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VIA EMAIL & EXPRESS MAIL

U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
Attention: Office of the Secretariat

COMMENT

Re: Amendments Pertinent to Registered Entities and Exempt Commercial Markets

Dear Sir or Madam:

The IntercontinentalExchange, Inc. ("ICE") is pleased to comment on the proposed rules issued by the U.S. Commodity Futures Trading Commission ("Commission"), 72 Fed. Reg. 45185 (August 13, 2007) ("Proposed Rules"), as they pertain to the delegation of authority to issue exempt commercial market ("ECM") special calls to include the Director of the Division of Enforcement and the Director's designees. ICE is a Delaware corporation that operates, *inter alia*, an electronic platform ("ICE OTC") for the trading of a variety of energy commodities and derivative products related to such commodities. For certain of its derivative contracts, ICE operates as an ECM pursuant to Section 2(h)(3) of the Commodity Exchange Act, 7 U.S.C. § 2(h)(3) ("CEA"), and is the principal ECM in the energy markets.

Delegation of Authority to the Division of Enforcement

ICE supports the delegation of special call authority to the Division of Enforcement as a necessary step to align Commission Rule 36.3 with Section 2(h) of the CEA.

Section 2(h)(5)(B)(iii) states, in pertinent part, "upon special call by the Commission, [an ECM shall] provide to the Commission . . . such information related to its business as an electronic trading facility exempt under paragraph (3) . . . as the Commission may determine appropriate - . . . (I) to enforce the provisions specified in subparagraphs (B) and (C) of paragraph (4) . . ." Subparagraphs (B) and (C) of paragraph (4) of section 2(h), in turn, refer to the fraud and manipulation provisions of the CEA.

Notwithstanding the language of the statute directing the Commission to use its special call authority, *inter alia*, to secure information from ECMs to enforce the fraud and manipulation provisions of the CEA, Commission Rule 36.3(b)(3)(ii) currently delegates special call authority only to the Directors of the Division of Clearing and Intermediary Oversight and the Division of Market Oversight (and their designees), and not to the Director of Enforcement and his or her designees, even though that Division has the principal responsibility for enforcement of the CEA's fraud and manipulation provisions. The proposed amendment to the rule will correct this omission.

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Designees of the Director of Enforcement

The information the Commission is authorized to secure pursuant to section 2(h)(5)(B)(iii) of the CEA includes details of transactions entered into in reliance on the 2(h)(3) exemption. Information of this kind is confidential and often reflects the proprietary trading strategies of participants on ECMs like ICE. For this reason, ICE believes the Commission should limit the individuals to whom the Director may designate such authority or require review of any special call by certain senior members of Division of Enforcement staff.

Since its designation as an ECM in January 2002, ICE OTC has received many requests from the Division of Enforcement for information about trading on the ICE platform. In light of its own experience, ICE believes that the process will benefit from having special call authority under 36.3(b)(3)(ii) reside, at least within the Division of Enforcement, among the Director and a limited group of individuals designated by the Director. ICE proposes that this group include Deputy and Associate Directors. By so defining the designees, the Commission will help to ensure that a special call to an ECM will be reviewed by individuals who have had the opportunity to become familiar with the types of information that may be available through the ECM and are sensitive to the implications to the ECM in being asked to produce particular materials or information. This, in turn, will facilitate the timely production of information by the ECM to the Division of Enforcement by reducing the time spent negotiating over the scope of the requested production, and ease the burden on the ECM in having to respond to such requests.

Alternatively, ICE proposes that the exercise of special call authority by the Director of Enforcement's designees be conditioned upon review and approval of the special call by the Director, a Deputy Director or an Associate Director to consider the appropriateness of (1) the issuance of a special call, (2) the specific records sought pursuant to the special call, and (3) the "form and manner" of the requested production by the ECM, *e.g.* the time afforded to the ECM to respond to the special call.

We believe that, with this modification, the proposed amendment to Rule 36.3 will serve the interests of the Commission and the Division of Enforcement in a manner that would ensure both efficiency and fairness in its implementation.



We appreciate the opportunity to comment upon the Proposed Rules. Please call the undersigned at 770-738-2120 if you would like to discuss these issues further or if you require additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Johnathan H. Short", with a long horizontal line extending to the right.

Johnathan H. Short
Senior Vice President and General Counsel

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