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COMMENT

August 17, 2009

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

OFFICE OF THE SECRETARIAT
C.F.T.C.
2009 AUG 17 PM 5:41

Re: **Account Ownership and Control Report ("OCR") - Advanced Notice of Proposed Rulemaking and Request for Public Comment**

Dear Mr. Stawick:

ICE Futures U.S., Inc. ("ICE Futures U.S." or "Exchange") submits this letter in response to the Advanced Notice of proposed Rulemaking appearing in 74 Federal Register 31642 concerning the Commission's determination to collect certain ownership, control, and related information for all trading accounts active on a U.S. designated contract market ("DCM") and possibly on other regulated entities (the "Advanced Notice").

ICE Futures U.S. is a DCM which provides a marketplace for trading in agricultural, equity index, currency and financial index futures and options contracts.

The Exchange recognizes the value in collecting information regarding the identity of the owners and controllers of accounts that actively trade on DCMs. As a self-regulatory organization, ICE Futures U.S. continually strives to enhance its trade practice and market surveillance systems to adapt to the changing trading environment and support the detection of trading abuses. Some of the additional OCR information will support these efforts by promoting further integration of our existing market surveillance and trade practice surveillance data and bridge gaps that may exist between individual transaction data contained in the Exchange trade register and position data contained in large trader reports filed with the Exchange.

The Exchange appreciates the opportunity to participate, at this early stage, in the development of an appropriate reporting mechanism. The Commission's proposal raises important issues that should be carefully weighed to strike the proper balance before issuing proposed rules. In considering the structure of the new reporting regime, the Commission should (1) take into account the burdens that will be imposed on those who will be required to collect information, by limiting the number of entities to which such data would be reported in the first instance, (2) limit the required data to only that information which is deemed essential to support

the Commission's stated objectives, while recognizing that additional information which may be required in a particular case or for special purposes will continue to be available through the many other means currently available to the agency, and (3) recognize the need to protect confidential personal and other information about traders, by limiting the number of points of potential breach in the system. The Exchange believes that the best way of addressing all of these over-arching objectives is for the Commission to adopt a regulation that requires FCMs to use a Commission-mandated standardized protocol to report the OCR information directly to the Commission, and for the DCMs to be required to access a download or establish another method for obtaining from the Commission that portion of the reported data that is relevant to each of them. The DCMs, in turn, would adopt a rule making it a violation for their members to fail to file proper OCR data with the Commission as and when required under the Commission's regulations. In this manner, both DCMs and the Commission would be able to enforce the OCR reporting requirement — the DCMs with respect to their members and the Commission with respect to all FCMs and other entities that are not within the jurisdiction of the DCMs. The Exchange's recommendations are articulated in further detail in its answers to the questions posed in the Advanced Notice.

1. Is there additional information, not included in Section II(A), that should be included in the OCR?

The Exchange does not believe that all of the information itemized in the Advanced Notice is necessary to accomplish the expressed objectives of identifying with certainty all accounts that are under common ownership or control at a single exchange and at multiple exchanges, identifying all trading accounts whose owners or controllers are also included in the Commission's large trader reporting program and identifying the entities to which the Commission should have recourse if additional information is required. In addition, calling for some of the information would be redundant, as described below.

In conducting its trade practice and market surveillance activities, the Exchange staff currently only has access to the clearing member identity and account number that is captured for all cleared transactions in the daily Trade Register and to any other additional data that may be received through Large Trader reports. When necessary, the Exchange requests and routinely receives from clearing members and member firms further account identification information, such as the account title/ownership, the identity of any third party account controller and copies of account statements and/or opening account paperwork. We therefore believe it would be beneficial to include this information in the OCR. However, the Exchange rarely has found it necessary to obtain the Social Security Number ("SSN") or Tax Identification Number ("TIN") of a trader. In these circumstances, we think that the risks posed by the Commission's proposal, in which the collection, transmission and use of client SSN/TIN information by multiple entities (firms, exchanges and the Commission) outweigh the benefit that collection of such information would bestow with regard to the objectives enumerated by the Commission in the Advanced Notice.

In addition, the Exchange does not see the need to include in the OCR an indication as to whether or not the trading account is reportable, because, if a Special Account Number has been assigned to the trading account then the account is, or has been, reportable. Finally, requiring the identity of the executing firm for the trading account is unnecessary as that information is already captured in other trading records received by the Commission, and there may be multiple executing firms for a single account which would unnecessarily complicate the OCR collection process and the report itself.

The Exchange believes that the OCR obligation could be made less burdensome without compromising the Commission's ability to accomplish its objectives. By requiring only that information which the Commission and the DCMs would regularly use, the OCR data collection process would be simplified and more easily standardized. To that end it is suggested that only the following information be required:

- The trading account number, as reported in the Trade Capture Report (see TCR tags 448 and 452, Party Role 24);
- Name and address of the trading account's owner(s);
- Name and address of the trading account's controller(s);
- Date on which the trading account was assigned to its current controller(s);
- Special account number, if one has been assigned; (if there is a special account number assigned to the account, then by definition it is reportable)
- Indication of whether the trading account is a firm omnibus account, and if so, the name of the firm;
- Name of the clearing firm for the trading account, and its unique identifier as reported in the TCR (see TCR tags 448 and 452, Party Role 4).
- Name of the firm(s) providing OCR information for the trading account;
- OCR transmission date.

2. ***What is the lifecycle of the information required by the OCR?***

We defer to the firms carrying the accounts with respect to the life cycle of such information.

Who possesses it at a root level? From what types of entities will exchanges draw the information required by the OCR (e.g. exchange clearing members, non-member futures commission merchants, etc.)?

Most of the collection and reporting burden will likely be borne by the firms carrying the ultimate customer account, because they have the account relationship and have access to opening account documents containing some of the proposed, required information. However, it should be noted that the DCMs currently collect the Clearing Member Identity (FIXML tags 448 and 452, Party Role 4) and the account number (FIXML tags 448 and 452, Party Role 24) as part of the transaction clearing process and consequently this information is already on the daily Trade Register and is being furnished to the Commission.

How will exchanges obtain OCR information?

The current proposal calls for the collecting firms to provide identical information to multiple exchanges, which in turn would furnish duplicative information to the Commission. In this respect, the proposal is similar to the current CFTC Form 102 filing process, which we believe is inefficient. Among other things, we believe that discrepancies will arise between the information provided for a single account owner when accounts are held at different firms and provided by more than one exchange. The proposed OCR presents an opportunity for the Commission to re-design a more efficient reporting process. Rather than simply add more data to existing reporting, the Commission should establish a standardized reporting format and process determined through mutual consultation and agreement with the FCM community, which avoids redundancies and addresses the over-arching objectives identified by the Exchange at the outset of this letter.

3. *Will OCR information be more difficult to acquire for some account types than for others?*

We would expect OCR information to be more difficult to acquire for certain accounts, as described below.

If so, what types of accounts will present a greater challenge and why?

Accounts carried in omnibus accounts and at firms and foreign brokers that are not Exchange members and are not directly under the Exchange's jurisdiction will present a greater challenge because the Exchange has no regulatory enforcement authority which would encourage compliance with the requirements. For this reason, the Exchange has suggested that all reporting should go directly to the Commission pursuant to a reporting requirement specified in the Commission's regulations, with enforcement authority shared between the Commission and the exchanges.

How can the challenge be overcome?

The Exchange believes that the challenges posed by these types of accounts further support the conclusion that reporting should be made directly to the Commission in the first instance, as described in our opening remarks and our response to question 2, above, and that enforcement should be carried out by both the Commission and the exchanges. If the Commission nonetheless concludes that the exchanges should receive and report OCR data to it, then it should adopt a specific rule applicable to the firms that will collect and report that data to the exchanges. Otherwise, these firms will be subject to multiple exchange rules with different obligations, standards and applicable interpretations.

4. *The Commission expects that initially the OCR will be submitted in FIXML via FTP. Is there a better way to electronically transmit the OCR? Is there an existing FIXML report that may be used to transmit OCR information? If not, is there an existing*

FIXML report that can be easily modified to supply the information contained in the OCR?

The Commission should require a standardized reporting format which will be used by the firms and the exchanges. FIXML appears to meet that requirement as it is now used by almost all firms and exchanges.

5. ***The Commission anticipates that each exchange will initially transmit a "master file" containing the required information for every trading account number included in the Trade Capture Report during the previous month or longer. The master file will effectively establish a baseline of account information. Subsequently, each exchange would be required to file a weekly "change file" reporting only changes that occurred during the week (e.g., new accounts, deleted accounts, or changes to accounts already in the master file). Is there a more convenient way to provide the required information on a regular basis?***

The Exchange believes it would be more efficient for the firms to report OCR data directly to the Commission via a single portal, one-stop reporting approach in accordance with a Commission Regulation requiring a standardized format. The Commission could then send a separate file to each DCM, by exchange code, which would contain information only for the accounts trading at that DCM. Alternatively, the DCMs could access a download from the Commission's data base.

Do changes occur so frequently that a change file should be submitted daily instead of weekly?

We defer to the carrying firms with respect to the frequency of changes.

6. ***What entities will have to report raw data to exchanges so that exchanges can compile the information required by the OCR?***

The Exchange anticipates that the firms carrying the ultimate customer account, which includes clearing members, member and non-member FCMs, foreign brokers and foreign affiliates of FCMs will all have to report in some way, whether directly or through a clearing member.

Since these entities will already be in possession of OCR information, what additional measures will they have to take to transmit it to exchanges or prepare it for transmission?

The answer to this question depends on the reporting firm's current technology and size. Some firms may have all of the necessary information in electronic databases, while others may have to retrieve it from opening account documentation and customer files. Some of the proposed account identifying information may not be readily available and may have to be manually uploaded from hard copy or scanned files.

What will be the dollar and staff-hour cost of those measures? To the extent possible, please itemize costs related to initial implementation as well as regular reporting costs.

Because the Commission is still in the information collection stages and there are numerous open questions regarding what information will be collected, from whom it will be received and by whom, as well as the method of communication, ICE Futures U.S. cannot estimate the scope of work, resources, budget and time it would require to implement the proposed regime. Regardless of the final reporting flow, the Exchange believes that the proposed OCR process will be a substantial undertaking for most firms and exchanges and very significant resources will be necessary to accomplish it. Therefore, the Exchange urges the Commission to allow a sufficient lead time for all involved entities to develop and implement the necessary processes and systems.

7. ***How long will it take exchanges to assemble the necessary information and transmit the first OCR to the Commission?***

Please see response to question 6.

What will be the dollar and staff-hour costs associated with providing the OCR? To the extent possible, please itemize costs related to initial implementation as well as regular reporting.

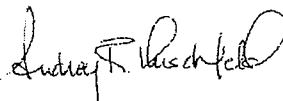
Please see response to question 6.

8. ***Will the OCR impose any disparate impact on small businesses? If so, how can it be minimized? Please describe and estimate the number of small entities that will be impacted.***

Not applicable to ICE Futures U.S.

ICE Futures U.S. appreciates the opportunity to comment on the Advanced Notice and would be happy to discuss any of the views presented with Commission staff as they consider the proper way to proceed with implementation. If you have any questions regarding this letter, please contact me at Audrey.Hirschfeld@theice.com or Mark Fabian at Mark.Fabian@theice.com.

Very Truly Yours,



Audrey R. Hirschfeld
Senior Vice President and General Counsel