

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66628; File No. SR-ICEEU-2012-01)

March 20, 2012

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change to Revise Rules and Procedures Related to Certain Technical and Operational Changes Relating to Credit Default Swap Contracts

I. Introduction

On January 24, 2012, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-ICEEU-2012-01 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> The proposed rule change was published for comment in the Federal Register on February 13, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed changes were set out in revisions to the Rules and CDS Procedures that were described in circular no. C11/170 published on November 25, 2011 (available on the Internet website of ICE Clear Europe at:

[https://www.theice.com/publicdocs/clear\\_europe/circulars/C11170\\_att1.pdf](https://www.theice.com/publicdocs/clear_europe/circulars/C11170_att1.pdf) and

[https://www.theice.com/publicdocs/clear\\_europe/circulars/C11170\\_att2.pdf](https://www.theice.com/publicdocs/clear_europe/circulars/C11170_att2.pdf)). According to ICE

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

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

<sup>3</sup> Securities Exchange Act Release No. 34-66341 (January 24, 2012), 77 FR 7652 (February 13, 2012). In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements is incorporated into the discussion of the proposed rule change in Section II below.

Clear Europe, the purpose of these rule changes is to allow the clearing agency to make certain technical operational changes relating to CDS Contracts (as defined at ICE Clear Europe Rule 101), including those that arise under its rules on an occasional basis as part of the end-of-day price submission process by Clearing Members.

Specifically, these changes can be grouped into three categories:

First, under ICE Clear Europe's current rule framework, CDS Contracts that arise following the end-of-day pricing process give rise to non-cleared transactions that may later be submitted for clearing. However, since the applicable CDS Contract is typically intended to be cleared between the parties, and since trades that arise following end-of-day pricing arise at the direction of the clearing house, ICE Clear Europe believes that it is more efficient and reduces risk for such CDS Contract to arise upon notice by ICE Clear Europe, rather than to require the applicable parties to submit the CDS Contract later. Accordingly, the first change establishes Rule 401(a)(xi) to permit ICE Clear Europe to specify the time and terms of entry into a CDS Contract arising following the submission of end-of-day prices by a Clearing Member. Once ICE Clear Europe has notified the two affected clearing members of a contract under Rule 401(a)(xi), the contract will stand, unless it is voidable under Rule 404 (for example due to illegality or manifest error). This change gives rise to the majority of the proposed rule changes in the text of the ICE Clear Europe Rules and the CDS Procedures. As a practical matter, this change operationalizes a technical service by which the terms of a CDS Contract entered into following submission of end-of-day prices can be promptly cleared by ICE Clear Europe. In order to operationalize this change, certain conforming changes are required. For example, various Rules establishing procedures for other automatically effective CDS Contracts are amended to include new Rule 401(a)(xi).

In addition, a new paragraph (c) has been added to Rule 602 which deems Clearing Members not to be in violation of Position Limits (as defined in the Rules) as a result of CDS Contracts that arise by notice of ICE Clear Europe. Rule 602(c) provides a procedure under which the Clearing Member can close out such a position within five business days of the applicable Position Limit adoption or determination date. In this manner, both the policy of ensuring the pricing process through automatically effective trades and the policy of ensuring Position Limits are respected. ICE Clear Europe notes that these provisions relating to accommodation of Clearing Members in respect of Position Limits that may be applicable to CDS Contracts that are automatically effective applies not only to Rule 401(a)(xi), but also to Rules 401(a)(v), (vi), and (x). In the case of Rule 401(a)(v), new Rule 602(c) would apply to CDS Contracts that arise from transactions generated by ICE Futures Europe or the ICE OTC Operator as a result of the operation of their contra trade, error trade, invalid trade, cancelled trade, error correction or similar policies and rules and procedures relating thereto or otherwise. In the case of Rule 401(a)(vi), new Rule 602(c) would apply to CDS Contracts that form as a result of another Contract being invoiced back by ICE Clear Europe. Finally, in the case of Rule 401(a)(x), new Rule 602(c) would apply to CDS Contracts arising pursuant to Rule 903(a)(xii), which generally governs the creation of new CDS Contracts between ICE Clear Europe and non-defaulting Clearing Members to replace any remaining CDS Contracts of a defaulting Clearing Member.

Under the second category of changes, settlement and coupon payments under CDS Contracts will take place through the ICE Clear Europe's payment banking network used for other cleared products, and not through the CLS Bank International ("CLS") system. At present, Section 8.9 of the CDS Procedures provides that where a CDS Contract is to be settled in

circumstances in which Rule 1514 (CDS Alternative Delivery or Settlement Procedure) does not apply, relevant cash payments between ICE Clear Europe and CDS Clearing Members will take place through The Depository Trust and Clearing Corporation using CLS, unless otherwise specified by ICE Clear Europe in a circular prior to the date on which such cash payments are due. However, following consultation with Clearing Members, ICE Clear Europe has determined it is more efficient if settlement and coupon payments are effected through ICE Clear Europe's current payment system (which is also permitted by the current CDS Procedures). ICE Clear Europe has determined to harmonize the system described at Section 8.9 of the CDS Procedures into a single payment system. This is achieved through the deletion of Section 8.9 of the CDS Procedures.<sup>4</sup> It should be noted that this proposed change also serves to further harmonize the ICE Clear Europe Rules and CDS Procedures with those of ICE Clear Credit LLC, the U.S.-based clearing agency affiliate of ICE Clear Europe.

The third category of changes involves various cross-reference and typographical amendments to the processes for submission of CDS Contracts. The typographical changes are as follows: (i) Section 4.2 of the CDS Procedures, the words "Bilateral CDS Contract" are changed to "Bilateral CDS Transaction", and (ii) Section 8.4 of the CDS Procedures, the words "submission of" are added. According to ICE Clear Europe, these changes are made solely to correct typographical and cross-reference drafting in the text of the Rules and make no substantive changes to the Rules.

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<sup>4</sup> On January 12, 2012, ICE Clear Europe published circular no. C12/003 (available at: [https://www.theice.com/publicdocs/clear\\_europe/circulars/C12003.pdf](https://www.theice.com/publicdocs/clear_europe/circulars/C12003.pdf)), pursuant to which ICE Clear Europe used its authority under Rule 8.9 of the CDS Procedures to specify that, effective January 17, 2012, all payments that had been settled via CLS including Upfront Fees, Quarterly Coupon Payments and Cash Credit Event Settlements would subsequently be settled in accordance with standard process set out in the Finance Procedures.

In its filing with the Commission, ICE Clear Europe indicated that it has engaged in extensive private consultation with its CDS Clearing Members involving both operational and legal consultation groups and has presented the changes to its CDS Risk Committee, which approved the changes. ICE Clear Europe has also engaged in a public consultation process in relation to all the changes, pursuant to the Circulars referred to above, and as required under applicable U.K. legislation. This public consultation involved the publication of such Circulars on a publicly accessible portion of the Internet website of ICE Clear Europe. ICE Clear Europe has received no opposing views from its Clearing Members in relation to the proposed rule amendments and received no responses to its public consultations during the consultation period.

### III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>5</sup> For example, Section 17A(b)(3)(F) of the Act<sup>6</sup> requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.

If approved, the proposed rule change would allow ICE Clear Europe to implement certain operational changes related to the processing of CDS contracts, including with respect to (i) CDS Contracts that arise as a result of the end-of-day pricing process and (ii) and the process by which settlement and coupon payments under CDS Contracts will be made. After

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<sup>5</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

considering these changes, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, including ICE Clear Europe's obligation to ensure that its rules be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-ICEEU-2012-01) be, and hereby is, approved.<sup>9</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 15 U.S.C. 78q-1.

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

<sup>9</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).