

**SECURITIES AND EXCHANGE COMMISSION**  
(Release No. 34-80449; File No. SR-ICEEU-2017-004)

April 13, 2017

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Third Party Collateral Purchase Arrangements under the ICE Clear Europe Finance Procedures and Other Clarifying Changes to the ICE Clear Europe Finance Procedures

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 April 6, 2017, 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) and (ii)<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 change from interested persons.

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

The principal purpose of the changes is to modify certain aspects of the ICE Clear Europe Finance Procedures in connection with third party collateral purchase arrangements. The amendments also make certain other clarifying changes and updates to the Finance Procedures.

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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), (ii).

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

1. Purpose

The purpose of the amendments is to modify the Finance Procedures to expand the permitted use of certain third-party collateral purchase arrangements with respect to Triparty Collateral provided by F&O Clearing Members in the context of an Individually Segregated Margin-flow Co-mingled Account (commonly referred to as an “ISOC Account”). The amendments also make certain other clarifying changes to the Finance Procedures. ICE Clear Europe is not proposing to modify its Clearing Rules (the “Rules”)<sup>5</sup> in connection with these amendments.

Under paragraph 3.32 of the existing Finance Procedures, an F&O Clearing Member may request that the Clearing House enter into a third party collateral purchase agreement (a “Purchase Agreement”) with a third party collateral purchaser (the “TPCP”)

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<sup>5</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

designated by the F&O Clearing Member.<sup>6</sup> The Clearing House has no obligation to enter into a Purchase Agreement. The TPCP may be an affiliate of the Clearing Member. Under the terms of a Purchase Agreement, if the Clearing House declares the F&O Clearing Member to be a Defaulter under the Rules, the Clearing House will offer to sell that Clearing Member's Triparty Collateral to the TPCP, for a specified price established by the Clearing House based on its determination of the market value of the collateral. The TPCP will have a specified period to accept or reject the offer to sell. If the TPCP accepts the offer, the Clearing House will sell the Triparty Collateral to the TPCP at the specified price. The proceeds of such sale would be applied by the Clearing House in the default management process and net sum calculation in the same manner as any other liquidation of margin of a Defaulter. If the TPCP rejects the offer to sell, or does not respond within the specified period, the offer will expire, and the Clearing House will apply or liquidate the Triparty Collateral pursuant to the Rules as part of its usual default management process. Under the current Finance Procedures, Purchase Agreements can only apply to Triparty Collateral provided by F&O Clearing Members in respect of their proprietary accounts, and cannot apply to other margin, collateral or permitted cover provided by F&O Clearing Members or any margin, collateral or permitted cover provided by CDS or FX Clearing Members in respect of CDS or FX Contracts, respectively.

At the request of certain F&O Clearing Members and their customers, the Clearing House proposes to expand these arrangements to permit the use of third party

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<sup>6</sup> A more detailed discussion of the existing third party collateral purchase arrangements is set out in Notice of Filing of Proposed Rule Change to Finance Procedures, Exchange Act Release No. 34-73667, File No. SR-ICEEU-2014-23 (Nov. 21, 2014), 79 FR. 70905 (Nov. 28, 2014).

collateral purchase arrangements for a customer of an F&O Clearing Member in respect of which positions and margin are held in an ISOC Account.<sup>7</sup> ICE Clear Europe understands that some such customers have requested such arrangements to facilitate their own collateral management activities, under which they (or their affiliates) may wish to reacquire collateral held in an ISOC Account to settle other transactions following an F&O Clearing Member default.

Specifically, ICE Clear Europe is amending paragraph 3.32 of the Finance Procedures to permit the use of a Purchase Agreement in respect of an ISOC Account of an F&O Clearing Member. As with Purchase Agreements involving the proprietary account, the Purchase Agreement for such an account would provide that upon default of the F&O Clearing Member, the Clearing House would offer to the TPCP the Triparty Collateral in the relevant ISOC Account. The amendments also provide that the relevant customer must be a party to the Purchase Agreement, and that the identity of the customer must be approved by the Clearing House. The amendments clarify that the net proceeds of any sale pursuant to a Purchase Agreement (for either the proprietary or an ISOC Account) would be included in the net sum calculation under Rules 905(b)(vii) and 906(a). Purchase Agreements could not be used for any other category of customer account of an F&O Clearing Member.

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<sup>7</sup> As defined under the Rules, ISOC Accounts provide a form of individual segregation for positions and margin of certain customers. Each ISOC Account constitutes a separate account, referencing a single client, for which the Clearing House keeps separate records of both positions and margin. However, as an operational matter, margin flows are aggregated across all such ISOC Accounts of a Clearing Member. ISOC Accounts are only available for Non-FCM/BD Clearing Members.

The Finance Procedures are also being amended to make certain unrelated clarifying changes relating to the timing of settlement of the transfer of securities as Permitted Cover. Paragraph 11.4 was amended in a previous filing<sup>8</sup> to remove certain account details and matching criteria for particular securities transfer systems (with the relevant details to be made available from time to time on ICE Clear Europe's website). Those amendments inadvertently removed certain settlement timing provisions (including as to instruction deadlines, trade dates and contractual settlement dates). Those settlement timing provisions have now been reinstated in paragraph 11.4. Certain updates to the settlement timings have been made (which are consistent with the timing requirements currently in effect as set forth on ICE Clear Europe's website).

## 2. Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act<sup>9</sup> and the regulations thereunder applicable to it, including the relevant standards under Rule 17Ad-22,<sup>10</sup> 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 Clear Europe or for which it is

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<sup>8</sup> Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Finance Procedures, Exchange Act Release No. 34-79375, File No. SR-ICEEU-2016-013 (Nov. 22, 2016), 81 FR 86048 (Nov. 29, 2016).

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

<sup>10</sup> 17 CFR 240.17Ad-22.

responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>11</sup>

The amended third party collateral purchase arrangements will use the existing Clearing House procedures for Triparty Collateral, which is held with a triparty collateral service provider such as Euroclear Bank. As a result, the amendments will not adversely affect the manner in which collateral provided by a Clearing Member is currently held, prior to default, and accordingly will not adversely affect the safeguarding of securities or funds in the custody or control of ICE Clear Europe or for which it is responsible, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>12</sup> The arrangement would not apply to CDS Clearing Members or FX Clearing Members acting in their capacities as such.

In terms of default management, ICE Clear Europe believes that the proposed amendments would not interfere with its ability to manage a Clearing Member default, consistent with the standards in the Act and Rule 17Ad-22.<sup>13</sup> Under its Rules, the Clearing House has broad rights to apply and liquidate collateral provided by a Clearing Member following its default.<sup>14</sup> In ICE Clear Europe's view, the arrangements provide an additional means by which Triparty Collateral can be liquidated following default, through a pre-arranged alternative purchase by a TPCP. The amendments expand the potential use of these arrangements to a particular type of individually segregated customer account. The arrangements may provide certain default management benefits

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<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 17 CFR 240.17Ad-22.

<sup>14</sup> See Rules 903-906.

for the Clearing House if the collateral purchase option is exercised, as the collateral purchase option will provide the Clearing House with the cash value of the relevant collateral promptly, without the need for the Clearing House to undertake the liquidation of the collateral in the market (and incur related expenses). As under the current Finance Procedures, the proposed third party collateral purchase arrangement would provide only a brief period in which the TPCP would have the right to purchase the Triparty Collateral. ICE Clear Europe does not believe this delay, even in the event the TPCP did not elect to purchase the collateral, would materially impact the Clearing House's ability to manage a default or liquidate collateral following expiration of the period. By limiting the arrangement to ISOC Accounts, in which positions and margin of a customer are individually segregated, the Clearing House also avoids any concern that the arrangement could affect other customers of the F&O Clearing Member. In ICE Clear Europe's view, the amendments will thus promote the prompt and accurate clearance and settlement of cleared contracts, and the protection of market participants and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>15</sup> For similar reasons, ICE Clear Europe believes that the amendments are also consistent with the requirements to establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a clearing member default in Rule 17Ad-22(d)(11)<sup>16</sup> and (as and when compliance therewith is required) Rule 17Ad-22(e)(13).<sup>17</sup>

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

<sup>16</sup> 17 CFR 240.17Ad-22(d)(11).

<sup>17</sup> 17 CFR 240.17Ad-22(e)(13).

The approach will also benefit certain F&O Clearing Members (and their relevant customers using ISOC Accounts), who have requested such arrangements in order to facilitate their own collateral management activities, under which they or their affiliates may want to have the ability to reacquire the relevant collateral. In this respect, ICE Clear Europe believes that the amendments are also consistent with the requirements of Rule 17Ad-22(d)(6)<sup>18</sup> and (as and when compliance therewith is required) Rule 17Ad-22(e)(21)<sup>19</sup>, which require that clearing agency procedures be cost-effective in meeting the requirements of market participants while maintaining safe and secure operations.

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

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 purposes of the Act. The proposed changes will provide additional flexibility by permitting the use, on a voluntary basis, of third party collateral purchase arrangements for those F&O Clearing Members (and their customers) that are interested in such arrangements in respect of an ISOC Account. No Clearing Member will be required to use these arrangements, and the changes will thus not affect those Clearing Members (or their customers) that do not participate in such arrangements. In addition, the amendments will not otherwise affect the terms or conditions of any cleared contract or the standards or requirements for participation in or use of the Clearing House. Accordingly, the changes should not, in the Clearing House's view, affect the availability

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<sup>18</sup> 17 CFR 240.17Ad-22(d)(6).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(21).

of clearing, access to clearing services or the costs of clearing for clearing members or other market participants.

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

Written comments relating to the proposed changes to the rules have not been solicited or received. 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 change has become effective upon filing pursuant to Section 19(b)(3)(A)<sup>20</sup> of the Act and paragraphs (f)(4)(i) and (ii) of Rule 19b-4<sup>21</sup> thereunder, because it effects 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)<sup>22</sup>, and because it effects a change in an existing service of a registered clearing agency that primarily affects the clearing operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(4)(i) and (ii).

<sup>22</sup> 17 CFR 240.19b-4(f)(4)(i).

rights or obligations of the clearing agency with respect to securities clearing or persons using such securities clearing service, within the meaning of Rule 19b-4(f)(4)(ii)<sup>23</sup>, as applicable. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change 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 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-2017-004 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-2017-004. 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

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<sup>23</sup> 17 CFR 240.19b-4(f)(4)(ii).

(<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#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-2017-004 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>24</sup>

Brent J. Fields  
Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).