



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84669; File No. SR-ICEEU-2018-018]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, Relating to Amendments to Futures and Options Risk Procedures(the “F&O Risk Procedures”).¹

November 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on November 16, 2018, 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. ICE Clear Europe filed the proposed rule changes pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(4)(ii) thereunder,⁵ so that the proposal was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

¹ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the “Rules”).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(4)(ii).

ICE Clear Europe proposes to make certain amendments to the F&O Risk Procedures to enhance monitoring and addressing potential uncollateralized exposure to Clearing Members during overnight hours.

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

ICE Clear Europe is amending its F&O Risk Procedures to enhance certain procedures for monitoring and addressing potential uncollateralized exposure to Clearing Members during overnight hours. The amendments supplement certain enhancements to intraday margining that the Clearing House has recently implemented.⁶

⁶ See Exchange Act Release No. 34-84375 (SR-ICEEU-2018-012), 83 Fed. Reg. 51715 (Oct. 12, 2018).

The proposed amendments apply to F&O Contracts that are margined using a one-business day margin period of risk.⁷ The revised procedures contemplate that the Clearing House can make margin calls outside of the standard margin hours (specifically, before 7:30 and after 20:00 London time), but recognize that Clearing Members may have reduced operational capabilities to provide additional margin during those times. The amended policy sets out procedures under which uncollateralized exposures for such contracts will be monitored by the Credit Risk Department (“CRD”) overnight. Pursuant to the proposed amendments, the CRD monitors margin exposures in near real time and senior CRD team members are alerted if Clearing Member exposures breach the margin threshold. The senior CRD person will decide whether to issue a margin call or require the Clearing Member to take other risk reducing actions, taking into account factors such as the particular member, its known operational capabilities and those of its APS bank, the product, market circumstances and the type and materiality of the exposure. If such Clearing Member cannot be contacted, does not reduce its positions or does not meet a margin call, the senior CRD person will further escalate to ICEU’s President (or delegate) and together decide on an appropriate response, which may include temporarily accepting the risk, suspending the relevant account or holding the Clearing Member in default. If ICEU’s President or delegate

⁷ Such contracts are generally F&O energy contracts. The amendments are intended to be consistent with certain additional risk management requirements that apply to such contracts under European Market Infrastructure Regulation (EMIR) implementing regulations, specifically Article 26(1)(c) 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, as amended by Commission Delegated Regulation (EU) 2016/822 of 21 April 2016 as regards the time horizons for the liquidation period to be considered for the different classes of financial instruments.

cannot be contacted, then the senior CRD person shall make the decision. Relevant regulators will be contacted should ICEU decide to hold a Clearing Member in default.

The amendments also clarify the applicability of a specified overnight buffer to contracts using a one-day margin period of risk, and removes a reference to the buffer amount being locked at end of day (in light of the overnight monitoring procedures discussed above). Certain other typographical corrections and similar clarifications are also made.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁸ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.⁹ Section 17A(b)(3)(F) of the Act¹⁰ 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, to assure 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. As discussed above, the proposed amendments to the F&O Risk Procedures are intended to enhance ICE Clear Europe's ability to monitor and limit its exposure to Clearing Members during overnight trading hours. This will facilitate the Clearing House's ability to manage risk generally, and therefore promote the prompt and accurate clearance and settlement of transactions, and

⁸ 15 U.S.C. 78q-1.

⁹ 17 C.F.R. 240.17Ad-22.

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

further the public interest in the sound operation of clearing agencies. (The amendments should not affect the safeguarding of securities or funds in the custody or control of the Clearing House or for which it is responsible). As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Section 17A(b)(3)(F) of the Act.

The amendments are also consistent with relevant requirements of Rule 17Ad-22 regarding margin and credit risk management.¹¹ Rule 17Ad-22(b)(1) and (2)¹² in particular require that ICE Clear Europe measure its credit exposure at least once per day and use margin requirements to limit its exposures to participants under normal market conditions. Consistent with these requirements, the proposed amendments facilitate additional measurement of credit exposures during overnight trading hours and to collect margin or take other action if appropriate to reduce its credit risk to Clearing Members. The proposed amendments are also consistent with Rule 17Ad-22(e)(4)(i)¹³, as the

¹¹ 17 CFR 240.17Ad-22.

¹² 17 C.F.R. 240.17Ad-22(b)(1) and (2). The rule states that: [a] registered clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to:

(1) Measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.

(2) Use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.”

¹³ 17 C.F.R. 240.17Ad-22(e)(4)(i). The rule states that: “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (4) Effectively identify, measure, monitor, and manage its credit exposures to

additional ability to conduct overnight margining will help the Clearing House maintain sufficient financial resources to cover its credit exposures to Clearing Members. Rule 17Ad-22(e)(6)(ii)¹⁴ requires that clearing agencies have sufficient operational capacity to make intraday margin calls in defined circumstances and extending ICE Clear Europe's ability to make such margin calls or to take other action, as appropriate in the circumstances, into the overnight period facilitates compliance with this requirement.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to enhance ICE Clear Europe's ability to limit its credit exposure during overnight trading hours. The amendments will apply to all F&O Clearing Members that trade contracts in the relevant category. ICE Clear Europe does not believe the amendments will generally affect the overall cost of clearing for F&O Clearing Members or other market participants or otherwise affect access to clearing generally. The amendments may require F&O

participants and those arising from its payment, clearing, and settlement processes, including by: (i) Maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence;"

¹⁴ 17 CFR 240.17Ad-22(e)(6) which states that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (6) Cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum:

(ii) Marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances;"

Clearing Members to post margin, or take other action, outside of the standard margin call window, but such changes are designed to better manage Clearing House risk and are tailored to the risks presented by such F&O Clearing Members and the positions they carry. As a result, any additional burdens placed on F&O Clearing Members will be appropriate in furtherance of enhancing risk management, and are not intended to disadvantage any particular Clearing Member. 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 amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 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-2018-018 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-2018-018. 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 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, 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/clear-europe/regulation#rule-filing>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2018-018 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.¹⁵

Eduardo Aleman,

Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).

