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BY ELECTRONIC TRANSMISSION

Submission No. 19-378
December 9, 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: Amendment to Rule 4.01 - Duty to Supervise
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 Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) hereby self-certifies an amendment to IFUS Rule 4.01, which codifies, in broad terms, the key elements of a satisfactory program of supervision, as set forth in Exhibit A.

Pursuant to Rule 4.01(a), firms conducting business on the Exchange are required to diligently supervise the Exchange-related activities of their employees and agents. 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, which provides 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 Exchange is adopting new Rule 4.01(b) to more particularly set forth what is expected 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). Rather, 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 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 aware of any opposing views and certifies that the amendment to Rule 4.01, which will become effective on January 1, 2020, complies with the requirements of the Act and the rules and regulations promulgated thereunder. Specifically, the amendment complies with core principles 2 (Compliance with Rules) and 7 (Availability of Information). As stated above, the amendment is being implemented to ensure adequate supervisory procedures are in place to better ensure compliance with Exchange Rules in furtherance of core principle 2. In addition, the Exchange intends to issue an advisory announcing the amendment which will also be posted on the “Resources” page of our website in furtherance of core principle 7.

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 212-748-4021 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.

Exhibit A

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 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.

(b)(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.

EXHIBIT B

DECEMBER 9, 2019



ADVISORY ON DUTY TO SUPERVISE- AMENDMENT TO RULE 4.01

Effective on 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 with automated trading systems that generate, submit and/or cancel messages

¹ Pending any required regulatory approvals.

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.

FOR MORE INFORMATION

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