SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69703; File No. SR-ICEEU-2013-09)

June 5, 2013

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 2 to Proposed Rule Change to Clear Contracts Traded on the LIFFE Administration and Management Market

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 June 4, 2013, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission") Amendment No. 2 to its previously submitted proposed rule changes to implement a clearing relationship in which ICE Clear Europe will clear contracts traded on the LIFFE Administration and Management ("LIFFE A&M") market (the "LIFFE Clearing Proposed Amendments").[3] Amendment No. 2 is intended to elaborate on certain aspects of the proposed clearing activities as they relate to LIFFE securities products and make a partial amendment to certain rules and procedures that would clarify the considerations under which certain margin and risk management requirements would be established and modified from time to time, as described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. Except as described in this Amendment No. 2, the LIFFE Clearing Proposed Amendments, as

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 On May 13, 2013, ICE Clear Europe initially filed the LIFFE Clearing Proposed Amendments. On May 22, 2013, ICE Clear Europe submitted Amendment No. 1 to the proposed rule change to, among other things, clarify the scope of products proposed to be cleared, add new Rule 207(f) prohibiting FCM/BD Clearing Members and other Clearing Members organized in the U.S. from clearing LIFFE Contracts that are futures or options on underlying U.S. securities, add additional clarification surrounding the operation of the combined F&O Guaranty Fund and the margining of LIFFE Contracts, and supplement the statutory basis for the proposed rule change. See Securities Exchange Act Release No. 69628 (May 23, 2013), 78 FR 32287 (May 29, 2013) (SR-ICEEU-2013-09) ("LIFFE Clearing Rule Notice").

described in the LIFFE Clearing Rule Notice, are unchanged. The Commission is publishing this notice to solicit comments on Amendment No. 2 to the proposed change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As described in the LIFFE Clearing Rule Notice, ICE Clear Europe has agreed to act as the clearing organization for futures and option contracts traded on LIFFE Administration and Management, a recognized investment exchange under the UK Financial Services and Markets Act of 2000. Capitalized terms used but not defined herein have the meanings specified in the LIFFE Clearing Rule Notice. In this Amendment No. 2, ICE Clear Europe submits revisions to Rule 502 and Sections 13.6 and 13.7 of the Finance Procedures that are intended to clarify the considerations under which ICE Clear Europe would establish and modify certain margin requirements that may be applicable to cleared LIFFE Contracts and energy contracts, including the assets eligible as Margin and Permitted Cover and related haircuts.

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

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the additional rule change in Amendment No. 2. 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 significant aspects of these statements.

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

(a) Purpose

ICE Clear Europe submits revisions to its margin requirements under Rule 502 and Sections 13.6 and 13.7 of the Finance Procedures. As discussed in the LIFFE Clearing Rule

Notice, Margin requirements for LIFFE Contracts will be calculated using the SPAN®1 v4 algorithm,[4] with modifications for concentration charges and a trinomial model used with respect to certain LIFFE option transactions. ICE Clear Europe will determine the margin parameters used in the SPAN algorithm for LIFFE Contracts cleared by ICE Clear Europe, and make appropriate modifications to those parameters from time to time, within the framework of the margin requirement policy approved by the ICE Clear Europe F&O Risk Committee. The margin parameters applicable from time to time will be issued and amended by ICE Clear Europe via a circular posted on its website.

Rule 502(d) addresses a number of margin requirements, including the assets eligible to be provided as Margin or Permitted Cover, and Rule 502(e) addresses haircuts that the clearing house may apply to such assets. Under the existing Rules, changes to such requirements may be determined by the clearing house from time to time and notified by Circular (which will also be posted on the clearing house's website). ICE Clear Europe proposes to add a new Rule 502(k) to provide that for F&O Contracts, changes to the matters set forth in Rules 502(d) and (e), including assets eligible as Margin or Permitted Cover and the haircuts established with respect to such assets, will be based on an analysis of appropriate factors as determined by the clearing house. These factors will include, without limitation, historical and implied price volatility of those assets, current and anticipated conditions in the market for those assets, spreads and correlations between assets, liquidity in the trading market for those assets, composition of the relevant market, default risk (including sovereign risk) with respect to those assets, relevant foreign exchange market conditions and other relevant information as determined by ICE Clear Europe. Consistent with its existing policies and procedures, ICE Clear Europe regularly

4 SPAN is a registered trademark of Chicago Mercantile Exchange Inc. and used by ICE Clear Europe under license. SPAN is a risk evaluation and margin framework algorithm.

reviews its current eligible Margin and Permitted Cover assets and related haircuts and makes any necessary adjustments.

Proposed new Rule 502(k) reads as follows:

> (k) With respect to F&O Contracts, changes to the matters described in Rules 502(d) and (e) above, including assets eligible as Margin or Permitted Cover and the haircuts established with respect thereto, will be based on an analysis of appropriate factors as determined by the Clearing House, including historical and implied price volatility of such assets, current and anticipated conditions in the market for those assets, spreads and correlations between relevant assets, liquidity in the trading market for those assets, composition of the relevant market, default risk (including sovereign risk) with respect to those assets, relevant foreign exchange market conditions and other relevant information.

Similarly existing Section 13.6 of the Finance Procedures addresses the determination and change of original margin rates from time to time. As set forth in existing Section 13.6, ICE Clear Europe regularly reviews its margin rates in light of market conditions and makes appropriate modifications. ICE Clear Europe proposes to amend Section 13.6 to provide that changes to original margin rates for F&O Contracts will be based on an analysis of appropriate factors as determined by the clearing house. These include market prices, historical and implied volatilities of relevant contracts, spreads and correlations between related commodities, other current and anticipated conditions (including liquidity) in the market for the contracts and other relevant information as determined by ICE Clear Europe. ICE Clear Europe believes that Section 13.6 provides it the flexibility to adjust the calculation of margin rates in order to react to changes in market conditions, particularly changes in volatility. These changes may occur suddenly, and failure to update margin rates to take into account such changes may lead to insufficient margin being collected by the clearing house. The proposed revisions to Section 13.7 of the Finance Procedures are substantially the same as the amendments to Rule 502(k), and are being made for the reasons discussed above in connection with that rule change.

Proposed amended Sections 13.6 and 13.7 of the Finance Procedures read as follows (new text underlined):

> 13.6 Margin Parameters The Clearing House monitors market volatilities on a daily basis. The Clearing House will review Original Margin rates on a periodic and ad hoc basis. Changes to Original Margin rates will be notified to Clearing Members by Circular. <u>With respect to F&O Contracts,</u> ad hoc rate changes will become effective on the next Business Day. Routine rate changes will be implemented on the date given in the Circular announcing such changes, normally five Business Days after the date of the Circular. <u>With respect to F&O Contracts, changes to Original Margin rates will be based on an analysis of appropriate factors as determined by the Clearing House, including market prices, historical and implied volatilities of relevant contracts, spreads and correlations between related commodities, other current and anticipated conditions (including liquidity) in the market for the contracts and other relevant information.</u>

> 13.7 Haircuts The Clearing House will review haircuts applicable for Permitted Cover on a periodic and ad hoc basis. Changes to haircuts will be notified to Clearing Members by Circular. <u>With respect to Permitted Cover for F&O Contracts,</u> ad hoc rate changes will become effective on the next Business Day. Routine rate changes will be implemented on the date given in the Circular announcing such changes, normally five Business Days after the date of the Circular. <u>With respect to Permitted Cover for F&O Contracts, changes to haircuts will be based on an analysis of appropriate factors as determined by the Clearing House, including historical and implied price volatility of such assets, current and anticipated conditions in the market for those assets, spreads and correlations between relevant assets, liquidity in the trading market for those assets, composition of the relevant market, default risk (including sovereign risk) with respect to those assets, relevant foreign exchange market conditions and other relevant information.</u>

ICE Clear Europe believes that the proposed revisions to Rule 502 and Sections 13.6 and 13.7 of the Finance Procedures will provide clearing members with additional predictability as to potential changes to margin requirements, and the reasons for such changes, without adversely affecting the clearing house’s ability to adjust margin requirements as warranted by its risk management policies and market conditions. In addition, this additional guidance should permit clearing members to better anticipate potential changes in margin requirements and manage their own liquidity requirements, which may reduce the likelihood that a clearing member will be unable to satisfy its margin requirements and thereby improve the financial stability of the clearing house.

(b) Statutory Basis

As discussed in the LIFFE Clearing Rule Notice, ICE Clear Europe proposes to clear, among other LIFFE contracts, the LIFFE securities products. Currently, the LIFFE securities products are cleared by LIFFE A&M, with certain clearing functions performed by LCH Clearnet Limited, as described in the no-action relief previously provided to LIFFE A&M and its predecessor entities by Commission staff.[5] ICE Clear Europe proposes to provide substantially the same clearing functions for the LIFFE securities products, pursuant to the LIFFE Clearing Proposed Amendments, as are currently being provided by LIFFE A&M and LCH Clearnet.

ICE Clear Europe is currently registered with the Commission as a securities clearing agency for purposes of clearing security-based swaps, pursuant to Section 17A(l) of the Act.[6] With respect to the clearing of other securities products, such as the options on securities and security indices that constitute LIFFE securities products, the Commission has historically taken the position that a foreign clearing agency would be required to register as a securities clearing agency (or obtain an exemption from registration) only if it provides clearing services for U.S. securities directly to U.S. persons.[7] Conversely, the Commission has recognized that a foreign clearing agency is not required to register, or obtain an exemption from registration, with respect

5 See, e.g., SEC No-Action Letter to LIFFE A&M, dated July 29, 2009; SEC No-Action Letter to LIFFE A&M, dated March 6, 1996; SEC No-Action Letter to LIFFE A&M, dated May 1, 1992.

6 15 U.S.C. 78q-1(l).

7 See, e.g., Cross-Border Security-Based Swap Activities, Securities Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30967, 31039 n. 682 (May 23, 2013).

to clearing services involving non-U.S. securities, even if such services may be provided directly to U.S. persons.[8]

Consistent with these Commission positions, ICE Clear Europe believes that its proposed clearing of the LIFFE securities products does not require further registration of ICE Clear Europe or an exemption from the registration requirement. With respect to those LIFFE securities products that constitute foreign securities (i.e., futures and options on underlying non-U.S. securities), ICE Clear Europe (as a foreign clearing organization) may, consistent with the approach taken under Euroclear Order, provide clearing services, including to U.S. clearing members, without registration. With respect to those LIFFE securities products that may constitute U.S. securities (i.e., futures and options on underlying U.S. securities), ICE Clear Europe will not provide clearing services to U.S. clearing members, as provided in proposed new Rule 207(f) and as described in the LIFFE Clearing Rule Notice. As a result, these clearing activities do not implicate the registration requirement under Section 17A(b) of the Act.[9]

In ICE Clear Europe's view, the fact that it is registered as a securities clearing agency for purposes of clearing security-based swaps does not change this analysis. ICE Clear Europe's security-based swap clearing activities are for relevant purposes separate from the proposed LIFFE securities product clearing activities, and in particular are supported by a separate guaranty fund. ICE Clear Europe believes that they can be treated separately as a regulatory matter as well. The Commission has recognized in the Euroclear Order, for example, that a foreign clearing organization may have activities for which registration (or exemption) is needed and activities for which neither registration nor exemption is required. Similarly, ICE Clear

---

8 See, e.g., Morgan Guaranty Trust Company of New York, Brussels Office, as Operator of the Euroclear System, Securities Exchange Act Release No. 38589 (May 9, 1997), 62 FR 26833, 26835 n. 16 (May 15, 1997) ("Euroclear Order").

9 15 U.S.C. 78q-1(b).

Europe's registration for security-based swap clearing should not preclude it from engaging in other clearing activities that would otherwise be permissible without registration under the Exchange Act. (ICE Clear Europe notes that in any event, because of its status as a registered clearing agency, it will in practice be subject to additional requirements under the Act in respect of the LIFFE securities products, notably the rule approval requirements under Section 19(b) of the Act.)

As described in the LIFFE Clearing Rule Notice, ICE Clear Europe's clearing operations with respect to the LIFFE securities products, and particularly those relating to U.S. securities, will be conducted outside the United States (with the exception of certain information technology services obtained from U.S. affiliates). Although ICE Clear Europe obtains certain services from some of its U.S. affiliates in connection with its security-based swap clearing activities, those services are not relevant to the clearing of the LIFFE securities products. Accordingly, ICE Clear Europe does not believe such arrangements would affect the analysis discussed above.

As noted above, ICE Clear Europe's proposed new Rule 207(f) will prohibit U.S. clearing members from clearing LIFFE securities products involving underlying U.S. securities (other than broad-based security index futures contracts). In furtherance of this restriction, ICE Clear Europe, together with LIFFE, will implement operational controls to restrict the activities of U.S. clearing members. Specifically, the clearing system to be used for the LIFFE securities products will have market access controls that prevent U.S. clearing members from creating or holding cleared positions in LIFFE securities products involving underlying U.S. securities. This is intended to prevent U.S. clearing members from engaging in any clearing-related activity (including give-ups or take-ups) in respect of those products. When a new U.S. clearing member is approved for clearing, LIFFE and ICE Clear Europe will be jointly responsible to ensure that these access limitations are properly in place.

With respect to the proposed changes to Rule 502 and Sections 13.6 and 13.7 of the Finance Procedures in this Amendment No. 2, ICE Clear Europe believes that such amendments are consistent with the requirements of Section 17A of the Act[10] and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.[11] The amendments will promote the prompt and accurate clearance of and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[12] Specifically, ICE Clear Europe believes that the amendments will facilitate the safeguarding of securities and funds in the custody or control of ICE Clear Europe, including the F&O Guaranty Fund that applies to LIFFE contracts and energy contracts, in a manner that is consistent with the financial resources and risk management requirements of Rule 17Ad-22[13] and the rule change approval requirements of Section 19(b)(1) of the Act[14] and Commission Rule 19b-4.[15] In addition, ICE Clear Europe believes that its other risk management practices applicable to clearing in the F&O Contracts can be conducted consistent with its rule change approval requirements of Section 19(b)(1) of the Act[16] and Commission Rule 19b-4.[17]

---

10 15 U.S.C. 78q-1.

11 17 CFR 240.17Ad-22.

12 15 U.S.C. 78q-1(b)(3)(F).

13 17 CFR 240.17Ad-22.

14 15 U.S.C. 78s(b)(1).

15 17 CFR 240.19b-4.

16 15 U.S.C. 78s(b)(1).

17 17 CFR 240.19b-4.

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

ICE Clear Europe does not believe the proposed rule changes in this Amendment No. 2 would have any impact, or impose any burden, on competition. ICE Clear Europe does not anticipate that the rule changes will adversely affect the trading market for the LIFFE contracts on LIFFE A&M. Moreover, ICE Clear Europe does not believe that the proposed amendments will impose any burden on competition among clearing members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to Amendment No. 2 have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of the LIFFE Clearing Rule Notice[18] 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:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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:

---

18 See supra note 3.

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-2013-09 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ICEEU-2013-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will 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/publicdocs/regulatory_filings/ICEU_SEC_060413.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2013-09 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill
Deputy Secretary

---

[19] 17 CFR 200.30-3(a)(12).