



January 16, 2024

Via Electronic Submission

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Notice of Proposed Rulemaking: Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (RIN 7100-AG65)

Dear Ms. Misback:

Intercontinental Exchange Inc., on behalf of itself and its subsidiaries (collectively “ICE”), appreciates the opportunity to respond to the notice of proposed rulemaking related to the Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies¹ (“G-SIB Surcharge” or “Proposal”) issued by the Board of Governors of the Federal Reserve System (“the Federal Reserve”).

ICE operates regulated marketplaces for the listing, trading and clearing of a broad array of derivatives contracts and financial securities, such as commodities, interest rates, foreign exchange and equities as well as corporate and exchange-traded funds, or ETFs. We operate multiple trading venues, including 13 regulated exchanges and six clearing houses, which are strategically positioned in major market centers around the world, including the U.S., U.K., European Union, or EU, Canada, Asia Pacific and the Middle East. ICE’s six clearing houses are regulated as follows:

- ICE Clear Credit (“ICC”) and ICE Clear U.S.² are regulated by the CFTC as Derivative Clearing Agencies (“DCO”) under the Commodity Exchange Act (“CEA”). The Financial Stability Oversight Council has designated ICE Clear Credit as a systemically-important financial market utility under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. ICC is also regulated by the Securities and Exchange Commission (“SEC”) as a clearing agency because it clears security-based swaps.
- ICE Clear Europe Limited (“ICE Clear Europe”), which is primarily regulated in the U.K. by the Bank of England as a Recognized Clearing House, is also subject to regulation by the CFTC as a DCO and by the European Securities and Markets Authority (“ESMA”).

¹ Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y-15), 88 Fed. Reg. 60,385 (Sept. 1, 2023).

² ICE Clear U.S. has elected to be a “subpart C” DCO under Commission Rule 39.31.



- In Canada, ICE NGX is recognized as an exchange and clearing house by the Alberta Securities Commission (“ASC”) and is also registered by the CFTC as a Foreign Board of Trade (“FBOT”) and as a DCO.
- In the EU, ICE Clear Netherlands is an authorized central counterparty (“CCP”) and is regulated by the Dutch National Bank (“DNB”) and Authority for Financial Markets (“AFM”).
- In Singapore, ICE Clear Singapore is an approved clearing house supervised by the Monetary Authority of Singapore (“MAS”).

ICE appreciates the opportunity to comment on the Proposal which would modify the capital surcharges for U.S. bank holding companies that are treated as global systemically important banks (“G-SIBs”). ICE closely follows regulatory reforms that have the potential to impact the centrally cleared ecosystem. ICE support the goals of the G-SIB surcharge framework to ensure the largest and most interconnected banks have adequate capital to maintain financial stability. ICE is however concerned regarding the Proposal’s impact on client clearing and the centrally cleared derivatives markets.

Concerns with the Proposal

The Federal Reserve is proposing to amend its rule that identifies and establishes risk-based capital surcharges for G-SIBs. The Proposal would require a banking organization to include the notional amount of its guarantees of client performance to a central counterparty (“CCP”) for client cleared derivatives in three indicators—(i) intra-financial system assets, and intra-financial system liabilities in the interconnectedness category and (ii) notional amount of OTC derivatives in the complexity category.³ Specifically, the Proposal would add over-the-counter (OTC) derivatives client clearing exposures arising from a G-SIB’s role as a clearing member to the Complexity and Interconnectedness Indicators used in determining the G-SIB Surcharge. Since the inception of the G-SIB Surcharge in the U.S., the Complexity and Interconnectedness indicators have specifically excluded transactions in which a clearing member G-SIB acts as an agent for a client’s OTC derivatives cleared transaction. Agency clearing is the dominant model under which clearing members operate in the U.S. derivatives markets.⁴ The provisioning of intermediated client clearing services would thus increase a bank’s overall G-SIB score and increase capital requirements for the entire bank. As a result, the Proposal would likely increase capital requirements for U.S. G-SIBs providing clearing services, reduce clearing capacity and willingness of G-SIBs to provide these services and conflict with the longstanding public policy objective to promote central clearing.

Client Clearing Implications

Clearinghouses play an important role in financial markets and are a critical market infrastructure which foster financial stability in global markets. Clearing has consistently proven to be a fundamentally safe and sound process for managing systemic risk. The risk-reducing benefits of central clearing have long been recognized by users of exchange-traded derivatives (futures), and the performance of the clearing model throughout even the most challenging financial situations made it the foundation of financial reforms. Observers frequently point to non-cleared derivative

³ *See id.*

⁴ Although the existing framework would include client clearing under the principal model in the three indicators, that model is not widely used in the U.S. markets.



contracts as a significant factor in the broad reach and complexity of the 2008 financial crisis, while noting the relative stability of cleared markets. The commitments of the Group of 20 nations (“G-20”) after the financial crisis highlighted central clearing as a fundamental reform to reduce risk and increase transparency, market integrity and stability. Those commitments have been implemented in the Dodd-Frank Act and global financial reforms. In the years since the financial crisis, clearing has been the backbone of financial reform and provides an essential service allowing market participants to hedge risk.

In the case of centrally cleared derivatives, clearing members in the U.S markets typically act as agents for their clients, in effect guaranteeing the performance of the clients to the CCP and assuming any payment obligation that would arise in a client default. To mitigate the risk associated with potential future exposures of these client cleared derivative transactions, initial margin is pledged by the client to the clearing member and then placed in a segregated account whereby client money is held separate from the clearing member’s own money. Customer initial margin is then passed on to the CCP where it remains outside ownership and control of the clearing member. By law and regulation, these initial margin resources may only be used to offset the client exposure guaranteed by the clearing member. The Proposal’s failure to recognize the cleared derivative market structure would increase systemic risk by disincentivizing banks and their customers away from central clearing to manage their risks and could result in using riskier bi-lateral transactions or not hedging at all.

The reduced ability for U.S. bank affiliated clearing members to provide client clearing services due to increased G-SIB charges may exacerbate concerning trends in the industry. Many clearing members have left the business over the past several years and a smaller clearing member community adversely impacts the financial markets by concentrating risk while reducing the availability of clearing services to end-users. End-users depend on clearing services to mitigate their business risks and a lack of access to these services results in increased costs or reduced availability of hedging which in turn increases the cost of goods for consumers. The proposed changes in the G-SIB Surcharge have the potential for firms to further reduce client clearing services.

The Proposal would disincentivize central clearing and is thus inconsistent with the goal of the G-20 to incentivize central clearing. The proposed rules do not fully consider the market structure of central clearing and the robust protections for end-users that are provided under law and regulation. Under the U.S. regulatory framework, clearing members are required to collect collateral from their customers to offset the potential future exposures arising from their customers’ derivatives positions at a CCP, and further to segregate those positions and collateral from the clearing member’s own positions and collateral. The Federal Reserve is proposing to include client cleared derivatives in the interconnectedness or complexity category for clearing members operating on the agency model (which is most or all clearing members in the U.S. markets), which may result in additional capital charges on client clearing activities. Client cleared derivatives present very low levels of risk to clearing members because clients are required to post initial and variation margin to guard against movements in market prices. Contrary to the risk-reducing nature of client cleared derivatives, the G-SIB Surcharge Proposal would treat client cleared derivatives as posing equal risk as bilateral OTC derivatives without explanation or supporting data.

The increased G-SIB surcharges may also increase systemic risk by lowering the probability of successful porting of solvent customers of a defaulting clearing member of a CCP. For background, in the event of a clearing member default and to maintain market stability and



preserve risk management capabilities for clients by minimizing portfolio liquidation, a CCP will often look to port the positions and margin of solvent customers of the defaulting clearing member to another solvent clearing member. During a period of financial stress in which clients may need to be ported to solvent clearing members, a bank-affiliated clearing member may not be in a position to accept, or willing to accept, ported customers' positions if the additional capital requirements to take the client ported positions are onerous. If porting to a new clearing member cannot be arranged, the customer positions and margin at the defaulting clearing member will need to be liquidated causing disruption for those customers and the markets generally. The increased G-SIB surcharges thus may increase liquidation risk for customer portfolios in the event of a clearing member default because of the risk that non-defaulting clearing members may be unable or unwilling to accept ported customers. In addition, the resulting need to liquidate client positions may cause significant price deterioration in markets as bank-affiliated clearing members will likely also decline to bid on the portfolio being liquidated for fear of the punitive additional capital requirements. The increased likelihood of forced liquidation during a market stress event can elevate overall systemic risk and exacerbate volatility in an already-stressed market.

For the reasons stated above, the Federal Reserve should retain the existing treatment of the agency model for client cleared derivatives under the GSIB surcharge framework, which aligns with the actual risk presented by this activity, international standards, and longstanding public policy objectives.

Conclusion

ICE appreciates the opportunity to comment on the Proposal. As noted in this letter, ICE believes that certain aspects of the Proposal fail to consider the centrally cleared derivative market structure and could unnecessarily and adversely affect that structure. ICE encourages the Federal Reserve to consider capital reform that more appropriately reflects the structure and financial stability benefits of centrally cleared markets.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth K. King".

Elizabeth K. King
Global Head of Clearing & Chief Regulatory Officer
Intercontinental Exchange, Inc.

