

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74577; File No. SR-ICEEU-2015-006)

March 25, 2015

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

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 March 13, 2015, 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 prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(4)(i)⁴ thereunder, so that the proposed rule change 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 amend the ICE Clear Europe Finance Procedures in order to address certain reporting and information requirements relating to Sections 1471 through 1474 of the U.S. Internal Revenue Code⁵ and U.S. Treasury regulations and other guidance thereunder (commonly known as the

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)(i).

⁵ 26 U.S.C. 1471-1474.

Foreign Account Tax Compliance Act, or “FATCA”) and related provisions under U.K. law and similar legislation, regulations or guidance enacted in any jurisdiction which seeks to implement similar tax reporting and/or withholding tax regimes.

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

(i) Purpose

The purpose of the proposed rule change is for ICE Clear Europe to adopt amendments to its Finance Procedures in order to clarify certain informational and tax form requirements applicable to its Clearing Members in connection with FATCA (and other similar laws). Specifically, the amendments add a new paragraph 6.1(j) to the Finance Procedures, which states that Clearing Members are required to provide to the Clearing House information, and to complete tax forms, as may be required by the Clearing House in order to comply with its obligations relating to FATCA, including obligations under intergovernmental arrangements between U.K. and U.S. authorities with respect to FATCA compliance and implementing regulations and guidance in the U.K. The amendments also clarify that ICE Clear Europe’s status under FATCA and

such agreements and implementing regulations (including ICE Clear Europe's registration with the U.S. Internal Revenue Service for a Global Intermediary Identification Number for FATCA reporting purposes) is not intended to have any effect on ICE Clear Europe's status for the purposes of any other applicable law, or any of the rights or obligations of ICE Clear Europe or any Clearing Member or customer provided for under the Rules and Procedures and relevant member agreements.

(ii) Statutory Basis

FATCA was enacted on March 18, 2010, as part of the Hiring Incentives to Restore Employment Act, and became effective, subject to transition rules, on January 1, 2013. The U.S. Treasury Department finalized and issued various implementing regulations ("FATCA Regulations")⁶ on January 17, 2013. FATCA's intent is to curb tax evasion by U.S. citizens and residents through their use of offshore bank accounts. FATCA generally requires foreign financial institutions ("FFIs")⁷ to become "participating FIs" by entering into agreements with the Internal Revenue Service ("IRS"), under which the FFI is required to report to the IRS information on U.S. persons and entities that have accounts with the FFI. Failure to enter into such an agreement would result in withholding taxes on certain payments to the FFI. As an alternative to FFIs entering into individual agreements with the IRS, the U.S. Treasury Department provided another means of complying with FATCA for FFIs which are resident in Non-U.S. jurisdictions that enter into intergovernmental agreements ("IGAs") with the United

⁶ Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities, 78 FR 5874 (Apr. 15, 2013).

⁷ Non-U.S. financial institutions are referred to as "foreign financial institutions" or "FFIs" in the FATCA Regulations.

States. Generally, such a jurisdiction (“FATCA Partner”) would pass laws to eliminate the conflicts of law issues that would otherwise make it difficult for FFIs in its jurisdiction to collect the information required under FATCA and transfer this information, directly or indirectly, to the United States. An FFI resident in a FATCA Partner jurisdiction would be required to transmit FATCA reporting to its local competent tax authority (which in turn would transmit the information to the IRS), or the FFI would be authorized or required to transmit FATCA reporting directly to the IRS.⁸

The U.K. has entered into an IGA with the United States, and U.K. tax authorities have adopted implementing regulations (and related guidance) with respect to FATCA compliance for U.K. entities.⁹ Under the U.K. implementing regulations and guidance, central counterparties such as ICE Clear Europe may be treated as FFIs for purposes of FATCA compliance. In connection with those regulations, and ICE Clear Europe’s potential obligations under them as a central counterparty, ICE Clear Europe has proposed the amendments to the Finance Procedures to require its Clearing Members to provide necessary information and relevant tax forms to the Clearing House. In addition, for added clarity and to avoid any potential legal uncertainty arising from the treatment of central counterparties under the U.K. implementing regulations for FATCA purposes, the amendments also provide that ICE Clear Europe’s FATCA status is not intended to

⁸ For a more complete discussion of the background of FATCA, as well as certain rules and procedures previously adopted by ICE Clear Europe relating to FATCA compliance, see Exchange Act Release No. 34-70283 (August 29, 2013), 78 FR 54713 (Sept. 5, 2013) (File No. SR-ICEEU-2013-08).

⁹ See International Tax Compliance (United States of America) Regulations 2014 (SI 2014/1506); Implementation of The International Tax Compliance (United States of America) Regulations 2014, HM Revenue & Customs Guidance Notes (Aug. 28, 2014).

otherwise affect its status under other laws, or to affect the rights and obligations of the Clearing House, its Clearing Members or other market participants.

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 (the “Act”)¹⁰ and the regulations thereunder applicable to it. Section 17A(b)(3)(F) of the Act¹¹ 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. Specifically, the proposed rule change is intended to facilitate compliance by ICE Clear Europe with its potential obligations under FATCA and under the related implementing regulations and guidance in the U.K. and thus further the tax compliance goals of the FATCA regime. In ICE Clear Europe’s view, the amendments are therefore consistent with the protection of investors and the public interest, and the requirements of Section 17A(b)(3)(F) of the Act.

B. Self-Regulatory Organization’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 not necessary or appropriate in furtherance of the purpose of the Act. The proposed rule change imposes certain informational requirements on Clearing Members, in order to ensure that ICE Clear Europe is in compliance with FATCA and implementing U.K. regulations and guidance. The

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

amendments would apply to all Clearing Members. ICE Clear Europe does not believe that the amendments would adversely affect the ability of Clearing Members or other market participants generally to engage in cleared transactions or to access clearing, adversely affect competition among Clearing Members, adversely affect the market for clearing services or limit market participants' choices for clearing transactions. To the extent that compliance with the amendments will result in any additional cost for Clearing Member or other market participants, ICE Clear Europe believes that such cost results from the requirements mandated by FATCA and implementing regulations. As a result, ICE Clear Europe does not believe that the proposed amendments 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 relating to the proposed rule 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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(4)(i).¹³ 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(4)(i).

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-2015-006 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ICEEU-2015-006. 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>.

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-2015-006 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.¹⁴

Brent J. Fields
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).