



March 31, 2025

Via Electronic Submission

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

Re: Request for Comment: Washington Cap and Invest Program Linkage Agreement

To Whom It May Concern:

Intercontinental Exchange Inc., on behalf of itself and its subsidiaries (collectively "ICE"), appreciates the opportunity to respond to the Washington Department of Ecology request for comment on the proposed Cap-and-Invest Linkage Agreement ("Linkage Agreement") which proposes to link the Washington State cap and invest program ("Cap and Invest Program") with the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms ("California Cap-and-Trade Program")¹ and the Quebec cap-and-trade system for greenhouse gas emission allowances ("C&T System") (the "RFC").²

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 both California Carbon Allowance ("CCA") and Washington Carbon Allowance ("WCA") futures contracts at ICE Futures U.S. ("IFUS") and clears CCA and WCA contracts at ICE Clear Europe ("ICEU"). IFUS is regulated by the 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. ICE has listed WCA contracts since June 2023, and market participants have traded contracts representing over 65,674,000 million tons of CO₂.

As operators of derivative markets that list and clear environmental contracts, ICE has a keen interest in the linking of the Cap and Invest Program with the California Cap-and-Trade Program and the C&T System. ICE therefore appreciates the opportunity to comment on the RFC.

¹ California Carbon Allowances (CCAs) are physically delivered greenhouse gas emissions allowances issued by the California Air Resources Board or a linked program under California Assembly Bill 32 "California Global Warming Solutions Act of 2006" and its associated regulations, rules and amendments, all together known as the "California Cap and Trade Program."

² On November 2, 2023, the Washington Director of Ecology announced a preliminary decision to pursue linkage with California and Quebec. As part of this announcement, the Washington State Department of Ecology requested public input as part of this process. [Cap-and-Invest Bill \(commentinput.com\)](https://www.commentinput.com)

Recommendations

The Linkage Agreement should require regulatory harmonization between the Cap and Invest Program, the California Cap-and-Trade Program and the C&T System.

ICE believes that the three cap-and-trade programs should have harmonized regulations and procedures to ensure proper integration and functioning. We note that the stated objective of the Agreement of the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions (“California-Quebec Agreement”)³ is for the parties to work jointly and collaboratively toward harmonization and integration. Further, Article 4 of the California-Quebec Agreement advances this goal by obligating the parties to examine their respective regulations and where differences are found to exist, determine if such elements need to be harmonized for the proper functioning and integration of the programs and, if needed, to collectively work on an approach. Similar language should be adopted and included in the Linkage Agreement.

In addition to the obligations set forth in the California-Quebec Agreement, the Linkage Agreement should expressly obligate the parties to work collectively to eliminate any procedural inconsistencies relating to the operation of the registry, registry accounts or the treatment or classes of participants. ICE believes the cap-and-trade programs would benefit from a cohesive approach.

The Linkage Agreement should require the Washington Department of Ecology to allow central counterparties to facilitate intermediated delivery of allowances and to adopt provisions of the California Cap and Trade Program related to clearing service providers.

As set out in prior ICE comment letters, the Cap and Invest Program does not allow DCOs to facilitate intermediated delivery of WCAs.⁴ Compliance entities must transfer WCAs bi-laterally between the buyer and seller. In contrast, the regulations for the California Cap-and-Trade Program,⁵ recognize DCOs unique role in the carbon markets and allow a DCO, such as ICEU, to facilitate the delivery of CCAs and California Carbon Offsets through the Compliance Instrument Tracking System Service (CITSS) registry.⁶ In addition, to support such intermediated delivery, California’s regulations also: (1) provide for a separate account type for clearing service providers, which is essential to facilitating intermediated delivery of allowances; and (2) allow clearing service providers to hold an unlimited number of allowances. By intermediating delivery, DCOs are better able to protect the interests of buyers and sellers by confirming performance of

³ See the Agreement of the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions between the California Air Resources Board and the Government du Quebec dated September 2013.

⁴ Please refer to the ICE Comment Letters to the Washington State Department of Ecology dated December 15, 2023 and September 27, 2024.

⁵ Title 17, California Code of Regulations (CCR), sections 95801-96022. Note: the California Cap-and-Trade Program also includes a limited exemption to this holding limit.

⁶ Section 95814(a)(1)(C) of the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (“California Cap-and-Trade Program”), an entity which provides clearing services to facilitate transactions between entities registered with the cap-and-trade program and who is a DCO registered with the CFTC, qualifies as a Voluntarily Associated Entity. In addition, Section 95831(a)(5)(A) and (B) provides a separate account type for exchange clearing holding accounts which allows entities to transfer compliance instruments to exchange clearing holding accounts for the purpose of transferring control to the clearing service provider. Further, Section 95920(b)(2) provides an exemption from the holding limit for allowances contained in exchange holding accounts.



each party before the transfer of the allowance or payment. An intermediated delivery structure also adds stability to the cap-and-trade market by guaranteeing anonymity and the fulfilment of contractual obligations.

Given the need for regulatory harmonization and the advantages of intermediated delivery, ICE strongly suggests the Washington Department of Ecology align with the California Cap-and-Trade Program and allow a DCO, such as ICEU, to facilitate the delivery of WCAs by adopting the provisions under the California Cap-and-Trade Program that establish an exchange holding account structure and clearing service provider holding limit exemption.

ICE appreciates the opportunity to comment on the RFC and respectfully requests that the Washington 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
VP, Head of Legal, US Futures Exchanges & Clearing
Intercontinental Exchange, Inc.