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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66936; File No. SR-ICEEU-2012-06)

May 7, 2012

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Membership Qualifications for CDS Clearing Members that are US CDS Clearing Members

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 5, 2012, ICE Clear Europe Limited (“ICEEU”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared primarily by ICEEU. 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. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

ICEEU proposes to conform the ICEEU membership qualifications with Commodity Futures Trading Commission (“CFTC”) Regulations 39.12(a)(2)(ii) and 39.12(a)(2)(iii) no later than the May 7, 2012, effective date of CFTC Regulations 39.12(a)(2)(ii) and 39.12(a)(2)(iii).

As discussed in more detail in Item II(A) below, the changes to Parts 1 and 2 of the ICEEU CDS Procedures provide for amendments to the membership qualifications for US credit default swap (“CDS”) clearing members.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

In its filing with the Commission, ICEEU 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 III below. ICEEU has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICEEU is registered as a derivatives clearing organization ("DCO") with the CFTC and clears CDS contracts subject to the jurisdiction of the CFTC. CFTC Regulation 39.12(a)(2)(ii) provides that "the participant requirements shall set forth capital requirements that are based on objective, transparent, and commonly accepted standards that appropriately match capital to risk. Capital requirements shall be scalable to the risks posed by clearing members." Accordingly, ICEEU proposes to revise its CDS Procedures 2.6 to provide that, if at any time and for so long as a CDS Clearing Member that is an FCM has a required contribution to the ICEEU CDS guaranty fund that exceeds 25% of its "excess net capital", ICEEU may (in addition to other rights) require such US CDS Clearing Member to provide additional margin and/or prepay and maintain with ICEEU an amount up to the US CDS Clearing Member's CDS guaranty fund assessment obligation. ICEEU CDS Procedures 1.1 (Additional Definitions), the definitional section of ICEEU's Rules, would be amended to define "excess net capital" as the amount reported on Form 1-FR-FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12 (or an equivalent amount for US CDS Clearing Members that are not futures

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<sup>3</sup> The Commission has modified the text of the summaries prepared by ICEEU.

commission merchants).

CFTC Regulation 39.12(a)(2)(iii) provides that “a derivatives clearing organization shall not set a minimum capital requirement of more than \$50 million for any person that seeks to become a clearing member in order to clear swaps.” Accordingly, ICEEU proposes to revise CDS Procedure 2.2(b) to incorporate the CFTC mandated \$50 million minimum adjusted net capital requirement for US CDS clearing members. ICEEU proposes to define the term “US CDS Clearing Member” to mean “a CDS Clearing Member or applicant that would become a CDS Clearing Member that is (i) an FCM or (ii) any other Person organised or incorporated under the laws of the United States of America or a state thereof.” ICEEU also proposes to amend CDS Procedure 2.2(b)(ii) and (iii) to eliminate references to external credit ratings as part of the membership qualifications for US CDS Clearing Members. In addition, CDS Procedure 2.2(b)(iv) would be added which states one additional membership qualification for US CDS clearing members. It requires that the US CDS Clearing Member be regulated “for capital adequacy (the “Regulatory Capital Requirement”) by a competent authority such as the FSA, CFTC, SEC, Banque de France, Bundesbank, Bundesanstalt für Finanzdienstleistungsaufsicht, Swiss Federal Banking Commission, U.S. Federal Reserve Board, U.S. Office of the Comptroller of the Currency, or any other Regulatory Authority the Clearing House designates from time to time for this purpose, or it is an Affiliate of an entity that satisfies the Regulatory Capital Requirement and is subject to consolidated holding company group supervision.”

Further, CDS Procedure 2.7 would be added to clarify that a “US CDS Clearing Member that is not an FCM Clearing Member shall provide to the Clearing House a copy of such forms as the Clearing House may determine to be necessary on a comparable schedule to that which an FCM Clearing Member would be required to follow in filing such forms with its Regulatory

Authorities.”

ICEEU argues that the proposed rule changes are consistent with the requirements of Section 17A of the Act and the regulations thereunder applicable to it and that the proposed membership requirements will comply with the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

ICEEU does not believe the proposed rule change would have any impact, or impose any burden, on competition.

(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 rule change have not been solicited or received. ICEEU represented that it will notify the Commission of any written comments it receives.

III. 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 may be submitted by using the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2012-06 on the subject line.
- Paper comments may be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2012-06. 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 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 Section, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICEEU and on ICEEU'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-2012-06 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 Proposed Rule Change

Section 19(b)(2)(C) of the Act<sup>4</sup> 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. Section 17A(b)(3)(F) of the Act<sup>5</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of

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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)(F).

securities transactions, and to the extent applicable, derivative agreements, contracts, and transactions.

The proposed change would allow ICEEU to expand the base of potential clearing members by lowering the net capital threshold for membership, thereby promoting the prompt and accurate clearance and settlement of securities transactions, and derivative agreements, contracts, and transactions. It would also allow ICEEU to comply with new CFTC regulatory requirements, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.

Further, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register because, as a registered DCO, ICEEU is required to comply with the new CFTC regulations by the time they become effective on May 7, 2012.<sup>7</sup>

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<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</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).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-ICEEU-2012-06) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).