

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-85439; File No. SR-ICEEU-2019-005

March 28, 2019

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to adoption of a new Futures & Options Capital-to-Margin And Shortfall Margin Policy (the “F&O Margin Shortfall 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 March 15, 2019, 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 by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4)⁴ thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change Notice

ICE Clear Europe proposes to adopt a new F&O Margin Shortfall Policy. These revisions do not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.⁵

II. Clearing Agency’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 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.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to adopt a new F&O Margin Shortfall Policy, which would set out certain additional margin requirements for F&O Contracts based on a Clearing Member’s capital-to-margin ratio and certain uncovered stress loss thresholds. The policy is designed to reduce the potential market risk that the Clearing House would need to manage in the event of a Clearing Member default through limiting the size of positions that can be opened and carried by an F&O Clearing Member relative to its margin requirement and capital.

⁵ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the “Rules”).

Capital to Margin Limits

Under the F&O Margin Shortfall Policy, ICE Clear Europe would determine ratios of each F&O Clearing Member's balance sheet capital⁶ to its original margin ("OM") requirement,⁷ referred to as "capital-to-margin" ratios. For most house and customer accounts, the OM requirement would be determined on the basis of the net positions in the account (even if margin requirement for that type of account is otherwise determined on a gross basis).⁸ ICE Clear Europe believes this approach appropriately reflects the risk to the Clearing House in the case of F&O Clearing Member default for purposes of the capital-to-margin ratio requirements. For each F&O Clearing Member, ICE Clear Europe would calculate three capital-to-margin ratios: (1) capital to house account OM (based on the total OM requirement for all house accounts); (2) capital to customer account OM (based on the total OM requirement for all customer accounts); and (3) capital to total OM (based on the total OM requirement for all house and customer accounts).

Pursuant to the proposed F&O Margin Shortfall Policy, Clearing Members would be expected to maintain ratios of at least the following:

⁶ Capital for this purpose would be as set out in the Clearing Member's financial statements provided to ICE Clear Europe in accordance with Rules 205 and 206.

⁷ For energy contracts carried in a house or affiliate account, the OM requirement used for the calculation would include the additional Clearing Member EMIR charge applicable to such accounts based on a two-day margin period of risk. For customer accounts, the OM requirement used for the calculation would exclude any additional margin collected under the margin framework.

⁸ For Sponsored Principal and Individually Segregated Margin-flow Co-Mingled Accounts, the OM requirement for the Clearing Member would be the sum of each of the individual client's net OM requirements.

- Capital to total OM: (1:3)
- Capital to house account OM: (1:2)
- Capital to customer account OM: (1:3)

A Clearing Member would be in breach of the capital-to-margin limits if either the house or customer account limits were breached, even if the total OM limit were not breached.

Pursuant to the proposed F&O Margin Shortfall Policy, if a Clearing Member breached a capital-margin ratio for a 30-day rolling period, it would be required to take one of the following actions: (1) providing additional permitted cover (i.e., assets eligible to be provided to satisfy margin requirements)⁹ as buffer margin, (2) changing its positions to reduce its OM requirement, (3) increasing its capital or (4) providing a guarantee from a controlling entity. Additional buffer margin would be held for a minimum of one calendar month, and until the Clearing Member would no longer be in breach of the relevant limits set out in the policy. The policy provides that ICE Clear Europe has discretion to consider not taking action, on a case-by-case basis, in situations where the Clearing Member could provide detailed reasons as to why action would not be necessary. Any such decision would be reported to the F&O Product Risk Committee.

Shortfall Margin

The policy would also require F&O Clearing Members to provide additional “shortfall margin” to limit the Clearing Member’s potential uncovered stress loss. The Clearing House would establish a stress allowance for each F&O Clearing Member using a formula based on its capital (or in certain cases that of its parent). Shortfall margin

⁹ The list of permitted cover can be found in the following link:
https://www.theice.com/publicdocs/clear_europe/list-of-permitted-covers.pdf

complements the OM requirement and reduces the risk to the Clearing House from leveraged positions identified as presenting uncollateralized stress losses. The stress allowance would represent the Clearing House's risk tolerance for uncovered stress loss for that Clearing Member. The shortfall margin would be defined as the worst uncovered stress loss for the F&O Clearing Member out of all F&O stress testing scenarios, less the shortfall allowance. The worst stress typically differs for each F&O Clearing Member based on its risk factor sensitivity. ICE Clear Europe Credit Risk Department would review the model parameters for determining the stress allowance on a regular basis and any changes would be communicated to the F&O Product Risk Committee.

Pursuant to the proposed F&O Margin Shortfall Policy, shortfall margin would be collected on a daily basis as part of the end-of-day margining process. Any changes in the total amount of shortfall margin collected that ICE Clear Europe management determine to be significant would be reported to the F&O Product Risk Committee as part of the regular reporting package. In evaluating the significance of the change, the Clearing House would consider the reason for the shortfall margin changes, and whether the changes were due to leverage, change in member capital allowance or other causes outside than the normal course of business.

Models supporting the F&O Margin Shortfall Policy objectives would be subject to an annual independent validation and governance oversight in accordance with the ICE Clear Europe Model Risk Governance Framework. The Policy Owner would be responsible for ensuring the policy remains up-to-date with the support of the Risk Oversight Department. The policy would be reviewed annually by the F&O Risk Committee and Board Risk Committee in accordance with their terms of reference. At a

minimum, any material policy changes would need to be discussed by the Executive Risk Committee and approved by the ICE Clear Europe Board on the advice of the F&O Risk Committee and the Board Risk Committee prior to implementation. The proposed F&O Margin Shortfall Policy would further set out a detailed escalation and notification protocol based on risk appetite metrics. Routine reporting and analysis demonstrating enforcement and adherence of the F&O Margin Shortfall Policy would need to be submitted to the F&O Risk Committee and where necessary, to the BRC, in a timely and appropriate manner.

The policy also addresses escalation and reporting of deviations from the policy.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act¹⁰ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act¹¹ requires, among other things, that the rules of a clearing agency be designed to promote 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 the clearing agency or for which it is responsible, and the protection of investors and the public interest. The new F&O Margin Shortfall Policy is intended to protect the Clearing House against an uncovered loss resulting from an F&O Clearing Member default, by limiting the OM requirement of Clearing Members as compared to their capital and imposing an additional shortfall margin requirement to cover potential

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

stress losses in excess of the stress allowance level. The new policy thus would promote the risk management of the Clearing House and accordingly the prompt and accurate clearance and settlement of cleared contracts. The enhanced risk management would also generally be consistent with the protection of investors and the public interest in the safe operation of the Clearing House. In ICE Clear Europe's view, the policy would not affect the safeguarding of funds and securities in the custody or control of the Clearing House or for which it is responsible, as the changes would not affect the way in which margin provided is held or managed for Clearing Members by ICE Clear Europe. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).¹²

In addition, Rule 17Ad-22(e)(6)(i)¹³ requires that a clearing agency cover its credit exposures to its participants by establishing a risk-based margin system that, among other matters, produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. The proposed F&O Margin Shortfall Policy would monitor the ratio of each Clearing Member's total OM requirement to capital to ensure that it remain within appropriate limits for the protection of the Clearing House from Clearing Member default. The proposed policy would also use the shortfall margin to limit a Clearing Member's uncovered stress losses by requiring additional collateralization of stress losses over the Clearing House's risk tolerance. The policy thus would enhance the ability of the Clearing House to tailor margin requirements to the risks posed by the Clearing Member, in light of its

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 C.F.R. 240.17Ad-22(e)(6)(i).

capitalization. In ICE Clear Europe’s view, the proposed F&O Margin Shortfall Policy is thus consistent with the requirements of Rule 17Ad-22(e)(6).¹⁴

Rule 17Ad-22(e)(2)¹⁵ requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. In compliance with this requirement, the proposed F&O Margin Shortfall Policy would explain the responsibility of the policy owner and the escalation and notification protocols. It would also require material changes to the policy discussed by the Executive Risk Committee and approved by the Board on the advice of the F&O Risk Committee and the Board Risk Committee prior to implementation. It would further set out reporting requirements. As such, the new F&O Margin Shortfall Policy is in compliance with Rule 17Ad-22(e)(2).¹⁶

¹⁴ 17 C.F.R. 240.17Ad-22(e)(6)(i).

¹⁵ 17 CFR 240.17 Ad-22(e)(2). The rule states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

- (2) Provide for governance arrangements that:
 - (i) Are clear and transparent
 - (ii) Clearly prioritize the safety and efficiency of the covered clearing agency;
 - (iii) Support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants;
 - (iv) Establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities;
 - (v) Specify clear and direct lines of responsibility; and
 - (vi) Consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.”

¹⁶ 17 CFR 240.17 Ad-22(e)(2).

Rule 17Ad-22(e)(6)(vii)¹⁷ further requires that each covered clearing agency establish written policies and procedures that provide for a model validation for the covered clearing agency's margin system and related models to be performed not less than annually, or more frequently as may be contemplated by the covered clearing agency's risk management framework. The models underlying the F&O Margin Shortfall Policy would be subject to review, validation and oversight in accordance with the Model Risk Governance Framework. As a result, In ICE Clear Europe's view, the proposed policy is consistent with Rule 17Ad-22(e)(6)(vii).¹⁸

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

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted further strengthen ICE Clear Europe risk management procedures and ensure that ICE Clear Europe appropriately monitors and limits risks relating to Clearing Members' capital to margin ratio and uncovered stress losses. The proposed F&O Margin Shortfall Policy may result in increased collateral, capital or other requirements for F&O Clearing Member, which would increase the costs of clearing for those Clearing Members. However, ICE Clear Europe believes that any such additional cost is tailored to the capital and risk presented by the particular F&O Clearing Member, and is appropriate to take into account that risk, consistent with the provisions of the Act and Commission regulations relating to margin requirements and methodologies as discussed above. The F&O Margin Shortfall Policy

¹⁷ 17 C.F.R. 240.17Ad-22(e)(6)(vii).

¹⁸ 17 C.F.R. 240.17Ad-22(e)(6)(vii).

will apply to all F&O Clearing Members, and such Clearing Members will be able to manage their positions to limit potential additional requirements if they so choose. ICE Clear Europe does not believe that the new F&O Margin Shortfall Policy will otherwise impact competition among Clearing Members or other market participants, or affect the ability of market participants to access clearing generally. As a result, ICE Clear Europe believes that any impact on competition is appropriate 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 amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and paragraph (f) of Rule 19b-4²⁰ thereunder. 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.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 C.F.R. 240.19b-4(f).

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. Please include File Number SR-ICEEU-2019-005 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-2019-005. 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, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m.

and 3:00 pm. 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>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2019-005 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.²¹

Eduardo A. Aleman
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).