

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73667; File No. SR-ICEEU-2014-23)

November 21, 2014

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change to Finance Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 14, 2014, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(4)(ii)⁴ thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The principal purpose of the proposed change is to permit certain third party collateral purchase arrangements.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

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 IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

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

1. Purpose

The purpose of the proposed rule change is to modify the Finance Procedures to permit certain third party collateral purchase arrangements with respect to Triparty Collateral provided by F&O Clearing Members in respect of a Proprietary Account. Under such an arrangement, an F&O Clearing Member would, with the permission of the Clearing House, enter into a third party collateral purchase agreement (a "Purchase Agreement") with the Clearing House and a third party collateral purchaser (the "TPCP") designated by the Clearing Member. The TPCP may be an affiliate of the Clearing Member. Under the terms of the Purchase Agreement, if the Clearing House declares the Clearing Member to be a Defaulter under the Rules, then the Clearing House will offer to sell that Clearing Member's Triparty Collateral to the TPCP, for a specified price established by the Clearing House based on its determination of the market value of the collateral. The TPCP will have a specified period (expected to be two hours) to accept or reject the offer to sell. If the TPCP accepts the offer, the Clearing House will sell the Triparty Collateral to the TPCP at the specified price. The proceeds of such sale would be applied by the Clearing House in the default management process and net sum calculation in the same manner as any other liquidation of margin of a Defaulter. If the TPCP rejects the offer to sell, or does not respond within the specified period, the offer will expire, and the Clearing House will apply

or liquidate the Triparty Collateral pursuant to the Rules as part of its usual default management process.

These arrangements would not apply to (i) margin, collateral or permitted cover provided by F&O Clearing Members other than Triparty Collateral, (ii) any margin, collateral or permitted cover provided with respect to a customer account, or (iii) any margin, collateral or permitted cover provided by CDS or FX Clearing Members in respect of CDS or FX Contracts, respectively.

The Clearing House proposes to permit third party collateral purchase arrangements to provide a pre-arranged alternative to collateral liquidation in the default management process for F&O Clearing Members. Certain F&O Clearing Members have requested that such arrangements be made available in order to facilitate their own collateral management activities. For example, ICE Clear Europe understands that for certain corporate groups, collateral to be transferred to the Clearing House may have been acquired by an affiliated entity (rather than the Clearing Member itself) through repurchase or similar transactions, and such entity may want to have the ability to reacquire the relevant collateral in order to settle such other transactions, even following a Clearing Member default. ICE Clear Europe has determined that the proposed collateral purchase arrangement is consistent with its own default management requirements. In this regard, if the TPCP accepts the offer, the Clearing House will be able to sell the relevant Triparty Collateral at the current market price, as determined by the Clearing House. The ability to sell such collateral to a willing buyer may avoid the need to liquidate such collateral in the market, and accordingly reduce time and transaction costs. In addition, the TPCP is granted only a short period of time (currently expected to be two hours) to respond to the Clearing House's offer, and if it rejects the offer or does not respond within such period, the Clearing House

retains all of its existing rights and remedies with respect to the Triparty Collateral. ICE Clear Europe thus does not believe the proposed two-hour delay would adversely affect its ability to liquidate collateral or otherwise manage the default of an F&O Clearing Member.

To implement these arrangements, ICE Clear Europe proposes to adopt a new Paragraph 3.32 of the Finance Procedures, the text of which is as follows (new text underlined):

3.32 At the request of an F&O Clearing Member, the Clearing House may, in its sole discretion, agree to enter into a collateral purchase agreement with a third party collateral purchaser and such F&O Clearing Member, under which the Clearing House will agree to offer for sale to the third party collateral purchaser Triparty Collateral deposited by such F&O Clearing Member for a Proprietary Account in respect of F&O Contracts, in the event of the F&O Clearing Member being declared a Defaulter under the Rules,. The Clearing House shall have no obligation to enter into any such agreement, and the identity of any such third party collateral purchaser must be approved by the Clearing House pursuant to criteria established by the Clearing House. Any such collateral purchase agreement must be in the form approved by the Clearing House for such purposes from time to time.

Paragraph 3.32 will thus authorize, but not require, the Clearing House to enter into a Purchase Agreement at the request of an F&O Clearing Member relating to Triparty Collateral provided with respect to a Proprietary Account. The Clearing House would need to approve the particular arrangement, including the TPCP. Paragraph 3.32 also contemplates that the Clearing House will develop and approve its own form of agreement to be used for this purpose (subject to modification in particular cases) that is consistent with the Clearing House's default management requirements. With respect to approval of TPCPs, the Clearing House will establish criteria focusing on the credit standing of the entity as well as considerations relating to legal enforceability of the arrangement, treatment of the arrangement in relevant insolvency proceedings and similar matters relevant to maintaining the integrity of the Clearing House's default management process.

2. Statutory Basis

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.⁶ Section 17A(b)(3)(F) of the Act⁷ requires, among other things, that the rules of a 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 and 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. In addition, Rule 17Ad-22(d)(11)⁸ requires that the clearing agency establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a clearing member default.

The third party collateral purchase arrangements will use the existing Clearing House procedures for Triparty Collateral, which is held with a triparty collateral service provider such as Euroclear Bank. As a result, the proposed rule change will not adversely affect the manner in which collateral provided by a Clearing Member is currently held, prior to default, and accordingly will not adversely affect the safeguarding of securities or funds in the custody or control of ICE Clear Europe or for which it is responsible, within the meaning of Section 17A(b)(3)(F) of the Act.⁹ It bears noting in this regard that the proposed arrangements are

⁵ 15 U.S.C. 78q-1.

⁶ 17 CFR 240.17Ad-22.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 240.17Ad-22(d)(11).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

limited to the Proprietary Accounts of F&O Clearing Members, and would not apply to any Customer Account. The arrangement also would not apply to CDS Clearing Members or FX Clearing Members acting in their capacities as such.

In terms of default management, as discussed above, ICE Clear Europe believes that the proposed amendments would not interfere with its ability to manage a Clearing Member default, consistent with the standards in the Act and Rule 17Ad-22. Under its existing Rules, the Clearing House has broad rights to apply and liquidate collateral provided by a Clearing Member following its default.¹⁰ In ICE Clear Europe's view, the proposed arrangements provide an additional means by which Triparty Collateral can be liquidated following default. In this regard, the arrangements may provide certain default management benefits if the collateral purchase option is exercised, as the collateral purchase option will provide the Clearing House with the cash value of the relevant collateral promptly, without the need for the Clearing House to undertake the liquidation of the collateral in the market (and incur related expenses). The proposed third party collateral purchase arrangement would provide only a brief period (expected to be two hours) in which the TPCP would have the right to purchase the Triparty Collateral. ICE Clear Europe does not believe this delay, even in the event the TPCP did not elect to purchase the collateral, would materially impact the Clearing House's ability to manage a default or liquidate collateral following expiration of the period. As a result, ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Rule 17Ad-22(d)(11).¹¹

As discussed above, ICE Clear Europe is proposing these arrangements at the request of F&O Clearing Members seeking to improve their own collateral management. In this respect,

¹⁰ See Rules 903-906.

¹¹ 17 CFR 240.17Ad-22(d)(11).

ICE Clear Europe believes that the proposed amendments are also consistent with the requirements of Rule 17Ad-22(d)(6),¹² which requires that clearing agency procedures be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.

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

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will provide additional flexibility by permitting the use, on a voluntary basis, of third party collateral purchase arrangements for those F&O Clearing Members that are interested in such arrangements. No Clearing Member will be required to use these arrangements, and the changes will thus not affect those Clearing Members that do not participate in such arrangements. In addition, the amendments will not otherwise affect the terms or conditions of any cleared contract or the standards or requirements for participation in or use of the Clearing House. Accordingly, the changes should not, in the Clearing House's view, affect the availability of clearing, access to clearing services or the costs of clearing for clearing members or other market participants.

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

Written comments relating to the proposed change to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

¹² 17 CFR 240.17Ad-22(d)(6).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹³ of the Act and Rule 19b-4(f)(4)(ii)¹⁴ thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities clearing service, within the meaning of Rule 19b-4(f)(4)(ii). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. 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-2014-23 on the subject line.

Paper Comments:

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

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

All submissions should refer to File Number SR-ICEEU-2014-23. 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 will also 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/clear-europe/regulation#rule-filings>.

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-2014-23 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).