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BY ELECTRONIC TRANSMISSION

Submission No. 19-249
August 7, 2019

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Amendments to Rules 4.02(k)(2)(D) and the ICE Futures U.S. Pre-Execution Communication FAQ - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the “Act”) and Commission Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) hereby self-certifies the amendments to Exchange Rules 4.02(k)(2)(D) and the Exchange’s Pre-Execution Communication Frequently Asked Questions (“FAQ”) set forth in Exhibit A. As discussed below, the amendments allow a participant to an *options* cross trade to immediately enter an order in a related market to hedge its exposure after agreeing to the cross trade.

Rule 4.02(k) allows participants to engage in pre-execution communications with each other to discern interest in Exchange products and arrange cross trades for submission to the trading platform. Options transactions arising from such communications must be executed by submission of a Crossing Order (“CO”) to the platform (futures transactions maybe be submitted as a CO or by exposing one order for a minimum of 5 seconds before placing the opposing order). Entry of the CO triggers a Request For Quote (“RFQ”) message on the electronic trading system (“ETS”) for the respective option or option strategy; the RFQ remains exposed to the market for a prescribed time period of 5 seconds before the platform seeks to execute the CO. Because the RFQ does not indicate the price of the CO, it allows other traders to participate and better the price at which the trade otherwise would transact.

Exchange Rule 4.02(k)(2)(C) prohibits a trader from entering an order based on non-public information derived from pre-execution communications. In the context of COs, the restriction serves to encourage traders to make their best bid/offer openly during the pre-execution communications, by precluding them from waiting until the CO is submitted and posted and then submitting a better price while the RFQ is exposed. As currently written, the Rule also prohibits a party to an options CO from hedging its exposure with a risk-reducing futures transaction, until after the CO has been executed on the ETS.

In addition to the 5 seconds during which the RFQ is exposed to the market, there is often additional delay associated with the entry of the CO to the ETS by an intermediary that has brokered the CO. Consequently, the parties to the CO may be subject to market exposure and risk for a period of time that is unnecessarily long. The Exchange believes that such delays impact the prices that options traders are willing to quote to counterparties during pre-execution communications, which may be wider than would otherwise be the case, in order to account for the length of time they may be exposed. This can have an overall negative effect on market quality and liquidity.

To address this issue, the Exchange is amending Rule 4.02(k)(2)(D) to allow participants to an *options* CO to enter an order in a related market to manage their risk *immediately* after they agree to the cross trade. This will allow the involved parties to manage risk in the related futures market or a related options market (not the same option strike and put/call being crossed), which, in the case of futures, is generally deeper and more liquid; and while there is no guarantee of a fill on the options cross trade, which remains subject to price improvement on the trading platform, unhedged futures are far easier to liquidate than unhedged options, should the CO be interrupted. As a result, the Exchange believes this limited exception will allow for tighter markets and thereby improve the quality and liquidity of the Exchange's options markets.

The Exchange also believes that the amendment is not inconsistent with Rule 4.02(k)(2)(C), as the limited carve out does not impact the primary intent, which is to encourage best bids/offers to be made openly during pre-execution communications. It should be noted that the entry of any other order based on non-public information derived from pre-execution communications remains prohibited until after the CO has transacted.

In addition, the amended rule expressly preserves the broker/customer relationship in such transactions. Similar to the Exchange's procedures for pre-hedging block trades, the amendments to Rule 4.02(k)(2)(D) and a corresponding amendment to the FAQ prohibit an intermediary that has brokered a cross-trade between a customer and an account in which the intermediary has a direct or indirect interest from hedging before the CO has fully transacted on the trading platform. Hedging by an intermediary prior to the transaction of the CO on the platform would be inconsistent with Exchange Rule 4.02(h) and/or 4.03, which prohibit intermediaries from front running or trading ahead of an executable customer order. As such, the amendments are consistent with the requirements of Core Principle 2 and CFTC Regulation 38.152.

The Exchange certifies that the amendments to Rule 4.02(k)(2)(D) and the FAQ comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. In addition to complying with Core Principle 2, the amendments comply with Core Principle 9 (Execution of Transactions), which requires all transactions to be executed openly and competitively. All options cross trades arising from pre-execution communications will continue to be executed by the submission of a CO to the platform, which exposes the pending trade to the market for a prescribed time period of 5 seconds. During that 5 second window, other traders may participate and better the price at which the trade otherwise would transact. As such, options cross trades will continue to transact openly and competitively on the trading platform. The amendments will simply allow participants who have agreed to an options cross trade to more timely manage the risk arising from the trade, which the Exchange believes will improve overall option market quality.

The Exchange is not aware of any substantive opposing views expressed by members or others with respect to the amendments, which will become effective on August 23, 2019 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/futures-us/regulation>).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jason V. Fusco". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jason V. Fusco
Assistant General Counsel
Market Regulation

Enc.
cc: Division of Market Oversight

EXHIBIT A

Rule 4.02. Trade Practice Violations

In connection with the placement of any order or execution of any Transaction, it shall be a violation of the Rules for any Person to:

(k) Engage in pre-execution communications, except in accordance with the following procedures:

(1) 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.

(2) 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:

- (A) If a Customer order is involved, the Customer has previously consented to such communications being made on its behalf;
- (B) A party to pre-execution communications shall not disclose the details of such communications to any Person who is not a party to the communications;
- (C) A party to pre-execution communications shall not enter an order to take advantage of information conveyed during such communications, except in accordance with this Rule;
- (D) Each Options order that results from pre-execution communications must be executed by entry into the ETS of a CO consisting of both the buy and sell orders. A party that has agreed to an Options CO resulting from pre-execution communications may enter an order in a related market to hedge the risk associated with the pending CO, except for an intermediary taking the opposite side of its own Customer order. The CO must transact in the ETS before an order to hedge may be entered for: (i) any account in which the intermediary has a direct or indirect interest; or (ii) the account of any Person(s) that holds a relationship to the intermediary of a type enumerated in the definition of “proprietary account” in CFTC Regulation 1.3.
- (E) Each Futures order that results from pre-execution communications may be entered as a CO, which contains both the buy and sell order; or by separately entering one order and allowing it to be exposed on the ETS for a minimum of five (5) seconds before entering the opposing order.
- (F) Once the terms of a CO have been agreed to, the parties may not delay entry of the CO and may not enter a Request for Quote (“RFQ”) with the intent to distract other participants from the pending CO

[REMAINDER OF RULE UNCHANGED]

Pre-Execution Communications FAQ

Question 3:

Q. 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?

A: No. However, an exception exists in the case of parties to an option CO. Such parties may hedge the risk associated with a pending Option CO by entering a risk-mitigating order in a related market as soon as they have agreed to the CO, except for an intermediary taking the opposite side of its own Customer order. In such instances, the CO must transact in the ETS before an order to hedge may be entered for: (i) any account in which the intermediary has a direct or indirect interest; or (ii) the account of any Person(s) that holds a relationship to the intermediary of a type enumerated in the definition of “proprietary account” in CFTC Regulation 1.3. Exchange Rules 4.02(h) and 4.03 prohibit intermediaries from front running and/or trading ahead of an executable customer order. Further, it shall be a violation of Exchange Rule 4.02(h) for any Person to engage in the front running of a CO when acting on material non-public information regarding an impending transaction by another person, acting on non-public information obtained through a confidential employee/employer relationship, broker/customer relationship, or in breach of a pre-existing duty.

The Exchange may proceed with enforcement action when the facts and circumstances of the pre-cross hedging suggest deceptive or manipulative conduct by any of the involved parties, including when an intermediary handling a Customer order acts against its Customer’s best interests.

*The submission of a CO does not guarantee a fill as it will interact with the central limit order book based on the prescribed CO functionality, leaving the potential for a non-hedged position

[REMAINDER OF FAQ UNCHANGED]