



December 15, 2023

Via Electronic Submission

California Air Resource Board
1001 I Street
Sacramento, CA 95814

Ministère de l'Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs
675 Boulevard Rene-Levesque Est
Quebec, Quebec G1R 5V7

Re: Request for Comment: MELCCFP and CARB Assessment of the Operating Parameters of the California Cap-and-Trade System

To Whom It May Concern:

Intercontinental Exchange Inc., on behalf of itself and its subsidiaries (collectively "ICE"), appreciates the opportunity to respond to the Ministère de l'Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs ("MELCCFP") and the California Air Resources Board's ("CARB") request for comment following the joint MELCCFP and CARB Cap-and Trade-Program Workshop held on November 16, 2023 (the "RFC").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 California Carbon Allowances ("CCA") futures contracts² at ICE Futures U.S. ("IFUS") and clears CCA contracts at ICE Clear Europe ("ICEU"). IFUS is regulated by the Commodity Futures Trading Commission ("CFTC") as a designated contract market 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. Since the launch of the first ICE CCA product in 2011, ICE has facilitated the delivery of 1,824,404 contracts or 1,824,404,000 allowances in the Compliance Instrument Tracking System Service ("CITSS") with a notional value of \$3,700,000,000.

ICE supports the CARB and MELCCFP's goal to ensure that the cap-and-trade program remains an effective tool to further the policy goal of reducing greenhouse gas emissions.³ As operators

¹ MELCCFP and CARB and Cap-and-Trade Program Workshop, November 16, 2023 and presentation at [Joint Cap-and-Trade Workshop Nov 16](#).

² 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".

³ California and Québec have operated a linked carbon market since Jan. 1, 2014. A combined market means that allowances are interchangeable between the programs and California and Quebec conduct joint auctions of allowances.



of derivative markets that list and clear environmental contracts, ICE has a keen interest in the California and Quebec cap-and-trade programs and associated regulations. ICE therefore appreciates the opportunity to comment on the RFC.

Recommendations

The provisions of the California Cap and Trade Program related to clearing service providers should be maintained.

Under 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”),⁴ 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. ICEU is a Voluntarily Associated Entity under the California Cap-and-Trade Program.⁵ 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. These provisions allow a DCO, such as ICEU, to facilitate the delivery of CCA and carbon offset futures contracts through the CITSS registry. By intermediating delivery, DCOs are better able to protect the interests of buyers and sellers by confirming performance of 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 fulfillment of contractual obligations.

ICE desires to continue intermediating deliveries of allowances between buyers and sellers and as such requests the CARB not amend Section 95814(a)(1)(C), Section 95831(a)(5)(A) and (B) and Section 95920(b)(2) during their assessment of the program.

The California Cap-and-Trade Program should be amended to allow clearing service providers to hold allowances for an unlimited period of time.

Section 95920 of the California Cap-and-Trade Program establishes a holding limit, which sets a restriction on the number of allowances that an entity or a group of entities with a direct corporate association may hold in their general holding account at one time. The holding limit applies to each registered entity including Voluntarily Associated Entities. The stated purpose of the holding limit is to make it more likely that there is an adequate supply of allowances available for compliance entities and to prevent participants from compiling allowances to impact pricing. Section 95920(b)(2) also provides an exemption from the holding limit for allowances held in exchange holding accounts. Given DCOs unique position as an intermediary between buyers and sellers, the California Cap-and-Trade Program rightly recognizes the need for a DCO holding limit exemption.

Section 95921(d)(2), however, requires all compliance instruments received by an exchange clearing holding account to be transferred within five days of receipt. To facilitate delivery between buyers and sellers, ICE requests the CARB amend Section 95921(d)(2) to exempt clearing service providers from the five-day requirement. DCOs act as a central counterparty to buyers

⁴ 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.

⁵ It should be noted that ICEU holds its account through ICE Clear US, a US DCO, as the CARB requires the account holder to be a US domiciled entity.



and sellers of CCA futures contracts. DCOs collect initial margin, in the form of cash or collateral, from market participants at the time a trade is initiated to protect buyers and sellers and to ensure the financial integrity of the futures contract. Initial margin collateralizes the futures position and protects the DCO and market participants from default or performance risks. Initial margin requirements could be reduced if DCOs were permitted to hold an unlimited number of allowances without any time limitation because it would allow a seller of a CCA futures contract to transfer its allowances to the exchange clearing holding account rather than posting cash as is required now. The allowances would be held as security by the DCO, and the market participant could deploy its cash elsewhere. Thus, removing the five-day time limitation will benefit market participants and compliance entities by lowering the capital requirements to trade CCA futures contracts and by providing greater capital efficiencies. This in turn will strengthen California's Cap and Trade Program by increasing participation and liquidity in the secondary futures market, by allowing market participants to transact more and by reducing the barrier to entry for futures market participation; all without compromising the risk-management function of the DCO.

Linkage of additional cap and trade programs should be subject to the same requirements set forth in the California Cap and Trade Program.

If the CARB and MELCCP desire to pursue linking the California Cap-and-Trade Program with the cap-and-trade programs of other states, any new state cap and trade program should adopt regulations that are the same as those adopted by CARB. Requiring linked programs to adopt the California-Cap and-Trade Program regulation will help promote the integrity of the CITSS registry and facilitate consistent delivery mechanisms.⁶ Specifically, ICE supports the linkage of Washington cap-and-trade program so long as the California Cap and Trade Program retains the current clearing service provider definition, exchange holding account structure and clearing service provider holding limit exemption.

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ICE appreciates the opportunity to comment on the RFC. ICE supports the CARB and MELCCP's goal to reduce greenhouse gas emissions and to ensure that the cap-and-trade program remains an effective tool to achieve the governments' emissions reduction targets. ICE respectfully requests that the CARB and MELCCP consider its comments in light of those goals.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth K. King".

Elizabeth K. King
Chief Regulatory Officer
Intercontinental Exchange, Inc.

⁶ ICE strongly recommends the CARB and MELCCFP require the state of Washington to adopt the same regulations and intermediated DCO delivery processes if the Washington cap-and-trade program links with the California and Quebec cap-and-trade programs.