MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
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COMMENT

**Via Electronic Submission:** http://comments.cftc.gov

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Re: ICE Clear Europe Limited: Petition for an Order Pursuant to Section 4d(f) of the Commodity Exchange Act to Hold Customer Funds in Single Customer Omnibus Cleared Swap Accounts for Positions in Cleared Swaps and Foreign Futures Contracts and Portfolio Margining**

Dear Mr. Stawick:

Managed Funds Association[1] appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "**Commission**") regarding ICE Clear Europe Limited's ("**ICE Clear Europe**") petition[2] for an order (the "**Order**") pursuant to Section 4d(f) of the Commodity Exchange Act, as amended (the "**Act**"), to permit ICE Clear Europe and its clearing members that are registered futures commission merchants ("**FCMs**") to: (a) hold in a cleared swap account subject to Section 4d(f) of the Act customer funds and other property used to margin, secure or guarantee both cleared swaps and contracts that constitute foreign futures and foreign options under Commission Rule 30.1 (collectively, "**foreign futures**") that would otherwise be held in the foreign futures account, and (b) provide for portfolio margining of such cleared swaps and foreign futures.

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[1] Managed Funds Association ("**MFA**") represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and all other regions where MFA members are market participants.

[2] ICE Clear Europe Limited Petition for an Order Pursuant to Section 4d(f) of the Commodity Exchange Act to Permit Commingling of Customer Funds in Connection with Cleared Swaps and Foreign Futures Contracts, dated March 8, 2012 (the "**Petition**").

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**Executive Summary**

MFA believes that the authority to calculate margin for cleared swaps customer accounts on a portfolio margin basis is essential to encourage increased clearing of swaps, enhance customer hedging and reduce systemic risk through clearing, and provide capital efficiencies for market participants. Thus, MFA supports the Petition because of the significant benefits to customers in the form of capital efficiencies and clearing access that result from portfolio margining and netting. MFA also supports the Petition's request to hold customer positions in both cleared swaps and foreign futures, and related assets supporting such positions, in the cleared swaps customer account to calculate margin on a portfolio basis under ICE Clear Europe's existing margin methodology. Under this methodology, ICE Clear Europe could offer margin offsets between cleared swaps and foreign futures positions that are correlated on a risk management and economic basis. The Petition requests that the Order be effective no later than the November 8, 2012 effective date of the Part 22 regulations governing Section 4d(f) accounts[3]. MFA strongly urges the Commission to grant the Order by that date, if not in advance, as customers expect to be clearing by then, whether on a voluntary or mandatory basis.

MFA notes that if the Commission does not grant the requested Order, ICE Clear Europe's FCM clearing members would have to hold cleared swaps and foreign futures in separate customer accounts, even if such positions are related or correlated, and accordingly, would have to margin such positions separately. MFA believes this separate account structure would result in additional margin costs and unnecessary capital inefficiencies for customers of ICE Clear Europe's FCM clearing members.

Accordingly, we encourage the Commission to issue the Order requested in the Petition to enable ICE Clear Europe to offer portfolio margining relief with respect to customer-related cleared swaps and foreign futures transactions as soon as possible. Otherwise, MFA is very concerned that U.S. customers, including many MFA members, will not benefit from the same capital relief and access to clearing that FCMs and non-U.S. customers will have by virtue of ICE Clear Europe's intention to continue to permit proprietary account positions of its clearing members, as well as positions of non-U.S. customers that clear through non-U.S., non-FCM clearing members, to be held in a single account and to provide for portfolio margining of such positions[4]. U.S. customers would thus be unfairly and unjustifiably disadvantaged by the Commission's withholding or delaying approval of the Petition.

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3 "Protection of Cleared Swap Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions", 77 Fed. Reg. 6336 (Feb. 7, 2012).

4 ICE Clear Europe Petition, footnote 4 on p.1.

**MFA Supports ICE Clear Europe's Petition Because of the Benefits of Netting and Portfolio Margining to U.S. Customers and the Derivatives Markets as a Whole**

MFA believes that ICE Clear Europe's petition for the requested Order, if approved by the Commission, will benefit U.S. customers and the derivatives markets as a whole, by: (1) facilitating systemic risk reduction; (2) providing capital efficiencies; (3) encouraging greater clearing and facilitating the transition to clearing; (4) improving buy-side access to clearing and removing economic barriers to customer clearing; (5) promoting competitive equality; and (6) improving the efficiency and effectiveness of risk management. Without the requested Order, MFA fears that none of these benefits will be realized.

MFA strongly believes that by issuing the requested Order, the Commission will provide customers with the economic incentives and capital efficiencies necessary to promote clearing of swaps. The requested Order would thus facilitate the achievement of the systemic risk reduction goal of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**").[5] Customers will be able to expend less capital on margin by virtue of the ability to net their related positions in swaps and foreign futures in cleared swaps customer accounts under ICE Clear Europe's risk management framework for portfolio margining. Moreover, without portfolio margin treatment, many customers may determine that clearing their swaps will be prohibitively expensive. MFA believes that such a result would have a continuously limiting effect on both the volume of voluntary clearing prior to the clearing mandate becoming effective, and the breadth of swaps clearing after the clearing mandate becomes effective. These results would be inconsistent with a key Dodd-Frank Act goal to promote greater central clearing of swaps to reduce systemic risk.

Without the exemptive relief requested in the Petition, ICE Clear Europe and its FCMs would be required to maintain separate accounts for cleared swaps and foreign futures subject to separate margin requirements. Separate accounts would make clearing significantly more expensive for customers because they would be required to fully margin both accounts. The resulting inability of FCMs clearing such transactions on behalf of customers to net the margin of correlated swaps and foreign futures held in separate accounts would eliminate the economic efficiencies that can be gained from portfolio margining and that are inherent in a wide range of hedging strategies. MFA believes these inefficiencies will act as an economic disincentive, not only to customers' efficient portfolio risk management, but also to moving the swaps marketplace to central clearing. Any such significant disincentive would be inconsistent with, and would severely undermine, a fundamental objective of the Dodd-Frank Act to reduce systemic risk through promotion of greater clearing of swaps and the reduction of systemic risk.

[5] Pub. L. 111-203, 124 Stat. 1376 (2010).

MFA's support for the Petition is also based on our understanding that the Dodd-Frank Act expressly sought to encourage portfolio netting for the systemic risk management reasons set forth, charging the Commission and the Securities and Exchange Commission with issuing exemptive orders under Section 713(a) in support of portfolio margining. There is also ample regulatory and academic support for the benefits of portfolio margining. For example, in the Federal Reserve Bank of New York Staff Report no. 424, "Policy Perspectives on OTC Derivatives Market Infrastructure," published January 2010 and widely referenced in the deliberations of the Dodd-Frank Act's language, Darrell Duffie, Ada Li and Theo Lubke stated:

> Furthermore, because posting margin is a material cost of participating in a CCP, market participants have an additional incentive to clear more if they can reduce the amount of margin to post against their exposures. Regulators should therefore encourage methods for reducing the use of margin whenever this can be done without increasing systemic risk. In particular, the joint clearing of different derivative products in the same CCP improves the opportunity to net positive against negative counterparty exposures, and increases the incentives for market participants to clear their derivatives trades, without increasing systemic risk.[6]

In addition, the Commission has broad authority under Section 4d(f)(3)(B) of the Act to permit the Petition's requested commingling of cleared swaps and foreign futures in a Section 4d(f) account to enable ICE Clear Europe to provide portfolio margining across such positions.

**Competitive Concerns**

ICE Clear Europe currently clears both exchange-traded energy futures contracts and energy swaps contracts, both for proprietary and customer accounts of its clearing members. Given the close relationship between these energy derivatives contracts, ICE Clear Europe currently offers margin offsets between such products, and seeks to continue to be able to do so by the Commission's issuance of the requested Order. The portfolio margining benefits achieved through holding cleared swaps and futures in the cleared swap customer account will not be realized by U.S. customers until the Commission approves the requested exemptive relief in the Petition. As previously noted, ICE Clear Europe intends to continue to permit proprietary account positions of its clearing members, and positions of non-U.S. customers that clear through non-U.S., non-FCM clearing members, to be held in a single omnibus account and to provide

6 Policy Perspectives on OTC Derivatives Market Infrastructure; Darrell Duffie, Ada Li, and Theo Lubke; Federal Reserve Bank of New York Staff Reports, no. 424; January 2010; revised March 2010, at page 14; http://www.ny.frb.org/research/staff_reports/sr424.pdf

portfolio margining for such positions.[7] As a result, the capital required for clearing will be significantly greater for U.S. customers than for direct clearing members' proprietary positions and non-U.S. customer positions that are cleared through non-U.S., non-FCM clearing members of ICE Clear Europe. This inequality will put U.S. customers at a substantial competitive disadvantage, with no justification. This inequality will not only create a significant economic barrier to buy-side clearing in the derivatives markets, but will substantially restrain the healthy evolution of increased liquidity that should develop with increased clearing. Burdened by unequal margining, all participants in the market that are not direct clearing members will be unable to offer competitive bids and offers. Liquidity will thus remain concentrated, as it is today in the bilateral markets, in a relatively small number of the largest swap dealer desks, both undermining price competition and concentrating risk in the swaps markets.

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Without portfolio margining, MFA is concerned that customers will have to dedicate increasing funds to initial margins which are not risk-driven, directly reducing customers' ability to support their trading and hedging activities. Thus, the amount of clearing that customers could implement for all of their derivatives contracts will be limited, a result that is inconsistent with the systemic risk reduction goal of the Dodd-Frank Act. Further, the inability of customers to net cleared swaps with correlated foreign futures, and *vice versa*, will inhibit open access to clearing for all market participants. This result is inconsistent with Sections 723 and 763 of the Dodd-Frank Act, which require open access and nondiscriminatory clearing of swaps and security-based swaps for all market participants. Clearing by the "buy-side" remains relatively low because of continuing material structural and economic barriers to clearing access for customers. Removal of this specific excess margin cost barrier will help to level the playing field on margin – between cleared and uncleared, and between customers and dealers – at a critical time in the progress toward enabling and expanding buy-side clearing.

For the reasons set forth above, MFA believes the requested Order, if issued, will promote greater clearing and more efficient and effective risk management in the derivatives markets as a whole. Therefore, MFA respectfully requests that the Commission approve the requested exemptive relief in the Petition and issue the requested Order as soon as possible.

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[7] *See supra*, note 4.

MFA thanks the Commission for the opportunity to provide comments to support ICE Clear Europe's Petition. Please do not hesitate to contact Laura Harper or the undersigned at (202) 730-2600 with any questions the Commission or its staff might have regarding this letter.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President & Managing
Director, General Counsel

cc: The Hon. Gary Gensler, Chairman
The Hon. Jill E. Sommers, Commissioner
The Hon. Bart Chilton, Commissioner
The Hon. Scott D. O'Malia, Commissioner
The Hon. Mark P. Wetjen, Commissioner