

SECURITIES AND EXCHANGE COMMISSION  
Release No. 34-77448; File No. SR-ICEEU-2016-005

March 25, 2016

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Equity Futures and Options

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> notice is hereby given that on March 11, 2016, ICE Clear Europe Limited (“ICE Clear Europe” or “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(4)(ii)<sup>4</sup> 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

The principal purpose of the changes is to modify certain aspects of the ICE Clear Europe Clearing Procedures and the ICE Clear Europe Delivery Procedures in connection with equity futures and options contracts traded on the ICE Futures Europe market and cleared by ICE Clear Europe.

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(ii).

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 proposed rule change. 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 most significant aspects of such statements.

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 amendments is to modify certain aspects of the ICE Clear Europe Clearing Procedures and the ICE Clear Europe Delivery Procedures relating to equity futures and options contracts traded on the ICE Futures Europe market and cleared by ICE Clear Europe.

The ICE Clear Europe Clearing Procedures have been amended to revise certain provisions relating to option exercise and expiration, particularly in the context of equity options. In particular, in paragraph 5.8 of the Clearing Procedures, amendments are made to clarify that allocations of exercised equity options to Clearing Members with short positions will be made on a random basis, one lot at a time. In this regard, the amendments distinguish equity options from other F&O option contracts (e.g., energy contracts), for which exercised options are allocated on a pro rata basis. The change is intended to make the Clearing Procedures consistent with current market practice with respect to equity options. Certain provisions relating to early and automatic exercise in paragraph 5 have also been revised to be consistent with the relevant contract terms and

specifications for each type of option contract. The amendments additionally specify the procedures for a party to abandon options that would otherwise be automatically exercised. Certain other clarifying changes in paragraph 5.2 and 5.8 reflect that an equity option is settled through a contract for the delivery of the underlying security.

In addition, amendments to paragraphs 1.1, 2.2 and 4.6 of the Clearing Procedures contain various drafting clarifications applicable to F&O Contracts generally, including with respect to the calculation of contingent variation margin for certain F&O energy and softs contracts under tender for delivery. Consistent with current practice, such calculation is made pursuant to the method specified in paragraph 4.6 or another method prescribed by the Clearing House for the relevant contract type from time to time, which would be notified to Clearing Members by Circular. Such amendments also update certain references to defined terms and ICE Clear Europe clearing systems and documentation.

In addition, the amendments revise Part Z of the Delivery Procedures, which relates to equity futures and options. The amendments generally update certain references to defined terms and relevant ICE Futures Europe and ICE Clear Europe systems, reports and other documentation. Amendments have been made to take into account additional underlying securities settlement systems that may be used to settle physical deliveries of securities resulting from equity futures and options, including Clearstream Frankfurt for German securities, SIX SIS for Swiss securities and Takasbank for Turkish securities. In addition, the timetables for physical delivery (for settlement of both equity futures and options and stock contingent trades) have been updated to indicate the appropriate requirements for each of the respective settlement systems. In

the timetable for stock contingent trades, the details required to be submitted have been updated to include any relevant special conditions relating to corporate events.

Amendments to the delivery timetable also clarify the timing requirements on the intended settlement day. In particular, the revised timetable requires delivery by the delivering Clearing Member to the Clearing House by one hour prior to the close of delivery-versus-payment settlement, in order to provide time for on-delivery by the Clearing House to the receiving Clearing Member. Additional notice requirements have been added concerning failures to deliver by such time.

In paragraph 2.3, certain clarifications have been made to the Clearing House's ability to split a delivery obligation into multiple deliveries (known as partialling), including to take advantage of various automated and manual processes at the different securities settlement systems. In paragraph 2.4, clarifications have been made to the procedures for a selling Clearing Member to request the use of a daylight settlement period. The Clearing House retains the discretion not to accept a request for such settlement.

Provisions relating to failed settlements and buy-ins have also been updated. In paragraph 3.1, the timetable for buy in by the Clearing House following a failure to deliver securities by a Clearing Member has been clarified. Cash payment obligations have been specified for situations where the Clearing House is unable to buy in securities. A new paragraph 3.2 has been added to allow for early buy-in if directed by the Clearing House. It is expected that early buy-in would be likely to be used only in the case of default, force majeure or similar event. A new paragraph 3.3 has also been added that

allows the Clearing House to charge a Clearing Member that has failed to make a settlement a daily charge for each day that the failure remains outstanding.

Paragraph 4 of Part Z, which relates to the treatment of certain corporate events that occur after exercise or expiration with respect to the securities underlying an equity futures or option contract, has been substantially revised. The revisions generally conform the corporate event provisions to the similar provisions relating to debt corporate events in Part Y of the Delivery Procedures. Specifically, the term “corporate event” has been defined to include cash claims in respect of the underlying securities (such as dividends or cash obligation from a fractional entitlement), distributions of non-cash property with respect to the underlying securities (such as warrants or rights issuances), and transformations of the underlying (such as pursuant to a corporate reorganization, de-listing, merger, de-merger, or a buy-out). Revised paragraph 4 clarifies the rights and obligations of the buyer and seller under the relevant contract in respect of such an event (in general, the buyer under the contract will be entitled to the relevant cash claim, distribution or transformed obligation). Where the corporate event requires an election to be made, the relevant buyer is permitted to make the election (subject to satisfying certain notice requirements). As revised, paragraph 4 provides certain limitations on the obligations and liability of the Clearing House with respect to a corporate event. It also addresses certain failed deliveries or settlements in connection with debt events and certain tax liabilities.

In paragraph 5 of Part Z, the various reports provided in respect of delivery of equity contracts have been updated. An existing report type relating to stock contingent trades has also been removed and consolidated into the general stock deliveries report.

## 2. Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act<sup>5</sup> and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22,<sup>6</sup> and are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>7</sup> The amendments are intended to update and clarify provisions of the Clearing Procedures and Delivery Procedures relevant to the exercise and settlement of equity futures and options currently traded on ICE Futures Europe and cleared through ICE Clear Europe. In particular, the amendments clarify the procedures for exercise and allocation of exercised equity options, consistent with current market practice for such products. They also update provisions of the Delivery Procedures to reflect the relevant settlement systems, to clarify treatment of delivery failures and buy-ins, and to enhance procedures relating to the treatment of corporate events. In ICE Clear Europe's view, the amendments will promote the prompt and accurate clearance and settlement of equity futures and option transactions, and are thus consistent with the requirements of Section 17A of the Act and the regulations thereunder.

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

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<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 17 C.F.R. § 240.17Ad-22.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. ICE Clear Europe is adopting the amendments to [sic] the Delivery Procedures and Clearing Procedures in order to clarify certain aspects of the exercise and settlement of equity futures and options currently cleared by ICE Clear Europe. ICE Clear Europe does not believe the adoption of related Delivery Procedures and Clearing Procedures amendments would materially affect the cost of clearing these products, adversely affect access to clearing in these products for Clearing Members or their customers, or otherwise adversely affect competition in clearing services.

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

Written comments relating to the proposed changes to the rules 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)<sup>8</sup> of the Act and Rule 19b-4(f)(4)(ii)<sup>9</sup> thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the clearing 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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(4)(ii).

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:

##### 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-2016-005 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-2016-005. 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 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#rule-filings>.

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-2016-005 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.<sup>10</sup>

Brent J. Fields  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).