

compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 6.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 6, is consistent with Section 6(b)(5) of the Act<sup>32</sup> and Section 11A(a)(1)(C)(iii) of the Act<sup>33</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR–NYSEArca–2017–87), as modified by Amendment No. 6, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82496; File No. SR–ICEEU–2017–016]

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

January 12, 2018.

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 December 29, 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 by ICE Clear Europe. The Commission is publishing this notice to solicit

Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

<sup>32</sup> 15 U.S.C. 78f(b)(5).

<sup>33</sup> 15 U.S.C. 78k–1(a)(1)(C)(iii).

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

Consistent with its obligations under applicable laws and regulations,<sup>3</sup> ICEU has adopted a Recovery Plan identifying certain critical clearing services it provides and addressing its tools, mechanisms and options for addressing scenarios that threaten its ability to continue to provide such services.

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

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, Security-Based Swap Submission or Advance Notice

###### (a) Purpose

Consistent with its obligations under applicable laws and regulations, ICE Clear Europe has adopted a Recovery Plan. The Recovery Plan is based on, and is intended to be consistent with, ICEU's Clearing Rules (the “Rules”)<sup>4</sup> and Procedures, as well as its existing risk management frameworks, policies and procedures.

###### Overview of the Recovery Plan

The Recovery Plan identifies the critical services that ICEU provides, and

<sup>3</sup> As discussed in further detail herein, ICE Clear Europe is required to establish a recovery plan under relevant provisions of the UK Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI/2001/1995) and Commission Rule 17Ad–22(e)(3)(ii), 17 CFR 240.17Ad–22(e)(3)(ii).

The Plan is also designed to be consistent with the Committee on Payments and Market Infrastructures (“CPMI”)—International Organization of Securities Commissions (“IOSCO”) Principles for Financial Market Infrastructures (“PFMIs”), including supplemental guidance from CPMI–IOSCO which includes its report on “Recovery of financial market infrastructures” published in October 2014 and revised July 2017 (the “Recovery Guidance”).

<sup>4</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

the business functions that support those services. In ICEU's view, its clearing services (for both the F&O and CDS product categories), and its related treasury and banking services, represent its critical services. The Recovery Plan outlines a number of firm-specific and market-wide stress scenarios that, in ICEU's determination, may result in significant losses or liquidity shortfall, suspension or failure of its critical services and related functions and systems, and damage to other market infrastructure, with resulting uncertainty in the markets for which ICEU clears. These include both losses from Clearing Member default and non-default loss scenarios. The Recovery Plan further evaluates different impact categories and severity levels of these stress scenarios. The Recovery Plan then addresses the tools, mechanisms and options (“Recovery Options”) upon which ICEU may draw (based on its existing Rules, Procedures and policies and frameworks) in order to address a stress scenario and continue to provide its critical services, and the actions to implement those options (including appropriate escalation and early warning procedures). The Recovery Plan also addresses communication with regulators and other relevant stakeholders and related governance issues. The Recovery Plan further considers the implications of certain situations that may be beyond its control, such as interdependencies with other institutions.

The Recovery Plan also addresses the roles and responsibility of ICEU Board, management and other personnel, including with respect to development, review and approval, testing and maintenance and liaison with relevant regulatory authorities. The Recovery Plan also includes a description of ICEU, its organizational structure, its applicable regulatory regime and the standards and guidelines that have informed the Recovery Plan. The Recovery Plan is based on the Rules and Procedures of the clearing house as they are in effect, and does not itself change the rights and obligations of the clearing house or its Clearing Members thereunder.

###### Critical Services and Functions

As noted above, ICEU has determined that both its F&O and CDS product category clearing services, as well as its related treasury and banking services, are critical services. The Recovery Plan sets out the methodology used by the clearing house in assessing the criticality of services for this purpose. ICEU has also identified the front-end business functions and support areas

(including IT services) that support these critical services. In particular, the Recovery Plan identifies the particular IT systems and services used by ICEU in providing its clearing services (including trade management systems, collateral management systems, risk systems and delivery systems). The Recovery Plan notes the locations from which these services are provided and, in cases where the services are provided by an affiliate or other third party, identifies that party. The Recovery Plan also identifies other key service providers on which ICEU relies, including custodians, concentration banks, other approved payment banks, investment managers and delivery services providers. The Recovery Plan considers the key services provided by ICE affiliates in support of the ICEU clearing activities, including information technology and risk management services.

#### Stress Scenarios

The Recovery Plan analyzes different stress scenarios that may affect ICEU's ability to continue to provide its critical services. The two relevant categories of stress scenarios are default losses and non-default losses. Default losses for this purpose are losses suffered by ICEU as a result of the default of one or more Clearing Member(s). Non-default losses are those suffered by ICEU from identified general business and operational risk events, investment losses, system outages or world-wide or regional political or macroeconomic events. In both categories, ICEU also considers losses resulting from liquidity risks and from the risk of contagion. ICEU uses a risk-based approach to scenario analysis, consisting of different impact categories and severity levels. Specifically, ICEU looks at impacts in five areas: Financial and operational impacts (affecting ICEU's own finances), Clearing Members and their customers (affecting their financial viability), other group infrastructure (affecting the efficiency or effectiveness of other related ICE entities (including exchanges cleared by ICEU), legal and regulatory considerations and macroeconomic (affecting market operations and market stability).

In terms of impact severity, ICEU assesses scenarios in categories of low, moderate, high, very high and severe. In the context of a default loss, a low severity impact would include a loss contained to the financial resources of the defaulting Clearing Member. By contrast, an event with a severe impact level would be expected to exhaust the funded resources of the clearing house (including ICEU's contribution and the

Guaranty Fund contributions of non-defaulting Clearing Members). Other intermediate severity levels will involve corresponding levels of resource consumption and impact on the clearing house. For non-default losses, a low severity is generally defined as a loss of less than 25% of capital resources or a loss having no direct impact on Clearing Members. By contrast, a severe non-default loss would be one in excess of 75% of capital resources are used, or one that otherwise involves a severe degradation of operations. The Recovery Plan contemplates that the range of responses to a loss scenario, including the potential Recovery Options used, will depend on the severity level (with low severity loss events involving limited or no use of Recovery Options, and severe loss scenarios requiring use of all of the available Recovery Options). The Recovery Plan also contemplates different levels of coordination with other CCPs, market participants, regulators and others depending on the severity of the event.

#### Recovery Options

The Recovery Plan sets out the likely Recovery Options that ICEU may implement depending upon the severity of the impact of the scenario, as discussed above. The Recovery Options are based on the rights and obligations of the clearing house under the Rules, Procedures, Risk Management Framework, Default Management Framework, Liquidity Risk Management Framework and other relevant policies and procedures.

The Recovery Plan considers a non-exhaustive list of available Recovery Options in terms of a number of factors, including the speed with which each option can be implemented, the impact on the clearing house, the impact on Clearing Members and their customers, and the effect on other market infrastructure. The Recovery Plan analyzes loss impact and the use of Recovery Tools separately for F&O defaults, CDS defaults and non-default losses. In general, in the case of default losses, relevant Recovery Options include, consistent with the Rules, powers of assessment, use of a default auction in accordance with auction procedures to fully unwind the defaulter's portfolio (for F&O contracts), forced allocation, to the extent the defaulter's positions cannot otherwise be unwound (for CDS contracts), variation margin gains haircutting (for F&O contracts), porting of client positions and clearing service

termination (for F&O contracts).<sup>5</sup> In terms of non-default losses, Recovery Options include emergency liquidity facilities, investment loss allocation to Clearing Members to the extent permitted by the Rules and service closure. The Plan contains greater detail regarding how each tool assists with the recovery process. Consistent with the Default Management Framework, the Recovery Plan is intended to be flexible and provide a structure and guidance to management. It is not designed to be prescriptive and it recognizes that the actions to be taken by the clearing house may vary depending on the prevailing circumstances which lead to the default rules being implemented. The Recovery Plan also examines the reliability, timeliness and legal basis of different Recovery Options.

#### Recovery Option Application

The Recovery Plan outlines the situations (and sequence) in which each of the Recovery Options is likely to be used, recognizing that the clearing house has discretion as to the particular actions to take in a default or non-default loss scenario. In general, use of Recovery Options is expected in extreme circumstances where losses exceed pre-funded resources of the clearing house. The Recovery Plan specifies the expected bases for using Recovery Options, such as powers of assessment and variation margin gains haircutting. It further specifies the decision-making process for the use of such options, separately for default and non-default loss scenarios. These arrangements generally specify a particular scenario in which a Recovery Option may be used, along with the key decision-makers involved. In most cases, under the Rules and the default management frameworks, the decision will be made by the ICEU president and managing director pursuant to the authority delegated by the Board, for both default and non-default loss events. In the case of default events, such actions would be taken having regard to the advice of the default management committee. In practice, the president, where appropriate and time permitting, would be expected to consult with the Board or with individual Board members before taking significant actions. The president may also call an emergency Board meeting or make Board members aware of the current position. The president will

<sup>5</sup> ICEU notes that it is preparing to propose certain amendments to its Rules relating to Recovery Options with respect to CDS contracts, to provide for auctions and variation margin gains haircutting and to eliminate forced allocation, among other changes.

report decisions to the Board at the next formal Board meeting. If the President is absent, the Chief Operating Officer will act in his stead.

The Recovery Plan recognizes the importance of clear communications and contemplates that use of Recovery Options would be expected to be implemented through close discussions with the ICEU Board, ICEU Board Risk Committee, Clearing Members, regulators, shareholders and other stakeholders. The Recovery Plan recognizes the risk that ICEU's actions could cause contagion and envisages communication with regulators and other financial market infrastructures to mitigate such effects.

The Recovery Plan also sets out a series of early warning indicators and tools intended to notify ICEU management that use of Recovery Options may be required, and where possible, avoid the need for such actions. These include liquidity forecasting and monitoring, use of a conservative approach to counterparty credit analyses and establishment of margin and Guaranty Fund requirements, use of comprehensive risk metrics to monitor Clearing Member financial performance, back-testing and stress testing, and other assessments. The clearing house also retains the mechanisms and resources to take prompt decisions, and allow an immediate response to an emerging situation. The Recovery Plan sets out detailed lists of potential early warning indications of a potential loss scenario, such as repeated non-compliance by a Clearing Member with membership or other requirements, actions taken by regulators or other governmental authorities with respect to a Clearing Member, certain quantitative factors, restructuring and similar events. The Recovery Plan outlines particular means of monitoring for potential loss scenarios following such indications.

#### Limitations of the Recovery Plan and Related Monitoring

The Recovery Plan has set out arrangements for identifying and responding to structural weaknesses in governance and risk management that may be identified in a default event or non-default event. ICEU's tools to address such potential weaknesses include: Default tests, operational risk measures (including for business continuity and disaster recovery purposes), an operational oversight committee, internal audit and consultation with external legal counsel.

The Recovery Plan also notes certain potential limitations of the Recovery Plan, including the risk of potential

legal uncertainty (such as a challenge by Clearing Members or other market participants to the use of Recovery Options, notwithstanding the protections available to ICEU under applicable law and the legal diligence conducted by the clearing house with respect to its Rules and policies and procedures). The Recovery Plan also identifies risks of reliance on third party market infrastructures, and notes that the risk of such infrastructure being unavailable is contemplated in stress scenarios. The Recovery Plan also notes ICEU's reliance on the continued support of Intercontinental Exchange, Inc., including as to technology, replenishment of capital resources and business continuity and disaster recovery.

#### Governance

The overall accountability for the Recovery Plan lies with the ICEU President. The Recovery Plan was prepared with the active involvement of the management of ICEU. The Recovery Plan is reviewed and approved by the ICEU Board. The Head of Regulation is responsible for facilitating the overall production and implementation of the Recovery Plan as well as its maintenance. The ICEU Board Audit Committee, Chief Risk Officer, Chief Operating Officer and Executive Risk Committee also have roles in the implementation of the Recovery Plan.

Second line functions are responsible for ensuring that the Recovery Plan remains up-to-date and reviewed in accordance with internal review and governance control arrangements. On an annual basis, the owner will revise the Recovery Plan and present the revised version to the ICEU Board. Material changes to the Recovery Plan must be reviewed by ICEU management and be subject to governance control. Minor changes can be incorporated as part of the routine review process.

As part of governance control, the Recovery Plan is subject to annual review by the ICEU Board Audit Committee. Recommendations and discussions by the ICEU Board Audit Committee are recorded and submitted to the Board in a timely manner. The scenarios and actions that support the Recovery Plan are subject to ICEU Board approval annually. Ad hoc reviews may be commissioned if the business materially changes, for example upon the introduction of a new service. Material changes to the Recovery Plan or the scenarios, including those brought about by market events, are subject to ICEU Board approval, following their review and discussion by the ICEU Board Audit Committee.

Deviations from the Recovery Plan must be reported to the ICEU Board. Elements of the Recovery Plan are tested as part of normal operations and risk management procedures.

#### (b) Statutory Basis

ICEU believes that the proposed amendments are 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. In addition, Rule 17Ad-22(e)(3)(ii)<sup>9</sup> requires that each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, 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 includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

The Recovery Plan is designed to meet the requirements of Rule 17Ad-22(e)(3)(ii), and is further consistent with the requirements of the Act. The Recovery Plan sets out ICEU's plan for recovering from severe loss events, including from credit losses resulting from Clearing Member default, liquidity shortfalls, losses from general business risk, and other types of losses. The Recovery Plan outlines different loss scenarios of these types that ICEU considers as part of its planning process. The Recovery Plan further builds on the provisions of the Rules, and other risk management frameworks, to set out the different Recovery Options that the clearing house has available to it to address loss scenarios, and restore or maintain normal clearing operations. The Recovery Plan outlines triggers for

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

<sup>7</sup> 17 CFR 240.17Ad-22.

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

<sup>9</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

the use of Recovery Tools, as well as the governance process around the use of Recovery Options. The Recovery Plan also provides greater transparency to market participants, including Clearing Members and their customers, about the expected sequence and scope of recovery actions that ICEU may take in a loss scenario. In ICEU's view, the Recovery Plan thus meets the requirements of Rule 17Ad-22(e)(3)(ii). Furthermore, ICEU views the Recovery Plan as a key aspect of its general risk management framework, which furthers its ability to maintain the prompt and accurate clearance and settlement of transactions, including in severe loss scenarios, and thereby promote the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.

ICEU further notes the requirement in Rule 17Ad-22(e)(15)<sup>10</sup> to hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by (i) determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken, and (ii) holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the recovery and wind-down plans established under Rule 17Ad-22(e)(3)(ii).

ICEU has determined that it holds equity capital at least sufficient to cover the costs of a recovery of its critical clearing services under the Recovery Plan, consistent with the requirements of Rule 17Ad-22(e)(15).<sup>11</sup>

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

ICEU does not believe the proposed Recovery Plan would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The Recovery Plan does not itself change the rights or obligations of the clearing house or Clearing Members, and reflects the Recovery Options set

out in existing Rules and risk management policies. The Recovery Plan has been designed to meet specific regulatory requirements concerning recovery planning, and is applicable to all clearing activities. ICEU does not believe the amendments will impact competition among Clearing Members or other market participants, or affect the ability of market participants to access clearing generally. While implementation of the Recovery Plan, and in particular use of the Recovery Plan in a severe loss scenario, would likely impose costs on Clearing Members or other market participants, such costs are consistent with the existing Rules, and are, in ICEU's view, appropriate in light of the goals of recovery and maintenance of critical clearing service in accordance with applicable regulations.

#### *(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, Security-Based Swap Submission and Advance Notice 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2017-016 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-ICEEU-2017-016. This file number should be included on the subject line if email 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 Section, 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 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-2017-016 and should be submitted on or before February 9, 2018].

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).

<sup>10</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>11</sup> 17 CFR 240.17Ad-22(e)(15).