



June 20, 2022

Vanessa A. Countryman
Office of the Corporate Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
Rule-comments@sec.gov

Re: File Number S7-14-22 - Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities (the “**Proposal**”)

Dear Ms. Countryman:

Intercontinental Exchange, Inc., on behalf of itself and its subsidiaries (collectively, “**ICE**”) appreciates the opportunity to respond to the Proposal¹ soliciting comment on proposed rules relating to security-based swap (“**SBS**”) execution and the registration and regulation of security-based swap execution facilities (“**SBSEF**”).

As an operator of global exchanges and clearinghouses, ICE is keenly interested in the Proposal. As background, ICE operates regulated marketplaces for the listing, trading and clearing of a broad array of derivatives contracts and financial securities, such as commodities, interest rates, foreign exchange and equities as well as corporate and exchange traded funds, or ETFs. ICE operates multiple trading venues, including 13 regulated exchanges and 6 clearing houses, which are strategically positioned in major market centers around the world, including the U.S., U.K., European Union, Canada, Asia Pacific, and the Middle East.

ICE’s regulated marketplaces include ICE Swap Trade, LLC (“**ICE Swap**”), a swap execution facility (“**SEF**”) registered with the U.S. Commodity Futures Trading Commission (“**CFTC**”) since 2013. ICE Swap supports bilateral energy trading in natural gas, oil and electricity and lists credit index swaps. The Proposal would allow ICE Swap to register with the Securities and Exchange Commission (“**Commission**”) as an SBSEF for the trading of single-name credit default swaps.

I. Rule Harmonization Benefits the SBS and Swaps Market

ICE supports the Commission’s proposal to align its rules for SBS execution and the registration and regulation of SBSEFs with Part 37 of the CFTC’s rules governing swap execution facilities.² ICE agrees with the Commission that most entities that will seek to register

¹ Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities, Exchange Act Release No. 94615 (April 6, 2022), 87 FR 28872 (May 11, 2022) (S7-14-22).

² Swap Execution Facilities, 17 CFR Part 37 (June 4, 2013).



as SBSEFs are also likely to be registered with the CFTC as SEFs.³ For this reason ICE supports the proposed harmonization. Further, because “[SEFs] have made substantial investments in systems, policies, and procedures to comply with and adapt to the regulatory system developed by the CFTC,”⁴ creating a second, completely different regulatory regime for SBSEFs would undermine the CFTC’s efforts while adding unnecessary complexity and cost for both SBSEFs and SEFs.

Harmonization of rules between the CFTC and the Commission would minimize the compliance burden on most SBSEFs, as their systems and processes are already designed to comply with the CFTC’s rules. Further, market participants are familiar with the proposed rules relating to SBS execution, as similar rules have been in effect in the swaps market for almost a decade. While ICE recognizes that differences between the SBS and the swaps market will at times require some deviation between the rules of the Commission and the CFTC, ICE believes, as further discussed below, that some of the Proposals’ suggested deviations are neither justified nor necessary.

II. Unnecessary Rule Deviation

a. Ten-Business-Day Pre-listing Review Period for Self-Certified Products

Proposed Rule 804(a)(2) would deviate significantly from CFTC Rule 40.2(a) by requiring a ten-business-day pre-listing review period for self-certified products,⁵ as opposed to the CFTC’s one-business-day review period.⁶ The Commission has not adequately explained why a ten-business-day review period would be necessary for a self-certified product listing. ICE believes that the Commission’s proposed ten-business-day review period is excessive and unnecessary, particularly given that the Commission is likely to have fewer rule submissions to review on an ongoing basis than the CFTC is currently reviewing today. As the Commission notes in the Proposal, since the size of the SBS market is smaller relative to the swap market, the Commission expects there to be fewer SBSEFs than SEFs.⁷ Therefore, with fewer SBSEFs, the Commission will need to review fewer rule submissions. For this reason, ICE believes the Commission should consider revising the ten-business-day pre-listing review period for self-certified products to align with the CFTC’s rules.

³ See Proposal at 28875.

⁴ See *id.*

⁵ See *id.* at 28882.

⁶ Provisions Common to Registered Entities, 17 CFR § 40.2(a) (July 27, 2011).

⁷ The Proposal acknowledges that the swaps market, which falls under CFTC jurisdiction, is larger than the SBS market, which falls under Commission jurisdiction. Proposal at 28875; see also *id.* at 28945 (acknowledging that the “SBS market is a small fraction of the swap market and the single-name CDS market ... is smaller than the index CDS market”), and 28963 (acknowledging “the likelihood that there will be fewer SBSEFs than SEFs”).



When proposing Rule 40.2(a), the CFTC noted that when a regulated entity proposes to list a product through self-certification, the regulated entity “is, in effect, pledging that the product” complies with all legal requirements to support the product listing.⁸ The CFTC’s one-business-day review period for self-certified product listing has been in effect for SEFs for over a decade (and even longer for designated contract markets). Throughout this time the CFTC has not proposed to extend the review period. The SEC’s proposal to require such a lengthy review period would undermine the goal of harmonization by essentially turning the self-certification process into an extended review and non-objection process. Further, the proposed ten-business-day review period would reduce the competitive benefit to SBSEFs that develop new products, reducing the incentive to innovate, because a ten-business day review period would allow competitors to list a “look-a-like” product on their own SBSEF.

ICE recognizes that the Commission may require more than one business day to review a self-certified product listing when a SBSEF submits a SBS to the Commission for a “made-available-to-trade” determination and in this limited circumstance perhaps more than a one business day review could be justified. Thereafter, each product submission would generally follow the same listing convention, except for a deviation in the product’s underlying reference obligation and its specific economic terms (e.g., coupon, pricing, basis points vs. points, and maturity date).

b. DCMs Should be Permitted to Act as a Regulatory Services Provider

The Commission proposes to model Rule 819 on CFTC Rule 37.204, which permits an SBSEF to contract with a regulatory services provider in connection with the SBSEF fulfilling certain of its regulatory obligations.⁹ ICE supports the harmonization of these rules but requests that the Commission also permit designated contract markets registered with the CFTC (“DCMs”) to act as a regulatory services provider in addition to a futures association, a national securities exchange, a national securities association (which would include the Financial Industry Regulatory Authority), or another SBSEF.¹⁰ The Commission did not provide any reason for excluding DCMs from providing regulatory services and allowing comparable self-regulatory organization, including national securities exchange, to do so.

DCMs are permitted regulatory service providers under the CFTC regulations applicable to SEFs. DCMs have well established regulatory protocols associated with policing their own markets and enforcing DCM rules through disciplinary and other actions which are subject to CFTC oversight. DCMs conduct regulatory activities similar to those performed by registered futures associations, such as the National Futures Association. DCMs have also developed expertise in the securities markets through the listing and significant trading they conduct in equity index futures contracts. In addition, DCMs are permitted to list futures on individual

⁸ Provisions Common to Registered Entities, 75 FR 67282, 67284 n.9 (proposed Nov. 2, 2010).

⁹ See *Proposal* at 28902.

¹⁰ See *id.* 28902 n.129.



stocks and to list swap contracts for trading. In light of these facts, DCMs are uniquely qualified to provide regulatory services to SBSEFs as well as SEFs, and in fact ICE Futures U.S., Inc. (“IFUS”), a DCM, already provides regulatory services to SEFs. It is unclear why IFUS would not be permitted to continue to provide regulatory services to SEFs when its affiliates registered as national securities exchanges could do so. Accordingly, the Commission should permit a DCM to act as a regulatory services provider for SBSEFs.

c. Proposed Criteria for Exempting Foreign SBS Trading Venues

In 2017, the CFTC began extending relief from the SEF registration requirements to a number of swap trading platforms operating in the European Union, Japan, and Singapore (“**Exempt Foreign SEFs**”).¹¹ The CFTC issued these exemptions based on its determination that the Exempt Foreign SEFs were subject to comparable, comprehensive supervision and regulation by a prudential regulatory or other governmental authority in the Exempt Foreign SEF’s home country and then subsequently permitted cross-border trading of swaps by U.S. persons on the Exempt Foreign SEFs.

The Commission’s proposed criteria for exemption from SBSEF registration would, among other things, require SBSs be subject to a comparable requirement to be traded on a foreign SBS trading venue, and require that the foreign SBS trading venue also provide the same permitted execution means as is required in the U.S.¹² For mandatory trades, Exempt Foreign SEFs are not required to provide the same means of execution as is required in the U.S. Thus, the Commission’s proposed additional requirements on foreign SBS trading venues would mean that U.S. persons would not be able to continue trading SBSs on Exempt Foreign SEFs. For example, EU and UK based multilateral trading facilities are not required under their home country regulation to ensure that a request-for-quote be sent to three different recipients or offer a central-limit-order-book. The Commission’s proposed criteria cannot be satisfied from the outset, thereby preventing covered persons¹³ from trading SBS on Exempt Foreign SEFs and impairing their ability to manage risk effectively.

In the absence of an exemption from SBSEF registration for the Exempt Foreign SEFs, covered persons will no longer be able to trade SBS on these venues and may not find it feasible to trade other instruments, such as swaps and foreign corporate debt, due to the bifurcation of liquidity that will result. The ability of U.S. and European participants to combine their trading

¹¹ See <https://www.cftc.gov/International/ForeignMarketsandProducts/ExemptSEFs> (listing all exemption orders issued by the CFTC under Section 5h(g) of the Commodity Exchange Act and subsequent amendments to those orders).

¹² See Proposal at 28925.

¹³ Proposed Rule 832(b) would define a “covered person” as any person that is a U.S. person; a non-U.S. person whose performance under an SBS is guaranteed by a U.S. person; or a non-U.S. person who, in connection with its SBS dealing activity, uses U.S. personnel located in a U.S. branch or office, or personnel of an agent of such non-U.S. person located in a U.S. branch or office, to arrange, negotiate, or execute a transaction.



interest in related products on the same trading platform is critical to the effective transfer of risk within the financial system. Preventing this single pool of liquidity jeopardizes that risk transfer and impairs price formation and ultimately increases systemic risk. For instance, if a U.S. participant is unable to purchase a foreign corporate bond and in turn offset its risk by entering into a corresponding SBS on a foreign SBS trading venue, then U.S. participants are less likely to trade foreign corporate debt.

ICE encourages the Commission to offer exemptive relief to the Exempt Foreign SEFs from the outset of any adoption of Regulation SE, which would ensure that covered persons continue to have uninterrupted access to important sources of liquidity.

III. Additional Regulatory Considerations

a. Abbreviated SBSEF Registration Procedure for Currently Registered SEFs

ICE supports the Commission utilizing its authority under Section 36(a)(1) of the Exchange Act to establish abbreviated procedures for SBSEFs to register with the Commission to the extent that such entities are already registered with the CFTC as a SEF. ICE believes that SEFs that are currently registered and in good standing with the CFTC should be permitted to register with the Commission utilizing their current documentation filed pursuant to the requirements of Form SEF. As the Commission recognizes, CFTC registered SEFs are required to keep their Form SEF and its exhibits current through post-registration amendments.¹⁴ As the Commission is modelling proposed Form SBSEF on the CFTC's Form SEF, substituting the forms should not be problematic for the Commission to review. The Commission should permit registered SEFs seeking to register as an SBSEF to submit their Form SEF and exhibits, with an accompanying addendum reflecting only those changes necessary to fulfill the specific requirements of proposed Regulation SE, in lieu of filing a new Form SBSEF.

b. Written Record of Only those Terms Agreed to on the SBSEF

ICE supports the Commission's approach to deviate from the CFTC's Section 37.6(b) requirement that a SEF provide a written record of "all the terms of the transaction [executed on the SEF] which shall legally supersede any previous agreement and serve as a confirmation of the transaction." The Commission recognizes that it is not practical nor cost effective for an SBSEF to collect, review and store each free-standing agreement underlying an SBS transaction entered into between numerous SBS counterparties. Notably, the CFTC has not required SEFs to comply with the requirements of CFTC Section 37.6(b) since 2014, when the CFTC issued No Action 14-108, due to the impracticality of compliance.¹⁵ This problem would be the same in the SBS marketplace and ICE appreciates the Commission being practical in this regard.

¹⁴ See Proposal at 28881.

¹⁵ Staff No-Action Position Regarding SEF Confirmations and Recordkeeping Requirements under Certain Provisions Included in Regulations 37.6(b) and 45.2, CFTC No-Action Letter No. 14-108 (Aug. 18, 2014),



c. Single-Dealer Aggregator Platforms

In 2018, the CFTC proposed substantial rule amendments to the regulations governing SEFs and the trade execution requirements for swaps (“**2018 CFTC Proposal**”).¹⁶ The CFTC stated that the 2018 CFTC Proposal was a result of the CFTC’s “enhanced knowledge and experience with swaps trading” following its implementation of Part 37 in 2013.¹⁷ Ultimately the 2018 CFTC Proposal was withdrawn, but many of the issues highlighted in the 2018 CFTC Proposal remain unresolved.

One such issue is the role of unregistered systems or platforms called “Single-Dealer Aggregator Platforms.” The CFTC described a Single-Dealer Aggregator Platform as “a trading system or platform that aggregates multiple Single-Dealer Platforms and, thus, enables multiple dealer participants to provide executable bids and offers, often via two-way quotes, to multiple non-dealer participants on the system or platform.”¹⁸ In the 2018 CFTC Proposal, the CFTC proposed to apply the statutory SEF registration requirements to Single-Dealer Aggregator Platforms, as such platforms essentially operate as SEFs by providing non-dealer participants with the ability to trade with multiple dealer participants on a single platform.

The Single-Dealer Aggregator Platform is almost indistinguishable from a SEF providing non-dealer participants access to these same dealers. Accordingly, ICE requests that the Commission consider requiring such systems or platforms to register as SBSEFs and thereby level the competitive landscape between SBSEFs and Single-Dealer Aggregator Platforms. The Commission recently proposed rules to amend Exchange Act Rule 3b-16 that would expand the type of systems that fall within the definition of “exchange” (“**Exchange Proposal**”).¹⁹ Under the Exchange Proposal, a Single-Dealer Aggregator Platform would likely be considered a “communication protocol system” and therefore would be required to register as an exchange. In the Proposal the Commission proposes to exempt an entity from exchange registration if the entity registers as an SBSEF.²⁰ ICE agrees with the Commission’s proposal to exempt an entity from exchange registration if the entity registers as an SBSEF.

providing relief to SEFs from the requirements of CFTC Section 37.9(b), which remains in effect through consecutive CFTC extensions.

¹⁶ Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018).

¹⁷ *See id.* at 61952.

¹⁸ *See id.* at 61956.

¹⁹ Amendments Regarding the Definition of “Exchange” and Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities, 87 FR 15496 (March 18, 2022).

²⁰ *See Proposal* at 28931.



d. Exempt Registered Clearing Agencies from the SBSEF Definition

ICE supports the Commission's proposal to exclude from the definition of SBSEF, registered clearing agencies that limit their SBSEF functions to the operation of a trading session designed to further the accuracy of the end-of-day valuations.²¹ A clearing agency's end-of-day valuation trading sessions are necessary to facilitate the establishment of the end-of-day settlement prices. Periodically requiring a clearing agency's participants to enter into SBS transactions that result from these trading sessions ensures the reliability of the settlement price determination process.

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ICE hopes these comments are constructive to the Commission as it considers rules relating to security-based swap execution and the registration and regulation of SBSEFs. To the extent the Commission staff has any questions relating to this letter please feel free to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RLaorno', with a stylized flourish at the end.

Robert Laorno
General Counsel
ICE Swap Trade, LLC

²¹ See *id.* at 28976