EFRP FAQs

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The following document provides answers to frequently asked questions regarding rules and procedures related to Exchange for Related Position ("EFRP") transactions executed at ICE Futures U.S. ("IFUS").

1. **What are EFRP transactions?**

EFRPs include Exchange for Physical (EFP), Exchange for Swaps (EFS), Exchange for Risk (EFR) and Exchange of Options for Options (EOO). EFRP transactions are permitted as exceptions to CFTC Regulation 1.38 which requires all futures trades to be executed "openly and competitively." The trades are bilaterally negotiated off-exchange and must comply with IFUS Rule 4.06, which governs such transactions.

An *Exchange for Physical* ("EFP"), also sometimes referred to as Against Actuals ("AA") or "Futures for Cash", is an off-exchange bilaterally negotiated transaction involving the simultaneous exchange of an Exchange futures position for a corresponding related cash or physical position. In such a transaction the buyer (seller) of the futures transaction is the seller (buyer) of a corresponding amount of the cash commodity, as appropriate, at a price mutually agreed upon.

An *Exchange for Swap* ("EFS") and an *Exchange for Risk* ("EFR") are the same type of transaction. An EFS/EFR is an off-exchange bilaterally negotiated transaction involving the simultaneous exchange of an Exchange futures position for a corresponding related OTC swap or other OTC derivative in the same or related product.

An *Exchange of Options for Options* ("EOO") is an off-exchange bilaterally negotiated transaction involving the simultaneous exchange of an Exchange option position for a corresponding related OTC option position or other OTC instrument with similar characteristics in the same or a related instrument.
The related position component of an EFRP may not be a futures contract or an option on a futures contract.

2. **What commodities can be used for the related cash or OTC derivative component of the transaction?**

ICE Futures U.S. Rule 4.06 requires that "the related position must involve the commodity underlying the Exchange Futures Contract or Option (or any by-product or related product)." According to CFTC guidance, the item that is deliverable on the futures contract may always be used for the cash or OTC derivative component of the transaction. If the commodity used to fulfill the cash or OTC derivative component is not deliverable against the futures contract, it must be an item that is reasonably equivalent in terms of its physical and economic properties. The cash commodity or OTC derivative component also should have a reliable and demonstrable price relationship with the futures contract. It should exhibit price movement that parallels the price movement of the futures contract (reasonable correlation). The lack of a consistent price relationship between the cash commodity or OTC derivative component and the futures contract can undermine the utility of the transaction and may indicate that the parties' motive for the EFRP was to circumvent Exchange rules or regulatory requirements.

3. Are all IFUS futures and options contracts eligible for EFRP transactions?

EFRPs may be executed in all IFUS contracts provided that the transaction complies with the requirements of IFUS Rule 4.06, this FAQ and any applicable CFTC requirements.

4. Who may participate in EFRP transactions?

The Exchange does not set any specific qualifications for participation in EFP transactions. However, to participate in an EFS/EFR or an EOO, the parties must be Eligible Contract Participants (as that term is defined in Section 1a(18) of the Commodity Exchange Act) and comply with any other CFTC requirements regarding eligibility to transact the OTC component of the EFS/EFR or EOO. Market participants considering the use of EOO transactions should consult appropriate counsel to determine whether or not they are eligible to enter into OTC options transactions. Since EFP transactions include a bona fide cash market transaction, these transactions are typically transacted by commercial market participants (e.g. producers, merchants, dealers, financial institutions) who customarily transact business in the relevant cash market. Therefore, EFPs conducted by non-commercial participants may be subject to additional scrutiny to determine the bona fide nature of the cash market transaction.

5. Are there any price restrictions on EFRP transactions?

EFRP transactions may be executed at any commercially reasonable price agreed upon by both parties provided that such price conforms to the minimum tick increment for the relevant exchange contract. However, EFRPs executed at off-market prices are more likely to be examined by the Exchange to determine the purpose for the pricing. EFRPs may not be priced off-market with the intent to shift substantial sums of cash from one party to another, to allocate gains and losses between the futures and cash or OTC derivative components of the EFRP, to evade taxes, to circumvent financial controls by disguising a firm's financial condition, or to accomplish some other unlawful purpose.

6. What are the requirements for a bona fide EFRP?

An EFRP must have two components: a futures contract or option on futures and a related position, either a cash commodity, OTC derivative (e.g. swap), or OTC option. In addition:

- The buyer (seller) of the related cash commodity or OTC component must be the seller (buyer) of the futures or options contract.

- The quantity of the exchange contract(s) must be approximately equivalent to the quantity of the related cash commodity or OTC component.
- The related cash commodity or OTC component should involve the product underlying the exchange contract or a by-product or a related product that has a reasonable price correlation with the exchange contract.

- The price must conform to the minimum tick increment of the futures contract.

- The accounts on the opposite sides of the EFRP must be for different beneficial owners or be under separate decision-making and control.

An EFRP must stand on its own as an independent transaction without being dependent on the execution of any other transaction.

7. What are the documentation requirements for EFRPs?

The parties to an EFRP are required to prepare and/or maintain all documents in connection with both the futures and related cash or OTC components of the EFRP. Upon request, any participant in an EFP transaction must provide the Exchange with such material, information and documents, which evidence title to, or the contract(s) to buy or sell, the cash commodity (or the by-product or related product) involved in the transaction. Each EFRP requires a bona fide transfer of ownership of the cash commodity between the parties or a bona fide, legally binding contract between the parties consistent with relevant market conventions for the particular related product transaction. Similarly, any participant in an EFS/EFR transaction, when requested, must provide the material, information and/or documents that demonstrate that the EFS/EFR is legitimate including, but not limited to, the master swap agreement and any supplements to it. Swap documents should contain all of the terms of the transaction, such as quantity, fixed price, floating price, how the settlement price is determined and the identity of the counterparty. For an EOO transaction, participants must provide documentation demonstrating that the OTC component is a legitimate OTC option transaction conducted by a person eligible to transact OTC options.

A swap that is traded on or subject to the rules of a designated contract market (“DCM”) or a swap execution facility (“SEF”) is ineligible to be the related position component of an EFS/EFR or EOO transaction executed pursuant to Rule 4.06. This exclusion does not apply to swaps that are bilaterally negotiated and submitted for clearing-only to a Derivatives Clearing Organization (“DCO”) provided that such swaps have a reasonable price correlation with the exchange contract.

The documentation should demonstrate that the buyer (seller) of the cash commodity or OTC component was the seller (buyer) of the futures or options contract. The cash commodity or OTC component should involve the product underlying the exchange contract or a by-product or a related product that has a reasonable price correlation with the exchange contract. The quantity of the exchange contract(s) must be approximately equivalent to the quantity of the cash commodity or OTC component.

The parties to an EFRP and/or each party's Clearing Member, must also maintain, and provide upon Exchange request, all documents relevant to the futures or options component of the EFRP including account statements and order tickets (or other electronically time-stamped records).

The Exchange may also require the participants to produce additional documents related to the negotiation of the terms of the EFRP, such as emails, instant messages, or recorded audio communications, if they exist.

8. Who is responsible for submitting documentation to the Exchange when requested?

Exchange requests for EFRP documentation are commonly directed to the Clearing Member(s) that cleared the transaction. The carrying Clearing Member is responsible for providing the requested documents and information on a timely basis. It should be noted, however, that all market participants are subject to the jurisdiction of the Exchange pursuant to Rule 4.00 and may be requested to furnish information and may be subject to disciplinary action for violation of Exchange Rules.

9. How many parties participate in an EFRP transaction?

Generally, there may only be two parties involved in an EFRP transaction. The documentation for all EFRP transactions must demonstrate that the buyer (seller) of the IFUS Futures Contract is the seller (buyer) of the physical or OTC component of the transaction (the "Related Position"). However, a third party may facilitate an EFRP by acting as the principal of the Related Position transaction. Except as provided below for foreign currency transactions involving a CTA, the Related Position must pass through to the Person that receives the Exchange Futures Contract as part of the EFRP transaction.

A CTA or other account controller may facilitate, as principal, the cash/OTC component of an immediately offsetting foreign currency EFP. In such case, the CTA or other account controller must, upon request of the Exchange, furnish an agreement, account statement or other document which demonstrates that the risk of loss on the cash/OTC component would be borne by the customer of the account controller if the EFP were void as a consequence of the futures leg not clearing, in accordance with Question 14 below.

10. May affiliated accounts execute EFRPs with each other?

The accounts involved in the execution of an EFRP transaction must be:

1. Independently controlled with different beneficial ownership; or

2. Independently controlled accounts of separate legal entities with the same beneficial ownership; or
3. Independently controlled accounts within the same legal entity, provided that the account controllers operate in separate business units.

"Independently controlled" means that the parties have separate accounts with separate operations (whose positions, even when exactly opposite, cannot be offset except by trading on the electronic platform) and that there is independent control of decision making with respect to transactions for such accounts.

The term "same beneficial ownership" means the same person or entity, or a parent and its wholly owned subsidiaries, or subsidiaries that are wholly owned by the same parent. For EFRP transactions between accounts with common beneficial ownership, the parties to the trade must be able to demonstrate the independent control of the accounts and that the transaction had economic substance for each party to the trade.

11. Can an EFRP transaction initiate or offset a position?

Yes, EFRP transactions generally can be used to either initiate or offset futures and/or cash/OTC positions. The impact of an EFRP transaction depends upon the existing futures or options positions of the parties to the transaction at the time the EFRP is executed.

12. Are transitory EFRPs permitted?

No. Transitory EFRPs are prohibited in all Exchange products. Transitory EFRPs are transactions in which the execution of an EFRP is contingent upon the execution of a related physical or OTC transaction between the parties that offsets the cash or OTC derivative component of the EFRP without the incurrence of market risk that is material in the context of the related physical or OTC transactions. Upon completing a transitory EFRP, both parties to the transaction end up with the same position in the cash market as they had before the trade took place.

The length of time between the offsetting related physical or OTC transaction and the EFRP may be considered when determining whether a transaction is transitory, but the primary consideration is determining whether the offsetting cash or OTC transaction can stand on its own as an independent transaction exposed to market risk.

13. Is an immediately offsetting EFP in Foreign Currency Futures prohibited as a transitory EFRP?

No. An immediately offsetting EFP in Foreign Currency Futures is permitted under Rule 4.06 and is not considered a transitory EFP because, in such transactions, the offsetting physical transaction cannot be contingent on the execution of the EFP. For example, if the futures leg of an immediately offsetting EFP in foreign currency is not accepted for clearing, the futures transaction and corresponding cash/ OTC component of the EFP would be void and the counterparties would be left with the stand-alone physical currency transaction that was not a component of the EFP. Rule 4.06 makes clear that the stand-alone physical and EFP transactions may occur immediately and result in the offset of the physical transactions without being prohibited as a transitory EFP. Such immediately offsetting transactions are only permissible as EFPs in foreign currency and as authorized in Question 22 regarding certain benchmark gold transactions, but not in any other asset class or in any other type of EFRP.

14. What documentation is required for an Immediately Offsetting Currency EFP?

For EFPs in foreign currency products that are executed simultaneously or almost simultaneously to another offsetting position in a related physical currency, the Exchange would expect to see confirmation statements for the cash leg of the transaction issued by the participating bank/foreign exchange dealer. The confirmation statements should be the type normally produced by the bank/foreign exchange dealer for confirmation of "stand-alone" currency deals and must identify the counterparty principal to the transaction by name or account number (or other account specific designation).

In circumstances where the EFP Transaction is between a bank/foreign exchange dealer and a CTA, account controller or other person ("Account Controller") facilitating, as principal, the cash/OTC component of the transaction as specified in Question 9 of this FAQ, a confirmation statement issued by the bank/foreign exchange dealer or a written allocation instruction issued by the Account Controller as soon as practicable after the entire transaction is complete, must contain at minimum the name of the Account Controller, Carrying Clearing Member and the account number (or other account specific designation), but need not identify the customer of the Account Controller by name. In addition, the requirements specified in Question 9 of this FAQ must be satisfied by the Account Controller.

15. Can two opposing EFPs/AAs be used to facilitate inventory financing for storable physical commodities?

In connection with inventory financing in storable agricultural, energy or metals products, a market participant may enter into an EFP/AA transaction in which there is a purchase of the physical commodity and the sale of futures contracts representing the equivalent amount of the physical commodity and simultaneously grant to the same counterparty a nontransferable right (but not the obligation) to transact a second AA/EFP during a specified time period which will have the effect of reversing the original AA/EFP.

16. How are EFRP transactions submitted to the Exchange?

EFRP transactions must be submitted via the ICE Block® system. In addition, market participants should be aware that the Commodity Exchange Act and CFTC

Regulations impose certain swap reporting obligations which may be applicable to them in connection with EFS/EFR transactions. Any party that utilizes ICE Block to submit EFRP(s) to the Exchange must take reasonable steps to ensure their actions do not cause significant market interruptions or system anomalies that may limit the ability of other market participants to trade, engage in price discovery, or manage risk.

17. What are the trading hours for EFRP transactions?

EFRP transactions in energy products executed during the trading session or on certain designated Exchange holidays should be submitted to the Exchange through ICE Block as soon as possible following agreement to the terms by the relevant parties but no later than the end of the trading session for the corresponding contract market, absent mitigating circumstances.

EFRP transactions in all other products executed during the trading session or on certain designated Exchange holidays should be submitted to the Exchange through ICE Block as soon as possible following agreement to the terms by the relevant parties but no later than thirty (30) minutes after the end of the trading session for the corresponding contract market, absent mitigating circumstances. The only exception is for EFRP transactions executed on the last trading day for any delivery month in any Sugar No. 11® or Sugar No. 16 futures contract which must be executed and entered into ICE Block no later than five (5) minutes prior to the close of trading.

EFRP transactions which are executed during normal trading hours for an Exchange Futures Contract or Exchange Option or during specified hours on certain designated holidays determined by the Exchange, which will be announced by the Exchange in advance of such holidays, must be reported no later than the time periods specified above after execution. For EFRP transactions executed outside of normal trading hours on non-designated holidays, the transaction must be reported to the Exchange no later than 5 minutes after the open of the next trading session for the applicable contract.

18. What are the recordkeeping requirements for EFRPs?

Parties to an EFRP must maintain all records relevant to the Exchange contract and the corresponding related cash or OTC position, including any records required to be kept pursuant to CFTC Regulation 1.35. EFRP transactions do not require submission of a separate time of execution provided that they are submitted through ICE Block immediately upon execution. If such transactions are not entered to ICE Block immediately, the date and the time of execution of the EFRP transaction must be captured and recorded on a separate record containing the other trade details related to the EFRP, as required under Exchange Rule 6.08. In addition, market participants should be aware that the Commodity Exchange Act and CFTC Regulations impose certain swap reporting obligations which may be applicable to them in connection with EFS/EFR transactions. EFRP transactions must be accurately identified as such on confirmation and monthly account statements produced by FCMs and delivered to customers.

19. Do EFRPs have to be separately identified and submitted in a firm's daily Large Trader position file?

Yes. In accordance with Exchange Rule 6.15, a firm's daily Large Trader position file must include for each reportable account the EFRP volume bought and sold in the reportable instrument, by contract month, and for EOOs by put and call strike.

20. Can parties to a swap or OTC instrument agree at the time the transaction is being negotiated to settle by EFS; or agree at any time after to offset the swap or OTC instrument by EFS?

Yes, parties may agree at the time a swap or OTC transaction is being negotiated to settle it by EFS. The determination of the settlement value for the instrument must be subject to market risk that is material in the context of the transaction. For example, a sugar swap may be negotiated to settle via EFS on a specific date in the future at the settlement price for the Sugar No. 11® futures contract on a specific date or the average price of the futures contract over a defined period of time.

Parties may also agree to offset a swap transaction via EFS at any time after the swap has been agreed to provided that the swap or OTC transaction stands on its own as an independent transaction, subject to material market risk.

21. Can parties agree at the time a physical forward contract is being negotiated to include as a term the option to settle the forward delivery obligations by executing an EFP which results in moving the position onto the Exchange; or agree at any time after to offset the physical forward contract by EFP?

Yes, parties may agree at the time a physical forward contract is being negotiated to include an option to settle/offset the delivery obligations by EFP that effectively results in moving the position onto the Exchange. Like swaps that are negotiated to settle via EFS, the determination of the price of the physical forward contract must be subject to market risk that is material in the context of the transaction. For example, a forward contract calling for delivery of a carbon emissions certificate may be priced at a premium or discount to a subsequent state/government auction price and may include an option to settle the delivery obligation by executing an EFP after the auction price is determined.

Parties may also agree to offset a physical forward contract via EFP at any time after the contract has been agreed to provided that the physical forward contract stands on its own as an independent transaction, subject to material market risk.

22. Can participants in the London Gold and Silver Auctions (the "Auctions") administered by ICE Benchmark Administration ("IBA") agree to settle their physical delivery obligations by executing immediately offsetting EFPs involving the Exchange's Gold and Silver Daily Futures Contract ? What Documentation is Required?

Yes. IBA Rules allow parties that are matched in the Gold and Silver Auction to settle delivery obligations either by physical delivery in London or by executing EFPs that effectively move the delivery obligations into the cleared, exchange environment. Pursuant to Rule 4.06, the Exchange may request documentation evidencing the IBA matching of the parties in the relevant Auction. Such documentation can be furnished directly by the parties or by IBA. In addition, a party to such an EFP must be able to provide evidence that such party or its Exchange clearing member has the capacity to settle transactions in the spot loco London Gold and Silver market, as applicable.

23. What types of transactions would the Exchange consider to be non-bona-fide EFRPs?

Submission of EFRPs for which the related cash/ OTC derivative component does not exist or cannot be documented and which are used to circumvent the competitive central futures or options market would be considered non-bona fide and would be considered a violation of Exchange Rules.

Transactions that would be considered non-bona-fide EFRPs include, but are not limited to, the following scenarios:

- Executing EFRPs on behalf of two customers or between an FCM's proprietary trading desk and a customer to avoid exposure to the competitive, exchange-traded futures or options market when there are no corresponding bona-fide cash or OTC transactions.

- Execution of EFRP transactions between two separate commercial suppliers by a trader with control over the trading for both entities in which the trades did not involve the actual transfer of ownership of the cash or OTC derivative component, but instead were done with the intent to transfer funds from one company to the other.

- Execution of EFRP transactions between two separate market participants under separate control for the purpose or intent to transfer funds from one company to the other without legitimate bona-fide cash/ OTC market transactions.

- Execution of non-bona fide EFRPs for the purpose of moving funds or P&L between futures and cash or OTC accounts of the same entity in order to conceal losses.

24. Does the use of electronic platforms or systems satisfy the private negotiation standard for an EFRP?

It is permissible to use communication platforms or technologies to bilaterally request EFRP markets from one or more market participants and to conduct privately negotiated EFRPs. It is not permitted to facilitate the execution of EFRPs in Exchange-traded products on a system or facility accessible to multiple parties that allows for the electronic matching of or the electronic acceptance of anonymous bids and offers. EFRPs transacted in such manner do not satisfy the private negotiation standard.

Parties may also use technologies supported by third parties which allow for the electronic posting of indicative EFRP markets displayed to multiple market participants. However, EFRPs executed between parties on the basis of such electronically displayed indicative markets may be transacted only through direct bilateral communications involving the broker, where applicable, and the parties to the trade. To demonstrate that the EFRP based on such technologies was privately negotiated, the broker(s) or parties involved in a transaction must maintain and provide, when requested, documentation or correspondence that clearly evidences direct bilateral communications between the broker(s) and the parties to the trade. Failure to provide such documentation or communication would render the EFRP in violation of the private negotiation standard.

25. Can two parties to an initial EFP transact a second EFP for the purpose of adjusting the number of futures contracts exchanged pursuant to the initial EFP, as a result of an instance where the quantity of the Related Position (physical product) to be delivered is not equal to the number of futures contracts exchanged in the initial EFP?

Yes, commonly referred to as a “true-up” EFP. Parties that have executed and reported an initial EFP in accordance with Exchange rules and guidance provided in this FAQ, and find later that the original amount of the Related Position (physical product) to be delivered has changed, may transact a second EFP to reflect the change in delivery quantities as agreed to by the parties. As with all EFRPs, a true-up EFP must be executed in accordance with Exchange rules and the guidance provided in this FAQ, and reported by the end of the business day on which the actual delivery quantities are determined. In certain circumstances, a true-up EFP may result in the unwind of a position obtained in the initial EFP.

As an acceptable alternative, and upon mutual agreement, the Exchange also deems it appropriate if the parties choose to settle any quantity difference financially instead of posting a true-up EFP.

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