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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69044; File No. SR-ICEEU-2013-03)

March 5, 2013

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Clearing of Foreign Exchange Transactions

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 February 28, 2013, ICE Clear Europe Limited (“ICE Clear Europe”) 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 ICE Clear Europe. The Commission is publishing this notice 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

The purpose of the proposed rule change is to implement new Part 17 of ICE Clear Europe’s Rules, new FX Procedures, and new OTC FX Product Guide and Published Terms to facilitate the clearing of foreign exchange (“foreign exchange” or “FX”) transactions, initially non-deliverable FX forward transactions.

II. Self-Regulatory Organization’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 comments it received on the proposed rule change. The text of these statements may be examined at the places specified

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

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

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 these statements.<sup>3</sup>

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

ICE Clear Europe submits new Part 17 of its Rules, new FX Procedures and new OTC FX Product Guide and Published Terms to facilitate the clearing of foreign exchange transactions, initially non-deliverable FX forward transactions. The other proposed changes in the Rules reflect conforming changes to definitions and related provisions and other drafting clarifications, and do not affect the substance of the Rules.

The amendments adopt a new Part 17 of the Rules, which provides for the basic terms and conditions on which foreign exchange transactions will be cleared. Initially, ICE Clear Europe proposes to clear a series of contracts that are non-deliverable forward ("NDF") transactions in the following currency pairs: USD/Brazilian Real, USD/Korean Won, USD/China Yuan, USD/Indian Rupee, USD/Indonesian Rupiah, USD/Chilean Peso and USD/Russian Ruble. The contract specifications for the cleared NDF transactions are set forth in the new FX Procedures and related OTC FX Product Guide and Published Terms.

The amendments also provide for the establishment of a separate guaranty fund for FX transactions (including a separate assessment right applicable to Clearing Members that clear FX transactions ("FX Clearing Members")), to be applied to losses resulting from the default of an FX Clearing Member. ICE Clear Europe will also have a limited right of assessment, as set forth in Part 11 of the ICE Clear Europe Rules, against non-defaulting FX Clearing Members in an amount up to two times their required FX guaranty fund contribution as in effect prior to the relevant default.

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

Specifically, Rule 1701 sets forth definitions related to the clearing of FX Contracts. Rule 1702 addresses the determination of settlement prices for FX Contracts. Rule 1703 provides for the payment of interest on mark-to-market margin for FX Contracts. Rule 1704 provides for the separate treatment of reference currency buyer and seller positions for each category of proprietary or customer account. New Rule 1705 addresses the settlement of FX contracts. Rules 1706 and 1707 establish an FX default committee to address defaults by FX Clearing Members and default related policies and procedures. Rule 1708 addresses permitted use of certain FX-related data. Rule 1709 establishes certain requirements for guarantors of FX Clearing Members. Rule 1710 sets out procedures for the termination of FX clearing membership.

Conforming and related amendments are also proposed to other parts of the ICE Clear Europe Rules, including changes to definitions in Part 1 of the ICE Clear Europe Rules. Part 2 of the Rules has been amended to address the inclusion of FX Clearing Members (including provisions relating to the termination of FX Clearing Member status). Proposed amendments to Parts 3 and 4 of the Rules contain various conforming and clarifying changes, and Rule 406 contains special rules relating to the netting of FX Contracts. Part 5 of the Rules has been amended to address margin for FX Contracts. Part 9 of the Rules has been revised to address defaults of FX Clearing Members and close-out of FX Contracts on default, in addition to various clarifying changes. Part 11 of the Rules has been amended to reflect the creation of a separate FX guaranty fund and to provide for contributions to and use of the FX guaranty fund in various default scenarios. Revised Part 11 also addresses ICE Clear Europe's power of assessment of additional FX guaranty fund contributions from FX Clearing Members.

ICE Clear Europe is also adopting a set of FX Procedures, which address certain additional issues for FX Contracts and FX Clearing Members, including (i) additional membership standards for FX Clearing Members (beyond those set out generally in the Rules), (ii) procedures for submission and acceptance of FX Contracts for clearing, (iii) provision of FX Contract pricing data by FX Clearing Members to ICE Clear Europe, (iv) settlement procedures for FX Contracts, (v) determination of market prices for FX Contracts and interest on mark-to-market margin and (vi) FX default committee procedures. The contract specifications and terms for FX Contracts are set out in the FX Procedures together with the OTC FX Product Guide and Published Terms for FX Contracts.

As part of the rule change, ICE Clear Europe will establish a separate FX Risk Committee with up to 15 members, including up to 10 representatives from clearing members of ICE Clear Europe.

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>4</sup> and the regulations thereunder applicable to it. The rule amendments will provide for clearing of an additional class of contract and thereby promote the prompt and accurate clearance of transactions and the protection of investors and the public interests. The proposed amendments do not impact ICE Clear Europe's financial resources devoted to its security-based swap related (i.e., credit default swap) clearing business. In particular, ICE Clear Europe notes that it has established three separate mutualized guaranty funds, one for energy products, one for credit default swaps, and one for foreign exchange swaps.

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<sup>4</sup> 15 U.S.C. 78q-1.

B. Self-Regulatory Organization'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.

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 change have been solicited, but no comments have been received to date. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

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:

- 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-2013-03 on the subject line.

Paper Comments:

- Send paper comments 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-2013-03. 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 Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will 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-2013-03 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) of the Act<sup>5</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. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,<sup>6</sup> and the rules and regulations thereunder applicable to ICE Clear Europe. Specifically, the Commission finds that the

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<sup>5</sup> 15 U.S.C. 78s(b).

<sup>6</sup> 15 U.S.C. 78q-1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,<sup>7</sup> which 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 proposed rule change is designed to permit ICE Clear Europe to clear promptly and accurately foreign exchange transactions, beginning with non-deliverable FX forward transactions.

In its filing, ICE Clear Europe requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing in the Federal Register because the proposed rule change implements new rules, procedures, and other provisions related to the clearing of products that are swaps subject to regulation by the Commodity Futures Trading Commission (“CFTC”).<sup>9</sup> ICE Clear Europe has represented that the proposed rule change does not affect ICE Clear Europe’s security-based swap clearing activities. The proposed rule and procedure changes have been submitted to the CFTC.

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

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

<sup>9</sup> See e.g., Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (Jul. 18, 2012), 77 FR 48207, 48254 – 48255, 48349 (Aug. 13, 2012) (Joint Final Rule with the CFTC) defining non-deliverable forward contracts involving foreign exchange as swaps under Section 1a(47) of the Commodity Exchange Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-ICEEU-2013-03) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).