

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80304; File No. SR-ICEEU-2017-002)

March 24, 2017

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Revise the ICE Clear Europe Clearing Rules Relating to the Application of Default Provisions in the Event of a Resolution Proceeding

I. Introduction

On January 25, 2017, ICE Clear Europe Limited (“ICE Clear Europe” or “Clearing House”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change (SR-ICEEU-2017-002) to amend the ICE Clear Europe Clearing Rules (“Rules”) relating to the application of default provisions in the event of a resolution proceeding.³ The proposed rule change was published for comment in the Federal Register on February 15, 2017.⁴ On February 8, 2017, ICE Clear Europe filed Amendment No. 1 to the proposed rule change and on February 10, 2017, ICE Clear Europe filed Amendment No. 2 to the proposed rule change.⁵ The Commission received no comment letters regarding the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used in this order, but not defined herein, have the meanings specified in ICE Clear Europe Clearing Rules.

⁴ Securities Exchange Act Release No. 34-79999 (February 9, 2017), 82 FR 10848 (February 15, 2017) (SR-ICEEU-2017-002).

⁵ Amendment Nos. 1 and 2 are technical amendments to ICE Clear Europe’s filing with respect to comments on the proposed rule change received by ICE Clear Europe.

In its filing on January 25, 2017, ICE Clear Europe represented that it had published a prior version of the proposed amendments for consultation with its clearing members,

change. The Commission is publishing this notice to solicit comment on Amendment Nos. 1 and 2 from interested persons and, for the reasons stated below, is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposed Rule Change

The principal purpose of the proposed rule change, as modified by Amendment Nos. 1 and 2, is to amend the Rules to clarify that the default remedies enumerated in the Rules are not automatically triggered by certain resolution or insolvency proceedings brought under the special resolution regimes of the UK Banking Act 2009 or the national legislation of any European Economic Area jurisdiction implementing the Bank Recovery and Resolution Directive (Directive 2014/59/EU) (“BRRD”).

Nevertheless, the proposed rule change preserves ICE Clear Europe’s right under the Rules to declare an Event of Default or exercise default remedies in the event a clearing member (or other person) is not performing substantive obligations to the Clearing House. The proposed rule change also preserves ICE Clear Europe’s right to declare an Event of Default or exercise all

two clearing members had inquired about the regulatory process surrounding the proposed change, and one clearing member suggested that certain additional clarifications be made to limit the application of other aspects of the “Insolvency” definition in the Rules. ICE Clear Europe further represented its conclusion that these suggested clarifications were not necessary or appropriate and that ICE Clear Europe would not make these requested clarifications.

In Amendment No. 1, on February 8, 2017, ICE Clear Europe amended the filing (1) to note that no written comments were received in response to its prior consultation publication (Circular C16/018, available at <https://www.theice.com/clear-europe/circulars> (February 22, 2016)), (2) to include Circular C16/018 as Exhibit 2, and (3) to add a footnote that “Capitalized terms used [in the notice] but not defined [t]herein have the meanings specified in the [] Rules.” However, Exhibit 2 was not referenced in Item 9 of ICE Clear Europe’s amended filing. Subsequently, ICE Clear Europe filed Amendment No. 2 on February 10, 2017. In Amendment No. 2, ICE Clear Europe referenced Exhibit 2 in Item 9 of its filing and corrected a pagination error in Amendment No. 1.

of the default remedies available in the Rules if applicable law, including special resolution regimes, does not prohibit doing so. Finally, the proposed rule change confirms that application of a special resolution regime with respect to ICE Clear Europe does not constitute an insolvency of ICE Clear Europe for purposes of the Rules.

III. Discussion and Commission's Findings

Section 19(b)(2)(C) of the Act⁶ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act⁷ requires, among other things, that the rules of a registered 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 and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change, which clarifies the application of certain default provisions in the event of a resolution proceeding with respect to either the Clearing House, a clearing member, or other person, are consistent with the requirements of the requirements of Section 17A(b)(3)(F) of the Act.⁸ The proposed change recognizes that other statutory resolution regimes could have an impact on ICE Clear Europe's rights and responsibilities in the event either ICE Clear Europe or one of its clearing members is subject to these regimes. Similarly, the proposed rule change clarifies the extent to which ICE Clear Europe's rights and responsibilities under its Rules are affected during the operation of a

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ Id.

statutory resolution regime. ICE Clear Europe represents that the amendments are not intended to increase risk to ICE Clear Europe, and will not impact ICE Clear Europe's ability to take risk management measures under its Rules with respect to non-defaulting clearing members (including clearing members that may be subject to a Resolution Step that is not an Unprotected Resolution Step).

The Commission finds that this explicit recognition and the additional clarity provided, should promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions as well as promote the public interest when default circumstances arise. The Commission notes ICE Clear Europe's representation that the amendments are not intended to increase risk to ICE Clear Europe and will not impact ICE Clear Europe's ability to take risk management measures with respect to its non-defaulting clearing members (including clearing members that may be subject to a Resolution Step that is not an Unprotected Resolution Step). Moreover, the Commission finds that by clarifying legal limitations on ICE Clear Europe's ability to determine that a clearing member is in default during certain resolution proceedings, the proposed rule change is consistent with Rule 17Ad-22(e)(1), which requires that a clearing house provide "a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions."⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act. Comments may be submitted by any of the following methods:

⁹ 17 CFR 240.17Ad-22(e)(1).

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-2017-002 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-2017-002. 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 the filing also will be available for inspection and copying at the principal office of ICE Clear Europe and on its 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-

2017-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,¹⁰ to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the 30th day after publication of Amendment Nos. 1 and 2 in the Federal Register. As described above, the proposed rule change clarifies that the default remedies enumerated in the Rules are not automatically triggered by certain resolution proceedings brought under the UK Banking Act 2009 or the BRRD (and related national implementing legislation). Nevertheless, the rule change preserves ICE Clear Credit's right under the Rules to declare an Event of Default and exercise default remedies in the event a clearing member (or other person) is not performing substantive obligations to the Clearing House. Also, as noted above, Amendment Nos. 1 and 2 are technical amendments to ICE Clear Europe's filing with respect to comments on the proposed rule change received by ICE Clear Europe.

Thus, the proposed rule change is intended to comply with restrictions on ICE Clear Europe's exercise of its default remedies provided by applicable laws in other jurisdictions. Moreover, ICE Clear Europe represents that the proposed rule change has been filed at the request of regulatory authorities in the United Kingdom and the European Union. Finally, the Commission finds that implementation of the proposed rule change will not substantially affect the rights of members of the Clearing House as a practical matter because the proposed rule change clarifies restrictions that are already imposed on the Clearing House by applicable law in other jurisdictions. Accordingly, the Commission finds good cause for approving the proposed

¹⁰ 15 U.S.C. 78s(b)(2).

rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis pursuant to section 19(b)(2) of the Act.

VI. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-ICEEU-2017-002), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.¹¹

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹²

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Assistant Secretary

¹¹ 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).

¹² 17 CFR 200.30-3(a)(12).