

SECURITIES AND EXCHANGE COMMISSION  
Release No. 34-83311; File No. SR-ICEEU-2018-007

May 23, 2018

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to the Clearing Rules to Implement the European Union General Data Protection Regulation

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 May 22, 2018, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I and II 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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.

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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)(6).

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 Clearing Rules (the "Rules") to comply with certain requirements of the European Union General Data Protection Regulation ("GDPR")<sup>5</sup>.

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

The purpose of the proposed change is to amend the Rules<sup>6</sup> to clarify the operation of certain provisions in light of requirements under the GDPR relating to personal data in the context of Clearing House activity. The GDPR takes effect on May 25, 2018.

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<sup>5</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

<sup>6</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

Consistent with the GDPR, the amendments reflect that the Clearing House’s policies on use of personal data will now primarily be stated in a privacy notice made available to Clearing Members and other market participants, and accordingly certain existing provisions in the Rules relating to personal data will be removed or modified, as discussed herein. Specifically, ICE Clear Europe is amending Rule 106, which sets out certain of its rights and obligations with respect to such personal data. Rule 106(c), which imposes certain requirements on Clearing Members and Sponsored Principals relating to “Personal Data” (as defined in the GDPR)<sup>7</sup>, is proposed to be updated to provide that such persons must ensure that they have a lawful basis for processing any Personal Data that they provide to the Clearing House. The provisions of subsections (d) and (e) have been removed (with the following subsections redesignated), as the relevant provisions describing the rights of the Clearing House to use Personal Data and the rights of Personal Data subjects will now be set out in a member/user privacy notice. Rule 106(d) (as redesignated) has been revised to update references to defined terms used in the GDPR. Rule 106(e) (as redesignated) has been amended to provide an acknowledgement that recording of telephone conversations with the Clearing House will take place to the extent permitted or required under applicable law (including the GDPR), removes references to consent (as other lawful bases apply to this processing) and makes certain other drafting clarifications.

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<sup>7</sup> In general, “Personal Data” is defined for this purpose in the GDPR as information relating to a natural person (referred to as a “Data Subject”) that would identify that person, in particular by reference to an identifier such as a name, identification number, location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social entity of that person.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act<sup>8</sup> and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.<sup>9</sup> In particular, Section 17A(b)(3)(F) of the Act<sup>10</sup> 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. The amendments clarify certain rights and obligations of the Clearing House, Clearing Members and Sponsored Principals with respect to Personal Data obtained in connection with clearing activity in light of updated legal requirements under the GDPR. As such the amendments are consistent with the protection of investors and the public interest.

Moreover, the amendments are consistent with Rule 17Ad-22(e)(1)<sup>11</sup>, which requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As discussed herein, the amendments are designed to facilitate compliance by ICE Clear Europe and its Clearing Members and Sponsored Principals with the

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<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 17 CFR 240.17Ad-22.

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> 17 CFR 240.17Ad-22(e)(1).

GDPR, and thereby facilitate continued clearing in Europe in accordance with the new EU regulations relating to data protection. ICE Clear Europe does not expect that ensuring that all Personal Data is provided and processed in a manner consistent with data privacy regulations under the GDPR will adversely impact its ability to comply with the Act or any standards under Rule 17Ad-22.<sup>12</sup>

(B) Clearing Agency'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 amendments are being adopted to comply with European Union requirements applicable to Personal Data under the GDPR. Although the amendments could impose certain additional costs on Clearing Members and Sponsored Principals, these result from the requirements imposed by the GDPR, and are generally applicable throughout the European Union. Accordingly, the amendments would apply to all Clearing Members and Sponsored Principals. ICE Clear Europe also does not believe the amendments would adversely affect competition among clearing members, the market for clearing services generally or access to clearing in cleared products by clearing members or other market participants.

(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.

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<sup>12</sup> 17 CFR 240.17Ad-22.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,<sup>13</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of its filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. ICE Clear Europe has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that ICE Clear Europe may implement the proposed rule change by the effective date of the GDPR (May 25, 2018). The Commission notes that the proposed rule change is limited to clarifying certain requirements in the Rules relating to the treatment of

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<sup>13</sup> ICE Clear Europe has satisfied this requirement.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

Personal Data obtained in connection with clearing activity and clarifying certain rights and obligations of the Clearing House, Clearing Members and Sponsored Principals with respect to Personal Data obtained in connection with clearing activity in light of updated legal requirements under the GDPR. The proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) effect the safeguarding of funds or securities in the custody or control of ICE Clear Europe or for which it is responsible. Waiver of the 30-day operative delay would allow ICE Clear Europe to implement the proposed rule change prior to the effective date of the GDPR and therefore comply with EU law. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.<sup>18</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### 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

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<sup>18</sup> For purposes only of waiving the five-day pre-filing requirement and the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2018-007 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-2018-007. 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-2018-007 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>19</sup>

Brent J. Fields  
Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).