

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72754; File No. SR-ICEEU-2014-11)

August 4, 2014

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Granting Accelerated Approval of Proposed Rule Change Relating to EMIR Requirements

I. Introduction

On July 7, 2014, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-ICEEU-2014-11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on July 15, 2014.³ The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

ICE Clear Europe has stated that the principal purpose of the proposed rule change is to amend certain ICE Clear Europe procedural rules (“Procedures”) in order to comply with requirements under the European Market Infrastructure Regulation (including regulations and implementing technical standards thereunder, “EMIR”)⁴ that will apply to ICE Clear Europe as an authorized central counterparty and to further implement proposed changes to its Clearing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-72582 (July 10, 2014), 79 FR 41320 (July 15, 2014) (SR-ICEEU-2014-11) (This rule filing is hereinafter referred to as the “Procedures Submission”).

⁴ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as well as various implementing regulations and technical standards.

Rules (the “Clearing Rules”) relating to EMIR implementation and certain other matters as proposed in rule filing SR-ICEEU-2014-09 (the “Rule Submission”).⁵

As described in more detail in the Rule Submission, in order to comply with EMIR, ICE Clear Europe is proposing changes to the structure of customer accounts for cleared transactions. The amendments to the Clearing Rules would establish two new types of individually segregated accounts, Individually Segregated Margin-flow Co-mingled Accounts and Individually Segregated Sponsored Accounts. The proposed changes to the Clearing Rules would also establish multiple new types of omnibus accounts, Segregated Customer Omnibus Accounts (separately for each product: FX, F&O and CDS) and Segregated TTFCFA Customer Omnibus Accounts (separately for each product: FX, F&O and CDS) as well as Omnibus Margin-flow Co-mingled Accounts. The amendments to the Procedures described herein are intended to further implement these changes to the Clearing Rules, as well as make various other consolidating, conforming and clarifying changes and drafting improvements to the existing Procedures.

ICE Clear Europe proposes to make amendments to the following Procedures: the Clearing Procedures, Finance Procedures, Membership Procedures, Business Continuity Procedures, Complaint Resolution Procedures, General Contract Terms, CDS Procedures, FX Procedures, OTC FX Product Guide and Published Terms for FX Contracts, Auction Terms for FX Default Auctions, Auction Terms for F&O Default Auctions and Delivery Procedures. The CDS Operational Procedures are being eliminated as they are no longer applicable. The proposed Procedure amendments are described as follows.⁶

⁵ Securities Exchange Act Release No. 34-72540 (July 3, 2014), 79 FR 39429 (July 10, 2014) (SR-ICEEU-2014-09).

⁶ The proposed rule change is described in further detail in the Procedures Submission. See supra note 3.

ICE Clear Europe proposes to make certain common changes to all relevant sections of the Procedures. In each such section of the Procedures, ICE Clear Europe would add provisions addressing governing law, arbitration and submission to jurisdiction that are substantially the same as those set forth in the Clearing Rules (specifically, Rules 117 and 1608). In addition, various references to Sponsored Principals would be added throughout, as well as conforming changes to reflect changes in defined terms in the Clearing Rules, such as the use of “Buying Counterparty” and “Selling Counterparty”.

ICE Clear Europe proposes revisions to its Clearing Procedures to incorporate the additional categories of customer accounts and relevant defined terms and other clarifications for margin for the relevant product categories (F&O, CDS and FX). The proposed revisions also include conforming changes, implementing changes and drafting improvements related to the transfer and close out of customer positions. In addition, the revisions would address certain matters with respect to Customer-CM Collateral provided to Non-FCM/BD Clearing Members, establish certain recordkeeping requirements for Clearing Members with respect to Customers (including as to the identity and default portability preferences thereof), and adopt certain additional defined terms and procedures relating to position transfers made under Rule 408(a)(i) and Part 12 of the Clearing Rules, as well as paragraph 6 of the Clearing Procedures.

ICE Clear Europe proposes to revise the Finance Procedures to incorporate the new account categories (and in particular Sponsored Principals), accommodate the use of pledged collateral arrangements as well as title transfer collateral, make certain revisions concerning margin requirements for F&O and FX contracts, and make other conforming and clarifying changes. The Finance Procedures would also be revised to incorporate certain parameters for the FX guaranty fund and to allow the Clearing House to allow different currencies to be used for

the guaranty fund contributions for any product category. In addition, Revised Paragraph 15 of the Finance Procedures would specify additional parameters for the Clearing House contributions to the three guaranty funds, as described in further detail in the Procedures Submission.

The Membership Procedures, which set out various aspects of the clearing membership application process, would be modified to also cover Sponsors and Sponsored Principals, in substantially the same manner as for Clearing Members. Other proposed revisions include various updates to defined terms and drafting clarifications as further described in the Procedures Submission.

ICE Clear Europe proposes to revise the CDS Procedures to implement the Sponsored Principal model and make various updates to defined terms (and conforming references to terms) and make drafting improvements for clarity and conformity, as discussed in more detail in the Procedures Submission. As noted in the Rule Submission, various membership requirements in Paragraph 2 have been moved to Part 2 of the Clearing Rules, and Paragraph 6, which addresses the Clearing House's contributions to the CDS guaranty fund, has been removed and moved to the Finance Procedures. Paragraph 13, which addresses certain aspects of customer transactions, including transfer of customer positions, has been moved to paragraph 6 of the Clearing Procedures (and generalized to apply all product categories, not just CDS).

Finally, ICE Clear Europe proposes to make clarifying, conforming and implementing changes to a number of other Procedures. Specifically, the FX Procedures would be revised to update various definitions, conform to new defined terms and other provisions of the updated Clearing Rules, incorporate the Sponsored Principal model, and make various other conforming and clarifying revisions as discussed in more detail in the Procedures Submission. The Auction

Terms for F&O Default Auctions would be revised to incorporate participation by Sponsored Principals as well as a number of other conforming and clarifying revisions to the auction and bidding process as further described in the Procedures Submission. In addition, ICE Clear Europe proposes various amendments to the Delivery Procedures. In many cases these revisions do not strictly relate to EMIR implementation but reflect other general updates and conforming changes. ICE Clear Europe also proposes to make various non-substantive conforming changes and drafting clarifications to the Business Continuity Procedures and Complaint Resolution Procedures.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act⁷ directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act⁸ requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, 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, in general, to protect investors and the public interest.

The Commission finds that the proposed amendments to the Procedures are consistent with the requirements of Section 17A of the Act⁹ and the rules and regulations thereunder applicable to ICE Clear Europe. In particular, the Commission believes that the proposed

⁷ 15 U.S.C. 78s(b)(2)(C).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1.

amendments to the ICE Clear Europe Procedures, which are principally designed to further implement proposed changes to its Clearing Rules as contained in the Rule Submission, are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and 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, consistent with Section 17A(b)(3)(F) of the Act.¹⁰

Section 19(b)(2)(C)(iii) of the Act¹¹ allows the Commission to approve a proposed rule change earlier than 30 days after the date of publication of the notice of the proposed rule change in the Federal Register where the Commission finds good cause for so doing and publishes the reason for the finding. In its filing, ICE Clear Europe requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. ICE Clear Europe has represented that the proposed Procedures changes are necessary to further implement the rule changes contained in the Rule Submission in order to comply with requirements under EMIR in connection with its authorization as a central counterparty under EMIR. ICE Clear Europe further notes that failure to have the amendments in effect, and to be in compliance with the EMIR requirements, may adversely affect the approval of its authorization application and therefore its ability to do business as a recognised central counterparty. Accordingly, the Commission finds that good cause exists to approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2)(C)(iii) of the Act.¹²

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 15 U.S.C. 78s(b)(2)(C)(iii).

¹² 15 U.S.C. 78s(b)(2)(C)(iii).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹³ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-ICEEU-2014-11) be, and hereby is, approved on an accelerated basis.¹⁵

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹³ 15 U.S.C. 78q-1.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 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).

¹⁶ 17 CFR 200.30-3(a)(12).