

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68734; File No. SR-ICEEU-2013-01)

January 25, 2013

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Extend Member Liability for Payment Obligations to the Clearing House

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 10, 2013, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change described in Items I and II below, which Items have been substantially prepared by ICE Clear Europe. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe submits proposed amendments to Parts 2 and 3 of its Rules and CDS Procedures to clarify a Clearing Member’s ongoing payment obligation to ICE Clear Europe with respect to electronic payment transfers. ICE Clear Europe proposes to amend Part 3 of the ICE Clear Europe Rules to state when a Clearing Member’s payment obligation has been satisfied or discharged. Part 2 would be revised to further clarify the application of the amendments to Part 3. The other proposed changes in the ICE Clear Europe CDS Procedures reflect drafting clarifications in Section 8.8(a), and do not affect the substance of the ICE Clear Europe CDS Procedures. All capitalized terms not defined herein are defined in the Rules or CDS Procedures.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Clearing Agency'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 the proposed rule change and discussed any comments it received on the proposed rule change. 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 such statements.<sup>3</sup>

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In response to issues raised by the Bank of England as overseer of its payment arrangements, ICE Clear Europe is submitting proposed amendments that are intended to reduce the unsecured credit risk to ICE Clear Europe in its payment system. The proposed amendments re-allocate this unsecured credit risk by, among other things, stating the conditions under which Clearing Members' payment obligations are deemed to have been satisfied or discharged and clarifying the liability with respect to payments not meeting those conditions.

ICE Clear Europe proposes to revise Rule 301(f) in its Rulebook so Clearing Members are deemed to have satisfied or discharged payment obligations when three conditions are met. First, Rule 301(f)(i) would require that the relevant electronic transfer of funds is actually received by the Clearing House in unencumbered, fully cleared and fully available funds in ICE Clear Europe's Clearing House Account at an Approved Financial Institution ("AFI"), provided

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<sup>3</sup> The Commission has modified the text of the summaries prepared by ICE Clear Europe pursuant to discussions with ICE Clear Europe by telephone on January 22, 2013 (among Patrick Davis, Head of Legal and Company Secretary, ICE Clear Europe; Gena Lai, Senior Special Counsel, SEC; and Zachary Hunter, Attorney-Advisor, SEC) and on January 24, 2013 (among the same parties, with the addition of Geoffrey B. Goldman, Partner, Shearman & Sterling LLP).

that the AFI is not subject to an Insolvency. Second, Rule 301(f)(ii) would provide that if the AFI is not a Concentration Bank, the AFI must have fully performed its concentration function in respect of the payment in question, by completing the transfer of funds from ICE Clear Europe's account at the AFI to ICE Clear Europe's concentration account at a Concentration Bank (which Concentration Bank is not subject to an Insolvency). Payments transferred to ICE Clear Europe's concentration account at a Concentration Bank must be in the form of unencumbered, fully cleared and fully available funds, representing (a) in the case of a payment under ICE Clear Europe Rule 302(a), a net amount reflecting all payments processed through that AFI in respect of all calls on or payments to all Clearing Members using that AFI under Rule 302(a) in respect of the Business Day in question; or (b) in the case of a payment not under ICE Clear Europe Rule 302(a) (for example, a payment for an intra-day margin call or an ad hoc transfer of additional cash Permitted Cover to ICE Clear Europe), the amount received from the Clearing Member that is seeking to make the payment in question. Third, Rule 301(f)(iii) would provide that, for payments under Rule 302(a) only, the AFI (including if it is a Concentration Bank) has made all relevant payments under Rule 302(a) due to the Clearing Member and other Clearing Members (in its capacity as an AFI or Concentration Bank) in respect of the Business Day in question.

ICE Clear Europe also proposes to revise Rule 301(f) to clarify ICE Clear Europe's, its Clearing Members', and an AFI's rights or liabilities in the event the AFI fails to make a payment referred to under Rule 301(f). Specifically, Rule 301(f) would provide that nothing in Rule 301(f) restricts or prevents ICE Clear Europe or any Clearing Member from making any claim against an AFI which has failed to make a payment under Rule 301(f). In particular, the Clearing House will not be deemed to have had any loss, liability or shortfall made good or

whole vis-à-vis an AFI by virtue of any further payment by a Clearing Member in addition to an attempted payment not credited to its account as a result of Rule 301(f). Additionally, an AFI which has failed to make any payment under Rule 301(f) will remain fully liable to the Clearing House or relevant Clearing Member for any such failed payment or account balance notwithstanding a reimbursement or additional payment as between a Clearing Member and the Clearing House.

Further, ICE Clear Europe proposes to revise Rule 301(f) to clarify ICE Clear Europe's procedures in the event a payment fails to meet the requirements of Rule 301(f)(i) – (iii). In essence, ICE Clear Europe must first notify the Clearing Member of the failed payment and request that it make the payment using alternative means before ICE Clear Europe may declare that the Clearing Member is subject to an Event of Default. ICE Clear Europe would not declare an Event of Default unless and until the Clearing Member failed to make the latter payment (other than solely due to the operation of either Rule 301(f)(ii) or Rule 301(f)(iii)). In addition, Rule 301(f) would provide that ICE Clear Europe will return any funds recovered from the AFI if the Clearing Member satisfied its payment obligations through an additional payment that complies with the Rule.

In particular, Rule 301(f) would provide that, in the event that (a) a payment is received into an ICE Clear Europe Account at an AFI but the requirements of Rule 301(f)(ii) or Rule 301(f)(iii) are not satisfied; (b) an affected Clearing Member has satisfied its payment obligations through an additional payment which complies with the requirements of Rule 301(f); and (c) ICE Clear Europe makes a recovery or irrevocably receives any part or full payment from the AFI into one of its accounts at a Concentration Bank (which Concentration Bank is not subject to an Insolvency), then ICE Clear Europe will make payment to affected Clearing

Members in respect of the recovery or receipt actually made by ICE Clear Europe, net of ICE Clear Europe's costs and expenses, pro rata in proportion to the amounts of the original missed payments of each affected Clearing Member.

ICE Clear Europe also proposes to add new Rule 301(l) to provide clarification regarding the satisfaction of ICE Clear Europe's obligations to its Clearing Members, providing that ICE Clear Europe's obligations have been satisfied or discharged when the relevant Credit/Debit Payment Transfer Order arises. Specifically, new Rule 301(l) provides that "[a]ny payment due to a Clearing Member from ICE Clear Europe will be recognized as having been duly made, and ICE Clear Europe's obligations in respect thereof shall be treated as having been satisfied and discharged, at the time that the relevant Credit/Debit Payment Transfer Order arises relating to such payment (or, if the Clearing Member or AFI is not a Participant, would have arisen were the Clearing Member or AFI to have been a Participant), provided that ICE Clear Europe has reason to believe that the Clearing House Account from which payment is to be made has sufficient funds or credit on Account." This provision, like the proposed amendments to Rule 301(f), is intended to re-allocate the risk of unsecured credit losses, rather than concentrating it with ICE Clear Europe.

Finally, Rule 209(c) would be revised to state that neither Rules 301(f)(ii)-(iii) nor Rule 301(l) shall apply to payments made or received after the Insolvency or an Event of Default as aforementioned in respect of ICE Clear Europe.

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the regulations thereunder applicable to it. Specifically, ICE Clear Europe believes that the proposed rule change will improve the finality

and accuracy of its daily settlement process and reduce the risk to Clearing House of settlement failures, thereby permitting the accurate clearing and settlement of cleared transactions.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule change would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

ICE Clear Europe has solicited written comments relating to the proposed rule change, but has not received any written comments to date. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2013-01 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.

All submissions should refer to File Number SR-ICEEU-2013-01. 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 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website

([https://www.theice.com/publicdocs/regulatory\\_filings/011013\\_ICEU\\_SEC.pdf](https://www.theice.com/publicdocs/regulatory_filings/011013_ICEU_SEC.pdf)). 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-2013-01 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 Act<sup>4</sup> 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 change is consistent with the

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<sup>4</sup> 15 U.S.C. 78s(b).

requirements of the Act, in particular the requirements of Section 17A of the Act,<sup>5</sup> and the rules and regulations thereunder applicable to ICE Clear Europe. Specifically, the Commission finds that the proposed rule change is 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.<sup>6</sup> As the proposed rule change is intended to reduce unsecured credit risk to ICE Clear Europe in its payment systems, by means of stating the conditions under which Clearing Members' payment obligations are deemed to have been satisfied or discharged and clarifying the liability with respect to payments not meeting those conditions, the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe.

ICE Clear Europe has requested that the Commission approve the proposed rule change on an accelerated basis. The Bank of England has indicated that implementation of the proposed rule change would mitigate to a significant extent the unsecured credit risk to which ICE Clear Europe is currently exposed.<sup>7</sup> Based on the foregoing, the Commission finds good cause for accelerating approval.

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<sup>5</sup> 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).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> Teleconference on January 11, 2013, among Robleh Ali, FS-PID Oversight Team, Bank of England; Joseph Kamnik, Assistant Director, SEC; Gena Lai, Senior Special Counsel, SEC; and Zachary Hunter, Attorney-Advisor, SEC.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ICEEU-2013-01) is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).