

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73690; File No. SR-ICEEU-2014-24)

November 25, 2014

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clearing Rules Relating to CASS Requirements

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 November 19, 2014, ICE Clear Europe Limited (“ICE Clear Europe” or “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,<sup>3</sup> and Rule 19b-4(f)(4)(i)<sup>4</sup> 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 rule change is to implement certain requirements under the U.K. client money rules applicable to certain classes of customer accounts of Clearing Members.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(i).

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 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

ICE Clear Europe submits certain proposed amendments to its Rules in connection with revised client money and client asset (collectively, "client money") requirements adopted by the U.K. Financial Conduct Authority (the "FCA") in the U.K. Client Asset Sourcebook ("CASS"). Several of the revised FCA requirements will come into effect as of December 1, 2014, including those to which the rule changes discussed herein relate.<sup>5</sup> Among numerous other changes, revised CASS 7.18.4R and 7.18.6R will require ICEU Clearing Members that are subject to the CASS requirements to identify to the Clearing House those accounts that contain client money for purposes of CASS through the use of a specified form of acknowledgment letter. Such identification is intended to facilitate the proper segregation of client money at the Clearing House level.

ICE Clear Europe's existing Rules establish several categories of customer accounts for Non-FCM/BD Clearing Members. Certain account categories are intended for use with customer property subject to the FCA client money requirements; other account categories are

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<sup>5</sup> See generally FCA Policy Statement No. PS14/9, Review of the Client Assets Regime for Investment Business (June 2014).

not intended for use with such property. For example, the Segregated Customer Omnibus Account for F&O, Segregated Customer Omnibus Account for CDS and Segregated Customer Omnibus Account for FX are to be used for customers that provide assets to their Clearing Members that are subject to the FCA client money regime. In addition, Individually Segregated Sponsored Accounts and Margin-flow Co-mingled Accounts may be used for such customers. By contrast, Segregated TTFCA Customer Omnibus Accounts are not to be used for customers whose assets are subject to the FCA client money regime. To date, the Clearing House has identified such accounts for purposes of the client money rules pursuant to a Circular. The new FCA rules require such identification to be provided by the Clearing Member in a specified form.

ICE Clear Europe proposes to adopt amendments to its Rules that implement the CASS acknowledgment letter requirement. Since the CASS rules themselves do not identify the accounts that should be subject to the requirement, the proposed amendments also specify the account categories for which acknowledgment letters should (and should not) be provided by Clearing Members. Specifically, ICE Clear Europe proposes to make amendments to Parts 1, 2 and 5 of the Rules. The proposed Rule amendments are described in detail as follows.

The relevant portion of Rule 102(q), which specifies that certain provisions and documents relating to asset and account segregation apply to customer accounts, has been revised to refer specifically to the customer account categories for customers whose assets are subject to the FCA client money requirements (specifically, the Segregated Customer Omnibus Accounts for F&O, CDS and FX, as well as Individually Segregated Sponsored Accounts and Margin-flow Co-mingled Accounts). In addition, subparagraph (viii) thereof has been revised to refer to acknowledgement letters delivered to the Clearing House under CASS 7.18 and countersigned by the Clearing House (in lieu of the prior Circular issued by the Clearing House

relating to client money arrangements). The revisions also clarify that references to Rule 102(q) in the Rules and Procedures are deemed to include references to those provisions and documents referred to in subparagraphs (vii) and (viii) thereof.

In Rule 202(a), which establishes ongoing obligations of Clearing Members, new subparagraph (xxi) has been added. It requires that Clearing Members that are subject to CASS 7.18 deliver to the Clearing House an acknowledgment letter in the required format for each of its Segregated Customer Omnibus Accounts, Individually Segregated Sponsored Accounts and Margin-flow Co-mingled Accounts which are treated by it as client transaction accounts under CASS 7.18.

In addition, Rule 203(a) has been amended to add a new subparagraph (xx), which provides that a Clearing Member that is subject to CASS 7.18 is not permitted to deliver an acknowledgment letter in respect of any Proprietary Account or Segregated TTFCustomer Omnibus Account, as such accounts are not intended to be used for customers whose assets are subject to the FCA client money regime.

In Rule 504(c), a new subparagraph (vi) has been added with respect to Clearing Members that are subject to CASS 7.18. Each such Clearing Member is deemed to represent that its Segregated Customer Omnibus Accounts only contain cash where the corresponding cash claim or receivable in the hands of the Clearing Member is treated by the Clearing Member as a client money claim or receivable, and only contain non-cash assets (resulting from a transfer into the Account by the Clearing Member) which the Clearing Member was entitled to treat as client assets prior to their transfer to the Clearing House. A similar representation applies to Individually Segregated Sponsored Accounts and Margin-flow Co-mingled Accounts which have been designated pursuant to a client money acknowledgment letter delivered by the

Clearing Member. With respect to other Customer Accounts and Proprietary Accounts, the Clearing Member is deemed to represent that such accounts do not contain any property subject to the client money rules (i.e., cash where the corresponding cash claim or receivable in the hands of the Clearing Member is required to be treated as a client money claim, or any non-cash assets (resulting from a transfer into the account by the Clearing Member) which the Clearing Member was required to treat as client assets prior to their transfer to the Clearing House). A conforming change is also made in Rule 504(h) to refer to CASS acknowledgment letters provided and countersigned in accordance with Rule 102(q).

A typographical correction is also made in Rule 918(a)(viii)(B)(1).

## 2. Statutory Basis

ICE Clear Europe believes that the proposed amendment to the Rules and Procedures is consistent with the requirements of Section 17A of the Act<sup>6</sup> and the regulations thereunder applicable to it.<sup>7</sup> Section 17A(b)(3)(F) of the Act<sup>8</sup> 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, 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. The proposed amendment is intended to facilitate the holding by the Clearing House of securities and funds that are subject to the U.K. client money regime under the CASS rules. Consistent with the existing customer account structure established in the ICE Clear

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<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 17 CFR 240.17Ad-22.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

Europe Rules, securities and funds subject to such rules are required to be maintained in certain categories of Customer Accounts. Under the revised CASS regulations, the Clearing Member is required to provide to the Clearing House an acknowledgment letter with respect to such assets and accounts. The proposed amendment is designed to implement this acknowledgment procedure, by requiring the proper acknowledgement letter for each relevant account category, and by prohibiting delivery of such a letter with respect to accounts not intended to hold client money. As such, ICE Clear Europe believes that the proposed changes will facilitate compliance with the CASS amendments and the UK client money requirements described above and are therefore consistent with the protection of investors and the public interest. As a result, the proposed changes are, in ICE Clear Europe's view, consistent with the requirements of Section 17A(b)(3)(F) of the Act.<sup>9</sup>

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

ICE Clear Europe does not believe the proposed change to the Rules discussed herein would have any adverse impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendment is intended to implement, at the Clearing House level, the revised client money requirements imposed under the CASS revisions. The amendment will thus apply uniformly across all Clearing Members that are subject to the CASS requirements. The additional requirements imposed by the rules on such Clearing Members are directly based on the CASS requirements applicable to them. Although the rules only affect Clearing Members that are subject to the CASS rules, that result follows from the particular regulatory status of such Clearing Members under applicable U.K. law.

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<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

In any event, ICE Clear Europe does not believe the proposed amendment set out herein would materially affect access to clearing by Clearing Members or their customers, adversely affect competition among Clearing Members or adversely affect the market for clearing services or limit market participants' choices for clearing transactions. Although the proposed amendment may impose additional compliance costs on certain Clearing Members, ICE Clear Europe believes that such costs result from the requirements imposed by the CASS revisions as discussed herein. Such costs also reflect the additional client money protections that apply under the CASS revisions. As a result, ICE Clear Europe does not believe that the proposed amendment to the Rules will impose any burden on competition not appropriate in furtherance of the purposes of the Act.

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

Written comments have not been specifically solicited with respect to the Rule change set out herein. ICE Clear Europe will notify the Commission of any additional written comments received by ICE Clear Europe.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(4)(i)<sup>11</sup> thereunder because the proposed amendment effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service, within the meaning of Rule 19b-4(f)(4)(i). At any time within 60 days

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(4)(i).

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](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2014-24 on the subject line.

##### Paper Comments:

- 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-2014-24. 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-2014-24 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.<sup>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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