

**SECURITIES AND EXCHANGE COMMISSION**  
(Release No. 34-85782; File No. SR-ICEEU-2019-009)

May 6, 2019

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Operational Risk Management Policy (“ORM Policy”)

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 May 1, 2019, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) 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. 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 formalize its Operational Risk Management Policy (“ORM Policy”), which consolidates its practices with respect to management of operational risk. The revisions do not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.<sup>3</sup>

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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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> Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the “Rules”).

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 proposing to formalize its ORM Policy which sets out the Clearing House's processes for managing operational risks, the stakeholders responsible for executing those processes, the frequency of review of the policy and the governance and reporting lines for the policy.

The ORM Policy addresses operational risk, which it defines as the risk of an event occurring which negatively impacts the achievement of business objectives resulting from inadequate or failed internal operational controls, people, systems or external events.<sup>4</sup> The ORM Policy establishes an overall process that identifies, assesses, responds to, monitors and reports operational risk.

***Risk Identification:*** Risk identification is performed by the business areas and lines exposed to the risk (referred to as "risk owners") at least once each year, and is overseen by the Risk Oversight Department. Risk owners must map their existing

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<sup>4</sup> The ORM Policy notes several non-exhaustive examples of operational risk, including risks from internal and external fraud, employment practices and workplace safety, clients, products and business practices, damage to physical assets and business disruption and system failures.

processes, linking them to business objectives and identify operational risks where an event might negatively impact the achievement of a business objective. Risk sources must also be identified.

***Risk Assessment:*** Risk assessment is conducted by the risk owners at least once per year in conjunction with risk identification. The potential impact of the risk, including its potential severity and likelihood, are to be evaluated. More frequent ad hoc assessments may be necessary if risks emerge or disappear between annual reviews. For most operational risks, control mechanisms may already exist, in which case uncontrolled and controlled impacts are measured. Risk owners must also assess the sufficiency of existing control mechanisms on a quarterly or, if necessary, a more frequent ad hoc basis.

***Risk Response:*** Risk owners are responsible for proposing and implementing remedial actions, which must be approved by the ICE Clear Europe Executive Risk Committee (the “ERC”). Depending upon the potential expected impact of the operational risk and the Clearing House risk appetite, the four possible responses to a risk are to treat or mitigate the risk, tolerate or accept the risk, transfer the risk to another party (such as through insurance) or terminate the activity carrying the risk.

***Risk Monitoring:*** Risk owners must monitor the identified operational risk daily through the use of key performance indicators, key risk indicators and other risk indicators such as their own management limits. The Risk Oversight Department itself monitors risks daily through risk appetite metrics and management thresholds as well as operational incidents raised by the risk owners. Risk owners and the Risk Oversight Department also must monitor the performance of control mechanisms on a regular and frequent basis.

***Risk Reporting and Oversight:*** Overall oversight of the policy rests with the Audit Committee and Risk Oversight Department. Specifically, the results of risk assessments must be reported to the Audit Committee and the Board Risk Committee (the “BRC”) when material changes are observed. Control assessments and operational incidents must be regularly reported to senior management, the Audit Committee and the BRC for appropriate action. The BRC and Board will also be informed of relevant incidents as part of routine reporting. Operational metrics will be provided to the Board and BRC monthly and the ERC daily. The product Risk Committees shall also have access to operational metrics following their schedule of meetings. Unexpected results of operational metrics require escalation and notification to the Board immediately following the event. Identified operational risks must also be compared against established thresholds and reported to the ERC daily and monthly. The ORM Policy itself is subject to review on a biennial basis or in the event of a material change.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act<sup>5</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>6</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, 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

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<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

investors and the public interest. By formalizing ICE Clear Europe’s operational risk management and governance process, the amendments are intended to enhance ICE Clear Europe’s ability to identify and respond to operational risks presented by its clearing activities. The amendments will thus promote the prompt and accurate clearing of cleared contracts and protects investors and the public interest in the sound operations of the clearing house. Increasing the ability of ICE Clear Europe to identify and respond to operational risks may also enhance the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, and avoid potential disruption of access to such assets as a result of operational risks. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).<sup>7</sup>

The policy is also consistent with the requirements of Rule 17Ad-22(e)(17)(i).<sup>8</sup> The ORM Policy is designed to enhance the ability of ICE Clear Europe to identify relevant sources of operational risk, monitor them on an ongoing basis and take appropriate action to respond to such risks. The amendments will therefore facilitate the

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 17 CFR 240.17Ad-22(e)(17)(i). The rule states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: Manage the covered clearing agency’s operational risks by:

- (i) Identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.

ongoing identification and mitigation of operational risk, within the meaning of Rule 17Ad-22(e)(17)(i).<sup>9</sup>

(B) Clearing Agency'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 amendments are being adopted to strengthen the Clearing House's internal operational risk management processes and governance and should not affect the rights or obligations of Clearing Members. As a result, ICE Clear Europe does not believe the amendments will affect the cost of clearing for Clearing Members or other market participants, the market for cleared services generally or access to clearing by Clearing Members or other market participants, or otherwise affect competition among Clearing Members or market participants.

(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 written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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<sup>9</sup> 17 C.F.R. 240.17Ad-22(e)(17)(i).

- (A) by order approve or disapprove the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

#### 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-2019-009 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-ICEEU-2019-009. 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-2019-009 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>10</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).