



Futures Industry Association

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By Commission Website

September 25, 2012

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

Re: ICE Clear Europe Petition for an Order Pursuant to Section 4d(a) of the Commodity Exchange Act to Permit Commingling of Customer Funds in Connection with Energy Futures and Foreign Futures Contracts

Dear Mr. Stawick:

The Futures Industry Association (“FIA”)¹ is pleased to submit this letter in support of the petition that ICE Clear Europe Limited (“ICE Clear Europe”) has submitted to the Commodity Futures Trading Commission (“Commission”) by letter dated August 6, 2012, for an order authorizing ICE Clear Europe and its clearing member FCMs: (i) to hold funds deposited to margin energy futures contracts traded on ICE Futures Europe in a US customer segregated account under section 4d(a) of the Commodity Exchange Act (“Act”); and (ii) to provide for portfolio margining of such foreign futures and US futures contracts (“Petition”).²

¹ FIA is the leading trade organization for the futures, options and over the counter (“OTC”) cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world’s largest derivatives clearing firms as well as leading derivatives exchanges and clearing organizations from more than 20 countries. As the principal members of the derivatives clearing organizations, our member firms play a critical role in the reduction of systemic risk in the financial markets. They provide the majority of the funds that support these clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions.

FIA’s core constituency consists of futures commission merchants (“FCMs”), and the primary focus of the association is the global use of exchanges, trading systems and clearinghouses for derivatives transactions. FIA’s regular members, which act as the majority clearing members of the US exchanges, handle more than 90 percent of the customer funds held for trading on US futures exchanges.

² Letter from Paul Swann, President and Chief Operating Officer, ICE Clear Europe, to David A. Stawick, Secretary to the Commodity Futures Trading Commission, dated August 12, 2012.

As explained in detail in the Petition, the requested order would allow ICE Clear Europe and its clearing members that are registered FCMs to:

- (i) Hold in the futures account class Covered Foreign Futures Contracts (as defined in the Petition) traded on ICE Futures Europe, and customer property used to margin, secure or guarantee such positions, that would otherwise fall within the foreign futures account class;
- (ii) Calculate margin for Covered Products (as defined in the Petition) in the commingled futures account on a portfolio basis in accordance with ICE Clear Europe's risk management framework, under which ICE Clear Europe could offer margin offsets for Covered Products that are correlated on a risk management and economic basis when calculating margin requirements; and
- (iii) Permit similar commingling and portfolio margining by FCM clearing members of ICE Clear Europe that clear on behalf of customers in Covered Products.

FIA has consistently supported the adoption of procedures to permit, in appropriate circumstances, both non-futures position margin and other property to be held in the customer segregated account and futures margin and other property deposited on behalf of qualified customers to be held outside of a segregated account.³ We have stressed that a comprehensive regulatory regime authorizing risk-based portfolio margining across markets, *i.e.*, securities, commodities and OTC derivatives on securities and commodities, should reduce systemic risk, while allowing for more efficient use of capital.

The present Petition does not appear to raise any novel issues that the Commission must consider. The Commission has previously issued orders authorizing a US derivatives clearing organization ("DCO") to hold funds deposited to margin foreign futures in a customer segregated account.⁴ In a similar manner, the Commission recently issued an

³ Letter from John M. Damgard, President, Futures Industry Association, to David A. Stawick, Secretary to the Commission, and Elizabeth M. Murphy, Secretary to the Securities and Exchange Commission, dated December 11, 2011; Letter from John M. Damgard, President, Futures Industry Association, to David A. Stawick, Secretary to the Commission, and Elizabeth M. Murphy, Secretary to the Securities and Exchange Commission, dated September 14, 2009; Letter from John M. Damgard, President, Futures Industry Association, to Jean A. Webb, Secretary to the Commission, dated April 2, 2002; Letter from John M. Damgard, President, Futures Industry Association, to Jonathan G. Katz, Secretary to the Securities and Exchange Commission, dated March 2, 2005.

⁴ Order of the Commission regarding "Treatment of Funds Held in Connection with Clearing by the New York Mercantile Exchange of Contracts Traded on NYMEX Europe" (September 6, 2005); Order of the Commission regarding "Treatment of Funds Held in connection with Clearing by the New York Mercantile Exchange of Contracts Traded on the Dubai Mercantile Exchange" (September 16, 2011).

One of the conditions of the New York Mercantile Exchange orders is that the customer funds must be held in accounts in the US. Consistent with this requirement, proposed amendments to ICE Clear Europe's rules provide that margin that is permitted to be commingled with US futures margin must be held by ICE Clear Europe in the "Clearing House DCM Segregated Account," which must be maintained in the US.

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order authorizing ICE Clear Europe and its FCM clearing members (i) to hold funds deposited to margin foreign futures in a cleared swaps account under section 4d(f) account, and (ii) to provide for portfolio margining of such foreign futures and cleared swaps.⁵ We further note that the Commission's previously issued interpretation of Part 190 of its rules would apply. This interpretation clarified that, in the event of the default of an FCM, funds permitted to be held in the US customer segregated account would be treated as if they were US futures segregated funds.⁶

In light of the foregoing, FIA encourages the Commission to grant ICE Clear Europe's Petition and authorize ICE Clear Europe and its clearing member FCMs: (i) to hold funds deposited to margin energy futures contracts traded on ICE Futures Europe in a US customer segregated account under section 4d(a) of the Act; and (ii) to provide for portfolio margining of such foreign futures and US futures contracts.

Conclusion

FIA appreciates the opportunity to submit these comments in support of the ICE Clear Europe Petition. If the Commission has any questions concerning the matters discussed in this letter, please contact Barbara Wierzynski, FIA's Executive Vice President and General Counsel.

Sincerely,



Walt Lukken
President & Chief Executive Officer

cc: Honorable Gary Gensler, Chairman
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Honorable Mark Wetjen, Commissioner

Ananda Radhakrishnan, Director,
Division of Clearing and Risk

⁵ Order of the Commission regarding "Treatment of Funds Held in Connection with Clearing by ICE Clear Europe of Contracts Traded on ICE Futures Europe" (August 8, 2012).

⁶ Interpretative Statement Regarding Funds Determined To Be Held in the Futures Account Type of Customer Account Class, 69 Fed.Reg. 69510 (November 30, 2004.) In light of the concerns that have been raised regarding the protection of customer funds and the likelihood that FIA will be asked to address this issue in its Frequently Asked Questions brochure, we ask the Commission, in issuing the requested order, to reaffirm this interpretation.