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September 15, 2011

Via Courier and by Email to rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Attention: Elizabeth M. Murphy
Secretary

Comments: Rule Filing Requirements for Dually-Registered Clearing Agencies
File Number S7-29-11

Ladies and Gentlemen:

We are writing on behalf of our client, ICE Clear Europe Limited ("ICE Clear Europe"), in response to the request for comments by the Commission in respect of the interim final amendment (the "Rule Amendment") to the rule filing requirements under Rule 19b–4 under the Securities Exchange Act of 1934 ("Exchange Act") for registered securities clearing agencies that are also registered with the Commodity Futures Trading Commission (the "CFTC") as derivatives clearing organizations ("dually-registered clearing agencies").[1] We appreciate the opportunity to comment on the Rule Amendment, and the efforts of the Commission to amend Rule 19b-4.

The implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") will require, for the first time, many swaps clearing houses to be dually regulated by the CFTC and the Commission in the United States. ICE Clear Europe is a recognized clearing house licensed by the U.K. Financial Services Authority, a derivatives clearing organization registered with the CFTC under the Commodity Exchange Act and a clearing agency registered under Section 17A of the Exchange Act. ICE Clear Europe at present has two separate swaps clearing businesses: (i) energy swaps and (ii) credit default swaps. These businesses are supported by separate guarantee funds.

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[1] See Release No. 34-64832, "Amendment to Rule Filing Requirements for Dually-Registered Clearing Agencies," issued July 7, 2011, 76 Fed. Reg. 41056 (July 13, 2011) ("Adopting Release").

In general, we are very supportive of the Rule Amendment, as we believe that it properly focuses the limited resources of the Commission on the securities business of dually-registered clearing agencies, and better harmonizes the regulatory oversight of the Commission and the CFTC in respect of dually-registered clearing agencies. As described further below, we believe that the Rule Amendment should not have omitted SRO rulemaking regarding swaps other than security-based swaps from the ambit of new subsection 19b-4(f)(4)(ii)(A), and that the inclusion of such swaps will further enhance the Rule Amendment.

I. SWAPS, OTHER THAN SECURITY-BASED SWAPS, SHOULD BE INCLUDED IN THE RULE AMENDMENT AS A CLASS OF RULEMAKING THAT MAY RELY ON SECTION 19(B)(3)(A) OF THE EXCHANGE ACT

1.1 Regulation of SRO rulemaking under SEC rules and regulations: under Section 19(b)(3)(A), certain SRO rule changes may become effective upon filing.

Currently, each SRO, including any clearing agency registered with the Commission ("Registered Clearing Agency"), must file copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO pursuant to Section 19(b)(1) of the Exchange Act. The Commission is then required to publish the proposed rule change for public comment. After a certain period of time, the Commission must either approve, disapprove or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission must approve the rule change if the Commission finds that the underlying rule change is consistent with the requirements of the Exchange Act. Sections 19(b)(2) and 19(b)(3) of the Exchange Act outline the basic time-frames within which a rule change proposal is reviewed by the Commission.

Under Section 19(b)(3)(A) of the Exchange Act, any proposed rule change may become effective upon filing with the Commission, without notice and opportunity for hearing, if it is appropriately designated by the SRO as: (i) constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO; (ii) establishing or changing a due, fee, or other charge imposed by the SRO (on any person, whether or not the person is a member of the SRO) or (iii) concerned solely with the administration of the SRO.

Under the Exchange Act, the Commission may, within 60 days of the filing of a proposed rule change that becomes effective upon such filing in accordance with the provisions of Section 19(b)(3)(A), the Commission may abrogate that change and require that the proposed rule change be re-filed and reviewed in accordance with the provisions of paragraph 19(b)(2). In

order to provide clarity as to the categories of rule changes that may properly be filed under Section 19(b)(3)(A), Rule 19b-4(f) provides a list of categories of SRO rule changes that qualify for summary effectiveness under Rule 19(b)(3)(A). This list is helpful inasmuch as it allows SROs to better understand which rule changes are permitted to become effective immediately upon filing in accordance with Section 19(b)(3)(A).

1.2 The Rule Amendment increases the list of rules that become effective upon filing in accordance with that provision.

The Rule Amendment expands this list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act to include any matter effecting a change in an existing service of a Registered Clearing Agency that both (A) "primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures" and (B) does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service.

By its terms, the Rule Amendment only applies to "futures clearing activity", thus drawing into question the treatment of non-security-based swaps that following the Dodd-Frank Act fall within the CFTC's jurisdiction. Specifically, the list of categories that now qualify for summary effectiveness under Section 19(b)(3)(A) does not include proposed rule changes relating to Registered Clearing Agencies' non-security-based swaps business. For the reasons stated below and consistent with the allocation of regulatory responsibility for derivatives between the CFTC and the Commission under the Dodd-Frank Act, we believe that omission of swaps other than security-based swaps from treatment under Section 19b-4(f) is an oversight that should be corrected in the final rulemaking.

1.3 CFTC now has jurisdiction over swaps while the SEC has jurisdiction only over security-based swaps.

In accordance with the provisions of the Dodd-Frank Act, the CFTC has jurisdiction over "swaps"[2] while the SEC has jurisdiction over "security-based swaps"[3]. Under the regulatory

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2 Under Section 721 of the Dodd-Frank Act, a "swap" includes a broad range of derivative transactions, including interest rate, currency, equity, credit, fixed income and commodity derivatives, with exceptions for certain physically-settled commodity forwards (including options thereon) and certain securities transactions (such as security options).

3 Under Section 761 of the Dodd-Frank Act, the term "security-based swap" is defined as a swap on a single security (or loan) or index comprised of a narrow group of securities.

regime as amended by the Dodd-Frank Act, the clearing of futures, options on futures and swaps by a dually-registered clearing agency is regulated by the CFTC in connection with its oversight and supervision of derivative clearing organizations ("DCOs"). The Dodd-Frank Act provided the Commission with regulatory authority over security-based swaps, and over any clearing agency (including a dually-registered clearing agency) clearing security-based swaps.

It is our view that implementation of rulemaking in furtherance of the purposes of the Dodd-Frank Act should, as much as possible, (i) respect the jurisdictional boundaries delegated to the CFTC and the Commission under that Act, and (ii) pursue efficiency and reduce the costs of rulemaking wherever possible. We believe that the Rule Amendment is a positive step towards the achievement of these goals, and that the addition of swaps, other than security-based swaps, will further these goals and address the full range of products subject to regulation by the Commission and the CFTC.

II. THE RULE AMENDMENT SHOULD BE REVISED TO INCLUDE SWAPS (OTHER THAN SECURITY-BASED SWAPS) TOGETHER WITH FUTURES IN RULE 19b-4(f)(4)(ii)(A).

As discussed above, we believe that the swaps business of a dually-registered clearing agency is properly regulated by the CFTC, with Commission oversight properly limited to those aspects of the clearing agency's swaps business that significantly affects the securities clearing operations of the clearing agency, or the related rights or obligations of the clearing agency or persons using the services of the clearing agency.

This change is warranted for Registered Clearing Agencies with non-security-based swaps business because:

- *Any rule changes relate solely to non-security-based swaps should be permitted to be filed under Section 19(b)(3)(A).* Any proposed procedural or rule changes that are solely related to the non-security-related swap business of a Registered Clearing Agency are by their terms outside the jurisdiction of the Commission. Even though such rule changes do not primarily relate to the "futures clearing operations" of the dually-registered clearing agency, they relate to matters that are properly within the jurisdiction of the CFTC. We note that, to paraphrase language used in the Adopting Release, the swaps activities of a dually-registered clearing agency would generally require the Registered Clearing Agency to register with the CFTC as a DCO in accordance with the CEA. Put differently, the "futures clearing operations" should include the full range of products subject to CFTC regulation, including futures, options on futures, and swaps. In many

cases, swaps and futures are economically very similar, and it would therefore be inappropriate to subject swaps to a different standard under the Rule Amendment.

- *Adding swaps (other than security-based swaps) to the Rule Amendment preserves the Commission's scarce regulatory resources without undermining regulatory protections.* We respectfully submit that the Commission's scarce regulatory resources are best spent focusing on rule changes relating to securities matters. Rule changes that (i) relate solely to non-security-based swaps, and (ii) do not impact the securities operations of the clearing agency are, if regulated by another specialist agency, properly filed with the Commission under Section 19(b)(3)(A).

- *Requiring a dually-registered clearing agency to follow the rule amendment process under 19(b)(2) is an unnecessary burden on the clearing agency's human resources.* By requiring dually-registered clearing agencies to adopt non-securities rule changes through a more onerous process, the Rule Amendment places a greater burden, measured in scarce human resources, on dually-registered clearing agencies that conduct swaps business in swaps other than security-based swaps. In subjecting swaps other than security-based swaps to the rule amendment process under Section 19(b)(2), the Commission thereby raises the costs of conducting a swaps business.

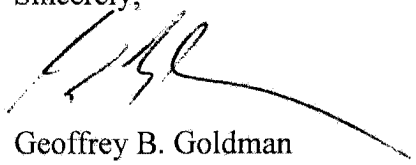
- *Our proposed change to the Rule Amendment is warranted because there are real-world examples of inefficiencies caused by the omission of swaps from Section 19b-4(f).* The change that we propose is not merely a hypothetical one. ICE Clear Europe has a longstanding energy derivatives clearing business, including swaps as well as futures. As a DCO, ICE Clear Europe is required to self-certify all rule changes and amendments relating to its energy swaps business with the CFTC. Under the Rule Amendment as filed, ICE Clear Europe, as a dually registered clearing agency, will, if no other grounds for filing under Section 19(b)(3) are available, be required to file rule changes relating to its energy swaps clearing business under Section 19(b)(2) of the Exchange Act, giving rise to the inefficiencies and redirection of resources that we mention above.

III. CONCLUSION

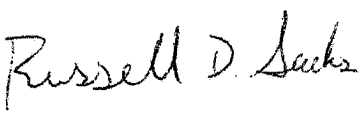
For the reasons noted above, we recommend that the Commission add swaps, other than security-based swaps, to the list of categories of rule changes for which filing under Section 19(b)(3)(A) is appropriate under the new Rule 19b-4(f)(4)(ii)(A).

As always, we are available to discuss the Rule Amendment, or any issue raised in this letter, at any time. In that respect, please feel free to call either of the undersigned at any time at 212-848-4000.

Sincerely,



Geoffrey B. Goldman



Russell D. Sacks