July 19, 2023

Via Electronic Submission

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: Vanessa Countryman, Secretary

Re: Covered Clearing Agency Resilience and Recovery and Wind-Down Plans (File Number S7-10-23)

Dear Ms. Countryman:

Intercontinental Exchange, Inc., on behalf of itself and its subsidiaries (collectively, "ICE") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or the "Commission") notice of proposed rulemaking relating to Covered Clearing Agency Resilience and Recovery and Wind-Down Plans (the "Proposal").[1]

ICE currently operates two clearing agencies registered with the Commission ("CAs"): ICE Clear Credit LLC ("ICE Clear Credit")[2] and ICE Clear Europe Limited ("ICE Clear Europe").[3] ICE Clear Credit and ICE Clear Europe are also derivatives clearing organizations ("DCOs") registered with the Commodity Futures Trading Commission ("CFTC"). ICE Clear Credit is designated as systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. ICE also operates ICE Clear US, Inc. and ICE NGX Canada Inc., which are DCOs registered with the CFTC, and ICE Clear Netherlands and ICE Clear Singapore, which are registered clearing organizations in other jurisdictions.

As an operator of clearing houses, ICE is keenly interested in the issues raised by the Proposal. Each ICE clearing house maintains recovery and wind down plans particular to its products, members, and overall strategy and which reflect the interests of market participants and stakeholders. ICE therefore appreciates the opportunity to comment on the Proposal.

ICE generally supports the Commission's proposal to codify certain requirements and guidance for CA resilience and for recovery and wind-down plans. ICE nonetheless believes that certain aspects of the Proposal are overly prescriptive and are unrealistic considering the practical limitations on a CA's ability to plan for extreme loss scenarios.

[1] Covered Clearing Agency Resilience and Recovery and Wind-Down Plans (File Number S7-10-23, RIN 3235-AN19), Exchange Act Release No. 34-97516, 88 Fed. Reg. 34708 (May 30, 2023).
[2] ICE Clear Credit has been designated as a systemically important derivatives clearing organization pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").
[3] ICE Clear Europe is also an authorized as a central counterparty under the European Market Infrastructure Regulation (EMIR) and a recognized clearing house under English law.

1. Resilience Enhancement—Intraday Margin

The Proposal would amend Commission Rule 17ad-22(e)(6)(ii) to require a CA to monitor intraday exposures on an ongoing basis and to have the authority and operational capacity to make intraday margin calls as frequently as circumstances warrant including when specific risk thresholds are breached or relevant cleared products display elevated volatility. ICE agrees with the Commission that intraday monitoring of exposure and intraday margin calls are important risk management tools for CAs. However, ICE does not believe the Commission has considered the costs associated with the procyclical effects that intraday margin calls can have, potentially exacerbating credit and liquidity concerns with clearing members and in extreme cases causing market participant defaults. This impact runs counter to internationally agreed principles that clearing organizations should mitigate the effects of procyclicality on their participants.[4] For this reason, ICE believes though that CAs should continue to have the flexibility to determine the appropriate timeframe for monitoring and tailoring intraday margin calls in light of its market characteristics.

ICE is concerned that the Proposal would require CAs to make intraday margin calls when pre-defined risk thresholds are breached or when markets display "elevated volatility" and take away any discretion that CAs now exercise. While intraday margin calls have risk-management benefits, they can also impose significant costs on clearing members and market participants through sudden and unpredictable liquidity demands. For this reason, ICE believes it is important for CAs to have the ability to make intraday margin calls but allow them the discretion on when and how to use this authority under the particular circumstances.

2. Resilience Enhancement—Sources of Pricing Information.

The Proposal would amend Rule 17ad-22(e)(6)(iv) to require CAs to have procedures and models for addressing circumstances in which price or other relevant data is not readily available or reliable so that the CA can continue to meet its obligations. Such procedures must include the use of price data or inputs from an alternate source or, if the CA does not use an alternate source, the use of an alternate risk-based margin system that does not rely on the unavailable or unreliable input.

ICE agrees with the Commission on the importance of available and reliable pricing data to support the operation of the risk-based margin model. ICE further agrees that it is appropriate for a CA to have plans and procedures in place to deal with foreseeable unavailable or unreliable pricing data. ICE clearing houses currently have policies and procedures in place designed to address circumstances where pricing sources are either unavailable or unreliable. ICE disagrees however with the proposed additional requirement that a CA have advance plans to use an alternate risk-based margin system because of the unavailability or unreliability of a particular input.[5] Such a requirement would impose a significant burden on a CA solely for the purpose of addressing a problem with an input that may be transitory. As the Commission is aware,

[4] See Basel Committee on Banking Supervision, Committee on Payments and Market Infrastructures (CPMI), Board of the International Organization of Securities Commissions (IOSCO), Margin Dynamics in Centrally Cleared Commodity Contracts in 2022 (May 2023); CPMI-IOSCO Principles for Financial Market Infrastructures, Principles 5 and 6 (April 2012).

[5] Covered Clearing Agency Resilience and Recovery and Wind-Down Plans (File Number S7-10-23, RIN 3235-AN19), Exchange Act Release No. 34-97516, 88 Fed. Reg. 34708 (May 30, 2023) at 34743.

development of a margin system is a significant undertaking involving considerable time, expense and consultation with clearing members, regulators, and other stakeholders. Further, ICE is not aware of circumstances where a CA has been unable to address a problem with an input price through its normal business practices and procedures. As a result, ICE does not believe the Commission has articulated a problem (other than a theoretical one) that it's Proposal is designed to address and has not recognized the considerable costs to CAs, clearing firms and other market participants that would be required to develop and implement alternative margin models to address a remote and theoretical problem with price or other data inputs. As such, ICE suggests removing that clause from proposed Rule 17ad-22(e)(6)(iv).

3. Recovery and Wind-Down Plans.

ICE recognizes the importance of recovery and wind-down planning and ICE CAs maintain such plans consistent with Commission and other relevant regulatory regulations, including the CFTC, Bank of England and CPMI-IOSCO Principles for Financial Market Infrastructures. ICE generally supports the Commission's Proposal to codify its existing guidance for recovery and wind-down plans in Rule 17ad-26 consistent with international standards and the requirements of other regulators.[6] ICE nonetheless believes that certain aspects of the Proposal are unnecessarily prescriptive or may be impractical.

A. Identification of Critical Payment, Clearing and Settlement Services (Proposed Rule 17ad-26(a)(1)).

ICE supports the requirement to identify critical payment, clearing and settlement services and to address continued use of such services during a recovery or wind-down. Although ICE recognizes it is necessary to identify staffing resources to implement recovery and wind-down plans, ICE does not believe it is necessary to identify specific personnel or positions required to be maintained. The CA should have flexibility to determine the staff needed in a particular situation including taking into consideration the availability and willingness of personnel to perform services at the time of a recovery or wind-down. As such, ICE suggests the Commission amend the Proposal to clarify that the CA is not required to identify specific personnel or positions required to be maintain.

B. Identification of Service Providers (Proposed Rule 17ad-26(a)(2)).

ICE recognizes the importance of identifying relevant service providers for recovery and wind-down planning. The Proposal would require the CA's recovery and winddown plan to "identify and describe any service providers upon which the covered clearing agency relies to provide its critical services." ICE believes that the proposed definition of "critical services" would include third parties that are "in any way related to the provision of a critical service" and believes this definition is overly broad. In particular, the definition would cover service providers that are only tangentially

[6] With respect to the proposed definition of "orderly wind-down" in proposed Rule 17ad-26(b), ICE questions whether it is appropriate to specify that the termination or transfer would be done "in a manner that would not increase the risk of significant liquidity, credit or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system." It is possible that despite the best efforts of all involved, a wind-down of a distressed CA could increase the risk of liquidity, credit or operational problems. Although the minimization of such problems should be a goal of any wind-down, ICE does not believe the possibility of increased risk of such problems should in itself disqualify a wind-down from being viewed as orderly.

related to clearing services and have no practical impact on recovery or wind-down planning which would be burdensome for CAs and provide minimal, if any, benefit.

As an alternative, ICE recommends that the Commission consider the approach used by the Federal Deposit Insurance Corporation (FDIC) for U.S. banks in their resolution plans. Under this approach, "critical services" have been more narrowly defined as "services and operations of the [entity], such as servicing, information technology support and operations, human resources and personnel that are necessary to continue the day-to-day operations of the [entity]."[7] ICE believes such an approach would focus on the most relevant service providers and would also be consistent with standards of another financial regulator that acts as a resolution authority.

The proposed requirement would also require CAs to ensure that service providers continue to perform in the event of a recovery or wind-down scenario. ICE does not believe it is possible for a CA to "ensure" that a service provider would perform. To be sure, the CA can and should analyze whether the service provider has any termination rights or other contractual basis for not performing in a recovery or wind-down situation. A CA should also assess and document how it would handle the situation where a service provider had a right to terminate or otherwise not perform in a recovery or wind-down situation. Accordingly, ICE suggests that the provisions of proposed Rule 17ad-26(a)(2) be modified to require that the CA evaluate whether the service provider would continue to perform in the event of a recovery or orderly wind-down and address how it would handle any termination or alteration of performance by the service provider.

C. Identification of Rules and Procedures to be Used in a Recovery or Wind-Down (Proposed Rule 17ad-26(a)(5)).

ICE does not object to the requirement that recovery and wind-down plans identify relevant rules, policies and procedures and tools to be used as part of the plan implementation. ICE agrees with the Commission's decision to not mandate or prescribe the use of tools in certain situations and believes that CAs should have the discretion to determine the appropriate mix of tools to be used.

D. Notification of the Commission (Proposed Rule 17ad-26(a)(7)).

ICE agrees that notification to the Commission of a CA's decision to implement the recovery or wind-down plan is appropriate. The reference in the Proposal to notify the Commission when the CA is "considering" initiating recovery or wind-down, however, is vague and could lead to uncertainty about when notification is required. For clarity and consistent application across CAs, ICE believes that the trigger for notification to the Commission should be the formal decision (by the governing board or other relevant body) to activate the recovery or wind-down plan, as appropriate.

E. Testing (Proposed Rule 17ad-26(a)(8)).

ICE agrees that testing of the recovery and wind-down plans is generally appropriate. ICE does not object to the proposed annual frequency of testing, provided that the recovery and wind-down plan testing can be combined with existing default testing. Otherwise, ICE is concerned that an additional testing requirement could be unnecessarily burdensome, particularly for clearing

[7] See 12 CFR 360.10(b)(5).

members who are likely to have testing obligations at multiple clearing organizations. ICE also notes that involvement of clearing members is not necessarily appropriate for certain scenarios/tools including scenarios and tools related to general business losses or other non-default losses. CAs should have flexibility to determine the appropriate approach to testing and clearing member involvement in such cases. As such, ICE suggests that the Commission remove or qualify the reference to "requiring the covered clearing agency's participants . . . to participate in the testing of its plans" in Commission Rule 17ad-26(a)(8).[8]

4. Coordination.

ICE notes that certain ICE clearing houses are dually registered both as a clearing agency with the SEC and as a DCO with the CFTC. The CFTC has separately proposed rules relating to recovery and wind-down planning for DCOs under its jurisdiction.[9] Given the subject matter overlap of the SEC Proposal and the CFTC recovery and wind down proposal, ICE strongly urges coordination between the agencies to ensure that any such final rules are structured so that dually registered clearing houses can efficiently comply with both agencies' rules.

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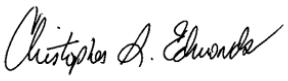
ICE appreciates the opportunity to comment on the Proposal. ICE supports the goals of the Commission in clarifying and codifying requirements for resilience of CAs and recovery and wind-down plans. As noted in this letter, ICE believes that certain aspects of the Proposal are overly prescriptive or may be impracticable and should be revised in a manner consistent with the Commission's goals.

Sincerely,



Chris Edmonds
Chief Development Officer
Intercontinental Exchange Inc.

cc: Honorable Chairman Gary Gensler
Honorable Commissioner Hester M. Peirce
Honorable Commissioner Caroline A. Crenshaw
Honorable Commissioner Mark T. Uyeda
Honorable Commissioner Jaime Lizárraga

[8] ICE notes that CFTC has proposed a testing requirement which includes participation of clearing members "where the plan depends on their participation" in their recent recovery and winddown proposal. The SEC should consider adopting this same standard. See Derivatives Clearing Organization Recovery and Orderly Wind-Down Plans; Information for Resolution Planning (RIN 3038-AF16) (June 7, 2023) Proposed Rule 39.39(c).

[9] See Derivatives Clearing Organization Recovery and Orderly Wind-Down Plans; Information for Resolution Planning (RIN 3038-AF16) (June 7, 2023).

Haoxiang Zhu, Director, Division of Trading and Markets
Elizabeth L Fitzgerald, Assistant Director, Division of Trading and Markets
Jesse Capelle, Special Counsel, Division of Trading and Markets