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New York, NY 10055

**BY ELECTRONIC TRANSMISSION**

Submission No. 22-128  
July 28, 2022

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 Exchange Rule 4.19, “Audit Trail Requirements for Electronic Orders Submitted Through Direct Access or Order Routing Systems” - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“Exchange”) hereby certifies the amendments to Exchange Rule 4.19 set forth in Exhibit A, which expand the list of FIX Tags required to be maintained by Clearing Members and Persons with Direct Access (collectively, “Direct Participants”) and clarify the Audit Trail maintenance requirements for such persons.

As background, the Exchange requires Direct Participants to maintain records of all order messages submitted to the Exchange. Currently, Exchange Rule 4.19, requires certain message attributes (individually, “FIX Tags”, and collectively, “Audit Trail”) to be maintained by Direct Participants and produced to the Exchange for verification, upon request.

The amendments set forth in Exhibit A incorporate a new requirement in Rule 4.19(c)(1), which will obligate Direct Participants to “accurately assign and populate” certain FIX Tags that are attached to order messages and used to identify: (i) the trader, (ii) the account and (iii) the assignment of the “manual order entry” flag. The amendments make clear that the Exchange has express authority to enforce the accurate population of the foregoing FIX Tags if a Direct Participant inaccurately assigns or populates such fields.

Further, the amendments also expand the list of fields that a Direct Participant is obligated to maintain as a part of their Audit Trail to include the FIX Tags underlying the Exchange’s new Self-Trade

Prevention Functionality (FIX Tags 9821 and 9822), new Manual Order Identifier (Tag 1028), and the customer account Reference ID (Tag 9207). These attributes should be maintained by Direct Participants for verification by the Exchange.

Additional Amendments remove paragraph (ii)(R) of Rule 4.19 (“authorized trader tags (Tag numbers 116, 115 and 144)”), in favor of separately naming each of the FIX Tags and their desired attributes. For example, new Rule 4.19(c)(2)(T) will refer to “Order Routing Member & Authorized Member (Tag 115 Left & 115 Right, respectively).” Further amendments to paragraph (c) provide for conforming changes for renumbering.

The amendments also delete paragraph (d) of Rule 4.19, which sets forth duplicative requirements for post-execution allocation and Bunched Orders. The requirements for Bunched Orders are currently codified in Exchange Rules 4.18 and 6.08, and their inclusion in 4.19 is redundant.

Further amendments provide a new requirement for Clearing Members. New Rule 4.19(d) provides that a Clearing Member must take appropriate action if it has actual or constructive knowledge that a Direct Participant it authorized has failed to accurately input and/or maintain each order or data field required to be populated by Rule 4.19. While each Direct Participant will remain responsible for conforming to the Audit Trail requirements for all orders submitted to the Exchange through its Direct Access connection, new Rule 4.19(d) makes clear that the Exchange has relevant disciplinary authority over Clearing Members who fail to take appropriate action in such circumstances.

Lastly, amendments to paragraph (e) of Rule 4.19 expressly require that each Direct Participant obtain and produce to the Exchange, upon request, the Audit Trail records described herein. Additionally, Clearing Members must obtain and produce, upon request, the audit trail records for each Direct Participant that such Clearing Member has authorized. The amendments enhance and clarify the previous requirement that a Clearing Member “must have the ability to” produce to the Exchange the audit trail data in a format prescribed by the Exchange. Further, the amendments make clear that the electronic audit trail must be maintained for a minimum of five years, in accordance with Rule 6.07, “General Record Requirements.”

The rule amendments will be effective trade date January 2, 2023, or such other date as the Exchange may determine, which shall be no sooner than 10 business days after receipt of this submission by the Commission.

## **Certifications**

The Exchange certifies that the rule amendments comply with the requirements of the 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 Act and has determined that the amendments comply with the following relevant Core Principles:

### **COMPLIANCE WITH RULES**

The Exchange’s amended Rule 4.19 provides guidance to market participants related to the Exchange’s Audit Trail requirements. The amended rule provides clarity on the obligation related to the Audit Trail requirements.

### **AVAILABILITY OF GENERAL INFORMATION**

The Exchange is publicly posting the amended rule to ensure that market participants have updated guidance and information related to the Exchange's Audit Trail requirements. The rule will also be available on the ICE Futures U.S. website.

**TRADE INFORMATION**

The amended rules are in furtherance of the Exchange's requirements to capture and retain necessary audit trail, pursuant to CFTC Regulation 38.551.

The Exchange is not aware of any substantive opposing views expressed by members or others with respect to the rule amendments 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 312-836-6745 or at [patrick.swartz@theice.com](mailto:patrick.swartz@theice.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Pat", is positioned above the typed name.

Patrick Swartz  
Director  
Market Regulation

Enc.

cc: Division of Market Oversight  
New York Regional Office

## EXHIBIT A

(Additions are underlined and deletions are [~~struck through~~].)

### **Rule 4.19. Audit Trail Requirements for Electronic Orders Submitted Through Direct Access or Order Routing Systems**

(a) Each Clearing Member or Person with Direct Access shall ensure that all orders submitted to the Exchange through its Direct Access connection and any Order Routing system (as applicable) comply with the requirements set forth in this Rule. [~~Each Clearing Member connecting to the ETS by Direct Access is responsible for (1) maintaining or causing to be maintained, and producing upon request of the Exchange, the audit trail for all orders submitted to the Exchange through its Direct Access connection and any Order Routing system and (2) producing upon request of the Exchange audit trail records for each Person with Direct Access that has been authorized by the Clearing Member to have such a connection. Each Person connecting to the ETS by Direct Access is responsible for maintaining or causing to be maintained the audit trail for all orders submitted to the Exchange through its Direct Access connection.~~]

(b) A Clearing Member or Person with Direct Access that has arrangements for a third party to populate and assign order data or maintain audit trail information on its behalf shall remain responsible for compliance with this Rule.

(c) Each Clearing Member or Person with Direct Access shall, in accordance with procedures adopted by the Exchange at the time of order generation:

(i) accurately assign and populate the following data elements: (1) Order Routing Trader & Authorized Trader (Tag 116 Left & 116 Right, respectively); (2) account number (Tag 440); and (3) Manual Order Identifier (Tag 1028); and

(ii) maintain, at a minimum, the following data for electronic orders: [~~The audit trail for electronic orders must include, at a minimum, the following order data:~~]

(~~[i]~~[1]) date and times of (A) order entry, (B) order receipt and (C) all modification and cancellation messages submitted to ETS and responses to such messages. (The times of order entry, order receipt, order modification and responses must reflect the highest level of precision provided by the API, but not less than one hundredth of a second and shall not be subject to modification or alteration by the Person entering the order.); and

(~~[ii]~~[2]) the [following order] details for: (A) ICE Market ID (Tag 55)[Exchange Commodity Contract; (B) expiration month]; ([C]B) buy/sell indicator (Tag 54); ([D]C) futures or option indicator (Tag 167); ([E]D) if option, put/call designation (Tag 201); ([F]E) quantity (Tag 38); ([G]F) if a reserve quantity order, the reserve quantity (Tag 210); ([H]G) order type (Tag 40); ([H]H) price (Tag 44); ([K]I) stop price (Tag 99); ([L]J) if option, strike price (Tag 202); ([M]K) time-in-force (Tag 59); ([N]L) Clearing Member ID (Tag 439); ([O]M) account number (Tag 440); ([P]N) customer type indicator (Tag 9208); ([Q]O) ETS log-in identification (Tag 9139); [~~(R) authorized trader tags (Tag numbers 116, 115 and 144);~~] ([S]P) client order identification (Tag 11); ([F]Q) Exchange order identification (Tag 37); and ([U]R) order status (Tag 9175); (S) customer account Reference ID (Tag 9207); (T) Order Routing Member & Authorized Member (Tag 115 Left & 115 Right, respectively);

(U) Order Routing Trader & Authorized Trader (Tag 116 Left & 116 Right, respectively);  
(V) Order Routing Group & Authorized Group (Tag 144 Left & 144 Right, respectively);  
(W) Tag 9821 (SelfMatchPrevention ID); and (X) Tag 9822  
(SelfMatchPreventionInstruction); and (Y) Manual Order Identifier (Tag 1028).

~~(d) [Orders that are eligible for post-execution allocation may be entered into ETS as long as the Person placing such orders, and the allocation of such orders comply with the requirements of Rule 6.08(e) (“Bunched Orders”). Bunched Orders may be entered using a suspense account number provided that, either~~  
  
~~the orders are being placed by an Eligible Account Manager; or~~

~~(ii) a written, pre-determined allocation scheme(s) has been provided to the Futures Commission Merchant (“FCM”) carrying the account(s) prior to the time that such orders are entered into ETS; provided, however, that, if the allocation scheme(s) has not been submitted to the FCM, each specific account number must be entered into ETS at the time of order entry.~~

~~For all Bunched Orders executed on the ETS, the final specific account allocations must be submitted to the Exchange in accordance with the Rules.]~~In accordance with Rule 4.10, a Clearing Member must take appropriate action if it has actual or constructive knowledge that a Clearing Member or Person with Direct Access it authorized has failed to accurately input and/or maintain each order or data field required to be populated by this Rule. Each Person with Direct Access is responsible for conforming to the above guidelines for all orders submitted to the Exchange through its Direct Access connection.

~~(e) Each Person with Direct Access shall maintain (or cause to be maintained) and, upon request, produce the audit trail records required by this Rule; and each Clearing Member shall, upon request, obtain and produce the audit trail records required under this Rule for each Person with Direct Access that such Clearing Member has authorized. The electronic audit trail must be maintained for a minimum of five (5) years, in accordance with Rule 6.07(b). Upon the request of the Exchange, each Clearing Member or Person with Direct Access must [have the ability to] produce to the Exchange the audit trail data in a format prescribed by the Exchange.~~

**[REMAINDER OF RULEBOOK UNCHANGED]**