



September 19, 2016

Via Electronic Submittal

Richard W. Corey
California Air Resources Board
Transportation and Toxic Division
1001 I Street
Sacramento, CA 95814

Re: Notice of public hearing to consider amendments to the California Cap on greenhouse gas emissions and market based compliance mechanisms regulation - Participation of Derivatives Clearing Organizations in CITSS

Dear Mr. Corey:

Summary

ICE Futures US (IFUS) and ICE Clear Europe (ICEU) write this comment letter in support of the cap and trade program operated by the California Air Resources Board (ARB) and with the aim of participating directly in the CITSS system in order to facilitate trading and clearing of California Carbon Allowances. ICEU and IFUS are part of the Intercontinental Exchange, Inc. group and together support efficient markets and provide clients with trading, central counterparty and risk management services. ICEU provides clearing and settlement services for the secondary market trading in futures and options contracts on California Carbon Allowances, which is operated by IFUS.

In this letter we ask for your consideration to allow an exception to the US location requirement within 95814(a)(2) and 95814(a)(5) for CFTC regulated DCOs applying as Voluntarily Associated Entities and their account representatives, since such DCOs are already subject to comprehensive US regulation and supervision. Such an approach would be consistent with ARB's oversight role for the Cap and Trade system, facilitate efficient settlement of cleared transactions in California Carbon Allowances and give regulated entities and other market participants a greater number of service providers from whom to choose. This also provides consistency with similar requirements for access to other emissions (or similar) systems in other US States.

Detailed Submission

Intercontinental Exchange, Inc. (ICE) operates a leading network of global futures, equity and equity options exchanges, as well as global clearing and data services across financial and

commodity markets. As it impacts the California Cap and Trade market, ICE's US registered futures exchange, IFUS, hosts trading in futures and options contracts with California cap and trade compliance instruments (specifically, California Carbon Allowances) as the underlying delivered instrument. All of the trades conducted on IFUS in futures and options in California Carbon Allowance instruments are cleared at ICEU. ICEU provides clearing services for all IFUS energy division contracts, which includes other futures and options on emissions allowances as well as futures and options involving oil, natural gas and other energy products. The IFUS futures and options on California Carbon Allowances help market participants manage financial and transactional risk associated with the cap and trade program. Since inception in August 2011 and through August 2016, more than 10,000 transactions have been executed in futures and option contracts for over 1 billion allowances. These transactions have resulted in more than 260 million allowances being delivered from seller to buyer. As of August 31, 2016 a total of 144 million allowances are committed for future delivery between buyers and sellers.

ICEU is one of the world's most diverse and leading clearing houses serving many US markets. It provides central counterparty clearing and risk management services for interest rate, equity index, agricultural and energy derivatives, as well as European credit default swaps. ICEU is a Derivatives Clearing Organization (DCO) registered with the US Commodity Futures Trading Commission (CFTC). ICEU is also a recognized clearing house under section 288 of the Financial Services and Markets Act 2000 and EU Regulation 648/2012 (European Market Infrastructure Regulation (EMIR)); supervised by the Bank of England. It has also received the settlement finality designation (SFD) by the FSA under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, which enhances the systemic risk protection provided to clearing members in the event of a clearing counterparty default. ICEU is also recognized as an inter-bank payment system under the Banking Act 2009 and regulated by the Bank of England.

ICEU also provides clearing services for European credit default swaps (CDS) index contracts. In addition to Bank of England and CFTC oversight, ICE Clear Europe's CDS clearing service is registered as a Securities Clearing Agency (SCA) with the US Securities and Exchange Commission (SEC). ICEU's CDS clearing services has a separate and discrete risk pool and default waterfall.

ICEU has established a mutualised Futures and Options (F&O) Guaranty Fund of US \$1.55 billion which is prefunded by its Clearing Members. In addition, ICEU contributes US \$100 million to the F&O Guaranty Fund, all of which sits in front of Members' obligations.

One of the fundamental services provided by exchanges and clearing houses is to ensure as far as possible that buyers receive the commodity they intended to buy when the contract goes to delivery, and, vice-versa, the seller receives the relevant sums due. In the current Cap and Trade regulation the ARB contemplated this role and created a category of account type, Exchange Clearing Holding Account, available to qualifying Voluntarily Associated Entities (VAEs). In order to qualify for an Exchange Clearing Holding Account and to provide exchange clearing

services the regulation, 95814(a)(1) (C) requires that the entity be a DCO as defined by the Commodity Exchange Act (CEA) (7 U.S.C 1a(9)) and be registered with the CFTC pursuant to the CEA (7 U.S.C. 7a-1(a)). However, pursuant to 95814(a)(2) and 95814(a)(5), an entity registering must be located in the United States and at least one individual acting as its account representative must have its primary residence in the United States, respectively.

ICE supports the requirement established by the ARB to require holders of Exchange Clearing Holding Accounts be properly registered DCOs with CFTC. This requirement is logical, consistent with the CFTC regulation of futures trading and clearing and supports ARB's goals for an efficient and robustly regulated program. However, the CFTC does not have a similar US locational requirement and non-US based clearing houses can apply for and obtain "full" DCO status (subject to certain requirements such as appointing a US agent for service of process). Such non-US DCOs are regulated in the same manner as US-based DCOs. However, as a result of the ARB's current location and residency requirements, many of the entities who could provide legitimate and robust Exchange Clearing Holding Account services are not eligible. This is true even while these entities, like ICEU, provide clearing services for US commodities markets (including California Carbon Allowances) to US firms under the jurisdiction and oversight of US regulatory agencies. The lack of direct access to CITSS for such clearing organizations makes the delivery and settlement process for cleared contracts involving allowances less efficient than it could otherwise be. Allowing such access would, in ICEU's view, further the ARB's interest in a liquid, efficient and transparent market and settlement process for California Carbon Allowances.

We ask that ARB allow an exemption to the US location and residency requirements within the regulations for properly registered DCOs and their representatives. We note in this regard that the CFTC has recognized that a DCO, regardless of its location and jurisdiction of organization, can be registered with it and if registered, will be subject to the CFTC's comprehensive regulation, supervision and enforcement regime, in the same manner as any US-based clearing organization. ICEU similarly believes that a DCO that registers with CITSS will be fully subject to the rules of ARB with respect to covered activity. An exemption from the location and residence requirement would allow the full range of DCOs to register with CITSS, and in particular allow entities, such as ICEU, who provide similar services for the European emissions market, to register.

The following are examples of two very minor regulatory changes (based on the changes that the ARB has already proposed) that would accommodate this request. The examples below are exclusive of each other.

Draft Change Alternative A:

- § 95814 Voluntarily Associated Entities and Other Registered Participants
- (a) Voluntarily Associated Entities (VAE).

(1) (2) An individual or entity registering as a voluntarily associated entity must have at least one active account representative with a primary residence in the United States.

(a)(1)(5) An entity registering as a voluntarily associated entity must be located in the United States, according to the registration information reported pursuant to section 95830(c).

(a)(1)(8) An entity and/or individual registering in accordance with 95814(a)(1)(C) is exempt from the residency requirement of 95814(a)(2) and the location requirement of 95814(a)(5).

Draft Change Alternative B:

95814(a)(1)(C) An entity providing clearing services in which it takes only temporary possession of compliance instruments for the purpose of clearing transactions between two entities registered with the Cap-and-Trade Program. A qualified entity must be a derivatives clearing organization as defined in the Commodities Exchange Act (7 U.S.C § 1a(9)) that is registered with the U.S. Commodity Futures Trading Commission pursuant to the Commodities Exchange Act (7 U.S.C. § 7a-1(a)). **Such an entity and its representatives are exempt from the residency requirement of 95814(a)(2) and the location requirement of 95814(a)(5).**

We appreciate the opportunity to comment on the Cap and Trade regulations and the ARB's consideration of our comments. If you or your staff should have any questions, or would like to discuss our comments further, please do not hesitate to contact Stephen McComb at 312.836.6727 or Stephen.McComb@theice.com.

Respectfully submitted,

Signed:



Trabue Bland
President
ICE Futures US

Signed:



Paul Swann
President & Managing Director
ICE Clear Europe