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Sent: Thursday, October 7, 2010 5:08 PM
To: OCR <OCR@CFTC.gov>
Subject: Account Ownership and Control Report
Attach: ICE OCR Comment letter 10-7-2010.pdf

Attached, please find the comment letter re: the Account Ownership and Control Report Notice of Rulemaking filed by IntercontinentalExchange, Inc. ("ICE").

Thanks

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BY ELECTRONIC TRANSMISSION

October 7, 2010

Mr. David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Account Ownership and Control Report (“OCR”) - Notice of Proposed Rulemaking and Request for Public Comment

Dear Mr. Stawick:

IntercontinentalExchange, Inc., ICE Futures Europe, and ICE Futures U.S., Inc, (collectively “ICE”) submits this letter in response to the Notice of Proposed Rulemaking appearing in 75 Federal Register 41775 concerning the Commission’s determination to collect certain ownership, control, and related information for all trading accounts active on “reporting entities” which include designated contract markets (“DCMs”), derivatives transaction execution facilities (“DTEFS”), exempt commercial markets with significant price discovery contracts (“ECM SPDCs”) and possibly other regulated entities (the “Notice”).

IntercontinentalExchange Inc. operates several reporting entities including ICE Futures U.S., Inc (ICE Futures US), ICE Futures Europe and ICE OTC. ICE Futures US is a U.S. DCM which provides a marketplace for trading in agricultural, equity index, currency and financial index futures and options contracts. ICE OTC is an exempt commercial market that lists several ECM SPDCs. Finally ICE Futures Europe, a foreign board of trade, lists “linked products” which are subject to a no action letter that institutes U.S. reporting obligations.

ICE recognizes the value in collecting information regarding the identity of the owners and controllers of accounts that actively trade on reporting entities, and therefore supports the Commission’s initiative to collect certain OCR information. As a self-regulatory organization, ICE continually strives to enhance its trade practice and market surveillance systems to adapt to the changing trading environment and support the detection of trading abuses. Some of the additional OCR information will support these efforts by promoting further integration of our existing market surveillance and trade practice surveillance data and bridge gaps that may exist between individual transaction data contained in the ICE trade register and position data contained in large trader reports filed with the ICE. Having such data readily available in our surveillance systems would improve the efficiency of the investigative process by saving the

additional work and time required to manually request such information from our clearing member firms.

ICE appreciates the opportunity to comment and participate in the development of an appropriate OCR mechanism. The Commission's proposal raises important issues that should be carefully weighed to strike the proper balance before instituting its final rules. We recognize that the proposed OCR initiative will demand a substantial amount of time and resources to develop, implement and maintain, not only for the reporting entities but also for the root data source holders and suppliers of the proposed account ownership and control information. Successful implementation of this proposal is going to require effective communication and coordination between all parties involved including the Commission so that we can achieve the desired results. In considering the structure of the new OCR regime, the Commission should take into account the burdens that will be imposed on those who will be required to collect and report the OCR information by limiting the required data to only that information which is deemed essential to support the Commission's stated objectives, while recognizing that additional information which may be required in a particular case or for special purposes will continue to be available through the many other means currently available to the agency.

In this regard, ICE supports several recommendations that were made by industry representatives at the OCR roundtable discussion held on September 16, 2010, with respect to: 1) reduction in the number of OCR data points necessary to sufficiently identify the ownership and control of an account, 2) establishment of minimum account volume thresholds above which the carrying firms would be obligated to supply the required OCR data for an account, 3) utilization and supplementation of the data already provided via the CFTC Form 102 information that is currently supplied to the CFTC and exchanges and via CFTC Form 40 supplied to the Commission by reportable traders. Finally, ICE requests that the Commission consider the unique burdens on foreign boards of trade if required to collect OCR data.

1) Reduction in the number of OCR data points necessary to sufficiently identify the ownership and control of an account

ICE does not believe that all of the OCR data points the Commission is proposing to collect are necessary to accomplish the expressed objectives of identifying with certainty the ownership and control of a single account and those accounts that are under common ownership or control at a single reporting entity or at multiple reporting entities. ICE recommends that the Commission limit its OCR data requirements to only that information that is absolutely necessary to identify the ownership and control of an account. Particularly, if it is information that is not routinely requested or collected as part of a carrying firm's account opening and identification process. Furthermore, we propose that the reporting of the OCR data be done by the carrying firms and not by the executing firms. It is the carrying firm that opens and carries the account to which a trade ultimately clears. As such, the carrying firm requests, receives and maintains the information with respect to the ownership and control of an account. Furthermore, requiring the identity of the executing firm for the trading account is unnecessary as that information may already be captured in ICE trade registers or related trading records received by the Commission. There may also be multiple executing firms for a single

account which would unnecessarily complicate the OCR collection process and the report itself.

ICE believes that the OCR data collection process would be simplified and more easily standardized without compromising the Commission's ability to accomplish its objectives by limiting the required OCR information to the following:

- The trading account number, as reported in the Trade Capture Report (see TCR tags 448 and 452, Party Role 24);
- Name and address of the trading account's owner(s);
- Name and address of the trading account's controller(s);
- Special account number, if one has been assigned; (if there is a special account number assigned to the account, then by definition it is reportable)
- Indication of whether the trading account is a firm omnibus account, and if so, the name of the firm;
- Name of the clearing firm for the trading account, and its unique identifier as reported in the TCR (see TCR tags 448 and 452, Party Role 4).
- Name of the firm(s) providing OCR information for the trading account;
- OCR transmission date.

As previously stated, we expect most of the collection and reporting burden will likely be borne by the firms carrying the ultimate customer account, because they have the account relationship and have access to opening account documents containing most of the proposed OCR information. However, it should be noted that the DCM trade registers currently contain the Clearing Member Identity (FIXML tags 448 and 452, Party Role 4) and the account number (FIXML tags 448 and 452, Party Role 24) as part of the transaction clearing process and consequently this information is already on the daily Trade Register and is being furnished to the Commission.

2) Establishment of minimum account volume thresholds

In its Notice, the Commission stated that it would be open to comment suggesting that the OCR be limited to accounts meeting certain minimum thresholds as a way of reducing costs associated with collection and reporting of the data.¹ ICE supports a minimum contract volume threshold that would identify actively traded accounts including high frequency traders ("HFTs"), automated trading systems ("ATs") and other day traders that are not otherwise captured through the large trader (Form 102) reporting process, but which based on the volume and frequency of trading, are considered significantly active participants on a reporting entity. The volume threshold should be set at a level that would ensure that the OCR data is reported for 80% to 90% of the volume traded in a market by all market participants, not just those accounts carrying reportable open positions at close of business. By capturing the OCR data for 80% to 90% of the largest and most active traders, the Commission should have the necessary information to quickly and efficiently detect, analyze and investigate

¹ CFTC OCR Notice of Proposed Rulemaking

significant abusive trading practices impacting markets and market participants. Furthermore, the implementation of a volume threshold would eliminate significant costs associated with collecting and reporting OCR information from every account including the many small volume accounts that trade infrequently.

The volume threshold would likely vary depending on the type of reporting entity and the specific contract. For example, one suggestion that was considered among participants at the CFTC OCR roundtable discussion was to link the volume threshold for non-reportable accounts to a product's reportable level requirement prescribed by the CFTC and or reporting entity for large trader reporting purposes. The reportable level, or some multiple of that reporting level, if it is determined the reportable level is too low for a particular product, could serve as the threshold for OCR reporting as well as large trader reporting. Existing reportable levels and any volume threshold are inextricably linked, in that the reportable levels that are used to identify any market participants that may have a position large enough to adversely impact market direction or price may also be used to identify market participants whose daily trading volume and frequency of trading is of a level that potentially could adversely impact market direction or price.

ICE also believes that there is a high correlation between the number of accounts for which OCR data must be collected/ reported and the cost to the firms and reporting entities to collect, store and report such data for every account. Therefore excluding the many low volume infrequently traded (retail type) accounts based on a volume, threshold would translate into significant reduction in costs to the firms and reporting entities supplying OCR data. Thus there is inherently an inverse relationship between a proposed volume threshold level and cost to firms beyond the initial implementation cost.

If necessary, the CFTC and SROs could always obtain the OCR information for the small volume infrequently traded account through traditional channels.

Lastly, ICE believes, that in situations where there are competing products across reporting entities, there may be a need for cross reporting entity thresholds to address any potential concerns that may arise with respect traders that execute volume across two competing reporting entities in essentially the same product. This issue will become more acute after the implementation of Dodd Frank with traders trading across multiple Swap Execution Facilities (SEFs) offering the equivalent swaps.

3) Utilization and supplementation of the data already provided via the CFTC Form 102 and Form 40

ICE anticipates that the firms carrying the ultimate customer account, which includes clearing members, member and non-member FCMs, foreign brokers and foreign affiliates of FCMs will all have to report OCR information in some way, whether directly or through a clearing member. In this regard it is worth noting that many of the account ownership and control data points listed above are currently provided to reporting entities and the Commission through submission of the CFTC Form 102 for accounts that reach reportable position levels. ICE recognizes that the Form 102 is currently only supplied

for entities that carry open positions equal to or in excess of a contract reportable level, however, we would advocate that OCR information similar to what is currently being supplied via the Form 102 be supplied whenever an account meets or exceeds a prescribed minimum volume threshold using an automated format that would need to be developed and would include the data currently included in the Form 102 supplemented with additional OCR data as deemed necessary.

Accounts carried as omnibus accounts on a carrying firm's books and accounts carried with foreign brokers that are not members of the reporting entity present logistical issues with respect to the carrying firms obtaining and reporting the OCR information. The OCR information about the end clients within the omnibus or foreign broker's accounts is generally not disclosed to the member carrying firm and is therefore not available for the carrying firm to report to the reporting entity. However, the Commission and exchanges require the disclosure of information for large trader end clients carried within omnibus accounts or with foreign brokers via the Form 102 and Form 40 filings. For this reason, ICE suggests that OCR information for such accounts could be obtained through the Form 102 and CFTC Form 40 filing processes which could be automated and supplemented as described above.

Foreign Boards of Trade

As indicated by the Commission at the Global Markets Advisory Committee, pursuant to the Dodd/Frank financial reform legislation ("Dodd/Frank"), the Commission will require foreign boards of trade to register in the United States. While it is unclear whether Section 738 of Dodd/Frank requires foreign boards of trade to provide any data in addition to large trader data for linked contracts, the CFTC may decide to require foreign boards of trade to obtain OCR data. If the Commission decides to require OCR from foreign boards of trade, it should consider the interplay between the OCR rules and foreign privacy and data security laws and whether gathering OCR data could put a foreign board of trade in violation of these laws.

Estimated OCR Cost and Time Required to Develop and Implementation

Clearly, the proposed OCR project will require significant time and resources to accomplish, including necessary support beyond the initial implementation. Estimating the cost of the required work in terms of systems (hardware & software) and personnel resource hours and dollars is difficult. Based on a review of recent internal database technology initiatives with characteristics similar to the proposed OCR initiative, but of lesser scale, ICE believes that the Commission's cost estimates for reporting entities in terms of hours and dollars contained in its Notice² are low. ICE estimates that aside from the initial development and implementation costs there are numerous hidden hours involved with the data warehouse set-up, servers, licenses, security, network operations, redundancy, controls, audit, storage and any number of other internal costs in addition to the cost of ongoing maintenance, support, and enhancements that cannot be adequately estimated at this time for this type of effort.

² CFTC OCR Notice of Proposed Rulemaking

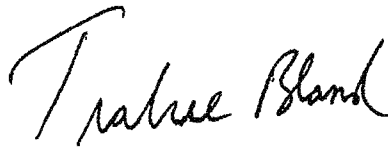
Until further details are determined regarding final OCR data points, the potential for a volume threshold, the standard reporting structure and format and the frequency for required reporting, ICE cannot estimate with any precision the costs to develop, implement and support the OCR initiative, except to say that they are large. Once these details are determined, we will be in a better position to estimate the costs associated with the initiation and on going support of the OCR system as well as a reasonable time table for implementation. As pointed out during the CFTC OCR roundtable, this work has to be budgeted and scheduled in conjunction with several other regulatory programs that are expected to emerge from the Commission's rule making process in the next few months.

ICE appreciates the opportunity to comment on the Notice and would be happy to further discuss any of the views presented with Commission staff as they consider the how to proceed with implementation of the OCR initiative. If you have any questions regarding this letter, please contact me at mark.fabian@theice.com or Trabue Bland at trabue.bland@theice.com.

Very Truly Yours,



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