

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76565; File No. SR-ICEEU-2015-019)

December 7, 2015

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Gross Margining for Certain Categories of Customer Accounts

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 24, 2015, 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 prepared primarily 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)(i) and (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 changes is to amend certain provisions relating to gross margining for various categories of Customer Accounts.

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. The text of these

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) and (ii).

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 such statements.

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

i. Purpose

ICE Clear Europe submits certain proposed amendments to its Clearing Rules (the "Rules") and Clearing Procedures relating to the margining of Customer Accounts. The amendments provide additional options for Clearing Members to use so-called "gross margined" Customer Accounts (and will require use of such accounts for certain F&O products as discussed below). The amendments further clarify which types of Customer Accounts are margined on a gross as opposed to a net basis, as well as related procedures for the collection and transfer of margin for such accounts and certain related information requirements, as discussed herein. For this purpose, for a Customer Account margined on a "gross" basis, initial or original margin requirements are determined separately with respect to the positions of each customer of the relevant Clearing Member (i.e., without netting of different positions across multiple customers). By contrast, for a Customer Account margined on a "net" basis, initial or original margin requirements are determined for the entire account on a net basis across the positions of all customers in that account.

The proposed changes are principally relevant to the Customer Accounts of Non-FCM/BD Clearing Members with respect to F&O Contracts. ICE Clear Europe's existing rules provide several types of Customer Accounts for such Clearing Members in light of relevant regulatory requirements and permissions. Currently, most such accounts

for F&O Contracts are margined on a net basis, which is permitted under the European Market Infrastructure Regulation (“EMIR”).⁵ ICE Clear Europe is proposing to revise its account structure to allow Clearing Members to use Customer Accounts of the same types but which are margined on a gross basis for certain products. Once the rule amendments are effective, ICE Clear Europe will require the use of such gross margined accounts for Non-FCM/BD Clearing Members in relation to certain F&O products in the energy category that are margined using a one-day period of risk, as specified below, such as oil contracts traded on ICE Futures Europe. Gross or net margined accounts would be available on an optional basis for other categories of F&O Contracts (which are margined using a two-day period of risk). As a result of these changes, ICE Clear Europe will no longer permit net margining of contracts for which margin is calculated using a one-day period of risk.

ICE Clear Europe is adopting the requirement for the use of gross margining to align the margin framework for certain energy contracts cleared by Non-FCM/BD Clearing Members more closely with the requirements that apply to FCM Clearing Members under CFTC rules and the Clearing House’s rules for FCM Customer Accounts, as implemented in 2012 when certain cleared OTC contracts were converted to economically-equivalent futures contracts admitted to trading on ICE Futures US. Such contracts are margined using a one-day period of risk. In this regard, ICE Clear Europe also notes that the European Securities and Markets Authority has issued a discussion paper for consultation as to the use of gross margined customer accounts under certain

⁵ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as well as various implementing regulations and technical standards.

circumstances (and in particular, whether a gross margined account using a one-day margin period of risk (of the type being provided under the rule amendments) should be a permitted alternative to an account using a two-day margin period of risk in order to satisfy requirements under EMIR, in light of the fact that EMIR is currently silent on whether accounts should be net or gross margined).⁶

For Customer Accounts with respect to CDS Contracts, the current practice of margining on a gross basis would be maintained.

The status of the DCM Customer Account and Swap Customer Account of FCM/BD Clearing Members (which are currently gross margined, consistent with U.S. regulatory requirements) would not be affected by the proposed amendments. The amendments would clarify the option for FCM/BD Clearing Members to use their Non-DCM/Swap Customer Account or General Customer Account on either a gross margined or net margined basis, to the extent permitted by applicable law. Certain other clarifications and updates are made in the Rules and Clearing Procedures as well, as discussed herein.

Specifically, ICE Clear Europe proposes to make amendments to Parts 3, 4, 6, 7 and 16 of its Rules and to the Clearing Procedures.

In Part 3 of the Rules, Rule 302, which addresses the procedures for payments to and from the Clearing House in respect of various categories of Customer Accounts, has been revised to take into account the new set of gross margined accounts and to simplify some of the drafting. As revised, the Rule clarifies that the Clearing House will determine the required margin amount based on the relevant margin model for that

⁶ ESMA, Review of Article 26 of RTS No. 153/2013 with respect to client accounts (26 August 2015) (Discussion Paper).

account type (net or gross). The Clearing House will then calculate the net amount owed to or by the Clearing House for that account based on that requirement. With respect to the Swap Customer Account, Rule 302 has been revised to add a cross-reference to the appropriate provisions in Rule 1605(h), which address the calculation and settlement of margin for that account more specifically. In Rule 304, which addresses payments with respect to Sponsored Principal accounts, certain changes have been made to conform to the changes made in Rule 302.

Rule 401(g) is amended to require each Clearing Member to submit on a daily basis (or more frequently, if requested by ICE Clear Europe) a breakdown of the open positions in each Customer Account on a per customer basis, in order to permit the Clearing House to calculate gross margin for that account, if applicable. Rule 406 is amended to clarify that positions in a Customer Account of one customer are not to be netted against opposite positions of another customer, and that positions in separate Customer Accounts are not to be netted against each other, consistent with other existing provisions of the Rules.

Rule 702(c) is amended to set out more clearly how the cash settlement amount for futures contracts is calculated based on the positions held in different accounts, in light of the use of gross or net margining discussed above. As revised, the rule refers to the difference between the exchange settlement price and the price at which the contract is recorded on the Clearing House's books (or, for new contracts entered into on the day of settlement, the price at which the contract was bought or sold). This is consistent with current practice for such contracts. Similar clarifications are made in Rule 705(a) to reflect the treatment of contracts entered into on the day of settlement. In Rule 803(a), a

similar change is made to reflect the treatment of option contracts entered into on the same day as the exercise date. Rule 810(d) is amended to set out more clearly the calculation of the cash settlement amount for an option contract (based on the difference between the relevant reference price and the price at which the contract is recorded on the Clearing House's books (or, for new contracts entered into on the day of exercise, the price at which the contract was bought or sold). This is also consistent with current practice for such option contracts.

In Rule 1605(h), which addresses margin for the Swap Customer Account of FCM/BD Clearing Members, certain amendments have been made to refer more specifically to the relevant Rules and procedures used for the transfer of relevant amounts to and from the Clearing House (in line with the procedures applicable to transfers of Margin for other accounts under the Rules and Finance Procedures). The amendments do not materially change the operation of the Swap Customer Account, but reflect the addition of the cross reference to Rule 1605(h) in Rule 302, which is intended to provide greater clarity to Clearing Members and market participants.

The Clearing Procedures have been amended to add the relevant new account designations and to distinguish more clearly between net margined and gross margined Customer Accounts, along with various conforming and clarifying changes. In paragraph 2.3(b)(2), for FCM/BD Clearing Members, the amendments state explicitly that the S, W and Z accounts use gross margin models, and add a new E account that can be used as a net margined account under the Non-DCM/Swap Customer Account or General Customer Account category, to the extent permissible under applicable law. In paragraphs 2.3(b)(3) and (4), for Non-FCM/BD Clearing Members, the amendments state

explicitly that the S, C, F, and T accounts use a gross margin model, and the E, R and K accounts use a net margin model. A change is made in paragraph 2.4(b) to conform to the changes made in Rule 406. Conforming changes to the relevant account designations have been made in paragraphs 3.1 and 3.2. Amendments to paragraph 4.4 of the Clearing Procedures address the difference between the calculation of net and gross margin for relevant Customer Accounts, consistent with the account designations under paragraph 2.3.

ICE Clear Europe has made available to F&O Clearing Members, pursuant to a member transition plan and the electronic GSPD file provided to clearing members on a daily basis, the details of the particular F&O Contracts that will be required to be held in gross margined Customer Accounts, as well as those that may be held in either gross or net margined Customer Accounts, in accordance with the amended Rules and Procedures described above, upon implementation of the amendments. Specifically, those ICE Futures Europe and ICE Futures US energy contracts that currently are margined using a one-day margin period of risk will be required to be carried in gross margined Customer Accounts. These include contracts relating to coal, crude oil and refined crude products, petrochemicals, US electricity, US emissions, US natural gas and natural gas liquids. Other F&O Contracts (including Financials & Softs contracts and certain energy contract traded on ICE Futures Europe and ICE Endex that are currently margined using a two-day margin period of risk) may be carried in either net or gross margined Customer Accounts. ICE Clear Europe will notify F&O Clearing Members by circular of the date of implementation of the amendments and gross margining requirements discussed herein.

ii. Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Rules and Clearing Procedures are consistent with the requirements of Section 17A of the Act⁷ and the regulations thereunder applicable to it.⁸ Section 17A(b)(3)(F) of the Act⁹ 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 amendments are designed principally to facilitate the use by Non-FCM/BD Clearing Members of gross margined Customer Accounts for the F&O product category. The amendments also more clearly distinguish between net margined and gross margined accounts in the Rules and Procedures, and clarify and simplify the rules and procedures relating to the calling and return of initial and original margin for all accounts. The amendments thus build on the existing customer account structure established in the ICE Clear Europe rules. By facilitating gross margining, and providing the Clearing House with customer-by-customer position data that supports such margining, the amendments will also enhance the Clearing House's risk management infrastructure with respect to Customer Accounts. As described above, the amendments are principally relevant to Non-FCM/BD Clearing Members for F&O Contracts; the DCM Customer Account and Swap Customer Account structures for FCM/BD Clearing Members (which are gross

⁷ 15 U.S.C. 78q-1.

⁸ 17 CFR 240.17Ad-22.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

margined accounts) are prescribed by applicable U.S. law and are not materially changing as a result of the amendments. As a result, in ICE Clear Europe's view, the amendments will promote the prompt and accurate clearance and settlement of derivative transactions, are consistent with the safeguarding of funds and securities in the custody or control of ICE Clear Europe, and generally further the public interest. The amendments are therefore consistent with the requirements of Section 17A(b)(3)(F) of the Act¹⁰ and the regulations thereunder.

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

ICE Clear Europe does not believe the proposed changes 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 amendments are intended to provide Clearing Members with additional ability to use gross margined Customer Accounts. Such accounts will be available on the same terms to all Non-FCM/BD Clearing Members. ICE Clear Europe does not believe the proposed amendments would adversely 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. Rather, competition among Clearing Members, and access to clearing, may be facilitated through the possibility of Clearing Members offering a choice of net or gross margining, where permitted (in all cases subject to applicable legal requirements and Clearing Rules). Although the proposed amendments may impose additional compliance costs on Clearing Members, including because of the requirements to provide

¹⁰ Id.

customer-related data to the Clearing House, ICE Clear Europe believes that such costs are appropriate in light of the benefits (to each of the Clearing House, Clearing Members and customers) from facilitating gross margining for Customer Accounts. As a result, ICE Clear Europe does not believe that the proposed amendments 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

On October 30, 2015, ICE Clear Europe solicited written comments relating to the proposed Rule and Procedure changes via a circular. Comments were due by November 13, 2015, and no comments had been received as of the time of this filing. 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)¹¹ of the Act and Rule 19b-4(f)(4)(i) and (ii)¹² thereunder. The amendments principally effect a change in an existing service of a registered clearing agency that primarily affects the clearing 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(4)(i) and (ii).

persons using such securities-clearing service. Certain other aspects of the amendments effect 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. 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-2015-019 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-2015-019. 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-2015-019 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.¹³

Brent J. Fields
Secretary

¹³ 17 CFR 200.30-3(a)(12).