

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68867; File No. SR-ICEEU-2013-02)

February 7, 2013

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Revise Rules Related to Legal Segregation with Operational Commingling

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on February 6, 2013, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes as described in Items I and II below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule changes is to implement the enhanced margin segregation model for cleared swaps that the Commodity Futures Trading Commission (“CFTC”) adopted in Part 22 of the CFTC regulations (generally referred to as “legal segregation with operational commingling” or “LSOC”). As result of the LSOC requirements, ICE Clear Europe principally proposes to (i) introduce new procedures for allocating initial margin to the positions carried for each customer of an FCM/BD Clearing Member on a customer-by-customer basis, (ii) introduce new procedures for calling for, holding and returning customer margin in light of the requirement to allocate initial margin on a customer-by-customer basis, and (iii)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

change the net sum calculation for defaulting Clearing Members to limit ICE Clear Europe's ability to use customer margin in the event that an FCM/BD Clearing Member defaults, consistent with the requirements of LSOC. The LSOC requirements are intended to mitigate the risk that one customer of an FCM/BD Clearing Member would suffer a loss because of a default by another customer. ICE Clear Europe also will be removing existing provisions of the ICE Clear Europe Rules ("Rules") that addressed the holding of excess margin for customers of such Clearing Members and will not be necessary in ICE Clear Europe's initial implementation of LSOC.

Specifically, ICE Clear Europe proposes to amend Parts 9 and 16 of the Rules, as well as related definitions, to incorporate Part 22 of the CFTC Regulations. The amendments to Part 9 of the Rules change the net sum calculation for defaulting FCM/BD Clearing Members. The amendments to Part 16 of the Rules contain the procedures for allocating initial margin on a customer-by-customer basis and related procedures for calling for, holding and returning such margin. The other proposed changes in the Rules reflect conforming changes and drafting clarifications, and do not affect the substance of the ICE Clear Europe Rules or forms of cleared products.

Another purpose of the proposed rule changes is to adopt a set of settlement and notices terms ("Settlement and Notices Terms") that will apply to all Customer-CM CDS Transactions and, where specified, to the clearing arrangements between an FCM/BD CDS Clearing Member and its FCM/BD Customers and, in each case, to the related CDS Contracts. The Settlement and Notices Terms will be published by ICE Clear Europe as an exhibit to the Rules but will not form part of ICE Clear Europe's Rules, Procedures or Standard Terms. The Settlement and Notices Terms adopt certain notice and related procedures for the customer clearing model for

CDS products (in which customers of ICE Clear Europe Clearing Members will have the ability to clear CDS products through ICE Clear Europe Clearing Members).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for proposing the LSOC changes to the Rules and the Settlement and Notices Terms exhibit. The text of these statements may be examined at the places specified in Item III below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.³

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule amendments in connection with the LSOC model are intended to update the particular characteristics of the Rules applicable to the segregation of customer margin. Specifically, the proposed rule changes affect Parts 9 and 16 of the ICE Clear Europe Rules, and related definitions, by providing, in summary, that initial margin allocated to a particular customer's positions may not be used to cover losses arising from another customer's positions. Each of these changes is described in detail as follows.

Under Rules 905(f) and 906(a), the net sum calculation with respect to "L" has been revised to clarify that certain expenses resulting from a defaulting Clearing Member are allocated to the House Account of the defaulting Clearing Member rather than a Customer Account. Further, in Rule 906(a) of the Rules, the net sum calculation with respect to "M" has been revised to state that for a Swap Customer Account of an FCM/BD Clearing Member, any property provided by or on behalf of the Defaulter as initial or original margin (or similar

³ The Commission has modified the text of the summaries prepared by ICE Clear Europe.

margin) allocated to a particular Customer Swap Portfolio (i.e., the positions of a particular customer) and proceeds thereof can only be included in the net sum calculation to the extent of obligations to ICE Clear Europe in respect of Open Contract Positions in such Customer Swap Portfolio in accordance with CFTC Rule 22.15.

A new definition for “Customer Swap Portfolio” has been added under Rule 1602(f) to accommodate the LSOC model, including the customer-by-customer tracking of positions. Under the proposed new Rule 1604(e), ICE Clear Europe has incorporated new CFTC Rule 22.15, which limits ICE Clear Europe’s use of the initial margin provided in respect of customer swap positions. Revisions to Rule 1605(d) eliminate various provisions that are now covered by CFTC regulations and are no longer necessary with the implementation of the LSOC framework. To comply with LSOC, under new Rule 1605(h), ICE Clear Europe will calculate the initial margin requirement separately for each Customer Swap Portfolio and compare it to the value of initial margin provided by the FCM/BD Clearing Member and allocated by ICE Clear Europe under CFTC Rules to that portfolio. In each margin cycle, ICE Clear Europe will call for additional initial margin for each Customer Swap Portfolio for which there is a shortfall. ICE Clear Europe will separately make available for return to the FCM/BD Clearing Member any excess initial margin held with respect to a Customer Swap Portfolio. Further, under the proposed new Rule 1605(i), ICE Clear Europe states that it will not accept the deposit of Margin from a FCM/BD Clearing Member in respect of Contracts or Open Contract Positions recorded in a Swap Customer Account in excess of the amount required by ICE Clear Europe, within the meaning of CFTC Rule 22.13(c).

The Settlement and Notices Terms are an exhibit to the Rules that is intended to complement the customer clearing model for CDS products whereby customers of ICE Clear

Europe Clearing Members have the ability to clear CDS products through ICE Clear Europe Clearing Members.

The Settlement and Notices Terms establish the processes for dealing with certain aspects of Physical Notices in the limited circumstances under the Rules and CDS Procedures in which physical, as opposed to electronic, notices may be delivered. “Physical Notices” mean those notices that may be delivered in connection with CDS Contracts and, where applicable, Customer-CM CDS Transactions (other than Electronic Notices and other equivalent electronic notices under Customer-CM CDS Transactions which are or are required pursuant to the Rules or CDS Procedures to be given through Deriv/SERV). Physical Notices include Manual MP Notices (and equivalent notices under Customer-CM CDS Transactions) and notices relating to physical settlement delivered pursuant to or in connection with a CDS Contract or Customer-CM CDS Transaction, including all notices in connection with the physical settlement processes to which the Settlement and Notices Terms apply. Further, for restructuring credit events, there is an electronic notice facility provided by DTCC which is of mandatory use under ICE Clear Europe's rules. Physical Notices relating to restructuring credit events may only be used in the unlikely event of a DTCC or clearing house technology failure or a self-certified clearing member technology failure, as a back-up methodology. Other physical notices are only relevant to physical settlement of CDS, which is nowadays considered a highly unlikely eventuality, following the introduction of ISDA protocols aimed at ensuring that CDS contracts are auction settled where there is sufficient interest in a particular name. The Settlement and Notice Terms also specify certain procedures for fall back settlement of CDS Contracts in the limited circumstances where normal settlement under the Rules and CDS Procedures does not apply.

ICE Clear Europe believes that the proposed LSOC rule amendments and the Settlement and Notices Terms are consistent with the requirements of Section 17A of the Act and the regulations thereunder applicable to ICE Clear Europe. The LSOC rule amendments are intended to adopt a more comprehensive segregation model for the protection of customer property, and thus further the protection of investors and the public interest. ICE Clear Europe believes such segregation also will facilitate the prompt and accurate clearance of transactions. ICE Clear Europe believes the Settlement and Notices Terms also are designed to improve the operational procedures for cleared trades, and thereby promote the prompt and accurate clearance of transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed Settlement and Notices Terms and the proposed rule changes to implement the CFTC's Part 22 regulations would have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the LSOC proposed amendments and Settlement and Notices Terms have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2013-02 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2013-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2013-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act⁴ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule changes are consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act, and the rules and regulations thereunder applicable to ICE Clear Europe.⁵ Specifically, the Commission finds that the proposed LSOC rule amendments are consistent with Section 17A(b)(3)(F) of the Act, which requires, among other things, that the rules of a registered clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest.⁶ Additionally, the Commission finds that the proposed Settlement and Notices Terms also are consistent with Section 17A(b)(3)(F) of the Act, which further requires that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.⁷

In its filing, ICE Clear Europe requested that the Commission approve the proposed rule changes on an accelerated basis for good cause shown. ICE Clear Europe believes there

⁴ 15 U.S.C. 78s(b).

⁵ 15 U.S.C. 78q-1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

is good cause for accelerated approval because the LSOC rule changes are required in order to be in compliance with Part 22 of the CFTC Regulations in connection with clearing of customer positions in swaps. ICE Clear Europe will not be able to commence customer clearing in CDS or other swaps (including those CDS subject to mandatory clearing under the CFTC's rules) without implementing the LSOC rule amendments. Furthermore, ICE Clear Europe has stated that the changes relating to the Settlement and Notices Terms are part of the implementation of ICE Clear Europe's CDS customer clearing framework recently approved by the Commission and are therefore also important to the commencement of customer clearing in CDS.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁸ for approving the proposed rule changes prior to the 30th day after the date of publication of notice in the Federal Register because, as a derivatives clearing organization registered with the CFTC, ICE Clear Europe must amend certain of its rules to comply with CFTC's Part 22 Regulations, and the Settlement and Notices Terms are an important part of its implementation of customer clearing in CDS.

⁸ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ICEEU-2013-02) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).