



Atlanta Calgary Chicago Houston London New York Singapore

January 18, 2011

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

RE: *Advanced Notice of Proposed Rulemaking relating to Protection of Cleared Swaps Customers Before and After Commodity Broker Bankruptcies*

Dear Mr. Stawick:

IntercontinentalExchange, Inc. (“ICE”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“Commission”) advanced notice of proposed rulemaking relating to the protection of the collateral of individual customers clearing swaps transactions (the “Advanced Notice”).

As background, ICE operates four regulated futures exchanges: ICE Futures Europe, ICE Futures Canada, the Chicago Climate Exchange, and ICE Futures U.S. ICE also owns and operates five derivatives clearinghouses: ICE Clear U.S., a Derivatives Clearing Organization under the Commodity Exchange Act, located in New York and serving the markets of ICE Futures U.S.; 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 credit default swaps (CDS) clearinghouse; ICE Clear Canada, a recognized clearinghouse 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 clearinghouse.

ICE recognizes that customers face a degree of “fellow-customer risk” as a part of the traditional clearinghouse model.¹ However, the traditional clearinghouse model has worked well by providing a high level of customer protection while keeping the cost of clearing low. This important balance has served to promote a considerable level of OTC clearing, especially in energy swaps. Thus, it might make more sense for the Commission to carefully consider and weigh the costs and benefits of potential customer-related OTC clearing models

¹ Pursuant to traditional futures clearing models, the amount of “fellow-customer risk” is limited to the amount of initial margin a customer has posted with its Futures Commission Merchant (FCM). As discussed in more detail herein, the ICE Trust model further limits the amount of “fellow-customer risk” to a customer’s pro rata share of its FCM’s net customer-related margin requirement with ICE Trust.



by asset class, as opposed to trying to determine if any potential models should apply to all swaps.²

As the owner of ICE Trust, an innovative and active CDS clearinghouse, ICE has a unique perspective on the questions raised by the Commission in its Advanced Notice related to protecting the collateral of customers clearing swaps transactions.

The ICE Trust Customer-related Clearing Model

The ICE Trust customer-related clearing model is designed after the traditional futures clearing model that has served ICE's other clearinghouses and the futures industry well for decades. Most importantly, the ICE Trust model segregates customer collateral from any house/proprietary trading. In other words, ICE Trust is strictly prohibited from utilizing customer collateral to satisfy obligations related to trading by the customer's clearing participant for its house/proprietary account. Thus, in the event that a clearing participant defaults with respect to a house/proprietary position, all customer collateral is protected (segregated) and may not be used to satisfy the clearing participant's obligation to ICE Trust.

Customer collateral is only "at risk" in the event that a "fellow-customer" at its common clearing participant causes the clearing participant to default, and in such an event, customer collateral is "at risk" only after ICE Trust has applied a number of significant financial resources of the defaulting clearing participant toward the default.

As stated by the Commission in its Advanced Notice, "fellow-customer risk" is positioned toward the middle of a traditional clearinghouse's default resources waterfall. This is also the case with respect to ICE Trust. Consequently, there are several lines of defense in front of "fellow-customer risk" that significantly reduce the likelihood customer margin will be used as a resource in the event a clearing participant defaults to the clearinghouse. The first line of defense is the margin of any defaulting customer. The second line of defense is the margin of the defaulting clearing participant. As soon as practicable, ICE Trust would liquidate any positions maintained by the clearing participant and apply any available margin collateral to the defaulting customer-related position. The third line of defense is the guaranty fund contribution of the defaulting clearing participant. ICE Trust would apply any available guaranty fund contribution of the clearing participant to the defaulting customer-related position.

In addition, ICE Trust intentionally designed its CDS-related clearing model to further reduce the amount of "fellow-customer risk." Specifically, under the ICE Trust model, customers are exposed to "fellow-customer risk" only with respect to the customer's

² ICE questions whether there has been a general interest by swaps customers regarding individual customer account segregation or whether the driving force behind individual account segregation might be asset class specific (e.g., CDS).



pro-rata share of the net customer-related margin requirement of its clearing participant. A customer's pro-rata share of the clearing participant's customer-related net margin requirement represents a fraction of a customer's gross margin requirement.³ Whereas, under traditional futures-related clearing models, a customer is exposed to potentially losing the full (gross) value of its margin as a result of another customer's default.

ICE submits that, with respect to CDS clearing, the net mutualization regime designed for ICE Trust represents an appropriate middle ground between a traditional gross mutualization clearing model and the individual customer account segregation model being advocated by a minority of OTC customers. ICE also respectfully submits that the customers "calling for" an individual account segregation model have done so without fully appreciating the substantial costs (discussed below) associated with implementing and maintaining such a model. Upon fully understanding the costs associated with individual account segregation, certain customers might determine that it would be more practical to become a direct clearing participant as a means of avoiding "fellow-customer risk." Such an alternative might be a more viable option in light of the Commission's recently proposed rulemaking that would prescribe dollar limits with respect to capital requirements for membership in a DCO.⁴

Potential Systemic Costs Associated with Individual Customer Segregation

ICE believes that the industry and the regulators should also carefully consider the systemic costs versus the benefits of the non-Baseline models described in the Advanced Notice.

There are potentially significant systemic costs that might be incurred if the Commission decides to fundamentally change how clearinghouses have cleared for decades and require clearinghouses to adopt a model such as Legal Segregation With Commingling. The current customer omnibus model is designed, in part, for a significant and practical settlements-related reason. Specifically, the omnibus model is designed to allow for timely settlements during times of market stress. The current law recognizes, as a matter of public policy, the important role clearinghouses provide with respect to the settlement of financial transactions, especially during times of financial stress.⁵

³ ICE Trust holds the difference between a customer's gross margin requirement and the customer's net margin requirement (such difference is known as "Excess margin") strictly on a custodial basis. Such Excess margin may not be applied to another customer's default, and as a result, such Excess margin is not exposed to "fellow-customer risk."

⁴ Risk Management Requirements for Derivatives Clearing Organizations, 76 Fed. Reg. ___ (proposed December 16, 2010) (to be codified at 17 C.F.R. pt. 39). In order to become a clearing participant, entities would also be required to have adequate operational capacity to meet obligations arising from participation in the derivatives clearing organization.

⁵ In its recent release "Risk Management Requirements for Derivatives Clearing Organizations", the Commission recognizes that Core Principle G, as amended by Dodd-Frank, requires each DCO to have rules



As referenced in Interpretative Statement, No. 85-3, (attached as the Appendix to the Advanced Notice):

Our conclusion that Section 4d(2) does not preclude a clearing organization from using all margin funds deposited by a clearing member firm to satisfy obligations arising from the account for which such funds were deposited reflects the essential function of margin deposits in the futures markets' clearing system. Clearing organizations generally stand as guarantors of the net futures and options obligations of the member firms and require margin deposits as security for the performance of obligations which, in the event of a member's default, the clearing organization must discharge. Margin deposits at the clearing level thus facilitate the clearing organization's performance of its guarantee obligations, serving to confine losses stemming from a clearing firm default to the defaulting firm and preventing their spread to the market as a whole.

From a practical standpoint, it would be almost impossible for a clearinghouse to accurately reconcile individual customer accounts and their respective customer collateral at the time of a default. A traditional clearinghouse does not maintain individual customer account information and instead would be required to rely on information provided by the defaulting Futures Commission Merchant (FCM). At the time of a default, the defaulting FCM is likely to be in a state of chaos and there is little chance that a clearinghouse will know individual customer positions and margin with sufficient certainty. Nor can a clearinghouse assume that margin in the customer omnibus account belongs to any particular customer. Margin held by the clearinghouse could have been advanced by the defaulting FCM or, in the context of futures, might belong to a customer participating in another market. Historically, it has taken bankruptcy trustees months after the fact to decipher the individual customer positions and the related margin and marked-to-market (variation) amounts following the default of a FCM. (For a clearinghouse to know individual customer-related margin and variation amounts with certainty, the clearinghouse would need to be directly involved with all initial margin and variation payments from and to each customer which would effectively dis-intermediate an FCM from the settlement flows with its customers.)

The fact that a traditional clearinghouse does not have customer-specific information is recognized in the provisions that govern bankruptcy liquidation. (See, Interpretative Statement, No. 85-3, attached as the Appendix to the Advanced Notice.)

and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or otherwise default on their obligations to the DCO. Each DCO must also clearly state its default procedures and ensure that it may take timely action to contain losses and liquidity pressures and to continue meeting its obligations. Section 5b(c)(2)(G) of the CEA.



Our conclusion that Section 4d(2) generally allows clearing organizations to treat customer funds as the property of the depositing firm’s customers, collectively, without regard to the respective interests of particular customers, also finds support in the legislative history of the Bankruptcy Reform Act of 1978. In recommending new provisions to govern bankruptcy liquidations of commodity firms, the Commission described the clearinghouse system then (and now) operant in the futures market as one in which “a clearinghouse deals only with its clearing members” and thus “does not know the specific customer on whose behalf a particular contract was entered into by one of its clearing members.” *Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil and Constitutional Rights, House Comm. on the Judiciary, 94th Cong., 2d Sess. 2377, 2395 (Statement of William T. Bagley) (1976)*. The Commission explained that this system allows a clearing organization to use “whatever funds are on deposit with it on behalf of customers to meet variation margin calls with respect to customers’ trades or contracts” and, following a clearing member default, the defaulting firm’s “original margin deposits are immediately available to offset any losses the clearinghouse might incur” as a result of answering variation margin calls to the defaulting firm. *Id.* at 2397, 2405.

Dodd-Frank – Limitation of Exposure to Potential Losses from Defaults

Eliminating or moving the mutualization of customer margin from a clearinghouse’s risk waterfall would be inconsistent with the intent of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). Section 725 of Dodd-Frank amends section 5b(c)(2)(D)(iii) of the CEA to provide that:

Limitation of Exposure to Potential Losses from Defaults – Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that – (I) the operations of the derivatives clearing organization would not be disrupted; and (II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

In its recent January 11, 2011, Notice of Proposed Rulemaking, the Commission proposes regulation 39.13(f) with language that is virtually identical to the language in section 5b(c)(2)(D)(iii) of the CEA, as amended by Dodd-Frank.



Non-defaulting clearing participants are not in a position to anticipate or control the customer-related clearing losses of a defaulting clearing participant. As noted above, the mutualization of customer margin (in the event that a fellow customer causes a clearing participant to default) falls ahead of the non-defaulting clearing participants' contributions to the guaranty fund, and thus provides a layer of protection to the nondefaulting clearing participants. If the Commission requires individual account segregation it will remove this layer of protection and effectively expose, to a greater degree, nondefaulting clearing participants to losses that they cannot anticipate or control.

Imposing Individual Account Segregation will Result in a Shift in the Balance of Risk Mutualization within a Clearinghouse that will Significantly Increase Customer Margin Requirements

As noted and discussed above, the initial margin of customers currently serves as a default resource at ICE Trust in the event that a defaulting customer's losses are greater than the financial resources (i.e., margin and guaranty fund) of the customers' defaulting clearing participant.⁶ Again, "fellow-customer risk" or mutualization of customer margin falls behind the first three layers of traditional clearinghouse waterfalls: defaulting customer margin, defaulting clearing participant margin, and the defaulting clearing participant's guaranty fund contribution. Importantly, however, "fellow-customer risk" or mutualization of customer margin falls ahead of the non-defaulting clearing participants' guaranty fund contributions.

If the mutualization of customer margin is eliminated from the waterfall under either the Full Physical Segregation or Legal Segregation With Commingling models, or if the mutualization of customer margin is placed at the end of the default resources under the Moving Customers to the Back of the Waterfall model, then the non-defaulting clearing participants who have contributed capital to the guaranty fund will be exposed sooner, and to a greater degree, than they are today. Clearing participants will be uncomfortable exposing their capital to this extent and would likely face increased capital charges as a result of such a change to the waterfall. Accordingly, clearing participants will expect the balance between initial margin requirements and guaranty fund requirements to shift more toward initial margin requirements in order to cover the added risk associated with the removal from, or movement within, the waterfall of the mutualization of customer margin. (See below for a detailed risk analysis of the costs associated with shifting the balance of default resources from the guaranty fund to initial margin.)

⁶ Non-defaulting customers would also have a claim against the bankruptcy estate of the defaulting clearing participant to recover any of the customers' margin that was applied by the clearinghouse to satisfy the defaulting clearing participant's loss.



Changes to Default Management Structure Resulting from Individual Account Segregation

Best-practices for clearinghouses include setting an appropriate ratio between collateralization and mutualization pools, i.e. between initial margin requirements and guaranty fund contributions. The initial margin requirement is intended to provision against low-probability expected losses typically occurring with probability of 1%, i.e. 99% protection, over a selected risk horizon. The chosen risk horizon must reflect the specificities and depth of the centrally cleared market.

A major consideration in designing the size of the guaranty fund is the magnitude of potential losses given extreme, but plausible, scenarios. The magnitude of the extreme losses is driven by the risk profile of the cleared financial instrument. CDS instruments present very unique highly asymmetric risk profiles associated with long or short protection positions. The embedded risk of CDS instruments stems from the financial liability of the protection seller upon a credit event.

In general, idiosyncratic (“surprise”) credit events are associated with very low probabilities. ICE Trust’s Risk Management approach, to date, has been to mutualize such losses through a guaranty fund rather than direct collateralization through initial margin requirements. Direct collateralization would lead to very high capital costs that would be detrimental to the underlying market. Table 1 (below) illustrates the impact of incrementally increasing the level of initial margin protection for CDS clearing. The presented results correspond to the currently guaranteed ICE Trust universe of portfolios. “Locking” very significant amounts of funds to provision for low-probability extreme losses will negatively impact the depth and liquidity of the underlying market, especially in distressed market conditions when market depth and liquidity are essential.

From a systemic risk perspective, the introduction of a clearinghouse model that features high concentration of initial margin and a small guaranty fund is very questionable. The typical clearinghouse waterfall approach features the assessment right which provides the clearinghouse with the ability to “call” for additional funds from non-defaulting clearing participants upon a clearing participant default. In turn, the clearinghouse assessment right yields a second, unfunded, guaranty fund. By increasing the amount of funds attributable to initial margin and reducing guaranty fund contributions, the clearinghouse is effectively reducing the size of the default funds available to cure a clearing participant default. It is advisable to assume that the extreme scenarios used for guaranty fund size determination might not cover all potential adverse scenarios. As a result, it is appropriate to maintain access to additional default funds through assessment rights.

Further, most clearinghouses have different requirements in terms of collateral assets used to meet initial margin and guaranty fund obligations. Specifically, the guaranty fund assets are more liquid and commonly used as a liquidity pool during default management.



Decreasing the guaranty fund size would substantially reduce the liquidity pool available to a clearinghouse. Compensating approaches to maintain a minimum liquidity pool will lead to an increased cost of central clearing, and will yield capital inefficiencies specifically for market participants with limited access to a wide range of accepted collateral assets. The table below provides the risk-related (initial margin) cost estimates (at different risk quantiles) for CDS under the Full Physical Segregation model.

	99.00%	99.50%	99.75%	99.90%
CP A	1.00	1.20	1.49	1.87
CP B	1.00	1.28	1.68	2.34
CP C	1.00	1.38	2.26	4.12
CP D	1.00	1.38	2.13	3.73
CP E	1.00	1.25	1.62	2.28
CP F	1.00	1.46	2.38	4.35
CP G	1.00	1.41	2.21	3.95
CP H	1.00	1.39	2.15	3.73
CP I	1.00	1.36	1.93	3.21
CP J	1.00	1.26	1.68	2.51
CP K	1.00	1.73	3.36	6.35
CP L	1.00	1.42	2.40	4.26
CP M	1.00	1.41	2.29	3.81
CP N	1.00	1.73	3.27	5.49
Average:	1.00	1.40	2.20	3.71

Table 1. Risk-related cost estimate for Full Physical Segregation model: Impact of increasing the statistical risk quantile used for initial margin computations. The numbers in the table represent the scaling of initial margin as a function of the chosen level of protection. Currently, ICE Trust uses a 5-day 99% risk quantile. If the risk quantile is increased to 99.5%, the average initial margin increase will be about 40%, i.e. scale factor of 1.4. In order to achieve the overall clearinghouse desired protection level of 99.90%, the initial margin requirements will increase approximately 3.7 times. (The corresponding guaranty fund size would be approximately equivalent to the sum of the minimum guaranty fund contributions.)

Implementation and Administrative Costs

The potential models described in the Advanced Notice would require significant operational and administrative changes at ICE Trust involving (depending on the model): trade processing systems; compliance processes and systems; risk management processes, methodologies and systems; and treasury processes, systems and accounts. The required changes will result in significant initial and ongoing costs and would take considerable time to implement. The Full Physical Segregation model would obviously be the most expensive to implement and maintain.



According to the Advanced Notice, pursuant to the Full Physical Segregation model, “each customer’s cleared swaps account, and all property collateralizing that account, is kept separately for and on behalf of that cleared swaps customer, at the FCM, at the DCO, and at each depository.” Requiring each customer’s cleared swap account be kept separately would require ICE Trust to maintain individual customer bank accounts at its settlement and custody banks (including at ICE Trust’s account at the Federal Reserve Bank⁷).

Omnibus accounts carried by an FCM further complicate the Full Physical Segregation model. Presumably, the DCO would be required to hold an account for each ultimate account entity (beneficial owner) carried within the omnibus account. (In the futures industry, there can be several layers of omnibus accounts between a customer and the clearing participant that maintains positions at the DCO.)

Presumably, DCOs would also be required to account for managed funds at the individual (beneficial owner) level rather than on a fund manager level in order to accomplish the stated purpose of individual customer account segregation. This would result in the creation of a large number of accounts, as fund managers regularly manage hundreds or more individual funds and carry positions at multiple FCMs.

DCO Treasury-related Costs

A model requiring individual segregation of each customer’s collateral at all levels would present many challenges relating to a DCO’s treasury operations. The areas affected would include: bank settlement and custody accounts; collateral managements systems; investment return options; and balancing/reconcilement and reporting.

The Full Physical Segregation model would fundamentally change the way margin cash and collateral are held at a DCO today. Today, ICE Trust maintains an omnibus account arrangement that records cash and collateral in a sub-ledger “collateral management system” for each clearing participant by regulatory account origin (house and customer omnibus). Cash accounts and custody accounts are opened for each regulatory account origin and the margin is held comingled within each of the respective accounts. In other words, all customer-related margin for a clearing participant is held in that clearing participant’s customer account origin. Under the Full Physical Segregation model, the DCO

⁷ If the Commission promulgates a regulation requiring all property collateralizing a customer’s cleared swap account to be kept separately for and on behalf of that cleared swaps customer *at each depository* [emphasis added], Systemically Important Derivatives Clearing Organizations (SIDCOs) would not be in a position to utilize an account at the Federal Reserve Bank as ICE Trust does today. The Federal Reserve Bank’s account structure is currently incapable of facilitating multiple accounts. Furthermore, today, Federal Reserve Bank accounts can accommodate very limited types of collateral (i.e., USD cash and U.S. Treasuries). Effectively eliminating the ability of SIDCOs to utilize a Federal Reserve Account to maintain customer-related collateral may not be in the public’s interest.



would be required to maintain separate cash and custody accounts for each client of each clearing participant. As a result, the DCO would likely be required to open thousands of cash and custody accounts at both a bank and custodian. Most likely, the DCO would not want all of the cash and custody accounts located at only one bank. Maintaining thousands of accounts across multiple banking relationships would be very difficult and expensive for a DCO to manage, and the costs would ultimately have to be passed on to customers. Table 2 below is an estimate of the costs that a DCO might incur assuming it was required to maintain 10,000 individual customer accounts.

	Estimated Increase	Yearly Cost
Bank Accounts	\$75 per month per acct	\$9,000,000
Custody Accounts	\$100 per month per acct	\$12,000,000
Transactions	2,500 per day ⁸	\$6,000,000
Operational/Administrative	25 Staff ⁹	\$3,125,000
Additional Office Space/Equipment	TBD	TBD
	Estimated Total:	\$30,125,000+

Table 2. Treasury-related cost estimate for Full Physical Segregation model.

In addition, most DCO collateral management systems are not designed to handle thousands of individual accounts. These systems are designed to handle a few hundred accounts and would have to be stress tested if more were required. In addition, these systems produce individual reports to clearing participants. The proposed model would likely require the DCO to produce individual account statements of collateral held for each of the clearing participant’s clients. It is possible that a completely new system would have to be put in place to handle the volume of accounts and transactions with an estimated cost running into the millions of dollars.

Also, a DCO’s clearing participants are accustomed to receiving a return of interest on cash they post as margin. Under the Full Physical Segregation model, individual accounts would be non-interest bearing and ICE Trust is uncertain how or whether it would be able to invest the cash from thousands of accounts overnight.¹⁰

DCO Technology-related Costs

The estimated cost of implementing the technology to process Full Physical Segregation at a DCO is approximately \$4.5 million and could take as much as a year to

⁸ Based on 25% of total accounts at \$10 per transaction

⁹ Based on \$125,000 average compensation/benefits per employee

¹⁰ Today, ICE Trust holds cash margin on an omnibus basis in its Federal Reserve account and the Federal Reserve Bank (FRB) and the FRB pays interest on those deposits. ICE Trust passes the interest (less costs) back to its clearing participants. However, the Federal Reserve does not accommodate multiple accounts.



implement depending on the availability of resources. The ongoing technology costs associated with maintaining the new system are estimated to be approximately \$1.35 million yearly.

	Full Time Employees	Estimated Time (Months)	Estimated Effort (Hours)	Estimated Cost¹¹
Collateral Management	8	6	7,680	\$1,344,000
Position/Trade Management	4	4	2,560	\$448,000
Performance Tuning due to increase in accounts	2	2	640	\$112,000
Daily Reports	3	3	1,440	\$199,500
Risk Management	3	3	1,440	\$199,500
Prod Dev, QA and Project Management (2.0 factor)	20	18	12,760	\$2,233,000
TOTALS:			25,520	\$4,466,000

Table 3. Technology-related cost estimate for Full Physical Segregation model.

DCO Compliance-related Costs

The Full Physical Segregation model would also require updating systems to receive additional information and building a complex database with front-end and back-end graphical user interfaces to allow FCMs to transmit data and to allow staff to review the data. The cost is extremely difficult to estimate without system requirements and rules. A rough estimate is \$5 million to create the system and another \$500,000 per year to maintain the system.

The Full Physical Segregation model would also require the creation of reports to monitor the information and the archiving of such reports. A rough cost estimate is \$1 million to create the reports and another \$500,000 per year to maintain & retain them.

The hiring of staff to perform surveillance would also be necessary under the Full Physical Segregation model. The number of staff required would vary based on the number of clearing participants and data volume. Assuming 2-5 employees are required to perform daily surveillance, the estimated annual cost would be \$325,000-800,000 for salaries, benefits and overhead.

In order to perform audits of each clearing participant, additional staff would need to be hired. The number of staff would vary based on the amount of clearing participants and the number of customers/bank accounts. Assuming over sixty clearing participants and over

¹¹ Blended hourly rate is estimated to be \$175/hour.



5,000 customers, an additional staff of 15-20 may be required. The estimated annual salary, benefits and overhead cost is \$2.5-3.75 million.¹²

	Staff Required	Initial Cost	Yearly Cost
System Update	TBD	\$5,000,000	\$500,000
Report Creation	TBD	\$1,000,000	n/a
Report Retention	TBD	n/a	\$500,000
Hiring of Surveillance Staff	2-5	Recruitment	\$325,000-800,000
Hiring of Audit Staff	15-20	Recruitment	\$2,500,000-3,750,000
Totals:		\$6,000,000	\$3,825,000-5,550,000

Table 4. Compliance-related cost estimate for Full Physical Segregation model.

Optional Models

Allowing customers to opt into individual customer segregation presents additional difficulties and challenges. If customers were allowed to voluntarily opt into or out of a Full Physical Segregation model, a clearinghouse would be forced to incur many of the implementation and administrative costs identified above. ICE has not done the risk modeling necessary to attempt to determine the effects on initial margin and guaranty fund requirements if an optional model is adopted. Additionally, ICE has not determined whether a payment by a customer opting into individual customer segregation might be used to offset the costs of changes to the default management structure that would be attributable to customers opting into individual customer segregation. Nor has ICE fully considered the implications of a bankruptcy (in an opt in model) and the changes that would be necessary to the Regulation part 190 rules regarding bankruptcy account classes. ICE’s general sense is that any bifurcated or optional model will further complicate the settlement process and lead to greater uncertainty during times of financial stress.

Conclusion

ICE submits that the significant and various costs that would be associated with the potential non-Baseline models described in the Commission’s Advanced Notice, (including implementation, administrative, regulatory and compliance, increases in initial margin and systemic costs) would, at each level of the marketplace (customer, FCM, and DCO), far outweigh any benefit. In addition, ICE submits that the Commission’s recently proposed Large Trader reporting and stress testing regulations (39.13(h)(2) and 39.13(h)(3)) should serve to mitigate “fellow-customer risk.” Accordingly, ICE suggests that it would be more

¹² As a condition of clearing participant status, participants may be required to pay all travel expenses related to performance of the audit, or alternatively, clearing participants may be required to pay dues to ICE Trust in order to pay for the costs related to the exams.



prudent and practical for the Commission to allow the traditional omnibus (mutualized) clearing model to be applied to customer-related swaps transactions.

ICE also recommends that more analysis be conducted before the Commission considers imposing a Legal Segregation With Commingling model. ICE respectfully submits that this model is not well-defined and understood and might be impractical given the complexity and dynamic nature of customer-related initial margin and variation payments.

Finally, should the Commission nevertheless determine to fundamentally change how clearinghouses have cleared customer-related transactions historically and impose any of the new models in the Advance Notice, ICE recommends that the Commission allow sufficient time for FCMs and DCOs to develop and implement the necessary systems and processes to ensure that the intended results are achieved and that new risks are not introduced into clearinghouses.

We appreciate the opportunity to comment on this rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Kevin R. McClear". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin R. McClear
General Counsel
ICE Trust U.S.