SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84556; File No. SR-ICEEU-2018-011)

November 8, 2018

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the F&O Guaranty Fund Policy (the "Policy"), Clearing Rules (the "Rules") and Finance Procedures ("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 October 29, 2018, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule changes pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(4)(ii) thereunder,[4] so that the proposal was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

ICE Clear Europe proposes to make certain amendments to the Policy, Rules and Finance Procedures relating to the calculation methodology for F&O Clearing Member

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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).

contributions, the minimum size of the F&O Guaranty Fund and the review cycle and to make various drafting clarifications and improvements.

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

(a) Purpose

ICE Clear Europe is generally amending the Policy to address the following aspects of the F&O Guaranty Fund: changing the calculation methodology for F&O Clearing Member contributions to incorporate an uncollateralized stress loss factor (in addition to a factor based on the intraday original margin requirement), in line with the Clearing House principle of 'polluter pays'; specifying the minimum size of the F&O Guaranty Fund at 2% of the amount of F&O original margin; and changing the review cycle for the F&O Guaranty Fund level from quarterly to every two months, in line with the F&O Risk Committee meeting schedule. Various drafting clarifications and improvements have also been made, and certain descriptions in the Policy that duplicate or describe provisions in other Rules, ICE Clear Europe Procedures and policies have been removed as unnecessary. ICE Clear Europe is also making corresponding amendments to the Rules and Finance

Procedures to accommodate the changes being made to the Policy. Set out below are further details regarding the specific proposed amendments.

ICE Clear Europe is proposing to amend its description of the purposes and objectives of the Policy to include a broader statement that the Policy defines how and how often the F&O Guaranty Fund is sized, how Clearing Member contributions are apportioned and the sizing frequency, as well as that the Policy also defines stress margin and its uses, eligible assets covering F&O Guaranty Fund requirement liabilities, the default sequence and powers of assessment. Certain descriptions of the use of F&O Guaranty Fund that summarize provisions of the Rules have been removed as unnecessary, and a cross reference to the Rules has been added.

The provisions of the Policy relating to the sizing of the F&O Guaranty Fund would be amended to remove details found in other Clearing House policies and documentation, including the methodology used to calculate and allocate the additional guaranty fund apportionment ("AGA") between the energy and financials & softs segments of the F&O Guaranty Fund. Detail regarding the review of the validity of the stress testing scenario(s) is being removed, as it is covered by other existing stress-testing policies. These changes do not represent a modification to ICE Clear Europe's current practices.

The amendments to the Policy also reflect that the frequency of certain reviews will be changed from a quarterly basis to each time the F&O Risk Committee meets (which is typically every two months). Corresponding amendments to the Rules specify that the Guaranty Fund Period will be set pursuant to the Finance Procedures, instead of being a fixed three month period. The amendments to the Finance Procedures state that the start and end dates of Guaranty Fund Periods will be communicated to F&O Clearing Members.

The amendments change the deadline for Clearing Members to deposit additional funds to comply with an increased F&O Guaranty Fund requirement. Specifically, as amended in section 6.1(i)(iii) of the Finance Procedures and as set out in the amended Policy, the deadline has been reduced from ten business days to five business days.

The proposed amendments define the minimum overall F&O Guaranty Fund size as 2% of the total F&O original margin requirement (averaged over the review period), as compared to the current minimum which is based on the fixed ICE Clear Europe initial contribution to the F&O Guaranty Fund.

The discussion of extraordinary reviews of the F&O Guaranty Fund is being amended to remove certain details relating to actions that will be taken by the clearing risk department when the stress testing results are observed to exceed the level of the relevant F&O Guaranty Fund segment, as this is documented in other Clearing House policies and documentation. The description instead notes that the amber and red limits defined as part of the Board Risk Appetite will potentially trigger an extraordinary review of the F&O Guaranty Fund which would be communicated via the standard process for review.

The requirements of the Policy regarding information presented to the F&O Risk Committee are being simplified such that the following information will be presented to the F&O Risk Committee at each review of the level of the Fund: historical daily stress-testing results from the Members showing at least the first and second largest uncollateralized losses; details of the stress scenario driving the largest exposures; and any other information supporting a resizing decision. Certain more prescriptive information requirements have been removed, as ICE Clear Europe believes they are unnecessary.

The provisions of the Policy relating to recommendations as to changes in the overall level of the F&O Guaranty Fund have been condensed and simplified. The revised Policy identifies several factors on which the Clearing House will base its recommendations on the level of the Fund (including the level of uncollateralized losses as compared to the F&O Guaranty Fund or relevant segments and the level of stress margin called for relevant F&O product categories), rather than describing specific circumstances under which a 'no change' recommendation or a recommendation to increase a Fund segment will be made. The Clearing House believes the more flexible approach better takes into account the range of factors that may warrant a change in the F&O Guaranty Fund level. In any case, as under the current Policy, a full explanation of the conclusions and related data is to be presented to the F&O Risk Committee and Board Risk Committee.

As noted above, the amendments alter the calculation of F&O Clearing Member contributions to take into account potential uncollateralized, or stress, loss as well as the maximum intraday original margin requirement. The governing principle with respect to this determination is that each Clearing Member's contribution to each of the Fund segments should reflect their relative share of clearing activity as well as their relative share of uncollateralized loss. Under the revised approach, subject to minimum contribution requirements set out in the Policy, an F&O Clearing Member's relative share of the F&O Guaranty Fund requirement will be based 40% on its maximum intraday original margin requirement and 60% on its uncollateralized loss. This will be recalculated at each review (instead of on a quarterly cycle). This two factor contribution model is intended to offer a balanced contribution taking into account clearing activity and stress results. Various conforming and clarifying changes have been made throughout the Policy. As discussed

above, F&O Clearing Members will have five (instead of ten) UK business days from notification to cover any increase in their F&O Guaranty Fund requirement. The description of the data validation process is being deleted (as the process is documented in other Clearing House procedures). The proposed amendments to the Policy also specify the minimum fund contribution for an F&O Clearing Member to be the larger of USD 1 million or the calculated member's contribution under the revised methodology. The corresponding proposed amendments to section 14.1(b) of the Finance Procedures accommodate this change, by specifying that the Clearing House will establish from time to time a minimum fund contribution for an F&O Clearing Member based on a methodology adopted by the Clearing House, of not less than USD 1 million.

The proposed amendments also remove a description of the manner in which a drawdown of the F&O Guaranty Fund is made across the different fund segments, as that is covered in greater detail in the existing Rules.

Finally, references to quarterly reviews of stress test results are being replaced with references to general review cycles throughout the Policy and an appendix with an example of a stress margin request is being deleted as unnecessary.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act[5] and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.[6] Section 17A(b)(3)(F) of the Act[7] requires,

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5 15 U.S.C. 78q-1.

6 17 C.F.R. 240.17Ad-22.

7 15 U.S.C. 78q-1(b)(3)(F).

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 in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments are generally intended to enhance the F&O Guaranty Fund allocation methodology to take into account both original margin requirements and potential stress losses that may exceed normal margin levels. The amendments also clarify the minimum size of the F&O Guaranty Fund, in a manner tied to the original margin requirements and thus the overall level of F&O clearing activity. The amendments further shorten the deadline under which F&O Clearing Members must provide additional F&O Guaranty Fund contributions when required. The Clearing House believes that these changes will more appropriately allocate F&O Guaranty Fund Contributions among F&O Clearing Members, further the risk management of the Clearing House and more generally promote the prompt and accurate clearance and settlement of transactions. The amendments also streamline the Policy to reduce redundancies with other Clearing House policies and the Rules and increase the review cycle from quarterly to every two months, consistent with the cycle of F&O Risk Committee meetings. In ICE Clear Europe's view, enhancing the clarity of the Policy and increasing the oversight of the Policy through more frequent reviews is also expected to better risk management and promote the prompt and accurate clearance and settlement of transactions. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Section 17A(b)(3)(F) of the Act.

The amendments are also consistent with relevant requirements of Rule 17Ad-22.[8] Rules 17Ad-22(e)(4)[9] and 17Ad-22(b)(3)[10] require clearing agencies to maintain certain financial resources at specified levels sufficient to support their clearing

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8 17 CFR 240.17Ad-22.

9 17 CFR 240.17Ad-22(e)(4)(i) – (v). The rule states that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:
(4) Effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by:
(i) Maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence;
(ii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency providing central counterparty services that is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;
(iii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency not subject to paragraph (e)(4)(ii) of this section, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;
(iv) Including prefunded financial resources, exclusive of assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under paragraphs (e)(4)(i) through (iii) of this section, as applicable;
(v) Maintaining the financial resources required under paragraphs (e)(4)(ii) and (iii) of this section, as applicable, in combined or separately maintained clearing or guaranty funds;"

10 17 CFR 240.17Ad-22(b)(3). The rule states that "[a] registered clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to: Maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions.

operations, including through the use of guaranty funds. The amendments will facilitate compliance with these requirements, through an enhanced approach to allocating F&O Guaranty Fund requirements that takes into account both clearing activity (as indicated through original margin levels) and potential stress losses in extreme but plausible market conditions. The revised Policy also contemplates review of by the F&O Risk Committee of daily stress testing results showing at least the first and second largest uncollateralized losses and details of the stress scenario driving the largest exposures. Taken together, the changes will help the Clearing House ensure that, consistent with regulatory requirements, the F&O Guaranty Fund, together with other financial resources, is sufficient to enable the Clearing House to cover a wide range of foreseeable stress scenarios.

Rule 17Ad-22(e)(2)[11] requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. To facilitate compliance with this requirement, the proposed amendments to the Policy more clearly set out the information that will be provided to the F&O Risk Committee at each review of the level

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[11] 17 CFR 240.17 Ad-22(e)(2). The rule states that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:
(2) Provide for governance arrangements that:
(i) Are clear and transparent
(ii) Clearly prioritize the safety and efficiency of the covered clearing agency;
(iii) Support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants;
(iv) Establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities;
(v) Specify clear and direct lines of responsibility; and
(vi) Consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency."

of the F&O Guaranty Fund and the factors that will be considered in making recommendations on the appropriate level of the F&O Guaranty Fund.

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

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to clarify and enhance the Policy and reduce overlap with other Clearing House Rules and policies. The amendments will apply to all F&O Clearing Members. ICE Clear Europe does not believe the amendments will generally affect the overall cost of clearing for F&O Clearing Members or other market participants or otherwise affect access to clearing generally. The amendments may alter the allocation of F&O Guaranty Fund requirements across F&O Clearing Members, which could increase requirements for some members, but such changes are designed to more appropriately take into account potential stress losses as well as clearing activity of such members. In ICE Clear Europe's view, such amendments will enhance the risk management of the Clearing House and tailor the F&O Guaranty Fund requirements to the risks presented by F&O Clearing Members. As a result, any additional burdens placed on F&O Clearing Members will be appropriate in furtherance of that goal. The amendments will provide a transparent and objective methodology for the calculation of F&O Guaranty Fund requirements, and are not intended to disadvantage any particular Clearing Member. As a result, ICE Clear Europe believes that any impact on competition is appropriate in furtherance of the purposes of the Act.

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

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

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) of the Act and paragraph (f) of Rule 19b-4 thereunder. 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-2018-011 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-2018-011. 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, N.E., Washington, D.C. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2018-011 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.[12]

Eduardo A. Aleman
Assistant Secretary

[12] 17 CFR 200.30-3(a)(12).