CME and ICE Disruptive Trading Practices Rules Summary[i]

CME Rule and Guidance	ICE Rule and Guidance	Guidance Common to CME and ICE	CFTC Guidance	CWT Comments
General Rule Prohibiting Disruptive Trading Practices				
CME Rule 575. All orders must be entered for the purpose of executing *bona fide* transactions. Additionally, all non-actionable messages must be entered in good faith for legitimate purposes. Intent: Rule 575 applies to intentional conduct (and in the case of orderly trading (Rule 575.D), to both intentional and reckless conduct). Scope: Rule 575 applies to all open outcry and electronic trading activity, including all market states (pre-opening, closing period, and all trading sessions).[ii]	**ICE Rule 4.02(l)(2).** In connection with the placement of any order or execution of any transaction, it is a violation for any person to knowingly enter any bid or offer for the purpose of making a market price which does not reflect the true state of the market, or knowingly entering, or causing to be entered, bids or offers other than in good faith for the purpose of executing *bona fide* transactions. Intent: Rule 4.02 applies to intentional conduct (and in the case of 4.02(l)(D), to both intentional conduct and reckless disregard for adverse impacts). Scope: Rule 4.02 applies to any activity that influences a market price, including during the pre-open period.[iii]	The CME and ICE FAQs include a list of factors that will be considered in assessing a potential violation of the disruptive trading practices. The factors are very similar across both CME and ICE. A market participant is not prohibited from making a two-sided market with unequal quantities as long as both orders are entered to execute *bona fide* transactions.[iv] For both CME and ICE, the means to cancel an order (*e.g.*, CME's or ICE's Self-Match Prevention functionality) does not indicate whether the trade violates the CME or ICE rules.[v]	Section 4c(a)(5) of the Commodity Exchange Act ("CEA") provides that: "it shall be unlawful for any person to engage in any trading practice, or conduct on or subject to the rules of a registered entity that – (A) violates bids or offers; (B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or (C); is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution)." In May 2013, the CFTC issued interpretive guidance ("CFTC Guidance") on its anti-disruptive practices authority under CEA Section 4c(a)(5).[vi] The CFTC will rely on facts and circumstances to determine if there has been a violation of the CEA prohibition on disruptive trading practices.[vii] The CFTC Guidance does not apply to block trades or exchange for related position transactions ("EFRPs") that are transacted in accordance with CFTC regulations.	Although the CME and ICE rules do not expressly address the CEA's prohibition on violating bids and offers, the ICE and CME trading functionality should prevent this type of conduct. The exchanges may find more generally that violating bids or offers is prohibited by the exchanges' disruptive trading practices rules. Neither CME or ICE rule nor the accompanying guidance defines "*bona fide* transactions," "good faith" or "legitimate purposes." The guidance and notes contained in this chart should provide market participants with a helpful starting place to develop compliance controls that are reasonably designed to prevent violations of CME Rule 575 and ICE Rule 4.02. Like the CFTC, ICE and CME will rely on facts and circumstances to determine whether there is a violation of the prohibition on disruptive trading, including circumstantial evidence to prove intent. However, even if a trade(s) is *bona fide*, it may violate the prohibition on disruptive trading (*e.g.*, numerous trades entered for *bona fide* and legitimate purposes that are executed during a small window of the closing period). A market participant making a two-sided market should intend to transact on either side.

CME Rule and Guidance	ICE Rule and Guidance	Guidance Common to CME and ICE	CFTC Guidance	CWT Comments
		Entering Trades with the Intent to Cancel ("Spoofing")		
CME Rule 575.A. No person shall enter or cause to be entered an order with the intent, at the time of order entry, to cancel the order before execution or to avoid execution.	**ICE Rule 4.02(l)(A).** It is a violation to enter an order or market message, or cause an order or market message to be entered, with the intent to cancel the order before execution, or modify the order to avoid execution.	Although ICE and CME did not identify factors specific to spoofing, the following factors from the FAQs appear most relevant to the issue: • Whether the market participant's intent was to induce others to trade when they otherwise would not; • Whether the market participant's intent was to affect a price rather than to change his position; • Whether the market participant's intent was to create misleading market conditions; • The ability of the market participant to manage the risk associated with the order(s) if fully executed; • The change in the best offer price, best bid price, last sale price, or other price that results from the entry of the order; and • The queue position or priority of the order in the order book. Modifying or cancelling an order due to a perceived change in circumstances is not a violation.[viii] Fat-finger orders do not constitute disruptive trading, but may violate other ICE or CME rules pertaining to acts that are detrimental to the best interests of the exchange.[ix] A market participant may enter orders to obtain "queue positioning" in the order book and subsequently cancel those orders based on changing market conditions, provided there are no other indicia of disruptive trading.[x] A partial fill of an order may indicate that the order was entered in good faith, but it does not establish a safe harbor from liability under the	CEA section 4c(a)(5)prohibits conduct that is of the character of "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution). The CFTC intends to apply the spoofing prohibition to bid and offer activity in all products traded on all registered entities, including DCMs and SEFs. The CFTC Guidance provides the following examples of spoofing: • overloading the quotation system of a registered entity; • delaying another person's execution of trades; • creating an appearance of false market depth; and • creating artificial price movements upwards or downwards. The CFTC does not apply the spoofing prohibition to market communications such as authorized pre-trade communications. The CFTC may find spoofing even where a market participant receives a partial fill of its order. The CFTC specified that a violation does not require a pattern of activity and that a single instance can be the basis for a violation. Trading, practices or conduct that is reckless or negligent do not constitute "spoofing" because the CFTC must establish intent. It is not a violation of the spoofing prohibition to cancel a bid or offer before	A spoofing violation under the CME and ICE Rules, and the CFTC Guidance requires a showing of specific intent, which the CME, ICE, and CFTC will determine by evaluating the factors included in their guidance. Market participants should ensure that their communications do not lead to improper inferences after the fact. FIA hosted separate webinars for both CME and ICE. During the CME FIA Webinar, CME emphasized that intent must be established at the time of order entry, which, according to the CME, is more specific than the CFTC's guidance on the CEA Prohibited Trading Practices. Later, the CME clarified, and the CFTC agreed, that the intent standard is determined at order entry for both the CME and the CFTC. ICE takes the same view that intent is measured at the time of order entry. The prohibition on spoofing also applies to resting orders that are later modified to avoid execution.

CME Rule and Guidance	ICE Rule and Guidance	Guidance Common to CME and ICE	CFTC Guidance	CWT Comments
		disruptive trading practices rules.[xi] CME and ICE do not establish a safe harbor for the amount of time that an order must be exposed to the market to demonstrate that it was not entered into with the intent to cancel, although time is a factor in the determination of whether an order constituted a disruptive practice.[xii]	execution if the market participant's actions were part of a legitimate, good faith attempt to consummate a trade.	
		Entering Trades with the Intent to Mislead Market Participants		
CME Rule 575.B. No Person shall enter or cause to be entered an actionable or non-actionable message or messages with intent to mislead other market participants.	**ICE Rule 4.02(l)(C).** It is a violation to enter an order or market message, or cause an order or market message to be entered, with the intent to . . . mislead other market participants. Guidance: • Iceberg orders are not considered a violation of the rules, but may be a violation if used as part of a scheme to mislead other market participants (*e.g.*, pre-positioning an iceberg on the bid and layering larger displayed quantities on the offer to create artificial downward pressure that results in the iceberg being partially or completely filled).[xiii] • To determine whether a market participant intended or demonstrated reckless disregard for the "orderly conduct of trading or the fair execution of transactions" ICE will consider the context of the specific instrument, market conditions, and other circumstances present	"Misleading" is a more specific statement of the general requirement not to act in violation of just and equitable principles of trade.[xv] This section prohibits a market participant from entering orders or messages with the intent of creating the false impression of market depth or market interest. The CME and ICE likely will find intent where the purpose of the conduct was, for example, to induce another market participant to engage in market activity.[xvi] Although CME and ICE do not identify factors specific to the prohibition on entering orders with the intent to mislead market participants, the following factors from the FAQs appear most relevant to this issue: • Whether the market participant's intent was to induce others to trade when they otherwise would not; • Whether the market participant's intent was to create misleading market conditions; • The effect on other market participants; • The market participant's historical pattern of activity; and • The prices of preceding and succeeding bids, offers, and trades.	In the CFTC Guidance, one of the examples of prohibited spoofing activity is: "submitting or cancelling multiple bids or offers to create an appearance of false market depth."[xvii] As a result, the CFTC could designate the submission or canceling of an order with the intent to mislead others as spoofing.	In addition to CEA's prohibition on spoofing, the CFTC could rely on its fraud-based manipulation authority to prosecute these types of trading activities. The CME views the prohibition on spoofing in CME Rule 575.B as broader than the CFTC's disruptive trading practices guidance because the CME Rule also applies to non-actionable messages.

CME Rule and Guidance	ICE Rule and Guidance	Guidance Common to CME and ICE	CFTC Guidance	CWT Comments
	at the time.[xiv] *See* notes below regarding "Entering messages with intent to disrupt or with reckless disregard for adverse impact on orderly conduct of trading or fair execution of transactions."			
Entering Messages with the Intent to Overload, Delay, or Disrupt Systems of Exchange of Other Market Participants				
CME Rule 575.C. No Person shall enter or cause to be entered an actionable or non-actionable message or messages with intent to overload, delay, or disrupt the systems of the Exchange or other market participants. The CME MRAN refers to this type of conduct as "quote stuffing practices," which includes submitting bids/offers to overload the quotation system and submitting bids/offers to delay another person's execution of the trade.	**ICE Rule 4.02(I)(B).** It is a violation to enter an order or market message, or cause an order or market message to be entered, with the intent to overload, delay, or disrupt the systems of the Exchange or other market participants.	Although CME and ICE do not identify factors specific to the prohibition on entering orders with the intent to cancel, the following factors from the FAQs appear most relevant to this issue: • Whether the market participant's intent was to create misleading market conditions; • Market conditions in the impacted market(s) and related markets; • The effect on other market participants; • The market participant's order entry and cancellation activity; • The size of the order(s) relative to market conditions at the time the order(s) was placed; • The size of the order(s) relative to the market participant's position and/or capitalization; and • The duration between, and frequency of, non-actionable messages.	According to the CFTC Guidance, delaying another person's execution of trades; or overloading the quotation system of a registered entity violates the CEA's prohibition on spoofing.[xviii]	This prohibited practice also is a specific intent violation. The CFTC, CME and ICE must prove that the person intended to "overload, delay, or disrupt the systems of the Exchange or other market participants."

CME Rule and Guidance	ICE Rule and Guidance	Guidance Common to CME and ICE	CFTC Guidance	CWT Comments
Entering Messages with Intent to Disrupt or with Reckless Disregard for Adverse Impact on Orderly Conduct of Trading or Fair Execution of Transactions				
CME Rule 575.D. No person shall enter or cause to be entered an actionable or non-actionable message with intent to disrupt, or with reckless disregard for the adverse impact on, the orderly conduct of trading or the fair execution of transactions.	**ICE Rule 4.02(l)(D).** It is a violation to enter an order or market message or cause an order or market message to be entered with reckless disregard for the adverse impact of the order or market message. **ICE Rule 4.02(l)(C).** It is a violation to enter an order or market message or cause an order or market message to be entered with the intent to disrupt the orderly conduct of trading [or] the fair execution of transactions	CME and ICE may evaluate whether conduct is intended to disrupt the orderly conduct of trading or whether it demonstrates a reckless disregard for orderly trading within "the context of the specific instrument, market conditions, and other circumstances present at the time in question."[xix] Both CME and ICE expect market participants to know the market characteristics of the products they trade as market disruption will be determined in the context of those characteristics. Further, CME and ICE intend to evaluate the size of the order(s) relative to market conditions at the time the order(s) was placed. CME and ICE will rely on guidance from the CFTC in determining whether there was orderly conduct or the fair execution of transactions: "[A]n orderly market may be characterized by, among other things, parameters such as a rational relationship between consecutive prices, a strong correlation between price changes and the volume of trades, levels of volatility that do not dramatically reduce liquidity, accurate relationships between the price of a derivative and the underlying such as a physical commodity or financial instrument, and reasonable spreads between contracts for near months and for remote months."[xx] CME and ICE may deem orders entered for the purpose of "igniting momentum in the market" to be a violation if the conduct was reckless.[xxi] CME and ICE permit changing an order from buying to selling provided that the activity is not	The CFTC interprets the prohibition of reckless disregard for the orderly execution of transactions during the close to apply to any trading, conduct or practices occurring within the closing period. The closing period is the period in the contract or trade when the settlement price is determined under the rules of a trading facility, including a DCM or SEF. However, the CFTC may also view conduct outside of the closing period as disrupting the orderly execution during the closing period (*e.g.*, if a market participant accumulates a large position in a product or contract immediately preceding the closing period with the intent to disrupt orderly execution of transactions during the closing period). To determine if activity represents an intentional or reckless disregard for the orderly execution of transactions, the CFTC provided the following non-exhaustive examples of an orderly market: • Rational relationship between consecutive prices; • Strong correlation between price changes and the volume of trades; • Levels of volatility that do not dramatically reduce liquidity; • Accurate relationships between the price of a derivative and the underlying such as a physical commodity or financial instrument; and • Reasonable spreads between contracts for near months and remote	CME Rule 575.D and ICE Rule 4.02(l)(D) employ a reckless standard similar to the CEA's prohibition on intentional or reckless disregard for the orderly execution of transactions during the closing period. Market participants should be familiar with, and cognizant of, the condition of the market in which they trade a product (*e.g.*, liquid, illiquid, congested) to help ensure that their orders are not disruptive. As noted above, the CME, ICE, and the CFTC may deem even a *bona fide* trade as disorderly.

CME Rule and Guidance	ICE Rule and Guidance	Guidance Common to CME and ICE	CFTC Guidance	CWT Comments
		disruptive. However, “flipping” orders are prohibited. The CME FAQs define “flipping” as “the entry of orders or trades for the purpose of causing turns of the market and the creation of volatility and/or instability.”[xxii]	months. The prohibition applies to bids and offers as well as orders, so entering orders with the intent to cancel during the closing period may violate the orderly execution provision and the spoofing provision. The CFTC applies a recklessness standard regarding orderly trading during the close, which is conduct that ‘‘departs so far from the standards of ordinary care that it is very difficult to believe the actor was not aware of what he or she was doing.’’[xxiii] This prohibition regarding orderly execution of transactions during the closing period may apply to swaps if a DCM or SEF determines that a settlement or pricing period exists for that particular swap.[xxiv] The CFTC will consider all facts and circumstances at the time the person engaged in the relevant trading, practices, or conduct in determining if a violation has occurred. An example of facts to be considered are what the person knew or should have known, and the information available at the time he or she was engaging in the conduct at issue.[xxv] The CFTC noted that banging or marking the close would disrupt the orderly execution of transactions during the closing period, but stated that such showing of intent is not required for finding a violation.	

ENDNOTES

[i] On August 29, 2014, the CME Group exchanges (CME, CBOT, NYMEX, and COMEX) (collectively, "CME") issued a Market Regulation Advisory Notice ("MRAN") adopting a new rule, Rule 575 – Disruptive Practices Prohibited and providing answers to Frequently Asked Questions ("FAQ"). CME Rule 575 became effective September 15, 2014. On December 29, 2014, ICE Futures U.S. ("ICE") issued a notice amending Rule 4.02 – Trade Practice Violations and providing an FAQ on Disruptive Trading Practices. Amended ICE Rule 4.02 became effective January 14, 2015.

[ii] CME Rule 575.

[iii] ICE FAQ A15.

[iv] CME & ICE FAQ A7.

[v] ICE FAQ A14 &CME FAQ A19.

[vi] Antidisruptive Practices Authority, 78 Fed. Reg. 31890 (May 28, 2013).

[vii] The CFTC's guidance includes a prohibition on violating bids and offers, which the Exchanges did not specifically address in their guidance but the CFTC treats as a *per se* offense, requiring no showing of intent. The CFTC will not apply the prohibition on violating bids and offers to: (1) methods of execution on a SEF other than the order book (*i.e.*, RFQs), (2) persons utilizing trading algorithms to match best bids and offers, (3) uncleared swaps, and (4) bids and offers on swaps that would be cleared at different clearinghouses.

[viii] CME & ICE FAQ A4.

[ix] CME & ICE FAQ A5.

[x] CME FAQ A10 & ICE FAQ A9.

[xi] CME & ICE FAQ A6.

[xii] CME & ICE FAQ A3.

[xiii] ICE FAQ A8.

[xiv] ICE FAQ A10.

[xv] CME & ICE FAQ A2.

[xvi] CME & ICE FAQ A2.

[xvii] CFTC Guidance at 31896.

[xviii] CFTC Guidance at 31896.

[xix] CME FAQ 13 & ICE FAQ A10.

[xx] CME A13 (quoting *Antidisruptive Practices Authority*, 78 Fed. Reg. at 31,895-96).

[xxi] CME FAQ A17 & ICE FAQ A12.

[xxii] CME FAQ A18 & ICE FAQ A13.

[xxiii] CFTC Guidance at 31895.

[xxiv] CFTC Guidance at 31895.

[xxv] CFTC Guidance at 31895.

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