

SECURITIES AND EXCHANGE COMMISSION  
Release No. 34-86259; File No. SR-ICEEU-2019-003

July 1, 2019

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, to Revise the ICE Clear Europe Clearing Rules Regarding Default Management, Recovery and Wind-down for CDS Contracts, and Default Auction Procedures

I. Introduction

On April 29, 2019, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposal to modify certain provisions of the ICE Clear Europe Clearing Rules (“Rules”) and clearing procedures relating to default management, Clearing House recovery and wind-down for CDS Contracts, and to adopt certain related default auction procedures for CDS Contracts (“CDS Default Auction Procedures”).<sup>3</sup> The proposed rule change was published in the Federal Register on May 17, 2019.<sup>4</sup> The Commission did not receive comments on the proposed rule change. On June 5, 2019, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The

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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 Rules, clearing procedures, or CDS Default Auction Procedures.

<sup>4</sup> Securities Exchange Act Release No. 34-85848 (May 13, 2019), 84 FR 22530 (May 17, 2019) (SR-ICEEU-2019-003) (“Notice”).

Commission is publishing this notice to solicit comment on Amendment No. 1 from interested persons and, for the reasons discussed below, is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposed Rule Change

The proposed rule change would amend the Rules relating to Clearing House default management tools and steps, including by adopting the CDS Default Auction Procedures and clarifying the governance regarding the use of default management tools and steps. Related to ICE Clear Europe's default management tools, the proposed rule change would clarify the requirements and uses of ICE Clear Europe's Guaranty Fund. Moreover, the proposed rule change would, for CDS Contracts, establish a cooling-off period, modify the requirements regarding withdrawal by CDS clearing members, and modify the requirements regarding clearing service termination. Finally, the proposed rule change would make certain other clarifications and improvements to the Rules described below.

### A. Revisions to Default Management Tools and Steps

#### i. Introduction

In general, the amendments would apply to the CDS Contract Category certain existing default management, recovery, and wind-down rules that currently apply only to the F&O Contract Category.<sup>6</sup> Thus, under the proposed rule change, instead of

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<sup>5</sup> ICE Clear Europe filed Amendment No. 1 to add a confidential Exhibit 3 to the filing associated with the proposed rule change. Amendment No. 1 did not make any changes to the substance of the filing or the text of the proposed rule change.

<sup>6</sup> ICE Clear Europe adopted its rules relating to Clearing House recovery and wind-down for the F&O and FX Contract Categories in 2014. See Exchange Act Release No. 71450 (Jan. 31, 2014), 79 FR 7250 (Feb. 6, 2014) (SR-ICEEU-2014-03) ("F&O Recovery Rule Amendments"). After adoption of the F&O Recovery

responding to a CDS Clearing Member default through the use of forced allocation, as required under ICE Clear Europe's current rules applicable to the CDS Contract Categories, ICE Clear Europe would be permitted to use default auctions, reduced gains distribution, and partial tear-up. The proposed rule change would also harmonize the default management tools across the F&O and CDS Contract Categories to ensure that such tools are utilized consistently across the different categories and, for the purpose of consistency with the proposed changes described herein, make clarifying and conforming changes, add new defined terms, and update current definitions and cross-references throughout the Rules. The proposed rule change would effect these changes by revising Rule 905, which establishes the overall default management tools and procedures available to the Clearing House to terminate and close out contracts of a Defaulter. In addition, because it is being replaced by the new default management tools described below, the proposed rule change would also remove existing Rule 905(c), which currently allows ICE Clear Europe to make a forced allocation of positions in the Defaulter's portfolio.

ii. Initial CDS Auctions

In the event of a clearing member default, proposed revised Rule 905(b)(i) would permit ICE Clear Europe to run one or more Initial CDS Auctions for the CDS Contract Category with respect to the remaining portfolio of the Defaulter.<sup>7</sup>

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Rule Amendments, certain provisions of ICE Clear Europe's rules continued to apply to CDS Contracts as they were in effect prior to the adoption of the F&O Recovery Rule Amendments. The proposed rule change would eliminate these provisions currently applicable only to CDS Contracts and CDS Clearing Members, and instead, the Rules would generally apply to CDS Clearing Members in the same way as they apply to F&O Clearing Members.

<sup>7</sup> See Notice, 84 FR at 22531.

ICE Clear Europe would conduct Initial CDS Auctions in accordance with Part 1 of the new CDS Default Auction Procedures. The CDS Default Auction Procedures would allow ICE Clear Europe to break the portfolio of the Defaulter into one or more lots, each of which would be auctioned separately. CDS Clearing Members would be required to bid for each lot in a minimum amount to be determined by ICE Clear Europe pursuant to the requirements set forth in the CDS Default Auction Procedures. The CDS Default Auction Procedures would permit a CDS Clearing Member to transfer or outsource its minimum bid requirement to an affiliated CDS Clearing Member, and similarly would permit a CDS Clearing Member to aggregate its own minimum bid requirement with that of its affiliated CDS Clearing Members. The CDS Default Auction Procedures would not apply a minimum bid requirement where the bid would be in breach of applicable law or the Rules, such as if a self-referencing CDS Contract would arise from an accepted bid, or where ICE Clear Europe, after written notification that a minimum bid requirement is inappropriate in the current circumstances, reasonably determines that the requirement should not apply.

The CDS Default Auction Procedures would permit Customers of CDS Clearing Members (including a Sponsored Principal invited by ICE Clear Europe to participate in an Initial CDS Auction) to bid, either directly or indirectly through a CDS Clearing Member. If bidding directly in an auction, the CDS Default Auction Procedures would require that the Customer (in this instance, a “Direct Participating Customer”): (i) confirm a Clearing Member will clear any of its resulting transactions; (ii) deposit a minimum of €7.5 million (which would generally be applied by ICE Clear Europe in the same manner as CDS Clearing Members’ Guaranty Fund Contributions, including being

subject to “juniorization,” as described below); and (iii) enter into an agreement with ICE Clear Europe pursuant to which the Direct Participating Customer would agree to the auction terms and confidentiality requirements as they apply to Direct Participating Customers.

The CDS Default Auction Procedures would require that the auction for each lot would be conducted as a modified Dutch auction. This would mean that, where there were multiple winning bidders, all would pay or receive the auction clearing price. If an auction for any lot or lots failed, as determined in accordance with the default auction procedures, the CDS Default Auction Procedures would allow ICE Clear Europe to conduct subsequent auctions, provided certain criteria set forth in the CDS Default Auction Procedures were met.

Under Rule 908, all available default resources (including pre-funded CDS Guaranty Fund Contributions of CDS Clearing Members, assessment contributions of CDS Clearing Members, and ICE Clear Europe contributions to the CDS Guaranty Fund) could be used to pay the cost of an Initial CDS Auction.

A portion of each CDS Clearing Member’s Guaranty Fund Contributions would be allocated to the auction cost of each lot. Proposed Rule 908(i) would subject the Guaranty Fund and Assessment Contributions of non-defaulting CDS Clearing Members to “juniorization” using a defined default auction priority set out in the CDS Default Auction Procedures based on the competitiveness of their bids. Specifically, the proposed approach would divide the CDS Guaranty Fund into three tranches, with the lowest tranche used first to pay for any remaining default costs after an auction. This lowest tranche would consist of contributions of CDS Clearing Members that failed to

participate or failed to bid in the required amount in the relevant auction. The second, or subordinate, tranche would include contributions of CDS Clearing Members whose bids were less competitive than a defined threshold, as set forth in proposed Rule 908(i), based on the auction clearing price. The final, or senior, tranche would include contributions of CDS Clearing Members whose bids would be competitive as compared to a second defined threshold, also as set forth in proposed Rule 908(i). For CDS Clearing Members who bid in the band between the two thresholds, the CDS Default Auction Procedures would allocate contributions between the senior and subordinate tranches based on a specified formula. Thus, ICE Clear Europe would pay remaining default costs after an auction first by using contributions of CDS Clearing Members who fail to bid, then by using contributions of those who bid uncompetitively, and finally, if necessary, by using contributions by those who bid competitively. Under the CDS Default Auction Procedures, the same juniorization approach would apply to assessment contributions from CDS Clearing Members and the required minimum deposit made by a Clearing Member when Direct Participating Customers bid in an auction.

iii. Secondary CDS Auction

If one or more Initial CDS Auctions were not fully successful in closing out the defaulting CDS Clearing Member's CDS portfolio, proposed Rule 905(d)(i)(B) and the CDS Default Auction Procedures would permit ICE Clear Europe to conduct a Secondary CDS Auction with respect to the Defaulter's remaining portfolio.<sup>8</sup>

In that event, the Secondary CDS Auction would be conducted pursuant to Part 2 of the CDS Default Auction Procedures. The Secondary CDS Auction would use the

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<sup>8</sup> See Notice, 84 FR at 22532.

same modified Dutch auction format used for Initial CDS Auctions, with all winning bidders paying or receiving the auction clearing price. Under the CDS Default Auction Procedures, a Secondary CDS Auction for a specific lot would be deemed successful if it resulted in a price for the lot that was within ICE Clear Europe's remaining CDS default resources available for the lot. Direct Participating Customers would be permitted to participate in Secondary CDS Auctions under the same conditions as Initial CDS Auctions, with one exception. Unlike in an Initial CDS Auction, A Direct Participating Customer in a Secondary CDS Auction could bid directly without need for a minimum deposit.

Under proposed revised Rule 908(i), in the case of a Secondary CDS Auction, ICE Clear Europe would apply all remaining CDS default resources. ICE Clear Europe would subject Guaranty Fund and Assessment Contributions of non-defaulting CDS Clearing Members, to the extent remaining, to "juniorization" in a Secondary CDS Auction, similar to that described above for initial default auctions, in accordance with the secondary auction priority set forth in the CDS Default Auction Procedures.

If a Secondary CDS Auction is unsuccessful for any lot, the CDS Default Auction Procedures would permit ICE Clear Europe to run another Secondary CDS Auction for that lot, and to repeat this process as necessary. Pursuant to proposed Rule 914(o), however, if ICE Clear Europe invokes reduced gains distributions, the last attempt at a Secondary CDS Auction (if needed) would occur on the last day of the five-business-day reduced gains distribution period. On that last day, the Secondary CDS Auction for each lot would be successful if it results in a price that is within the default resources for such lot. ICE Clear Europe would also be able to determine, for a Secondary CDS Auction on

that last day, that an auction for a lot would be partially filled. With respect to any lot that is not successfully auctioned, in whole or in part, ICE Clear Europe would be permitted to proceed to partial tear-up under Rule 915, as described below.

iv. F&O Default Auction

The proposed rule change would also clarify in Rule 908(b)-(d) that, where a Default Auction is held in respect of the F&O Contract Category, any applicable juniorization approach (made by modifying Rule 908) would be set out by the Clearing House by Circular.<sup>9</sup> The proposed rule change would make certain other drafting clarifications, corrections, and conforming changes to Rule 908 as well. The proposed rule change would also amend Rule 908(f) to eliminate the requirement that ICE Clear Europe provide notice of relevant default amount calculations to all affected Clearing Members via publication of a Circular, and instead allow ICE Clear Europe to notify affected Clearing Members through means that ICE Clear Europe deems appropriate under the facts and circumstances at the time. This change is intended to allow ICE Clear Europe greater flexibility with respect to the manner of notice to affected Clearing Members in what could be quickly changing circumstances.

v. Partial Tear-Up

The proposed rule change would add partial tear-up as an additional default remedy for all Contract Categories, with one difference between CDS and F&O Contracts.<sup>10</sup> ICE Clear Europe would be permitted to use partial tear-up for F&O

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<sup>9</sup> See Notice, 84 FR at 22532.

<sup>10</sup> See Notice, 84 FR at 22532.



Contracts immediately after a failed Default Auction, but would be able to use partial tear-up for CDS Contracts only after a failed Secondary CDS Auction.

Pursuant to proposed Rule 915(b), in a partial tear-up, ICE Clear Europe would terminate positions of non-defaulting Clearing Members and Sponsored Principals that exactly offset those in the Defaulter's remaining portfolio, that is, positions in the identical contracts and in the same aggregate notional amount ("Tear-Up Positions"). ICE Clear Europe would terminate Tear-Up Positions of all non-defaulting Clearing Members and Sponsored Principals that have such positions, on a pro rata basis, across both house and customer origin accounts. Within the customer origin account of a non-defaulting Clearing Member, Tear-Up Positions of customers would be terminated on a pro rata basis. Where ICE Clear Europe has entered into hedging transactions relating to the defaulter's positions that would not be subject to tear-up, ICE Clear Europe could, at its discretion, offer to assign or transfer those transactions to Clearing Members with related Tear-Up Positions.

ICE Clear Europe would determine a termination price for all Tear-Up Positions in accordance with proposed Rule 915(f). For CDS Contracts, the termination price would be the last established end-of-day mark-to-market settlement price. For F&O Contracts, the termination price would be the last established exchange end-of-day settlement price, subject to a specified fallback price procedure. Under proposed Rule 915(c), ICE Clear Europe would set out in a published Circular the date and time as of which partial tear-up would occur. For the CDS Contract Category, tear-up would occur contemporaneously with the determination of the termination price at end of day. Accordingly, the termination price would equal the current mark-to-market or other

applicable settlement value as determined pursuant to the applicable exchange or ICE Clear Europe end-of-day settlement price process, and would be satisfied by application of mark-to-market margin posted, or that would have been posted but for reduced gains distribution, under Rule 915(e). Thus, ICE Clear Europe would owe no additional amount in connection with the tear-up.

vi. Reduced Gains Distributions

To provide an additional secondary default management action for the CDS Contract Category, the proposed rule change would modify ICE Clear Europe's existing variation margin haircutting rules for the F&O Contract Category, as set forth in existing Rule 914, and extend the proposed modified rules so that they apply to both the F&O Contract Category and the CDS Contract Category.<sup>11</sup> Currently, these provisions only apply to the F&O Contract Categories. The proposed rule change would rename these provisions as "reduced gains distribution" and make them applicable to all contract categories.

For CDS Contracts specifically, the proposed rule change would only allow ICE Clear Europe to use reduced gains distribution for CDS Contracts after (i) there has been an unsuccessful Initial CDS Auction, (ii) ICE Clear Europe has exhausted its remaining available default resources (including assessment contributions paid up to that point), and (iii) ICE Clear Europe has called for Assessment Contributions and such contributions have become due and payable. Moreover, proposed Rule 914(o) would only allow ICE Clear Europe to invoke reduced gains distribution for CDS Contracts for up to five consecutive business days. Under revised Rule 914(b), ICE Clear Europe would

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<sup>11</sup> See Notice, 84 FR at 22532-33.

determine at the close of business on each business day in this five-day period whether the conditions for reduced gains distributions persist.

Reduced gains distribution would allow ICE Clear Europe to reduce payment of variation, or mark-to-market, gains that would otherwise be owed to Clearing Members. While using reduced gains distribution, ICE Clear Europe would attempt a Secondary CDS Auction. If ICE Clear Europe were able to conduct a successful Secondary CDS Auction, the day of that successful auction or the preceding business day (if ICE Clear Europe so determines) would be the last day for reduced gains distribution. If ICE Clear Europe is unable to conduct a successful Secondary CDS Auction by the end of the five business day reduced gains distribution period, ICE Clear Europe would proceed to conduct a partial tear-up under Rule 915 as of the close of business on such fifth business day.

Pursuant to proposed Rule 914(p), if reduced gains distribution would apply to CDS Contracts on any day, the net amount owed on such day to each Margin Account of each Contributor (meaning a Clearing Member or Sponsored Principal that is not in default) that would otherwise be entitled to receive mark-to-market margin or other payments in respect of such account would be subject to a percentage haircut, based on the incoming mark-to-market margin from other Clearing Members. ICE Clear Europe would determine haircuts independently on each day of reduced gains distribution for CDS Contracts and would apply them separately for each margin account for each Contributor.

The proposed rule change would also make changes to Rule 914(i) to clarify the obligations of the Clearing House upon termination of reduced gains distribution, as well

as certain clarifications to the provisions in Rule 914(i) as they apply to F&O Contracts. Moreover, a related proposed amendment to Rule 906(a) would clarify that the calculation of a net sum on default would treat the payment or return of variation margin or mark-to-market margin as having been successfully and fully made even if reduced gains distributions have been applied, and therefore the defaulter would not pay or receive such variation margin or mark-to-market margin in the net sum on default.

vii. Recoveries from Defaulting Clearing Members

The proposed rule change would add to Rule 907 a new subsection (c), which would address the Clearing House's authority to seek recoveries from a defaulting Clearing Member on its own behalf and on behalf of Clearing Members, including through setoff or legal process.<sup>12</sup> The proposed rule change would also revise Rule 907 to state ICE Clear Europe's obligations with respect to seeking recoveries from a defaulting Clearing Member where the Guaranty Fund Contributions of non-defaulting Clearing Member have been applied, and provide that in such case ICE Clear Europe will exercise the same degree of care in enforcement and collection of any claims against the defaulter as it exercises with respect to its own assets that are not subject to allocation to Clearing Members and others. The proposed rule change would also remove certain contrary provisions of the Rules to the effect that ICE Clear Europe has no obligation to pursue recoveries from defaulters, such as existing Rule 914(m).

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<sup>12</sup> See Notice, 84 FR at 22533.

viii. Delay of Outbound Variation Margin

The proposed rule change would extend the provisions of existing Rule 110(f) to the CDS Contract Category.<sup>13</sup> Rule 110(f) would permit ICE Clear Europe to delay making a variation margin or mark-to-market margin payment, solely on an intra-day basis, where a Clearing Member or Sponsored Principal has failed to make a corresponding payment to ICE Clear Europe, and the amount of the failure exceeds the initial or original margin posted by that Clearing Member or Sponsored Principal.

ix. Governance

The proposed rule change includes a number of revisions that would specify the required governance provisions that would apply to these new default management tools.<sup>14</sup>

Under the CDS Default Auction Procedures, ICE Clear Europe would be required to consult with its CDS Default Committee as to certain matters of auction design, including the division of the relevant portfolio into lots, whether to hold additional auctions, and whether to accept a partial fill of any lot in any such auction. The CDS Default Committee would be made up of personnel seconded from Clearing Members, who would be required to act in the best interests of ICE Clear Europe when acting in their capacity as members of the CDS Default Committee. The CDS Default Committee would be expected to work together with, and under the supervision of, the ICE Clear Europe risk department, and would be supported by ICE Clear Europe legal, compliance, and other personnel.

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<sup>13</sup> See Notice, 84 FR at 22533.

<sup>14</sup> See Notice, 84 FR at 22535.

Moreover, based on its existing Board charter and practice, ICE Clear Europe would expect that key decisions regarding use of the recovery tools would be made in consultation with the ICE Clear Europe Board of Directors, which is independent of ICE Clear Europe management. Specifically, the Board has delegated to the President of ICE Clear Europe authority to take the relevant steps set out under the Rules, or to ensure that such steps are taken, upon an Event of Default with respect to a Clearing Member. Under the terms of delegation, the President would be required to ensure that the Board is informed of the relevant circumstances, steps or actions taken, and determinations made or approvals given, as soon as practicable subsequent to such Event of Default. The Board would be able to, in its discretion and where possible and practical, rescind any steps or actions taken or determinations made or approvals given by the President, or amend such actions, steps, determinations, or approvals, as the Board determined appropriate.

B. Clarifications of Guaranty Fund Requirements and Uses

The proposed rule change would make various clarifications and conforming changes to the provisions of Rule 908 to address contributions to and uses of the Guaranty Fund.<sup>15</sup> The proposed rule change would also move and reorganize provisions in Rules 909, 910, and 911 as described below.

- The proposed rule change would update ICE Clear Europe's ability to modify the order of application of Guaranty Fund Contributions under the Auction Procedures to provide for juniorization based on bidding (Rule 908(i), and conforming cross-references throughout).

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<sup>15</sup> See Notice, 84 FR at 22533-22534.

- Proposed revisions to Rule 909 would specify a single Powers of Assessment for all Contract Categories, eliminating inconsistencies across the default rules for different products. The proposed rule change would make various deletions and insertions to remove duplication among the three Contract Categories. In addition, the proposed rule change would remove as unnecessary a certification requirement in connection with the application of claims under any default insurance policies for F&O Contracts (Rules 909 – 911).
- Proposed Rule 909(a) would permit assessments for CDS Contracts to be called in anticipation of any charge against the CDS Guaranty Fund following a default, rather than only after such a charge. This proposed change would be consistent with the current treatment of assessments for F&O Contracts.
- The proposed rule change would make certain changes throughout Part 11 of the Rules to align the process for return of Guaranty Fund Contributions following termination of Clearing Membership across all Contract Categories, align the Guaranty Fund Contribution calculation methodology across all Contract Categories, and to clarify that separate Guaranty Fund Contribution amounts calculated in respect of Proprietary and Customer positions could be applied across any type of account. The proposed rule change would modify Rule 1101(e) to better reflect current practice for the calculation of Guaranty Fund Contributions. Finally, the

proposed rule change would delete Rule 1102(n) and merge its content into Rule 1102(m).

C. Cooling-Off Period, Withdrawal, and Termination for CDS Contracts

i. Cooling-Off Period

The proposed rule change would modify the Cooling-off Period concept in Rule 917 to apply it to CDS Contracts, adjust the calculation of the relevant cap on contributions for all Contract Categories, and reduce the length of the Cooling-off Period.<sup>16</sup> Under the proposed rule change, certain calls for assessments for the relevant Contract Category, or a sequential Guaranty Fund depletion in the relevant Contract Category within a specified period, would trigger a Cooling-off Period. The proposed rule change would reduce the base length of the Cooling-off Period from 30 Business Days to 30 calendar days in order to balance the goals of limited liability and certainty for Clearing Members with the need for the Clearing House to restore normal operations following recovery as quickly as possible. As under the current Rules, a Cooling-off Period could be extended as a result of subsequent defaults during the period.

Rule 917(b) would also be revised to provide that the “3x” cap on relevant contributions during a Cooling-off Period would apply to both Assessment Contribution and replenishments of the Relevant Guaranty Fund, in the aggregate, regardless of the number of defaults during the period. The cap would be based on a Clearing Member’s individual Guaranty Fund Contribution immediately prior to the default that triggered the Cooling-off Period. Moreover, under the proposed rule change, the existing single-default cap on Assessment Contributions under Rule 909 would continue to apply in a

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<sup>16</sup> See Notice, 84 FR at 22534.



Cooling-off Period, as set out in Rule 917(b)(iii). The proposed rule change would also allow ICE Clear Europe to rebalance, reset, and recalculate the Relevant Guaranty Fund during the Cooling-off Period, but such changes would not affect the aggregate 3x contribution limit. Finally, under proposed Rule 917(e), the proposed cap would not affect ICE Clear Europe's right to call for margin from a Clearing Member.

ii. Clearing Member Withdrawal

The proposed rule change would make certain changes to existing Rules 209, 917, and 918, which currently apply only to F&O and FX Clearing Members, and apply them to the CDS Contract Category as well, such that these rules would apply to all ICE Clear Europe Clearing Members and Sponsored Principals.<sup>17</sup>

Specifically, under revised Rule 917(c), CDS Clearing Members (like other Clearing Members) and Sponsored Principals would be able to withdraw from ICE Clear Europe during a Cooling-off Period by providing an irrevocable notice of withdrawal<sup>18</sup> in the first 10 business days of the period (subject to extension in certain cases if the Cooling-off Period is extended). CDS Clearing Members could withdraw from ICE Clear Europe at other times by notice to ICE Clear Europe under Rule 209(c). Under Rule 209(d), however, a CDS Clearing Member that seeks to withdraw other than during the first 10 business days of a Cooling-off Period could, at the direction of ICE Clear Europe, be required to make a deposit of up to three times the CDS Clearing Member's required Guaranty Fund Contribution (this provision already applies to F&O Clearing

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<sup>17</sup> See Notice, 84 FR at 22534.

<sup>18</sup> Pursuant to Rule 918(c), membership could only be reinstated pursuant to a new application for membership following the close-out of all of the relevant Clearing Member's open Contracts of the Relevant Contract Category.

Members). This increased deposit requirement is intended to provide assurance that the withdrawing Clearing Member would continue to meet its obligations in respect of defaults and potential defaults before its withdrawal would be effective, and thus reduce the potentially destabilizing effect that a Clearing Member withdrawal (or a series of withdrawals) could have on the Clearing House during a stressed situation.

Consistent with existing Rule 918's application to F&O and FX Clearing Members, a CDS Clearing Member's withdrawal under proposed revised Rule 918 would not be effective until the CDS Clearing Member closed out all outstanding positions and satisfied any related obligations. Further, a withdrawing CDS Clearing Member would remain liable under Rule 918 with respect to charges and assessments resulting from defaults that occurred before such time.

iii. Clearing Service Termination

The proposed rule change would extend the existing provisions of Rules 105(c), 912, and 916, which currently apply only to the F&O and FX Contract Categories and provide for full clearing service termination for one or more of those specific Contract Categories, such that they would apply to the CDS Contract Category as well.<sup>19</sup>

Specifically, Rule 105(c) would apply where ICE Clear Europe determines to cease acting as a Clearing House, whether generally or in relation to a particular class of Contracts. It would provide for the application of the procedures and terms in specified sections of Rule 918 to effect termination of the relevant contracts, including the timing of termination and the determination of the termination price.

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<sup>19</sup> See Notice, 84 FR at 22534-22535.

Rule 912 would permit ICE Clear Europe to terminate upon events such as a clearing house insolvency and failure to pay.

Rule 916 would apply where ICE Clear Europe determines to terminate an entire Contract Category in certain circumstances following an Event of Default, including where there has been an Under-priced Auction or the Clearing House otherwise does not believe it will have sufficient assets to perform its obligations in respect of that Contract Category.

D. Additional Changes

The proposed rule change would also make certain drafting improvements and updates, clarifications, and conforming changes to the Rules.<sup>20</sup> In particular, the proposed rule change would revise Rule 101 to add new defined terms that are used in the changes and amendments discussed above. The proposed rule change would also revise Rule 101 to include, for clarity, additional cross-references to various terms that are defined in other parts of the Rules. The proposed rule change would also make other updates to definitions and cross-references throughout the Rules, including in Parts 4 and 11.

The proposed rule change would make certain other conforming changes throughout the Rules to reflect the new default management tools and provisions discussed above, as well as related defined terms. Specifically, the proposed rule change would amend Rule 903(d) to align treatment of automatic default termination provisions for all Contract Categories; revise Rule 906 to clarify that certain amounts payable to Clearing Members in respect of Guaranty Fund Contributions, assessments, reduced gains distribution, partial tear-up, and collateral offset obligations would be taken into

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<sup>20</sup> See Notice, 84 FR at 22535.

account in that component of the net sum calculation; and add to Rule 918(a)(viii) a cross-reference to the relevant Settlement Finality Regulations. The proposed rule change also would make certain minor clarifications and conforming updates in Part 12, designed to ensure consistency with the changes described above. The proposed rule change would also amend Rule 1901(k) to provide that Sponsored Principals could be required to participate in Default Auctions. Finally, the proposed rule change would make certain other typographical and cross-reference corrections throughout the Rules, and would amend ICE Clear Europe's Clearing Procedures to reflect the renaming of ICE Clear Europe's risk model.

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.<sup>21</sup> After carefully considering the proposed rule change, the Commission believes the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to ICE Clear Europe. More specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act<sup>22</sup> and Rules 17Ad-22(e)(1), (e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii) thereunder.<sup>23</sup>

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<sup>21</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>22</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>23</sup> 17 CFR 240.17Ad-22(e)(1), (e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii).

A. Consistency with Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, 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, in general, to protect investors and the public interest.<sup>24</sup>

In general, ICE Clear Europe maintains equal and opposite obligations on cleared positions (commonly referred to as a matched book). In an extreme loss event caused by a Clearing Member default, re-establishing a matched book as quickly as possible is essential because it would allow ICE Clear Europe to continue clearing and settling securities transactions as a central counterparty. In addition, allocating uncovered losses is important in such an event because it would allow ICE Clear Europe to provide further certainty to Clearing Members, their customers, and other stakeholders about how it addresses such losses and how it avoids a disorderly resolution to such an event. Thus, taken together, the Commission believes that the new and amended authority granted to ICE Clear Europe specific to the context of extreme loss events described above, such as the conduct of default auctions and the use of partial tear-up, should enhance ICE Clear Europe's ability to re-establish a matched book, allocate uncovered losses if necessary, and limit ICE Clear Europe's potential exposure to losses from such an event, all of which would be essential to ICE Clear Europe's ability to continue to promptly and accurately clear and settle securities transactions in the event that an extreme market event places ICE Clear Europe in a recovery scenario.

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<sup>24</sup> 15 U.S.C. 78q-1(b)(3)(F).

Further, the Commission believes that the proposed changes would provide a reasonable amount of clarity and specificity to Clearing Members, their customers, and other stakeholders about the potential tools that would be expected to be available to ICE Clear Europe if such an event occurred, and the consequences that might arise from ICE Clear Europe's application of such tools. Specifically, the Commission believes the removal of forced allocation as a default management tool would provide certainty that non-defaulting Clearing Members would not be required to take on positions in a defaulting Clearing Member's portfolio that could result in unpredictable and unquantifiable liability. Similarly, the Commission believes the CDS Default Auction Procedures would provide certainty regarding the conduct of initial and secondary auctions and the use, and possible juniorization, of Guaranty Fund and Assessment Contributions based on participation in such auctions. Moreover, the Commission believes the proposed clarification of ICE Clear Europe's obligations with respect to seeking recoveries from a defaulting Clearing Member where the Guaranty Fund Contributions of non-defaulting Clearing Member have been applied would provide Clearing Members with certainty that ICE Clear Europe would exercise the same degree of care in enforcement and collection of any claims against the defaulter as it would exercise with respect to its own assets. The Commission also believes the proposed clarification regarding the return of Guaranty Fund Contributions following termination of Clearing Membership and the calculation of Guaranty Fund Contributions across all contract categories would provide Clearing Members with important information about the use and calculation of the Guaranty Fund. In addition, the Commission believes the proposed application of existing ICE Clear Europe Rules regarding withdrawal by

Clearing Members and termination of clearing services to CDS Contracts would provide CDS Clearing Members with clarity regarding the process and requirements for withdrawal from ICE Clear Europe and ICE Clear Europe's ability to terminate the CDS clearing service in certain circumstances. Finally, the Commission believes that the proposed rule change's clarification that certain amounts payable to a defaulting Clearing Member in respect of that Clearing Member's Guaranty Fund Contributions, assessments, reduced gains distribution, partial tear-up, and collateral offset obligations would offset the amount owed by that Clearing Member upon default would provide greater certainty regarding amounts owed upon default.

Because of this increased clarity and specificity, ICE Clear Europe's Clearing Members, their customers, and other stakeholders should have more information regarding their potential exposure and liability to ICE Clear Europe in an extreme loss event. Accordingly, the Commission believes that the proposed changes should allow Clearing Members, their customers, and other stakeholders to better evaluate the risks and benefits of clearing transactions at ICE Clear Europe, because the proposed changes result in those parties having more information and specificity regarding the actions that ICE Clear Europe could take in response to an extreme loss event. To the extent that Clearing Members, their customers, and other stakeholders are able to use this increased clarity and specificity to better manage their potential exposure and liability in clearing transactions at ICE Clear Europe, such parties should be able to mitigate the likelihood that such tools could surprise or otherwise destabilize them. For these reasons, the Commission believes that the proposed rules providing for such clarity and specificity are designed, in general, to protect investors and the public interest.

It is important for ICE Clear Europe to implement measures that enhance ICE Clear Europe's ability to address losses and to avoid threatening its ability to safeguard securities and funds within ICE Clear Europe's custody or control, including measures designed to facilitate ICE Clear Europe's ability to address risks and obligations arising in the specific context of extreme loss events. ICE Clear Europe's proposed modified assessment powers would impose a cap on a Clearing Member's potential liability to replenish the Clearing Fund following a particular default event and extend the timeframe during which a Clearing Member must determine whether to terminate its membership and avoid further losses. Similarly, the proposed rule change would establish a Cooling-off Period, which would cap Clearing Members' obligations to make Assessment Contributions and replenish the Relevant Guaranty Fund and would provide Clearing Members the opportunity to withdraw from the Clearing House. Moreover, ICE Clear Europe's proposed reduced gains distributions would allow ICE Clear Europe, in certain circumstances, to reduce payment of variation, or mark-to-market, gains that would otherwise be owed to Clearing Members. Similarly, the proposed rule change would, in certain circumstances, permit ICE Clear Europe to delay payment of variation margin or mark-to-market margin with respect to CDS Contracts. Taken together, the Commission believes that these tools are reasonably designed to provide ICE Clear Europe with sufficient financial resources to cover default losses and help ensure that ICE Clear Europe can take timely actions to contain losses in the event of a Clearing Member default. Similarly, the Commission believes that these changes would provide Clearing Members and their customers with greater certainty and predictability regarding the amount of losses they could be required to bear as a result of a Clearing Member default,



which in turn should allow them to better manage and potentially mitigate or otherwise limit their potential exposure to such losses. For these reasons, the Commission believes that the proposed rule change is designed to assure the safeguarding of securities and funds in ICE Clear Europe's custody or control.

Additionally, ICE Clear Europe's proposed authority to conduct partial tear-ups would provide ICE Clear Europe with a mechanism for restoring a matched book. The Commission recognizes that a tear-up would result in termination of positions of non-defaulting Clearing Members. However, because under the proposed rules ICE Clear Europe would only be able to use its tear-up authority for CDS Contracts after it has conducted an Initial Auction and Secondary Auction, both of which must have failed to eliminate or replace the risk of a defaulter's open positions before tear-up could be used, the Commission believes that a partial tear-up would only arise in an extreme stress scenario. The Commission further believes that that use of tear-up in such circumstances could potentially return ICE Clear Europe to a matched book quickly, thereby containing its losses and avoiding exposing ICE Clear Europe and its Clearing Members to additional losses. ICE Clear Europe's proposal would also address the determination of the Partial Tear-Up Price. Specifically, for CDS Contracts, the Partial Tear-Up Price would equal the market price, as determined by ICE Clear Europe in accordance with its procedures. The Commission believes that ICE Clear Europe's proposed authority to conduct tear-ups could facilitate its ability to return to a matched book quickly and, in an extreme event, allocate losses. This, in turn, could help ensure that ICE Clear Europe is able to continue providing its critical clearing functions by facilitating the timely containment of default losses and liquidity pressures, thereby helping to prevent ICE

Clear Europe from failing in such an event, and is therefore consistent with promoting the prompt and accurate clearance and settlement of securities transactions.

Therefore, the Commission believes that the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, and, in general, protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Exchange Act.<sup>25</sup>

B. Well-Founded Legal Basis

Rule 17Ad-22(e)(1) requires, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.<sup>26</sup> The Commission believes that the proposed changes discussed above to: revise Rule 101 to add new defined terms, update existing defined terms, and revise cross-references; revise Rules 903 and 906; update definitions and cross-references and make other conforming changes throughout the Rules; and correct typographical errors, are necessary to ensure that the proposed recovery rules are clear and transparent and operate as intended. The Commission therefore believes that this aspect of the proposed rule change would help to ensure that ICE Clear Europe's Rules are well-founded, clear, and enforceable.

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<sup>25</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>26</sup> 17 CFR 240.17Ad-22(e)(1).

Similarly, the Commission believes that the renaming of ICE Clear Europe's risk model in the Clearing Procedures would help to ensure that ICE Clear Europe's procedures are clear and transparent in referring to the current version of the risk model.

Accordingly, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(1).<sup>27</sup>

### C. Governance

Rules 17Ad-22(e)(2)(i), (iii), and (v) require, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; support the public interest requirements of Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants; and specify clear and direct lines of responsibility.<sup>28</sup>

The proposal, taken together with existing ICE Clear Europe policies, procedures, and practices, specifies the governance provisions that would apply to ICE Clear Europe's use of each of the recovery tools set forth in the proposed rule change. Specifically, as discussed above, ICE Clear Europe's Board has delegated to the President of ICE Clear Europe authority to take the relevant steps set out under the Rules, or to ensure that such steps are taken, upon an Event of Default with respect to a Clearing Member. Under the terms of delegation, the President would be required to ensure that the Board is informed of the relevant circumstances, steps, or actions taken and determinations made or approvals given, as soon as practicable subsequent to such Event

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<sup>27</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>28</sup> 17 CFR 240.17Ad-22(e)(2)(i), (iii), and (v).

of Default. The Board would be able to, in its discretion, where possible and practical, rescind any steps or actions taken or determinations made or approvals given, or amend such actions, steps, determinations or approvals, as it determined appropriate.

Because key decisions by ICE Clear Europe in connection with the use of its proposed recovery tools upon an Event of Default are subject to specific governance processes, the Commission believes that the governance process for using the recovery tools is clear and transparent and provides clear and direct lines of responsibility by addressing decision making in the use of recovery tools, thereby supporting the public interest requirements of Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants, and therefore the Commission believes that the proposed rule change is consistent with Rules 17Ad-22(e)(2)(i), (iii), and (v).<sup>29</sup>

D. Allocation of Credit Losses Exceeding Available Resources and Replenishment of Financial Resources Following a Default

i. Consistency with Rule 17Ad-22(e)(4)(viii)

Rule 17Ad-22(e)(4)(viii) requires, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to address allocation of credit losses ICE Clear Europe may face if its collateral and other resources are insufficient to fully cover its credit exposures.<sup>30</sup> The proposed rule change includes two new recovery tools that would address the allocation of credit losses in the event that ICE Clear Europe determined that, notwithstanding the availability of any remaining resources under ICE Clear Europe's other resource rules, ICE Clear Europe may not have sufficient resources to satisfy its obligations and

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<sup>29</sup> 17 CFR 240.17Ad-22(e)(2)(i), (iii), and (v).

<sup>30</sup> 17 CFR 240.17Ad-22(e)(4)(viii).

liabilities following a default. First, proposed revised Rule 909 would provide a framework for ICE Clear Europe to assess Clearing Members for additional contributions to the Clearing Fund. Second, proposed new Rule 915 would provide ICE Clear Europe the ability to conduct a mandatory partial tear-up of CDS Contracts. This tool could be used if necessary in the event that one or more Secondary CDS Auctions has failed to eliminate or replace all remaining risk of the open positions of a defaulting Clearing Member and any positions ICE Clear Europe entered into to hedge the risks of the open positions of a defaulting Clearing Member.

After due consideration of the record before it, the Commission believes that these additional recovery tools are reasonably designed to provide ICE Clear Europe with means to address allocation of credit losses that it may face if its collateral and other resources are insufficient to fully cover its credit exposures. Further, the Commission believes that these tools should enhance ICE Clear Europe's ability to address fully any credit losses that ICE Clear Europe may face as a result of any individual or combined default among its Clearing Members. Therefore, the Commission believes that these aspects of the proposed changes are consistent with Rule 17Ad-22(e)(4)(viii).<sup>31</sup>

ii. Consistency with Rule 17Ad-22(e)(4)(ix)

Rule 17Ad-22(e)(4)(ix) requires, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to describe ICE Clear Europe's process to replenish any financial resources it may use following a default or other event in which use of resources is contemplated.<sup>32</sup>

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<sup>31</sup> 17 CFR 240.17Ad-22(e)(4)(viii).

<sup>32</sup> 17 CFR 240.17Ad-22(e)(4)(ix).

The proposed changes to ICE Clear Europe's assessment powers would produce in Rule 909 a single assessment rule for all categories of contracts cleared by ICE Clear Europe, thus eliminating inconsistencies across the default rules for different products. The proposed rule change would also permit assessments for CDS Contracts to be called in anticipation of any charge against the CDS Guaranty Fund following a default, rather than only after such a charge, consistent with the current treatment of assessments for F&O Contracts.

The proposed rule change would also include a Cooling-off Period for all categories of contracts cleared by ICE Clear Europe. Specifically, the proposed rule change would modify the Cooling-off Period concept in Rule 917 and apply it to CDS Contracts, reduce the base length of the Cooling-off Period from 30 Business Days to 30 calendar days, and provide that the 3x cap on contributions during a Cooling-off Period would apply to both Assessment Contributions and replenishments of the Relevant Guaranty Fund, in the aggregate, regardless of the number of defaults during the period. Moreover, under the proposed rule change, the existing single-default cap on Assessment Contributions under Rule 909 would continue to apply in a Cooling-off Period, as set out in Rule 917(b)(iii). Finally, under the proposed rule change, a Cooling-off Period would be triggered by certain calls for assessments for the relevant Contract Category or by sequential Guaranty Fund depletion in the relevant Contract Category within a specified period.

The Commission recognizes that by placing a cap on its assessment power during the Cooling-off Period, these revisions would effectively limit the amount of financial resources available to ICE Clear Europe from its Clearing Fund during that period.

However, the Commission believes that it is appropriate for ICE Clear Europe to attempt to balance its need to maximize available financial resources with Clearing Members' need for certainty and predictability regarding their potential liability to the Guaranty Fund. Based on the record before it, the Commission believes that the proposals described above strike an appropriate balance and would provide greater certainty and predictability regarding Clearing Members' maximum liability to the Guaranty Fund. Moreover, Clearing Members that have made the maximum contribution during a Cooling-off Period would still be required, under proposed Rule 917(e), to provide additional proprietary initial margin during the period, which would facilitate ICE Clear Europe's ability to continue to satisfy its regulatory minimum financial resources requirements.

In light of the foregoing discussion, the Commission believes that the provisions related to ICE Clear Europe's assessment powers, taken together with the other components of ICE Clear Europe's default management procedures and recovery rules, are reasonably designed to allow ICE Clear Europe to replenish its financial resources following a default or other event in which use of such resources is contemplated, and therefore are consistent with Rule 17Ad-22(e)(4)(ix).<sup>33</sup>

E. Authority to Take Timely Action to Contain Losses and Liquidity Demands and Continue to Meet Obligations

Rule 17Ad-22(e)(13) requires, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that it has the authority and operational capacity to take timely action to contain

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<sup>33</sup> 17 CFR 240.17Ad-22(e)(4)(ix).

losses and liquidity demands and continue to meet its obligations.<sup>34</sup> As described above, the proposed rule change would provide ICE Clear Europe with a variety of tools designed to help ensure that ICE Clear Europe is able to meet this requirement, including new CDS Default Auction Procedures, modified assessment powers, partial tear-ups, reduced gains distributions, and delay of outbound margin. The Commission believes that the new CDS Default Auction Procedures would provide ICE Clear Europe a means of containing the potential losses associated with a defaulting Clearing Member's open positions by providing ICE Clear Europe the ability to auction off a defaulting Clearing Member's portfolio. Similarly, the Commission believes that the modified assessment powers and partial tear-ups would provide ICE Clear Europe a mechanism for eliminating potential losses by allowing ICE Clear Europe to seek additional resources to cover losses and eliminate any positions of a defaulter remaining after an auction. Finally, the Commission believes that reduced gains distributions and delay of outbound margin would allow ICE Clear Europe to eliminate losses and respond to liquidity demands arising from a Clearing Member's default by eliminating or delaying payment of variation or mark-to-market margin. Thus, the Commission believes that these tools, taken together, would provide ICE Clear Europe the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations, consistent with Rule 17Ad-22(e)(13).

The Commission recognizes that a partial tear-up would result in termination of positions of non-defaulting Clearing Members. However, because ICE Clear Europe would only be able to use its partial tear-up authority after one or more unsuccessful

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<sup>34</sup> 17 CFR 240.17Ad-22(e)(13).



Initial and Secondary CDS Auctions have failed to eliminate or replace all remaining risk of the open positions of a defaulting Clearing Member and any positions ICE Clear Europe entered into to hedge the risks of the open positions of a defaulting Clearing Member, the Commission believes that a tear-up would only arise in an extreme stress scenario. Further, use of tear-up in such circumstances could potentially return ICE Clear Europe to a matched book quickly, thereby containing its losses.

Similarly, the Commission recognizes that reduced gains distributions would result in some Clearing Members not receiving market gains on their positions. However, ICE Clear Europe could only invoke reduced gains distributions in certain limited circumstances that the Commission believes would most likely only occur in an extreme stress scenario. For example, for CDS Contracts, the proposed rule change would only allow ICE Clear Europe to use reduced gains distribution for CDS Contracts after (i) there has been an unsuccessful Initial CDS Auction, (ii) ICE Clear Europe has exhausted its remaining available default resources (including assessment contributions paid so far), and (iii) ICE Clear Europe has called for assessment contributions and such contributions have become due and payable. Similarly, although the proposed rule change would allow ICE Clear Europe to delay paying variation margin or mark-to-market margin with respect to CDS Contracts, the Commission believes this tool as well would only be invoked in an extreme stress scenario because ICE Clear Europe would only be permitted to delay paying variation margin or mark-to-market margin on an intra-day basis and only where (i) a Clearing Member has failed to make a corresponding payment to ICE Clear Europe and (ii) the amount of the failure exceeds the initial or original margin posted by that Clearing Member.

Taken together, the Commission believes that these tools are designed to provide greater certainty to Clearing Members seeking to estimate the potential risks and losses arising from their use of ICE Clear Europe, while enabling ICE Clear Europe to promptly return to a matched book in an extreme loss event caused by a Clearing Member default. The Commission believes that returning to a matched book pursuant to these provisions in the context of ICE Clear Europe's default management and recovery facilitates ICE Clear Europe's operational capacity to timely contain losses and liquidity demands while continuing to meet its obligations. Thus, the Commission believes that the proposed changes are consistent with Rule 17Ad-22(e)(13).<sup>35</sup>

F. Public Disclosure of Key Aspects of Default Rules

Rules 17Ad-22(e)(23)(i) and (ii) require, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for the public disclosure of all relevant rules and material procedures, including key aspects of default rules and procedures, as well as sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in ICE Clear Europe.<sup>36</sup> The Commission believes that the proposed changes enhance key aspects of ICE Clear Europe's default rules and procedures, thereby providing Clearing Members with a better understanding of the potential risks and costs they might face in an extreme event where ICE Clear Europe may use its proposed recovery tools, including the potential use of partial tear-up and reduced gains distributions, and the circumstances in which Clearing Members may withdraw from ICE

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<sup>35</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>36</sup> 17 CFR 240.17Ad-22(e)(23)(i) and (ii).

Clear Europe or ICE Clear Europe may terminate a clearing service. Accordingly, the Commission believes that ICE Clear Europe has disclosed these key aspects of its default rules and procedures, consistent with Rule 17Ad-22(e)(23)(i) and (ii).<sup>37</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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-2019-003 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-2019-003. 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, as modified

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Id.

by Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Amendment No. 1, 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 pm. 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-2019-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>38</sup> to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the publication of notice of Amendment No. 1 in the Federal Register. As discussed above, ICE Clear Europe filed Amendment No. 1 to add a confidential Exhibit 3 to the filing associated with the proposed rule change. Amendment No. 1 did not make any changes to the substance of the filing or the text of the proposed rule change, nor did it raise any novel regulatory issues.

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<sup>38</sup> 15 U.S.C. 78s(b)(2).

Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>39</sup>

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act<sup>40</sup> and Rules 17Ad-22(e)(1), (e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii) thereunder.<sup>41</sup>

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<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>41</sup> 17 CFR 240.17Ad-22(e)(1), (e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii).

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>42</sup> that the proposed rule change, as modified by Amendment No. 1 (SR-ICEEU-2019-003), be, and hereby is, approved on an accelerated basis.<sup>43</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>44</sup> 17 CFR 200.30-3(a)(12).