Intercontinental Exchange, Inc. (“ICE”) is a provider of marketplace infrastructure, data services and technology solutions to a broad range of customers including financial institutions, corporations and government entities. As an operator of regulated exchanges and clearing houses in major market centers around the world for a broad array of derivatives contracts and financial securities, ICE enables its customers to manage risk and raise capital. ICE's regulated exchanges include futures exchanges in the U.S., the U.K., the E.U., Singapore and (as of 2021) Abu Dhabi.

ICE Futures Europe and ICE Endex (‘the Exchanges’) welcome the opportunity to respond to the EBA consultation on draft RTS on the reclassification of investment firms as credit institutions (EBA/CP/2021/23) and support the policy maker’s objectives for financial markets to be robust and transparent and for Investment Firms (“IFs”) to be adequately capitalised. We believe these objectives can only be successfully achieved through a proportional and simplified framework. Our concern is that the draft RTS as proposed by the EBA would significantly raise the cost, complexity and regulatory burden of establishing a presence and/or operating in the EU. The approach proposed runs counter to the purpose of implementing the IFR/IFD, which was to establish a prudential regime proportional to the specific risks posed by the activities and business of investment firms operating in the EU.

In line with the level 1 text of the IFR/IFRD as agreed by the co-legislators, the Exchanges strongly believe that for the purpose of the calculation of the EUR 30 billion group threshold test, only assets held by EU investment firms and/or EU branches should be counted.

Exchange-traded derivatives (“ETDs”) markets play an integral economic role, enabling competition and supporting the resiliency and robustness of the real economy. ETDs facilitate price discovery and maintain accessible liquidity to enable customers to manage their risks. To deliver these services, exchanges require deep and varied sources of liquidity in order to function reliably and efficiently during times of market stress. End customers tend to all demand more liquidity at similar times, thus creating the potential for momentary imbalances of demand and supply in ETDs. A varied set of specialist investment firms, known as liquidity providers or market makers, are therefore vital in ensuring that customer demand for liquidity is met throughout the trading day.

There is a high probability that if the EBA RTS is introduced as proposed, some non-EU headquartered investment firms with operations in the EU will be forced either to stop operating in the EU or to cease undertaking dealing as principal / underwriting activities, as firms will not wish to bear the capital, liquidity, supervisory and prudential consequences of being regulated in the EU as if they were a bank. This would reduce

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competition and liquidity, and would be to the detriment of both EU and global capital markets and consumers.

We believe extending the EUR 30bn threshold calculation to include non-EU based entities within a group that carries out relevant activities, regardless of geographical location, is not in line with the intention of the establishment of the IFR, nor is it proportionate regulation. Firms should only be included in the group calculation if they pose a risk to the EU. A non-EU subsidiary of a non-EU entity, that does not operate in the EU and is not a subsidiary of an EU entity, does not create any such risk and as such should not be included in the group calculation to determine the appropriate prudential regime to apply to the EU based entity. To treat non-EU subsidiaries as if they do pose such a risk is to completely ignore corporate structures, which are often intentionally designed to limit risk sharing or contagion between subsidiaries of the same parent.

By including non-EU entities in the calculation of group assets, the EBA's draft RTS is inconsistent with the original Level 1 text set out in the IFR. It is also taking an approach that no other major regulator globally takes. As currently drafted, the revised draft RTS will lead to EU investment firms with small balance sheets, with relatively little activity in the EU and which are of no systemic importance, having to become licensed as a credit institution in the EU simply because of the balance sheet size of non-EU affiliates which have no activity in, and pose no risk to, the EU.

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