

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70444; File No. SR-ICEEU-2013-12)

September 18, 2013

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clear Contracts Traded on ICE Endex

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 September 18, 2013, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A)(iii)³ of the Act and Rule 19b-4(f)(4)(ii)⁴ thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

ICE Clear Europe has agreed to act as the clearing organization for futures and option contracts traded on the ICE Endex derivatives market. IntercontinentalExchange, Inc. together with Gasunie NV Nederlandse, a European gas infrastructure company, launched the ICE Endex market in March 2013. ICE Endex Derivatives B.V., which operates the relevant derivatives market, is based in Amsterdam, Netherlands and provides markets for trading continental European energy products, including natural gas and power derivatives, gas balancing markets

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

and gas storage services. ICE Endex Derivatives B.V. holds a license to operate a regulated market in the Netherlands.

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

The ICE Endex contracts that are proposed to be cleared by ICE Clear Europe (the "ICE Endex Contracts") consist of energy futures and options, including futures and option contracts involving natural gas and power in the Dutch, Belgian and German markets. The clearing of ICE Endex Contracts will be supported by the F&O Guaranty Fund (and in particular the energy clearing segment of the F&O Guaranty Fund). ICE Clear Europe anticipates that the clearing of the ICE Endex contracts will initially require a de minimis change in the size of the F&O Guaranty Fund or the energy segment thereof, if indeed any change is actually required. In making this determination, ICE Clear Europe has considered and will continue to review a number of factors, including the anticipated volume and open interest in ICE Endex Contracts based on historical trading volume and open interest, expected market conditions in the relevant natural gas and power markets, the fact that clearing of ICE Endex Contracts is expected to be conducted by existing ICE Clear Europe Clearing Members, and the identity of such members, and the initial margin expected to be required in connection with the ICE Endex Contracts. In ICE Clear Europe's view, these factors, considered in light of ICE Clear Europe's overall energy clearing activities and Guaranty Fund methodology, indicate that the ICE Endex clearing activity will not require more than a de minimis change in the F&O Guaranty Fund. ICE Endex Contracts will be executed on or subject to the rules of the ICE Endex electronic trading system. ICE Clear Europe intends to commence clearing for the ICE Endex Contracts on 7 October, 2013.

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

1. Purpose

The principal purpose of the changes is to implement a clearing relationship in which ICE Clear Europe will provide clearing services for energy futures and options contracts traded on the ICE Endex market. ICE Clear Europe submits revised Parts 1, 2, 4, 12 and new Part 20 of its Rules (along with other conforming and clarifying Rule amendments) and further amendments to the Delivery Procedures to reflect the operational delivery arrangements in relation to the referenced markets.

In Part 1 of the Rules, Rule 101 is modified to add new defined terms and revise existing definitions in connection with the ICE Endex clearing relationship, including designation of ICE Endex as a Market for which ICE Clear Europe provides clearing services and the addition of defined terms and other revisions to integrate ICE Endex Contracts into the existing ICE Clear Europe clearing framework for energy futures and options.

Part 2 of the Rules has been revised to require generally that a Clearing Member must be a member of ICE Endex in order to clear ICE Endex Contracts at ICE Clear Europe. In the case of FCM/BD Clearing Members, however, ICE Clear Europe will waive compliance with that requirement pursuant to Rule 110, in order to ensure that FCM/BD Clearing Members do not breach certain restrictions under the U.S. Commodity Exchange Act on direct access by U.S. persons to the ICE Endex market.⁵ Although FCM/BD Clearing Members would be permitted to

⁵ ICE Endex intends to apply for registration with the Commodity Futures Trading Commission as a Foreign Board of Trade. If such application is approved, direct access to ICE Endex by certain U.S. persons would be permitted, and FCM/BD Clearing Members would be expected to become members of ICE Endex at that time.

clear ICE Endex Contracts, they would be required to access the ICE Endex market itself through a non-U.S. ICE Endex member.

Changes to Part 4 of the Rules incorporate ICE Endex Contracts into the procedures for submission of contracts for clearing and creation of cleared contracts, as well as other relevant conforming changes.

The amendments also revise Part 12 of the Rules, which addresses UK Settlement Finality Regulations and the Companies Act 1989, to incorporate ICE Endex Contracts in the provisions addressing various categories of transfer orders under those regulations.

The amendments include a new Part 20 of the Rules, which adopts transitional provisions concerning the novation of open contracts with European Commodity Clearing A.G., which currently clears ICE Endex contracts, to ICE Clear Europe, under the new clearing relationship. New Part 20 also allows ICE Clear Europe to redesignate certain existing ICE Futures Europe Contracts as ICE Endex Contracts for purposes of the Rules, consistent with the plan of those markets to move trading in those contracts to ICE Endex.

The changes to the General Contract Terms and ICE OTC Contract Standard Contract Terms and Eligibility Criteria consist of conforming changes that reflect the addition of ICE Endex Contracts.

ICE Clear Europe also proposes to amend its Delivery Procedures to reflect the ICE Endex Contracts. The Delivery Procedures amendments will set forth specifications for delivery, including delivery standards and timing for delivery, documentation for delivery, security for delivery, and related matters.

2. Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act⁶ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.⁷ The amendments will provide for clearing of ICE Endex Contracts by ICE Clear Europe, consistent with ICE Clear Europe's existing clearing arrangements and related financial safeguards, protections and risk management procedures, as discussed herein. The ICE Endex Contracts that will be cleared are energy futures and options contracts substantially similar to those currently traded on ICE Futures Europe and cleared by ICE Clear Europe. Acceptance of ICE Endex Contracts for clearing, on the terms and conditions set out in these rule amendments, will promote the prompt and accurate clearance of and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICE Clear Europe, 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.⁸ Clearing of the ICE Endex Contracts will also satisfy the relevant requirements of Rule 17Ad-22,⁹ as discussed below.

Financial Resources. ICE Clear Europe will apply its existing margin methodology for energy contracts to the new ICE Endex Contracts. ICE Clear Europe believes that this model will provide sufficient margin to cover the risks from clearing such contracts. In addition, ICE Clear Europe believes the F&O Guaranty Fund will provide sufficient additional financial resources to support the clearing of ICE Endex Contracts consistent with the requirements of

⁶ 15 U.S.C. 78q-1.

⁷ 17 CFR 240.17Ad-22.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22.

Rule 17Ad-22(b)(2)-(3).¹⁰ (ICE Clear Europe anticipates that clearing of the ICE Endex Contracts will initially require a de minimis change in the size of the F&O Guaranty Fund or the energy clearing segment thereof, if indeed any change is actually required.) The proposed amendments do not impact ICE Clear Europe's financial resources devoted to its security-based swap related (i.e., credit default swap) clearing business. ICE Clear Europe does not propose to alter the segment of the F&O Guaranty Fund that primarily supports the LIFFE contracts cleared by ICE Clear Europe.

Operational Resources. ICE Clear Europe will have the operational and managerial capacity to clear the ICE Endex Contracts as of the commencement of clearing, consistent with the requirements of Rule 17Ad-22(d)(4).¹¹ ICE Clear Europe believes that its existing systems are appropriately scalable to handle the additional ICE Endex Contracts, which are generally similar to the energy contracts currently cleared by ICE Clear Europe.

Participant Requirements. ICE Clear Europe believes that the rule amendments are consistent with the requirements of Rule 17Ad-22(d)(2)¹² to provide fair and open access through participation requirements that are objective and publicly disclosed. The amendments establish fair and objective criteria for the eligibility to clear ICE Endex Contracts. ICE Clear Europe clearing membership is available to participants that meet such criteria. ICE Clear Europe clearing members that wish to clear ICE Endex Contracts will have to satisfy the financial resources requirements to clear these products and continue to do so in order to preserve their eligibility to clear ICE Endex Contracts. Clearing member compliance with the requirements to clear ICE Endex Contracts will be monitored by ICE Clear Europe.

¹⁰ 17 CFR 240.17Ad-22(b)(2)-(3).

¹¹ 17 CFR 240.17Ad-22(d)(4).

¹² 17 CFR 240.17Ad-22(d)(2).

Settlement. ICE Clear Europe believes that the rule changes will be consistent with the requirements of Rule 17Ad-22(d)(5), (12) and (15)¹³ as to the finality and accuracy of its daily settlement process and avoidance of the risk to ICE Clear Europe of settlement failures. ICE Clear Europe will use its existing settlement procedures, account structures and approved financial institutions as used in energy clearing for the ICE Endex Contracts. ICE Clear Europe believes that its Rules and procedures related to settlements (including physical settlements), as amended, appropriately identify and manage the risks associated with settlements under ICE Endex Contracts.

Default Procedures. ICE Clear Europe believes that the Rules and its relevant procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults, including in respect of ICE Endex Contracts, in accordance with Rule 17Ad-22(d)(11).¹⁴

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

ICE Clear Europe does not believe the proposed rule and procedure changes would have any impact, or impose any burden, on competition. ICE Endex is an established market for the ICE Endex Contracts, and ICE Clear Europe does not anticipate that its becoming the clearing house for the ICE Endex Contracts will adversely affect the trading market for those contracts on ICE Endex. Moreover, ICE Clear Europe has established fair and objective criteria for eligibility to clear ICE Endex Contracts, and accordingly ICE Clear Europe does not believe that the proposed rule changes will impose any burden on competition among clearing members.

¹³ 17 CFR 240.17Ad-22(d)(5), (12) and (15).

¹⁴ *Id.*

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

Written comments relating to the proposed amendments 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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(4)(ii)¹⁶ thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities clearing service. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(4)(ii).

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-2013-12 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-2013-12. 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/notices/Notices.shtml?regulatoryFilings>.

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-2013-12 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).