



January 12, 2022

Via Electronic Submission

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

Re: File Number S7–23–22 – Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities, 87 Fed. Reg. 64610 (Oct. 25, 2022)

Intercontinental Exchange Inc., on behalf of itself and its subsidiaries (“ICE”), appreciates the opportunity to comment on the notice of proposed rulemaking by the U.S. Securities and Exchange Commission (the “Commission” or the “SEC”), titled “Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities” (the “Treasury Clearing Proposal” or the “Proposal”).¹ The SEC proposes rule changes enhancing risk management practices for clearing agencies in the U.S. Treasury market and facilitating additional clearing of U.S Treasury market transactions.

ICE has a successful and innovative history of clearing exchange-traded and OTC derivatives across a spectrum of asset classes, including financial, energy, and agriculture products. ICE currently operates two clearing agencies registered with the Commission (“SEC Registered 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 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 global clearing houses, ICE strongly believes in the benefits of clearing for the sound operation of financial markets and for the protection of market participants. As the Proposal recognizes, the risk-reducing benefits of central clearing have long been acknowledged by users of exchange-traded derivatives and other financial products, and the pre-existing regulatory framework and efficacy of the clearing model throughout even the most challenging financial

¹ 15 U.S.C. 78a et seq., Exchange Act Release No. 95763 (Oct. 25, 2022), 87 Fed. Reg. 64610 (October 25, 2022).

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 a recognized clearing house under English law and a recognized central counterparty under the European Market Infrastructure Regulation (EMIR).



situations made it the natural foundation of the financial reforms put forward since the financial crisis in 2008. Clearing has consistently proven to be a fundamentally safe and sound process for managing systemic risk.

In connection with the markets increased reliance on clearing, clearing houses and market participants have worked to ensure that the clearing process is robust and resilient and supported by adequate financial, risk management, and operational resources. The CPMI/IOSCO Principles for Market Infrastructure (PFMI) represent the internationally agreed-to framework for achieving these goals and are designed to ensure that fundamental protections apply internationally and reduce the risk of regulatory arbitrage. National regulators in G-20 jurisdictions have implemented the key aspects of the PFMI into their regulatory frameworks. This process has set a robust standard across numerous jurisdictions for the regulation of clearing houses.

ICE understands the concerns that the SEC has identified about the current operation of the U.S. Treasury market and believes the SEC's proposal is a workable solution to the problems the SEC has identified. The expansion in the use of clearing for U.S. Treasury securities transactions, including repurchase and reverse repurchase agreements involving U.S. Treasury securities, would reduce risks in the U.S. Treasury market in the same way as clearing has in other asset classes and help increase market liquidity and transparency. Below are ICE's views on certain legal, regulatory, technical and operational points that we recommend the SEC consider to improve the effectiveness of the Proposal.

Multiple Clearing Agencies

As noted by the Commission and others, central clearing of Treasury securities offers numerous benefits to the market.⁴ Clearing agencies have the expertise and experience to manage defaults and are required to establish a transparent framework of policies and procedures to ensure the clearing agency has the authority and capacity to deal with a default. In addition, increased central clearing of U.S. Treasury securities increases multilateral netting of transactions thereby reducing operational, liquidity and settlement risks and affords greater access for non-dealer market participants to the U.S. Treasury markets.

ICE however notes that there are currently no clearing agencies that offer all the Treasury clearing services that the SEC's proposal would require and ICE believes that the competitive market for clearing services is well-placed to develop solutions to fill this need. In order to help ensure effective implementation of the Proposal if adopted, ICE believes that any final rule should expressly acknowledge the potential for multiple Treasury clearing agencies and importantly, prohibit a clearing agency's rules from restricting or impeding in any way their members ability to clear U.S. Treasury securities, repurchase, and reverse repurchase agreements at another

⁴ See Proposal, 87 Fed. Reg. at 64628; see also N. Liang and P. Parkinson, *Enhancing Liquidity of the U.S. Treasury Market Under Stress*, Hutchins Center Working Paper #72 (Dec. 2020) (suggesting potential benefits of wider use of central clearing for Treasury securities); D. Duffie, *Still the World's Safe Haven? Redesigning the U.S. Treasury Market after the COVID-19 Crisis*, Hutchins Center Working Paper #62 (June 2020) (suggesting consideration of central clearing as a means to improve Treasury market robustness and efficiency).



clearing agency. This would provide market participants with the ability to choose the clearing agency that best meets their needs.

Segregation and Client Protection

The Proposal would establish a segregation framework similar to that used in other cleared markets. Under the Proposal, margin for customer positions would be calculated and collected separately from proprietary positions and would be held in a segregated manner.⁵ ICE supports this structure.

Treasury Clearing Access

The Proposal would require securities clearing agencies to adopt policies and procedures to facilitate indirect participation in clearing to permit non-participants to clear U.S. Treasury trades. ICE supports the Proposal's reliance on the clearing agencies to develop the model and infrastructure and believes clearing agencies should have flexibility to innovate in this area.⁶ ICE also notes that many market stakeholders may prefer an agency model or some form of limited membership with a clearing agency. Any final Rule should support the adoption of these approaches. In any case, ICE supports the Commission's approach of not limiting through its rules the model that a clearing agency develops.

Amendments to Rule 15c3-3

ICE supports the Proposal which would amend Commission Rule 15c3-3 to allow a broker-dealer to deduct from the reserve requirement client margin that is on deposit with a clearing agency for cleared Treasury transactions.⁷ As a result, broker dealers would be permitted to pass through customer margin for cleared Treasury transactions in a capital efficient manner.⁸ Additionally, the proposed amendments to Commission Rule 15c3-3 are subject to several conditions including limiting margin to cash and U.S. Treasuries, requiring the clearing agency to calculate margin requirements on a gross basis, requiring customer margin to be maintained in segregated accounts and using customer margin exclusively to cover amounts owed on customer positions.⁹ ICE is supportive of these proposed requirements, which are similar to margin and segregation requirements in other cleared markets.

However, ICE does not support the proposed condition that would require the return of excess margin within one business day. ICE does not believe it is necessary to require the clearing agency to return excess margin within a one day (or any) regulatorily-mandated timeframe. ICE also notes this requirement would be inconsistent with practice for other cleared products and is unnecessary for customer protection, particularly since the Commission would have to approve

⁵ Proposed Rule 17Ad-22(e)(6)(i), 87 Fed. Reg. at 64682.

⁶ Proposed Rule 17Ad-22(e)(18)(iv)(C), 87 Fed. Reg. at 64682.

⁷ See proposed Rule 15c3-3a, Note H, 87 Fed. Reg. at 64680.

⁸ See 87 Fed. Reg. at 64637.

⁹ Proposed Rule 15c3-3a, Note H, 87 Fed. Reg. at 64680.



clearing agency segregation rules before a broker-dealer could make a deduction from the reserve requirement.¹⁰

Conclusion

ICE appreciates the opportunity to comment on the Proposal and the engagement of the Commission and its staff in the rulemaking process. ICE shares the Commission's goals of expanding the use of clearing to support the sound operation of financial markets, including the U.S. Treasury market. ICE respectfully requests that the Commission consider its comments in light of those goals.

Respectfully submitted,

A handwritten signature in blue ink that reads "Christopher S. Edmonds". The signature is fluid and cursive.

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¹⁰ Proposed Rule 15c3-3a, Note H(b)(2)(v) and (3), 87 Fed. Reg. at 64680.