


ICE FUTURES U.S.
55 East 52nd Street
New York, NY 10055

BY ELECTRONIC TRANSMISSION

Submission No. 24-88
June 26, 2024

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 Exchange Rule 21.02 - 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 21.02 set forth in Exhibit A.

As background, as required by the Commodity Exchange Act (“CEA”) and CFTC Regulations, the Exchange must maintain an affirmative compliance program to enforce Exchange rules and discipline market participants who violate those rules. Chapter 21 of the Exchange’s rulebook sets forth the Exchange’s enforcement and disciplinary process. Rule 21.02(e) allows the Chief Regulatory Officer (“CRO”) to issue summary fines for minor infractions of certain Exchange Rules, which are readily discernible, up to \$25,000 per case. As described below, the Exchange self-certifies amendments which align the text of Rule 21.02(e)(ii) with recent amendments to the Exchange’s Block Trade and Wash Sale FAQs. In addition, the proposed amendments extend the authority of the CRO to issue a summary fine for any violation of Exchange Rule 21.04; and a violation of Rule 4.00(c) for failure to comply with the terms of a settlement agreement or the terms of a suspension or a failure to comply with any rule related to delivery, where a delivery has been completed, but was completed untimely.

i. Block Trade and Wash FAQ Amendments

Effective June 13, 2024, the Exchange self-certified comprehensive amendments to its Block Trade and Wash Sale FAQs, which included guidance provided to market participants for the purpose of adhering to Exchange rules regarding block transactions and prohibited wash trading. (*Please see Submission No. 24-79.*) Included in such amendments were changes to FAQ #15 of the Wash Sale FAQ, which provided further specificity as to when block trades may be executed between accounts with common ownership. In lieu of the legacy term “affiliated party,”

the revised FAQ indicates that block trades are permitted in all futures and options contracts between different accounts of the “same Principal,” provided that the parties meet the requirements detailed in FAQ #15. Additional amendments defined the new term “same Principal” as accounts that are owned by the same person, entity, or a parent and its 100% wholly owned subsidiaries, or subsidiaries that are wholly owned by the same parent and shall also include accounts that have common ownership that is less than 100%. Consequently, the Exchange self-certifies amendments to Exchange Rule 21.02(e)(ii) to update the provision regarding block trades executed between accounts of affiliated entities to align with the revised language of “accounts of the same Principal.” The provision regarding EFRP transactions between affiliated entities remains unchanged. It is the Exchange’s belief that the amendments in the foregoing rule provision will provide additional clarity to market participants regarding the Exchange’s authority to impose summary fines for violations of its block trade and wash trade rules.

ii. Power to Compel Testimony and Production of Documents (Rule 21.04) Amendments

Additionally, the Exchange self-certifies amendments to Rule 21.02(e)(x) to remove the limitation of the circumstances when a summary fine may be imposed by the CRO for a violation of Rule 21.04. Currently, summary fine authority extends only to those instances where a subject has failed to produce documents, books or records, within the time period prescribed by the Exchange. The amendments provided in Exhibit A remove such limitation, which allow a summary fine to be imposed for any violation of Rule 21.04, which, in addition to the current provision, would also include the failure to obey a summons issued by the President, the Board, the CRO, Market Regulation staff, or any committee or subcommittee and any panel of any committee or subcommittee, engaged in any investigation of, examination into, or hearing involving any matter pursuant to the Rules to provide testimony under oath or in any other manner required by them. The Exchange believes that the authority to impose a summary fine for such instances is an appropriate extension of its disciplinary authority for strict violations of Rule 21.04 for failure to provide testimony when requested by Market Regulation or other applicable parties.

iii. Compliance with Rules and Orders (Rule 4.00(c)) and Any Delivery Process Rules Additions

Rule 4.00(c) states that “[i]t shall be a violation of the Rules for any Person to violate, or fail to comply with, the terms of any agreement with the Exchange or any order or decision of, or any suspension imposed by, the Exchange, the Board or any committee or subcommittee of the Exchange, including, without limitation, any Hearing, Arbitration or Appeals Panel.” Separately, the Exchange’s delivery process rules are multiple and noted in the suite of Rules that are applicable to futures contracts that make and take delivery of the underlying commodity. For example, Rule 10.24(a)(i), which addresses part of the delivery process applicable to the Cotton No. 2 futures contract, states that “[o]n or before 12:00 pm on the Business Day prior to the Date of Delivery, the Deliverer shall transfer ownership of the EWRs to the Clearing Organization.”

A violation of Rule 4.00(c) for a market participant’s failure to comply with their settlement agreement’s suspension period terms, and a violation of any delivery process Rule for a market participant’s failure to complete delivery in a timely manner, are both discrete and readily discernible failures that do not require a finding on motive or intent to determine that a violation has occurred for which the Exchange could seek penalties. Moreover, while violations of any Exchange rule, including violations of Rule 4.00(c) and the delivery process Rules, can always be referred by Staff to the Business Conduct Committee (“BCC”), a summary fine for nonserious or unintentional circumstances in either scenario gives the CRO the option to take action for a

monetary fine up to \$25,000. Therefore, the Exchange believes that summary fine authority for both scenarios is another effective option to resolve such matters. New Rules 21.02(e)(xiii) and (xiv) codify such new summary authority.

The rule amendments will be effective trade date July 12, 2024, 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 Chapter 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 21.02 provides guidance and clarity to market participants related to the Exchange's enforcement and disciplinary procedures.

AVAILABILITY OF GENERAL INFORMATION

The Exchange is publicly posting the amended Rule 21.02 to ensure that market participants have updated guidance and information related to the Exchange's enforcement and disciplinary procedures. The rules will also be available on the ICE Futures U.S. website.

PROTECTION OF MARKETS AND MARKET PARTICIPANTS

Amended Rule 21.02 provides the Exchange with a framework for enforcing rules designed to promote fair and equitable trading and disciplining market participants that engage in activity that violates Exchange Rules.

DISCIPLINARY PROCEDURES

Amended Rule 21.02 is in furtherance of the Exchange's requirement to establish disciplinary procedures that authorize the Exchange to discipline market participants that violate the Exchange's rules. Specifically, amendments to Rule 21.02(e), including new Rules (xiii) and (xiv), further balance Core Principle 13's objective to provide respondents with adequate notice of acts in which the respondent is alleged to have engaged, the rules alleged to have been violated, and their rights to a hearing, with the objective to have the Exchange manage its resources effectively, promptly prosecute rule violations within its disciplinary jurisdiction, and impose sanctions that are commensurate with the violations committed to sufficiently deter recidivism.

The Exchange further certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website. It may be accessed at: <https://www.theice.com/futures-us/regulation>. If you have any questions or need further information, please contact the undersigned at 312-836-6745 or at Patrick.Swartz@ice.com.

Sincerely,



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~~].)

ICE Futures U.S.[®], Inc.

DISCIPLINARY RULES

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Rule 21.02. Market Regulation Staff — Powers and Duties

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(e) Notwithstanding the provisions of paragraph (d) of this Rule, the Chief Regulatory Officer or his designee may impose a summary fine of no more than twenty-five thousand dollars (\$25,000) upon a Respondent in any case in which it is concluded that there has been a violation of:

- (i) any record keeping rule;
- (ii) Rule 4.02(c) by executing trades between the accounts of [~~affiliated entities~~]the same Principal to effect a position transfer (Wash Trade FAQ #11); or by failing to comply with the Exchange's requirements for block transactions between accounts of the same Principal or EFRP transactions between affiliated entities (Wash Trade FAQ #15);
- (iii) Rule 4.02(g)(2), (3), (4) or (5);
- (iv) Rule 4.02(k)(2)(A) or (D);
- (v) Rule 4.07 (a), (b) or (c);
- (vi) Rule 6.15;
- (vii) Rule 2.22 or Rule 18.05(a) or (d);
- (viii) Rule 4.37;
- (ix) Rule 4.15(a), (b) or (c);
- (x) Rule 21.04[~~, by failing to produce documents, books or records, within the time period prescribed by the Exchange~~];
- (xi) Rule 4.19; [~~or~~]
- (xii) Appendix III to Chapter 4[~~;~~];
- (xiii) any delivery process rule where delivery has been completed but is untimely; or
- (xiv) Rule 4.00(c) by failing to comply with a settlement agreement's suspension terms.

The authority to impose such summary fine does not limit the Chief Regulatory Officer's authority to refer the matter to the BCC instead of imposing such sanction. A summary fine imposed in accordance with this paragraph shall become final and effective and payment shall become effective fifteen (15) calendar days after receipt. A Respondent may not merely contest the issuance of a summary fine but may present new evidence to the Market Regulation Department to request the summary fine be rescinded or reduced during the fifteen (15) calendar day period until the fine has become effective. The decision to cancel, modify or affirm a

summary fine imposed in accordance with this paragraph shall be made at the sole and absolute discretion of the Chief Regulatory Officer or his designee.

[REMAINDER OF RULE UNCHANGED]