

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78762; File No. SR-ICEEU-2016-010)

September 2, 2016

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Certain Default Management Requirements under Applicable Law

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 August 30, 2016, 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 primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule changes pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(4)(i)<sup>4</sup> thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed changes is to modify the ICE Clear Europe Clearing Rules (“Clearing Rules”) in order to clarify the timing of certain default

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(i).

management procedures in light of requirements under the European Market Infrastructure Regulation (“EMIR”)<sup>5</sup> and relevant UK law.

II. Self-Regulatory Organization’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 changes. 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. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule amendments is to modify the ICE Clear Europe Clearing Rules to clarify the timing of certain default procedures in light of regulatory requirements under EMIR and UK law.

In particular, Rule 1604(c), which applies to defaults involving an FCM/BD Clearing Member, has been revised in light of EMIR Article 48(5)-(6) and Paragraph 34(2)(d) of the UK FSMA Recognition Requirements (SI 2001/995).<sup>6</sup> These provisions

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<sup>5</sup> 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.

<sup>6</sup> Paragraph 34(2)(d) of the UK Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995), which was added by UK Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (SI 2013/504), Part 4, Paragraph 5(6). Citation has been added by SEC staff and confirmed by ICEEU’s outside counsel by telephone on August 31, 2016.

require that the clearing house rules explicitly specify a pre-defined transfer period within which a transfer of customer positions carried by a defaulting clearing member to a new clearing member is to take place, if possible (and after which the clearing house would exercise default remedies to close out any such positions not transferred). The amendments to Rule 1604(c) specify that the clearing house will seek to transfer under the Default Portability Rules any customer positions carried by a defaulting FCM/BD Clearing Member within seven calendar days of the default, and if a transfer has not been effected within such period (or the clearing house otherwise deems it necessary for its protection), the clearing house will terminate or liquidate such contracts, subject to applicable law and its default rules. The transfer period is intended to be consistent with the timing set forth in CFTC Rule 190.03 for the transfer of customer positions carried by a defaulting FCM and for the liquidation of such contracts that have not been transferred. The amendments do not otherwise affect the rights or obligations of the clearing house or clearing members in respect of such a default. The amendments are also consistent with the general approach in place for non-FCM/BD Clearing Members in paragraph 6(f) of the applicable Standard Terms Annexes to the Rules.

## 2. Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act<sup>7</sup> and the regulations thereunder applicable to it, and are consistent with the prompt and accurate clearance of 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 ICE

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<sup>7</sup> 15 U.S.C. 78q-1.

Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>8</sup> The changes to the Rules clarify the timing of certain actions to be taken in the management of a default of an FCM/BD Clearing Member, in order to comply with requirements under EMIR and UK law, and do not limit the authority of the clearing house to act under its default management rules for its protection. As such, ICE Clear Europe believes that the changes will generally promote the prompt and accurate clearance and settlement of securities and derivatives transactions, and further the public interest in the safe and effective clearing of such transactions. ICE Clear Europe does not believe the amendments will adversely affect the safeguarding of securities and funds in its custody or control or for which it is responsible. The changes are thus consistent with the requirements of Section 17A of the Act.<sup>9</sup>

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

ICE Clear Europe does not believe the proposed changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. ICE Clear Europe is adopting amendments to the Clearing Rules to clarify the timing of certain default management procedures in light of regulatory requirements. ICE Clear Europe does not believe that these changes will impose significant additional costs on Clearing Members or other market participants. ICE Clear Europe also does not believe the amendments will adversely affect access to clearing by Clearing Members or their customers or otherwise adversely affect Clearing

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

<sup>9</sup> 15 U.S.C. 78q-1.

Members or market participants. In this regard, the changes will apply to all FCM/BD Clearing Members, and accordingly are not expected to affect competition among Clearing Members or in the market for clearing services generally.

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

ICE Clear Europe has not solicited or received any written comments with respect to the proposed changes. 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

The foregoing rule changes have become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(4)(i)<sup>11</sup> thereunder. The amendments effect a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible, and does not significantly affect the respective rights or obligations of the clearing agency or persons using its clearing service, within the meaning of Rule 19b-4(f)(4)(i). As noted above, the amendments clarify the timing of certain default management actions by the clearing house, including the period in which a transfer of customer positions of an FCM/BD Clearing Member will be attempted and after which the clearing house in which the clearing house will exercise default remedies to close out remaining positions. These changes are intended to comply with requirements under EMIR and UK law, and to be consistent with the timing

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(4)(i).

specified in applicable CFTC regulations. The amendments do not otherwise affect the rights or obligations of the clearing house or clearing members.

At any time within 60 days of the filing of the proposed rule changes, the Commission summarily may temporarily suspend such rule changes 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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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-2016-010 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-2016-010. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 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#rule-filings>.

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-2016-010 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>12</sup>

Brent J. Fields  
Secretary

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