25 April 2014

ICE Trade Vault Europe Limited & ICE Endex Comments on the Regulation No 1227/2011 on Wholesale Energy Market Integrity and Transparency ("REMIT") Draft Implementing Rules

ICE Trade Vault Europe Limited ("ICE Trade Vault Europe") and ICE Endex (collectively, "ICE") appreciate the European Commission's efforts in producing the draft implementing rules to REMIT ("draft implementing rules.") ICE believes that the draft implementing rules will facilitate sufficient preparation by counterparties, organised markets, trade matching or trade reporting systems and other market participants prior to the commencement of trade and order reporting under REMIT. To further refine and enhance these draft implementing rules, please see ICE's below recommendations:

I. *Clarify Definition of Market Participant* – REMIT defines market participant as "any person, including transmission system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets." This definition does not specify the inclusion of central counterparties ("CCPs"). Some CCPs enter into clearing agreements with their Clearing Members which state that for each transaction submitted to the CCP for clearing, two separate and distinct contracts arise automatically: one between the selling Clearing Member and the CCP, and one between the buying Clearing Member and the CCP. Accordingly, CCPs that enter into such contracts would seemingly fall under the definition of market participant and thus may have an obligation to report pursuant to REMIT. Thus, ICE seeks clarity on whether the European Commission intends to include CCPs in the definition of market participant.

II. *Consistency of Definitions In General* – ICE recommends that the European Commission align the definitions contained in the draft implementing rules with those of other prominent financial regulations, specifically Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("EMIR"). For example, the draft implementing rules define a transaction that is over-the-counter ("OTC") as "any transaction carried out outside an organised market;" whereas EMIR defines OTC as "a derivative contract the execution of which does not take place on a regulated market as within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third-country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC[.]" The synchronization of definitions will increase understanding among market participants and avoid unintended loopholes in corresponding regulations.

III. *Clarity on Obligations of Organised Market Places under Article 3(2)* – Article 3(2) of the draft implementing rules states that organised market places shall submit identifying reference data for each wholesale energy product they admit to trading to the Agency before trading commences in said product in a format defined by the Agency. Further, this provision states that organised market places shall submit updates of the information "as changes occur." Currently, organised market places undergo a significant amount of operational and legal work prior to listing a contract for trading because of their status as a regulated entity by one or many competent authorities, each

with their own set of rules and regulations. While these organised market places understand and appreciate the need to notify ACER of new wholesale energy contracts, ICE believes that the process for submission needs to be clearly articulated in the implementing rules so that organised market places are fully aware of the requirements and processes involved. Furthermore, ICE recommends that the use of the language "as changes occur" be specified. For example, ICE recommends that organised market places notify the Agency for Cooperation of Energy Regulators ("ACER" or the "Agency") within 10 business days following any changes to wholesale energy contracts. The provision of more exact language will ensure that ACER receives up to date information, while still allowing organised market places to incorporate these new requirements into their operational and legal workflows.

IV. *Article 5(1) Implementation* – ICE recommends that the European Commission provide more clarity on how market participants actually report those contracts specified in Article 5(1) of the draft implementing rules. For example, how does the European Commission expect market participants to populate those fields in Table 1 of Annex I that are not applicable to non-standard contracts? For consistency of reports, ICE recommends that the European Commission specify those fields of Table 1 of Annex I need not be populated when they are not applicable to non-standard contracts.

V. *Legal Effectiveness of ACER's User Manual* – ICE strongly recommends that the European Commission or ACER provide an affirmative statement on the legal effectiveness of ACER's user manual described in Article 5(2) of the draft implementing rules. While ICE believes that a trade reporting user manual is helpful to market participants, including the various ICE entities, the degree to which the manual is legally binding could be questioned. . An incongruity between the relevant rules and regulations and the aforementioned, non-binding documentation could thereby cause confusion in the market place and therefore, the European Commission and the Agency should strive for complete synchronization of these documents.

VI. *Clarity on Market Participants' Registration as Registered Reporting Mechanisms ("RRMs") when Reporting Directly to ACER* – Article 6(4)[1] of the draft implementing rules provides that market participants, or third parties reporting on their behalf, shall report details of wholesale energy contracts which have been concluded outside of an organised market. ICE recommends that the European Commission specify whether market participants and those third parties reporting on their behalf are allowed to report this information directly to ACER, or whether they are required to become RRMs. ICE believes that ACER should only receive information from RRMs to avoid an inundation of data from market participants who do not have the resources and/or expertise to adequately format and securely report data. Furthermore, third parties reporting on behalf of market participants should be required to comply with the RRMs framework to ensure that market participants' data is kept confidential and that third parties employ proper security processes and procedures.

[1] This recommendation also applies to those entities referred to in Article 6(7) of the draft implementing rules.

VII. *Removal of Market Participant from Article 9(5) and Article 9(9)* – ICE recommends that the European Commission remove the obligation of market participants to report to ACER information detailed in Articles 9(5) and 9(9) of the draft implementing rules. We believe that this obligation is particularly onerous on market participants and end users and should only be required of LNG and Storage System Operators.

VIII. *Publication of Inside Information by ACER* – Article 10(1) of the draft implementing acts provides that market participants shall provide to ACER web feeds to enable the regulator to collect the inside information disclosed on market participants' (or their service providers') websites. ICE recommends that ACER subsequently centrally publish this information in order to provide the marketplace, as a whole, with a "level playing field" of information on which to make commercial decisions.

In conclusion, ICE believes that the recommendations set forth above would provide the whole energy marketplace as a whole greater clarity on order and trade reporting to ACER. Should you have any questions or comments, please contact the undersigned.

Sincerely,

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