



May 11, 2022

Via Electronic Submission

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

**Re: Comments on Request for Comment on FTX Request for Amended DCO
Registration Order**

Dear Mr. Kirkpatrick:

Intercontinental Exchange, Inc., on behalf of itself and its subsidiaries (collectively, “ICE”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) request for comment on the LedgerX, LLC d.b.a. FTX US Derivatives (“FTX US”) request for an amended derivatives clearing organization (“DCO”) registration order to permit clearing of margined products through a retail, non-intermediated clearing model (the “FTX Request”).¹

ICE owns and operates geographically diverse clearing houses that serve global markets and customers across North America, Europe and Asia. ICE currently operates four DCOs registered with the Commission: ICE Clear Credit LLC,² ICE Clear Europe Limited,³ ICE Clear US, Inc.⁴ and ICE NGX Canada Inc.⁵ ICE also operates ICE Clear Netherlands and ICE Clear Singapore, which are not registered as DCOs with the Commission but are registered clearing organizations in other jurisdictions. ICE has a successful history of clearing exchange traded and OTC derivatives across a spectrum of asset classes including energy, agriculture and financial products. Each of the ICE clearing houses is subject to direct oversight by local, national regulators, often in close coordination and communication with other regulatory authorities with important interests, and subject to regulations reflective of the G-20 reforms and CPMI/IOSCO principles.

ICE clearing organizations operate using both intermediated and non-intermediated models and adhere to the comprehensive regulatory framework adopted globally following the financial crisis, as outlined in the CPMI/IOSCO Principles for Financial Market Infrastructures

¹ Available at <https://www.cftc.gov/PressRoom/PressReleases/8499-22>.

² ICE Clear Credit has been designated as a systemically important derivatives clearing organization pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. ICE Clear Credit is also registered as a securities clearing agency under the Securities Exchange Act of 1934 (the “Exchange Act”).

³ ICE Clear Europe is also authorized as a central counterparty under the European Market Infrastructure Regulation (EMIR) and a recognised clearing house under English law, and a registered securities clearing agency under the Exchange Act.

⁴ ICE Clear US has elected to be a subpart C DCO pursuant to Commission Rule 39.31.

⁵ ICE NGX Canada Inc. is also registered with the Commission as a foreign board of trade and is a recognized exchange and clearing agency under the laws of Alberta, Canada.



(“PFMIs”)⁶ and implemented under the Commodity Exchange Act (“CEA”) and Commission regulations, the Securities Exchange Act of 1934, the European Market Infrastructure Regulation and the laws of other jurisdictions. As an operator of clearing organizations, ICE is keenly interested in the issues raised by the FTX Request and believes that a robust, resilient, and transparent regulatory framework for clearing is critical to the financial stability of global markets. ICE believes that approval of the FTX Request will undermine the internationally agreed to framework and Commission regulations intended to achieve the goal of a robust, resilient, and transparent clearing process.

ICE respectfully suggests that the Commission evaluate the significant regulatory framework issues raised by the FTX Request through a formal rulemaking process with notice and comment as opposed to a one-off, exceptions-based, approval of the FTX Request.

Background

In the wake of the global financial crisis of 2007-2008, policymakers recognized the importance of robust, resilient, and well-capitalized financial market participants, including clearing organizations. The regulatory initiatives to achieve these goals, together with the goal of clearing standardized OTC derivative contracts⁷, led to substantial enhancements to the financial, risk management, and operational resources required of clearing organizations. The PFMIs represent the internationally agreed-to framework for achieving these goals and are designed to apply fundamental protections internationally and reduce the risk of regulatory arbitrage. National regulators in G-20 jurisdictions have implemented the key aspects of the PFMIs into their regulatory frameworks. In ICE’s view, this process has set an appropriate standard across key jurisdictions for the regulation of a clearing organization.

ICE supports innovation in clearing services and believes that there is no single model for clearing that is appropriate for all products and markets. ICE operates traditional intermediated clearing for futures exchanges and OTC credit derivatives markets and non-intermediated clearing of energy products for commercial and institutional market participants. All ICE clearing houses employ robust financial protections and risk management practices consistent with the PFMIs and applicable law.

ICE believes that the FTX Request raises significant questions around risk management, financial resources, participant standards, investor protections and the collection of margin in a retail non-intermediated clearing model. As described further below, retail non-intermediated clearing substantially differs from both the traditional mutualized clearing model and a non-intermediated clearing model restricted solely to commercial and institutional participants. ICE is also concerned that the FTX model could encourage speculative risk-taking activity by individual users without adequate risk management and investor protections that currently apply to DCOs and Futures Commission Merchants (“FCMs”).

⁶ The [Principles for financial market infrastructures](#) are the international standards for financial market infrastructures, i.e. payment systems, central securities depositories, securities settlement systems, central counterparties and trade repositories.

⁷ Group of 20, Leaders’ Statement, Pittsburgh Summit (Sept. 2009), available at <https://www.oecd.org/g20/summits/pittsburgh/G20-Pittsburgh-Leaders-Declaration.pdf>.



ICE emphasizes that while FTX US' current business focuses on digital assets, the proposed framework about which the Commission seeks comment is not limited to digital assets. Accordingly, the Commission must consider the implications of the proposed model as a policy matter for all products and markets. In ICE's view, the proposed model significantly deviates from the current regulatory framework and as such, the Commission should evaluate the implications of these changes through a formal rulemaking process with notice and comment as opposed to a one-off, exceptions-based, approval of the FTX Request.

In any evaluation of the FTX Request, ICE believes the starting point should be the CFTC Rules and PFMI principles.⁸ ICE discusses in further detail the following topics we believe require the Commission's attention:

- Participant Standards and Credit Risk
- Financial Resources
- Liquidity Risk
- Default Management
- Customer Protections
- Governance

Participant Standards and Credit Risk

Under the FTX Request, the clearing organization would not take steps to evaluate and monitor the credit risk of its participants as required by CFTC Rule 39.12(a). CFTC Rule

⁸ The PFMI Principles ensure that a clearing organization has appropriate governance and fitness standards; adequate financial, operational, and managerial resources, appropriate standards for participant and product eligibility; adequate and appropriate risk management capabilities; efficient and fair default rules and procedures; adequate and appropriate systems safeguards, emergency procedures, and plan for disaster recovery; adequate rule enforcement and dispute resolution procedures; and a well-founded legal framework.

As the Commission has stated, subparts A and B of its Part 39 regulations incorporate the vast majority of the standards set forth in the PFMI and were informed by the PFMI consultation. See Derivatives Clearing Organizations and International Standards, 78 Fed. Reg. 72476, 72478 (Dec. 2, 2013). The Commission adopted subpart C of the Part 39 regulations to address certain potential gaps between its existing rules and the PFMI. Although the subpart C rules are only applicable to those DCOs that are either deemed systemically important or elect to be subject to them, the PFMI as reflected in the rest of the Part 39 regulations are relevant to the evaluation of all DCOs, including the FTX US proposal.

Moreover, most registered DCOs are subject to the PFMI through the CFTC subpart C rules or through regulations in other jurisdictions that directly integrate the PFMI. It is the expectation of participants and global regulators that the PFMI represent the appropriate standard for a clearing organization. As a policy matter, ICE is concerned with setting the precedent of approving a new DCO clearing model subject to lesser standards than the appropriate international standards in the PFMI. A new clearing model focused on retail market participants should be expected to meet the highest US standards rather than lesser requirements inconsistent with international standards.



39.12(a) requires a DCO to have appropriate admission and participation requirements for clearing members including sufficient financial resources to meet obligations arising in extreme but plausible market conditions and capital requirements which match capital to risk. All clearing members must also provide financial reports to the DCO so they can assess whether clearing member participation requirements are being met on an ongoing basis.⁹ Similarly, PFMI Principle 18 requires that a financial market infrastructure (“FMI”) consider the risks that a participant may pose to the FMI and other participants and establish risk-related participation requirements adequate to ensure that participants meet appropriate operational, financial and legal requirements to allow them to fulfill their obligations on a timely basis. Moreover, PFMI Principle 3 provides that an FMI should routinely monitor and measure credit exposures to its participants.

The FTX Request would not meet these critical requirements. FTX U.S. does not have credit standards for participants nor are participants required to meet any minimum capital or asset requirements. Furthermore, the clearing organization does not conduct any due diligence on a participant’s ability to perform its obligations and the FTX Request does not indicate that FTX would review individual participants financial reports. The clearing organization would solely rely on margin provided by the participant and the automated close-out methodology described below. This approach removes a fundamental protection existing in other clearing models where the clearing organization can look to the financial strength of the participants in addition to the posted margin. Moreover, the proposed auto-liquidation process in the FTX Request would manage capital-related risks other than through participant capital requirements, as required. ICE is concerned that in a non-fully margined model the clearing organization is exposed to additional risk and as such the model set out in the FTX Request is inconsistent with the CFTC rules and PFMIs.

In addition, the FTX Request does not adequately address the need for anti-money laundering (AML) and know-your-customer (KYC) compliance at the clearing organization level. In existing intermediated models, the clearing organization has limited obligations with respect to AML and KYC. In contrast, clearing members are typically regulated financial institutions subject to AML and KYC responsibilities for their own customers.¹⁰ Clearing members also have well developed systems and processes in this area. Accordingly, the intermediated model relies on the clearing member to conduct AML and KYC gatekeeping for most users. In a retail, non-intermediated model, it is necessary for a clearing organization itself to perform this function but the existing legal framework around AML and KYC does not contemplate a clearing organization doing so.¹¹ The Commission should ensure through regulation, that a retail non-

⁹ CFTC Rule 39.12(a)(5)(i).

¹⁰ For example, the Bank Secrecy Act (BSA), 31 USC 5318(h), and the implementing Financial Crimes Enforcement Network (FinCEN) regulations under 31 CFR Part 1026, makes FCMs subject to the AML responsibilities applicable to financial institutions. By contrast, DCOs are not treated as financial institutions for this purpose under the BSA or FinCEN regulations and are not subject to specific AML responsibilities.

¹¹ The Commission has recognized this limitation and required FTX US and other DCO’s that clear fully collateralized transactions to comply with the BSA as if they were a financial institution. For DCO’s with a retail non-intermediated model, the Commission should build on this requirement through affirmative rulemaking setting out in further detail the functions to be performed. It is also necessary that such a DCO



intermediated clearing organization is both obligated to perform this function and has sufficient operational, systems and other resources to do so.

Financial Resources

A principal benefit of clearing is the management and mitigation of credit risk from cleared derivatives. The financial resources supporting the clearing organization are key to providing this benefit and to ensuring the safety, soundness and robustness of the clearing system. As outlined in PFMI Principle 4, a clearing organization should maintain sufficient financial resources to cover its exposure to each participant fully and with a high degree of confidence. More specifically, a clearing organization should maintain additional resources sufficient to cover stress scenarios that include the default of the largest, or in some cases the two largest, participant groups that potentially cause the largest aggregate credit exposure in extreme but plausible market conditions -- referred to as the “cover 1/cover 2” standard. The Commission’s regulations, like those of other regulators throughout the G-20 directly implement this requirement.¹² Specifically, CFTC Rule 39.11(a) requires a DCO to maintain adequate financial resources to cover the default of the largest clearing member causing the largest aggregate credit exposure in extreme but plausible market conditions.¹³

As recognized in the FTX Request, the cover 1/cover 2 standard is designed for clearing arrangements with institutional clearing members. ICE suggests this standard (or even the “cover 3” alternative suggested in the FTX Request) is not suitable for a retail non-intermediated clearing model based on the large number of small retail market participants. Such an approach would include a small proportion of a DCOs exposure to a participant default against which to make a reasoned assessment of appropriate financial resource requirements. Nonetheless, it is essential that each clearing organization be subject to a robust financial resource standard - particularly when the participants at risk of a default by the clearing organization are individual retail investors. Given the recognition that the existing cover 1/cover 2 standard is insufficient for a retail non-intermediated clearing arrangement, ICE believes that the Commission should address an appropriate standard through formal rulemaking backed by relevant financial analysis.

Liquidity Risk

Under PFMI Principle 7, an FMI should effectively measure, monitor and manage its liquidity risk. An FMI must also maintain sufficient liquid resources in relevant currencies to settle payment obligations, make required variation margin payments and meet other payment obligations on time with a high degree of confidence under a wide range of potential stress scenarios including the default of the participant group that would generate the largest aggregate payment obligation in extreme but plausible market conditions. CFTC Rule 39.11(e) imposes a similar requirement on all DCOs to maintain sufficient liquid resources to fulfill their

have appropriate personnel, systems, policies and procedures to implement an effective AML program and that the Commission provide appropriate examination and supervision.

¹² CFTC Rules 39.11, 39.33.

¹³ CFTC Rule 39.33 increases the requirement, for systemically important and subpart C DCOs, to “cover 2”—the exposure from the two largest clearing members in extreme but plausible market conditions.

cash obligations when due. CFTC Rule 39.12(b) also requires a DCO to consider liquidity as a factor in determining product eligibility.

For similar reasons as described above under Financial Resources, a liquidity standard (such as the one in CFTC Rule 39.11(e)) which is based on the default of the largest single clearing member is not well suited for a retail non-intermediated clearing model involving a large number of small retail participants. The Commission should consider an appropriate standard for mitigating liquidity risk through a formal rulemaking process with a request for comment.

In addition, FTX's markets are open 24 hours a day, seven days a week. FTX trades can occur during times of low liquidity such as overnight or on weekends or holidays. Large selloffs during times of thinly traded volumes can drastically move the market. An example of this occurred when Bitcoin fell \$10,000 in 24 hours and dropped below \$50,000 on Saturday, December 4th 2021. The CFTC should consider the risk of large price movements in an illiquid market and the impact on FTX's general liquidity as well as the effectiveness of its liquidation process in the case of default.

Default Management

Under PFMI Principle 13, an FMI should have effective and clearly defined rules and procedures to manage a participant default. These rules and procedures should be designed to ensure that the FMI can take timely action to contain losses and liquidity pressures and continue to meet its obligations. CFTC Rule 39.16 imposes similar requirements for all DCOs.

The FTX Request includes features that differ from traditional default management approaches and in light of the relevant CFTC rules and PFMI, warrants further consideration by the Commission.

- Automated/Formulaic Close-out. Rather than a call for additional margin to an FTX user, FTX's default management procedure provides for an automated close-out of a user's positions once a margin trigger is reached. It is unclear whether this procedure is appropriate for purposes of default management.
 - There are fundamental differences between the traditional clearing organization model and the FTX model related to the treatment of losses in a portfolio. Currently, clearing organizations operate a "pay as you go" model, meaning losses are settled at least once a day. This model allows participants to maintain their positions notwithstanding negative market moves. Conversely, the FTX model is a "go as you pay" model. In this model, when a participant's collateral is eroded below a prescribed threshold, FTX liquidates the position and the participant's participation is stopped.
 - The FTX participants lose their positions when the market moves against them and the positions are liquidated at adverse prices. ICE notes the risks to the market and other participants when a clearing organization is

forced to automatically liquidate and the potential for a cascading downward spiral, especially in relatively illiquid markets.

ICE believes that the FTX Request has not sufficiently addressed many details on the automated close-out.

- How does the algorithm work? Is there appropriate transparency for users on the risk of being closed out? Conversely, is there a risk of other market participants taking unfair advantage of the automated close-out algorithm?
- Automated close-out seems protective of the clearing organization, but it may harm users who would be, if offered, willing and able to meet a margin call to preserve their positions. At a minimum, providing for an automatic close-out rather than making a margin call exposes users to execution risk on their positions that could be avoided. It is also important to ensure that the price at which positions are transferred does not unfairly transfer value from the customer to the liquidity provider (“LP”).
- Automated close-out may leave the underlying positions unhedged.
- Automated close-out raises investor protection concerns, as it may disincentivize users to monitor and manage the risk of their positions.
- The risks of simultaneous or contemporaneous close-out of numerous market participants should be considered by the Commission. It seems likely that multiple users or participants could be subject to a close-out at the same time in the event of a significant market movement. Could the close-out exacerbate market movements particularly in a declining or volatile market potentially magnifying participant losses?
- Is there a risk that automated close-out does not work or is adversely affected if the market is illiquid? Is there a minimum level of market liquidity necessary for automated close-out to work properly? What happens if there is not sufficient liquidity to close out all desired positions?

In ICE’s view, the proposed approach must be considered in light of the goals in the PFMI and the Commission rules, of efficient and effective default management and transparency.

- Role of Liquidity Providers. The default management procedures in the FTX Request rely on participation of LPs. This approach raises questions that are not answered in the request:
 - Who are the LPs and what are the standards for being a LP? In the default management context, ICE’s understanding is that the LPs are playing a role similar to traditional clearing members. As such, a similar standard is appropriate. Specifically, a minimum financial or capital requirement should be applicable to LPs to provide assurance that the LP

is able to perform its function in a default scenario. It is critical to ensure that LPs have adequate operational capabilities and the ability to manage the risks of the positions acquired through default management.

- Are LPs being compensated for participation, and if so, how? It is important for regulators and market participants to understand the LPs' incentives to participate in default management.
 - What is the process for transferring positions from a user to an LP? Is there an auction? Is there another means of ensuring a competitive market price at the time?
 - What happens if an LP fails to perform?
 - ICE is not opposed to the use of LPs as a form of default management, but the arrangements must be transparent and analyzed in light of the PFMI and Commission regulations.
- Size and Use of Default Fund. FTX indicates that it has an additional \$250 million in default resources contributed from its own funds; however, the basis for fund sizing is unclear. The FTX comparisons to clearing house contributions at other clearing organizations are incorrect. Skin in the game contributions are not intended as principal default resources but are meant to balance and align the risk management interests of the clearing house and the interests of its clearing members. The FTX Request is also unclear around how and when the default fund is used.

ICE believes that there is no single appropriate means of constructing a default fund. However, it is important that the default fund approach be transparent and clear around how it is constructed and when it is used.

- Margin Use or Haircutting. The FTX Request states that in some cases margin provided by users may be used for liquidity purposes or haircut due to losses caused by other users. This approach is inconsistent with the approach taken by other DCOs in default management where margin of a non-defaulting member is not subject to use in the default by another member. It is also inconsistent with the general principles under Section 4d of the Commodity Exchange Act and Commission regulations thereunder pursuant to which funds of one customer should not be used to cover obligations of another. At a minimum, the DCO authority to use margin in this way must be clearly set out in relevant rules and the risks must be fully disclosed to users.

In the case where FTX chooses to use or mutualize the initial margin of the non-defaulting participant, it is unclear whether the non-defaulting participant positions would become under-margined (and be subject to potential liquidation) as a result. This risk, if present, should be fully disclosed to users.

- Other Default and End of Waterfall Considerations. The FTX Request is unclear in circumstances where LPs do not perform and the default fund is fully used.

Would remaining transactions be torn up or terminated? On what basis and at what prices? How would any remaining shortfall be allocated?

It also appears that FTX US has broad discretion to tear-up contracts in the case of a participant default, even prior to the use of the default fund or LP arrangements. The circumstances when this could occur and consequences to other participants are unclear.

Consistent with PFMI principles and Commission regulations, ICE believes that a clearing house should disclose details about its approach so that participants can evaluate the risks.

Customer Protection

- **Segregation and Portability.** PFMI Principle 14 provides that a clearing organization should have rules and procedures that enable the segregation and portability of positions of a participant's customers and collateral provided to the clearing organization.

The clearing organization is not technically subject to segregation requirements for user property. Under the FTX Request, because users are not customers of a FCM, they would not have the protections of Section 4d of the CEA and Commission Rule 1.20.

Although users of other DCOs with self-clearing arrangements also do not have these protections, current self-clearing arrangements do not extend to retail market participants. Institutional market participants are better suited to determine and evaluate the appropriate level of protection. The CFTC must consider the appropriateness of allowing retail market participants to effectively opt out of the protections of Section 4d of the CEA and Commission Rule 1.20.

Alternatively, the Commission could consider whether to impose on DCOs offering a retail non-intermediated clearing model comparable Section 4d protections. ICE believes such action should be done through formal notice and comment rulemaking given the significant change from current rules.

- **Custody and Investment Risk.** PFMI Principle 16 requires a clearing organization to safeguard participants' assets and minimize the risk of loss and delay in access. Investments of customer assets must be in instruments with minimal credit, market and liquidity risks. Commission Rule 39.15 implements these requirements for DCOs.

In the FTX Request, it is unclear how FTX US proposes to meet these requirements. In the absence of segregation requirements, how are participant funds or property maintained by the clearing organization? It is also unclear whether investments are made with participant funds and what types of investments can be made. As such, the Commission should consider whether

the requirements of Rule 1.25 should be applied to the investment of retail participants' funds.

- Disclosures and Other Customer Protections
 - The Commission should consider, via rule-making with a public comment process, the scope of disclosures for a retail non-intermediated clearing model. It is expected that institutional clearing members perform appropriate diligence on the clearing organization to evaluate its risks, and therefore enhanced disclosure requirements may be appropriate in a retail non-intermediated model. Retail market participants may be unable to properly assess these risks.
 - FCMs perform a gatekeeping and risk intermediary function for the clearing organization. The Commission should consider, via rule-making with a public comment process, appropriate requirements on a retail non-intermediated clearing organization to manage risks posed by retail participants. Retail market participants should be subject to an enhanced level of disclosure about the clearing organization including information on how the retail customers manage the liquidity and operational risks involved in participating in a clearing house.
 - Commission rules also contemplate that FCMs will be responsible for providing confirmations and similar statements to their customers. In a retail non-intermediated clearing model, the clearing organization should be required to take on this role.

Governance

Under PFMI Principle 2, a clearing organization should have governance arrangements that are clear and transparent, promote the safety and efficiency of the clearing organization, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders. The Commission has implemented these requirements in CFTC Rule 39.24. In addition, CFTC Rule 39.24(a)(2) requires the board of directors to ensure that the DCO's design, rules, strategy, and major decisions reflect the interests of clearing members, customers, and other relevant stakeholders.

The FTX Request does not provide many details on its governance that are viewed as significant for other clearing organizations. These deficiencies include:

- Participation by Users in Governance Committees. CFTC Rule 39.26 requires that the board of a DCO include market participants. In addition, most DCOs have risk management committees designed to reflect meaningful participation by market participants. It does not appear that the FTX Request addresses these requirements.
- Participation in Significant Default Management Decisions. Most DCOs contemplate involvement by clearing members in significant default management decisions such as the decision to implement recovery techniques such as auctions, partial tear-up, margin

haircutting and similar measures. The Commission should consider how to implement this involvement in the case of a largely retail market.

These governance gaps are exacerbated by FTX's customer base of retail participants. As discussed above, retail individual participants are unlikely to be sufficiently organized as a group to adequately voice their expectations and concerns to the clearing organization, its management or board of directors. The Commission should consider whether the FTX Request adequately meets the regulatory objectives and requirements in respect of governance.

Comparison to Other Non-Intermediated Models

ICE has significant experience with non-intermediated clearing arrangements through its ICE NGX clearing house. ICE NGX operates in a sophisticated commercial market, offering clearing services to producers, marketers and utilities in the physical energy markets of North America. Accordingly, ICE NGX has a risk profile that differs substantially from the FTX Request and other retail non-intermediated clearing models and has numerous features and protections that are not present in the FTX Request.

- ICE NGX participation requirements preclude participation by individuals and retail participants. Participation is restricted to commercial market participants and other institutional counterparties that meet minimum financial requirements of a net worth exceeding \$5 million or total tangible assets exceeding \$25 million.
- ICE NGX conducts regular and ongoing reviews of participant creditworthiness and requires parental guarantees to reduce exposure to participants with limited creditworthiness or limited transparency into creditworthiness.
- Participants in cleared physical markets are required to have the capability to make and take delivery of underlying energy commodities and are required to make or take delivery of net positions, which discourages pure speculative trading firms from participating.
- Physical energy markets have specific characteristics including delivery timelines that are well understood by participants in those markets and allow market participants to fix issues themselves by trading out of positions prior to delivery and/or arranging for physical replacements to be found and substituted before delivery is required. As a result, the markets operate in a fundamentally different way from the model described in the FTX Request and discussed above.
- ICE NGX can also call for additional collateral and participants are required to meet specified timeframes for providing additional collateral. There is no auto-liquidation function.
- ICE NGX has experience managing volatility in the energy markets. Physical energy has inherent production and transportation costs contributing to the price. The energy products cleared by ICE NGX have over 20 years of price history, allowing for deeper analysis of volatility and margin rates. Commercial and



institutional participants utilize the ICE NGX markets to manage risk associated with a physical energy business. Electricity products may also have price caps or limitations that prevent extreme price run-ups. These factors tend to limit excessive price swings or speculative activity.

- ICE NGX has significant experience with clearing and the physical energy markets in which it operates, including specific experience with management of participant defaults.

The FTX Request does not share many of these features and raises issues that differ from those of existing institutional non-intermediated arrangements. Overall, while ICE believes a non-intermediated model can be appropriate for certain markets, clearing arrangements must provide robust risk management and financial protections.

Other Considerations

- **System Safeguards.** Based on FTX US' public statements, all of its relevant systems are operated through cloud-based arrangements and technologies. The Commission's existing system safeguard rules including CFTC Rule 39.18 do not clearly address risk management, oversight and testing of cloud-based technologies. As this is an area of increased interest, ICE believes that the Commission should consider appropriate changes to its rules to address such arrangements through a formal rulemaking rather than this request for approval.
- **Insolvency Considerations.** The Commission recently updated and modernized its Part 190 regulations addressing the insolvency of an FCM or DCO. ICE believes the insolvency implications of a retail non-intermediated clearing model should be considered more fully, including a DCO insolvency with many retail participants. Provisions relating to treatment of "customer property" in insolvency should also be considered in the context of a non-intermediated model.
- **Equivalence.** ICE does not believe the FTX Request fully satisfies the PFMI and Commission regulations. As such, the Commission should carefully consider the cross-border implications of approving a clearing model that fails to satisfy the PFMI. Specifically, ICE notes that other jurisdictions including the European Union ("EU") and the United Kingdom ("UK") rely on compliance with the PFMI to determine whether a jurisdiction has comparable or equivalent regulation. The current recognition of US DCOs in the EU and UK is based on this determination of equivalence. It is critical that any action by the Commission not jeopardize the existing foreign equivalence determinations applicable to U.S. DCOs.

Conclusion

ICE appreciates the opportunity to comment on the FTX Request. ICE believes that the FTX Request raises significant policy issues as well as questions about compliance with the PFMI and Commission regulations that warrant further analysis. ICE is concerned that



approval of the FTX Request could undermine the internationally agreed to framework and Commission regulations intended to achieve the goal of a robust and resilient clearing process.

Given that the FTX Request would require significant deviations from the current regulatory framework, ICE respectfully submits that the Commission evaluate the significant regulatory framework changes through a formal rulemaking process, with notice and comment, as opposed to a one-off, exceptions-based, approval of the FTX Request.

Sincerely,

Chris Edmonds

Chris Edmonds
Chief Development Officer
Intercontinental Exchange, Inc.

cc: Honorable Chairman Rostin Benham
Honorable Commissioner Christy Goldsmith Romero
Honorable Commissioner Kristen N. Johnson
Honorable Commissioner Summer Mersinger
Honorable Commissioner Caroline D. Pham
Clark Hutchison, Director, Division of Clearing and Risk