6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Proposed Order and Request for Comment on Application for Exemption from Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and from Certain Related Commission Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed order and request for comment.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is requesting comment on a proposed exemption issued in response to an application from ICE Clear Credit LLC, ICE Clear US, Inc., and ICE Clear Europe Limited (collectively, "the ICE DCOs" or "the Petitioners") to grant an exemption to permit the investment of futures and swap customer funds in certain categories of euro-denominated sovereign debt. The ICE DCOs are also requesting exemptive relief to expand the universe of counterparties and depositories they may use in connection with these investments given the structure of the market for repurchase agreements in euro-denominated sovereign debt.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- CFTC website: http://comments.cftc.gov. Follow the instructions for submitting comments through the Comments Online process on the website.

- Mail: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail, above.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to http://www.cftc.gov. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act ("FOIA"), a petition for confidential treatment of the exempt information may be submitted according to the established procedures in Commission Regulation 145.9, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from http://www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this action will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, (202) 418-5096, edonovan@cftc.gov, Division of Clearing and Risk, Commodity Futures

Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; or Tad Polley, Associate Director, (312) 596-0551, tpolley@cftc.gov, or Scott Sloan, Attorney-Advisor, (312) 596-0708, ssloan@cftc.gov, Division of Clearing and Risk, Commodity Futures Trading Commission, 525 West Monroe Street, Chicago, Illinois 60661.

SUPPLEMENTARY INFORMATION:

I. Background

By application dated June 22, 2017, the Petitioners, all registered derivatives clearing organizations ("DCOs"), requested an exemptive order under section 4(c) of the Commodity Exchange Act ("CEA" or "Act") permitting the ICE DCOs to invest futures and cleared swap customer funds in certain categories of euro-denominated sovereign debt.

Section 4d of the Act[1] and Commission Regulation 1.25(a)[2] set out the permitted investments in which DCOs may invest customer funds.[3] Section 4d limits investments of customer money to obligations of the United States ("U.S. Government Securities"), general obligations of any State or of any political subdivision thereof, and obligations fully guaranteed as to principal and interest by the United States.[4] Regulation 1.25

[1] 7 U.S.C. 6d.

[2] 17 CFR 1.25(a) (2017).

[3] Although Regulation 1.25 by its terms applies only to futures customer funds, Regulation 22.3(d) requires that a DCO investing cleared swap customer funds comply with the requirements of Regulation 1.25.

[4] *See* 7 U.S.C. 6d(a)(2) (futures), (f)(4) (cleared swaps).

expands the list of permitted investments but does not permit investment of customer funds in foreign sovereign debt.[5]

Regulation 1.25 previously included foreign sovereign debt as a permitted investment for customer funds.[6] In 2011, the Commission removed this option from Regulation 1.25, but also acknowledged that "the safety of sovereign debt issuances of one country may vary greatly from those of another," and stated that it was amenable to considering requests for section 4(c) exemptions from this restriction.[7] Specifically, the Commission stated that it would consider permitting foreign sovereign debt investments (1) to the extent that the petitioner has balances in segregated accounts owed to customers or clearing member futures commission merchants in that country's currency and (2) to the extent that the sovereign debt serves to preserve principal and maintain liquidity of customer funds as required for all other investments of customer funds under Regulation 1.25.[8]

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[5] Regulation 1.25 permits investment of customer funds in: (i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities); (ii) General obligations of any State or of any political subdivision thereof (municipal securities); (iii) Obligations of any United States government corporation or enterprise sponsored by the United States government (U.S. agency obligations); (iv) Certificates of deposit issued by a bank (certificates of deposit) as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank that carries deposits insured by the Federal Deposit Insurance Corporation; (v) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation (commercial paper); (vi) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation (corporate notes or bonds); and (vii) Interests in money market mutual funds.

[6] *See* 17 CFR 1.25(a) (2005).

[7] Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776, 78782 (Dec. 19, 2011).

[8] *Id.*

In connection with their proposal to invest customer funds in foreign sovereign debt, the ICE DCOs have also requested an exemption from Regulations 1.25(d)(2) and (7). Regulation 1.25(d)(2) limits the counterparties with which a DCO can enter into a repurchase agreement involving customer funds to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, or a government securities broker or government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986. Regulation 1.25(d)(7) requires a DCO to hold the securities transferred to the DCO under a repurchase agreement in a safekeeping account with a bank as referred to in Regulation 1.25(d)(2), a Federal Reserve Bank, a DCO, or the Depository Trust Company in an account that complies with the requirements of Regulation 1.26.

II. The ICE DCOs' Petition

The ICE DCOs specifically seek to invest euro-denominated customer funds in sovereign debt issued by the French Republic and the Federal Republic of Germany ("Designated Foreign Sovereign Debt") through both direct investment and repurchase agreements.[9] In the petition, the ICE DCOs argue that French and German sovereign debt is comparable to U.S. Government Securities in terms of creditworthiness, liquidity, and volatility. The Petitioners note that facing the credit risk of these financially stable sovereigns is preferable from a risk management perspective to holding euro at a

[9] A copy of the petition is available on the Commission's website at http://www.cftc.gov/idc/groups/public/@requestsandactions/documents/ifdocs/icedcos4cappl6-22-17.pdf.

commercial bank. In the case of investments through reverse repurchase agreements (as opposed to direct investments), the ICE DCOs still face a commercial counterparty but receive the additional benefit of receiving securities as collateral against that counterparty's credit risk. The ICE DCOs have also represented that in the event a securities custodian enters insolvency proceedings, they would have a claim to specific securities rather than a general claim against the assets of the custodian.

The Petitioners further request an exemption from Regulation 1.25(d)(2) that would permit them to enter into reverse repurchase agreements with certain foreign banks, certain regulated securities dealers, or the European Central Bank and the central banks of Germany and France.[10] The ICE DCOs have represented that the principal participants in the European sovereign debt repurchase markets are non-U.S. banks, non-U.S. securities dealers, and foreign branches of U.S. banks. As a result, the counterparty requirements under Regulation 1.25(d)(2) would significantly constrain the use of euro-denominated sovereign debt repurchase agreements.

The ICE DCOs also request an exemption from Regulation 1.25(d)(7) that would permit them to hold the securities purchased through reverse repurchase agreements in a safekeeping account with a non-U.S. bank. The ICE DCOs seek this exemption based on their representation that it is impractical and inefficient to hold such securities at a U.S. custodian. Rather than seeking an open-ended exemption from Regulation 1.25(d)(7), the ICE DCOs propose that they be permitted to only use a foreign bank that qualifies as a depository under the requirements of Regulation 1.49.

[10] The ICE DCOs have indicated they may not currently be able to enter into repurchase agreements with these central banks.

III. Section 4(c) of the Act

Section 4(c)(1) of the Act empowers the Commission to "promote responsible economic or financial innovation and fair competition" by exempting any transaction or class of transactions (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), from any of the provisions of the Act, subject to exceptions not relevant here.[11] In enacting section 4(c), Congress noted that its goal "is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner."[12] The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

Section 4(c)(2) of the Act provides that the Commission may grant exemptions under section 4(c)(1) only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts, or transactions at issue; that the exemption is consistent with the public interest and the purposes of the Act; that the agreements, contracts, or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the Act.

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[11] 7 U.S.C. 6(c)(1).

[12] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

IV. Order

A. Discussion of the Proposed Order

The Commission is proposing to permit the ICE DCOs to invest futures and cleared swap customer funds in sovereign debt issued by the French Republic and the Federal Republic of Germany, through either direct investment or repurchase agreements, pursuant to an exemption under section 4(c) of the Act. The Commission is proposing the order below, which includes certain conditions on the permitted investments, in response to the ICE DCOs' argument that permitting investment in the Designated Foreign Sovereign Debt furthers responsible risk management. Based on the analysis below, the Commission has preliminarily determined that the exemption provided in the proposed order meets the requirements of section 4(c)(2) of the Act, including in that it is consistent with the public interest and the purposes of the Act, and in that it will not have a material adverse effect on the ability of the Commission to discharge its regulatory responsibilities.

Through their petition, the ICE DCOs have demonstrated that the Designated Foreign Sovereign Debt has credit, liquidity, and volatility characteristics that are comparable to U.S. Government Securities, which are permitted investments under the Act and Regulation 1.25. For example, as evidence of the creditworthiness of France and Germany, the ICE DCOs provided data demonstrating that credit default swap spreads of France and Germany have historically been similar to those of the United States. To demonstrate the liquidity of the markets, the ICE DCOs point to, for example, the substantial amount of outstanding marketable French and German debt and the daily transaction value of the repo markets for their debt. And with respect to volatility, the

ICE DCOs provided data on daily changes to sovereign debt yields demonstrating that the price stability of French and German debt is comparable to that of U.S. Government Securities. The ICE DCOs have thus argued that the Designated Sovereign Debt serves to preserve principle and maintain liquidity of customer funds as is required for investments permitted under Regulation 1.25. To ensure that permitted investments are limited to those with an appropriate risk profile, the proposed order limits investments in Designated Foreign Sovereign Debt to instruments of a shorter duration, as is discussed below.

Further, the ICE DCOs have demonstrated that investing in the Designated Foreign Sovereign Debt poses less risk to customer funds than the current alternative of holding the funds at a commercial bank, arguing that exposure to high-quality sovereign debt is preferable to facing the credit risk of commercial banks through unsecured bank demand deposit accounts. And finally, the Commission does not believe that any of the section 4(c)(2) exceptions would prevent a grant of the requested exemption.

The Commission is also proposing certain conditions to the exemption, including that the ICE DCOs may only use customer euro cash to invest in the Designated Foreign Sovereign Debt. This restriction was included in Regulation 1.25[13] when the rule permitted the investment of customer funds in foreign sovereign debt, and the Commission believes it is still an appropriate restriction on the amount that may be invested in these instruments.

[13] *See* 17 CFR 1.25(b)(4)(D) (2005) (providing that sovereign debt is subject to the following limits: a futures commission merchant may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its customers denominated in that country's currency; a DCO may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its clearing member futures commission merchants denominated in that country's currency).

The Commission is further proposing to permit the ICE DCOs to invest in the Designated Foreign Sovereign Debt only so long as the two-year credit default spread of the issuing sovereign is 45 basis points ("BPS") or less. Because the Commission does not intend in this proposed order to expand the universe of permitted investments beyond instruments with a risk profile similar to those that are currently permitted, the Commission believes it is appropriate to use U.S. Government Securities as a benchmark to confine permitted investments in foreign sovereign debt. The Commission is proposing the cap of 45 BPS based on a historical analysis of the two-year credit default spread of the United States ("U.S. Spread"). Forty-five BPS is approximately two standard deviations above the mean U.S. Spread over the past eight years and represents a risk level that the U.S. Spread has exceeded approximately 5% of the time over that period.[14]

Under the proposal, if the spread exceeds 45 BPS, the ICE DCOs would not be permitted to make new investments in the relevant debt. They would not, however, be required to immediately divest all current investments, due to risks associated with selling assets into a potentially volatile market. The Commission believes that prohibiting new investments, together with the length to maturity condition discussed immediately below, will sufficiently protect customer funds in the event that a country's Designated Foreign Sovereign Debt were to exceed the 45 BPS spread limit.

[14] The Commission reviewed the daily U.S. Spread from July 3, 2009 to July 3, 2017. Over this time period, the U.S. Spread had a mean of approximately 26.5 BPS and a standard deviation of approximately 9.72 BPS. Over this same period, the two-year German spread exceeded 45 BPS approximately 6% of the time, and the two-year French spread exceeded 45 BPS approximately 25% of the time. Neither the German nor the French two-year spread has exceeded 45 BPS since September 2012.

The Commission is also proposing to limit the length to maturity of direct investments in Designated Foreign Sovereign Debt, to limit permitted investments to those with a lower risk profile. Specifically, the proposed order requires each of the ICE DCOs to ensure that the dollar-weighted average of the time-to-maturity of their portfolio of direct investments in each type of Designated Foreign Sovereign Debt does not exceed 60 days. This restriction is consistent with Securities and Exchange Commission requirements for money market mutual funds[15] and ensures that the ICE DCOs will not hold Designated Foreign Sovereign Debt investments on a long-term basis, and that the investments will mature relatively quickly, providing the ICE DCOs with access to euro cash. The Commission believes that the liquidity timing needs of money market mutual funds are an appropriate analogue to those of a DCO in this instance and that the 60-day time-to-maturity limit will further limit the risks of investments in Designated Foreign Sovereign Debt.

To provide the ICE DCOs with the ability to invest customer funds in the Designated Foreign Sovereign Debt, the Commission is also proposing to exempt the ICE DCOs from the counterparty and depository requirements of Regulation 1.25(d)(2) and (7), subject to conditions. As a practical matter, complying with these requirements would severely restrict the ICE DCOs' ability to enter into repurchase agreements for Designated Foreign Sovereign Debt. As a result, the Commission proposes to exempt the ICE DCOs from the counterparty restrictions of Regulation 1.25(d)(2), subject to the condition that counterparties be limited to certain categories that are intended to limit the risk associated with reverse repurchase transactions. Similarly, the Commission is

[15] *See* 17 CFR 270.2a-7.

proposing to condition the ICE DCOs' exemption from Regulation 1.25(d)(7) on its use of depositories that qualify as permitted depositories under Regulation 1.49. This approach is designed to ensure that the counterparties and depositories used by the ICE DCOs will be regulated entities comparable to those currently permitted under Regulation 1.25(d)(2) and (7).

B. Proposed Order

The Commission proposes an exemptive order that includes the following substantive provisions:

(1) The Commission, pursuant to its authority under section 4(c) of the Commodity Exchange Act ("Act") and subject to the conditions below, hereby grants registered derivatives clearing organizations ("DCOs") ICE Clear Credit LLC, ICE Clear US Inc., and ICE Clear Europe Limited ("ICE DCOs") a limited exemption to section 4d of the Act and to Commission Regulation 1.25(a) to permit the ICE DCOs to invest euro-denominated futures and cleared swap customer funds in euro-denominated sovereign debt issued by the French Republic and the Federal Republic of Germany ("Designated Foreign Sovereign Debt").

(2) The Commission, subject to the conditions below, additionally grants:

(a) A limited exemption to Commission Regulation 1.25(d)(2) to permit the ICE DCOs to use customer funds to enter into repurchase agreements with foreign banks and foreign securities brokers or dealers; and

(b) A limited exemption to Commission Regulation 1.25(d)(7) to permit the ICE DCOs to hold securities purchased under a repurchase agreement in a safekeeping account at a foreign bank.

(3) This order is subject to the following conditions:

(a) Investments of customer funds in Designated Foreign Sovereign Debt by each ICE DCO must be limited to investments made with euro customer cash.

(b) The ICE DCOs may only invest customer funds in Designated Foreign Sovereign Debt if the two-year credit default spread of the issuing sovereign is 45 basis points or less.

(c) The dollar-weighted average of the time-to-maturity of each ICE DCO's portfolio of direct investments in each sovereign's Designated Foreign Sovereign Debt may not exceed 60 days. Direct investment refers to purchases of Designated Foreign Sovereign Debt unaccompanied by a contemporaneous agreement to resell the securities.

(d) The ICE DCOs may use customer funds to enter into repurchase agreements for Designated Foreign Sovereign Debt with a counterparty that does not meet the requirements of Commission Regulation 1.25(d)(2) only if the counterparty is:

(i) A foreign bank that qualifies as a permitted depository under Commission Regulation 1.49(d)(3) and that is located in a money center country (as defined in Commission Regulation 1.49(a)(1)) or in another jurisdiction that has adopted the euro as its currency;

(ii) A securities dealer located in a money center country as defined in Commission Regulation 1.49(a)(1) that is regulated by a national financial regulator such as the UK Prudential Regulation Authority or Financial Conduct Authority, the German Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), the French Autorité Des Marchés Financiers (AMF) or Autorité de Contrôle Prudentiel et de Résolution (ACPR), or the Italian Commissione Nazionale per le Società e la Borsa (CONSOB); or

(iii) The European Central Bank, the Deutsche Bundesbank, or the Banque de France.

(e) The ICE DCOs may hold customer securities purchased under a repurchase agreement with a depository that does not meet the requirements of Commission Regulation 1.25(d)(7) only if the depository meets the location and qualification requirements contained in Commission Regulation 1.49(c) and (d) and if the account complies with the requirements of Commission Regulation 1.26.

(4) The ICE DCOs must continue to comply with all other requirements in Commission Regulation 1.25, including but not limited to the counterparty concentration limits in Commission Regulation 1.25(b)(3)(v), and other applicable Commission regulations.

V. Request for Comment

The Commission requests comment on all aspects of Petitioners' exemption request, including the specific provisions and issues highlighted in the discussion above and the issues presented in this section. For each comment submitted, please provide a detailed rationale supporting the response.

The purposes of the CEA include "promot[ing] responsible innovation and fair competition among boards of trade, other markets, and market participants."[16] It may be consistent with these and the other purposes of the CEA, and with the public interest, to grant the exemption requested by the Petitioners. Accordingly, the Commission is requesting comment as to whether an exemption from the requirements of the CEA

[16] Section 3(b) of the CEA, 7 U.S.C. 5(b). *See also* Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1) (purpose of exemptions is ''to promote responsible economic or financial innovation and fair competition'').

should be granted in this context. The Commission also is requesting comment as to whether this exemption would affect its ability to discharge its regulatory responsibilities under the CEA.

VI. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This exemptive order does not involve a collection of information. Accordingly, the PRA does not apply.

B. Cost-Benefit Analysis

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

1. Baseline for the Proposal

The Commission's proposed baseline for consideration of the costs and benefits of the proposed exemptive order are the costs and benefits that the ICE DCOs and the public would face if the Commission does not grant the order, or in other words, the status quo. In that scenario, the ICE DCOs would be limited to investing customer funds in the instruments listed in Regulation 1.25.

2. Costs and Benefits

The costs and benefits of the proposed order are not presently susceptible to meaningful quantification. Therefore, the Commission discusses proposed costs and benefits in qualitative terms.

The Commission does not believe granting the exemption would impose additional costs on the ICE DCOs. The proposed order would permit but not require the Petitioners to invest customer funds in Designated Foreign Sovereign Debt. The ICE DCOs may therefore choose whether to accept any costs and benefits of an investment. The Commission also does not expect the proposed order to impose additional costs on other market participants or the public, which do not face any direct costs from the proposed order. While other market participants or the public could potentially face costs from riskier investment activity leading to financial instability at an ICE DCO, the flexibility to hold customer funds in Designated Foreign Sovereign Debt rather than in euro cash at a commercial bank provides risk management benefits as described above.

The Commission believes that the ICE DCOs would benefit from the proposed order. The exemption would provide the ICE DCOs additional flexibility in how they manage and hold customer funds and would allow them to improve the risk management of their customer accounts. Further, as described above, it is safer from a risk management perspective to hold Foreign Sovereign Debt in a safekeeping account than to hold euro cash at a commercial bank. Therefore, market participants and the public may also benefit from the proposed exemption.

3. Section 15(a) Factors

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. The Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA. The Commission is considering the costs and benefits of this exemptive order in light of the specific provisions of section 15(a) of the CEA, as follows:

1. *Protection of market participants and the public.* As described above, investing in the Designated Foreign Sovereign Debt as requested by the Petitioners can provide risk management benefits relative to the current alternative of holding euro collateral in a commercial bank. Granting the exemption thus serves to protect market participants and the public.

2. *Efficiency, competition, and financial integrity.* Granting the exemption may increase efficiency by providing the Petitioners additional flexibility in how they manage customer funds. Making the investments permitted by the proposed order is elective, within the discretion of the ICE DCOs, and thus does not impose additional costs. Further, as discussed above, the ICE DCOs plan to exercise prudent risk management by investing in the Designated Foreign Sovereign Debt, which may enhance the financial integrity of the ICE DCOs.

3. *Price discovery.* The exemption is unlikely to impact price discovery.

4. *Sound risk management practices.* As described above, the ICE DCOs' plan to invest customer funds in the Designated Foreign Sovereign Debt is intended to advance sound risk management practices.

5. *Other public interest considerations.* The Commission believes that the relevant cost-benefit considerations are captured in the four factors above.

The Commission invites public comment on its application of the cost-benefit provisions of section 15.

Issued in Washington, DC, on December 12, 2017, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Appendix to Proposed Order and Request for Comment on Application for Exemption from Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and from Certain Related Commission Regulations – Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz and Behnam voted in the affirmative. No Commissioner voted in the negative.