

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73156; File No. SR-ICEEU-2014-13)

September 19, 2014

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the 2014 ISDA Credit Derivatives Definitions

I. Introduction

On August 14, 2014, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-ICEEU-2014-13 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> The proposed rule change was published for comment in the Federal Register on August 20, 2014.<sup>3</sup> The Commission did not receive comments on the proposed rule change. On September 19, 2014, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

A. Description of the Initial Rule Filing

ICE Clear Europe has stated that the principal purpose of the proposed rule change is to revise the ICE Clear Europe Clearing Rules (the “Rules”) and the ICE Clear Europe CDS

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<sup>1</sup> 15 U.S.C. 78(s)(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 34-72849 (August 14, 2014), 79 FR 49357 (August 20, 2014) (SR-ICEEU-2014-13) (hereinafter referred to as the “Initial Rule Filing”).

<sup>4</sup> ICE Clear Europe filed Amendment No. 1 to the proposed rule change to address the timing of the commencement of clearing of transactions incorporating the 2014 ISDA Credit Derivatives Definitions in light of changes in the implementation timing of the industry-wide ISDA protocol, as discussed in more detail below.

Procedures (the “CDS Procedures”) to incorporate references to revised Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc. (“ISDA”) on February 21, 2014 (the “2014 ISDA Definitions”). In the Initial Rule Filing, ICE Clear Europe anticipated that, consistent with the approach being taken throughout the CDS market at that time, the industry standard 2014 ISDA Definitions would be applicable to certain products cleared by ICE Clear Europe beginning on September 22, 2014.<sup>5</sup>

ICE Clear Europe principally proposes to (i) revise the Rules and CDS Procedures to make proper distinctions between the 2014 ISDA Definitions and the ISDA Credit Derivatives Definitions published previously in 2003 (as amended in 2009, the “2003 ISDA Definitions”) and related documentation; and (ii) make conforming changes throughout the Rules and the CDS Procedures to reference provisions from the proper ISDA Definitions. In addition, ICE Clear Europe proposes to revise its CDS Risk Policy to reflect appropriate portfolio margin treatment between CDS Contracts cleared under the 2003 and 2014 ISDA Definitions.

ICE Clear Europe has stated that, as described by ISDA, the 2014 Definitions make a number of changes from the 2003 ISDA Definitions to the standard terms for CDS Contracts, including (i) introduction of new terms applicable to credit events involving financial reference entities and settlement of such credit events, (ii) introduction of new terms applicable to credit events involving sovereign reference entities and settlement of such credit events, (iii) implementation of standard reference obligations applicable to certain reference entities, and (iv) various other improvements and drafting updates that reflect market experience and developments since the 2009 amendments to the 2003 ISDA Definitions.

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<sup>5</sup> See supra note 4 and the discussion of Amendment No. 1 below.

ICE Clear Europe proposes to accept for clearing new transactions in eligible contracts that reference the 2014 ISDA Definitions. ICE Clear Europe also proposes revisions that would provide for the conversion of certain existing contracts currently based on the 2003 ISDA Definitions into contracts based on the 2014 ISDA Definitions, an approach consistent with expected industry practice for similar contracts not cleared by ICE Clear Europe, and these converting contracts will be subject to a multilateral amendment “protocol” sponsored by ISDA. For contracts that are not converting automatically, ICE Clear Europe expects to continue to accept for clearing both new transactions referencing the 2014 ISDA Definitions and new transactions referencing the 2003 ISDA Definitions (and such contracts based on different definitions will not be fungible). ICE Clear Europe understands, through industry consensus, that Clearing Members plan to adhere to the ISDA protocol and would desire ICE Clear Europe to convert certain protocol-eligible contracts cleared at ICE Clear Europe into contracts based on the 2014 ISDA Definitions, consistent with the ISDA protocol. In an effort to achieve consistency across the CDS marketplace, ICE Clear Europe’s implementation plan is intended to be fully consistent with the planned ISDA protocol implementation. ICE Clear Europe anticipates that, consistent with the protocol, most ICE Clear Europe CDS Contracts will convert, with certain exceptions including CDS on so-called protocol excluded reference entities, which are principally sovereigns and financial reference entities.

To this end, ICE Clear Europe proposes to (i) revise the Rules to make proper distinctions between the 2014 ISDA Definitions and the 2003 ISDA Definitions and related documentation; and (ii) make conforming changes throughout the Rules to reference provisions from the proper ISDA Definitions. ICE Clear Europe proposes changes to Parts 1, 9 and 15 of the Rules. ICE

Clear Europe also proposes revisions to the CDS Procedures to reflect proper distinctions between the 2003 ISDA Definitions and the 2014 ISDA Definitions.<sup>6</sup>

Finally, ICE Clear Europe proposes revisions to its CDS Risk Policy to provide for appropriate portfolio treatment between CDS Contracts cleared under the 2003 and 2014 ISDA Definitions. ICE Clear Europe intends to introduce a “Risk Sub-Factor” in the CDS Risk Policy as a specific single name and any unique combination of instrument attributes (e.g., restructuring clause, 2003 or 2014 ISDA Definitions, debt tier, etc), so that the union of all Risk Sub-Factors that share the same underlying single name would form a single name Risk Factor. ICE Clear Europe intends the portfolio treatment at the Risk Sub-Factor level would be provided for in the risk policy, as appropriate. Additionally, ICE Clear Europe proposes that the CDS Risk Policy would be revised to reflect a change in the 2014 ISDA Definitions that restructuring credit events (including sovereign restructurings) other than M(M)R Restructuring will not require separate triggering of each contract and will therefore be treated as “hard” credit events such as bankruptcy and failure to pay. ICE Clear Europe also intends to revise its CDS Risk Policy regarding physical settlement, including referencing the cash settlement fallback where physical settlement fails.

B. Description of Amendment No. 1

On September 19, 2014, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to address the timing of the commencement of clearing of transactions incorporating the 2014 ISDA Definitions in light of changes in the implementation timing of the industry-wide ISDA protocol. ICE Clear Europe has represented that, except as described in Amendment No. 1, the proposed rule changes in the Initial Rule Filing are unchanged.

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<sup>6</sup> A more detailed description of the proposed changes to the Rules, CDS Procedures and CDS Risk Policy is set forth in the notice of the Initial Rule Filing. See supra note 3.

As described in the Initial Rule Filing, ICE Clear Europe is proposing changes to incorporate the 2014 ISDA Definitions, which make a number of changes to the standard terms for CDS Contracts. ICE Clear Europe has stated that, based on consultation with its Clearing Members and others, ICE Clear Europe has sought to implement these revisions in a manner and at a time consistent with the expected industry implementation of the 2014 ISDA Definitions for similar contracts not cleared by ICE Clear Europe, as provided under a multilateral amendment protocol sponsored by ISDA.

ICE Clear Europe has stated that, as has been publicly announced by ISDA, the implementation date for the conversion of existing transactions to the 2014 ISDA Definitions under the ISDA protocol has been delayed until October 6, 2014. In addition, ICE Clear Europe has stated that the industry consensus date for the commencement of trading of new transactions based on the 2014 ISDA Definitions has similarly been delayed until October 6, 2014, with the exception of certain European corporate, financial and sovereign CDS contracts for which new transactions based on the 2014 ISDA Definitions may be entered into commencing on September 22, 2014 (so-called “protocol excluded transactions” or “Non-STECC Contracts”<sup>7</sup>). Following consultation with its Clearing Members, and in an effort to maintain consistency across the CDS marketplace, ICE Clear Europe proposes to modify certain of the proposed rule changes in the Initial Rule Filing so that the clearing of CDS contracts at ICE Clear Europe after the implementation of the 2014 ISDA Definitions by the industry is consistent with this revised schedule.

Accordingly, ICE Clear Europe proposes to make certain additional changes to the CDS Procedures. In Paragraph 1 of the CDS Procedures, a new definition of “2014 CDD

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<sup>7</sup> As defined in the Initial Rule Filing.

Implementation Date” (defined to be September 22, 2014) is proposed to be added. As described below, this definition will be used to distinguish the 2014 ISDA Definitions implementation date for protocol excluded transactions from that of other transactions. ICE Clear Europe also proposes to revise the definition of “2014 CDD Protocol” to reflect the fact that the protocol has been modified as discussed above. The definition of “Protocol Effective Date” would be clarified to refer to the first Amendment Effective Date under the protocol, which is now expected to be October 6, 2014. The remaining provisions in Paragraph 1 of the CDS Procedures would be renumbered and cross-references would be updated.

Paragraph 4.3(c) would be revised to distinguish single-name CDS contracts with different implementation times for the 2014 ISDA Definitions. Revised subparagraph (i) would address contracts for which use of the 2014 ISDA Definitions will not commence until the Protocol Effective Date. Proposed revisions to subparagraph (ii) would address the protocol excluded contracts for which use of the 2014 ISDA Definitions may commence on the 2014 CDD Implementation Date.

Similarly, Paragraph 10.1 would be revised to reflect the revised implementation timing for the 2014 ISDA Definitions for Non-STECC Contracts (i.e., protocol excluded contracts). Under revised Paragraph 10.1(e), Non-STECC Contracts accepted for clearing prior to the 2014 CDD Implementation Date would be subject to the 2003 ISDA Definitions. Under revised Paragraph 10.1(f), Non-STECC Contracts accepted for clearing on or following the 2014 CDD Implementation Date would be subject to the 2014 ISDA Definitions, unless the 2003 ISDA Definitions are specified to be applicable to such contracts.

ICE Clear Europe has represented that the purpose of, and statutory basis for, the proposed rule changes, as set forth in the Initial Rule Filing, are otherwise unchanged.

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>8</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act<sup>9</sup> requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to 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.

The Commission finds that the proposed revisions to the Rules, CDS Procedures and CDS Risk Policy, as modified by Amendment No. 1, are consistent with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder applicable to ICE Clear Europe. The proposed rule change, which is principally designed to incorporate and implement the 2014 ISDA Definitions, will permit clearing of contracts, both new and existing, referencing the new definitions, while distinguishing, where applicable, contracts cleared by ICE Clear Europe between those referencing the 2014 ISDA Definitions and those referencing the 2003 ISDA Definitions for purposes of risk management and clearing operations. Additionally, the proposed rule change, as modified by Amendment No. 1, will allow ICE Clear Europe to implement the clearing of contracts referencing the 2014 ISDA Definitions in a manner consistent with the implementation of the industry-wide ISDA protocol for similar uncleared

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<sup>8</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 15 U.S.C. 78q-1.

contracts, as discussed above, thereby facilitating the trading and clearing of CDS throughout the entire credit derivatives market. Finally, ICE Clear Europe states that the proposed rule change is necessary to provide the market with the assurances that ICE Clear Europe plans to implement the 2014 ISDA Definitions consistent with industry practice, thereby facilitating prompt and accurate clearance and settlement. The Commission therefore believes that the proposed rule change, as modified by Amendment No. 1, is reasonably 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 assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.<sup>11</sup>

#### IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether 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-2014-13 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.

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<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

All submissions should refer to File Number SR-ICEEU-2014-13. 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 the filing 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/clear-europe/regulation>.

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

As discussed above, ICE Clear Europe submitted Amendment No. 1 to the proposed rule change to address the necessary change in the timing of the clearing of transactions incorporating the 2014 ISDA Definitions in light of the change in the implementation timing of the industry-wide ISDA protocol. The Commission believes that Amendment No. 1 does not modify the proposed rule change as described in the Initial Rule Filing<sup>12</sup> in any substantive manner, but will facilitate the trading and clearing of CDS throughout the entire credit derivatives market.

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<sup>12</sup> The Initial Rule Filing was published in the Federal Register on August 20, 2014, for 21-day comment and the comment period ended on September 10, 2014. The Commission did not receive comments on the Initial Rule Filing.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,<sup>13</sup> to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of Amendment No. 1 in the Federal Register.

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<sup>13</sup> 15 U.S.C. 78s(b)(2)(C)(iii).

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 of the Act<sup>14</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (File No. SR-ICEEU-2014-13), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.<sup>16</sup>

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

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 15 U.S.C. 78q-1.

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

<sup>16</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>17</sup> 17 CFR 200.30-3(a)(12).