

From: Trabue Bland <Trabue.Bland@theice.com>
Sent: Monday, August 23, 2010 11:57 PM
To: secretary <secretary@CFTC.gov>
Cc: Bill Naber <Bill.Naber@theice.com>
Subject: ICE BCP comment letter
Attach: BCP comment letterice.pdf

Dave:

I hope you are doing well. Attached is ICE's comment letter on the business continuity planning rulemaking.

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August 23, 2010

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

RE: *Business Continuity and Disaster Recovery Standards*

Dear Mr. Stawick:

The IntercontinentalExchange, Inc. (ICE) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (CFTC or Commission) proposed rulemaking on business continuity standards and disaster recovery. As background, ICE operates four regulated futures exchanges: ICE Futures Europe; ICE Futures Canada, the Chicago Climate Exchange and ICE Futures US. ICE also owns and operates five derivatives clearinghouses: ICE Clear US, a Derivatives Clearing Organization under the Commodity Exchange Act, located in New York and serving the markets of ICE Futures US; ICE Clear Europe, a Recognized Clearing House located in London that serves ICE Futures Europe, ICE's OTC energy markets and operates as ICE's European CDS clearinghouse; ICE Clear Canada, a recognized clearing house located in Winnipeg, Manitoba that serves the markets of ICE Futures Canada; The Clearing Corporation, a U.S. Derivatives Clearing Organization and ICE Trust, a U.S.-based CDS clearing house. As the operator a diverse set of exchanges and clearinghouses based in three countries, ICE has a unique perspective on business continuity and disaster recovery standards.

1. The CFTC should coordinate with other financial regulatory agencies in establishing Business Continuity and Disaster Recovery Standards

In the proposed rulemaking, the Commission asks whether the passage of the Dodd/Frank Wall Street Reform and Financial Recovery Act will affect the Commission's proposed rulemaking. Passage of the financial reform act will cause numerous CFTC regulated entities to register with other agencies, primarily the Securities and Exchange Commission. While the CFTC is basing its rulemaking on the 2003 *Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System*, financial agencies' policies on business conduct standards have evolved since its issuance. The CFTC should work with other financial regulatory agencies to coordinate best practices for business continuity and disaster recovery standards to ensure that CFTC registered entities are not subject to differing or contradictory standards. If the CFTC decides to issue this rulemaking without coordinating with other financial regulatory



agencies, ICE suggests that the CFTC give at least a year before registrants are required to comply with this rule.

- 2. The CFTC should consider whether its methodology for establishing a recovery time objective is appropriate.*

The CFTC sets a same day real time recovery objective for DCMs and DCOs. While the CFTC's proposed rulemaking mentions the terrorist attacks on September 11, 2001, the Northeast regional power outages in 2003, economic events of 2008-2009, and the current rise in cyber threats, the proposed rulemaking appears to be based almost solely upon a catastrophic event such as September 11. The CFTC should consider in its final rulemaking whether basing the rules on a catastrophic event make sense as the rules will force DCOs and DMOs to focus time and resources on this type of business continuity event which may draw resources away from a more likely event of a power outage or economic turmoil. The CFTC should consider whether a flexible approach is warranted with recovery objectives proportional to event severity.

- 3. The CFTC should re-estimate the recordkeeping burden of the rule.*

The CFTC states there will be no recordkeeping burden of the proposed rule. Proposed Rule 40.9(d) specifies "regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve a same-day recovery time objective in the event of a wide-scale disruption". Testing for the worst case does not necessarily cover all lesser scenarios. For example, an exercise simulating a total loss of Chicago involves very different actions than a Chicago blizzard where the data center is still functioning and personnel are working remotely. By specifying a particular scenario, these exercises for an unlikely wide-scale event will not replace the more likely scenarios that still need to be exercised, but will be added, resulting in additional recordkeeping both for scheduling and exercise results.

- 4. The cost burdens on DCMs and DCOs will be greater than the CFTC estimates.*

ICE believes the CFTC's goal of implementing real time objectives for DCMs and DCOs is laudable. However, the CFTC should be aware that the rulemaking might entail significant cost burdens on these entities. For example, since many clearing operations involve specialized and very technical skills, only certain people at alternate locations would be qualified to be cross-trained for those operations. Given the required skills, the alternates will mostly come from the pool of critical personnel at the alternate location; therefore, with the requirement to be able to recover operations for all personnel from the affected area, this would require offices to have significant excess capacity of people trained in key roles with ongoing costs for payroll and training.



Further, some clearing organizations are required to create and maintain spaces for the physical segregation and security for clearing operations and treasury. This will have to be duplicated at alternate offices, adding inefficiency to office layouts and workflow for cross-trained individuals and ultimate cost to the DCO.

We appreciate the opportunity to comment on this rulemaking. If you have any questions, please feel free to contact me at 770-916-7832.

Sincerely,

R. Trabue Bland
Vice President of Regulatory Affairs and
Assistant General Counsel