



Pre-Execution Communications FAQ

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PRE-EXECUTION COMMUNICATIONS FAQ

ICE Futures U.S. Inc. Rules permit pre-execution communications in all Exchange products, subject to the provisions of Rules 4.02(i) and 4.02(k). This document is intended to provide information on the permission required to allow pre-execution communication on behalf of a customer, and on how orders resulting from pre-execution communication must be executed on the electronic trading system (“ETS”).

Required Permission and restrictions for Pre-Execution Communications

1. Is a customer’s consent to pre-execution communications necessary?

Yes. If a Person is acting on behalf of another, i.e. a customer, such Person must obtain the customer’s consent prior to engaging in pre-execution communications. Records evidencing that such consent was obtained should be available for production upon request of the Exchange. Such consent may be in the form of blanket consent from a customer acknowledging its consent for the broker to engage in pre-execution communications on its behalf and would be considered in force until revoked by such customer.

2. May a Person involved in pre-execution communications disclose the details of those communications to other parties?

No. Pre-execution communications are confidential and may not be disclosed to anyone else.

3. 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?

No, at minimum, such actions would result in a violation of 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.

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.

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

Execution of orders resulting from Pre-Execution Communication

4. What is considered Pre-Execution Communication?

The Exchange defines pre-execution communications between any Person as interactions intended to solicit interest in executing a trade prior to the order being displayed on the ETS. Any communication that discusses order terms such as quantity, market side, or price is regarded as a pre-execution communication. However, the Exchange does not consider a two-sided market quote to be pre-execution communication.

Any Person, whether directly or indirectly involved in the placement, execution, communication, or working of an order that includes pre-execution communication must adhere to the Rules of the Exchange. Failure by any Person involved in a transaction that includes pre-execution communications to comply with Exchange Rules may subject each Person in such transaction to disciplinary action by the Exchange.

5. How are orders resulting from Pre-Execution Communications required to be executed?

In addition to Off-Exchange transactions (e.g., Block and EFRP trades), the following are the other permissible methods for executing a futures or options cross trade resulting from pre-execution communications on the ETS. The parties involved in pre-execution discussions that result in a trade using the methods below must not involve the same Principal as specified in the [Wash Trade FAQ](#).

Futures

The submission of a Crossing Order (“CO”) into the ETS. The CO must contain the quantity and price at which the cross trade execution is sought. Entry of the CO will trigger a Request for Quote (“RFQ”) message for the respective future, option or combination, which will automatically be exposed to the market for the prescribed two (2) seconds before the ETS will seek to execute the CO.

Alternatively, a Person may opt to transact a cross trade **only** in futures (**not options**) by separately entering one order and allowing it to be exposed on the ETS for a minimum of two (2) seconds before entering the opposing order.

Options

Only through the submission of a Crossing Order (“CO”) into the ETS.

6. Is a CO, RFQ or bid/offer required to be submitted to the ETS prior to engaging in pre-execution communications?

No. Only after the market participants have agreed to the execution of a transaction as a result of pre-execution communications, must a participant execute the transaction in accordance with the guidance herein.

Use of Crossing Order Functionality

7. Is the price or quantity of the orders on the CO displayed to the marketplace in the resulting RFQ?

No. The price of the orders will not be displayed, but the quantity will be displayed.

8. Is there any information in the RFQ that identifies that a CO may be forthcoming?

No. The purpose of the RFQ is to notify all market participants that there is interest in executing a trade or strategy.

9. After submitting a CO, how much time will elapse before the CO is automatically activated?

Two (2) seconds will elapse after submission of the CO before the CO is automatically activated.

10. Once the CO has been activated, are the buy and sell orders automatically executed against each other?

No. Once activated, the CO will be evaluated against the best prices in the limit order book. If the CO price improves the best bid and the best offer in the order book or if there is no bid/offer, 100% of the CO quantity will match at the CO price immediately upon activation. If the CO price improves the best bid but there is a better offer or offers, the buy side of the CO will be executed first against such better offer or offers and then subsequently against the sell side of the CO if any residual quantity on the buy side remains. Similarly if the CO price improves the best offer but there is a better bid or bids, the sell side of the CO will be executed first against such better bid or bids and then subsequently against the buy side of the CO if any residual quantity on the sell side remains.

11. What priority will the CO have in the order book?

For purposes of determining priority in the order book, the CO will be considered to have been entered at the time the CO is submitted to ETS.

12. What happens if there are unfilled quantities of the CO after the CO has been matched?

Any remaining volume of the CO will be cancelled by ETS.

13. Once the CO is submitted and quotes are made, may the submitter of the CO trade opposite the bids or offers entered in response to the RFQ?

Yes. However, the parties to the CO cannot enter bids or offers that would improve the bids or offers made in the corresponding market during the respective 2-second crossing window. This would violate the provisions of Rule 4.02(k)(2)(C) which prohibit the parties to pre-execution communications from entering orders that take advantage of information obtained through the pre-execution communication, such as the price at which the CO will execute.

14. Once the CO is submitted and active, may the parties to the CO submit any RFQs?

Yes. The parties to the CO (including the submitter of the CO in the case of a broker) may submit RFQs provided that they are not entering the RFQs with the intent to divert attention of other participants away from the pending CO.

15. Once the CO is submitted and quotes are made, may the submitter of the CO change the CO?

No. The submitter of the CO cannot change the originally submitted CO and may not submit another CO until the original CO is transacted. Further, the parties to the CO cannot enter bids or

offers that would improve the bids or offers made in the corresponding market during the respective 2-second CO window.

16. Once a transaction is agreed upon via pre-execution communications, how much time does the submitter have before the submitter must enter the CO?

None. Once a transaction has been agreed upon, the submitter must immediately enter the CO.

17. May a submitter specify a “Reserve Quantity” on a CO?

No.

18. For futures contracts, if a Person places an order with a reserve quantity (“Iceberg” order) (e.g. 10 lots showing with 90 lots hidden) after engaging in pre-execution communication related to the order, can a party to the pre-execution communication trade opposite that order after it has rested for two (2) seconds?

Yes, however, *only* the order quantity exposed to the market may be crossed (e.g. 10 lots) after 2 seconds has elapsed. If any portion of the hidden/reserved quantity is traded, the Exchange may make an inference that the Person trading opposite knew or reasonably should have known that the original order placed included quantities that were not exposed competitively to the market and may be considered in violation of Exchange Rules. Below are two examples:

Example 1 - A Person places an Iceberg futures bid for 100 lots with 10 lots showing and 90 lots hidden, waits 2 seconds after the order is placed, then enters an offer for 10 lots. This scenario complies with Exchange Rules if any portion of the exposed 10-lot futures bid crosses.

Example 2 - A Person places an Iceberg futures bid for 100 lots with 10 lots showing and 90 lots hidden, waits 2 seconds after the order is placed, then enters an offer for a quantity of 11 lots or greater. Assuming the 10-lot resting bid fills in full, if any portion of the 90 lots hidden crosses with the offer, the Exchange may make an inference that the Person knew or reasonably should have known that the offer could trade opposite the remaining hidden quantity of the Iceberg futures bid not exposed competitively to the market -- this would **NOT** be an acceptable practice and may be considered in violation of Exchange Rules. The Exchange requires the Person trading opposite the resting futures order to wait 2 seconds each time an additional 10-lot portion of the iceberg is exposed to the market.

Transactions with no Pre-Execution Communications

19. Is it permissible to contact other market participants to obtain general market color without engaging in pre-execution communications?

Yes. Communications to obtain general market color or simply to obtain a quote are permissible provided there is no express or implied arrangement to execute a specified trade and no non-public information is communicated regarding an order or potential order. The Exchange does not consider a two-sided market quote to be pre-execution communication.

20. If an order has been submitted to ETS, are there any restrictions on communicating with potential counterparties?

With a resting order exposed on ETS, it is permissible to contact potential counterparties to solicit interest in trading against the order. In any such communications, no non-public information (i.e.

information not represented in the terms of the order exposed to the market) may be disclosed. For example, if the represented offer is for 250 contracts, it would be a violation of the Rules to disclose that there are an additional 500 contracts to sell because that information has not been disclosed to the market. Please see the examples provided within this FAQ for acceptable practices.

21. What are the requirements for handling simultaneous buy and sell orders for different beneficial owners that do not involve pre-execution communications?

Independently initiated orders that are on opposite sides of the market for different beneficial account owners and are immediately executable against each other may be entered without delay provided that the orders did not involve pre-execution communications and that each of the orders is entered immediately upon receipt.

In accordance with Rule 4.02(g) (“Trade Practice Violations”):

Opposite **futures** orders that are for different beneficial accounts and are simultaneously placed by a party with discretion over both accounts, or orders that allow for price and/or time discretion, may be entered as a CO which contains both the buy and sell orders, or by separately entering one order and allowing it to be exposed on the ETS for a minimum of two (2) seconds before entering the opposing order.

Opposite **options** orders that are for different beneficial accounts and are simultaneously placed by a party with discretion over both accounts, or orders that allow for price and/or time discretion, must be entered as a CO which contains both the buy and sell orders.

22. If there have been no pre-execution communications, is it permissible for a firm to knowingly trade a future or option for its proprietary account against a customer order entered by the firm?

Yes, provided that in accordance with Rule 4.02(i), the Customer’s order and the proprietary order have been exposed on the ETS by the submission of a CO.