

**SECURITIES AND EXCHANGE COMMISSION**  
(Release No. 34-80674; File No. SR-ICEEU-2017-007)

May 15, 2017

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to Amendments to the ICE Clear Europe Limited Articles of Association

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 May 2, 2017, ICE Clear Europe Limited (“ICE Clear Europe”) 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 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 proposed rule change is to modify certain provisions of the ICE Clear Europe Articles of Association.

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

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

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

(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 changes is to make certain amendments to ICE Clear Europe's Articles of Association (the "Articles"). The amendments are generally intended to update the Articles to reflect the Clearing House's committee structure, to modify certain matters relating to the term of office of directors and to adopt certain new procedures addressing conflicts of interest of directors, as discussed in more detail herein.

In article 1<sup>3</sup>, a cross-reference to relevant parts of UK companies regulations has been updated. In article 3, certain definitions have been updated, including to add definitions for key existing committees: the Audit Committee, Board Risk Committee, Compensation Committee and Nominations Committee. The amendments also update the definition of Risk Committee to refer to product-specific Risk Committees (as distinct from the Board Risk Committee). A reference to the former UK Financial Services Authority has been updated to refer to the Bank of England, consistent with changes in the UK regulatory structure. A definition has also been added for the Senior Independent Director, as discussed below. Certain definitional provisions have also been clarified, including to remove unnecessary references to certain extraordinary resolutions. Article 4 has been updated to provide a cross-reference to regulations referred to in article 1.

Articles 7 and 8 have been revised to remove certain unnecessary distinctions between annual general meetings of members (i.e., shareholders) and extraordinary

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<sup>3</sup> References herein to the numbering of particular articles will be to the articles as amended.

general meetings of members (given that the clearing house has a single shareholder). A typographical correction is made in article 12.

In article 25, the minimum number of directors has been changed from two to six (the maximum of twelve is unchanged, as are the requirements with respect to independent directors). The clearing house currently has ten directors; as a result, this amendment is not expected to affect current operations of the board. Article 26 has been revised to reflect that selection of replacement or additional directors will be made following recommendation by the Nominations Committee. Article 29 provides for the board to appoint one of its independent directors as Senior Independent Director (and to revoke or terminate such appointment at its discretion). The Senior Independent Director will serve as the lead independent director appointed in accordance with the UK Corporate Governance Code<sup>4</sup> as in effect from time to time (to which the clearing house is subject).

The amendments make certain changes to the procedures for staggering the retirement or rotation of independent directors. Under revised Articles 31 and 32, at a general meeting to be held each year, the two longest serving independent directors (who are not CDS directors) that have served at least three consecutive years on the board, at the discretion of the Nominations Committee, must retire from office, but may offer themselves for reappointment for a new three year term by the shareholder. An

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<sup>4</sup> Financial Reporting Council Limited, *UK Corporate Governance Code* (April 2016). The code sets out a code of conduct and best practices for governance matters for UK companies. Among other matters, the code states that the board should appoint one of the independent non-executive directors as a senior independent director “to provide a sounding board for the chairman and to serve as an intermediary for the other directors when necessary.” The senior independent director should lead meetings of the non-executive directors, at least annually, to evaluate the performance of the Board chairman.

independent director may be so reappointed a maximum of two times for three year terms, unless the clearing house by resolution of its sole shareholder determines otherwise. The provisions for the retirement or rotation of CDS directors are unchanged. The revised retirement procedures do not apply to directors other than independent directors. Various conforming and clarifying changes have been made in article 33, which will provide that a director whose term ends at a general meeting may be reappointed and if not, may retain office until the meeting appoints a replacement (or until the end of the meeting if no replacement is named). In article 34, standards for determining that a director has become incapacitated have been updated. The amendments also reduce from six to three the number of consecutive meetings that a director may miss before being removed on that basis.

A new article 37 has been added to state explicitly that the directors will appoint the members of the relevant committees, as is current practice, consistent with the terms of reference for those committees, and that the committees will operate in accordance with such terms of reference. Article 43, which addresses delegation of board powers to committees, has been revised to refer explicitly to the Audit Committee, Board Risk Committee, Nominations Committee and Compensation Committee, and such other committees as the board determines may be required. A new article 48 has been added to require independent directors to disclose to the board all other directorships they hold, both prior to appointment and on an ongoing basis.

Additional amendments have been made to the provisions of the Articles relating to conflicts of interest (and potential conflicts of interest) of directors to ensure that there is a clear procedure in place to deal with any such conflicts of interest (and potential

conflicts of interest), consistent with the provisions of the UK Companies Act 2006. In article 52, the prohibition on a director participating in or voting on a decision in which he or she has an interest is modified (i) to eliminate a restriction that the interest be material and (ii) to provide additional exceptions where ICE Clear Europe by ordinary resolution of the shareholder disappplies the provision of the Articles that would prevent the director from participating in that decision or where the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest. A reference to the UK Companies Act 2006 is also corrected, and an unnecessary reference to that act is removed.

The amendments also adopt a new article 53, which addresses certain conflicts of interests and potential conflicts of interest of directors that do not arise in relation to a transaction or agreement with ICE Clear Europe (without limiting the obligations of directors under applicable provisions of the UK Companies Act 2006). In the case of such a conflict that arises from the appointment or proposed appointment of a person as a director, the uninterested directors or the shareholder may nonetheless authorize the appointment of the director, and address the relevant situation, on such terms as they determine. In the case of other conflicts, the uninterested directors or the shareholder may choose to permit the relevant situation and the continued performance by the interested director of his or her duties, on such terms as they determine. The interested directors will not be counted in the quorum for, and will not be allowed to vote on, any decision of the directors on such matters. The uninterested directors may act on such matters even if there are insufficient directors to meet the normal quorum and voting requirements. The resolution adopted by the uninterested directors or the shareholder

may, for example, permit the interested directors to vote, exclude the interested directors from all information and discussion about the relevant situation, and/or impose additional duties of confidentiality on the interested directors. The authorization of an interested director situation can be withdrawn or modified at any time. The article also contains requirements on directors to provide notice of potential conflicts and specifies certain other procedures and documentation requirements.

In article 55, clarifications are made that a director may not retrospectively waive notice of a meeting more than seven days after the meeting is held. The revised article also clarifies that the chair will not have a second or casting vote (in the case of an equally divided vote) if the chair is not otherwise to be counted for quorum or voting purposes (such as because of a conflict of interest). In revised article 60, the requirements for action by written resolution of directors have been clarified to provide that all directors entitled to vote on the matter (rather than all directors entitled to receive notice of a board meeting) must consent to the action.

The recordkeeping requirements in article 63 have been revised to provide that the company must keep a written record of all unanimous or majority decisions of the directors for at least 10 years. Article 69 has been revised to refer to a special rather than extraordinary resolution.

Certain other non-substantive corrections and clarifications have been made in the Articles. For example, various references to persons throughout the Articles have been revised to be gender-neutral. Various articles have also been renumbered in light of the changes discussed above, and related cross-references have been updated.

## 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, and in particular are consistent with the prompt and accurate clearance 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>6</sup> As discussed above, the changes are intended to clarify and update certain aspects of ICE Clear Europe's Articles, particularly around the committee structure, retirement and rotation of independent directors and conflicts of interest of directors. In ICE Clear Europe's view, these amendments will enhance the clearing house's overall governance framework, and thus facilitate the efficient operation of the clearing house and the prompt and accurate clearance and settlement of transactions and the public interest, within the meaning of the Act. For these reasons, the amendments will also promote governance arrangements that are clear and transparent to fulfill the public interests requirements in Section 17A of the Act applicable to clearing agencies, support the objectives of owners and participants and promote the effectiveness of the clearing agency's risk management procedures, within the meaning of Rule 17Ad-22(d)(8). Furthermore, the amendments will support governance arrangements that fulfill the requirements of Rule 17Ad-22(e)(2), including that the directors have appropriate experience and skills to discharge their duties and

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

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

responsibilities, and that the governance arrangements specify clear and direct lines of responsibility.

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

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. The amendments relate to ICE Clear Europe's internal governance structure relating to the board of directors and similar matters. ICE Clear Europe does not believe that these changes will impose any additional costs on Clearing Members or other market participants. ICE Clear Europe further does not believe that the amendments will adversely affect access to clearing by Clearing Members or their customers or otherwise adversely affect Clearing Members or market participants or the market for clearing services generally.

(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](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2017-007 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-2017-007. 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-2017-007 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>7</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).