



April 22, 2024

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: Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants (RIN 3038-AF21)

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 relating to Margin Adequacy and Accounting for the Treatment of Separate Accounts by Futures Commission Merchants (“FCM”) (the “New Proposal”).¹

ICE operates regulated marketplaces for the listing, trading and clearing of a broad array of derivatives contracts and financial instruments, 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 LLC (“ICC”) and ICE Clear U.S., Inc. (“ICUS”)² are regulated by the CFTC as Derivatives Clearing Agencies (“DCOs”) under the Commodity Exchange Act (the “CEA” or the “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 securities clearing agency because it clears security-based swaps.

¹ Regulation to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants (RIN 3038-AF21), 89 Fed. Reg. 15312 (March 1, 2024).

² ICUS has elected to be a “subpart C” DCO under Commission Rule 39.31.



- 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.
- In Canada, ICE NGX Canada Inc. is recognized as an exchange and clearing house by the Alberta Securities Commission and is also registered with 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 New Proposal and supports the Commission’s proposal to codify no-action relief allowing an FCM to treat separate accounts of the same customer as being owned by separate entities for purposes of relevant CFTC regulations relating to adequacy and withdrawal of margin (“separate account treatment”). ICE recognizes the importance of separate account treatment to FCMs and their customers and appreciates the Commission’s willingness to reconsider the approach set out in its 2023 proposal in light of the comments raised by industry participants.³ ICE supports the revised approach and believes the New Proposal would appropriately place responsibility for separate account treatment on the FCM rather than requiring DCOs to impose indirect separate account requirements on FCMs. The revised approach would also appropriately place supervisory responsibility on the FCM’s Designated Self-Regulatory Organization (“DSRO”) rather than on the DCO.

1. Withdrawal of Prior Proposal and Proposal of New Rule 1.44.

In response to the Prior Proposal, ICE and other commenters generally supported the Commission’s decision to codify the no-action guidance relating to the treatment of separate accounts. However, ICE and other commenters expressed concerns around the proposed approach of requiring DCOs to impose the separate account requirements for FCM clearing members and supervise the FCM’s use of such accounts. ICE and other commenters suggested instead that the Commission codify the requirements for separate accounts as a new regulation applicable to FCMs in Part 1 of the Commission’s regulations and that the requirements be subject to supervision by the FCM’s existing DSRO.

In the New Proposal, the Commission has proposed to adopt a new Rule 1.44 which would set out the requirements under which an FCM may provide separate account treatment. ICE strongly supports this new approach and believes it will provide certainty and flexibility for FCMs that elect to provide separate account treatment. In addition, ICE believes the new approach is more consistent with the Commission’s longstanding approach to FCM supervision in which the DSRO is principally responsible for the direct supervision of the FCM and DCOs have a limited supervisory role. The revised approach recognizes that DCOs have not built a framework for the supervision of clearing member activities.

³ See Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants (RIN 3038-AF21), 88 Fed. Reg. 22934 (April 14, 2023) (the “Prior Proposal”).



2. Specific Requirements for Separate Account Treatment.

ICE does not object to the specific requirements that would be imposed under proposed Rule 1.44(c) where an FCM elects separate account treatment with respect to a customer. As described by the Commission, ICE understands that these conditions are consistent with those conditions imposed for separate account treatment under existing Commission staff no-action relief.

With respect to proposed Rule 1.44(d), ICE believes it would also be appropriate to require the FCM to provide notice to the DCO of accounts that are subject to separate account treatment so that the DCO can comply with its own obligations with respect to the margining of such accounts under Rule 39.13(g).

ICE does not object to the list of events that would be “inconsistent with the ordinary course of business” (following which separate account treatment would no longer be permitted) in proposed Rule 1.44(e). ICE also generally supports the risk management requirements for separate accounts set forth in proposed Rule 1.44(g).

3. One Business Day Call.

ICE notes that the Commission has codified in proposed Rule 1.44(f) a requirement that separate accounts must be on a one-business day margin call. ICE does not object to the proposed standard as it applies to FCMs. ICE appreciates the Commission’s confirmation that the proposed one business day margin requirement between FCMs and their customers for purposes of Rule 1.44 is not intended to affect or prohibit more stringent risk management requirements including margin timeframes that may be established by DCOs for their clearing members.⁴

ICE also notes that proposed Rule 1.44(f)(7) would provide a separate margin timing rule for FCMs in the case of a U.S. holiday when the relevant designated contract market (“DCM”) is open for trading and where the separate account includes positions traded on that market. ICE agrees that it is appropriate to address DCMs but believes the rule should also be extended to DCOs that are open for clearing on a U.S. holiday. This is relevant in the context of cleared swaps which may not be traded on a designated contract market and which margin requirements are set by the DCO.

4. Rule 30.7 Accounts.

The New Proposal would allow FCMs to provide separate account treatment for customers with Rule 30.7 accounts for futures and option transactions traded on exchanges outside the United States.⁵ ICE strongly supports this extension. ICE does not believe it is necessary to distinguish Rule 30.7 accounts from futures and cleared swap accounts in connection with separate account treatment and believes that FCMs should be permitted to provide the benefits of separate account treatment to 30.7 customers as well as other customers.

⁴ New Proposal, 89 Fed. Reg. at 15331.

⁵ See New Proposal, 89 Fed. Reg. at 15316. ICE notes that this proposed extension goes beyond what was proposed in the Prior Proposal.



ICE also notes that there are references in proposed Rule 1.44 to DCMs that should also include foreign exchanges in connection with Rule 30.7 accounts (including proposed Rules 1.44(b)(2) and 1.44(f)(7)).

5. Rule 1.56 issues.

ICE notes that if the Commission moves forward with the New Proposal, they should also amend Rule 1.56, which prohibits an FCM from representing that it will not call or collect margin to make conforming changes to facilitate separate account treatment. Although ICE recognizes the Commission's goal of limiting the scope of the New Proposal, ICE is concerned that failing to address Rule 1.56 may not allow FCMs to fully take advantage of the New Proposal or may create uncertainty on the application of Rule 1.56 for a customer with separate accounts. As a result, ICE suggests that the Commission reconsider whether conforming changes to Rule 1.56 would be appropriate as part of this rulemaking.

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ICE appreciates the opportunity to comment on the New Proposal and the engagement of the Commission and its Staff in the rulemaking process. ICE supports the Commission's goals of codifying separate account treatment for FCMs and appreciates the Commission's willingness to withdraw the Prior Proposal and propose an alternative approach.

Sincerely,

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

Kara Dutta
Vice President, Head of Legal, US Futures Exchanges & Clearing
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