

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82979; File No. SR-ICEEU-2018-005)

April 2, 2018

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to the Futures & Options Guaranty Fund 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 March 19, 2018, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4)(ii) thereunder,⁴ so that the proposal was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.⁵

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

ICE Clear Europe proposes to make certain amendments to its policies relating to its Clearing House Futures & Options (“F&O”) Initial Contribution to default resources.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

⁵ Capitalized terms used herein but not otherwise defined have the meaning set forth in the ICE Clear Europe rulebook, which is available at <https://www.theice.com/clear-europe/regulation#rulebook>.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

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) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

ICE Clear Europe is taking certain steps to increase its Clearing House F&O Initial Contribution to default resources. The Clearing House F&O Initial Contribution is used to cover losses arising from the default of an F&O Clearing Member, and would be applied following the use of the defaulter's own margin and guaranty fund contributions, and prior to the application of guaranty fund contributions of non-defaulting F&O Clearing Members. Currently, the Clearing House F&O Initial Contribution is set in the F&O Guaranty Fund Policy (the "Policy") at a fixed level. ICE Clear Europe is proposing to modify the Policy to remove the fixed level, and to provide that ICE Clear Europe will notify Clearing Members by circular of its contribution level in effect from time to time.

In connection with these changes, ICE Clear Europe expects to increase the Clearing House F&O Initial Contribution, and will notify F&O Clearing Members of the exact amount by circular.

The increased Clearing House F&O Initial Contribution reflects an agreement among ICE Clear Europe and the exchanges for which it currently clears F&O Contracts (ICE Futures Europe, ICE Futures U.S., Inc., ICE Endex Markets B.V. and ICE Endex Gas Spot Ltd.) that those exchanges should contribute to the aggregate Clearing House F&O Initial Contribution. (The exchange contributions will be in addition to ICE Clear Europe's existing contribution.) In ICE Clear Europe's view, the exchange contributions will enhance the risk practices of, and the risk sharing between, the exchanges, the F&O Clearing Members, and ICE Clear Europe itself, and create an incentive for exchanges to operate fair and orderly markets and to build liquidity in stressed market conditions. Under this approach, each exchange will make a contribution pursuant to a formula based on the average F&O guaranty fund contribution of F&O Clearing Members, subject to a minimum contribution. The clearing services agreements between ICE Clear Europe and each of the relevant exchanges will be amended to reflect this requirement.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁶ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.⁷ Section 17A(b)(3)(F) of the Act⁸ 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

⁶ 15 U.S.C. 78q-1.

⁷ 17 CFR 240.17Ad-22.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

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.

As discussed above, the amendments are designed to increase the Clearing House's overall financial resources to cover losses from a default of an F&O Clearing Member. In particular, the amendments increase the amount of F&O default resources that will be available to be applied after the exhaustion of the defaulting Clearing Member's margin and guaranty fund contributions, and prior to the use of guaranty fund contributions of non-defaulting Clearing Members. Moreover, the amendments enhance the protection of guaranty fund contributions made by non-defaulting F&O Clearing Members by reducing the likelihood that ICE Clear Europe would need to use such contributions in the event of an F&O Clearing Member default. The amendments thus support the prompt and accurate clearance and settlement of cleared transactions and the protection of Clearing Members and other market participants. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁹ For similar reasons, ICE Clear Europe believes that the amendments are also consistent with the requirements of Rule 17Ad-22(b)(3)¹⁰ and Rule 17Ad-22(e)(4).¹¹

In addition, as noted above, the amendments are designed to enhance the overall risk management of the Clearing House by aligning the risk objectives of the exchanges that submit F&O Contracts for clearing with those of the Clearing House. In particular,

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22(b)(3).

¹¹ 17 CFR 240.17Ad-22(e)(4).

the amendments, by requiring a contribution from such exchanges, are intended to create an incentive for those exchanges to operate fair and orderly markets and to build liquidity in stressed market conditions. In ICE Clear Europe's view, the amendments are thus consistent with the risk management requirements of Rule 17Ad-22(e)(3).¹² The amendments will apply to all exchanges based on an objective formula for determining the contribution, and accordingly are not designed to permit unfair discrimination among particular exchanges, or market participants using such exchanges, within the meaning of Section 17A(b)(3)(F) of the Act.¹³

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

ICE Clear Europe does not believe the proposed rule change 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 enhance the Clearing House's overall F&O default resources, and better align the risk objectives of the Clearing House and the exchanges for which it clears. Although the amendments will impose additional costs on such exchanges through the required exchange contribution, ICE Clear Europe believes that such additional costs appropriately reflect the risk brought to the Clearing House from F&O Contracts traded on such exchanges. Such contributions would apply to all exchanges that submit F&O contracts to the Clearing House, based on an objective formula, and are not intended to disadvantage any particular submitting exchange or trading venue. In addition, the amendments will not directly impose additional costs on F&O Clearing Members or market participants.

¹² 17 CFR 240.17Ad-22(e)(3).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

Although exchanges could pass certain additional costs to F&O Clearing Members or other market participants through exchange fees, ICE Clear Europe does not believe this possibility would adversely affect competition among Clearing Members or other market participants, or otherwise affect the appropriateness of the exchange contributions in light of the considerations set out above. In ICE Clear Europe's view, the amendments would also not affect access to clearing or the market for cleared services generally. 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. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission or Advance Notice and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ thereunder. 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4.

IV. 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-2018-005 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-2018-005. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2018-005 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.¹⁶

Robert W. Errett
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).