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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81994; File No. SR-ICEEU-2017-013]

### **Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to the ICE Clear Europe Procyclicality Framework**

November 1, 2017

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 October 23, 2017, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II, and III 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.

#### **I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change**

The principal purpose of the changes is to adopt a new policy framework for addressing the procyclicality of its risk management policies by establishing such a framework that addresses the risk appetite, model design, monitoring and assessment and management of procyclicality in the risk models used by ICE Clear Europe to manage default risk.

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

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

II. Clearing Agency'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 such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the Procyclicality Framework is to establish an overall framework for the risk appetite, model design, monitoring and assessment and management of procyclicality in the risk models used by ICE Clear Europe to manage default risk. The European Market Infrastructure Regulation<sup>3</sup> ("EMIR") and related implementing standards require that a central counterparty ("CCP") ensure that its margin framework provides, among other matters, stable and prudent margin requirements that limit procyclicality to the extent that the soundness and financial security of the central counterparty is not negatively affected.<sup>4</sup> Those standards also require that central

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<sup>3</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as well as various implementing regulations and technical standards.

<sup>4</sup> Article 28 of Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties.

counterparties implement at least one of several specified options for mitigating procyclicality with respect to margin requirements.<sup>5</sup>

Although ICE Clear Europe's current margin policies incorporate the anti-procyclicality ("APC") measures required by EMIR (and ICE Clear Europe does not propose to change such measures at this time), it is proposing to adopt the Procyclicality Framework in order to provide a more defined framework for considering the impact of procyclicality on margining, membership, collateral haircuts, stress testing and concentration risk policies. The framework is designed to set out (1) the aspects of ICE Clear Europe risk policies relevant to procyclicality considerations, (2) how the clearing house will assess procyclicality (both as a qualitative and a quantitative matter) and (3) how the clearing house will factor considerations of procyclicality into its response to emerging risks.

Although "procyclicality" is not expressly defined in EMIR, ICE Clear Europe considers procyclicality for purposes of the proposed framework to be the extent to which changes in market conditions can have an effect on a clearing member's ability to manage its liquidity to meet ICE Clear Europe's changing margin requirements. For example, a typical initial margin model would require increased margin in stressed margin conditions, and such increases may potentially occur rapidly and/or over-react to the change in conditions. Such margin increases, in turn, may stress a clearing member's ability to obtain liquidity to meet the increased requirements.

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<sup>5</sup> The CPMI-IOSCO Principles for Financial Market Infrastructures ("PFMIs") similarly provide that a clearing house should limit procyclicality for margin requirements and haircuts. See Principles 5 (Collateral) and 6 (Margin).

The framework identifies sources of procyclicality, in particular in margin models, stress testing, and collateral haircut policies, and references existing mitigation strategies and stress testing arrangements used by the clearing house. Stress testing scenarios that are based on models similar to margin models but targeting a higher confidence quantile may also be procyclical due to changing market conditions, which may lead to increased stress shock results and therefore in default fund requirements. The framework also addresses how ICE Clear Europe intends to address procyclicality on an ongoing basis. Under the framework, ICE Clear Europe will assess procyclicality by monitoring the 95<sup>th</sup> percentile expected shortfall of the 5-day percentage change in initial margin (or other relevant risk mitigant) over a rolling 250-day window. ICE Clear Europe established this period, in consultation with Clearing Members, as an appropriate period to reflect short-term spikes in margin. ICE Clear Europe will also monitor the largest percentage changes to facilitate observation of both the maximum and a tail estimate to remove extreme outliers. A red-amber-green (“R-A-G”) escalation framework will be used with respect to implementing APC measures based on certain defined thresholds for expected 95<sup>th</sup> percentile expected shortfall metric, which are detailed in an appendix to the framework. The escalation framework specifies appropriate responses where the expected shortfall level is at an amber or green level. ICE Clear Europe will assess procyclicality both on a regular basis in monitoring model performance and making margin rate adjustments as part of risk model design.

The framework requires that the model design process take into consideration the procyclicality characteristics of the model. This should include analysis of the performance of APC measures during periods of increasing volatility (in light of defined

threshold conditions specified in the framework), in a range of market conditions, including stress periods.

In addition to the quantitative metrics, there are a number of qualitative inputs that are given consideration under the framework. For example, ICE Clear Europe will take into consideration the periodicity of margin updates and will attempt to mitigate the effect of such updates by communicating any such updates to the cleared markets up to a week in advance. The framework also includes procedures for considering the impact of prospective margin changes on the portfolios of Clearing Members and communicating with Clearing Members that may be significantly affected by such changes. The framework also takes into account the activities of other CCPs in the relevant market (including whether they are implementing APC measures), expectations of market participants, the potential for moral hazard created by an expectation of gradual margin changes (which may not be possible in extreme situations), and the ability of the clearing house to override normal APC measures in extreme circumstances. The framework recognizes that different APC measures and thresholds may be appropriate in different markets based on their historical performance. ICE Clear Europe also takes into account the different liquidity resources and practices of different types of Clearing Members, including banks, broker-dealers and other traders, and the need for margin add-ons to mitigate particular liquidity and/or concentration risks. The framework also sets out APC considerations for new products and material changes in existing products.

Appendices to the framework set out more specific analysis of procyclicality for F&O and CDS products. These analyses are calculated using several different measures of procyclicality, on both whole period and stressed period bases, and both taking into

account price change effects and without price change effects, among other factors. The appendices also detail an ICE Clear Europe approach to back testing initial margin calculations, both with and without anti-procyclicality measures under its existing margin policies.

Pursuant to the framework, ICE Clear Europe will disclose its APC methodology on its website. The framework further provides for ongoing governance, including the role of the chief risk officer, and review by the relevant product risk committees and board risk committee, as appropriate.

(b) Statutory Basis

ICE Clear Europe believes that the proposed APC framework is consistent with the requirements of Section 17A of the Act<sup>6</sup> and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.<sup>7</sup> Section 17A(b)(3)(F) of the Act<sup>8</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 proposed amendments are designed to enhance and formalize the overall assessment and management of procyclicality in the clearing house's margin and haircut models, among other matters, consistent with regulatory requirements under EMIR. The model is thus

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<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 17 C.F.R. 240.17Ad-22.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

intended to strengthen the risk models and procedures already used by the clearing house, particularly the margin model, and limit on an ongoing basis the risks of procyclicality for Clearing Members and the clearing house itself. The framework will also provide greater clarity and transparency for Clearing Members and others as to the clearing house's approach to managing procyclicality. As a result, ICE Clear Europe believes that the proposed changes will promote the prompt and accurate clearance and settlement of cleared transactions, and in general protect investors and the public interest, within the meaning of Section 17A(b)(3)(F).<sup>9</sup> In addition, the changes are consistent with the requirements of Rule 17Ad-22(e)(2),<sup>10</sup> which requires that a clearing agency have governance arrangements that are clear and transparent, prioritize the safety and efficiency of the clearing agency and support the public interest requirements of Section 17A of the Act applicable to clearing agencies and the objectives of owners and participants, among other matters. The amendments also generally strengthen the clearing house's risk management procedures, consistent with the requirements of Rule 17Ad-22(e)(3) and (6).<sup>11</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 proposed changes are designed to provide additional protections against the effects of procyclicality by setting forth a methodology to identify

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<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 17 C.F.R. 240.17Ad-22(e)(2).

<sup>11</sup> 17 C.F.R. 240.17Ad-22(e)(3) and (6).

and mitigate such risks, consistent with the requirements of EMIR. As such, the changes are intended to reduce the potential liquidity burden for Clearing Members of increases in margin requirements during stressed scenarios. As a result, ICE Clear Europe does not believe the changes will adversely affect the cost to clearing members or other market participants of clearing services. The changes will otherwise not affect the terms or conditions of any cleared contract or the standards or requirements for participation in or use of the Clearing House. The changes should not, in the Clearing House's view, adversely affect competition among Clearing Members, or the ability of market participants to access clearing services generally. As a result, ICE Clear Europe believes that any impact on competition is appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be 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 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-2017-013 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-ICEEU-2017-013. 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-2017-013 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>12</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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

[FR Doc. 2017-24130 Filed: 11/6/2017 8:45 am; Publication Date: 11/7/2017]