



September 27, 2024

Via Electronic Submission

Washington Department of Ecology
3100 Port of Benton Boulevard
Richland, Washington 99354

Re: Request for Comment: Washington Cap and Invest Program Proposed Linkage to the California Cap-and-Trade Program

To Whom It May Concern:

Intercontinental Exchange, Inc., on behalf of itself and its subsidiaries (collectively, "ICE"), appreciates the opportunity to comment on the Washington State Department of Ecology's proposed Cap and Invest Linkage Rulemaking (the "Proposed Rules" or "Proposal"), which would amend in relevant part Chapter 173-446 WAC.¹

ICE operates regulated marketplaces for the listing, trading, and clearing of a broad array of derivatives contracts such as commodities, interest rates and foreign exchange. We operate multiple trading venues, including 13 regulated exchanges and six 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 lists a broad suite of environmental products that are used by market participants to hedge their risk. Specifically, ICE lists Washington Carbon Allowance ("WCA") futures contracts at ICE Futures U.S. ("IFUS") and clears WCA contracts at ICE Clear Europe ("ICEU"). IFUS is regulated by the Commodity Futures Trading Commission ("CFTC") as a designated contract market ("DCM") under the Commodity Exchange Act ("CEA"). ICEU is regulated by the CFTC as a derivatives clearing organization ("DCO") under the CEA. ICE provides liquid, transparent and regulated trading venues where compliance entities can procure allowances.² ICE has listed WCA contracts since June 2023, and market participants have traded contracts representing over 50 million tons of CO₂.

ICE supports the Washington State Department of Ecology's goal to ensure that the Washington State Cap and Invest Program ("Cap and Invest Program") remains an effective tool to further the policy goal of reducing greenhouse gas emissions. As an operator of derivative markets that list and clear environmental contracts, ICE has a keen interest in the Cap and Invest Program and the regulations of the Washington State Department of Ecology. ICE supports the aspects of the Proposal that would allow central counterparties (referred to in the Proposal as exchange clearing houses, or "ECHs")³ to become registered participants to facilitate intermediated delivery of

¹ On April 11, 2024, the Department of Ecology announced the Proposed Rules and requested public comments. See <https://ecology.wa.gov/regulationspermits/laws-rules-rulemaking/rulemaking/wac-173-441-446-linkage>.

² In addition, ICE's subsidiary ICE Clear U.S., Inc., ("ICUS") which is also registered DCO, is a registered participant in the California State compliance carbon market as operated by the CARB. See 17 Cal. Code Regs. § 95800 et seq.

³ Proposed WAC 173-446-020, "Exchange clearing house" means "a qualified entity providing clearing services in which the entity takes only temporary possession of compliance instruments for the purpose of clearing transactions between two entities registered either in Washington's cap and invest program or in an external GHG ETS of a linked jurisdiction. A qualified entity must be a derivatives clearing organization as defined in the Commodity Exchange Act (7 U.S.C. section 1a) that is registered with the U.S. Commodity Futures Trading Commission pursuant to the Commodity Exchange Act (7 U.S.C.



allowances. ICE however recommends certain changes in order to avoid unnecessary restrictions that might limit the ability of central counterparties to take advantage of such registration. ICE therefore appreciates the opportunity to comment on the Proposed Rules.

Recommendations

Residency Of Account Representatives

The Proposal would require registrants, including central counterparties, to designate a primary account representative and one alternate account representative to access the Compliance Instrument Tracking System Service (“CITSS”). At least one representative must reside in Washington State (the “Residency Requirement”).⁴ ICE believes that the Residency Requirement is unnecessary, particularly in the context of a regulated central counterparty, and would be burdensome for a central counterparty with national or global operations. Under the Proposal, an ECH would be required to consent to the jurisdiction of courts and administrative tribunals in Washington.⁵ Adding a Residency Requirement would not, in ICE’s view, materially strengthen the Department of Ecology’s jurisdiction over an ECH or its ability to supervise or monitor the activities of an ECH in connection with the Cap and Invest Program. ICE also notes that an ECH must be registered with the CFTC as a DCO and must notify the Department of Ecology of any change in that status.⁶ A DCO is subject to extensive requirements related to operations, risk management, governance, disclosure and reporting, as well as ongoing supervision by the CFTC. In light of these requirements, ICE does not believe the Residency Requirement would provide the Department of Ecology with any meaningful supervisory benefit and does not further the goal of the Cap and Invest Program being an effective tool in reducing greenhouse gases. Moreover, the Residency Requirement is counterproductive to the goals of the Cap and Invest Program because it would discourage ECHs, who operate nationally and globally, from participating and increase the costs to ECHs that do participate.

ICE also notes that the California Cap-and-Trade Program, under the regulations adopted by the California Air Resources Board (“CARB”), has an exemption from its residency requirement for the account representatives of an entity providing exchange clearing services.⁷ As such, ICE strongly recommends the Washington State Department of Ecology align with the California Cap-and-Trade Program and adopt an exemption for ECHs from the Residency Requirement.

Restrictions On Holding Allowances On Behalf Of Other Parties

The Proposal would require an ECH to hold allowances for its own use and would prohibit an ECH from holding allowances on behalf of another party having an interest in or control of the instrument.⁸ ICE believes this restriction would interfere with certain common clearing arrangements in which the central counterparty may be acting on behalf of a clearing member, the clearing member’s customers, another clearing organization or other relevant person. For example, ICEU (a DCO organized in the UK) currently acts as a central counterparty for WCA contracts, as noted above. Because the Proposal requires that an ECH be a US-domiciled entity,

section 7a-1).”

ICE notes that an ECH would be required to provide a document issued by the “Commodities Exchange Commission” confirming its registration status (and date of registration). Proposed WAC 173-446-052(1)(d). ICE presumes that the Washington State Department of Ecology intends to refer to the CFTC for this purpose and suggests that the final rules be so clarified.

⁴ WAC 173-446-130(8).

⁵ Proposed WAC 173-446-052(1)(e)(i).

⁶ See definition of “exchange clearing house” at Proposed WAC 173-446-020; Proposed WAC 173-446-052.

⁷ *Id.*

⁸ WAC 173-446-400(8).



ICE would likely seek to have ICUS, which is a US-domiciled DCO, become an ECH and act on behalf of ICEU in connection with delivery of allowances in settlement of WCA contracts.⁹ There may also be other situations, including in the management of a default, where a central counterparty could be deemed to be acting on behalf of another person. We note that under the regulations adopted by CARB in respect of the California Cap-and-Trade Program, ECHs are not subject to a similar restriction. Given the goal of facilitating ECHs participation in the Cap and Invest Program, ICE requests that this restriction be modified and not apply to ECHs.

Transfer Provisions

The Proposal would establish procedures for a registered entity to transfer allowances to an ECH. It is unclear however that there is a similar procedure for the transfer of allowances by the ECH to another party in settlement of the contract.¹⁰ ICE notes that an ECH will stand between the buyer and seller of allowances and upon physical settlement, the seller will deliver the allowances to the account of the ECH and the ECH will then deliver the allowances to the account of the buyer. ICE requests that the transfer procedures address transfers both to and from the ECH, recognizing the unique nature of the ECH and the intermediated delivery process.

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ICE appreciates to the opportunity to comment on the Proposal and respectfully requests that the Washington State Department of Ecology consider its comments.

Sincerely,

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

Kara Dutta
Vice President, Head of Legal, US Futures & Clearing
Intercontinental Exchange Inc.

⁹ ICUS and ICEU have used this arrangement with respect to delivery of allowances under other state programs.

¹⁰ Although Proposed WAC 173-446-412(3) contemplates the use by an ECH of allowances to "compensate" another registered entity, it is not clear to ICE that the term "compensate" necessarily includes all transfers that may be made by a clearing organization to another participant.