

COMMITTEE ON CAPITAL MARKETS REGULATION

March 14, 2019

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Re: Industry Filing IF 19-001 (Amendment to ICE Futures U.S., Inc. Rule 4.26)

Dear Sir or Madam:

The Committee on Capital Markets Regulation (the “**Committee**”) is grateful for the opportunity to comment on the rule amendment certification filing by ICE Futures U.S., Inc. (“**IFUS**”) to amend IFUS Rule 4.26.¹

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes thirty-five leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Dean, Columbia Business School) and John L. Thornton (Chairman, The Brookings Institution) and led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

IFUS’ proposed rule amendment would allow for what IFUS calls “Passive Order Protection (“**POP**”) Functionality.” As described by IFUS, POP Functionality would create a “couple of millisecond” speed bump for “incoming orders that would otherwise transact immediately opposite resting or ‘passive’ orders” thus providing the trader who placed the resting order a “delay window” in which the trader can modify its resting order based on “external market conditions.”² The language of the proposed rule amendment would permit the POP Functionality to be applied by IFUS to any of its futures contracts, with the length of the speed bump delay left to the discretion of IFUS³ - and by extension, would create a precedent that could be copied across the entire U.S. futures market. IFUS has stated that “initially” it will utilize POP Functionality “with a 3 millisecond delay period in Gold Daily and Silvers Daily futures markets.”⁴

¹ CFTC Release No. 7870-19, CFTC Requests Public Comment on a Rule Amendment Certification Filing by ICE Futures U.S. (Feb. 13, 2019), <https://www.cftc.gov/PressRoom/PressReleases/7870-19>.

² Submission No. 19-119, Letter from Jason V. Fusco, Assistant General Counsel Market Regulation, ICE, to Christopher J. Kirkpatrick, Secretary of the Commodity Futures Trading Commission (Feb. 1, 2019) at 1, https://www.theice.com/publicdocs/regulatory_filings/19-119_New_Passive_Order_Protection_Functionality.pdf.

³ *Id.* at 4 (Proposed Rule 4.26(c)).

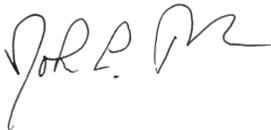
⁴ *Id.* at 2.

IFUS' proposal would implement, for the first time in U.S. futures markets, an asymmetric speed bump (i.e., one that applies an intentional delay to some order types but not to others). As the Committee previously wrote to the Securities and Exchange Commission regarding U.S. equities markets, asymmetric speed bumps "could distort markets and . . . [e]xchanges should . . . not be broadly permitted to adopt intentional delays." We communicated our view that any intentional delays should be "equally applied to all market participants."⁵ The Committee believes the same is true in the context of U.S. futures markets and IFUS' proposal should therefore not be approved.

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Thank you very much for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's President, Prof. Hal S. Scott (hscott@law.harvard.edu), or Executive Director, John Gulliver (jgulliver@capmksreg.org), at your convenience.

Respectfully submitted,



John L. Thornton
Co-CHAIR



Hal S. Scott
PRESIDENT



R. Glenn Hubbard
Co-CHAIR

⁵ *Id.*