

**Congress of the United States**  
**Washington, DC 20515**

July 5, 2016

Mr. Jeffrey Sprecher  
Chief Executive Officer  
Intercontinental Exchange  
5660 New Northside Dr.  
Atlanta, GA 30328

Dear Mr. Sprecher:

We are writing to request information on the recovery and resolution plans of ICE Clear Credit LLC.

Ice Clear Credit LLC is registered with the Commodities Futures Trading Commission (CFTC) as a derivatives clearing organization (DCO) and has been designated as “systemically important” by the Financial Stability Oversight Council. Like the nation’s largest banks, systemically important DCOs are required to create resolution plans that would be implemented as needed to guide their orderly failure. However, the public lacks information about DCO resolution plans, and we do not know whether the plans are credible. Because it is concerning that the resolution plans of several of the largest banks were recently deemed not credible, we are seeking information to understand whether the resolution plans for DCOs are not credible as well.

The 2007-2008 financial crisis occurred in part due to the fact that, at that time, there was no requirement that derivatives be traded through central clearinghouses, and as a result, the nation’s largest financial institutions were subject to significant counterparty risk on those trades. The Financial Crisis Inquiry Commission found that “derivatives counterparties had played an important role in the run on Bear Stearns,” which led to wider financial stress.<sup>1</sup>

The Dodd-Frank Act addressed this problem by requiring most bilateral swaps to be cleared through a DCO.<sup>2</sup> DCOs, colloquially known as central clearinghouses, sit between two traders and assume the counterparty risk originally held by the traders. This arrangement minimizes counterparty risk and represents a significant step towards ensuring a safe and stable financial system. As a result of international financial reform, it is estimated that more than 70% of traded derivatives worldwide are centrally cleared.<sup>3</sup>

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<sup>1</sup> Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report*, at 300 (January 2011).

<sup>2</sup> 7 U.S.C. § 2(h).

<sup>3</sup> Board of Governors of the Federal Reserve System, *Remarks as Prepared for Delivery by Governor Jerome H. Powell at the Clearing House Annual Conference* (Nov. 17, 2015) (online at [www.federalreserve.gov/newsevents/speech/powell20151117a.htm](http://www.federalreserve.gov/newsevents/speech/powell20151117a.htm)).

However, this arrangement engenders the risk that a DCO might fail because of an increased concentration of risk at the clearinghouse, causing significant threats to the financial system. As Federal Reserve Governor Jerome Powell noted, the “failure of a large clearing member that is also a key service provider could disrupt the smooth and efficient operation of one or multiple [central clearinghouses], and vice versa.”<sup>4</sup> The Dodd-Frank Act put in place requirements for DCOs to ensure their continued operation, and three have been designated as systemically important derivative clearing organizations (SIDCOs) by the Federal Reserve Board.<sup>5</sup> This systemically important designation carries with it additional requirements, which require the designated clearinghouses to appropriately account for and internalize risk.

One requirement is that SIDCOs draft recovery and wind down plans to be used if they fail.<sup>6</sup> Systemically important financial institutions, such as large banks or designated non-banks, are also generally required to create wind down plans, also known as “living wills,” to assist regulators in continuing business operations and avoid systemic risk if the firm were to fail. A SIDCO’s plan must address credit losses or liquidity shortfalls and losses from general business, operational, or other risks.

Unlike the large banks, SIDCOs are not required to release any public information about their plans.<sup>7</sup> Banks provide the public with an executive summary of their plans together with material information about “the covered company’s resolution strategy, covering such items as the range of potential purchasers of the covered company, its material entities and core business lines.” However, the public receives no information about SIDCO plans. While the Federal Reserve Board and Federal Deposit Insurance Corporation (FDIC) assess and make a public determination about whether the largest banks’ plans are credible, no such information is provided about SIDCOs’ plans.<sup>8</sup> In fact, there are no requirements that SIDCOs provide their plans to the Federal Reserve Board or the Commodity Futures Trading Commission (CFTC) for review.

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<sup>4</sup> Board of Governors of the Federal Reserve System, *Remarks as Prepared for Delivery by Governor Jerome H. Powell at the “The New International Financial System: Analyzing the Cumulative Impact of Regulatory Reform,” 17<sup>th</sup> Annual International Banking Conference* (Nov. 6, 2014) (online at [www.federalreserve.gov/newsevents/speech/powell20141106a.htm](http://www.federalreserve.gov/newsevents/speech/powell20141106a.htm)).

<sup>5</sup> See Board of Governors of the Federal Reserve System, *Designated Financial Market Utilities* (online at [www.federalreserve.gov/paymentsystems/designated\\_fm\\_u\\_about.htm](http://www.federalreserve.gov/paymentsystems/designated_fm_u_about.htm)) (designating the Chicago Mercantile Exchange, Inc.; ICE Clear Credit L.L.C.; and the Options Clearing Corporation).

<sup>6</sup> 17 C.F.R. § 39.39.

<sup>7</sup> See 12 C.F.R. § 243.8(c).

<sup>8</sup> Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, *Agencies Announce Determinations and Provide Feedback on Resolution Plans of Eight Systemically Important, Domestic Banking Institutions* (Apr. 13, 2016) (online at [www.federalreserve.gov/newsevents/press/bcreg/20160413a.htm](http://www.federalreserve.gov/newsevents/press/bcreg/20160413a.htm)).

On April 13, 2016, the Federal Reserve Board and the FDIC deemed that the resolution plans of five of the eight largest banks were not credible, and they required those five banks to remediate their deficiencies by October 1. This raises significant concerns about the resolution plans of other financial institutions, particularly those that have significant business interaction with the large banks. However, we have no information as to whether SIDCO plans are credible.

Since your firm plays a systemically important role as a derivative clearing organization, we request that you provide us with your firm's final recovery and resolution plans. We also request that you respond to the following questions:

- (1) Have you submitted your DCO's resolution and recovery plan to the CFTC and Federal Reserve Board for review?
- (2) If so, have those regulators provided you with comments on those plans, and if so, what were the nature of those comments?
- (3) Have you modified those plans based on comments provided by the regulators, and if so, how?
- (4) What events trigger your resolution plan's execution?
- (5) What entity provides clearing responsibilities if your DCO is unable to do so?
- (6) To what extent, and how, are your DCO's services and financing isolated from your firm's other activities?
- (7) Does your DCO have independent capital and ready liquidity?
- (8) If so, what is its capital ratio and liquidity coverage ratio?
- (9) What systemic risks have you identified that impact your DCO?
- (10) What are your firm's plans to address those systemic risks?
- (11) Does your DCO engage in stress testing? If so, what are your DCO's stress testing procedures, and what are the results of those stress tests?

Please provide this information by July 26, 2016. We also request a briefing from the appropriate official from your DCO by July 26.

If you have any questions about this request, please contact Todd Phillips with Rep. Cummings at (202) 225-4741, Brian Cohen with Sen. Warren at (202) 224-4543, or Milan Dalal with Sen. Warner at (202) 224-2023. Thank you for your cooperation with this matter.

Mr. Jeffrey Sprecher  
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Elijah E. Cummings  
Ranking Member  
House Committee on Oversight and  
Government Reform

Sincerely,



Elizabeth Warren  
Ranking Member  
Subcommittee on Economic Policy  
Senate Committee on Banking,  
Housing, and Urban Affairs



Mark Warner  
Ranking Member  
Subcommittee on Securities,  
Insurance, and Investment  
Senate Committee on Banking,  
Housing, and Urban Affairs

cc. The Honorable Jason Chaffetz, Chairman  
House Committee on Oversight and Government Reform