

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81068; File No. SR-ICEEU-2017-007)

June 30, 2017

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICE Clear Europe Limited Articles of Association

I. Introduction

On May 2, 2017, ICE Clear Europe Limited (“ICE Clear Europe”), filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change (SR-ICEEU-2017-007) to amend its Articles of Association. The proposed rule change was published for comment in the Federal Register on May 19, 2017.<sup>3</sup> The Commission received no comment letters regarding the proposed change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

As more fully described in the Notice, the proposed rule change seeks to amend the Articles of Association, among other things, to update the Articles to add definitions that reflect ICE Clear Europe’s existing committees, change the minimum number of directors from two to six, provide for selection of replacement or additional directors by the Nominations Committee, make use of a Senior Independent Director appointed in accordance with the UK Corporate Governance Code, stagger the retirement or rotation of independent directors (the provisions for

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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> Securities Exchange Act Release No. 34-80674 (May 19, 2017), 82 FR 23080 (May 19, 2017) (SR-ICEEU-2017-007) (the “Notice”).

the retirement or rotation of CDS directors will not change), explicitly provide that directors appoint members of relevant committees, which operate under their own terms of reference, require independent directors to disclose to the Board of Directors all other directorships that they hold both prior to appointment and on an ongoing basis, adopt new procedures identifying and addressing conflicts of interest of directors with respect to both transactions with ICE Clear Europe where a director has an interest and matters in the ordinary course in which directors' interests are affected (i.e., directors affiliated with clearing members), make clarifications to notice waiver requirements, and require a written record of all unanimous or majority decisions of the directors for at least ten years. Additionally, ICE Clear Europe proposed other non-substantive corrections and clarifications to the Articles of Association. For example, various references to persons have been revised to be gender-neutral, and various articles have been renumbered in light of the changes discussed above.

### **III. Discussion and Commission Findings**

Section 19(b)(2)(C) of the Act 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.<sup>4</sup> Section 17A(b)(3)(C) of the Act requires,<sup>5</sup> among other things, that the rules of a clearing agency<sup>6</sup> assure a fair representation of its participants in the selection of its directors and

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<sup>4</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>6</sup> The “rules of a clearing agency” include its articles of incorporation and bylaws. 15 U.S.C. 78c(a)(27).

administration of its affairs. Section 17A(b)(3)(F) of the Act requires,<sup>7</sup> 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, 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. Rule 17Ad-22(e)(2) requires that a covered clearing agency<sup>8</sup> shall establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; clearly prioritize the safety and efficiency of the covered clearing agency; support the public interest requirements in Section 17A of the Act; establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.<sup>9</sup>

The Commission finds that the proposed rule change is consistent with Section 17A of the Act and Rule 17Ad-22 thereunder. In particular, the Commission finds that the amendments will clarify aspects of ICE Clear Europe's governance framework and thus, in ICE Clear Europe's view, facilitate the efficient operation of the clearing house and the prompt and accurate clearance and settlement of transactions. The Commission believes that these amendments are consistent with ICE Clear Europe's obligation to have governance arrangements

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> See 17 CFR 240.17Ad-22(a)(5) (defining "covered clearing agency").

<sup>9</sup> See 17 CFR 240.17Ad-22(e)(2).

that are clear and transparent, prioritize the safety and efficiency of the clearing agency, and support the public interest requirements in Section 17A of the Act and the objectives of owners and participants. Finally, with respect to potential conflicts of interest concerning matters in the ordinary course in which directors' interests are affected, the Commission believes that this provision is consistent with the requirement that the rules of a clearing agency assure a fair representation of its participants in the administration of its affairs. ICE Clear Europe has represented that these provisions are not intended to result in the recusal or disqualification of member-affiliated directors as a class,<sup>10</sup> but rather could result in recusal on a case-by-case basis depending on the conflict. Further, any recusal is not automatic; rather, ICE Clear Europe's shareholders or the remaining directors have the ability to determine whether full or limited participation by the interested director is appropriate. Moreover, ICE Clear Europe currently affords members participation in product risk committees and on the Board's Risk Committee.

Relying on these findings and assurances, the Commission believes that the proposed rule change is consistent with Sections 17A(b)(3)(C) and (F) of the Act,<sup>11</sup> and Rule 17Ad-22(e)(2) thereunder.<sup>12</sup>

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<sup>10</sup> In particular, ICE Clear Europe has represented that the recusal provisions in proposed Article 53 of its Shareholder Articles would not prohibit member-affiliated directors from participating in decisions relating to margin levels as a general matter, decisions to clear new contracts, or other similar general matters that are applicable to all members or particular classes of clearing members.

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

<sup>12</sup> 17 CFR 240.17Ad-22(e)(2).

IV. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-ICEEU-2017-007) be, and hereby is, approved.<sup>13</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Brent J. Fields  
Secretary

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<sup>13</sup> 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).

<sup>14</sup> 17 CFR 200.30-3(a)(12).