



BY ELECTRONIC TRANSMISSION

Submission No. 16-27
March 3, 2016

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

**Re: Amendments to Rule 6.12 –Aggregation of Positions-- Submission Pursuant to Commission
 Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Regulation 40.6(a) ICE Futures U.S., Inc. (“IFUS” or “Exchange”) submits by written certification amendments to Rule 6.12 (contained in Exhibit A) which will become effective on March 18, 2016.

Rule 6.12 sets forth the Exchange requirement that all positions which are held by any person, or the trading of which is controlled by such person, must be aggregated for purposes of determining compliance with applicable position limits and position accountability levels. The Exchange has amended the rule to provide certain exceptions from aggregation which are recognized in the CFTC’s Supplemental Notice of Proposed Rulemaking on position limits, published September 29, 2015 (the “CFTC Proposed Rules”). These exceptions are reflected in the amendments to paragraph (c) of the Exchange Rule and address: (1) the exception for information sharing restriction, that is, where the sharing of information associated with aggregation of an owned entity creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, and (2) where there is independent decision making and trading control of an owned entity and there are procedures designed to preclude gaining access to information about each other’s trades. This latter exclusion will not be available to any Exchange contracts that are currently subject to Federal position limits; consequently it will not apply to the Exchange’s Cotton No. 2[®] contract. Neither exception is self- executing; rather, an application must be submitted to, and granted by, the Exchange after consideration of all relevant information.

The amendments are driven by the direct experience of the Exchange in carrying out the position limit and accountability component of its market surveillance program. Recently, certain energy market

participants have requested not to have their positions aggregated, as it would give rise to the transfer of information about each other's positions and hedge exemptions, and that knowledge would constitute a violation of FERC regulations applicable to them. The amendment would allow firms in this situation to report separately and apply for exemptions separately without aggregating positions, so long as the firms did not already have knowledge about each other's positions

Likewise, the Exchange has long been an advocate of aggregation relief where there is common ownership but complete independence of control over the trading decisions of an owned entity and no sharing of information regarding those decisions and the resulting positions. As the Commission has noted, aggregation of positions held by owned entities in some cases is "impractical, burdensome or not in keeping with modern corporate structures." The exclusion contained in the amendments generally tracks the CFTC Proposed Rules except for the proposed requirement that separate risk management systems be utilized. As noted in our comment letter and many others filed in response to the CFTC Proposed Rules, we do not believe it is practical or necessary to require firms in these circumstances to operate separate risk management systems that preclude even compliance and risk personnel from having access to the trades of an owned entity. Such a standard would significantly undermine the likelihood that the affected market participants would be able to take advantage of the exception provided in the amendments. As a general matter, we do not believe that the personnel charged with monitoring group financial risk are also engaged in trading the accounts whose risk they are supposed to be assessing. In such case, concerns about improper information sharing seems misplaced, and personnel with compliance or risk functions should be encouraged to access information across owned entities to ensure their responsibilities can be effectively carried out.

The amendments also delete the language of current paragraph (c) of the Rule, as the Exchange no longer lists Cleared Only futures contracts and there is no open interest associated with those instruments.

The Exchange certifies that the amendments comply with the Commodity Exchange Act, as amended, and the regulations thereunder, including Core Principle 5 and CFTC Regulations 38.300 and 38.301, as discussed above. There were no substantive opposing views to the amendments. The Exchange further certifies that concurrent with this filing a copy of this submission was posted on the Exchange's website at (<https://www.theice.com/futures-us/regulation#rule-filings>).

If you have any questions or need further information, please contact me at Audrey.hirschfeld@theice.com or Erik Haas at Erik.Haas@theice.com.

Sincerely,



Audrey R. Hirschfeld
SVP and General Counsel

cc: Stephen Sherrod
Division of Market Oversight

EXHIBIT A

[in the text additions are underscored and deletions overstruck]

Rule 6.12. Aggregation of Positions

(a) The position limits and position accountability levels established by these Rules shall apply to all positions held by any Person, including those positions in accounts for which such Person by power of attorney or otherwise directly or indirectly holds positions or controls trading; and in the case of positions held by two (2) or more Persons acting pursuant to an expressed or implied agreement or understanding, the same as if all of the positions were held by or the trading of the positions were done by, a single Person.

(b) An 'eligible entity', as defined in CFTC Regulation 150.1(d) need not aggregate its positions with the eligible entity's client positions or accounts carried by an authorized 'independent account controller', as defined in Regulation 150.1(e), provided that the positions are not held in the spot month during such time as a notice period or spot month position limit is in effect. If an independent account controller is affiliated with an eligible entity or another independent account controller, each of the affiliated entities must comply with the requirements specified in CFTC Regulation 150.3(a)(4)(i)(A-D).

(c) ~~[Positions held in Futures and Futures Equivalent Contracts will not be aggregated with positions held in Cleared Only Swaps for the same Commodity which are submitted to the Exchange for clearing pursuant to Chapter 23.]~~ The Exchange may exclude any Person from the aggregation requirements of paragraph (a) of this Rule upon receipt of a written request in the form specified by the Exchange, which details the circumstances of the request, in the following instances:

- (i) With respect to the positions or accounts of a separately organized entity (an "owned entity"): if the sharing of information associated with such aggregation creates a reasonable risk that such sharing would cause any Person to violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder, **provided that** a written officer's certification to that effect accompanies the request, and **provided further that** such Person does not have actual knowledge of information associated with such aggregation.
- (ii) With respect to the positions or accounts of an owned entity in which a Person holds an ownership or equity interest equal to or greater than 10% (except for positions which are subject to Federal position limits): if the individuals controlling the trading decisions of the relevant accounts do not have knowledge of the trading decisions made by each other, the accounts trade pursuant to separately developed and independent trading strategies, there are written procedures designed to preclude access to information regarding the trades, positions and strategies of each account, and there is no sharing of personnel controlling the respective trading decisions.