

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81076; File No. SR-ICEEU-2017-005)

July 5, 2017

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Clearing House Contributions to CDS Default Resources

I. Introduction

On May 4, 2017, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change (SR-ICEEU-2017-005) to modify its Finance Procedures with respect to ICE Clear Europe’s contributions to funds available in the event of a clearing member’s default. The proposed rule change was published for comment in the Federal Register on May 23, 2017.<sup>3</sup> The Commission received no comment letters regarding the proposed change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICE Clear Europe maintains financial resources to cover potential losses resulting from a CDS Clearing Member default by collecting margin from CDS Clearing Members, maintaining the CDS Guaranty Fund which is made up of CDS Member Contributions, and allocating its own contribution. In the event that ICE Clear Europe experiences losses from the default of a CDS Clearing Member, it first looks to the margin and CDS Guaranty Fund contributions provided by that defaulting CDS Clearing Member. Next, ICE Clear Europe applies part of its own

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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> Securities Exchange Act Release No. 34-80706 (May 17, 2017), 82 FR 23692 (May 23, 2017) (SR-ICEEU-2017-005) (the “Notice”).

contribution – the Clearing House CDS Initial Contribution. Third, ICE Clear Europe applies the CDS Guaranty Fund contributions of non-defaulting CDS Clearing Members together with the remainder of its own contribution (the Clearing House CDS GF Contribution).

ICE Clear Europe has proposed revisions to its Finance Procedures to permit ICE Clear Europe to redesignate all or a part of the Clearing House CDS GF Contribution as the Clearing House CDS Initial Contribution. If such redesignation were to occur, the Clearing House CDS GF Contributions would no longer be used *pari passu* with non-defaulting CDS Clearing Members' contributions to the CDS Guaranty Fund. Instead, the redesignated amounts would be used before non-defaulting CDS Clearing Members' contributions. Accordingly, ICE Clear Europe has proposed amending paragraph 15.2(a) of the Finance Procedures, which establishes the amount of the Clearing House CDS Initial Contribution, to provide that “[t]he amount of the Clearing House CDS Initial Contribution may be further increased by [ICE Clear Europe] redesignating all or part of any of the Clearing House CDS GF Contributions as Clearing House CDS Initial Contributions.” Section 15.2(a) will also provide that any redesignation will be notified by circular. ICE Clear Europe has also proposed additional, conforming changes to paragraphs 15.2(b) to refer to amounts so redesignated as Clearing House CDS Initial Contribution; 15.2(c) to take into account amounts that are redesignated when establishing the Clearing House CDS GF Contributions; 15.2(d) to include redesignated amounts in the Clearing House CDS GF Contribution when calculating any replenishment to the Clearing House CDS GF Contribution; and 15.2(g) to clarify that redesignation for purposes of top-up as a result of exchange rate fluctuations is not required, and that redesignation for purposes of withdrawal as a result of exchange rate fluctuations is not permitted.

ICE Clear Europe believes that redesignation will reduce the likelihood that non-defaulting CDS Clearing Members' contributions will be used in a default scenario, and has represented that it "does not propose to change the aggregate amount of, or basis for calculating, the Clearing House CDS GF Contribution and Clearing House CDS Initial Contribution."<sup>4</sup> ICE Clear Europe has represented that its Board, in consultation with its CDS Risk Committee, will make any redesignation decision.<sup>5</sup> With respect to flexibility on the redesignation amount, ICE Clear Europe noted that there are "ongoing industry discussions concerning the appropriate level and seniority of clearing house contributions to default resources" and that market participants have "evolving views" on the subject.<sup>6</sup>

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>7</sup> Section 17A(b)(3)(F) of the Act requires,<sup>8</sup> among other things, that the rules of a registered clearing agency be designed 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 the protection of investors and the public interest. Rule 17Ad-22(b)(3) requires that a clearing

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<sup>4</sup> Notice, 82 FR at 23693. ICE Clear Europe noted that "The respective amounts [] are determined in accordance with paragraph 15.2 of the Finance Procedures, and are notified to Clearing Members by Circular." Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

agency that performs central counterparty services for security-based swaps shall establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a central counterparty for security-based swaps.<sup>9</sup> Rule 17Ad-22(e)(4) requires that a covered clearing agency involved in activities with a more complex risk profile shall establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by, in relevant part, (i) maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence, (ii) maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions, (iv) including prefunded financial resources, exclusive of assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available, and (v) maintaining the financial resources required under Rule 17Ad-22(e)(4)(ii) in combined or separately maintained clearing or guaranty funds, as applicable.<sup>10</sup> Rule 17Ad-22(e)(2) requires that a covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and support the public interest

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<sup>9</sup> 17 CFR 240.17Ad-22(b)(3).

<sup>10</sup> 17 CFR 240.17Ad-22(e)(4)(i), (ii), (iv) and (v).

requirements in Section 17A of the Act applicable to clearing agencies, and the objectives of owners and participants.<sup>11</sup>

The Commission finds that the proposed rule change is consistent with Section 17A of the Act and Rule 17Ad-22 thereunder. Because ICE Clear Europe has not proposed changing the amount of financial resources it contributes to cover default losses, but rather, to give itself the authority to apply some or all of those amounts in a default scenario sooner than it otherwise would, the proposed rule change is consistent with Section 17A(b)(3)(F)<sup>12</sup> and Rules 17Ad-22(b)(3) and (e)(4).<sup>13</sup> ICE Clear Europe's flexibility in deciding whether and, if so, how much, of the Clearing House CDS GF Contribution to designate is consistent with the public interest in light of ongoing industry discussions, consistent with Section 17A(b)(3)(F) of the Act.<sup>14</sup> Finally, ICE Clear Europe's proposal to vest redesignation authority with its Board, in consultation with its CDS Risk Committee and publication by circular, is consistent with the requirement in Rule 17Ad-22(e)(2) concerning governance arrangements that are clear and transparent and support the public interest requirements of Section 17A of the Act applicable to clearing agencies and the objectives of participants.<sup>15</sup>

#### IV. Conclusion

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<sup>11</sup> 17 CFR 240.17Ad-22(e)(2)(i) and (iii).

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 17 CFR 240.17Ad-22(b)(3) and (e)(4).

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(2)(i) and (iii).

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-ICEEU-2017-005) be, and hereby is, approved.<sup>16</sup>

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

Eduardo A. Aleman  
Assistant Secretary

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<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).