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By Electronic Mail

January 16, 2018

Mr. Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Application for Exemption from Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and from Certain Related Commission Regulations, 82 Fed. Reg. 59586 (December 15, 2017)

Dear Mr. Kirkpatrick:

The Futures Industry Association ("**FIA**")[1] is pleased to submit this letter in support of the application of ICE Clear Credit LLC, ICE Clear US, Inc., and ICE Clear Europe Limited (collectively, the "**ICE DCOs**") for an exemptive order under section 4(c) of the Commodity Exchange Act ("**Act**"), pursuant to which the ICE DCOs would be authorized to invest futures customer funds and cleared swaps customer collateral (sometimes collectively referred to herein as, "**customer funds**") in certain categories of euro-denominated sovereign debt notwithstanding the provisions of sections 4d(a) and 4d(f)[2] of the Act and Commodity Futures Trading Commission ("**Commission**") Rule 1.25.[3]

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[1] FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in London, Singapore and Washington, DC. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry. FIA's mission is to: (i) support open, transparent and competitive markets; (ii) protect and enhance the integrity of the financial system, and (iii) promote high standards of professional conduct.

As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

[2] Sections 4d(a) and 4d(f) of the Act authorize registered futures commission merchants ("**FCMs**") and registered derivatives clearing organizations ("**DCOs**") to invest customer funds in "obligations of the United States, general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States. Section 4d(f) further authorizes FCMs and DCOs to invest cleared swaps customer collateral in "in any other investment that the Commission may by rule or regulation prescribe."

[3] In accordance with Commission Rule 22.3, a DCO may invest cleared swaps customer collateral in accordance with Commission Rule 1.25. In 2011, the Commission amended Rule 1.25 to prohibit such investments in foreign sovereign debt. 76 Fed. Reg. 78776 (December 19, 2011).

Each of the ICE DCOs is registered with the Commission as a DCO and, in that capacity, receives customer funds deposited by its respective FCM clearing members to margin customer transactions in futures contracts traded on a designated contract market or cleared swaps. Because certain futures contracts and cleared swaps are settled in foreign currencies, including the euro, each ICE DCO will hold customer funds denominated in such currencies.

The ICE DCOs have requested authority to invest euro-denominated customer funds in sovereign debt issued by the French Republic and the Federal Republic of Germany through both direct investment and repurchase agreements. In support of their request, the ICE DCOs have presented evidence that French and German sovereign debt is comparable to US Government debt in terms or creditworthiness, liquidity and volatility. We have not attempted to verify this analysis independently. However, based on the information the ICE DCOs have provided, we agree that investments in French and German sovereign debt would appear to be consistent with the objectives of preserving principal and maintaining liquidity. Subject to the terms and conditions set out in the proposed order, as modified below, we believe that the ICE DCOs should be permitted to invest in such debt.

Importantly, among such terms and conditions, the ICE DCOs have agreed that, with the exception of the provisions of Rule 1.25(d)(2) and 1.25(d)(7), the ICE DCOs would continue to be required "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),[4] and all other applicable Commission regulations."[5] In this regard, therefore, the ICE DCOs would be required to comply with the remaining provisions of Rule 1.25(d), which set out the requirements to which all repurchase agreements must conform. These requirements provide important protections for customer funds employed in repurchase agreements and should not be waived.

The ICE DCOs have also agreed that dollar-weighted average of the time-to-maturity of each ICE DCO's portfolio of direct investments in permitted sovereign debt may not exceed 60 days. "Direct investments" is defined to mean purchases of permitted sovereign debt unaccompanied by a contemporaneous agreement to resell the securities. We understand, therefore, that sovereign debt purchased subject to a repurchase agreement will not be subject to any time-to-maturity restrictions. Rather, in accordance with the provisions of Rule 1.25(d)(6), the term of a repurchase agreement must be no more than one business day or must be subject to being reversed on demand.

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[4] Commission Rule 1.25(b)(3)(v) provides that "[s]ecurities purchased by [an FCM] or [DCO] from a single counterparty, or from one or more counterparties under common ownership or control, subject to an agreement to resell the securities to the counterparty or counterparties, shall not exceed 25 percent of total assets held in segregation or under §30.7 of this chapter by the [FCM] or [DCO]."

[5] Such other regulations include Commission Rule 1.29(b), which provides, in part, that a DCO "shall bear sole responsibility for any losses resulting from the investment of customer funds in instruments described in §1.25" and, "if customer funds are invested by a [DCO] in its discretion", no investment losses "shall be borne or otherwise allocated to" the clearing member FCMs.

Although we agree that the dollar-weighted average of the time-to-maturity should be a period less than the 24 months provided in Commission Rule 1.25(b)(4), we encourage the Commission to consider a longer dollar-weighted average of the time-to-maturity. The 60-day weighted-average of the time-to-maturity was reviewed by the trading desks of several FIA member firms, and they were unanimous in concluding that a 60-day period would be too limiting.[6] The new issuance supply of French and German sovereign debt meeting this restriction are limited and would be thinly traded/quoted, which could force participants invest in less-liquid secondary market securities. The consensus view was that a dollar-weighted average of the time-to-maturity of six months would better assure sufficient liquidity while preserving principal, consistent with the provisions of Rule 1.25(b).

We would recommend that paragraph (b) of the proposed order be revised to provide that the ICE DCOs may only invest customer funds in French and German sovereign debt if the five-year credit default spread of the issuing sovereign is 60 basis points or less, as the five-year is a more commonly traded and liquid benchmark. The trading desks with which we consulted confirmed that the two-year credit default market is comparatively thinly traded/quoted.

We further note that the proposed order would provide that each ICE DCO may invest in French and German sovereign debt only to the extent that the DCO has balances in segregated accounts owed to its FCM clearing members denominated in euros. As the Commission notes, FCMs and DCOs were subject to this limitation when Rule 1.25 permitted investments in sovereign debt, and the Commission believes it is appropriate to include this limitation here. We agree.

Finally, we encourage the Commission to consider extending the proposed order to all DCOs and FCM clearing members. We see no reason why the proposed relief should not be available to all DCOs and FCMs that are holding segregated balances denominated in euros and wish to invest in French and German sovereign debt subject to the terms and conditions set out in the proposed order.[7] In this regard, we note that section 4(c) of the Act authorizes the Commission to grant an exemption "on its own initiative", and we urge the Commission to do so here.

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[6] In setting this restriction, the Commission noted that the proposed 60-day dollar-weighted average of the time-to-maturity is consistent with Securities and Exchange Commission ("**SEC**") requirements for money market mutual funds. 17 CFR § 270.2a-7. The SEC rule, however, differs significantly from the proposed order in that the calculation of the 60-day time to maturity includes both direct investments and overnight repurchase agreements. The inclusion of overnight repurchase agreements greatly facilitates compliance with the 60-day time-to-maturity restriction. In contrast, as noted above, the proposed order does not include repurchase agreements in the calculation of the dollar-weighted average of the time-to-maturity. Moreover, the market for US government debt is substantially larger than the market for either French or German sovereign debt.

[7] For FCMs, the proposed order would be extended to include Commission Rule 30.7 customer funds in addition to futures customer funds and cleared swaps customer collateral.

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Thank you for your consideration of these comments. If you have any questions regarding the matters discussed herein or need any additional information, please contact Allison Lurton, FIA's General Counsel and Senior Vice President, at alurton@fia.org or 202.466.5460.

Sincerely,

Walt L. Lukken
President and Chief Executive Officer

cc: Honorable J. Christopher Giancarlo, Chairman
Honorable Brian Quintez, Commissioner
Honorable Rostin Benham, Commissioner

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