



December 7, 2020

Via Electronic Submission

Vanessa Countryman
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. S7-13-12, Proposed Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With the Portfolio Margining of Swaps and Security-Based Swaps That Are Credit Default Swaps

Dear Ms. Countryman:

Intercontinental Exchange, Inc., on behalf of itself and its subsidiaries (collectively, “ICE”) appreciates the opportunity to comment on the U.S. Securities and Exchange Commission (“SEC”) proposed order (the “2020 Proposed Order”),¹ which would grant conditional exemptions under the Securities Exchange Act of 1934 (the “Exchange Act”) in connection with the portfolio margining of cleared swaps and security-based swaps that are credit default swap (“CDS”) contracts. As noted by the SEC, it is intended that the 2020 Proposed Order would supersede and replace its 2012 order granting conditional exemptions in the portfolio margining of cleared CDS contracts (the “2012 Order”).²

ICE currently operates two securities clearing agencies registered with the SEC: ICE Clear Credit LLC (“ICC”) and ICE Clear Europe Limited (“ICEU”).³ ICC and ICEU are also derivatives clearing organizations registered with the Commodity Futures Trading Commission (“CFTC”), and ICC is designated as systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Both ICC and ICEU have successfully cleared swaps and security-based swaps and implemented portfolio margining of cleared swaps and security-based swaps in the same account pursuant to Orders of the CFTC and SEC.⁴ As such, ICE strongly supports portfolio margining for cleared swaps and security-based swaps and appreciates the opportunity to comment on the 2020 Proposed Order.

¹ Proposed Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Portfolio Margining of Swaps and Security-Based Swaps that are Credit Default Swaps, 85 Fed. Reg. 70657 (Nov. 5, 2020).

² Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with Portfolio Margining of Swaps and Security-based Swaps, Exchange Act Release No. 34-68433, 77 FR 75211 (Dec. 19, 2012).

³ ICE Clear Europe is authorized as a central counterparty under the European Market Infrastructure Regulation (EMIR) and a Recognised Clearing House under English law.

⁴ Pursuant to the Commodity Exchange Act (“CEA”) and the 2012 Order, swaps customer positions are held in an account established and maintained in accordance with Section 4d(f) of the CEA, and clearing



ICE welcomes the SEC's 2020 Proposed Order which demonstrates further coordination with the CFTC on swaps markets regulation. ICE believes a vital and efficient CDS market for both swaps and security-based swaps is essential to market participants and their ability to appropriately and efficiently hedge and manage risk. Essential to the continued efficiency of the CDS market is portfolio margining of related positions in a single account. Portfolio margining also offers benefits to market participants in terms of more prudent risk management and greater collateral efficiencies by establishing appropriate margin requirements that reflect the entire financial risk in a portfolio of different, yet related, contracts. The confidence market participants have in the current structure, including the 2012 Order, has allowed increased innovation in the cleared CDS product portfolio and increased voluntary adoption of security-based swaps clearing. ICE believes this continued expansion of additional cleared products is completely consistent with the initial global regulatory goals of reducing systemic risks.

Accordingly, ICE fully supports the SEC's general approach of modifying the 2012 Order in line with the cleared CDS market's experience over the past eight years, and with the goal of further improving the efficiencies of the existing portfolio margining framework for cleared CDS instruments. Our comments focus on the elements of the 2020 Proposed Order that strive to achieve further alignment and efficiencies of the SEC and CFTC regulatory regimes across related CDS products.

ICE Supports the Elimination of Conditions Requiring the Option for CDS Portfolio Margin Program in Securities Accounts

ICE strongly supports the SEC's proposal to eliminate the conditions of the 2012 Order relating to requiring the option to portfolio margin in an account established in accordance with Section 3E of the Exchange Act (an "SEC SBS account"). ICE agrees with the SEC's observations regarding the lack of market demand to expand the current cleared CDS portfolio margining structure to include portfolio margining in SEC SBS accounts. In our view, the current cleared CDS portfolio margining structure is operating effectively and efficiently; and there has been no expressed interest by market participants to undertake the material additional costs and risky operational changes to expand the portfolio margining offering to SEC SBS accounts.

Since the launch of CDS clearing at each of ICC and ICEU in early 2009, clearing activity has consistently grown.⁵ While voluntary clearing of security-based swaps contracts has grown significantly over time, a significant majority of current CDS clearing activity remains in CDS index instruments, which are regulated by the CFTC and a portion of which are subject to regulatory clearing mandates. Since the 2012 Order, all such activity within the ICE clearing houses has been portfolio margined in CFTC cleared swaps accounts. The availability of

member proprietary credit default swap positions are maintained separately in cleared swaps proprietary account established pursuant to the CEA.

⁵ Since the launch of CDS clearing in 2009, the ICE clearing houses have cleared an aggregate of approximately \$144 trillion in gross notional value.



portfolio margining program under the 2012 Order has been the most critical factor in the increase in voluntary clearing of security-based swaps.

The current CDS portfolio margining structure is now well established and has performed well throughout the growth of the cleared CDS market. The program has encouraged clearing of CDS products, including voluntary clearing of security-based swaps products, and has allowed market participants to more efficiently deploy collateral assets as the program computes portfolio margin requirements to better reflect the overall risk of a CDS portfolio. Furthermore, requiring that the current portfolio margining structure also be offered as an option in SEC SBS accounts would lead to material modification to existing systems and create unnecessary duplicative processes to accommodate such accounts, and such modifications would impose material costs to all market participants. Given the established, well-functioning and cost-effective current portfolio margining structure, ICE agrees with the SEC's assessment that there has been a lack of market interest in introducing an alternative portfolio margining approach for cleared CDS instruments in an SEC SBS account. ICE also agrees with the SEC's stated belief that maintaining the current conditions of the 2012 Order to offer an SEC SBS account structure would impose unnecessary and redundant costs to the marketplace without defined benefits. As a result, ICE fully supports the SEC's proposal to eliminate conditions (a)(1) and (a)(2) in the 2012 Order that require the development of an option for portfolio margining of credit-based swaps and security-based swaps in an SEC SBS account.

ICE further supports the SEC's proposed conditions of the exemptive relief applicable to clearing agencies as presented in the 2020 Proposed Order. Such conditions largely maintain the well understood *status quo* with respect to conditions (a)(3), (4) and (5) of the 2012 Order. As noted herein, ICE believes the existing portfolio margining structure for cleared CDS instruments has operated safely, effectively and efficiently and, accordingly, ICE is in agreement with the SEC's efforts to uphold the current model.

Conclusion

ICE appreciates the opportunity to submit comments on the 2020 Proposed Order. As an operator of global futures and derivatives markets, ICE understands the importance of ensuring the utmost confidence in its markets, and we take seriously our obligations to mitigate systemic risk. ICE shares the SEC's goals of providing a regulatory framework for robust risk management services and capital efficient portfolio margining to cleared CDS contracts. ICE respectfully requests that the SEC and its staff consider these comments in light of those goals.

Respectfully submitted,


Chris Edmonds (Dec 7, 2020 13:07 CST)

Chris Edmonds



Global Head of Clearing and Risk
Intercontinental Exchange, Inc.

cc: Honorable Chairman Jay Clayton
Honorable Commissioner Hester M. Peirce
Honorable Commissioner Elad L. Roisman
Honorable Commissioner Allison H. Lee
Honorable Commissioner Caroline A. Crenshaw
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