



September 28, 2023

Via Electronic Submission

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: Commodity Futures Trading Commission’s Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities

Dear Mr. Kirkpatrick:

Intercontinental Exchange Inc., on behalf of itself and its subsidiaries (“ICE”), appreciates the opportunity to comment on the Commodity Futures Trading Commission (“CFTC” or “Commission”) Request for Information (“RFI”), seeking public comment on the impact of affiliations on CFTC-Regulated entities.¹ ICE addresses its comments to several specific questions asked by the CFTC regarding these affiliations. As discussed below, ICE is supportive of the CFTC’s principles-based approach to regulation and oversight of affiliated entities which fosters growth and innovation for derivatives markets.

ICE operates regulated global futures, options and swaps markets and derivatives clearing houses that promote price transparency and offer participants the opportunity to hedge and trade a variety of commodities and financial derivatives in regulated markets. ICE operates multiple trading venues, including 13 regulated exchanges and 6 clearing houses, which are strategically positioned in major market centers around the world, including the United States (“US”), United Kingdom (“UK”), European Union (“EU”), Canada, Asia Pacific and the Middle East. Our core products include contracts based on crude and refined oil, natural gas, power, coal, environmental commodities, sugar, cotton, coffee, cocoa, canola, frozen concentrated orange juice, CDS, currencies and equity indexes. Our markets provide participants with a means for trading and managing risks associated with price volatility, securing physical delivery of certain commodities, as well as enabling asset allocation or diversification. As an operator of regulated marketplaces, ICE is keenly interested in the issues raised by the RFI and appreciates the opportunity to comment.

¹ CFTC, Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities (June 2023).



Comments

ICE is supportive of the CFTC's goals to better understand the impact of affiliations between CFTC-regulated entities and potential issues that may arise. Consistent with the Commodity Exchange Act ("CEA"), the CFTC has adopted a principle-based approach to addressing conflicts of interest which may arise where a corporate group owns multiple CFTC-registered entities. This approach has proven successful by requiring Designated Contract Markets ("DCMs"), Derivative Clearing Organizations ("DCOs") and Swap Execution Facilities ("SEFs") within the same corporate group to identify, mitigate, and manage conflicts of interest. These registrants are also subject to the CFTC's supervisory oversight. ICE believes the CFTC's regulatory framework appropriately allows for various organizational structures which support innovation and allow for regulated entities to effectively and efficiently offer their services to meet customer demands. ICE believes that group affiliations can promote greater access to products, cost-efficiencies and increased innovation and competition within the derivatives markets.

Moreover, groups that own a DCO and DCM have strong regulatory and commercial interests in supporting the stability of the financial system. Affiliated entities implement robust policies and procedures, transparent governance arrangements, independent oversight, disclosure requirements, and compliance frameworks to mitigate conflicts of interests. ICE strongly believes these enhanced and transparent governance arrangements are critical to mitigating or eliminating conflicts of interest. Affiliated registered entities in most instances have separate board of directors, key management personnel, appropriate information sharing barriers and policies that mitigate or eliminate conflicts of interest.

Nevertheless, ICE believes that recent developments whereby a group owns a futures commission merchant (FCM) and DCO, DCM, and/or SEF suggest that the Commission could consider taking additional steps to confirm that conflicts of interests continue to be managed effectively. Furthermore, recent events in the cryptocurrency and digital asset markets reinforce the critical need for effective management of conflicts of interest for new ownership models. Well-defined and robust policies, procedures, rules, and disclosures should be implemented at affiliated regulated entities to reduce the conflicts of interest risks.

I. *DCO and Affiliated FCM Oversight*

ICE supports regulated entity affiliations, including where a corporate group owns both a futures commission merchant ("FCM") and a DCM/DCO/SEF. ICE believes this structure does not raise anti-competitive concerns if the affiliated regulated entities adopt appropriate rules and policies and procedures for managing conflicts. The CFTC has recognized that there are multiple ways in which organizations may be structured and the CFTC's principles-based regulation reinforces this view.

ICE does however recognize the potential risks and conflicts of interest with a designated self-regulatory organization ("DSRO") being tasked with oversight and examination of an affiliated



FCM. Instituting measures such as information sharing barriers and appropriate policies and procedures will not mitigate the conflict of interest. In this case, the CFTC should consider requiring a non-affiliated third party to be the DSRO.

Similarly, the CFTC should consider whether it is appropriate for an entity to be tasked with auditing entities with which it competes. If a registrant is obligated to audit an entity with which its affiliated entity competes, the CFTC should at a minimum require robust information barriers to ensure that information derived from an examination does not flow to the affiliated entity that competes with the firms being audited.

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ICE appreciates the opportunity to comment on the RFI. ICE supports the Commission's goals to better understand the impact of affiliations between CFTC-regulated entities and potential issues that may arise. ICE believes the Commission's principles-based approach to mitigating conflicts of interests has proven to be efficient and effective, and that the industry's SROs and DSROs can work with the industry and the CFTC to ensure the ongoing effectiveness of the self-regulatory framework.

Sincerely,

Kara Dutta

Kara Dutta
Assistant General Counsel
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