



55 East 52<sup>nd</sup> Street  
New York, NY 10055

AMSTERDAM ATLANTA CALGARY CHICAGO HOUSTON LONDON NEW YORK SINGAPORE WINNIPEG

## **BY ELECTRONIC TRANSMISSION**

Submission No. 19-242  
July 15, 2019

Mr. Christopher J. Kirkpatrick  
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 Rule 4.07 and Block Trade FAQ--  
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)**

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Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the “Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) self-certifies the amendments to Rule 4.07 and the Exchange’s Block Trading FAQ set forth in Exhibit A. The amendments expand the eligibility standards for participating in a block trade to include foreign persons and certain other individuals and entities that meet the standards of a qualified eligible person (a “QEP”) under CFTC regulation 4.7, as described below.

Core Principle 9 and CFTC Regulation 1.38 permit designated contract markets (“DCMs”) to establish the rules under which trades may be executed away from the centralized market. Currently, block trades are permitted on IFUS and on most other U.S. exchanges by eligible contract participants (“ECPs”), as such term is defined in the Act (with limited exceptions for qualifying trading advisors acting on behalf of non-ECPs) subject to authorization by the carrying FCM.<sup>1</sup> The ECP standard was first articulated in 1995 in direct response to a request for exemptive relief from the open outcry trading

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<sup>1</sup> In accordance with Exchange Rule 4.07(d), a Clearing Member carrying an account for which a Block Trade is executed is responsible for exercising due diligence to determine that the eligibility requirements of paragraph (a)(i) of the Rule are satisfied. Traders must be specifically authorized by their FCMs to execute block trades following the eligibility determination, and the party entering a trade into the Exchange’s system must be specifically authorized by the FCM to do so.

requirement, and has been applied since that time.<sup>2</sup> The futures markets have evolved enormously since then; in the past decade contract markets have transformed from regional open outcry trading floors to electronic trading platforms facing intense global competition. These changes have rendered the ECP standard for block trades unduly restrictive and out of step with the realities of the marketplace.<sup>3</sup>

The Exchange has determined that the ECP standard is inappropriate and excludes qualified traders and investors from participating in this important trade type. This is particularly true in light of the globalization of futures markets. There is no ECP standard applicable to block trades of futures contracts executed on major foreign markets which have been recognized by the Commission and which compete with the Exchange. Accordingly, as discussed further below, the Exchange is expanding the categories of market participants that are eligible to conduct 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. In doing so, the Exchange has relied on exceptions recognized by the Commission and the Securities and Exchange Commission (“SEC”) in other contexts where financial resources and investment experience were relevant considerations.

Specifically, the amendments to Rule 4.07 allow the following additional participants to execute block trades on the Exchange, subject to meeting the portfolio requirements set forth in CFTC Regulation 4.7, described below:

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. This is the same as the SEC’s accredited investor (“AI”) standard but lower than the current ECP standard, which is either **total assets** of \$10 million or **net worth** of more than \$1 million plus engaging in hedging transactions;

2-an individual with **net worth**, or joint net worth with a spouse, who qualifies as an AI under SEC regulation 501(a)(5). The AI net worth qualification test is \$1 million whereas the ECP test applicable to an individual requires them to have invested on a discretionary basis in excess of \$10 million or \$5 million if the individual engages in **hedging** transactions;

3- an individual that qualifies 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. There is no average income analogue in the ECP definition.

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<sup>2</sup> The ECP definition was added to the Act in 2000 in connection with legislation that was unrelated to block trades. Regulation 1.38 does not impose an ECP or other specific eligibility requirement.

<sup>3</sup> For example, the ECP definition includes “floor brokers”, but most floor brokers who previously could execute block trades on their trading floor no longer hold or require that registration and do not automatically qualify under any other prong of the ECP definition. These individuals became ineligible to execute block trades simply by virtue of electronic trading.

Traders in each of the above categories would also need to meet one of the 3 portfolio requirements set forth in CFTC Regulation 4.7 (with minor contextual modifications), each of which demonstrates a high level of trading and investment proficiency and supports participation in privately negotiated transactions. The 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) - a combination of the above 2 alternatives, so long as the sum of the amounts from each of subsection (i) and (ii), expressed as a percentage of the minimum \$ amount specified in the subsection, equals 100%; e.g., \$1 million in securities and \$100,000 in futures margin and premiums.

In addition, consistent with the QEP standard, IFUS also is expanding the availability of block trades to **non-US persons**, as such term is defined in CFTC Regulation 4.7. No portfolio requirement exists under Commission Regulation 4.7 for non-U.S. persons and therefore none is required under the Exchange's rule amendments. Based on the definition of non-U.S. persons in Regulation 4.7, 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-An estate or trust, the income of which is not subject to US income tax, and


4-An employee pension plan of an entity organized and with its principal place of business outside of the U.S.

The Exchange has consulted with multiple FCMs regarding the proposed amendments and is not aware of any opposing views; some FCMs expressed the view that exchange rules should have no restrictions on block trade eligibility and that FCMs should hold full discretion to determine which of their customers can transact block trades. The Exchange certifies that the amendments to Rule 4.07 comply with the requirements of the Act and the CFTC Regulations promulgated thereunder. Specifically, as described above, the amendments comply with Core Principle 9 and CFTC Regulation 1.38, which allow DCMs to authorize transactions, such as block trades, that are executed away from the DCM's centralized marketplace. The Exchange's compliance program includes

regular review of block trades for conformance with the requirements of Rule 4.07 and violations are subject to disciplinary action. These procedures will continue to be applicable to amended Rule 4.07 consistent with the requirements of Core Principle 2. The Exchange further certifies that concurrent with this filing a copy of this submission was posted on the Exchange's website, which may be accessed at (<https://www.theice.com/futures-us/regulation#Rule-Filings>).

If you have any questions or need further information, please contact me at 212-748-4083 or at [audrey.hirschfeld@theice.com](mailto:audrey.hirschfeld@theice.com).

Sincerely,

A handwritten signature in purple ink that reads "Audrey R. Hirschfeld". The signature is written in a cursive style with a large, looped initial "A".

Audrey R. Hirschfeld  
SVP and General Counsel  
ICE Futures U.S., Inc.

cc: Division of Market Oversight

## EXHIBIT A

[Additions are underlined and deletions have been struck through]

### 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 ~~(A-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 ~~(B-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

(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.



~~March 6~~ July 29, 2019

For More Information  
Please Contact:

Energy Products  
Vito Naimoli  
Senior Manager  
(312) 836-6729  
[vito.naimoli@theice.com](mailto:vito.naimoli@theice.com)

Agricultural, Metals & Financial Products  
Kerry Demetriou  
Chief Compliance Officer  
(212) 748-4014  
[kerry.demetriou@theice.com](mailto:kerry.demetriou@theice.com)

## **ICE FUTURES U.S. BLOCK TRADE – FAQs**

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### **3. Who may participate in block trades?**

Each party to a block trade must be either:

(1) an Eligible Contract Participant (“ECP”) as that term is defined in Section 1a(18) of the Commodity Exchange Act (“Act”). ECPs include, but are not limited to floor brokers, FCMs, broker/dealers, financial institutions, insurance companies, pension funds, corporations, commodity pools, investment companies and high net worth individuals which satisfy certain criteria specified in Section 1a(18) of the Act.

Notwithstanding the foregoing, if the block trade is entered into on behalf of a Customer by a commodity trading advisor registered under the Act (“CTA”), including without limitation any investment advisor registered as such with the Securities and Exchange Commission who is exempt from regulation under the Act or CFTC regulations with total assets under management exceeding US \$25 million, or by a foreign entity performing a similar role or function to a CTA or investment advisor that is subject to foreign regulation with total assets under management exceeding US \$50 million, the individual Customer need not be an ECP’

(2) a non-United States person, as such term is defined in CFTC Regulation 4.7(a)(1)(iv). This includes (a) natural persons not resident in the US, (b) corporations, partnerships and other entities organized under the laws of a foreign jurisdiction with their principal place of business in a foreign jurisdiction, (c) an estate or trust, the income of which is not subject to US income tax, and (d) an employee pension plan of an entity organized and having its principal place of business outside of the U.S..

(3) 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), as described below,

(4) -an individual with **net worth**, or joint net worth with a spouse, of \$1 million who qualifies as an accredited investor under SEC regulation 501(a)(5) on that basis and meets one of the portfolio requirements specified in CFTC Regulation 4.7(a)(1)(v), as described below, or

(5)- an individual that had \$200,000 income in the prior 2 years (or \$300,000 if joint with a spouse) and has a reasonable expectation of earning the same in the current year, who qualifies as an accredited investor under the **income test** of SEC regulation 501(a)(6) on that basis and meets one of the portfolio requirements specified in CFTC Regulation 4.7(a)(1)(v), as described below.

The portfolio requirements applicable to any Person executing block trades in reliance on meeting the standards in paragraphs 3, 4 or 5 above are 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) - a combination of (i) and (ii) above, so long as the sum of the amounts from each of subsection (i) and (ii), expressed as a percentage of the minimum \$ amount specified in the subsection, equals 100%; e.g., \$1 million in securities and \$100,000 in futures margin and premiums.

[Remainder Unchanged]