

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68812; File No. SR-ICEEU-2012-09)

February 1 , 2013

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change to Provide for a Customer Clearing Model for CDS Products and to Amend, Clarify, and Consolidate Certain Rules and Procedures

I. Introduction

On October 22, 2012, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change SR-ICEEU-2012-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on November 9, 2012.³ The Commission received one comment letter to the proposed rule change.⁴ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The principal purpose of the proposed rule change is to provide for a Customer CDS Clearing Model whereby customers of ICE Clear Europe Clearing Members have the ability to clear CDS products through ICE Clear Europe. In addition, ICE Clear Europe is amending its Rules and CDS Procedures in order to implement certain rule changes that are unrelated to Customer CDS Clearing Model.

Currently, ICE Clear Europe Clearing Members may clear CDS products at ICE Clear Europe through their proprietary accounts only and not on behalf of their customers. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 68152 (November 5, 2012), 77 FR 67427 (November 9, 2012).

⁴ Letter from Kermit Kubitz (November 30, 2012).

Customer CDS Clearing Model extends ICE Clear Europe's customer clearing models that are currently available for other products to CDS products, with certain modifications appropriate for the nature of the product.

The Customer CDS Clearing Model builds on the customer clearing framework available for other products at ICE Clear Europe. US customers must clear through a registered futures commission merchant and/or broker-dealer (depending on whether the product is an index CDS or single-name CDS), consistent with the requirements of the Commodity Exchange Act and the Act, as applicable. Non-US customers may clear through a non-US clearing member in accordance with applicable local laws or through a registered futures commission merchant and/or broker-dealer.

The terms of the Customer CDS Clearing Model, as well as various related enhancements to the clearing model, were proposed as amendments to the ICE Clear Europe Rules and CDS Procedures. Changes to Part 1 of the Rules clarify and conform existing definitions to the Customer CDS Clearing Model, create new CDS-specific definitions used in new operative provisions, clarify customer and proprietary account class definitions that are relevant to CDS, and clarify general standards of Clearing Member responsibility and liability. Other changes reflect the incorporation into the Rules of provisions that had been in a separate master agreement entered into between the Clearing Member and ICE Clear Europe. Changes to Part 2 of the Rules provide updates related to anti-money laundering legislation applicable to customers, clarify membership standards for Clearing Members, clarify the obligations of Clearing Members with respect to customer accounts and proprietary accounts and clarify and/or restate certain provisions relating to Clearing Member default and termination of clearing membership. Changes to Part 3 of the Rules clarify certain payment mechanics for Clearing

Members with respect to amounts owed by their customers and include a waiver of set-off by Clearing Members. Changes to Part 4 of the Rules reflect amendments to the contract rights and obligations of ICE Clear Europe and Clearing Members, particularly in the context of the clearing of CDS on behalf of customers. Changes to Part 5 of the Rules address the delivery of margin from customers to Clearing Members and add provisions dealing with transfer of margin by security interest rather than title transfer. Changes to Part 6 of the Rules clarify the procedures for providing notice of position limits and clarify further how position limits apply in instances where contracts arise due to firm trades, voiding, or error policies. Changes to Parts 7 and 8 of the Rules clarify that references in those parts of the Rules (covering Settlement and Delivery of Futures (Part 7) and Options (Part 8)), which relate solely to Energy contracts, do not apply to CDS Customer Accounts or customers in the context of CDS clearing. Changes to Part 9 of the Rules consolidate and clarify the respective rights and obligations of ICE Clear Europe and Clearing Members in the case of a Clearing Member or ICE Clear Europe default and the procedures to be followed in determining a net sum payable to or receivable from a defaulting Clearing Member. Changes to Part 10 of the Rules provide more detail regarding how a disciplinary or appeals panel could impose a sanction on a customer and determine liability or responsibility in any instance where there is joint misfeasance. Changes to Part 11 relate to the operation of the ICE Clear Europe guaranty funds, including changes relating to the introduction of customer clearing. ICE Clear Europe will continue to operate separate guaranty funds for CDS products and for energy products. Changes to Part 12 of the Rules conform to the new terms and definitions that are part of the Customer CDS Customer Model. Changes to Part 15 of the Rules provide provisions dealing with CDS contracts cleared in the customer account (including the representation of customer transactions in relevant books and records and

treatment of customer transactions in the case of credit events) and the elimination of the separate master agreement previously entered into between CDS Clearing Members and ICE Clear Europe. Changes to Part 16 of the Rules address the addition of CDS clearing to the ICE Clear Europe FCM customer clearing model and certain other clarifications and enhancements requested by CDS Clearing Members.

ICE Clear Europe is also establishing in Exhibit 1 of the Rules certain standard terms (the Customer-CM CDS Transactions Standard Terms) that will be applicable to Customer-CM CDS Transactions, which are CDS transactions between a Non-FCM/BD Clearing Member and a non-U.S. customer. Under the changes to Rule 1516, all Non-FCM/BD Clearing Members must agree to the applicability of these terms as between them and each of their customers. The Standard Terms provisions, among other things, ensure that the terms of Customer-CM CDS Transactions mirror the terms of the cleared transaction, enable a clearing member to pass on clearing-house performance (or non-performance) to their customers, facilitate the provision of margin to ICE Clear Europe, and amend provisions in underlying agreements relating to events of default and close-out in order to ensure that the porting of contracts and margin under the default rules will be effective. In addition, various consents must be supplied for ICE Clear Europe to update customer records in DTCC and receive other information as required relating to customers.⁵

ICE Clear Europe is also modifying its CDS Procedures. Changes to Part 1 of the CDS Procedures clarify and conform existing definitions to the Customer CDS Clearing Model, as well as add new definitions used in new operative provisions. Changes to Part 2 of the CDS

⁵ As noted above, US customers must clear through an FCM/BD Clearing Member. The Customer-CM CDS Transactions Standard Terms will not apply to that relationship.

Procedures clarify and conform membership requirements to standards implemented as a result of the Dodd-Frank Act. Changes to Part 3 of the CDS Procedures delete a reference to CDS Operational Procedures, which document has become obsolete in light of the changes related to customer clearing. Changes to Part 4 of the CDS Procedures update information that must be provided with respect to CDS contracts and procedures for submission of CDS contracts for clearing. Changes to Part 5 of the CDS Procedures address customer clearing in the context of the CDS Default Committee procedures. Part 6 of the CDS Procedures was removed because it is no longer necessary in light of ICE Clear Europe's use of determinations made by the ISDA Determinations Committees with respect to credit and succession events. Changes to Part 7 address restructuring as a credit event with respect to CDS contracts cleared in the customer account, including the processing for triggering settlement of such contracts. Changes to Part 8 of the CDS Procedures clarify the procedures for listing new CDS Contracts, in particular to enable ICE Clear Europe to respond in timely fashion to any prohibition on trading in CDS imposed under the EU Short Selling Regulation (Regulation 236/2012 dated 14 March 2012). Changes to Part 9 of the CDS Procedures include various provisions previously included in the separate master agreement between CDS Clearing Members and ICE Clear Europe as well as certain tax provisions relevant to customer clearing. These updated provisions apply to both customer positions and proprietary positions of CDS Clearing Members. Changes to Part 10 of the CDS Procedures update the cross-references and definitions relevant to customer clearing as they relate to Index CDS Contracts. Changes to Part 11 of the CDS Procedures update the cross-references and definitions relevant to customer clearing as they relate to Single Name CDS Contracts. Changes to Part 12 of the CDS Procedures update the cross-references and the definitions relevant to customer clearing with respect to Sovereign Contracts. Changes to Part

13 of the CDS Procedures add certain general procedures relating to customer clearing of CDS contracts.

III. Comment

The Commission received one comment to the proposed rule change. The comment concerned ICE Clear Europe's requirements under the Exchange Act, including but not limited to recordkeeping and reporting requirements that are outside of the scope of this proposal. The Commission notes, however, that ICE Clear Europe, as a clearing agency registered with the Commission, is fully subject to the Exchange Act and all applicable rules and regulations promulgated thereto.

IV. Discussion

Section 17A(b)(3)(F) of the Act⁶ requires that, among other things, a clearing agency be organized and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to protect investors and the public interest. After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder. The implementation of the Customer CDS Clearing Model may promote the prompt and accurate clearance of securities transactions, derivatives agreements, contracts, and transactions by extending clearing to a broader segment of the CDS market.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with

⁶ 15 U.S.C. 78q-1(b)(3) (F)

the requirements of the Act and in particular with the requirements of Section 17A of the Act⁷ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-ICEEU-2012-09) be, and hereby is, approved.⁹

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill
Deputy Secretary

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78s(b)(2).

⁹ In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).