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August 24, 2020

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 Notice of Proposed Rulemaking on Electronic Trading Risk Principles, RIN 3038-AF04***

Dear Mr. Kirkpatrick:

Intercontinental Exchange Inc. ("ICE") is submitting comments and recommendations to the Commodity Futures Trading Commission ("CFTC" or "Commission") for consideration regarding its proposed Electronic Trading Risk Principles for designated contract markets ("DCMs") [1] ("Proposal or Proposed Rule"). ICE operates regulated derivatives exchanges and clearing houses located in the United States, Europe, Canada and Singapore. As the operator of U.S. and international exchanges, ICE has a practical perspective of the implications of the proposed risk principles. Considering these factors, ICE respectfully offers the following comments regarding the framework outlined in the Commission's Proposal.

I. Executive Summary

ICE supports the Proposal and the Commission's continuing efforts to ensure fair and orderly trading in the futures market. The Proposed Rule reflects consideration by the Commission and Staff of prior industry comments and is an improvement over the previous Regulation Automated Trading rulemaking.[2] DCMs have a vested interest in advancing the Commission's stated policy goals, namely the prevention, detection and mitigation of market disruptions and system anomalies. ICE believes that DCMs are best positioned to adopt the rules, procedures and system controls that best fit its particular market and technology. DCMs have proactively developed a substantial suite of risk controls, as well as financial, operational and supervisory controls to protect their markets and comply with existing regulations. As recognized by the Commission, such DCM controls have proven effective in preventing and mitigating market disruptions. ICE anticipates that DCM controls will continue to advance with technology and DCMs will introduce new procedures to further reduce the likelihood for disruptions. Accordingly, ICE supports the principles-based approach taken by the Commission which largely codifies existing DCM practices.

[1] *Electronic Trading Risk Principles*, 85 Fed. Reg. 42761 (July 15, 2020).
[2] *Regulation Automated Trading*, 80 Fed. Reg. 78824 (Dec. 17, 2015) and 81 Fed. Reg, 85334 (Nov. 25, 2016).

While ICE is supportive of the Proposed Rule and the Commission's policy goals, there are several provisions that in our view warrant change and/or clarification before the Commission adopts final rules. Below we summarize ICE's comments for ease of reference.

- Clarify when events should be considered a "significant disruption to the DCM trading platform" thus triggering a notification requirement;

- Clarify whether the term electronic trading is intended to include off-exchange "trading" (such as block trades and EFRPs) or if it is intended to only include order messages sent to the central limit order book;

- Retain a principles-based approach to the regulation, as a more prescriptive approach could compromise existing DCM infrastructure;

- Incorporate the proposed principles into existing Regulation 38.255 and the related guidance rather than create a new set of principles that may lead to confusion or duplicative standards.

Principle 1 - Adoption of Rules

ICE supports the Commission's approach in proposed Risk Principal 1, which gives DCMs reasonable discretion to adopt rules that prevent, detect and mitigate market disruptions. DCMs are best positioned to adopt the rules, procedures and system controls that appropriately fit their market and technology. The majority of DCMs, including ICE, have already implemented rules and system controls to protect participants and the integrity of their markets. For example, prior to being given access to the trading platform, ICE requires participants to undergo conformance testing, which is designed to and has been successful in detecting system anomalies. ICE has also developed pre-trade risk controls, such as messaging throttles, interval price limits (price velocity collars), individual maximum order quantities (set specifically for each contract) and order reasonability limits. Moreover, ICE has staff dedicated to market monitoring who identify and mitigate market disruptions in real-time. Exchange rules also require clearing members to utilize pre- and post-trade risk limits, such as maximum long/short levels and maximum margin levels.

Furthermore, ICE believes that the supervisory obligations set out in ICE's exchange rules, along with disruptive trading practice requirements have been effective in preventing market disruptions. ICE notes that exchange supervision rules have been particularly useful in incentivizing participants to proactively develop comprehensive risk controls to prevent, detect and mitigate activity that may lead to a market disruption. ICE also requires firms to supervise electronic trading including participant testing of systems prior to trading, incorporating controls into the electronic trading system (such as internal message throttles and pricing controls), and real-time system monitoring during electronic trading. Given the robust rules and system controls currently in place at DCMs, a more prescriptive approach than currently proposed could compromise the existing DCM infrastructure.

ICE additionally supports the Commission's belief that each DCM should have discretion to identify market disruptions and system anomalies as they relate to a DCM's market and participants trading activity. What constitutes a market disruption will not only vary from exchange to exchange, but from market to market. Tolerance levels and thresholds need to be set for each market. For example, the

maximum order quantity and velocity logic should not be the same for the Henry Hub futures contract and the Sugar No. 11 futures contract.

Lastly, ICE notes that the proposed risk principles are largely duplicative of existing Commission guidance under Core Principle 4 and the Acceptable Practices relating to Regulation 38.255. ICE suggests the Commission amend existing regulations to include references to electronic trading, rather than creating a new set of principles that may unintentionally conflict with or create duplicative and overlapping standards, leading to confusion. ICE recommends that the Commission amend Regulation 38.255 to require DCMs to have rules, procedures and system controls to prevent, detect, mitigate disruptions, price distortions. This tracks the Commission's approach to regulating financial risk controls in Regulation 38.607 which has proven effective.

Principle 2 - Application of Risk Controls

The Commission has correctly acknowledged the important role that pre-trade risk controls play in protecting against market disruptions and ICE agrees with the Commission's comments that DCMs and market participants both have a vested interest in the effective prevention, detection, and mitigation of market disruptions and system anomalies associated with electronic trading. ICE additionally agrees with the Commission statement that DCMs are addressing most, if not all, of the electronic trading risks currently presented to their trading platforms.

ICE supports requiring DCMs to subject all electronic orders to exchange-based pre-trade risk controls. In ICE's comments to the now withdrawn Regulation Automated Trading proposal, ICE strongly encouraged the Commission to reconsider requiring pre-trade risk controls.[3] ICE stated that all participants trading electronically, no matter how they access DCMs, should be subject to exchange-based pre-trade risk controls and that participants should be required to implement and maintain a minimum set of reasonable pre-trade risk and other controls. All persons that trade electronically have the potential to disrupt markets. As such, ICE believes that all participants should implement risk controls appropriate to their role in the life of an order and all persons engaged in electronic trading should be required to use pre-trade risk controls to help minimize the likelihood of a market disruption. ICE therefore supports the requirements proposed in the Acceptable Practices for existing Regulation 38.251(f) and the guidance provided in Appendix B(b)(5) that provides DCMs with discretion to adopt the appropriate risk controls for their respective platform.

Moreover, ICE requests that the Commission refine its description of "electronic trading." The term is used in both Risk Principles 1 and 2 and the Commission has defined it to "*include all trading and order messages submitted by electronic means to the DCM's electronic trading platform, including both automated and manual order entry.*" The foregoing description of electronic trading appears to be in reference to orders submitted to a DCM's central limit order book. However, the Commission also references "trading" messages in the proposed definition. Since participants only submit order messages to the central limit order book and not trades, this definition appears to therefore include off-facility trades submitted to a DCM, such as EFRPs and block transactions. ICE recommends the Commission revise the description of the term "electronic trading" to only include order messages and to not include off-facility

[3] Please refer to ICE's comments to the CFTC Regulation Automated Trading, March 16, 2016.

"trading" messages. Off-facility transactions are privately negotiated and have a low likelihood of disrupting the central limit orderbook.

Principle 3- Notification of Disruption

In Risk Principle 3, the Commission requires a DCM to "promptly notify Commission staff of any significant disruptions to its electronic trading platform(s)." The term "market disruption" is discussed throughout the preamble and ultimately left for the DCMs to define. The term "market disruption" however is not used in Risk Principle 3. Risk Principle 3 instead requires notification when there is a significant disruption to a DCM trading platform. As noted above, ICE recommends that the Commission more precisely define what constitutes "a significant disruption of a DCM trading platform" and how it differs from a "market disruption," as DCMs need more guidance as to what type of event must be reported under Risk Principle 3. For example, would a transient disruption caused by a participant, which temporarily results in prices not being reflective of market fundamentals be reportable? It could be argued that such a disruption materially impacted another market participant's ability to engage in price discovery, particularly if another participant was entering orders at the exact time of the momentary disruption. Accordingly, ICE requests the Commission to provide additional context and better define a "significant disruption."

In addition, ICE supports the Commission expressly incorporating into Risk Principle 3 the requirement that a significant disruption be caused by a "malfunction of a market participant's trading system." While the Commission uses the qualification to describe a "significant disruption" in the Proposed Rule, it is noticeably absent from the proposed risk principle itself. ICE believes the addition of this language would not only limit DCM reporting obligations to disruptions caused by electronic trading, it also would help to differentiate the reporting obligations under Regulation 38.1051(e), arising from internal DCM malfunctions, from proposed 38.251(g), arising from external market participant trading system malfunctions.

Conclusion

ICE appreciates the opportunity to comment on the Proposal and supports the Commission's goals and objectives to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. The Commission should consider providing further clarity to the definitions and terms used in the Proposal in order to provide effective guidance to DCMs. Attached as Exhibit A, ICE responds in detail to specific questions in the Proposal. Again, ICE thanks the Commission for the opportunity to comment on the Proposed Rules.

Sincerely,

Kara Dutta
Assistant General Counsel
Intercontinental Exchange Inc.

Exhibit A

Electronic Trading Risk Principles
Requested Comments

A. Electronic Trading, Electronic Orders, Market Disruption, and System Anomalies

1. Is the Commission's description of "electronic trading" sufficiently clear? If not, please explain.

> The Commission's description of electronic trading appears to be in reference to orders submitted to a DCM's central limit order book. However, the Commission also references "trading" messages in the definition. Since participants only submit order messages to the central limit order book and not trades, this definition appears to therefore include off-facility trades submitted to a DCM, such as EFRPs and block transactions. The Commission should clarify if the term electronic trading is intended to include these off-facility "trading" messages or if it is intended to only include order messages as referenced in proposed Regulation 38.251(f).

2. This rulemaking uses the term "market disruption" to describe the disruptive effects to be prevented, detected, and mitigated through these Risk Principles. Is it preferable to use the term "trading disruption," "trading operations disruption," or another alternative term instead? If so, which term should be used and why?

> The Commission's description of "market disruption" is overly broad. The Commission describes a "market disruption," in part, to refer to a significant disruption that disrupts the ability of other market participants to trade on the DCM. This could include a range of subjective interpretations and possibilities, including a disruption caused by a market participant resulting in prices not being reflective of market fundamentals. It could include entering orders in a disorderly manner, quote stuffing, causing illiquid markets where one would not occur otherwise, or causing the artificial widening of markets. On the other hand, these scenarios could be interpreted as the result of volatility and not a market disruption. Because of the ambiguities in the Commission's Proposal, market participants may be reluctant to trade if pricing appears aberrant or erroneous.
>
> The guidance also appears to use the term "significant" inconsistently. The Commission defines a market disruption as "*an event originating with a market participant that significantly disrupts the: 1) operation of the DCM on which such participant is trading; or 2) the ability of other market participants to trade on the DCM on which such participant is trading.*" It would therefore appear that a disruption would need to be significant in order to be classified as market disruption. However, the notification standard guidance for proposed Regulation 38.251(g) suggests only significant disruptions to the trading platform be reported to the Commission. ICE suggests the Commission provide further clarity regarding the Commission's intended differentiation.

3. What type of unscheduled halts in trading would constitute "market disruptions" that impact the ability of other market participants to trade or manage their risk?

An unscheduled trading halt caused by a market participant that could not readily be attributed to market volatility or fundamental conditions in underlying or related markets could generally constitute a type of market disruption.

4. What amount of latency to other market participants (measured in milliseconds) should be considered a market disruption? How can DCMs evaluate changes over time in the amount of latency that should be considered a market disruption?

The measure of total latency incorporates many factors outside a DCM's processing of order messages. As such, the Commission should be cautious when interpreting latency as an indication of a market disruption. Where a participant's actions lead to a market disruption, it is likely more meaningful to quantify the impact of the market itself rather than attempt to calculate a subjective impact to latency.

6. Is there guidance that the Commission can give DCMs for how best to monitor for emerging risks that are not mitigated or contemplated by existing risk controls or procedures?

As the operator of the trading platform and related markets, a DCM is in the best position to monitor for emerging risks and has a vested interest in doing so. The Commission appears to recognize this fact as the Proposal notes that DCMs proactively adopted rules and controls to address emerging risks.

7. The Commission recognizes that there are alternative approaches to the proposed Risk Principles to address the risk of market disruption resulting from electronic trading on DCMs by market participants. The Commission requests comment on whether an alternative to what is proposed would result in a more effective approach (meaning, alternative to these Risk Principles as well as the withdrawn Regulation AT), and whether such alternative offers a superior cost-benefit profile. Please provide support for any alternative approach.

As noted in the Proposal, the risk principles are duplicative to existing Commission Guidance and Acceptable Practices relating to Part 38.255. Therefore, ICE suggest the Commission refine the existing language to include a reference to electronic trading, rather than creating a new set of principles that may lead to confusion or duplicative standards.

8. Given that the Risk Principles overlap to some extent with Commission regulation 38.255, which specifically addresses risk controls for trading, would it be preferable to codify the three Risk Principles within existing regulation 38.255 rather than within regulation 38.251, which covers general requirements relating to the prevention of market disruption?

ICE recommends that the Commission update existing Regulation 38.255, rather than Regulation 38.251. The Commission could consider updating Regulation 38.255 to include similar language to Regulation 38.607, which requires DCMs to have rules, procedures and system controls to prevent, detect, and mitigate disruptions and price distortions and which requires DCMs to mandate participants to comply with such rules.

B. Proposed Regulation 38.251(e)—Risk Principle 1

9. The Commission recognizes that DCMs may differ in what rules they establish to prevent, detect, and mitigate market disruption and system anomalies. Would such disparity have a harmful effect on market liquidity or integrity?

> No, DCMs need flexibility in drafting rules that are appropriate for the supervisory, operational and technological controls applicable to their respective platforms.

10. Is the proposed Acceptable Practice for regulation 38.251(e) appropriate?

> Yes, the proposed Acceptable Practice for Regulation 38.251(e) provides DCMs with sufficient discretion to adopt the rules appropriate for their platform.

11. What rules have DCMs found to be effective in preventing, detecting, or mitigating the types of market disruptions and system anomalies associated with electronic trading? Should the Commission include any particular types of rules as Acceptable Practices for compliance with proposed regulation 38.251(e)?

> ICE believes the supervisory obligations set out in Exchange rules, along with requirements relating to disruptive trading practices, have been effective in preventing market disruptions. The Exchange rules have also been helpful in incentivizing participants to develop comprehensive risk controls to detect and mitigate activity that may lead to a market disruption.

C. Proposed Regulation 38.251(f)—Risk Principle 2

12. The Acceptable Practices for Core Principle 2 include pre-trade limits on order size, price collars or bands around the current price, message throttles, and daily price limits. Do DCMs consider these controls to be effective in preventing market disruptions in today's markets?

> ICE believes the Commission intended to reference the existing Acceptable Practices for Core Principle 4, rather than Core Principle 2. ICE agrees that the Acceptable Practices for Core Principle 4 identify a set of controls that, when used in connection with other risk controls, can be effective in preventing market disruptions.

13. In addition to the risk controls listed in the Acceptable Practices for Core Principle 2, what risk controls do DCMs consider to be most effective in preventing market disruptions and addressing risk as described in this proposal?

> There is not one set of risk controls that are most effective in preventing market disruptions. ICE supports looking at the totality of risk controls, including financial, operational, development and supervisory controls, in order to be effective in preventing market disruptions.

14. Are the proposed risk controls set forth in the Acceptable Practices for proposed regulation 38.251(f) appropriate?

> Yes, ICE supports the requirement to subject all electronic orders to exchange-based pre-trade risk controls.

15. Should the Commission include any particular types of risk controls as Acceptable Practices for compliance with proposed regulation 38.251(f)?

> No, the proposed Acceptable Practice for Regulation 38.251(f) and the guidance provided in Appendix B(b)(5) provides DCMs with sufficient discretion to adopt the appropriate risk controls for their platform.

D. Proposed Regulation 38.251(g)—Risk Principle 3

16. As noted above, proposed regulation 38.251(g) requires a DCM to notify Commission staff of a significant disruption to its electronic trading platform(s), while Commission regulation 38.1051(e) requires DCMs to notify the Commission in the event of significant systems malfunctions. Is the distinction between these two notification requirements sufficiently clear? If not, please explain.

> The distinction between a significant disruption and a significant systems malfunction is sufficiently clear, however as noted in the response to Question 2, the Commission should provide further guidance regarding the definition of a market disruption and a significant disruption.

17. Please describe any disruptive events that would potentially fall within the notification requirements of both proposed regulation 38.251(g) and Commission regulation 38.1051(e).

> As noted previously, the Commission defines a market disruption as "*an event originating with a market participant that significantly disrupts the: 1) operation of the DCM on which such participant is trading; or 2) the ability of other market participants to trade on the DCM on which such participant is trading.*" ICE interprets this definition to require a DCM to notify the Commission under Proposed Regulation 38.251(g) if a market participant submits orders in a manner that significantly disrupts the reliability or availability of the DCM's trading platform. This event would likely also be viewed as a "significant systems malfunction" and therefore also qualify as a notifiable event under 38.1051(e)(1). Absent a system malfunction, there could theoretically be instances where a participant's system may malfunction and impact the ability of other participants to execute trades or engage in price discovery, without triggering a trading halt or cause a malfunction of the trading platform.

18. Is the Commission's description of whether a given disruption to a DCM's electronic trading platform(s) is "significant" for purposes of proposed regulation 38.251(g) sufficiently clear? If not, please explain.

> As noted previously, the Commission has qualified a market disruption as needing to be significant. However, the guidance for Proposed Regulation 38.251(g) attempts to differentiate a market disruption from a significant disruption. As the definitions seem duplicative, the Commission should provide further clarity in its guidance regarding the classification of a significant disruption.

19. Please describe circumstances in which it would be appropriate for a DCM to notify other DCMs about a significant market disruption on its trading platform(s). Should proposed regulation 38.251(g) include such a requirement?

The current Appendix B(b)(5) provides guidance on coordinating risk controls for linked or related contracts. In circumstances of a significant market disruption, it would be prudent for such coordination to include notification to impacted markets, at least though a market alert. However, ICE does not believe that the Commission should require such notification to another DCM, as the external impacts may not be classified as significant where disruptions are resolved in a timely manner.

D. Proposed Acceptable Practices for Proposed Regulations 38.251(e) and (f)

25. Do commenters believe that the Commission is correct in its determination that a prescriptive approach to proposed rules on risk controls and rules designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading would be too costly and burdensome?

Yes, ICE supports a principles-based approach to the Proposed Rules.

26. Are there other alternative approaches with lower costs that the Commission should have considered? If so, please explain.

The Commission could propose a simplified set of updates to existing regulations 38.255 and 38.1051(e). In doing so, the Commission could avoid confusion and the potentially costly examinations that will be required of DCMs when determining an appropriate notification standard.

3. Costs

28. Do DCMs currently collect most of the information required from market participants in order to comply with rule 38.251(e)? If not, what are the associated expected costs?

ICE believes that the DCMs currently collect sufficient information from participants in order to comply with proposed regulation 38.251(e).