



March 15, 2019

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St, N.W.
Washington, DC 20581

Re: Swap Execution Facilities and Trade Execution Requirement; Proposed Rule - RIN 3038-AE25

Dear Mr. Kirkpatrick:

Intercontinental Exchange, Inc. (“ICE”) appreciates the opportunity to submit these comments on the proposed revisions to the regulations of swap execution facilities (“SEFs”) and the trade execution requirement (“Proposal”) published by the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) on November 30, 2018.¹ 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 Commission’s proposed amendments to the SEF regulations.

Background

ICE appreciates and supports the Commission’s efforts to amend the CFTC’s current SEF regulations in order to further improve swaps trading on SEFs. In particular, we support the Commission’s decision to revise existing trading protocols and to accommodate more flexible methods of execution. We also support the Commission’s proposal to offer permanent solutions to compliance challenges associated with certain trade execution practices currently subject to Staff no-action relief. Notwithstanding the foregoing, ICE encourages the Commission to examine the cross-border implications when finalizing any SEF rulemaking. ICE also requests the Commission conduct a more detailed risk assessment of the proposed changes to the straight through processing requirements.

Discussion

- a. Methods of Execution

¹ *Swap Execution Facilities and Trade Execution Requirement; Proposed Rule*, 83 Fed. Reg. 61,946 (Nov. 30, 2018), available at <https://www.cftc.gov/sites/default/files/2018-11/2018-24642a.pdf>.



The CFTC proposed that a SEF would no longer be required to offer an order book for all of the swaps that it lists for trading. In addition, the CFTC has proposed that for swaps subject to the trade execution requirement, a SEF would no longer be required to transmit a “Request for Quote” to a minimum of three market participants. A SEF would instead be able to offer flexible methods of execution for all listed swaps, including swaps subject to the trade execution requirement.

ICE supports the Commission’s decision to establish a principles-based approach that allows SEFs to offer any method of execution for all listed swaps, including those subject to the trade execution requirement.

b. Codification of No-Action Relief

ICE supports the Commission’s proposal to replace the no-action relief from certain of the swap trade confirmation requirements in Commission regulations 37.6(b)2 and 45.3(a)3.² The Commission’s current rules require a SEF to obtain documents that are incorporated by reference in a trade confirmation issued by a SEF and to require a SEF to report confirmation data contained in the documents that the SEF incorporates by reference in a confirmation. ICE commends the Commission for proposing a permanent solution to the compliance challenges associated with these requirements by codifying the current no-action relief.

c. Cross Border Impact

ICE encourages the Commission to address the cross-border implications of its SEF regulatory framework by continuing to work with global regulators to harmonize rule sets where possible³. The proposed codification of “footnote 88”, coupled with the expansion of products subject to the trade execution requirement, could intensify existing challenges in cross-border trading. The Proposal creates the potential for the regulatory treatment of products subject to the U.S.’s trade execution requirement to diverge from that of non-U.S. jurisdictions that have active trading in those same products. As such, ICE encourages the Commission to carefully consider the potential global implications of, and to consult with its international regulatory colleagues regarding, any final SEF rulemaking.

d. Straight-through-processing

The Proposal modifies the Commission’s current straight-through-processing (“STP”) requirements for SEF trading. SEFs would no longer be required to send an executed transaction to a CCP within 10 minutes. The removal of this requirement could result in

² CFTC No-Action Letter 14-108 issued on April 22, 2015 and as extended through subsequent Staff No-Action letters.

³ ICE supports the recently issued CFTC and MAS announcement of the mutual recognition of certain derivatives trading venues in the US and Singapore and commends the Commission for its continued outreach to global regulators.



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executed transactions taking longer to be submitted to clearing, which could introduce market and operational risk. As such, ICE recommends the Commission conduct a more detailed assessment of the risks associated with the proposed change and refrain from altering standards that have proven successful in reducing trading-related risks.

Conclusion

ICE appreciates the opportunity to submit comments on the SEF Proposal. ICE supports the Commission's efforts to amend the CFTC's current SEF regulations in order to further improve swaps trading on SEFs. 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,

A handwritten signature in black ink, appearing to read 'Kara Dutta', is positioned above the typed name.

Kara Dutta
Assistant General Counsel
Intercontinental Exchange, Inc.