

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81680; File No. SR-ICEEU-2017-010)

September 22, 2017

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Amendments to the ICE Clear Europe CDS Risk Policy

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 15, 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 by ICE Clear Europe. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to amend ICE Clear Europe’s CDS Risk Policy relating to portfolio margining, as described below, to comply with Article 27 of Commission Delegated Regulation (EU) No 153/2013³ (the “Portfolio Margining Limitation”).

II. Clearing Agency’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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Commission Delegated Regulation (EU) No 153/2013 dated 23 February 2013.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe proposes to adopt amendments to the CDS Risk Policy relating to portfolio margining. The changes discussed herein apply to all cleared credit default swap ("CDS") products.

The amendments are intended to comply with the Portfolio Margining Limitation implementing the European Market Infrastructure Regulation ("EMIR"),⁴ which requires that where portfolio margining covers multiple different instruments, the amount of margin reduction that the clearing house may offer can be no greater than 80% of the difference between the sum of the margins for each product calculated on an individual basis and the margin calculated based on a estimation of the exposure for the combined portfolio. By contrast, where the margin reduction relates to positions in the same instrument, the clearing house may apply a margin reduction of up to 100% of that difference. The European Securities and Markets Authority ("ESMA"), the competent authority with respect to this requirement under EMIR, has issued an opinion

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.

interpreting this requirement in the context of CDS to provide⁵ that (i) credit derivatives on different underlying names or indexes (including two series of the same index) should be considered different products; and (ii) credit derivatives on the same underlying name or index with different maturities or coupons may be considered as the same product. According to ICE Clear Europe, the effect of this is to require that credit derivatives on different index series of the same index family be considered different instruments under the Portfolio Margining Limitation and that therefore portfolio margining for such instruments must be limited to 80% of the gross margins.

To implement the Portfolio Margining Limitation, ICE Clear Europe is amending its CDS Risk Policy such that when calculating the spread response charge (which provides portfolio margin reductions across a variety of correlated positions, including positions in different series of the same index), the 99.5% Value-at-Risk (“VaR”) Monte Carlo (“MC”) benchmark⁶ used in the calculation will have a minimum amount equal to 20% of the portfolio gross 99.5% MC VaR requirements. The gross requirement is defined for this purpose as the sum of the requirements at risk factor level for single names (for single-name CDS) and index series level (for index CDS) (i.e., without portfolio margin offsets across such products). ICE Clear Europe is required to implement the Portfolio Margining Limitation by September 30, 2017.

⁵ Section 3.1.2.C of the ESMA Opinion On Portfolio Margining Requirements under Article 27 of Commission Delegated Regulation (EU) No 153/2013 dated 10 April 2017 (the “ESMA Opinion”).

⁶ The 99.5% VaR MC benchmark serves as a minimum initial margin level.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁷ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.⁸ Section 17A(b)(3)(F) of the Act⁹ requires, among other things, that the rules of a 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, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. In addition, Rule 17Ad-22(b)(2)¹⁰ requires that a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements. Furthermore, Rule 17Ad-22(e)(6)(v)¹¹ requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum uses an appropriate method for measuring credit

⁷ 15 U.S.C. 78q-1.

⁸ 17 CFR 240.17Ad-22.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22(b)(2).

¹¹ 17 CFR 240.17Ad-22(e)(6)(v).

exposure that accounts for relevant product risk factors and portfolio effects across products.

The proposed amendments to the CDS Risk Policy would apply a 20% floor to the 99.5% VaR MC aspect of ICE Clear Credit's spread response margin component calculation, based on the gross margin requirement without portfolio offsets. The amendments are being made in order to comply with the Portfolio Margin Limitation imposed under EMIR, as set out in the ESMA Opinion, and may in some cases result in higher initial margin requirements for market participants. ICE Clear Europe believes that the amended requirement (as with the current methodology) represents an appropriate risk-based margin framework to take into account portfolio risk reduction and related portfolio effects in a manner that will continue to enable the clearing house to mitigate the risk of clearing member default. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of the Act and Commission regulations set forth above.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to implement that Portfolio Margining Limitation under EMIR. The amendments will affect all CDS Clearing Members and CDS market participants. ICE Clear Europe does not believe the amendments will impact competition among CDS Clearing Members or other market participants, or affect the ability of market participants to access clearing generally. As noted above, the amendments may increase initial margin requirements with respect to

some portfolios, because of the limitation on margin reductions as compared to the current methodology. Although this may affect the cost of clearing for some market participants, any increased costs will reflect the requirements imposed under the EMIR Portfolio Margining Limitation and the risk management benefits for the clearing house that are designed to be obtained through the Portfolio Margining Limitation. As a result, ICE Clear Europe believes that any impact on competition is appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice 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. Please include File Number SR-ICEEU-2017-010 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-ICEEU-2017-010. 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 change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice 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/notices/Notices.shtml?regulatoryFilings>.

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-2017-010 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b)(2)(C) of the Act¹² 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 Exchange Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act¹³ requires, among other things, that the rules of a clearing agency be designed 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(b)(2)¹⁴ requires that a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements. Furthermore, Rule 17Ad-22(e)(6)(v)¹⁵ requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

¹² 15 U.S.C. 78s(b)(2)(C).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ 17 CFR 240.17Ad-22(b)(2).

¹⁵ 17 CFR 240.17Ad-22(e)(6)(v).

The Commission finds that the proposed rule change is consistent with Section 17A of the Act and the relevant rules thereunder.¹⁶ The proposed rule change is designed to comply with the Portfolio Margining Limitation of Article 27 of Commission Delegated Regulation (EU) No 153/2013.¹⁷ As interpreted by ESMA, this limitation will not permit complete margin offsets between different cleared instruments, which in the CDS context means CDS with different reference entities, including different versions of the same index. Instead, any margin reductions resulting from the portfolio margining of different CDS instruments must be limited to 80% of the difference between the sum of the margins for each instrument calculated on an individual basis and the margin calculated based on a combined estimation of the exposure for the combined portfolio. Margin reductions from portfolio margining of the same CDS instruments, i.e. on the same underlying name or index, even with different maturities or coupons, can be applied without limitation. ICE Clear Europe has chosen to implement this requirement by limiting the margin reductions calculated from the 99.5% VaR MC aspect of its spread response methodology to 20% of the gross margin requirement without portfolio offsets.

The Commission has reviewed the proposed rule change, including the changes to ICE Clear Europe's policies and procedures, as well as data on the estimated impact of the proposed rule change on margin requirements. Based on this review, the Commission finds that the proposed rule change is designed to implement a more conservative approach to portfolio margining reductions than under ICE Clear Europe's

¹⁶ 15 U.S.C. 78q-1.

¹⁷ Commission Delegated Regulation (EU) No 153/2013 dated 23 February 2013.

existing spread response calculation methodology and is therefore consistent with assuring the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The approach is risk-based and does not impose unduly conservative margin requirements that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹⁸

For the same reasons, the Commission further finds that the proposed rule change is consistent with Rule 17Ad-22(b)(2),¹⁹ in that any additional margin collected based on this more conservative approach should support ICE Clear Europe's risk management functions and ability to limit its credit exposures, consistent with Rule 17Ad-22(b)(2).²⁰

Similarly, the Commission further finds that the proposed rule change is consistent with Rule 17Ad-22(e)(6)(v).²¹ The proposed rule change does not eliminate portfolio margin reductions. The proposed rule change allows for portfolio margin reductions of 100% where the margin reduction relates to positions in the same instrument. Where the portfolio margining covers multiple different instruments, the proposed rule change limits the margin reduction to no greater than 80%, consistent with EMIR. The Commission finds that this is a reasonably designed method for

¹⁸ See 15 U.S.C. 78q-1(b)(3)(I).

¹⁹ 17 CFR 240.17Ad-22(b)(2).

²⁰ 17 CFR 240.17Ad-22(b)(2).

²¹ 17 CFR 240.17Ad-22(e)(6)(v).

measuring credit exposure that accounts for relevant product risk factors and portfolio effects across different products consistent with Rule 17Ad-22(e)(6)(v).²²

In its filing, ICE Clear Europe requested that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2)(C)(iii) of the Exchange Act.²³ Under Section 19(b)(2)(C)(iii) of the Act,²⁴ the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. ICE Clear Europe believes that accelerated approval is warranted because the proposed rule change is required as of September 30, 2017 in order to comply with the Portfolio Margin Limitation under EMIR, as interpreted by ESMA.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,²⁵ for approving the proposed rule change on an accelerated basis, prior to the 30th day after the date of publication of notice in the Federal Register, because the proposed rule change is required as of September 30, 2017 in order to comply with EMIR.

V. 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 Act²⁶ and the rules and regulations thereunder.

²² 17 CFR 240.17Ad-22(e)(6)(v).

²³ 15 U.S.C. 78s(b)(2)(C)(iii).

²⁴ 15 U.S.C. 78s(b)(2)(C)(iii).

²⁵ 15 U.S.C. 78s(b)(2)(C)(iii).

²⁶ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (File No. SR-ICEEU-2017-010) be, and hereby is, approved on an accelerated basis.²⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Eduardo A. Aleman
Assistant Secretary

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 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).

²⁹ 17 CFR 200.30-3(a)(12).