

**SECURITIES AND EXCHANGE COMMISSION**  
Release No. 34-86340; File No. SR-ICEEU-2019-014

July 10, 2019

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe CDS Default Management Framework (the “Framework”)

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 June 25, 2019, ICE Clear Europe Limited (“ICE Clear Europe” or the “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 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

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to revise its CDS Default Management Framework (the “Framework”) to make certain updates and enhancements, including changes to be consistent with amendments proposed to the ICE Clear Europe Clearing Rules (the “Rules”) to address default management, recovery and wind-down for the CDS Contract Category. The revisions would not involve any changes to the ICE Clear Europe Rules or Procedures. The

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

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

revisions do not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.<sup>3</sup>

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 the amendments to the Framework in order to ensure that the Framework remains consistent with the Rules in light of the proposed Recovery Rule Amendments to address default management, recovery and wind-down for the CDS Contract Category. Consistent with the Recovery Rule Amendments, the proposed changes to the Framework primarily relate to implementation of auction procedures, reduced gains distribution, partial contract tear-up, Clearing Member withdrawal and termination, clearing service termination and the role of the CDS Default Committee, CDS Risk Committee and Board during a default event. The proposed amendments would also include certain other enhancements and clarifications.

(I) Overall Framework

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

The amendments clarify the overall purposes and content of the Framework, to include explicitly the porting of client positions and assets, conducting auctions and associated processes, implementing reduced gain distributions, calls for assessments from Clearing Members and partial tear-up of positions.

(II) Auction Procedures

Several aspects of the Framework addressing default auctions would be amended in light of the Recovery Rule Amendments, which would adopt a new set of CDS initial and secondary auction procedures (the “Proposed Auction Procedures”):

- The amendments would clarify that in determining the auction portfolios, the Clearing House would consider wrong-way risk to non-defaulting Clearing Members, among other listed factors;
- The amendments would clarify that upon completion of the auction, submission of resulting trade to the Trade Information Warehouse would be done under normal Clearing House practices;
- Clearing Members would no longer be required to confirm to the Default Management Committee their intention to bid in a particular auction (in light of the mandatory bidding requirements of under the Proposed Auction Procedures);
- Consistent with the Proposed Auction Procedures, the Framework would no longer provide that the last bid submitted by the Clearing Member is the only bid considered once the bidding window is closed;
- The amendments would set a range for the minimum bid requirement for Clearing Members, consistent with the Proposed Auction Procedures. The Framework provides examples of the calculation of the minimum bid requirement for

Clearing Members, based on their respective CDS Guaranty Fund contributions as compared to the total CDS Guaranty Fund size;

- The Framework also provides several examples of the modified Dutch auction methodology used under the Proposed Auction Procedures;
- The Framework would reflect the two means by which Customers would be able to participate in auctions under the Proposed Auction Procedures: (i) via Clearing Member following mutual agreement on participation terms; and (ii) via direct participation following (subject to Customer contribution of €7.5 million to default resources (in the case of initial auctions) and certain other requirements);
- The Framework also summarizes key distinctions between initial auctions and secondary auctions under the Proposed Auction Procedures;
- The existing Clearing House approach to non-competitive bids would be deleted, in light of the three tier methodology approach to juniorization of the Guaranty Fund contribution provided for in the Recovery Rule Amendments;
- The existing auction schedule in the Framework would be removed, as it would be superseded by the Proposed Auction Procedures; and
- The provisions in the existing Framework for forced portfolio allocation for positions for which ICE Clear Europe does not receive a formal bid from any Non-Defaulting Clearing Members would be removed, consistent with the Recovery Rule Amendments.

### (III) Reduced Gains Distribution

The amendments would add a new section to the framework that describes the use of reduced gains distribution (“RGD”) as a recovery tool that the Clearing House could use

in the event that its remaining default resources are insufficient to ensure solvency. The Framework incorporates and summarizes key aspects of the Recovery Rule Amendments relating to the use of RGD, including the methodology for applying RGD to both the house and customer accounts and the five consecutive business day limitation on the use of RGD (following which partial tear-up may be conducted). The Framework also provides examples of the use of RGD.

(IV) Clearing Member Withdrawal

The proposed amendments to the Framework reflect the procedures for Clearing Member withdrawal as set out in the Recovery Rule Amendments, including both an ordinary course of business termination outside of a default and termination during a cooling off period.

(V) Partial Tear-Up

The revised Framework would reflect the Recovery Rule Amendments that permit the Clearing House to proceed to partial tear-up as a final default tool where the Clearing House is unable to close out all of the defaulter's remaining positions through auctions within the Clearing House's remaining resources. In a partial tear-up, the Clearing House would terminate positions of non-defaulting Clearing Members that exactly offset those in the defaulting Clearing Member's remaining portfolio ("Tear-Up Positions"), in accordance with the Recovery Rule Amendments. This would be done across both house and customer accounts of all non-defaulting Clearing Members in accordance with the Rules. The Framework would also describe procedures for the timing of partial tear-up and determination of the relevant termination price, in accordance with the Recovery Rule Amendments.

(VI) Clearing Service Termination

The amended Framework would also reflect the Clearing House's ability, under Rule 916 as proposed to be modified by the Recovery Rule Amendments, to terminate the CDS clearing service under specified circumstances.

(VII) Role of the CDS Risk Committee During a Default Event

Pursuant to the proposed amendments, the CDS Risk Committee would be consulted on (i) establishing the terms of initial and secondary auctions (including defining different auction lots) and (ii) holding additional auctions and/or accepting a partial fill of an auction during the initial auction phase. The CDS Risk Committee would be consulted, with the ultimate decision to be made by the ICE Clear Europe Board (or their delegate), with respect to the following matters under the Rules:

- Whether to use CDS Guaranty Fund contributions of non-defaulting Clearing Members to cover the cost of a direct liquidation outside of a default auction;
- Whether to determine that an initial default auction has failed due to insufficient default resources;
- Whether to invoke and/or continue RGD;
- Whether to hold a secondary auction, whether that auction has failed and in the event of failure, whether to hold additional secondary auctions;
- In a secondary auction, whether to reallocate default resources to a particular lot to permit a successful auction of that lot;
- In a final secondary auction, whether to accept a "partial fill" to the extent of available default resources for the relevant lot;
- Whether to implement a partial tear-up;
- Whether to terminate the clearing service in full; and
- Whether to bypass an initial default auction or bypass secondary default management action(s).

(VIII) Additional Amendments

The proposed amendments would include certain other clarifying and conforming changes and typographical corrections. In addition, the proposed amendments would remove as unnecessary a provision that hedging traders are responsible for ensuring all hedge trades are correctly reflected in the trade capture system by end of day (as the Clearing House is responsible for such matters in accordance with its current practices). Certain unnecessary details about computer support for CDS Default Committee Members would be removed. An outdated trade workflow chart would also be removed. With respect to liquidation of a defaulting Clearing Member's collateral, the amendments would clarify that the Head of Clearing Risk may postpone the collateral sale without seeking advice of the CDS Default Committee, which is consistent with current practice. The amendments would also clarify that the risk team also consults with the CDS Default Committee with respect to establishing hedging positions with the non-defaulting Clearing Members, in addition to the Head of Clearing Risk. Certain parts of Appendix A, including an itemized example of auction position data and a standard bidding template, as well as references thereto throughout the framework would be removed.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act<sup>4</sup> and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.<sup>5</sup> In particular, Section 17A(b)(3)(F) of the Act requires that that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts

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<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 17 C.F.R. § 240.17Ad-22.

and transactions cleared by ICE Clear Europe, 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.<sup>6</sup> As discussed herein, the proposed rule changes are principally designed to conform the Framework to the provisions of the proposed Recovery Rule Amendments, which address the risks posed to ICE Clear Europe by a significant default by one or more Clearing Members.<sup>7</sup> The proposed amendments add to the Framework internal procedures and processes for using the additional default tools that would be made available by the Recovery Rule Amendments, including initial and secondary CDS auction procedures, RGD and partial tear-up. These tools are designed to permit ICE Clear Europe to restore a matched book and limit its exposure to potential losses from a CDS Clearing Member default in extreme scenarios that may not be able to be addressed by standard risk management and default procedures. The amendments would also reflect in the Framework the updated procedures for CDS Clearing Members to withdraw from the Clearing House, as proposed in the Recovery Rule Amendments. The amendments would also describe the procedures for full CDS clearing service termination, which would be a tool to address general business risk, operational risk and other risks that may otherwise threaten the viability of the Clearing House. The amendments also clarify certain governance arrangements during a default event, by specifying the circumstances in which the CDS

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

<sup>7</sup> For a discussion of the statutory basis of the Recovery Rule Amendments themselves, see Exchange Act Release No. 34-85848, SR-ICEEU 2019-003.



Risk Committee would be consulted with respect to key decisions involving the use of recovery tools.

The amendments to the Framework would thus enhance the ability of the Clearing House to deal with significant loss events, and in turn further prompt and accurate clearance and settlement of cleared transactions and the public interest in the continued operation of the clearing system in light of such events. Through increasing the ability of ICE Clear Europe to withstand and recover from extreme loss events, the amendments may also enhance the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, and avoid disruption of access to such assets.

The amendments would also satisfy the relevant specific requirements of Rule 17Ad-22,<sup>8</sup> as set forth in the following discussion:

*Default Procedures.* Rule 17Ad-22(e)(13)<sup>9</sup> requires the covered clearing agency to ensure that it “has the authority and operational capacity to take timely action to contain losses and liquidity demands” in the case of default. The proposed amendments would enhance ICE Clear Europe’s internal procedures to implement to the Recovery Rule Amendments. The amendments will facilitate use of the new default management and recovery tools included in the Recovery Rule Amendments, including the new procedures for CDS auctions, juniorization of Guaranty Fund and assessment contributions in the context of auctions, procedures for secondary auctions, RGD, and the option to invoke a partial tear-up of positions to restore a matched book in the event that

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<sup>8</sup> 17 C.F.R. § 240.17Ad-22.

<sup>9</sup> 17 C.F.R. § 240.17Ad-22(e)(13).

it would be unable to auction the defaulter's remaining portfolio. ICE Clear Europe believes that this revised set of tools would strengthen the Clearing House's ability to efficiently, fairly and safely manage extreme default events. The amendments thus are designed, in conjunction with the Recovery Rule Amendments, to permit ICE Clear Europe to fully allocate losses arising from default by one or more Clearing Members, with the goal of permitting the Clearing House to resume normal operations. As a result, in ICE Clear Europe's view, the amendments would allow it to take timely action to contain losses and liquidity pressures, within the meaning of Rule 17Ad-22(e).

*Governance.* Rule 17Ad-22(e)(2)<sup>10</sup> requires that a covered clearing agency provide for governance arrangements that, among other matters, are “clear and transparent,” “clearly prioritize the safety and efficiency of the covered clearing agency,” and “specify clear and direct lines of responsibility.” ICE Clear Europe believes that the proposed amendments to the Framework provide further clarity as the governance process for default management and recovery, consistent with these standards. Specifically, the amendments would address the circumstances in which the CDS Risk Committee would be consulted on key decisions involving the use of recovery tools. The amendments also clarify that key decisions will ultimately be made by the ICE Clear Europe Board (or its delegate). ICE Clear Europe believes that the amendments would thus specify appropriate lines of responsibility and involvement of the CDS Risk Committee and Board, in furtherance of the safety and efficiency of ICE Clear Europe in a default scenario.

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

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<sup>10</sup> 17 C.F.R. § 240.17Ad-22(e)(2).

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 purpose of the Act. The amendments would apply uniformly to all CDS Clearing Members (and customers of Clearing Members). The amendments are intended to provide additional implementing procedures and governance relating to the use of the default management and recovery tools in the Recovery Rule Amendments, which are designed to address the risk of extreme loss events. As a result, ICE Clear Europe does not anticipate that the amendment would affect the day-to-day operation of the Clearing House under normal circumstances. ICE Clear Europe does not believe the amendments would adversely affect the ability of Clearing Members or other market Clearing Members to continue to clear contracts, including CDS Contracts. ICE Clear Europe also does not believe the enhancements would limit the availability of clearing in CDS or other products for Clearing Members or their customers or otherwise limit market Clearing Members' choices for selecting clearing services in CDS and other products. As with the Recovery Rule Amendments more generally, in the case of an extreme default scenario, the application of the Framework in the conduct of default management could impose certain costs and losses on Clearing Members or their customers, as well as ICE Clear Europe. ICE Clear Europe believes that this potential result is consistent with the Rules and is appropriate in light of the default management goals of the Clearing House, the goal of promoting orderly recovery of the Clearing House and the broader public interest in the ability of the clearing system to withstand default events. As a result, ICE Clear Europe does not believe that the proposed amendments impose any burden on competition that is not 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 written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change

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 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-2019-014 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-2019-014. 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 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>.

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-2019-014 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>11</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).