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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71450; File No. SR-ICEEU-2014-03]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Clearinghouse Recovery and Wind-Down Rules for its Futures and Options and Foreign Exchange Product Categories
January 31, 2014.

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 January 28, 2014, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change described in Items I and II below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rules 19b-4(f)(4)(i) and (ii) thereunder,[4] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed changes is to amend the ICE Clear Europe Clearing Rules in order to adopt new procedures for clearinghouse recovery and wind-down in the event of exhaustion or potential exhaustion of clearinghouse resources following a clearing member default, as well as make other improvements to the default management process. As discussed below, the proposed amendments apply to the F&O and FX product categories, but,

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(iii).

4 17 CFR 240.19b-4(f)(4)(i) and (ii).

except for certain conforming and clarifying changes described below, do not apply to the CDS product category.

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 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 these statements.

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

1. Purpose

ICE Clear Europe submits proposed amendments to its Rules in order to adopt new provisions relating to clearinghouse recovery and wind-down following the exhaustion or potential exhaustion of available resources after a clearing member default or series of clearing member defaults. The amendments would, among other matters, (i) establish a "cooling-off period" in cases of certain clearing member defaults that result in assessments, in which case the liability of clearing members for additional guaranty fund assessments would be capped for all defaults that trigger the period or occur during the period; (ii) establish new procedures under which a clearing member may terminate its clearing membership, both in the ordinary course of business and during a cooling-off period, and related procedures for unwinding all positions of such a clearing member and capping its continuing liability to the clearing house, (iii) provide for "haircutting" of mark-to-market margin gains by the clearing house in situations where the clearing house determines, following a clearing member default, that it is unlikely to have

sufficient resources to make all such payments; (iv) revise procedures for the termination of clearing and wind-up of outstanding contracts of a particular product category in the event of exhaustion of clearing house resources available to support those contracts; (v) adopt a new set of procedures for default auctions and modify the order of allocation of guaranty funds of non-defaulting clearing members to strengthen incentives of clearing members to actively participate in default auctions; and (vi) in general limit the effect of losses in the covered product categories (F&O or FX) on ongoing clearing for other product categories.

As described in the revised rules, and as described in a Circular to be published by the Clearing House with respect thereto, these proposed amendments would not apply to the CDS product category. Accordingly, ICE Clear Europe's existing rules will continue to apply to CDS contracts and to CDS Clearing Members (even if they are also F&O Clearing Members or FX Clearing Members), with certain conforming and clarifying changes described below.

Pursuant to amendments made to the recognition requirements for recognized clearing houses under English law, ICE Clear Europe is required to have default rules addressing the allocation of losses in excess of clearing house resources and recovery plans establishing the steps it will take to maintain continuity of services if such continuity is threatened. These requirements will go into effect on February 1, 2014. Recovery and wind-down plans are also an element of the CPSS-IOSCO Principles for Financial Market Infrastructures (the "PFMIs") and are therefore necessary for ICE Clear Europe to be treated as a qualified central counterparty ("QCCP") for purposes of the applicable Basel III bank capital requirements that apply to clearing members and other market participants.

The amendments are intended to enhance the clearing house's existing rules for the F&O and FX product categories by providing additional tools to assist the clearing house in addressing

potential losses in excess of available clearing house resources. In each case, ICE Clear Europe, in consultation with its clearing members, has sought to balance a number of competing considerations in developing these additional tools. The clearing house needs to have sufficient resources to cover potential losses in extreme default situations and to have adequate flexibility in the management of defaults, consistent with the PFMIs and UK and US regulatory requirements.[5] At the same time, clearing members must be able to continue to manage appropriately their own risks from cleared transactions and their obligations to the clearing house, in light of the evolving regulatory and capital framework that applies to them. The amendments are designed to provide greater certainty (for both clearing members and the clearing house) as to the maximum liability of clearing members to the clearing house and as to the particular steps the clearing house may take to manage a default (and the responsibilities of the clearing members for default management), and to reduce the incentives for non-defaulting clearing members to withdraw from the clearing house following a default. The amendments are also intended to give clearing members appropriate incentives to participate actively in default management and to provide the clearing house adequate time and opportunity to resolve a default, while limiting the incentive for non-defaulting clearing members to withdraw from clearing membership following a default. The following discussion is intended to highlight the purpose and expected effects of the principal features of the proposed amendments:

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[5] See, e.g., 17 CFR 39.11, 39.16; 17 CFR 240.17Ad-22(b)(2)-(3), (d)(11).

Cooling-off Periods and Assessment Limits

- Under various provisions of its existing rules,[6] there are limits on ICE Clear Europe's ability to call for assessments from clearing members as a result of potential losses exceeding guaranty fund resources. Following extensive consultation with clearing members, and consideration of the impact on clearing house resources in extreme loss scenarios, ICE Clear Europe proposes to revise the assessment limit framework as set forth herein. In each product category, ICE Clear Europe proposes to maintain both (i) a per default assessment limit (which is twice the required guaranty fund contribution for the F&O and FX product categories) and (ii) an aggregate assessment limit for any cooling-off period (which is three times the required guaranty fund contribution for each such product category).
- A cooling-off period will be triggered by a default or series of defaults that results in an assessment on clearing members or a sequential guaranty fund depletion (i.e., a series of defaults requiring replenishment in the aggregate in excess of the required guaranty fund contribution). The cooling-off period will initially run for 30 business days, but if a subsequent trigger event occurs during the period, the period will be extended until the 30th business day following that subsequent trigger. Once the

6 In particular, existing Rule 1105(b) provides for a per default assessment limit equal to twice the required guaranty fund contribution for the F&O product category. The existing rules do not contemplate a cooling-off period assessment limit. Under the existing rules, a clearing member can only limit its liability for further assessments by withdrawing from clearing membership in accordance with Rule 1105(h) or (i). Similar provisions exist for the FX product category under Rule 1107. As discussed herein, ICE Clear Europe proposes the addition of the cooling-off period, with the related assessment cap for the period, to provide greater certainty as to the maximum liability of a clearing member during a series of defaults and to avoid providing an incentive for clearing members to withdraw from clearing membership to limit their liability.

cooling-off period is triggered and for the duration of such period, the guaranty fund will not be recalculated or replenished. Each clearing member will remain liable for assessments during the period, up to the relevant maximum for the period. Clearing members will remain liable to post initial margin during the cooling-off period.[7]

- The combination of the assessment limit and the cooling-off period is designed to provide certainty to clearing members as to their maximum liability to the clearing house with respect to the guaranty fund. Well-defined liability for guaranty fund contributions is an expected aspect of QCCP status and facilitates the risk management needs of clearing members under their own capital requirements and policies.[8] By fixing the maximum contribution for all clearing members, the cooling-off period is designed to reduce the risk of a "rush for the exit" following a significant default, since all clearing members (whether or not they choose to withdraw from membership) will bear the same assessment liability in proportion to their guaranty fund requirements. The cooling-off period also gives the clearing house time to arrange an orderly close-out of the defaulter's or defaulters' positions and provides the clearing house greater certainty as to the resources it will have during that period. ICE Clear Europe believes that even with the assessment caps, the clearing house has

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7 The clearing house expects that it would rely on additional initial margin during the cooling-off period, if necessary, in order to satisfy ongoing regulatory financial resources requirements (i.e., the "cover 2" requirement).

8 ICE Clear Europe does not believe it is commercially feasible for an internationally active clearing house to require potentially unlimited guaranty fund contributions of its members. In this regard, we note that applicable bank capital guidelines under the Basel III capital framework contemplate that a qualified central counterparty, or QCCP, does not impose unlimited liability on its clearing members for contributions to the guaranty fund. See Regulatory Capital Rules, 78 FR 62018, 62099 (Oct. 11, 2013).

sufficient financial resources to support its operations even in extreme market conditions.[9] In ICE Clear Europe's view, the assessment limits and cooling-off period arrangements strike an appropriate balance between its needs for financial resources in the case of an extreme default while providing desired certainty and protection for non-defaulting clearing members in light of their own capital, liquidity, risk management and commercial considerations.

Procedures for Termination of Clearing Membership

- In connection with the adoption of the cooling-off period concept, ICE Clear Europe is proposing new procedures for withdrawal from clearing membership (other than for CDS Clearing Members). Under the revised rules, a withdrawing clearing member is required to close out all of its outstanding positions within a specified period. If it does so, it will not be responsible for losses from defaults occurring following the end of that period. In the case of a withdrawal during the cooling-off period, the revised rules provide for a specified cooling-off termination period during the beginning of the period. If notice is given within the cooling-off termination period, the clearing member generally has until the end of the cooling-off period to terminate its positions at the clearing house. If it does so, it will not be liable for

[9] In this regard, we note that ICE Clear Europe satisfies its regulatory "cover 2" financial resources requirement through the funded component of its guaranty funds, without consideration of assessment rights. Assessments provide additional financial resources in extreme scenarios beyond the cover 2 level, but the assessment caps will thus not impact the clearing house's ability to meet its regulatory financial resources requirements. Although ICE Clear Europe would not be permitted to call for replenishment of the guaranty fund during a cooling-off period, ICE Clear Europe retains the ability to call for initial margin (including additional initial margin) at all times during a cooling-off period in its discretion. ICE Clear Europe would expect to call for additional initial margin if necessary to satisfy regulatory financial resources requirements during such period.

further assessments beyond those owed during the cooling-off period, and will not have to replenish its guaranty fund at the end of the cooling-off period. The amendments are intended to provide clearing members, and the clearing house, greater certainty as to their respective rights and obligations in the case of withdrawal.

- The amendments are intended to benefit withdrawing clearing members by providing a clear procedure for withdrawal, and specifying the dates by which relevant actions must be taken in order for the clearing member to limit its liability for future defaults. For the clearing house, the amendments provide certainty as to those margin and guaranty fund contributions of a withdrawing clearing member that can be used for particular defaults, and also provide a series of remedies for the clearing house in the event that a withdrawing clearing member does not satisfy its obligations in respect of its withdrawal. By providing an appropriate delay for withdrawal, the procedures protect the clearing house and remaining clearing members by permitting an orderly exit from positions, and continuing liability for the clearing member until it has closed out its positions. For customers of a withdrawing clearing member, the rules provide a mechanism for facilitating the transfer of positions to a new, remaining clearing member prior to withdrawal. This should mitigate the impact of withdrawal on customers and the cleared derivative market in general.

Mark-to-Market Margin Haircutting

- The proposed rules permit the clearing house, in limited circumstances specified in the proposed rules where, as a result of a clearing member default, the clearing house has insufficient resources to pay all outgoing mark-to-market margin payments, to "haircut" such outgoing payments by the amount of the shortfall in resources. This

authority only applies to the F&O and FX product categories. This approach allows the clearing house to avoid default in such situations where available resources are insufficient. The proposed rules permit mark-to-market margin haircutting in several situations following a default where amounts owed or, in the clearing house's determination, expected to be owed by the clearinghouse (including to make outward mark-to-market margin payments and to pay the costs of transferring positions to non-defaulting clearing members as part of the default management process) exceed available financial resources. Thus, haircutting may be appropriate following default (i) where the clearing house does not believe that it would otherwise have sufficient resources to run a successful default auction for the defaulter's positions, and (ii) where the clearing house has encountered difficulty or delay in collection of amounts owed to it (including assessments on clearing members that have not been paid) as a result of which it is unable to pay all amounts then owed. In such situations, mark-to-market margin haircutting allows the clearing house to continue operations, despite the potential lack of available resources, in circumstances where it might otherwise be forced to terminate contracts or default. In particular, where there is uncertainty as to the ultimate resources of the clearing house or the ultimate cost of resolving a default, haircutting may permit the clearing house to continue operations until such resources or costs are finally determined, following which the clearing house would expect to be able either to resume normal operations or proceed to termination of contracts as discussed below. In addition, mark-to-market margin haircutting can be conducted with respect to a particular product category (i.e., F&O or FX) that has been affected by a shortfall, allowing clearing in other product categories to continue unaffected.

ICE Clear Europe anticipates that mark-to-market haircutting would only be imposed in extreme circumstances, as an alternative to clearinghouse default and a further preventive step to avoid or delay tear-up of relevant contracts.

- Haircutting will, of course, mean that clearing members and their customers that would otherwise have mark-to-market margin gains will not receive some or all of such gains. In ICE Clear Europe's view, this is an appropriate approach to loss allocation.[10] In particular, haircutting is intended to mimic the way losses would be expected to be allocated in an actual insolvency, where parties with claims against an insolvent entity would share pro rata in available assets (and would thus have their claims "haircut" to the extent of any shortfall in assets). The haircutting rules are intended to achieve a similar result in an orderly, controlled manner without the need, expense or disruption of an insolvency proceeding. Although a tear-up of contracts is

[10] As proposed, haircutting would be performed separately for the proprietary and each customer account, and within a customer account, haircutting would be done on a "gross" basis across each customer portfolio, to the extent possible (although positions would be netted for this purpose within each such portfolio). Although this approach will impose a burden on customers as well as clearing members, ICE Clear Europe believes that it most equitably distributes the loss, as it treats each non-defaulting market participant with mark-to-market gains in the same manner with the same percentage haircut. Alternative approaches, such as calculating the customer haircut on a net basis for this purpose, would make a customer's treatment depend on the positions of other customers of a particular clearing member, and would thus lead to different treatment for the same positions when held at different clearing members. Another alternative approach, position-by-position haircutting could adversely affect the ability of market participants to net exposures for accounting and other purposes. Furthermore, ICE Clear Europe does not believe it would be appropriate for the clearing house to try to shift more of the loss to clearing members as opposed to customers, such as by not haircutting the customer account or haircutting the proprietary account before the customer account. Such a preference for some market participants over others would divorce the haircutting treatment from the positions held, and would penalize clearing members (including self-clearing members) for the benefit of customers, even in circumstances where the customer is holding potentially riskier, more directional positions.

potentially an alternative (and is permitted under the rule amendments), ICE Clear Europe believes that haircutting would be a useful alternative in the situations mentioned above, where it is possible that the clearing house will, as a result of haircutting, be able to maintain the clearing house as a going concern and run a successful auction that would permit clearing to continue and be less disruptive to the market than tear-up. Similarly, where there is a delay in obtaining financial resources following a default, and the clearing house believes it has a reasonable prospect of obtaining amounts owed to it, haircutting that allows cleared contracts to remain outstanding may be preferable to tear-up for market participants.

Termination of Clearing

- As a final tool, the proposed rules would provide more detailed procedures under which ICE Clear Europe could terminate clearing in the F&O or FX product category. This would permit ICE Clear Europe to arrange an orderly wind-down of cleared contracts in that category in the event that there are insufficient financial resources to support continued clearing of that product and ICE Clear Europe determines that termination for that product category is appropriate under the circumstances. Upon termination, available resources for that product category (including the relevant guaranty fund) will be used, together with amounts owed to the clearing house, to pay amounts owed by the clearing house on the terminated contracts. To the extent such resources are insufficient, the shortfall will be shared among clearing members and their customers on a pro rata basis.
- Termination of contracts, particularly where resources are insufficient, will thus impose a loss on certain clearing members and their customers, similar to that

imposed under mark-to-market margin haircutting. ICE Clear Europe believes that this approach is generally similar to the result that would obtain in an actual insolvency proceeding. Furthermore, ICE Clear Europe believes that this approach is an appropriate means of allocating the loss, consistent with the goals of avoiding unlimited liability for clearing members.

New Default Auction Procedures

- ICE Clear Europe has determined to adopt a new auction methodology for unwinding the F&O or FX positions of a defaulting clearing member. The terms of the auction methodology are set forth in default auction procedures established by ICE Clear Europe. Under the auction methodology, the defaulting clearing member's open positions may be divided in to one or more lots, each of which will be auctioned separately. Each clearing member will be required to participate in each auction in a minimum bid amount based on the relative size of its guaranty fund contribution. (Clearing members will be permitted to submit bids on behalf of their customers as well, and in certain cases customers may be permitted to directly bid in the auction.)
- Based on the bids submitted, ICE Clear Europe will determine an auction clearing price for the relevant portfolio, subject to any maximum or minimum price established by the clearing house for that auction. The auction procedures use a "Dutch" auction methodology to establish an auction clearing price at which the defaulter's portfolio will be unwound. The Dutch auction methodology is similar to that used in determining auction settlement values under credit default swaps and in general is widely used in numerous other financial market contexts.

- In connection with the auction methodology, and to provide an incentive for active participation in the auction, the proposed rules also provide for a specific priority of use of guaranty fund contributions based on bids in the auction (sometimes referred to as "juniorization"). Under this approach, to the extent the guaranty funds of non-defaulting clearing members are to be used to pay the auction price,[11] ICE Clear Europe will begin with the guaranty fund contributions of any such clearing member that failed to participate in the auction. The guaranty fund contributions (and, if necessary, assessments) of other non-defaulting clearing members are split into a subordinate and a senior tranche based on the competitiveness of their respective bids. The subordinate tranche will be applied next to the auction costs, followed by the senior tranche (and followed by a subordinate tranche of assessments and senior tranche of assessments, if necessary). Within each tranche, guaranty fund contributions will be applied on a pro rata basis.
- Bidders whose bids were more competitive than a specified "senior threshold price" (determined based on a specified range from the auction clearing price) will have their guaranty fund contributions assigned to the senior tranche; bidders whose bids were less competitive than a specified "subordinate threshold price" (determined based on a specified range from the auction clearing price) will have their guaranty fund contributions assigned to the subordinate tranche. Bidders whose bids were between the senior threshold price and subordinate threshold price will have their

[11] Consistent with the existing default management waterfall, resources of the defaulting clearing member and certain resources provided by ICE Clear Europe itself would be used prior to the use of guaranty fund contributions of non-defaulting clearing members as described herein.

guaranty fund contributions split between the two tranches based on a formula. Where the defaulter's positions are divided into multiple lots, the above calculations will be performed for each lot, and an aggregate senior and subordinate tranche calculated based on the results of individual lots. (In such case, a bidder's guaranty fund contribution may be split between the aggregate senior and subordinate tranches depending on its bidding for each lot.)

- ICE Clear Europe believes that the new default auction methodology, together with the guaranty fund priority described above, will provide a strong incentive for clearing members to participate actively in the auction and will result in the allocation of the defaulter's positions at a fair, market-clearing price. Although clearing members that fail to participate, or that provide non-competitive bids, will be adversely affected as compared to an approach in which all clearing members are affected equally, ICE Clear Europe believes that this approach appropriately takes into account participation in the auction. The rules of the auction are established in advance, and all clearing members have an equal opportunity to participate. By giving clearing members an incentive to bid competitively, ICE Clear Europe believes that its default auctions will result in more competitive and accurate pricing for the defaulter's portfolios, which will benefit the clearing members as a whole and make it more likely that the clearing house will be able to manage a default successfully.

Separation of Product Categories

- The rule amendments are also designed to further the separation of the F&O and FX product categories cleared by ICE Clear Europe. Under its existing rules, ICE Clear

Europe maintains separate guaranty funds for each product category, each of which is intended to support only that product category. The amendments will enhance this separation of products by allowing the clearing house to use the recovery tools separately for each of the F&O and FX product categories. As a result, an extreme loss in one such product category can be addressed by those tools, without adversely affecting clearing operations in another product category. In an extreme situation, even if the clearing house has to implement mark-to-market margin haircutting or termination for one such product category, that will not in itself require termination of the other category. Although segregation of the different product categories in some sense may limit the aggregate resources that could be used to cover a default, it will protect the market, and market participants, in each category from events outside that market. ICE Clear Europe believes that preventing contagion of defaults in this way will further the operation of the clearing system more generally. Such separation is particularly important for market participants that may participate in one product category, but not others.

Use of Recovery Tools

- The recovery and wind-down tools set forth in the proposed rules are expected to be used only in extreme default scenarios where the clearing house has exhausted the margin and guaranty fund resources provided by the defaulter and has used guaranty fund contributions provided by non-defaulting clearing members (or might reasonably expect such contributions to be used). Default scenarios, especially such extreme default scenarios, vary, and as a result the proposed rules have been designed to provide the clearing house with flexibility as to how, whether and the extent to

which the additional default tools are implemented in a particular case. However, where ICE Clear Europe has discretion as to implementing such measures, such as mark-to-market margin haircutting or termination, ICE Clear Europe expects that it would make such a decision in accordance with its default management procedures and governance process more generally. This would include, where practicable under the circumstances, consultation of clearing members through the relevant product risk committee.

As noted above, these new resolution and recovery tools will not apply to CDS contracts.

The proposed Rule amendments are described in detail as follows.

In Part 1 of the Rules, various conforming changes have been made to definitions, including the definitions of "FX Default Amount", "Termination Close-Out Deadline Date", "Termination Close-Out Time", "Termination Date" and "Termination Notice Time". Rule 105(c) ("Termination") has been revised to conform to new termination provisions in part 9 of the Rules and to clarify the use of the term "Termination Notice Time" in connection with a termination of clearing house services in connection with F&O and FX products. A new subsection (f) has been added to Rule 110 which permits ICE Clear Europe to delay making outgoing mark-to-market margin payments for F&O and FX products on an intra-day basis in certain circumstances where a clearing member has failed to make a mark-to-market margin payment to the clearing house on such day.

In Rule 209 ("Termination of clearing membership"), certain provisions addressing the termination of clearing membership and a clearing house default and the consequences thereof have been moved to Rules 912 and Rule 918, as discussed below, with conforming changes being made to the remainder of Rule 209. (These amendments will not apply to CDS Clearing

Members. Existing Rules 209 and 912 will continue to apply to CDS Clearing Members.)[12] In Rule 301(f) certain cross-references have been corrected. Various conforming and non-substantive changes are made in Part 4 of the Rules.

Part 9 of the Rules has been revised to incorporate the new recovery and wind-down provisions discussed above. In addition, several provisions that were previously in other parts of the Rules have been moved into Part 9 to consolidate the relevant provisions. Conforming and cross-reference changes have also been made throughout Part 9.

The former Rule 1103 ("Application of Assets upon Event of Default") has been moved to Rule 908. As moved, relative to former Rule 1103, Rule 908 also contains various conforming changes, corrections to cross-references and non-substantive drafting improvements and clarifications to terms used, including to promote consistency across the rulebook, such as to change references to "any loss or shortfall" to "any shortfall, loss or liability" in relevant provisions.[13] In Rule 908(e), which addresses the calculation of a separate default amount for each product category in the case of a defaulting clearing member that cleared in multiple product categories, a reference in clause (iv) to guaranty fund contributions has been moved, and new clause (v) has been added, to clarify the allocation, for purposes of determining the default amounts, of the defaulter's guaranty fund contributions across the product categories in which the defaulter acted, consistent with the other provisions of Rule 908. (A conforming change is

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12 Pursuant to a telephone conversation among Geoffrey Goldman, Shearman & Sterling LLP; Gena Lai, Senior Special Counsel, SEC; and Justin Byrne, Attorney-Advisor, SEC on January 30, 2014, ICE Clear Europe notes that these Continuing CDS Rule Provisions, which continue to be in effect with respect to the CDS Contract Category, will be available on ICE Clear Europe's website at https://www.theice.com/Rulebook.shtml?clearEuropeRulebook=.

13 Commission staff made clarifying edits to this sentence pursuant to a telephone conversation on January 30, 2014, among Geoffrey Goldman, Shearman & Sterling LLP; Gena Lai, Senior Special Counsel, SEC; and Justin Byrne, Attorney-Advisor, SEC.

also made in Rule 908(e)(vi) to clarify that the allocation of guaranty fund contributions, which is addressed in new clause (e)(v), is not addressed in clause (vi).) With respect to the F&O and FX product categories, Rule 908(g) also removes a timing limitation on the use of a defaulter's guaranty fund contributions from one product category to cover its losses from another product category. In the proviso to clause (v) of Rule 908(g), conforming references to relevant defined terms have been added and a cross-reference in subclause (2) of the prior provision in former Rule 1103 has been corrected.[14] In Rule 908(g)(vii), additional clarifying language has been included that states explicitly the extent to which assessment contributions in each product category may be used, consistent with the use of guaranty fund contributions under other clauses of Rule 908(g) and with the purposes for which (and amounts in which) assessments may be called under Rules 909-911. New Rule 908(i) provides that with respect to the F&O and FX product categories, if a non-defaulting clearing member fails to participate in a default auction or does not comply with its obligations under any such auction, its guaranty fund contributions will be applied prior to the guaranty fund contributions of other non-defaulting clearing members. Rule 908(i) also imposes the default auction priority for the use of guaranty fund contributions and any assessment contributions in the case of default auctions in the F&O and FX product categories, as discussed above.

Former Rules 1105 ("Powers of Assessment: Energy"), 1106 ("Powers of Assessment: CDS") and 1107 ("Powers of Assessment: FX") have been moved to new Rules 909, 910 and 911, respectively. In addition to certain conforming changes, new Rules 909 (for F&O) and 911 (for FX) have been revised (i) to provide that the clearing house may call for assessments where

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[14] Commission staff made clarifying edits to this sentence pursuant to a telephone conversation on January 30, 2014, among Geoffrey Goldman, Shearman & Sterling LLP; Gena Lai, Senior Special Counsel, SEC; and Justin Byrne, Attorney-Advisor, SEC.

it determines that a shortfall in relevant resources either has arisen or is likely to arise, (ii) to clarify the existing per default maximum assessment liability in each product category, as described above, and (iii) to provide that assessments called in excess of the amounts actually required will be treated as surplus collateral provided by the relevant clearing member until such time as such amount is required or the clearing house determines that it will not be required. In Rule 910, certain cross-references have been revised as a result of the movement of other provisions in the proposed rules. In addition, relative to former Rule 1106, Rule 910(a) contains certain non-substantive drafting improvements and clarifications to terms used across the rulebook, including to promote consistency across the rulebook, such as to change references to "any loss or shortfall" to "any shortfall, loss or liability" in relevant provisions.[15] Rule 910(a) has also been revised to correct cross-references to new Rule 908(g) and remove certain unnecessary cross-references. Rule 910(b) removes certain text concerning the calculation of the CDS Assessment Amount that is unnecessary in light of the provisions of Rule 910(a) and further removes a superfluous reference to the Clearing House CDS Contribution.

Certain provisions addressing the termination of transactions in the event of an ICE Clear Europe insolvency or other default (formerly in Rule 209) have been moved to new Rule 912, with certain conforming changes and a clarification relating to a default that affects some but not all product categories. Such changes will not apply to CDS Clearing Members (regardless of whether they are also F&O Clearing Members or FX Clearing Members), and existing Rules 209 and 912 will continue to apply to CDS Clearing Members.[16]

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15 Commission staff made clarifying edits to this sentence pursuant to a telephone conversation on January 30, 2014, among Geoffrey Goldman, Shearman & Sterling LLP; Gena Lai, Senior Special Counsel, SEC; and Justin Byrne, Attorney-Advisor, SEC.

16 See supra note 12.

New Rules 913 to 918 will not apply to the CDS product category.

New Rule 913 contains various new definitions used in the new recovery and wind-down provisions, including the haircutting provisions in Rule 914, the termination provisions of Rule 916, the cooling-off period provisions of Rule 917 and the clearing member withdrawal provisions of Rule 918.

New Rule 914 establishes the haircutting mechanism. The core of Rule 914 is the procedure for "haircutting" the mark-to-market margin and certain other contractual payments owed by the clearing house to clearing members for a contract category, to the extent of a shortfall in available resources for that contract category, when ICE Clear Europe issues a "Haircutting Determination". Such determination may be made, once certain conditions are satisfied:

(i) one or more clearing member defaults have occurred but ICE Clear Europe has not yet declared and either paid or submitted a claim in respect of all net sums due to or from the defaulter in respect of its proprietary account and all of its customer accounts; and

(ii) ICE Clear Europe determines, based on one of several relevant tests, that its available resources are insufficient to pay all relevant outward mark-to-market margin and contractual payments and/or its available resources would be insufficient to cover the losses or shortfalls to the clearing house from close-out of the defaulter's positions.

A Haircutting Determination will not be made if clearing in the relevant contracts is being terminated under Rule 916 or a clearing house insolvency or failure to pay has occurred. In the event of a Haircutting Determination, on day during the "loss distribution period" specified by the clearing house, the net amount owed on such day to each clearing member that is deemed to be a "cash gainer" in respect of an account class (i.e. a member that would otherwise be entitled

to receive mark-to-market margin or other payments in respect of such account class) will be subject to a percentage haircut. Corresponding adjustments are also made for "cash losers" (i.e., those who owe the clearing house) to the extent amounts previously owed to them have been haircut.

New Rule 916 permits the clearing house to terminate a set of contracts where (i) its obligations to meet mark-to-market margin payments or the cost of auctioning off the positions of a defaulting clearing member will not be satisfied through the haircutting procedure in Rule 914, (ii) following the declaration of all net sums in respect of a particular default, the clearing house may be rendered insolvent, (iii) there has been a failed auction in a relevant contract category, or (iv) the clearing house determines that because of the termination of clearing members, there will be insufficient clearing members for clearing of the relevant contract category to remain viable. Rule 916 provides a procedure for determining the termination price for all contracts in a particular set. To the extent the termination value payable by the clearing house for the terminated contract set exceeds available resources for that contract set, the clearing house's obligations will be limited to the available resources. This will permit clearing activity to continue in other contract categories.

Rule 917 implements the "cooling-off period" concept discussed above. A cooling-off period is triggered by certain defaults that result in a guaranty fund assessment or a sequential guaranty fund depletion. During a cooling-off period, the assessment liability of a clearing member is capped with respect to all defaults occurring during the period. In addition, the guaranty fund is not recalculated or rebalanced during the cooling-off period, and replenishment of guaranty fund contributions for continuing clearing members is not required until the end of the cooling-off period.

Rule 918 implements the revised procedures discussed above for clearing members (other than CDS clearing members) that wish to terminate their clearing membership (including during a cooling-off period). Clearing members that have submitted a termination notice are required to close out their open contracts by a specified deadline. Rule 918 also provides for the calculation and payment of a net amount to or from the terminating clearing member for each of its accounts in respect of the close out of all of its positions. As discussed above, terminating clearing members are not responsible for additional guaranty fund contributions for defaults occurring after the effective termination date.

Various conforming changes are also made to the Rules, including in Part 11 of the Rules. Rule 1102(g), addressing the return of the guaranty fund, has been revised to provide for the return of F&O and FX guaranty fund contributions consistent with the new termination provisions in Rule 918. The amendments do not affect the return of CDS guaranty fund contributions, to which the existing rules continue to apply. Revised Rule 1102(i) also revises the timing of replenishment of guaranty fund contributions for the F&O and FX product categories, but not for the CDS product category. Certain conforming changes to cross-references in revised Rule 1102(i) are also made. Former Rule 1104, which addresses use of guaranty fund contributions, has been redesignated as Rule 1103, and various conforming changes to cross-references have been made. Rule 1204(j) has been revised to correct a cross-reference to Rule 1204(a). Other conforming changes have been made in parts 12 and 15 of the Rules. In part 17, Rule 1710 has been removed as it has been replaced by Rule 918.

2. Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act[17] and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.[18] Section 17A(b)(3)(F) of the Act[19] 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. ICE Clear Europe believes that the proposed rule changes are consistent with the Act and the regulations thereunder applicable to ICE Clear Europe, in particular, Section 17(A)(b)(3)(F)[20], because ICE Clear Europe believes that the new recovery and wind-down rules will facilitate the prompt and accurate settlement of derivatives and contribute to the safeguarding of securities and funds associated with derivative transactions which are in the custody or control of ICE Clear Europe or for which it is responsible, as set forth herein. In addition, except for certain conforming and clarifying changes described above, the proposed amendments do not affect security-based swaps (i.e., the CDS product category), which will continue to be subject to the existing rules.[21]

ICE Clear Europe has developed the new recovery and wind-down rules in response to issues raised by the Bank of England as overseer of its payment arrangements and following extensive consultation with the Bank of England and clearing members. Recovery rules are

17 15 U.S.C. 78q-1.

18 17 CFR 240.17Ad-22.

19 15 U.S.C. 78q-1(b)(3)(F).

20 15 U.S.C. 78q-1(b)(3)(F).

21 Commission staff made clarifying edits to this sentence pursuant to a telephone conversation on January 30, 2014, among Geoffrey Goldman, Shearman & Sterling LLP; Gena Lai, Senior Special Counsel, SEC; and Justin Byrne, Attorney-Advisor, SEC.

required to be in place by February 2014 under recent amendments to the clearing house recognition requirements under applicable English law. Recovery and wind-down rules are also contemplated under the PFMIs and accordingly are necessary to maintain QCCP status.

Consistent with these legal and regulatory requirements, the proposed rules are designed to address extreme loss scenarios following one or more clearing member defaults, and are not generally intended to affect the ordinary course operation of the clearing house or its existing protections for the securities and funds in its custody or control or for which it is responsible. ICE Clear Europe believes that the proposed rule changes will enhance the stability of ICE Clear Europe following the default of one or more clearing members and reduce the risk of ICE Clear Europe failure or insolvency. The revisions will in particular facilitate the orderly wind-down or termination of contracts affected by a default. Further, ICE Clear Europe, as a clearing house for multiple products, also believes that the changes will permit the clearing house to address a default in one market while minimizing the effect on other categories of contracts, for which clearing should be able to continue. This will reduce the risk of a systemic problem in one cleared market causing contagion or creating risks for other cleared markets. The amendments also provide clearer limitations on the liability of clearing members for assessments following defaults, and a clearer procedure for termination of clearing member status. Taken together, the amendments will thus promote the prompt and accurate clearance and settlement of contracts cleared by ICE Clear Europe, consistent with the requirements of Section 17A(b)(3)(F).[22]

As discussed above, most of the proposed amendments do not affect the clearing of security-based swaps (i.e., CDS). These changes, which principally include the implementation of new Rules 912-918, as well as revisions to Rules 209, 909, 911, 1102 and 1103 and related

[22] 15 U.S.C. 78q-1(b)(3)(F).

definitions and conforming changes, primarily affect ICE Clear Europe's clearing operations with respect to products that are not securities (specifically, the F&O and FX product categories) and do not significantly affect the securities clearing operations of ICE Clear Europe (i.e., the CDS product category) or the rights or obligations of ICE Clear Europe and its clearing members with respect to securities clearing activities.

Certain other rule changes discussed above (which are applicable to all product categories or specific to the CDS product category) involve the movement and/or reorganization of existing provisions, as well as conforming changes, clarifications and non-substantive drafting improvements. These include the changes described above that relate to the CDS product category in Rules 908 and 910, as well as certain other conforming changes in Part 11 of the Rules. These proposed amendments do not affect the substance of the existing requirements for the clearing of CDS or the rights and obligations of CDS Clearing Members with respect to that product category. As a result, in ICE Clear Europe's view, they do not adversely affect the safeguarding of securities or funds relating to CDS in the custody or control of ICE Clear Europe or for which it is responsible, and do not significantly affect the rights or obligations of ICE Clear Europe or persons using its clearing service with respect to the CDS product category. As such, ICE Clear Europe believes the proposed rule changes are consistent with the requirements of Section 17(A)(b)(3)(F) of the Act[23] and the rules thereunder, as well as filing requirements under Section 19(b)(3)(A)(iii) of the Act[24] and Rules 19b-4(f)(4)(i) and (ii) thereunder.[25]

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23 15 U.S.C. 78q-1(b)(3)(F).

24 15 U.S.C. 78s(b)(3)(A)(iii).

25 17 CFR 240.19b-4(f)(4)(i) and (ii). Commission staff made clarifying edits to this sentence pursuant to a telephone conversation on January 30, 2014, among Geoffrey Goldman, Shearman & Sterling LLP; Gena Lai, Senior Special Counsel, SEC; and Justin Byrne, Attorney-Advisor, SEC.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any material impact, or impose any material burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes either (i) affect only the F&O and FX product categories or (ii) involve conforming or clarifying changes of general application (including the CDS product category) that will not significantly affect the rights or obligations of the Clearing House or clearing members.[26] Accordingly, in either case, the proposed amendments should not have any effect on the competition in the CDS market. Moreover, any effects on competition would not be on securities and therefore ICE Clear Europe does not believe that the proposed rule changes would have any material impact or impose any material burden on competition that is inappropriate in furtherance of the purposes of the Act.

As noted above, most of the proposed changes are intended to address extreme loss scenarios with respect to the FX and F&O product categories, and not affect the ordinary securities clearing operation of the clearing house. As such, ICE Clear Europe does not believe the changes will reduce access by CDS clearing members to the clearing house. ICE Clear Europe also does not believe the rule amendments will adversely affect the ability of market participants to continue to clear securities transactions or otherwise limit market participants' choices for clearing securities transactions. ICE Clear Europe expects that, in light of the PFMIs and applicable regulatory requirements in the US and EU, other clearing organizations will similarly need to develop recovery and wind-down plans. The rule amendments are intended to provide a stronger framework for the clearing house to deal with extreme loss events in the FX

[26] Commission staff made clarifying edits to this sentence pursuant to a telephone conversation on January 30, 2014, among Geoffrey Goldman, Shearman & Sterling LLP; Gena Lai, Senior Special Counsel, SEC; and Justin Byrne, Attorney-Advisor, SEC.

and F&O product categories. By helping segregate losses in one of these product categories from another, and from the CDS product category, the amendments are designed to keep unaffected CDS clearing services in operation despite losses in another area. This should generally enhance the ability of market participants to continue to clear CDS products, and reduce the risk of failure of the clearing house (which would generally be expected to have an adverse impact on competition). To the extent market participants have greater certainty as to how extreme loss events in the F&O and FX categories would be handled by the clearing house, they may have greater confidence in clearing generally (including for CDS), which will also tend to enhance the stability and strength of the market for cleared securities products, consistent with the goals of the Act.

With respect to those of the proposed amendments that do affect the CDS product category or CDS clearing members generally, such changes are in the nature of clarifying and conforming amendments that will not significantly affect the substantive rights or obligations of the Clearing House or clearing members in respect of CDS. As a result, ICE Clear Europe does not believe such changes would impose any burden on competition.

For the foregoing reasons, ICE Clear Europe does not believe that the proposed amendments will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, CDS Clearing Members or Others

Written comments relating to the rule changes have been solicited from clearing members through a public consultation and as part of the clearing house governance process. ICE Clear Europe received various comments during this consultation and took such comments into account in making further modifications to the proposed rules. The rule changes also reflect

discussions with the Bank of England. ICE Clear Europe will notify the Commission of any additional written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii)[27] of the Act, and Rules 19b-4(f)(4)(i) and (ii)[28] 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.

IV. 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. Please include File Number SR-ICEEU-2014-03 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.

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27 15 U.S.C. 78s(b)(3)(A)(iii).

28 17 CFR 240.19b-4(f)(4)(i) and (ii).

All submissions should refer to File Number SR-ICEEU-2014-03. 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 such filings 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-2014-03 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.[29]

Kevin M. O'Neill,
Deputy Secretary.

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[29] 17 CFR 200.30-3(a)(12).