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August 6, 2018

Via Electronic Submission

Christopher Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: *Comments on Part 40, Provisions Common to Registered Entities, Notice of Intent to Renew Collection 3038-0093*

Dear Mr. Kirkpatrick:

Intercontinental Exchange, Inc. ("ICE") appreciates the opportunity to provide comments and recommendations to the Commodity Futures Trading Commission ("CFTC" or "Commission") in response to the Commission's request for comments to the Part 40, Provisions Common to Registered Entities, Notice of Intent to Renew Collection ("Notice"). As background, ICE operates regulated derivatives exchanges, clearing houses, trade repositories and swap execution facilities in the United States, Europe, Canada and Singapore. As the operator of domestic and international exchanges and clearinghouses, ICE has a practical perspective on the submission to the Commission of new products, rules and rule amendments pursuant to CFTC Part 40 regulations. Considering these factors, ICE respectfully offers the following comments regarding the rule filing and submission process.

Quality, Usefulness and Clarity of the Collected Information

ICE believes that the information currently required for a new product or rule filing under the certification procedures of Commission Regulations 40.2 and 40.6 does not require any enhancement. The self-certification process has been successfully utilized over the past decade and has provided both the Commission and market participants with useful and accurate information regarding hundreds of Designated Contract Market ("DCM") products and rules. The requirements of Part 40 already ensure that the Commission and market participants have a clear explanation of how a product or rule complies with the Commodity Exchange Act ("CEA") and the Commission's regulations. The information filed by registered entities is available to the public via their own websites and the CFTC site in advance of the applicable effective date, and it is common for registered entities like ICE Futures U.S., Inc. (the "Exchange" or "IFUS") to receive input from market participants with relevant expertise through interaction with Exchange product committees and other outreach processes. It is also common for the Exchange to consult with the Commission during the development of new products to ensure compliance



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with the principles of the CEA. As a result of this robust process, the quality and clarity of the information provided supports the Commission in carrying out its statutory obligations. Therefore, ICE does not believe the Commission needs to enhance its requirements on collected information in any respect.

Commission's Estimate of the Proposed Collection of Information Burden on Exchanges

The Commission's estimate indicates that under Commission Regulations 40.2, 40.3, 40.5 and 40.6, the approximate number of annual responses filed by each respondent is 100 and the estimated time spent by each respondent filing a response with the Commission is two hours. ICE believes the Commission's estimates are understated and notes that the Notice does not indicate the methodology by which they were derived. While SEFs and newer DCMs may have a small number of filings, more established DCMs with diverse markets handle substantially more submissions to the Commission. For example, during 2017, the Exchange filed 266 DCM rule submissions with the Commission and the Chicago Mercantile Exchange ("CME") filed 564 submissions according to its website. Year to date, the Exchange has already filed 380 submissions. The Commission should take into account that IFUS and CME, collectively, account for the greatest number of filings to the Commission. ICE suggests that the estimate and resulting impact should be recalculated taking into account the burden on these DCMs, and not the burden on an "average" filer. ICE also requests the Commission provide additional color around the methodology used to calculate its figures.

The Notice also fails to provide an explanation of the conclusion that filings under Commission Regulations 40.2, 40.3, 40.5 and 40.6 would take two hours or whereas a filing made by a Systemically Important Derivatives Clearing Organization ("SIDCO") under Commission Regulation 40.10 would take over twice that time. The information required for a new product filing under Commission Regulation 40.2 or 40.3 is quite comprehensive and requires a "concise explanation and analysis of the submission and its compliance with the statutory provisions of the Act", including a discussion of the product itself, a cash market discussion and analysis and supporting information regarding the basis for establishing position limits. Each submission must also include an analysis of compliance with the relevant registered entity core principles. ICE suggests that the information required to be provided by a DCM for a new product rule filing is robust, comprehensive and requires at a minimum the same amount of time as a SIDCO rule filing.

Ways to Minimize the Burden of Collection of Information on Respondents

The CFTC submission portal and the procedures for regulatory filings create significant burdens regarding the commitment of time and staff resources to complete filings. In particular, the Commission requires a separate filing cover page, filing number and independent document submission for each product and does not accept a single submission with multiple filing numbers covering multiple similar products. As a result, the exchange must submit repetitive filings of the same document changing only the cover sheet and the exhibit page with the



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specific product rules. To remedy this situation, the Commission should accept a single filing with one attachment containing the relevant chapter(s) of new product rules, as this would significantly lessen the submission burden while still allowing the Commission to meet its regulatory requirements and adequately review each new product. ICE suggests the Commission redress this situation through portal updates or changes to its internal processes for tracking new product filings.

Block Trade Levels

As previously stated in ICE's Project KISS comment letter¹, the Commission should treat block trade levels specified by a DCM in connection with the initial listing of a new contract like any other term and condition of the contract. The Part 40 regulations allows new contracts to be listed for trading 24 hours after the rules setting forth the contract terms and conditions are filed with the CFTC. Most new contracts permit block trades to be executed as such trades and often help to establish the market in a new product. However, because block trades are not expressly referenced in the definition of the phrase "terms and conditions" the Commission staff has taken the position that they cannot be included in the same submission as the product terms, and must be submitted separately under the ten-day advance filing procedures. Therefore, we request that the staff treat block trade levels specified by a DCM in connection with the initial listing of a new contract like any other term and condition of the contract. Any amendments to block trade levels made thereafter should continue to be submitted under the ten-day timeframe contemplated by the Part 40 regulations.

Conclusion

ICE appreciates the opportunity to submit comments on the Notice. ICE supports the Commission's willingness to consider the public comments on simplifying or streamlining existing rules, regulations, or practices. If the Commission has any questions, please feel free to contact Kara Dutta at (770) 916-7812. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Dutta", is positioned above the printed name.

Kara Dutta
Assistant General Counsel
Intercontinental Exchange, Inc.

¹ See ICE Project KISS Comment Letter dated September 29, 2017.