Please note that requirements vary depending on the product).

### **Required Permission and restrictions for Pre-Execution Communications**

1. Is a customer’s consent to pre-execution communications necessary?

Yes. If a Person is acting on behalf of another, i.e. a Customer, such Person must obtain the Customer’s consent prior to engaging in pre-execution communications. Records evidencing that such consent was obtained should be available for production upon request of the Exchange. Such consent may be in the form of blanket consent from a customer acknowledging its consent for the broker to engage in pre-execution communications on its behalf and would be considered in force until revoked by such customer.

2. May a Person involved in pre-execution communications disclose the details of those communications to other parties?

No. Pre-execution communications are confidential and may not be disclosed to anyone else.

3. 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?

No.

### **Execution of orders resulting from Pre-Execution Communication**

4. How are orders resulting from Pre-Execution Communications required to be executed?

Such orders must be executed by submission of a Crossing Order (“CO”) into the ETS. The CO must contain the quantity and price at which the cross trade execution is sought. Entry of the CO will trigger a Request For Quote (“RFQ”) message for the respective future, option or combination, which will automatically be exposed to the market for the prescribed time period before the ETS will seek to execute the CO.

5. Is a CO or a Request for Quote (“RFQ”) required to be submitted prior to engaging in pre-execution communications?

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<sup>1</sup> Formerly Exchange Rule 27.21

<sup>2</sup> Formerly Exchange Rule 27.22

No. Only after the market participants have agreed to the execution of a crossing transaction as a result of pre-execution communications, must a CO be submitted. The ETS will create the RFQ automatically from the submitted CO.

6. Is the price or quantity of the orders on the CO displayed to the marketplace in the resulting RFQ?

No. The price of the orders will not be displayed, but the quantity will be displayed.

7. Is there any information in the RFQ that identifies that a CO may be forthcoming?

No. The purpose of the RFQ is to notify all market participants that there is interest in executing a trade or strategy.

8. After submitting a CO, how much time will elapse before the CO is automatically activated?

For all futures, energy options and equity options, five (5) seconds will elapse after submission of the CO before the CO is automatically activated. For agricultural options and other financial options, fifteen (15) seconds will elapse after the submission of the CO before the CO is automatically activated.

9. Once the CO has been activated, are the buy and sell orders automatically executed against each other?

No. Once activated, the CO will be evaluated against the best prices in the limit order book. 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.

10. What priority will the CO have in the order book?

For purposes of determining priority in the order book, the CO will be considered to have been entered at the time the CO is submitted to ETS.

11. What happens if there are unfilled quantities of the CO after the CO has been matched?

Any remaining volume of the CO will be cancelled by ETS.

12. Are there any alternative methods of complying with the requirements of Rule ~~[27.22]~~ 4.02(m) other than through the entry of a CO?

No.

13. Once the CO is submitted and quotes are made, may the submitter of the CO trade opposite the bids or offers entered in response to the RFQ?

Yes. However, the parties to the CO cannot enter bids or offers that would improve the bids or offers made in the corresponding market during the respective 5 or 15 second crossing window. This would violate the provisions of Rule 4.02(m)(2)(C) which prohibit the parties to pre-execution communications from entering orders that take advantage of information obtained through the pre-execution communication, such as the price at which the CO will execute.

14. Once the CO is submitted and active, may the ~~submitter of~~parties to the CO submit any RFQs?

No. The parties to the CO (including the submitter of the CO in the case of a broker) submitter may not submit any RFQs until the CO ~~is~~has transacted.

15. Once the CO is submitted and quotes are made, may the submitter of the CO change the CO?

No. The submitter of the CO cannot change the originally submitted CO and may not submit another CO until the original CO is transacted. Further, the parties to the CO cannot enter bids or offers that would improve the bids or offers made in the corresponding market during the respective 5 or 15 second crossing window.

16. Once a transaction is agreed upon via pre-execution communications, how much time does the submitter have before the submitter must enter the CO?

None. Once a transaction has been agreed upon, the submitter must immediately enter the CO.

17. May a submitter specify a "Reserve Quantity" on a CO?

No.

### **Transactions with no Pre-Execution Communications**

18. Is it permissible to contact other market participants to obtain general market color without engaging in pre-execution communications?

Yes. Communications to obtain general market color or simply to obtain a quote are permissible provided there is no express or obviously implied arrangement to execute a specified trade and no non-public information is communicated regarding an order or potential order.

19. If an order has been submitted to ETS, are there any restrictions on communicating with potential counterparties?

With a resting order exposed on ETS, it is permissible to contact potential counterparties to solicit interest in trading against the order. In any such communications, no non-public information (i.e. information not represented in the terms of the order exposed to the market) may be disclosed. For example, if the represented offer is for 250 contracts, it would be a

violation of the Rules to disclose that there are an additional 500 contracts to sell because that information has not been disclosed to the market.

20. What are the requirements for handling simultaneous buy and sell orders for different beneficial owners that do not involve pre-execution communications?

Independently initiated orders that are on opposite sides of the market for different beneficial account owners and are immediately executable against each other may be entered without delay provided that the orders did not involve pre-execution communications and that each of the orders is entered immediately upon receipt.

In accordance with Rule ~~[27.21]~~ 4.02(i) (“Cross Trades”), opposite orders that are for different beneficial accounts and are simultaneously placed by or for a party with discretion over both accounts must have a Crossing Order (“CO”) which contains both the buy and sell orders entered into ETS.

An order for that allows for price and time discretion may be executed opposite a second order only by entering a CO into the ETS.

21. If there have been no pre-execution communications, is it permissible for a firm to knowingly trade for its proprietary account against a Customer order entered by the firm?

Yes, provided that in accordance with ~~[27.21]~~ 4.02(i) (“Cross Trades”), the Customer’s order and the proprietary order have been exposed on the ETS by the submission of a CO.