



Atlanta Calgary Chicago Houston London New York Singapore

March 25, 2014

Ms. Melissa Jurgens
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: ICE Clear Europe Petition for an Amendment to the Order Pursuant to Section 4d(a) of the Commodity Exchange Act to Permit Commingling of Customer Funds in Connection with Futures and Foreign Futures Contracts

Dear Ms. Jurgens:

On October 15, 2012, the Commodity Futures Trading Commission (the "CFTC" or the "Commission") granted ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") an order (the "Order") pursuant to Section 4d(a) of the Commodity Exchange Act (the "Act") to permit ICE Clear Europe and its clearing members ("Clearing Members") that are registered futures commission merchants ("FCMs") (i) to hold in a futures account subject to Section 4d(a) of the Act customer money, securities and property ("customer property") used to margin, secure or guarantee energy contracts traded at ICE Futures Europe that constitute foreign futures and foreign options under Commission Rule 30.1 (collectively, "foreign futures") along with certain energy futures contracts traded at ICE Futures US and (ii) to provide for portfolio margining of such foreign futures and futures contracts.¹ ICE Clear Europe is hereby requesting the Commission to amend the Order to apply also to certain energy, interest rate and financial contracts traded or to be traded on ICE Futures Europe, as discussed herein.

¹ The Commission granted the Order in response to petitions filed by ICE Clear Europe on August 6, 2012 (the "Original Petition") and September 6, 2012 (the "Supplemental Petition"). Capitalized terms used but not defined herein have the meanings described in the Original Petition.



I. Background

ICE Clear Europe, a registered derivatives clearing organization (“DCO”), currently serves as the clearing house for futures and option transactions traded on the LIFFE Administration & Management market (“LIFFE UK”). These include certain interest rate futures and option products, as set forth on Exhibit A-1 hereto (the “LIFFE UK Contracts”).² As previously announced, IntercontinentalExchange Group (“ICE”) plans to transfer trading of LIFFE UK Contracts to ICE Futures Europe³ on or around October, 2014. Such contracts will continue to be cleared through ICE Clear Europe.

NYSE Liffe US, LLC (“LIFFE US”), a designated contract market, currently lists for trading Eurodollar Futures and Futures on the DTCC GCF Repo Index® (the “LIFFE US Contracts”), among other contracts, as set forth on Exhibit A-2 hereto. The LIFFE US Contracts are currently cleared through New York Portfolio Clearing LLC (“NYPC”), a registered DCO. As has been previously announced, ICE plans to move trading of the LIFFE US Contracts from LIFFE US to ICE Futures Europe, effective trade date June 9, 2014. In connection with this transfer, ICE also plans to transfer the open interest, and ongoing clearing activity, from NYPC to ICE Clear Europe (the “Transition”).⁴ The Transition is part of ICE’s strategy of centralizing its suite of global interest rate futures onto a single trading venue, thereby lowering the connectivity costs to customers while maximizing opportunities available to hedge one’s global interest rate portfolio.

Since the LIFFE US Contracts are currently traded on a designated contract market, customer property posted to margin customer positions in such contracts is subject to the futures account segregation requirements under Section 4d(a) of the CEA and the Commission’s rules thereunder. ICE Clear Europe is seeking this order in order to permit itself and its Clearing Members that are FCMs to continue such treatment following the Transition. (Absent such an order, following the Transition, transactions in the LIFFE US Contracts would become foreign futures subject to the secured amount requirement under Commission Rule 30.7, rather than the futures account segregation requirements under Section 4d(a).)

ICE Clear Europe also seeks permission, for itself and its Clearing Members, to hold customer property in connection with LIFFE UK Contracts in the Section 4d(a) account. Currently, such contracts are treated as foreign futures and related customer property is carried in the Rule 30.7 account. However, because of the economic relationships between the LIFFE US

² ICE Clear Europe commenced clearing of the LIFFE UK products in July 2013, pursuant to a clearing services agreement between ICE Clear Europe and LIFFE UK. ICE Clear Europe’s ultimate parent company, IntercontinentalExchange Group, Inc. acquired NYSE Euronext, the parent company of LIFFE UK and LIFFE US, in December 2013.

³ ICE Futures Europe has applied to register as a foreign board of trade under Part 48 of the Commission’s regulations.

⁴ ICE Clear Europe intends to separately submit for self-certification under Commission Rule 40.6 any necessary rule changes to accommodate the clearing of the LIFFE US Contracts and will seek an order of the Commission approving the transfer of open interest.



Contracts and LIFFE UK Contracts, ICE Clear Europe believes that it would be appropriate and beneficial for market participants to be able to portfolio margin such positions within the protections of the Section 4d(a) futures account class.

Finally, IntercontinentalExchange, Inc. together with Gasunie NV Nederlandse, a European gas infrastructure company, launched ICE Endex as a joint initiative in March 2013. ICE Endex is based in Amsterdam and provides markets for trading continental European energy products, including natural gas and power derivatives, gas balancing markets and gas storage services. In October 2013, ICE Clear Europe became the clearing house for derivatives transactions conducted on the ICE Endex market. ICE Clear Europe seeks permission to hold certain ICE Endex products listed in Exhibit A-3 (the "ICE Endex Contracts") in the Section 4d(a) account. Several of these contracts were previously commingled in the Section 4d(a) account before the contracts were transferred from ICE Futures Europe to ICE Endex. The remaining contracts are economically similar to the energy products currently in the Section 4d(a) account.

II. Relief Requested

In the Order, the Commission granted approval to ICE Clear Europe and its Clearing Members to hold customer property used to margin, guarantee or secure certain trades or positions in foreign futures traded on ICE Futures Europe with other customer property used to margin, guarantee or secure trades or positions in certain futures traded on ICE Futures US in a segregated futures account or accounts maintained in accordance with Sections 4d(a) and 4d(b) of the Act and the regulations thereunder, and provide for portfolio margining of such futures and foreign futures, subject to the requirements of Commission Regulation 39.13(g)(4).

ICE Clear Europe hereby requests that the Commission amend the Order to grant approval to ICE Clear Europe and its Clearing Members to also hold customer property used to margin, guarantee or secure trades or positions in Additional Covered Products (as defined below) collectively, in the segregated futures account, and to provide for portfolio margining of such Additional Covered Products, subject in each case to conditions set forth in the Order.

As used herein, the "Additional Covered Products" that are proposed to be subject to commingling under the amended Order will include (i) LIFFE US Contracts, (ii) LIFFE UK Contracts, (iii) ICE Endex Contracts and (iv) such other interest rate, energy, and financial contracts as may be listed for trading on ICE Futures Europe or ICE Endex after the date hereof and cleared through ICE Clear Europe.

The products currently covered under the existing Order include energy futures and options contracts traded on ICE Futures US and ICE Futures Europe (the "Current Covered Products"). As used herein, "Covered Products" will mean Additional Covered Products and Current Covered Products cleared by ICE Clear Europe and held in the Section 4d(a) futures account.



As discussed in the Original Petition, the Commission is authorized, pursuant to Section 4d(a)(2) of the Act, to permit by rule, regulation or order the commingling of customer property held in connection with futures contracts with other customer property required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers in other account classes of an FCM.⁵ We also note that Commission Rule 39.15(b)(2)(ii) establishes standards and procedures for the submission of a petition for an order under which futures, options and swap positions may be held in the futures account subject to the requirements of Section 4d(a) of the Act and Commission regulations thereunder. Although Commission Rule 39.15(b)(2) does not specifically address commingling of foreign futures as opposed to swaps, the Commission's authority under Section 4d(a) would apply to both categories of products, and we believe the proposed commingling of futures and foreign futures would in any event satisfy the standards under Commission Rule 39.15(b)(2) as well as the Commission's prior commingling orders.

If permitted to be held in the futures account pursuant to an amended Order, Additional Covered Products would be subject to the same segregation and other legal requirements applicable to futures contracts under Section 4d(a) and relevant Commission regulations (including Rules 1.20-1.30), and in addition would be treated as part of the futures account class for purposes of the Commission's Part 190 bankruptcy rules in the event of the insolvency of the carrying FCM.

As a policy matter, as both Congress and the Commission have recognized, commingling and portfolio margining across positions in futures and foreign futures can bring important benefits to market participants, including more efficient use of capital through potential margin reductions for correlated positions. Such portfolio margining promotes sound risk management by allowing the clearing organization, FCMs and customers to view a portfolio of positions based on its overall economic substance, as opposed to dividing a portfolio based on regulatory distinctions that may not reflect commercial or economic realities. In addition, portfolio margining will allow US customers to retain their contracts in US segregated futures account and preserve their current level of protection. Further, granting this request will allow US customers to place their funds in a 4d(a) account for LIFFE UK, and ICE Endex products. Therefore, this request is consistent with these policy goals as well as the statutory authority given to the Commission to permit portfolio margining and longstanding Commission precedent to allow commingling of positions and portfolio margin between futures and foreign futures while maintaining adequate protections to customer positions. Finally, granting this order will give 4d(a) account protections to U.S. customers for a large portion of the European derivatives market.

⁵ As discussed in the Original Petition, the Commission has previously by order permitted the commingling of exchange-traded futures listed on a foreign board of trade with exchange-traded futures listed on a designated contract market on various occasions, including pursuant to the Order. See, e.g., Order of the Commission regarding "Treatment of Funds Held in Connection with the Clearing by The Clearing Corporation of Euro-Denominated Contracts Executed on Eurex Deutschland AG" (Oct. 21, 2004); Order of the Commission regarding "Treatment of Funds Held in Connection with Clearing by the New York Mercantile Exchange of Contracts Traded on NYMEX Europe (Sept. 6, 2005).



III. Informational Requirements

Commission Rule 39.15(b)(2) identifies twelve categories of information that should be included in a DCO's petition for an order to permit commingling and portfolio margining. Although that rule does not specifically apply to the commingling of futures and foreign futures, ICE Clear Europe believes that the categories of information are relevant in this context as well, and we address each category in turn.

A. Identification of the Additional Contracts to be Commingled

ICE Clear Europe proposes to permit commingling of the Additional Covered Products with other Covered Products in the futures account. The Additional Covered Products comprise financial and interest rate futures and options contracts traded or intended to be traded on ICE Futures Europe and cleared with the Clearing House. Currently, the Additional Covered Products include (i) the LIFFE US Eurodollar futures, (ii) the LIFFE US Futures on DTCC GCF Repo Index® products, (iii) the LIFFE Euribor futures and options on futures, (iv) LIFFE Euroswiss interest rate futures and options on futures, (v) LIFFE Swapnote futures, (vi) the LIFFE Bond futures and options on futures; (vii) LIFFE Short Sterling interest rate futures and options on futures; and (viii) energy futures and options contracts traded on ICE Endex

B. Analysis of Risk Characteristics of the Commingled Products

ICE Clear Europe currently clears the LIFFE UK Contracts and ICE Endex Contracts, and expects to begin clearing the LIFFE US Contracts following the Transition. ICE Clear Europe believes that the LIFFE US Contracts and LIFFE UK Contracts have similar risk characteristics and can be managed using the existing ICE Clear Europe margin and risk models. The ICE Endex contracts have similar risk characteristics to the Covered Products that are energy contracts and are currently managed under ICE Clear Europe's existing margin and risk models. As a result, ICE Clear Europe believes that it is appropriate to manage the risk of these products on a commingled, portfolio margined basis. ICE Clear Europe intends to similarly portfolio margin such contracts carried for the proprietary accounts of Clearing Members.

C. Description of Manner of Execution

The Additional Covered Products will be executed and traded on or subject to the rules of the ICE Futures Europe electronic trading market or the ICE Endex electronic trading market. As has been publicly announced, ICE Futures Europe intends to expand its trading platform to include the pro-rata allocation-based matching algorithm used currently by LIFFE UK and LIFFE US for short-term interest rate products. Trading is otherwise expected to be conducted using the existing facilities of the ICE Futures Europe market.



D. Analysis of Liquidity of Commingled Products

Attached as Exhibits B and C, respectively, are historical volume and current open interest data for the Additional Covered Products, as traded on LIFFE US, LIFFE UK, and ICE Endex respectively.

As a general matter, contract liquidity is part of ICE Clear Europe's risk management framework, and the Clearing House considers liquidity among other factors in determining whether to accept a contract for clearing.

ICE Clear Europe believes that the liquidity of the Additional Covered Products, is such that it and its Clearing Members have the ability to offset or mitigate the risk of commingled contracts in a timely manner and without compromising the financial integrity of the customer account. In the case of a default of an FCM Clearing Member, the Clearing House has the ability to conduct an orderly close out of positions, including through the use of such techniques as the sale or auction of the FCM Clearing Member's book of positions to a solvent Clearing Member, temporary hedging arrangements, entering into offsetting transactions on exchanges and other actions it deems appropriate, as set out in Part 9 of the ICE Clear Europe Rules. These procedures are designed to permit the Clearing House to manage its risk even if liquidity in the relevant contracts is lower than is normal or expected in the market.

E. Analysis of the Availability of Reliable Prices for Commingled Products

Prices for Additional Covered Products are expected to be available from trading activity on ICE Futures Europe and ICE Endex. Where appropriate, ICE Clear Europe may obtain prices from market participants or other sources, or use prices from related products for which there is a more active trading market.

F. Description of the Financial, Operational and Managerial Standards for FCM Clearing Members

ICE Clear Europe proposes that FCM Clearing Members would be permitted to commingle customer positions in Additional Covered Products with other Covered Products in the futures account. As set forth in ICE Clear Europe's rules and procedures and as described in the Original Petition, FCM Clearing Members are subject to extensive requirements as to financial, operational, managerial and other standards.

1. Financial Standards

All FCM Clearing Members will be required to maintain the minimum capital requirements under applicable law (including Commission regulations), as well as the additional requirements imposed by the Clearing House. Clearing Members are required to provide financial statements and other financial information to the Clearing House. Clearing Members must also meet Clearing House standards of financial responsibility and creditworthiness.



2. Operational and Managerial Standards

FCM Clearing Members, like all Clearing Members of ICE Clear Europe, must demonstrate operational competence to perform the duties of a Clearing Member, including (i) having all necessary regulatory or other authorizations to perform their business, (ii) having sufficient qualities of operational capacity, business integrity, reputation and competence as determined by the Clearing House, (iii) having facilities, personnel and systems capable of supporting its clearing functions, and (iv) having sufficient knowledge about the types of contracts that it intends to clear and the related risks.⁶

G. Description of Clearing House Systems and Procedures Used to Oversee Clearing Member Risk Management of Commingled Positions

As described in the Original Petition, the Clearing House has developed a comprehensive risk management framework applicable to its clearing business, including for the Additional Covered Products. This framework contemplates its existing commingling of futures and foreign futures pursuant to the Order. ICE Clear Europe believes that this framework will be equally effective if the Additional Covered Products are also commingled in the futures account under the requested amendment to the Order.

As described in further detail in the Original Petition, in the context of the products proposed to be commingled, the risk management framework focuses on the following considerations:

- Market risk (addressed through a combination of margin and guaranty fund contributions, as well as ongoing risk monitoring and market surveillance);
- Liquidity risk (addressed through Clearing Member eligibility standards and management of margin and guaranty fund assets);
- Credit risk (regularly monitored and mitigated via membership eligibility standards); and
- Operational risk (mitigated through implementation of risk management and other policies and procedures and monitoring of Clearing Members' compliance with them).

ICE Clear Europe's risk management functions are led by its risk department. The Head of Risk manages the risk department, which consists of 29 risk managers.

H. Description of Financial Resources of the Clearing Organization

ICE Clear Europe maintains and will maintain adequate financial resources to discharge its financial obligations as a DCO, securities clearing agency and a UK recognized clearing

⁶ See ICE Clear Europe Rules 201-202.



house under applicable law. These resources will be available to cover its obligations in respect of commingled Additional Covered Products to the same extent as under its current operations.

Pursuant to its rules, ICE Clear Europe can apply several forms of financial resources to cover losses in connection with a default by a Clearing Member involving futures and option contracts (including Covered Products). With respect to the defaulting Clearing Member itself, these include margin posted by the defaulting Clearing Member (subject to prohibitions on the use of customer account margin to cover proprietary account losses and to applicable law) and the contribution of the defaulting Clearing Member to the futures and options guaranty fund (the "F&O Guaranty Fund"). To the extent necessary, the Clearing House can also apply the Clearing House contribution to the F&O Guaranty Fund and contributions to the F&O Guaranty Fund from non-defaulting Clearing Members and, in extreme cases, can make an assessment on Clearing Members to cover additional losses. ICE Clear Europe maintains separate Guaranty Funds in respect of its F&O business its CDS business and its FX business, such that guaranty fund contributions of non-defaulting Clearing Members with respect to one category of contracts cannot be used to cover losses on contracts in either of the other categories. In addition, the F&O Guaranty Fund is divided into two segments, an energy segment (including ICE Endex) and a LIFFE contract segment. Although the F&O Guaranty Fund as a whole can be used to cover losses from both energy and LIFFE contracts, the energy segment would be used first to cover losses from energy contracts and second to cover losses from LIFFE products, and conversely the LIFFE segment would be used first to cover losses from LIFFE contracts and second to cover losses from energy contracts.

I. Description of the Margin Methodology Applied to Commingled Positions

ICE Clear Europe intends to continue to use its existing margin methodology as applicable for the LIFFE UK, LIFFE US and ICE Endex Contracts. Specifically, ICE Clear Europe uses London SPANTM to calculate initial margin for the LIFFE UK and ICE Endex Contracts, and will use it as well for the LIFFE US Contracts.⁷ Pursuant to that methodology, ICE Clear Europe expects to permit certain offsets following the Transition between LIFFE UK Contracts and LIFFE US Contracts. In addition, ICE Clear Europe's margin methodology will otherwise continue to conform to the applicable requirements under the Part 39 regulations.

J. Analysis of Clearing House Ability to Manage a Potential Default With Respect to Commingled Products

ICE Clear Europe is confident in its ability to manage a potential default with respect to a commingled product. ICE Clear Europe intends to use the same default procedures and methodologies that exist and that function effectively today under its existing rules for the LIFFE

⁷ Upon regulatory approval, ICE intends to adopt a new margining system, Multi Asset Portfolio Simulation (MAPS) which will eventually be applied to the Covered Products and Additional Covered Products



UK Contracts, ICE Endex Contracts and other Covered Products. ICE Clear Europe does not anticipate any incremental difficulties in handling such a default if Additional Covered Products are carried in the futures account.

In particular, the Clearing House believes that its default procedures, as discussed in subsection K below, together with its margin, F&O Guaranty Fund and other financial resources, as discussed in subsections H and I above, are sufficient to permit the Clearing House to manage a potential default and comply with its obligations in respect thereof under applicable law.

K. Discussion of Default Procedures

As discussed in more detail in its DCO application and in the Original Petition and as set forth in the Clearing House Rules, ICE Clear Europe has a detailed and tested set of procedures for handling the default of a Clearing Member. Upon the occurrence of a default, the Clearing House is entitled to close out all open contract positions of the defaulting Clearing Member, and has broad flexibility in the manner of doing so.⁸ It is expected that Additional Covered Products of a defaulting Clearing Member would generally be liquidated through transactions on ICE Futures Europe or ICE Endex, as applicable, where possible. If positions could not be unwound through market transactions, ICE Clear Europe would be permitted under its rules to auction the relevant position among its non-defaulting Clearing Members or take other actions in its discretion to unwind or settle the position.

Following completion of the close-out of all positions in the futures account, ICE Clear Europe would calculate a net sum under its rules taking into account the close-out loss or gain to the Clearing House, the available margin and Guaranty Fund contribution of the defaulting Clearing Member and, if necessary, available F&O Guaranty Fund contributions of ICE Clear Europe and non-defaulting Clearing Members.⁹ The net sum calculated in respect of the commingled futures account would, under the Clearing House rules, be determined separately from any other customer account class or from the proprietary account of the defaulting Clearing Member.

L. Description of Arrangement for Obtaining Daily Position Data from each Beneficial Owner of Commingled Positions

ICE Clear Europe's risk department actively monitors the positions of Clearing Members throughout the trading day, including with respect to the concentration of a Clearing Member's positions. To the extent required by applicable law or otherwise required in the performance of its clearing functions, ICE Clear Europe will obtain beneficial owner level position data.

IV. Conclusion and Requested Relief

⁸ See Clearing House Rules 902-905.

⁹ See Clearing House Rule 906.



ICE Clear Europe hereby requests that the Commission amend the Order to permit the commingling of Additional Covered Products together with other Covered Products in the futures account and to permit the portfolio margining of Additional Covered Products held in such account, on the terms and conditions provided in the Order. All other aspects of the Order would continue to apply.

ICE Clear Europe believes that expanding the Order to include Additional Covered Products is fully consistent with the risk management and other factors discussed in detail in the Original Petition and the requirements of Section 4d(a) of the Act and Commission rules, including Rule 39.15(b)(2). An amended Order will facilitate trading and clearing by market participants in these products by allowing them to take advantage of economically appropriate margin offsets among Additional Covered Products, while enabling them to obtain the benefits and protections of a commingled account segregated under Section 4d(a) of the Act and Commission rules.

If you or your staff should have any questions or comments or require further information regarding this request, please do not hesitate to contact the undersigned at paul.swann@theice.com or +44 20 7065 7700, Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752, or Patrick Davis, Head of Legal and Company Secretary, at Patrick.davis@theice.com or +44 20 7065 7738.

Yours Sincerely,

Paul Swann
President & Managing Director
ICE Clear Europe

cc: Acting Chairman Mark P. Wetjen
Commissioner Bart Chilton
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List of Exhibits

Exhibit A-1	List of LIFFE UK Contracts
Exhibit A-2	List of LIFFE US Contracts
Exhibit A-3	List of ICE Endex Contracts
Exhibit B	Historical Trading Volume for Additional Covered Products*
Exhibit C	Current Open Interest Data for Additional Covered Products*