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September 29, 2017

Via Electronic Submission

Christopher Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: ***Comments on Project KISS, RIN 3038-AE55***

Dear Mr. Kirkpatrick:

Intercontinental Exchange, Inc. ("ICE") appreciates the opportunity to provide comments and recommendations to the Commodity Futures Trading Commission ("CFTC" or "Commission") in response to the Commission's request for comments related to the Project KISS initiative. As background, ICE operates regulated derivatives exchanges, clearing houses, trade repositories and swap execution facilities in the United States, Europe, Canada and Singapore. As the operator of domestic and international exchanges and clearing houses, ICE has a practical perspective on the implementation of global financial reform. Considering these factors, ICE respectfully offers the following comments regarding the simplification and streamlining of the current regulatory framework.

Overview

ICE appreciates the Commission's efforts to review the current CFTC rules, regulations and practices to identify those areas that can be simplified and made less burdensome. ICE supports the Commission's policy goals and believes that the Commission's goals can be achieved through rule modifications, staff guidance and interpretive relief. In that context, ICE has reviewed the various CFTC rulemakings and has identified several areas of regulatory clarifications which we encourage the Commission to consider:

- Harmonize Dodd-Frank rulemakings and derivatives market oversight with the SEC. Derivatives regulation should occur under a single set of rulemakings.
- The Commission should review several areas within the Designated Contract Market ("DCM") rules including;
    - Cure period for DCM non-compliance.
    - 38.154(c)- Expanding the language to allow any qualified firm to perform regulatory tasks.
    - 38.7- Sharing of regulatory data with non-registered entities.

- Allowing DCMs to increase position limits to match limits already in place at another DCM for the same product.
- Treating block trade size as a 'term and condition' of a new contract listing rather than a 10-day rule amendment.

- The CFTC should update regulations to confirm to business practices of today.
- The CFTC, where possible, should consistently apply standards across regulated entities.
- The CFTC should implement regulatory changes through a formal rulemaking process and not expand regulations via clearing house or exchange guidebook updates.

Regulatory Overlap

The CFTC should be the primary regulator for all derivatives markets, including single name credit default swaps. To that end, the CFTC's current and proposed Title VII rulemakings should be used for all derivatives oversight. The SEC should work to harmonize its rules with CFTC rules to avoid unnecessary costs and duplicative oversight. Since single name credit default swaps ("CDS") only makes up approximately less than 5 percent of the overall derivatives markets, it makes economic and practical sense for the SEC to coordinate and harmonize rulemakings and oversight with the CFTC. In addition, the CFTC has the practical experience and knowledge necessary to oversee the derivatives markets. It will be much more cost effective for market participants and the derivatives markets as a whole to adhere to one set of rulemakings for the US derivatives markets. Further, given that the majority of Title VII rulemakings are already completed by the CFTC and in effect, there is little need for differing regulations for the same markets. As such, ICE requests that the CFTC work with the SEC and Congress, if needed, to harmonize Dodd-Frank rulemakings and derivatives market oversight.

DCM Related Changes

DCM Cure Period

The CFTC should adopt a regulation or statement of policy under which a DCM which it believes may not be in full compliance with a Core Principle or CFTC Regulation receives notice of non-compliance and 30 days to bring itself into compliance. This would be consistent with the manner in which the CFTC and DCMs had operated successfully since at least 2000, pursuant to Section 5c(d) of the Commodity Exchange Act. That provision was removed by the Dodd-Frank Act without any discussion or comment. While a statutory change restoring the provision would ultimately be desirable, the CFTC could accomplish the same result in the interim by adopting this approach as a matter of standard operating procedure through a binding Statement of Policy or regulation that contained an express notice and cure period.

Part 38.154(c)

Part 38.154(c) currently limits DCMs to use only registered entities as third party service providers for regulatory tasks. ICE believes the Commission should consider allowing a DCM to use any firm that is qualified to perform the regulatory task. The regulation makes the DCM responsible for the conduct of the service provider and obligates the DCM to review the provider's performance. The DCM also is in a position to obtain from the service provider any records or other information which the CFTC might want to look at relative to the DCM. Therefore, the current requirement that the service provider be a registrant serves no purpose and unduly restricts DCMs, especially those that are part of a larger corporate structure where technical and other functional expertise may reside with the parent company. Therefore, we would suggest expanding the regulation to allow as service providers any company that is an affiliate of the DCM, including sister companies, subsidiaries and parent organizations-- whether or not such affiliate is itself a CFTC registrant. To do so, paragraph (a) would be revised to read as follows:

Use of third- party provider permitted. A designated contract market may choose to utilize a registered futures association or another registered entity, as such terms are defined under the Act , or an entity that is an affiliate of the designated contract market through ownership or control, including parent, subsidiary and sister entities of the designated contract market (collectively, "regulatory service provider")…..

Separately, there should be no limit on the activities that can be delegated to a service provider. Currently, the rule precludes delegating the authority to break trades. Because such decisions must be made in real time, and given that electronic trade is conducted virtually 24 hours a day, this has required ICE to second employees in different parts of the world to monitor our markets during the U.S. overnight period, creating unnecessary personnel and tax complications. A number of exchanges previously commented on this limitation when the rule was initially proposed, however the CFTC stated at that time that it was adopting the rule as proposed because breaking a trade "has a profound impact on the market participant and the exchange". It is impractical and expensive to have employees around the world to monitor only a few hours a day of trading in a particular time zone. In addition, the CFTC position is particularly weak where the service provider is an affiliate exchange in a comparable jurisdiction, e.g. UK and Singapore, which uses the same trading platform and performs the same function for itself during other trading hours. ICE proposes the Commission revise paragraph (c) of the regulation to delete the restriction as follows:

> (c) *Regulatory decisions required from the designated contract market*. A designated contract market that elects to utilize a regulatory service provider must retain exclusive authority in decisions involving ~~the cancellation of trades,~~ the issuance of disciplinary charges against members or market participants, and the denial of access to the trading platform for disciplinary reasons. …

Regulation 38.7

Regulation Part 38.7 states that regulatory data can be shared with other DCMs and Swap Execution Facilities ("SEFs") when necessary for regulatory purposes. The Commission should clarify that such data can also be shared with non-registered entities as well, such as overseas securities and futures exchanges, domestic and international self-regulatory organizations ("SRO"), and similar entities, subject to appropriate confidentiality provisions being contained in the underlying agreement. DCMs already have information sharing agreements in place under which they can share such information with entities that are neither DCMs nor SEFs. In addition, the regulation should make clear that the sharing of such data with service providers also is permitted. Service providers may need or automatically have access to regulatory data in carrying out critical functions for the DCM. The important point is that they cannot use the data for any other purpose. ICE suggests revising Part 38.7 to read as follows:

> "A designated contract market, where necessary for regulatory purposes, may share such data or information with <u>(i)</u> one or more designated contract markets, derivatives clearing organizations, and swap execution facilities registered with the Commission, <u>(ii) overseas securities and futures exchanges, domestic and international SROs and similar entities, and (iii) regulatory service providers used by the designated contract market in complying with the core principles, *provided that,* in each such case, the use and disclosure of such information is subject to contractual provisions protecting confidentiality and restricting the use of the regulatory data."</u>

DCM Limit Increases

A DCM should be allowed to increase position limits to match limits already in place at another DCM for the same product. The CFTC should not require a DCM to perform a new deliverable supply analysis just to match existing limits at another DCM. A deliverable supply analysis supporting initial position limits is required as part of a new contract listing under Part 40 of the regulations. Therefore, the CFTC already has the relevant analysis supporting the limit and there is no reason that another DCM seeking to alter its limits to the same level already permitted by the Commission should be subject to the delay associated with submitting a separate deliverable supply analysis. Requiring an additional analysis drains resources from the DCM and the Commission staff for a duplicative exercise. The CFTC should instead treat all DCMs equally and allow DCMs to increase limits to match those of another exchange without filing a new deliverable supply analysis.

Block Trade Levels

The Part 40 regulations allow new contracts to be listed for trading 24 hours after the rules setting forth the contract terms and conditions are filed with the CFTC. Most new contracts permit block trades to be executed as such trades often help to establish the market in a new product. However, because block trades are not within the scope of the definition of “terms and conditions” for this purpose, the block level must be submitted separately as a rule amendment 10 days in advance of becoming effective. We see no purpose to this delay, which regularly precludes a DCM from allowing block trades to be executed upon launch of a new contract. Therefore, we request that the CFTC treat block trade levels specified by a DCM in connection with the initial listing of a new contract like any other term and condition of the contract.

Updating Regulations to Match Current Technology and Practices

A number of CFTC regulations exist which contain obsolete language associated with open outcry trading in one form or another. For example, Regulation 155.3 (Trading Standards for Futures Commission Merchants) requires FCMs to adopt standards related to the handling of customer orders. The regulation is designed to ensure that FCMs have procedures intended to prevent front running customer orders. Regulations such as this reflect important principles that should not be left inapplicable; rather, they should be carried forward to the electronic markets of today with appropriate rewording that ensures they can be meaningfully applied.

As another example, Regulation 1.35(g) requires members of derivatives clearing organizations (“DCO”) that clear trades executed on a DCM or SEF to maintain a single record which shows, among other things, the “floor broker buying or selling” and a customer type indicator (“CTI”) which shows with respect to each person “executing the trade”, whether such person was, among other things, “trading for another member present on the exchange floor or an account controlled by such other member.” CTI codes can provide exchanges with important audit trail data that facilitates their trade practice surveillance. In the absence of amendments to this regulation, some exchanges have adopted their own particular rules based on the manner in which their trading access rules operate, and we favor this approach. Accordingly, we suggest that the CFTC eliminate any requirements associated with CTIs.

Finally, the Commission should ensure that regulations that are no longer applicable are deleted or designated as “reserved” in the Code of Federal Regulations to avoid confusion as to whether or not a regulation is deemed to be in effect.

CFTC Rule Harmonization

Where possible, the Commission should consistently apply standards across regulated entities. The Division of Swap Dealer Oversight (“DSIO”) recently finalized amendments to the rules governing Chief Compliance Officer (“CCO”) duties and annual report requirements for FCMs, swap dealers and major swap participants. The amendments introduce a "reasonableness" standard, rather than a strict liability standard, on the activities of the CCO. These rule modifications were not adopted for other CFTC registrants, thus there are differing standards of CCO liabilities for different classes of CFTC registrants. These changes to the CCO rules by DSIO exemplify how different divisions within the CFTC are applying different standards. For policy reasons, people performing the same functions should not be held to different standards across regulated entities. As such, ICE encourages the CFTC to review and harmonize standards of liabilities across regulated entities where possible.

Regulatory Modifications Should Be Made Through the Formal Rulemaking Process

The Commission should implement regulatory changes through a formal rulemaking process and not expand regulations via clearing house or exchange guidebook updates. ICE supports the Commission's efforts to improve processes and procedures; however, ICE is concerned with the Commission's reliance on guidebook updates as a means of imposing additional obligations. For example, Staff has requested revisions to the ICE Clear Credit, ICE Clear US and ICE Clear Europe Guidebooks related to Part 39.19 which mandates the reporting of client-level margin and position information, as well as related identification elements, not currently collected or used by clearinghouses. ICE supports the Commission's efforts to collect comprehensive and accurate information on clearing member position, margin, and collateral, and appreciates that this information represents a critical component of the Commission's risk surveillance program. However, ICE notes that the current "updates" to the Guidebook require significant internal and third-party redevelopment and testing. While ICE strives to cooperate with all staff requests for information, ICE is concerned with the scope of the current request and the aggressive implementation timeframe. In addition, ICE notes that the amended Guidebook marks a significant departure from the textual requirements of Rule 39.19(c)(1). In ICE's view, it would have been preferable for such a change to be made through an amendment to the terms of Rule 39.19, in accordance with the public comment and other procedural requirements of the Commodity Exchange Act and the Administrative Procedure Act (5 U.S.C. § 551 et seq.). Such an approach would permit full consideration of the views of all market participants (including FCMs and their customers), in addition to the DCOs themselves. It would also be consistent with the approach suggested by Chairman Giancarlo to identify, and mitigate burdens to the operation of a regulated entity resulting from the adoption of informal interpretations and guidance.[1]

Previously Filed Comments

ICE reiterates that its views articulated in its previously filed comments in respect of multiple Dodd-Frank rulemakings, including the Position Limit and Regulation AT proposals, are still accurate and commensurate with its current views.

[1] See J. Christopher Giancarlo, Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank, White Paper (Jan. 2015), available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf (stating that CFTC staff has unnecessarily added to the burden of operating a regulated entity by issuing an unprecedented number of no-action letters, guidance, advisories, and other written communications).

Review of Substantive Issues Outside of Project KISS

ICE encourages the Commission to review additional substantive issues through other channels outside of Project KISS. ICE believes the Commission could effectuate positive changes through an additional review of a broader scope of issues effecting market participants today.

Conclusion

ICE appreciates the opportunity to submit comments on the CFTC Project KISS initiative. ICE supports the Commission's willingness to consider the public comments on amending or applying existing rules, regulations, or practices in a simpler, less burdensome, and less costly manner. If the Commission has any questions, please feel free to contact Kara Dutta at (770) 916-7812. Thank you for your time and consideration.

Sincerely,

Kara Dutta
Assistant General Counsel
Intercontinental Exchange, Inc.