

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80631; File No. SR-ICEEU-2017-006)

May 9, 2017

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to the CDS End-of-Day Price Discovery Policy

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 April 26, 2017, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the changes is to modify certain aspects of ICE Clear Europe’s CDS End-of-Day Price Discovery Policy (the “EOD Price Discovery Policy”) and Price Submission Disciplinary Framework.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

1. Purpose

The purpose of the rule change is to amend the EOD Price Discovery Policy to change the calculation of firm trade notional limits for single-name CDS contracts. ICE Clear Europe also proposes to make certain amendments to its Price Submission Disciplinary Framework (the "Disciplinary Framework"), which addresses missed price submissions by CDS Clearing Members for CDS contracts ("Missed Submissions"). The proposed revisions are described in detail herein. ICE Clear Europe does not otherwise propose to change its Clearing Rules³ or Procedures in connection with these amendments.

Under the EOD Price Discovery Policy, CDS Clearing Members are required to submit end-of-day prices for specific instruments relating to their open CDS interest at the Clearing House. ICE Clear Europe determines end-of-day settlement price levels from these price submissions, using its settlement price methodology. (ICE Clear Europe is not proposing to change the settlement price methodology in connection with these amendments.) To encourage CDS Clearing Members to submit high-quality price submissions, ICE Clear Europe, on random days, selects a subset of instruments to be eligible for required firm trades in cleared CDS contracts between CDS Clearing Members ("Firm Trades"). ICE Clear Europe currently utilizes a "cross and lock"

³ Capitalized terms used but not defined herein will have the meanings specified in the ICE Clear Europe Clearing Rules (the "Rules").

algorithm for identifying Firm Trades. CDS Clearing Member pairs identified by the algorithm as crossed or locked markets in these instruments, based on their price submissions, may be required to enter into Firm Trades with each other.

ICE Clear Europe currently establishes pre-defined maximum notional amounts for Firm Trades in single-name CDS contracts. Currently, single-name Firm Trade notional limits are set at the CDS Clearing Member level. The notional limits are intended to limit the risk (on an overnight basis) that a given CDS Clearing Member may face as a result of a Firm Trade, including in situations where submission errors or outlying pricing submissions have led to a Firm Trade.

ICE Clear Europe is proposing to modify the EOD Price Discovery Policy to provide that single-name Firm Trade notional limits will instead apply on a group level to affiliated CDS Clearing Members, rather than at an individual CDS Clearing Member level. Under the current approach, an affiliate group may have multiple clearing memberships, which in turn leads to a group-wide limit that can be multiples of the single entity limit. Affiliated groups may use this approach, for example, where different clearing entities are needed for house or customer transactions originating from different jurisdictions. The result can be that an affiliated group with multiple CDS Clearing Members may be subject to significantly higher risk of Firm Trades, based on the aggregate notional, than it would if it cleared all of the same business through a single legal entity. In addition, over time, ICE Clear Europe has broadened the process for determining Firm Trades to include all submissions, including those classified as outlying pricing submission (or “obvious errors”), which has made Clearing Members eligible to receive Firm Trades on a potentially wider range of submissions. As a result, there is

heightened interest in adjusting the Firm Trade allocation process so that CDS Clearing Members are not overly penalized for Firm Trades in terms of group-wide risk exposure.

Under the proposed changes, Firm Trade notional limits for single-name CDS will be implemented at the “CP affiliate group” level. A CP affiliate group consists of all CDS Clearing Members that own, are owned or are under common ownership with other CDS Clearing Members. In determining Firm Trades, ICE Clear Europe will track the notional amounts of potential Firm Trades assigned to each CDS Clearing Member at the risk sub-factor and sector level. If the cumulative risk sub-factor notional for the CP affiliate group exceeds the notional limit for that sub-factor, ICE Clear Europe will not designate further Firm Trades in that risk sub-factor for any CDS Clearing Member in the CP affiliate group. Cumulative sector notional limits will be applied similarly to CP affiliate groups. As under the current approach, the notional amount of reversing transactions will not count toward CP affiliate group notional limits.

Certain other changes have been made to the EOD Price Discovery Policy to update references to the Clearing House’s clearing risk department and head of clearing risk, and certain other risk personnel. The amendments add certain background standards relating to risk appetite and related metrics and limits, reflecting the overall approach of the Clearing House to such matters. The policy is also being revised to specify additional procedures relating to model validation and policy review, consistent with overall Clearing House risk governance policies. Specifically, relevant underlying models (within the definition thereof established by ICE Clear Europe) used to support the EOD Price Discovery Policy will be subject to an annual independent validation. The EOD Price Discovery Policy itself is to be reviewed by the CDS Risk Committee at least

annually. In addition, material changes must be approved by the Board on the advice of the CDS Risk Committee and Board Risk Committee prior to implementation. The policy specifies certain metrics to be tracked by the clearing risk department and risk oversight department, and sets out escalation and notification protocols for those metrics, as well as for any deviations from the policy.

ICE Clear Europe is also proposing to amend the Price Submission Disciplinary Framework, specifically with regard to the procedures for imposing fines, known as fixed cash assessments, for Missed Submissions. The amendments formalize certain procedures around notices and preliminary determinations with respect to Missed Submissions, consistent with the procedures for disciplinary proceedings under Part 10 of the Rules. Consistent with the current framework, at the end of each calendar month, ICE Clear Europe will collect the details of alleged Missed Submission(s). The Clearing House will issue a Notice of Investigation under Rule 1002 to the relevant CDS Clearing Member with alleged Missed Submission(s). Within five days after the Notice of Investigation, and following an investigation, ICE Clear Europe will issue a Letter of Mindedness under Rule 1002 setting out its preliminary factual conclusions and intended course of action (which would be imposition of a fixed cash assessment). The CDS Clearing Member will have ten days from the date of the Letter of Mindedness to note any factual errors or objections. Following such ten day period, the Clearing House would finalize its findings and course of action. ICE Clear Europe does not propose to change the levels of cash assessments for Missed Submissions that are determined to have occurred under the revised policy.

During an investigation into a Missed Submission, if a CDS Clearing Member is able to demonstrate that the alleged Missed Submission(s) are the first instance(s) of a Missed Submission for a particular instrument, provide an adequate explanation for the Missed Submission, and a remedial plan of action to prevent future Missed Submissions, ICE Clear Europe may take no further action, provided that another Missed Submission for the same type of instrument does not occur within ninety days of the first Missed Submission. If a second Missed Submission were to occur in that period, the CDS Clearing Member will be subject to a cash assessment for both the initial and subsequent Missed Submissions.

In addition, consistent with the current framework, if a CDS Clearing Member is able to demonstrate that an alleged Missed Submission was due to extraordinary circumstances outside of the CDS Clearing Member's control (such as a market-wide disruption), the head of clearing compliance has the ability to determine that a CDS Clearing Member should not be subject to a cash assessment. Neither of these two exceptions will preclude ICE Clear Europe from undertaking disciplinary action against a CDS Clearing Member who persistently fails to submit end-of-day prices or submits prices treated as obvious errors by the end of day pricing algorithm.

2. Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁴ and the regulations thereunder applicable to it. Section 17A(b)(3)(F) of the Act⁵ in particular requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

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 the clearing agency, and the protection of investors and the public interest. The proposed amendments are designed to enhance the Clearing House's EOD Price Discovery Policy, which is a key aspect of the risk management and daily settlement procedures of the Clearing House. In ICE Clear Europe's view, the changes will maintain the strong incentive of Clearing Members to provide accurate end-of-day price submissions, while appropriately treating affiliated CDS Clearing Members as a group for purposes of the notional limit. In the Clearing House's experience, setting notional limits on a CP affiliate group basis is consistent with CDS Clearing Member price submission practices, where end-of-day submissions from multiple affiliated entities often are made by the same personnel or desk and reflect the overall affiliate group's view on the value of the relevant instrument. The amendments will avoid unfairly penalizing affiliated Clearing Members with Firm Trades, and limit the potential overnight risk that a CP affiliate group may face as a result of the Firm Trade process. The ICE Clear Europe believes the amendments will not adversely affect the integrity of the settlement price determination process, as all CDS Clearing Members will continue to be subject to potential Firm Trades for any given price submission, on a randomized basis. As a result ICE Clear Europe does not believe the amendments will change price submission behavior or materially limit the effectiveness of the Firm Trade process as an incentive to robust price submissions. Furthermore, ICE Clear Europe believes that the enhancements to the Disciplinary Framework will reinforce the price submission process, by clarifying the procedures for implementing fines and cash assessments for Missed

Submissions. As a result, in ICE Clear Europe's view, the amendments are consistent with, and will promote, the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions, within the meaning of Section 17A(b)(3)(F) of the Act.⁶

ICE Clear Europe also believes that the amendments will not permit unfair discrimination among participants in the use of the Clearing House, within the meaning of Section 17A(b)(3)(F). In particular, the amendments are designed to treat affiliated groups of CDS Clearing Members fairly, such that they are not subject to excessive overnight risk as a result of the Firm Trade submission process, as potentially applied to multiple CDS Clearing Member entities within the group. The approach thus is designed to prevent the Firm Trade process from disadvantaging those CP affiliate groups that have chosen to conduct their clearing business through multiple CDS Clearing Members, as opposed to a single clearing entity. This is particularly appropriate where a single or consolidated trading desk is submitting end-of-day prices for the entire CP affiliate group.

For similar reasons, ICE Clear Europe believes that the amendments are consistent with the requirements of Section 17A(b)(3)(D)⁷ of the Act, which requires that the rules of a clearing agency provide for the equitable allocation of reasonable fees, dues and other charges among its participants. As discussed above, the amendments are intended to equitably allocate the risk and potential cost of Firm Trades across the members of a CP affiliate group, to avoid unfairly disadvantaging each CDS Clearing Member in that group. The amendments mitigate the potential overnight risk exposure of

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78q-1(b)(3)(D).

an entire affiliate group from Firm Trades, to the same level that would apply if the group cleared all of its trades through a single CDS Clearing Member entity. At the same time, all such CDS Clearing Members remain potentially subject to Firm Trades for any given submission, on a randomized basis. Thus, if only one CDS Clearing Member within a CP affiliate group submits an off-market submission resulting in a Firm Trade for that entity only, the full notional limit would potentially be applicable to it. In ICE Clear Europe's view, this revised approach provides for the equitable allocation of reasonable dues, fees and charges among participants, within the meaning of Section 17A(b)(3)(D) of the Act.⁸

In addition, in ICE Clear Europe's view, the amended Disciplinary Framework, like the current framework, provides an appropriately tailored set of cash assessments for Missed Submissions by Clearing Members, in light of the importance of end-of-day price submissions to the Clearing House risk management and settlement procedures. The framework is thus consistent with the requirements of Section 17A(b)(3)(G) of the Act⁹. The amendments also enhance the procedures for investigating and notifying Clearing Members of potential Missed Submissions and related assessments, and for Clearing Members to dispute and/or seek a waiver of such assessments in particular circumstances. In ICE Clear Europe's view, this aspect of the amended framework is consistent with the requirements of Section 17A(b)(3)(H) of the Act.¹⁰

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance

⁸ 15 U.S.C. 78q-1(b)(3)(D).

⁹ 15 U.S.C. 78q-1(b)(3)(G).

¹⁰ 15 U.S.C. 78q-1(b)(3)(H).

of the purposes of the Act. The enhancements to ICE Clear Europe's price discovery process apply uniformly to all CDS Clearing Members. As discussed above, the amendments are designed to avoid unfairly burdening affiliate groups that have elected to clear through more than one affiliated CDS Clearing Member, by setting the relevant Firm Trade notional limit at the CP affiliate group level. In ICE Clear Europe's view, the revised approach appropriately incentivizes CDS Clearing Member participation in the end-of-day price submission process, while balancing the risks of the Firm Trade process fairly across different CDS Clearing Members. The amendments to the Disciplinary Framework will also apply to all CDS Clearing Members, and establish new procedures for determinations that a Clearing Member is subject to a cash assessment as a result of a Missed Submission. ICE Clear Europe does not believe that the adoption of the amendments will adversely affect competition among Clearing Members, or the ability of market participants to clear contracts generally. The Clearing House also does not believe that the amendments will reduce access to clearing CDS contracts or limit market participants' choices for clearing CDS.

The amended policies, like the current policies, may result in certain costs for Clearing Members that are required to enter into Firm Trades as a result of obvious errors in their submissions or otherwise, or are subject to cash assessments as a result of Missed Submissions. ICE Clear Europe believes that these costs are warranted to enhance the integrity of the price submission process, and are in any event generally within the control of the Clearing Member. As a result, ICE Clear Europe does not believe the proposed amendments impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency'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, Security-Based Swap Submission and Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice 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. Please include File Number SR-ICEEU-2017-006 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-ICEEU-2017-006. 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, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice 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, N.E., Washington, D.C. 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-2017-006 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.¹¹

Eduardo A. Aleman
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).