

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68152; File No. SR-ICEEU-2012-09)

November 5, 2012

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change to Provide for a Customer Clearing Model for CDS Products and to Amend, Clarify and Consolidate Certain Rules and Procedures

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 October 22, 2012, 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. Self-Regulatory Organization’s Statement of Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes rule changes to provide for a clearing model for CDS products whereby customers of ICE Clear Europe have the ability to clear CDS products through ICE Clear Europe (the “Customer CDS Clearing Model”). Additionally, ICE Clear Europe also seeks to amend, clarify and consolidate the terms of certain rules and procedures, including those that relate to default and membership requirements.

II. Self-Regulatory Organization’s Statement of 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

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 240.19b-4.

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.³

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

As noted above, the principal purpose of the proposed rule change is to provide for a Customer CDS Clearing Model whereby customers of ICE Clear Europe Clearing Members have the ability to clear CDS products through ICE Clear Europe. In addition, ICE Clear Europe proposes to amend its Rules and CDS Procedures in order to implement certain rule changes that are unrelated to Customer CDS Clearing Model.

Currently, ICE Clear Europe Clearing Members are only able to clear CDS products at ICE Clear Europe through their proprietary accounts and not on behalf of their customers. The Customer CDS Clearing Model will extend ICE Clear Europe's customer clearing models that are currently available for other products to CDS products, with certain modifications appropriate for the nature of the product.

ICE Clear Europe has identified customer clearing of CDS products as a service that has become increasingly important for market participants to manage risk and express views with respect to the credit markets. In addition, the CFTC has proposed, pursuant to the Dodd-Frank Act, that clearing of certain CDS products, including iTraxx index CDS currently cleared by ICE Clear Europe, will become subject to mandatory clearing under Section 2(h) of the Commodity Exchange Act, including for customers. Customers subject to the clearing mandate will therefore need access to clearing in order to comply with their own clearing obligations. Moreover, ICE Clear Europe believes that extending CDS clearing to customers of its Clearing Members will facilitate the prompt and accurate settlement of swaps and contribute to the

³ The Commission has modified the text of the summaries prepared by ICE Clear Europe.

safeguarding of securities and funds associated with swap transactions.

The Customer CDS Clearing Model builds on the customer clearing framework available for other products at ICE Clear Europe. For US customers, clearing would have to occur through a registered futures commission merchant and/or broker-dealer (depending on whether the product is an index CDS or single-name CDS), consistent with the requirements of the Commodity Exchange Act and Securities Exchange Act of 1934. Non-US customers would be permitted to clear through a non-US clearing member in accordance with applicable local laws or through a registered futures commission merchant and/or broker-dealer.

The terms of the Customer CDS Clearing Model, as well as various related enhancements to the clearing model, are being proposed as amendments to the ICE Clear Europe Rules and CDS Procedures. Proposed changes to Part 1 of the Rules contain various clarifying and conforming amendments to definitions, various new CDS-specific definitions used in new operative provisions, clarifications to customer and proprietary account class definitions that will now be relevant to CDS, and clarifications to general standards of Clearing Member responsibility and liability requested by CDS Clearing Members. Other proposed changes reflect the incorporation into the Rules of provisions that used to be in a separate master agreement entered into between the Clearing Member and ICE Clear Europe. Proposed changes to Part 2 of the Rules provide updates related to anti-money laundering legislation applicable to customers, clarify membership standards for Clearing Members, clarify the obligations of Clearing Members with respect to customer accounts and proprietary accounts and clarify and/or restate certain provisions relating to Clearing Member default and termination of clearing membership. The proposed changes in Part 3 of the Rules clarify certain payment mechanics for Clearing Members with respect to amounts owed by their customers and include a waiver of set-off by

Clearing Members. Part 4 of the Rules contains proposed changes related to the obligations of Clearing Members with respect to formation of contracts, including whether such contract is being entered into for the customer account or proprietary account, particularly in the context of the clearing of CDS on behalf of customers. The proposed changes in Part 5 of the Rules address the delivery of margin from customers to Clearing Members and add provisions dealing with transfer of margin by security interest rather than title transfer. The proposed changes to Part 6 of the Rules, which governs position limits, clarify the procedures for providing notice of such position limits. Some proposed minor technical changes clarify further how position limits apply in instances where contracts arise due to firm trades, voiding or error policies. The proposed changes in Parts 7 and 8 of the Rules clarify that references in those parts of the Rules (covering Settlement and Delivery of Futures (Part 7) and Options (Part 8)), which relate solely to Energy contracts, do not apply to CDS Customer Accounts or Customers in the context of CDS clearing. Part 9 of the Rules contain various proposed changes to consolidate and clarify the respective rights and obligations of ICE Clear Europe and Clearing Members, in the case of a Clearing Member or ICE Clear Europe default and the procedures to be followed in determining a net sum payable to or receivable from a defaulting Clearing Member. Part 10 of the Rules contains proposed clarifying language providing more detail as to how a disciplinary or appeals panel could impose a sanction on a customer and to determine liability or responsibility appropriately in any instance where there is joint misfeasance. Part 11 contains proposed conforming changes related to the operation of the ICE Clear Europe guaranty funds, including proposed changes relating to the introduction of customer clearing. ICE Clear Europe will continue to operate separate guaranty funds for CDS products and for energy products. Part 12 of the Rules on settlement finality contains proposed updates to conform to and be consistent

with the new terms and definitions that are part of the Customer CDS Customer Model. Part 15 of the Rules, which governs clearing of CDS generally, contains proposed updates to include various additional provisions dealing with CDS contracts cleared in the customer account (including the representation of customer transactions in relevant books and records and treatment of customer transactions in the case of credit events) and elimination of the separate master agreement previously entered into between CDS Clearing Members and ICE Clear Europe. Part 16 of the Rules contains certain proposed amendments to the ICE Clear Europe FCM customer clearing model that address the addition of CDS clearing and certain other clarifications and enhancements requested by CDS Clearing Members.

In connection with the proposal of the Customer CDS Clearing Model, ICE Clear Europe proposes to establish in Exhibit 1 of the Rules certain standard terms (the Customer-CM CDS Transactions Standard Terms) that will be applicable to Customer-CM CDS Transactions, which are CDS transactions between a Non-FCM/BD Clearing Member and a non-U.S. customer. Under the proposed changes to Rule 1516, all Non-FCM/BD Clearing Members must agree to the applicability of these terms as between them and each of their Customers. The Standard Terms provisions *inter alia* would ensure that the terms of Customer-CM CDS Transactions mirror the terms of the cleared transaction, enable a clearing member to pass on clearing house performance (or non-performance) to their Customers, facilitate the provision of margin to ICE Clear Europe and amend provisions in underlying agreements relating to events of default and close-out in order to ensure that the porting of contracts and margin under the default rules will be effective. In addition, various consents would be supplied for ICE Clear Europe to update customer records in DTCC and receive other information as required relating to customers. As

noted above, US customers would clear through an FCM/BD Clearing Member, and the Customer-CM CDS Transactions Standard Terms would not apply to that relationship.

The adoption of the Customer CDS Clearing Model will also require changes to ICE Clear Europe's CDS Procedures. Part 1 of the CDS Procedures contains various proposed clarifying and conforming amendments to definitions, as well as new definitions used in new operative provisions. Part 2 of the CDS Procedures also contains various proposed clarifying and conforming amendments to membership requirements, largely resulting from implementation of the Dodd-Frank Act. Part 3 of the CDS Procedures also contains certain proposed conforming changes. Proposed changes in Part 4 of the CDS Procedures contain updates concerning information that must be provided with respect to CDS contracts and procedures for submission of CDS contracts for clearing. Proposed changes in Part 5 of the CDS Procedures have been made in furtherance of the Customer CDS Clearing Model to address customer clearing in the context of the CDS Default Committee procedures. Part 6 of the CDS Procedures would be removed as no longer necessary in light of the clearinghouse's use of determinations made by the ISDA Determinations Committees with respect to credit and succession events. Proposed changes in Part 7 address restructuring as a credit event with respect to CDS contracts cleared in the customer account, including the processing for triggering settlement of such contracts. Part 8 of the CDS Procedures contains proposed clarifying changes to the procedures for listing new CDS Contracts, in particular to enable the clearing house to respond in timely fashion to any prohibition on trading in CDS imposed under the EU Short Selling Regulation (Regulation 236/2012 dated 14 March 2012). Part 9 of the CDS Procedures would be updated to include various provisions previously included in the separate master agreement between CDS Clearing Members and ICE Clear Europe as well as certain tax

provisions relevant to customer clearing. These updated provisions would apply to all CDS Contracts, both customer positions and proprietary positions of CDS Clearing Members. Part 10 of the CDS Procedures would be revised to update the cross-references and definitions relevant to customer clearing as they relate to index CDS Contracts. Part 11 of the CDS Procedures also would be revised to update the cross-references and definitions relevant to customer clearing as they relate to Single Name CDS Contracts. Similarly, Part 12 of the CDS Procedures would include updates to the cross-references and the definitions relevant to customer clearing with respect to Sovereign Contracts. Finally, Part 13 of the CDS Procedures would add certain general procedures relating to customer clearing of CDS contracts, including as to transfer of customer positions.

ICE Clear Europe believes that the proposed Customer CDS Clearing Model is consistent with the requirements of Section 17A of the Act and the CDS procedures and regulations thereunder applicable to it. Specifically, the Customer CDS Clearing Model would promote market transparency for derivatives markets, promote the prompt and accurate clearance of securities transactions, and derivative agreements, contracts, and transactions, and protect investors and the public interest. The Customer CDS Clearing Model is designed to permit customers of Clearing Members to clear CDS transactions, thereby permitting the increased use of clearing and the prompt and accurate clearance and settlement of securities transactions in furtherance of the goals of Section 17A of the Act. ICE Clear Europe also believes the proposed changes are specifically designed to protect investors and the public interest. The non-Customer CDS Clearing Model proposed rule changes also achieve such ends by clarifying the rights and obligations of Clearing Members and ICE Clear Europe with respect to key aspects of the clearance and settlement process.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

ICE Clear Europe has consulted extensively with CDS Clearing Members and others in developing the Customer CDS Clearing Model. ICE Clear Europe has not solicited and does not intend to solicit comments regarding this proposed rule change. ICE Clear Europe has not received any unsolicited written comments from interested parties. 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 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.

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 may be submitted by using 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 No. SR-ICEEU-2012-09 on the subject line.

- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C., 20549-1090.

All submissions should refer to File Number SR-ICEEU-2012-09. 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, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will 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/notices/Notices.shtml?regulatoryFilings>.

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-2012-09 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.⁴

Kevin M. O'Neill
Deputy Secretary

⁴ 17 CFR 200.30-3(a)(12).