



November 6, 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: Notice of Proposed Rulemaking: Amendments to Provisions Common to Registered Entities (RIN 3038-AF28)

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”) notice of proposed rulemaking related to Amendments to Provisions Common to Registered Entities (the “Proposal”).¹

ICE operates regulated marketplaces for the listing, trading, and clearing of a broad array of derivatives contracts such as commodities, interest rates and foreign exchange. We operate multiple trading venues, including 13 regulated exchanges and six clearing houses, which are strategically positioned in major market centers around the world, including the U.S., U.K., European Union, or EU, Canada, Asia Pacific and the Middle East. The following ICE entities are registered with the CFTC:

- ICE Clear Credit (“ICC”), ICE Clear U.S. (“ICUS”), ICE Clear Europe (“ICEU”) and ICE NGX (“NGX”) are regulated by the CFTC as Derivative Clearing Agencies (“DCO”) under the Commodity Exchange Act (“CEA”).
- ICE Futures U.S. is regulated by the CFTC as a designated contract market (“DCM”) under the CEA.
- ICE Swap Trade is regulated by the CFTC as a swap execution facility (“SEF”) under the CEA.
- ICE Trade Vault is regulated as a Swap Data Repository (“SDR”) under the CEA.

ICE supports the Commission’s goal to clarify, simplify, and enhance the Part 40 Regulations for registered entities. As operators of CFTC registrants, ICE has a keen interest in the procedures to submit rules, to list products for trading, and to accept new products for clearing. ICE therefore appreciates the opportunity to comment on the Proposal.

¹ Provisions Common to Registered Entities (RIN 3038–AF28), 88 Fed Reg 61432 (September 6, 2023).

Recommendations

Regulation 40.1

The Commission is proposing to revise the definition of “Rule” in Regulation 40.1 to include a reference to margin methodology. As background, in 2011 the CFTC required DCOs to submit margin-related rule changes.² The CFTC is now proposing to include a reference to margin methodology in the definition of “Rule” that could broaden the scope of the definition and thus place additional reporting burdens on DCOs for documents that are not “Rules” within the meaning of existing Regulation 40.1. In ICE’s view, a margin methodology is not necessarily the same as a margin-related rule, and the CFTC has not established a proper basis for requiring such documents to be filed.

Regulation 40.6(d)(2)

ICE supports the Commission’s proposed amendments to Regulation 40.6(d)(2), expanding the types of rule changes that may be placed into effect by DCMs without prior certification to the Commission and instead submitted to the Commission as “weekly” filings. ICE however recommends that the CFTC also allow DCMs to submit amendments to price and volatility control mechanism (“VCM”) levels in a “weekly” filing under Regulation 40.6(d). ICE agrees that amendments to VCM methodologies should be subject to 10-day review under Regulation 40.6(a), however we believe that DCMs should be free to alter VCM levels in response to prevailing market conditions without prior Commission review. Specifically, DCMs should have the flexibility to change metrics such as maximum order size, reasonability limit levels, price bands, circuit breaker trigger levels, and the duration of a market pause in periods of heightened market volatility, to promptly address disorderly market conditions or to mitigate disruptions.³

Moreover, it should be noted that changing market conditions, including increases and decreases in volatility that may warrant corresponding changes to VCM levels, occur in all products to varying degrees. In most instances, such ebbs and flows would not constitute a “market emergency” and would not form the basis for an “emergency rule” filing under Regulation 40.6(a)(6). Requiring a DCM to certify a VCM level change 10-days prior to implementation or take emergency action to implement such change unnecessarily hinders its ability to adapt important controls to changing market conditions in real-time. Accordingly, ICE suggests the Commission allow a DCM to implement changes to VCM levels without prior certification under Regulation 40.6(d).

Regulation 40.6(b)(2)

The Commission is proposing to amend Regulation 40.6(b)(2) to reset the applicable 10-day review period when a supplemental filing or modification to an existing filing is submitted. In the preamble, the Commission proposed an exception to the proposed 10-day reset for supplemental filings which are made at the request of the Commission.⁴ ICE notes that the proposed text of Regulation 40.6(b)(2) does not reflect this exception and only lists exceptions for typographical errors, renumbering and non-substantive revisions. As such, ICE requests that the Commission expressly incorporate into Regulation 40.6(b)(2) the exception for supplemental filings that are

² Section 8a(7)(D) of the CEA, as amended by the Dodd-Frank Act, permitted the Commission to alter the rules of a DCO with respect to margin requirements. As such, in 2011, the CFTC amended Part 40.

³ A robust discussion of VCMs currently operated by DCMs and relevant VCM metrics was recently published by the FIA. See FIA [Best Practices for Exchange Volatility Control Mechanisms at https://www.fia.org/sites/default/files/2023-09/FIA_WP_Exchange%20Controls_Final3.pdf](https://www.fia.org/sites/default/files/2023-09/FIA_WP_Exchange%20Controls_Final3.pdf).

⁴ Provisions Common to Registered Entities (RIN 3038–AF28), 88 Fed Reg at 61441 (September 6, 2023).



made at the request of Commission Staff. In addition, ICE believes that the Commission should expand this exception to include supplemental filings or modifications made with the consent of Commission Staff. This additional exception would provide a means for DCMs to seek approval from Commission Staff where the supplement or modification results in a change that does not fit into the specified, excepted categories but nonetheless is of such a nature that Commission Staff does not find the reset of the 10-day review period to be necessary.

Regulation 40.2

ICE suggests the Commission revise Regulation 40.2 to allow a DCM to file a request to add multiple new products in the same filing. Currently, CFTC Staff requires a DCM to file a separate submission in the CFTC Portal for each new product it intends to list. DCMs draft a single written filing covering multiple products when listing a series of new contracts that have a common or related underlying asset class. DCMs submit the single filing with supporting documentation through the CFTC Portal multiple times (i.e., once for each new product). The filings are identical and the only difference is the unique filing number. ICE has been advised by CFTC staff that this burdensome process is due to systems constraints with the Portal. Resubmitting the same filing and supporting documentation numerous times to list multiple related contracts is redundant, time consuming and unnecessary and with little benefit to the Commission. ICE urges the Commission to find an alternative process that would facilitate DCMs submitting a single filing to list multiple new contracts. ICE appreciates the Commission's consideration of this request.

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ICE appreciates the opportunity to comment on the Proposal and the engagement of the Commission and its Staff in the rulemaking process. ICE shares the Commission's goals to simplify, clarify and enhance Part 40 Regulations. ICE respectfully requests that the Commission consider its comments in light of those goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Kara Dutta", is positioned below the "Sincerely," text.

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