



January 17, 2024

**Via Electronic Submission**

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

**Re: Notice of Proposed Rulemaking: Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations (RIN 3038-AF24)**

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 Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations (the “Proposal”).<sup>1</sup>

ICE operates regulated marketplaces for the listing, trading and clearing of a broad array of derivatives contracts and financial securities, such as commodities, interest rates, foreign exchange and equities as well as corporate and exchange-traded funds, or ETFs. 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. ICE’s six clearing houses are regulated as follows:

- ICE Clear Credit (“ICC”) and ICE Clear U.S.<sup>2</sup> are regulated by the CFTC as Derivative Clearing Agencies (“DCOs”) under the Commodity Exchange Act. The Financial Stability Oversight Council has designated ICE Clear Credit as a systemically-important financial market utility under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. ICC is also regulated by the Securities and Exchange Commission (“SEC”) as a clearing agency because it clears security-based swaps.
- ICE Clear Europe Limited (“ICE Clear Europe”), which is primarily regulated in the U.K. by the Bank of England as a Recognized Clearing House, is also subject to regulation by the CFTC as a DCO and by the European Securities and Markets Authority.

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<sup>1</sup> Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations (RIN 3038-AF24), 88 Fed. Reg. 81236 (Nov. 21, 2023).

<sup>2</sup> ICE Clear U.S. has elected to be a “subpart C” DCO under Commission Rule 39.31.



- In Canada, ICE NGX is recognized as an exchange and clearing house by the Alberta Securities Commission and is also registered by the CFTC as a Foreign Board of Trade and as a DCO.
- In the EU, ICE Clear Netherlands is an authorized central counterparty and is regulated by the Dutch National Bank and Authority for Financial Markets.
- In Singapore, ICE Clear Singapore is an approved clearing house supervised by the Monetary Authority of Singapore.

ICE appreciates the opportunity to comment on the Proposal and supports the Commission's proposal to codify and expand its existing exemptive relief permitting DCOs to invest customer funds in qualifying French and German sovereign debt. As an operator of DCOs, ICE believes that the existing relief provides important flexibility, facilitating the clearing of products and acceptance of margin in different currencies. In ICE's view, it is appropriate to expand the relief to additional types of high-quality sovereign debt. With respect to those aspects of the Proposal relevant to FCMs, ICE has no objection to the proposed amendments.

### **Investment in Foreign Sovereign Debt**

In 2018, the Commission granted an exemptive order ("2018 Order") permitting DCOs to invest euro-denominated customer funds in French and German sovereign debt subject to certain conditions based on maximum time to maturity and credit default swap spreads.<sup>3</sup> The 2018 Order also permits DCOs to enter into repurchase transactions for qualifying French and German sovereign debt and expands the definition of permissible counterparties to include qualifying foreign banks and foreign securities brokers or dealers as opposed to only US banks and broker-dealers as required under Rule 1.25(d)). In addition, the 2018 Order permits DCOs to hold foreign sovereign debt received under repurchase transactions in custody with foreign banks that met the requirements for depositories under Rule 1.49. The 2018 Order facilitates the DCO's management of investment and custody risk, while continuing to protect customer funds and avoid unnecessary currency conversions. As such, ICE strongly supports the Commission's Proposal to codify the relief in the 2018 Order as part of Rule 1.25.

The Commission has also proposed to expand the types of permitted foreign sovereign debt to include the debt of Canada, Japan and the United Kingdom in addition to France and Germany.<sup>4</sup> ICE supports the expansion of permitted foreign sovereign debt as it would facilitate the investment of customer fund balances denominated in Canadian dollars, Japanese Yen and United Kingdom pounds sterling in the eligible sovereign debt of these currencies by DCOs. As the Commission notes in the Proposal, the sovereign obligations of those jurisdictions have strong credit and liquidity characteristics consistent with those of U.S. Treasury securities and with the French and German government securities covered by the 2018 Order.<sup>5</sup> ICE believes investment in such debt is an appropriate way to protect and hold customer funds balances in those currencies. Allowing investment in high-quality sovereign debt through direct investment or repurchase transactions, provides flexibility for DCOs and enhances protection of customer funds

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<sup>3</sup> Order Granting Exemption from Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and From Certain Related Commission Regulations, 83 Fed. Reg. 35241 (July 25, 2018).

<sup>4</sup> Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations at 81281.

<sup>5</sup> Stet at 81244.



compared to commercial bank accounts which expose the DCO to the unsecured risk of the depository institution.

Furthermore, ICE generally believes the proposed conditions to investments in foreign sovereign debt are acceptable and the proposed conditions on credit default swap and time-to-maturity are workable ways to mitigate sovereign debt investment risk. ICE however notes that forcing DCOs to discontinue investment in sovereign debt due to fluctuations in a CDS spread could be disruptive. ICE does not believe the CDS spread condition is necessary given the jurisdictions involved. We further note the same credit spread condition is not present for U.S. sovereign debt. ICE similarly supports the proposed increase to the time to maturity limitation to greater than 60 days on a portfolio basis and 180 days for any individual investment. ICE believes that a DCO can manage the liquidity, credit and market risk of its foreign sovereign debt investments in the same manner as other investments and consistent with Commission Rule 39.15 and the DCO's risk management practices.<sup>6</sup>

ICE also supports the proposed amendments to Rules 1.25(d)(2) and (7) to codify the 2018 Order permitting a DCO to engage in repurchase transactions in foreign sovereign debt with foreign bank counterparties who meet the Rule 1.49(d)(3) requirements and regulated foreign securities brokers or dealers located in money center countries that have adopted the relevant currency of the permitted foreign sovereign debt. As the Commission notes in the Proposal, it would be difficult in practice to engage in repurchase transactions with only US bank and broker-dealer counterparties since foreign institutions constitute the principal dealers in the foreign sovereign debt markets.<sup>7</sup> ICE further supports the proposed changes identifying the central banks of Canada, Japan, the United Kingdom, France and Germany and the European Central Bank as eligible repurchase agreement counterparties.

Moreover, ICE supports the proposal to codify the current relief permitting custody of foreign sovereign debt acquired in a repurchase transaction with a foreign depository that meets the requirements of Commission Rule 1.49(d)(3). The principal custodians for foreign sovereign debt securities are located outside the U.S. and custody through a U.S. institution as required under Rule 1.25 would be impractical or involve an indirect custodial relationship through a foreign bank or dealer in the relevant jurisdiction. This relief was a part of the 2018 Order and has worked well. ICE also suggests that the Commission explicitly state that the central banks of Canada, Japan, the UK, France and Germany and the European Central Bank are eligible custodians for foreign sovereign debt. Although the Commission has permitted the use of such custodians for customer funds by no-action letter or similar relief, ICE believes it is appropriate to codify the relief in this rulemaking.

Finally, ICE is generally supportive of the extension of Rule 1.25 to permit investment in qualifying foreign sovereign debt by FCMs in addition to DCOs. ICE believes FCMs should be able to manage the risks of such investments in the same way as DCOs.

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<sup>6</sup> In response to question 3 in the Proposal, ICE does not believe that any additional restrictions based on the liquidity of foreign sovereign debt are necessary as part of the final rule. DCOs will need to take account of liquidity concerns and risks as part of their general risk management and investment policies and practices.

<sup>7</sup> Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations (RIN 3038-AF24), at 81246.



### **Other Amendments**

ICE supports the proposed change to the definition of permitted adjustable-rate securities to reference securities with an interest rate benchmarked to SOFR in light of the LIBOR transition and the increased use of SOFR by market participants.

ICE does not believe it would be beneficial to remove certificates of deposit as a permitted investment even if their use by FCMs and DCOs is currently limited.

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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 supports the Commission's goals of codifying and extending the use of foreign sovereign debt investments for DCOs and respectfully requests that the Commission consider its comments in light of those goals.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth K. King". The signature is fluid and cursive.

Elizabeth King  
Global Head of Clearing & Chief Regulatory 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