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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86782; File No. SR-ICEEU-2019-017]

August 28, 2019

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe CDS Clearing Back-Testing Policy (the “Back-Testing Policy”).

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 August 19, 2019, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been substantially prepared by ICE Clear Europe. On August 27, 2019, ICE Clear Europe filed Partial Amendment No.1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1 (hereafter referred to as the “proposed rule change”), from interested persons.

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

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to revise its Back-Testing Policy to make certain clarifications, correct certain typographical errors and update governance processes.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Partial Amendment No. 1 corrected an inaccurate statement in the initial proposed rule change but did not make any changes to the substance of the filing or the text of the proposed rule change.

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 proposing to modify, update and reorganize certain provisions of its Back-Testing Policy to clarify certain test strategies, procedures and methodologies, correct certain typographical errors and update governance processes.

The amendments to the Back-Testing Policy principally include various clarifications to the daily, weekly and monthly back-testing performed by the Clearing House. As discussed herein, the amendments would generally align the Back-Testing Policy with the Clearing House's current back-testing practices, and accordingly the amendments are not intended to result in significant changes in back-testing practices. ICE Clear Europe is thus proposing to make these changes in order to make the policy more accurate, clear and precise, in line with regulatory requirements applicable to back-margin back-testing and related suggestions of its regulators. Certain amendments will in particular clarify that back-testing is done at the Clearing Member account level,⁴

⁴ Account for this purpose has the meaning specified in the Rules.

replacing existing references to testing at the portfolio level (which was a less precise description).

The amendments would reorganize the requirements of the policy with respect to daily back-testing, but would not substantially change existing processes. As noted above, the amendments would provide for daily back-testing at the Clearing Member account level. The amendments would also provide that back-testing results would be reported to the Model Oversight Committee and CDS Risk Committee on a monthly basis, including an exceedance summary, an example of which would be included in the Back-Testing Policy.

The provisions of the Back-Testing Policy setting out portfolio construction for back-testing the production margin model using special strategy portfolios would be amended to add an additional strategy and also update strategy names and clarify the use of bought and sold protection positions in the back-testing process. The portfolio construction of the additional strategy, iTraxx Senior Financial 5Y.OTR Arb, would be the same as the construction of the existing special strategies but would relate only to the iTraxx Senior Financials 5Y index. ICE Clear Europe regularly back tests using this additional strategy in practice and is adding it to the policy to reflect this practice. The amendments would provide that with respect to each specified strategy, for completeness, the opposite strategy would be taken into consideration. The other amendments are also generally intended to better reflect current practice.

The provisions of the policy relating to back testing of the Monte Carlo (“MC”) model would be revised to clarify that back-tests are performed daily on the Spread Response component of the Initial Margin using ICE Clear Europe’s MC model rather

than the worst among the scenario based spread response approaches and the MC approach. The back-test would be performed on individual Clearing Member accounts using the risk approach for the Spread Response Initial Margin (and accordingly references to specific quantiles for testing have been removed). The back-tested risk measures would include the sum of the MC VaR and the basis risk, interest rate and recovery rate quantities. This amendment is intended to clarify what is meant in the policy by “Monte Carlo back-testing”, which is back-testing only the MC model and not the stress based model. There would be no change to the current practice with respect to MC model back testing. The amendments would also remove an unnecessary distinction depending on whether the indices are decomposed. In ICE Clear Europe’s view, this change would improve the readability of the policy by clarifying that the basis risk initial margin component is part of the back-tested initial margin components. This amendment would not change current practices.

The section regarding the full period back-testing results setting out the manner in which the back-tested component of initial margin and the profit and loss results for every back-tested day are reported for each Clearing Member for daily portfolio back-testing would be removed as the reporting requirements have been consolidated into a different section of the policy.

The amendments would make certain changes to the Basel Traffic Light System exceedance summaries. Pursuant to the amendments, back-testing results of the production model for each Clearing Member’s account, special-strategy back-testing results of the production model and back-testing results of the MC model for each Clearing Member’s account would be reported at least monthly to align the frequency of

the reporting to the relevant regulatory requirement under Commission Rule 17Ad-22(b)(2).⁵

Various other changes would also be made to correct typographical and similar errors and to clarify use of certain defined terms and references. Certain outdated references to testing quantiles of 99% and 99.25% would be removed, as they are lower than the minimum 99.5% quantile prescribed by the European Market Infrastructure Regulation (EMIR) for over the counter (OTC) contracts.

(b) Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act⁶ and the regulations thereunder applicable to it. Section 17A(b)(3)(F) of the Act⁷ in particular requires, among other things, that the rules of the 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, in general, protect investors and the public interest. The proposed amendments are designed to modify the Back-Testing Policy to clarify certain risk management practices for CDS Contracts including back-testing strategies, the application of the Monte Carlo method, and the frequency of back-testing and reporting

⁵ Such change would not preclude ICE Clear Europe from sharing relevant reports with regulators more frequently as under current practice.

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

of results. The amendments would also adopt various enhancements to the review and governance processes for those policies. In ICE Clear Europe’s view, the amendments will not result in a significant change in its back-testing practices, but will improve the accuracy and clarity of the Back-Testing Policy. As such, the amendments are consistent with the continued overall risk management of the Clearing House, and with the prompt and accurate clearance of transactions and the public interest in sound operation of clearing agencies, within the meaning of Section 17A(b)(3)(F).⁸ As the amendments would enhance the Back-Testing Policy as it relates to Clearing House margin models, the amendments would also be consistent with requirements relating to safeguarding of funds and securities in the custody or control of the Clearing House or for which it is responsible, within the meaning of that section. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).⁹

ICE Clear Europe also believes that the amendments for similar reasons are consistent with specific requirements of Rule 17Ad-22.¹⁰ Through providing additional details and examples and enhancing overall clarity of the Back-Testing Policy, the amendments are consistent with Rule 17Ad-22(e)(3)(i),¹¹ which requires clearing

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22.

¹¹ 17 CFR 240.17 Ad-22(e)(3)(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:
(3) Maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which:

agencies to have reasonably designed policies and procedures that, at a minimum, include risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by a clearing agency.

Rule 17Ad-22(e)(6)(vi)(A)¹² specifically requires clearing agencies to implement reasonably designed policies and procedures to conduct back-testing of their margin model at least once each day using standard predetermined parameters and assumptions. In compliance with these requirements, proposed amendments to the Back-Testing Policy specify that ICE Clear Europe must perform daily portfolio-level back-testing analysis at a 99.5% quantile based on the individual Clearing Member accounts as of the back-testing date. Back-testing results would also reviewed on a daily basis by the Clearing Risk Department.

Pursuant to Rule 17Ad-22(e)(6)(vi)(B)¹³ a clearing agency must have policies and procedures reasonably designed to review its parameters and assumptions for back-

(i) Includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually”

¹² 17 CFR 240.17Ad-22(e)(6)(vi)(A). The rule 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:
(vi) Is monitored by management on an ongoing basis and is regularly reviewed, tested, and verified by:
A. Conducting backtests of its margin model at least once each day using standard predetermined parameters and assumptions”.

¹³ 17 CFR 240.17Ad-22(e)(6)(vi)(B). The rule states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

testing its margin model on at least a monthly basis. The proposed amendments to the Back-Testing Policy, as discussed above, are consistent with these requirements, as they provide that reviews of the back-test results must be reported to the Model Oversight Committee and CDS Risk Committee on a monthly basis. As a result, ICE Clear Europe believes that these amendments to the Back-Testing Policy are in compliance with Rule 17Ad-22(e)(6)(vi)(B).¹⁴

Rule 17Ad-22(e)(2)¹⁵ requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. To facilitate compliance

(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:

(vi) Is monitored by management on an ongoing basis and is regularly reviewed, tested, and verified by:

B. Conducting a sensitivity analysis of its margin model and a review of its parameters and assumptions for backtesting on at least a monthly basis, and considering modifications to ensure the backtesting practices are appropriate for determining the adequacy of the covered clearing agency's margin resources”

¹⁴ 17 CFR 240.17Ad-22(e)(6)(vi)(B).

¹⁵ 17 CFR 240.17 Ad-22(e)(2). The rule states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(2) Provide for governance arrangements that:

(i) Are clear and transparent

(ii) Clearly prioritize the safety and efficiency of the covered clearing agency;

(iii) Support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants;

(iv) Establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities;

(v) Specify clear and direct lines of responsibility; and

(vi) Consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.”

with this requirement, the proposed amendments to the Back-Testing Policy more clearly define the roles and responsibilities of the CDS Risk Committee and Model Oversight Committee to receive back-testing results.

(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 purpose of the Act. The amendments to the Back-Testing Policy apply to all CDS Contracts and are intended to strengthen risk management relating to these products. ICE Clear Europe does not believe the amendments will have any direct effect on Clearing Members, other market participants or the market for cleared products generally. As a result, ICE Clear Europe does not believe the amendments will materially affect the cost of, or access to, clearing. To the extent the amendments may have any impact on margin levels, ICE Clear Europe believes such changes will be appropriate in furtherance of the risk management of the Clearing House. Therefore, ICE Clear Europe does not believe the proposed rule changes impose any burden on competition that is inappropriate 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 written comments received with respect to the proposed rule change.

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

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. Please include File Number SR-ICEEU-2019-017 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2019-017. 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, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>. 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-2019-017 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.¹⁶

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Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

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