

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69888; File No. SR-ICEEU-2013-09)

June 28, 2013

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 3 and Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2 and 3 Thereto, to Clear Contracts Traded on the LIFFE Administration and Management Market

I. Introduction

On May 13, 2013, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-ICEEU-2013-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder² to implement a clearing relationship in which ICE Clear Europe will clear contracts traded on the LIFFE Administration and Management (“LIFFE A&M”) market³ (“LIFFE Contracts”).⁴ On May 22, 2013, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.⁵ Notice of the proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the Federal Register on May 29, 2013.⁶ On June 4, 2013, ICE Clear Europe filed Amendment No. 2 to the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ LIFFE A&M is a recognized investment exchange under the UK Financial Services and Markets Act of 2000.

⁴ The LIFFE Contracts include interest rate and government bond futures and options, certain agricultural futures and options, and futures and options on underlying equity securities and equity indices.

⁵ In Amendment No. 1, ICE Clear Europe, among other things, clarified the scope of products proposed to be cleared, added new Rule 207(f) prohibiting its U.S. Clearing Members from clearing LIFFE Contracts that are futures or options on underlying U.S. securities, added additional clarification surrounding the operation of the combined F&O Guaranty Fund and the margining of LIFFE Contracts, and supplemented the statutory basis for the proposed rule change.

⁶ Exchange Act Release No. 69628 (May 23, 2013), 78 FR 32287 (May 29, 2013) (SR-ICEEU-2013-09).

change.⁷ Notice of Amendment No. 2 to the proposed rule change was published for comment in the Federal Register on June 12, 2013.⁸ On June 20, 2013, ICE Clear Europe filed Amendment No. 3 to the proposed rule change.⁹

The Commission did not receive comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment Nos. 1, 2 and 3.

II. Description of the Proposed Rule Change

A. Background

As announced on December 20, 2012, ICE Clear Europe has agreed to act as the clearing organization for futures and option contracts traded on LIFFE A&M, including contracts traded over-the-counter and processed through LIFFE A&M's BClear service.¹⁰ The LIFFE Contracts proposed to be cleared by ICE Clear Europe include instruments that constitute securities for the purposes of U.S. securities laws ("LIFFE Securities Products"), including U.S. securities, which

⁷ In Amendment No. 2, ICE Clear Europe elaborated on certain aspects of the proposed clearing activities as they relate to LIFFE Contracts that are securities products and made a partial amendment to certain rules and procedures that would clarify the considerations under which certain margin and risk management requirements would be established and modified from time to time.

⁸ Exchange Act Release No. 69703 (Jun. 5, 2013), 78 FR 35335 (Jun. 12, 2013) (SR-ICEEU-2013-09).

⁹ In Amendment No. 3, ICE Clear Europe modified proposed Rule 207(f) to further define the persons that are subject to the restriction from clearing U.S. securities to include any Clearing Member having a U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act) and (ii) a foreign branch of a U.S. bank or U.S. registered broker-dealer. The amendment is technical in nature and meant to clarify the scope of Rule 207(f) so that it is consistent with prior Commission actions. See infra n. 11 and accompanying text. Amendment No. 3 therefore did not require an additional comment period. The initial rule filing and all subsequent amendments filed are collectively referred to hereinafter as the "Proposal."

¹⁰ BClear is a service operated by LIFFE A&M, which enables LIFFE A&M Clearing Members to report certain bilaterally agreed off-exchange trades to LIFFE A&M. After ICE Clear Europe launches its clearing business for LIFFE A&M, trades would be eligible for clearing by ICE Clear Europe upon being reported.

for purposes of the Proposal, include futures or options on underlying U.S. equities and equity indices. The purpose of the Proposal is to implement this clearing relationship.

In the Proposal, ICE Clear Europe submitted revised Parts 1, 2, 4, 5, 7, 8, 11, and 12 and new Part 18 of the ICE Clear Europe Clearing Rules (“Rules”) (along with other clarifying and conforming Rule amendments) and revisions to its Finance Procedures, Clearing Procedures, Delivery Procedures and Membership Procedures. The other proposed changes in the Rules and procedures reflect conforming changes to definitions and related provisions and other drafting clarifications, and do not affect the substance of the Rules and procedures.

B. ICE Clear Europe Clearing Rules

The Proposal revises Part 1 of the Rules, in which Rule 101, which provides definitions for certain terms, is modified to add new defined terms and revise existing definitions. Included in the changes to Rule 101 are the designation of LIFFE A&M as a Market for which ICE Clear Europe provides clearing services, the addition of defined terms and other revisions to cover LIFFE Contracts and the creation of a new category “F&O Contracts” that will include Energy Contracts and LIFFE Contracts (and related definitions). The Energy Guaranty Fund will be re-designated as the F&O Guaranty Fund, which fund will be sub-divided with respect to Energy Contracts and LIFFE Contracts.

Part 2 of the Rules has been revised to address requirements for LIFFE Clearing Members and other conforming changes. New Rule 207(f), as modified by Amendment No. 3 of the Proposal, would be adopted to provide that Clearing Members that are U.S. persons will not be permitted to clear LIFFE Contracts that are futures or options on underlying U.S. securities (other than futures contracts on broad-based security indices). Specifically, Rule 207(f) defines the persons that are subject to this restriction to include any (i) FCM/BD Clearing Members; (ii)

other Clearing Members that are organized in the United States of America; and (iii) other Clearing Members having a U.S. residence, based upon the location of their executive office or principal place of business, including, without limitation, (a) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act) and (b) a foreign branch of a U.S. bank or U.S. registered broker-dealer. As modified by Amendment No. 3, the proposed rule would restrict the clearing of U.S. securities by U.S. participants consistent with prior Commission actions.¹¹ In furtherance of this restriction, ICE Clear Europe, together with LIFFE A&M, will implement operational controls to restrict the activities of U.S. Clearing Members. Specifically, the clearing system to be used for the LIFFE Securities Products will have market access controls that prevent U.S. Clearing Members from creating or holding cleared positions in LIFFE Securities Products involving underlying U.S. securities. This is intended to prevent U.S. Clearing Members from engaging in any clearing-related activity (including give-ups or take-ups) in respect of those products. Furthermore, when a new U.S. clearing member is approved for clearing, LIFFE A&M and ICE Clear Europe will take the necessary steps in their respective systems to implement these access controls prior to granting the new member access to the clearing system.

Part 3 of the Rules contain certain conforming changes.

Changes to Part 4 of the Rules address the submission of LIFFE Contracts for clearing and related matters. A new Rule 410 has been added to set out a framework for Link Agreements, which are generally defined as agreements entered into between ICE Clear Europe

¹¹ See, e.g., Morgan Guaranty Trust Company of New York, Brussels Office, as Operator of the Euroclear System, Order Approving Application for Exemption From Registration as a Clearing Agency, Exchange Act Release No. 39643 (Feb. 11, 1998), 63 FR 8232 (Feb. 18, 1998) (“Euroclear Order”) at n. 62 (defining “U.S. participant” in the context of granting an exemption from registration as a clearing agency under Section 17A in connection with performing the functions of a clearing agency for transactions involving U.S. government and agency securities for U.S. participants).

and another exchange for which ICE Clear Europe does not otherwise provide clearing services that provides for the transfer of contracts to or from that exchange (or its clearing house) to ICE Clear Europe. LIFFE A&M currently has link arrangements with Tokyo Financial Exchange Inc. and Tokyo Stock Exchange Inc., which exchanges would constitute “Participating Exchanges” pursuant to the new Rules.

The Proposal revises Part 5 of the Rules, which addresses margin requirements. Existing Rule 502(d) addresses a number of margin requirements, including the assets eligible to be provided as Margin or Permitted Cover, and existing Rule 502(e) addresses haircuts that the clearing house may apply to such assets. Under the existing Rules, changes to such requirements may be determined by the clearing house from time to time and notified by Circular (which will also be posted on the clearing house’s website). ICE Clear Europe proposes to add a new Rule 502(k) to provide that for F&O Contracts, changes to the matters set forth in Rules 502(d) and (e), including assets eligible as Margin or Permitted Cover and the haircuts established with respect to such assets, will be based on an analysis of appropriate factors as determined by the clearing house. These factors will include, without limitation, historical and implied price volatility of those assets, current and anticipated conditions in the market for those assets, spreads and correlations between assets, liquidity in the trading market for those assets, composition of the relevant market, default risk (including sovereign risk) with respect to those assets, relevant foreign exchange market conditions and other relevant information as determined by ICE Clear Europe. Consistent with its existing policies and procedures, ICE Clear Europe regularly reviews its current eligible Margin and Permitted Cover assets and related haircuts and makes any necessary adjustments.

Part 6 of the Rules contain no changes.

The Proposal revises Part 7 of the Rules, which deals with settlement and delivery of futures, to address settlement of LIFFE Contracts. Specifically, Rule 703 has been amended to address the treatment of tenders delivered in relation to Futures that are not settled in cash. Additionally, Rule 704, which deals with the credit and debit of accounts, has been amended to provide that any payment or other allowance payable by or to either the Buyer or Seller under the terms of the Contract shall be paid by or to the Clearing House for onward payment to the Buyer or Seller, as the case may be.

The Proposal revises Part 8 of the Rules, which deals with Options, to provide additional terms with respect to the exercise of option contracts other than options on futures. Specifically, new Rule 806 provides that upon exercise of any Option with a Deliverable which is not a Future, a Contract for the sale and purchase of the relevant Deliverable (a “Contract of Sale”) at the Strike Price (or such other price as is required pursuant to the Contract Terms) will arise pursuant to Rule 401 and in accordance with the Contract Terms for the Option and applicable Market Rules. Additionally, new Rule 806 provides that upon such Contract of Sale or Contracts of Sale having arisen and all necessary payments having been made by the Clearing Member and Clearing House pursuant to the Clearing Procedures, the rights, obligations and liabilities of the Clearing House and the relevant Clearing Member in respect of the Option shall be satisfied and the Option shall be terminated.

The Proposal revises Part 8 of the Rules to include the addition of new Rule 809, which clarifies the delivery and settlement procedures with respect to Contracts of Sale arising from Options. Pursuant to new Rule 809, the Clearing House has the authority to direct a Clearing Member, who is a Seller under a Contract of Sale subject to delivery, to deliver the Deliverable under such Contract to another Clearing Member that is a Buyer. New Rule 809 further provides

that if a Buyer under a Contract of Sale rejects a Deliverable delivered to it, the Clearing House as Buyer under the back-to-back Contract with the Seller shall be entitled, if to do so would be in accordance with the applicable Contract Terms, to take the same action as against the Seller under the equivalent Contract and the Clearing House shall not be deemed to have accepted such delivery until the relevant Buyer has accepted delivery under the first Contract.

New Rule 810 addresses the cash settlement terms of Options with Deliverables other than Futures. New Rule 811 provides that the Clearing House shall make any necessary credits or debits to or from Clearing Members' Proprietary Margin Account and Customer Margin Accounts, as appropriate, arising as a result of each cash settlement and delivery in accordance with Part 3 of the Rules.

Part 9 of the Rules contain certain conforming changes.

Part 10 of the Rules contain no changes.

The Proposal revises Part 11 of the Rules, which deals with the Guaranty Funds. The clearing of LIFFE Contracts will be supported by the existing Energy Guaranty Fund, which will be re-designated the "F&O Guaranty Fund." Contributions to the F&O Guaranty Fund will be primarily allocated to losses from either Energy Contracts or LIFFE Contracts, and secondarily allocated to the other such class of Contracts, as set forth in Rule 1103. The size of each segment will be determined separately based on ICE Clear Europe's risk assessment of the Energy Contracts and LIFFE Contracts, respectively, and each segment will be separately stress-tested in accordance with the clearing house's risk management policies and procedures. In the event of a default of a clearing member for which ICE Clear Europe needs to apply the F&O Guaranty Fund in accordance with the risk waterfall under the Rules, the energy segment will be applied first to losses resulting from Energy Contracts, and the LIFFE segment will be applied

first to losses resulting from cleared LIFFE Contracts. Once a segment has been exhausted by losses in its product category, remaining assets from the other segment may be applied to those losses.

The Proposal also revises Part 12 of the Rules, which addresses UK Settlement Finality Regulations and the Companies Act 1989. Conforming changes have been made to incorporate LIFFE Contracts in the provisions addressing various categories of transfer orders.

The Proposal includes a new Part 18 of the Rules, which provide for transitional provisions concerning the novation of open contracts with LIFFE A&M and LCH.Clearnet Limited, under LIFFE A&M's existing clearing arrangements, to ICE Clear Europe, under the new clearing relationship, and the transfer of Clearing Member cash and securities from LCH.Clearnet Limited to ICE Clear Europe.

C. ICE Clear Europe Procedures

Membership Procedures

The Proposal updates ICE Clear Europe's Membership Procedures to provide for the clearing of LIFFE Contracts and to reflect a new membership category, "F&O Clearing Members", which identify Clearing Members seeking to clear LIFFE Contracts as well as existing Energy Clearing Members. The amendments reflect various other updates and changes to conform to other provisions of the Rules and procedures. In Section 4 ("Matters Requiring Notification by Clearing Members"), the chart governing all notifications, their timing and their form requirements have been generally updated to address the changes to the numbering of provisions and otherwise to reflect the latest version of ICE Clear Europe's Clearing Rules. New subsections G ("Clearing Procedures"), H ("Finance Procedures"), I ("Complaint Resolution

Procedures”) and J (“Business Continuity Procedures”) have also been added, reflecting the notifications, timing and form requirements contained in such procedures.

Finance Procedures

The Proposal also contains revisions to Parts 2, 3, 4, 5, 6, 9 and 13 of ICE Clear Europe’s Finance Procedures, which reflect general updates as well as changes to the clearing of LIFFE Contracts.

Section 2.1 has been revised to clarify the currencies supported by ICE Clear Europe in various contexts. Initial and Original Margin obligations may be met only in USD, GBP and EUR currency. CAD, CHF and SEK currency may be used by Clearing Members only for the receipt of income on non-cash Permitted Cover with coupons payable in those currencies. CAD may also be used for Variation Margin and settlement payments only for Energy Contracts which settle in CAD. Certain additional currencies may be used for Variation Margin and settlement payments for LIFFE Contracts which settle in such currencies.

Similarly, Section 3.7 has been amended to clarify that currencies eligible for Triparty Collateral for Original or Initial Margin are limited to USD, GBP and EUR.

Section 4.1 governing currency requirements for the accounts of the Clearing Members has been slightly modified: all F&O Clearing Members must have an account, denominated in USD; all CDS Clearing Members must have an account denominated in EUR; all F&O Clearing Members must additionally have at least one further account denominated in either GBP or EUR; all CDS Clearing Members must additionally have at least one further account denominated in either GBP or USD; a Clearing Member which has an Open Contract Position in a contract for which EUR, GBP, USD or CAD is the settlement currency must have an account denominated in such currency; a Clearing Member which transfers non-cash Permitted Cover to the Clearing

House which pays a coupon, interest or redemptions in USD, EUR, GBP, CAD, CHF or SEK must have an account in that currency; and an F&O Clearing Member that is a LIFFE Clearing Member and is party to LIFFE Contracts which settle in CAD, CHF, CZK, DKK, HUF, JPY, NOK, PLN, SEK or TRY must have an account in each such currency.

The procedures of the assured payment system have been updated under Section 5.5 of the Finance Procedures to conform to changes recently made to Rule 301(f) regarding the liability of Clearing Members for the remittance of funds through Approved Financial Institutions.

Section 6.1(h), which addresses the various payments that may be included in a cash transfer, has been modified to address intra-day call of additional Initial or Original Margin Call, the proceeds of which may be applied against future Variation Margin or Mark-to-Market Margin calls. Intra-day Calls will now only be processed in USD, GBP or EUR. Section 6.1(h)(vi) has been revised to address general procedures for rebates, fee discounts and incentive programs that the Clearing House may adopt from time to time. In addition, the provisions on Currency Holidays and payments on other currencies, Section 6.1(h)(viii), have also been updated and now include language on Force Majeure Events and Financial Emergencies.

In Section 9, the definitions relating to the use of Emission Allowances and Permitted Cover have been updated to reflect changes in EU Law with respect to Registry Regulations. Certain conforming changes are made in Part 10 of the Finance Procedures. Finally, Section 12.1 has been revised to reflect the sub-categories of Letters of Credit that might be used to satisfy Original Margin, being a “Standard Letter of Credit” and a “Pass-Through Letter of Credit”. The relevant forms of the Letters of Credit have also been updated in Section 12.4.

Section 13.6 of the Finance Procedures addresses the determination and change of original margin rates from time to time. Margin requirements for LIFFE Contracts will be calculated using the SPAN®1 v4 algorithm,¹² with modifications for concentration charges and a trinomial model used with respect to certain LIFFE A&M option transactions. ICE Clear Europe will determine the margin parameters used in the SPAN algorithm for LIFFE Contracts cleared by ICE Clear Europe, and make appropriate modifications to those parameters from time to time, within the framework of the margin requirement policy approved by the ICEEU F&O Risk Committee. As set forth in existing Section 13.6, ICE Clear Europe regularly reviews its margin rates in light of market conditions and makes appropriate modifications. ICE Clear Europe proposes to amend Section 13.6 to provide that changes to original margin rates for F&O Contracts will be based on an analysis of appropriate factors as determined by the clearing house. These include market prices, historical and implied volatilities of relevant contracts, spreads and correlations between related commodities, other current and anticipated conditions (including liquidity) in the market for the contracts and other relevant information as determined by ICE Clear Europe. ICE Clear Europe believes that Section 13.6 provides it the flexibility to adjust the calculation of margin rates in order to react to changes in market conditions, particularly changes in volatility. These changes may occur suddenly, and failure to update margin rates to take into account such changes may lead to insufficient margin being collected by the clearing house. The proposed revisions to Section 13.7 of the Finance Procedures are substantially the same as the amendments to Rule 502(k), and are being made for the reasons discussed above in connection with that rule change.

¹² SPAN is a registered trademark of Chicago Mercantile Exchange Inc. and used by ICE Clear Europe under license. SPAN is a risk evaluation and margin framework algorithm.

Clearing Procedures

The Proposal also updates ICE Clear Europe's Clearing Procedures to provide for the clearing of LIFFE Contracts as well as certain other updates and confirmations. Accordingly, amendments have been made to the provisions relating to ICE Clear Europe's post-trade administration, clearing and settlement systems, position management and position accounts in Sections 1, 2 and 3, respectively.

Delivery Procedures

The Proposal revises ICE Clear Europe's Delivery Procedures to provide for the delivery of LIFFE Contracts. The following provisions have been added to the Delivery Procedures, which set out the new delivery arrangements:

- Section 8 (“Alternative Delivery Procedure: LIFFE White Sugar and Raw Sugar”);
- Section 17 (“LIFFE Guardian”), which describes the LIFFE Guardian electronic grading and delivery system which will be used in certain LIFFE deliveries; and
- Parts I – Q, which set out the delivery arrangements for the additional LIFFE Contracts as follows:
 - Part I: “LIFFE Cocoa Contracts”
 - Part J: “LIFFE Coffee contracts”
 - Part K: “LIFFE White Sugar Contracts”
 - Part L “LIFFE Wheat Contracts”
 - Part M: “LIFFE Deliveries”
 - Part N: “LIFFE Common Delivery Procedures”
 - Part O: “LIFFE Gilt Contracts”
 - Part P: “LIFFE Japanese Government Bond Contracts”

- Part Q: “LIFFE Equity Futures/Options”.

Further, the Schedule of Forms and Reports has been updated and lists additional delivery forms used for the LIFFE Contracts.

Part A of the Delivery Procedures relating to emissions contracts has also been amended, reflecting changes to EU legislation, certain new emission contracts previously launched by ICE Futures Europe and the use of a single EU registry together with additional conforming and updating changes to the Delivery Procedures generally.

ICE Clear Europe believes that the proposed rule and procedure changes are consistent with the requirements of Section 17A of the Act¹³ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.¹⁴ The amendments will provide for clearing of LIFFE Contracts by ICE Clear Europe, consistent with ICE Clear Europe’s existing clearing arrangements and related financial safeguards, protections and risk management procedures, as discussed herein. ICE Clear Europe believes acceptance of LIFFE Contracts for clearing, and conditions set out in these rule and procedure amendments, will promote the prompt and accurate clearance of and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.¹⁵ The proposed amendments do not impact ICE Clear Europe’s financial resources devoted to its security-based swap related (i.e., credit default swap) clearing business. ICE Clear Europe believes the clearing of LIFFE Contracts will satisfy relevant requirements of Rule 17Ad-22,¹⁶ as discussed below.

¹³ 15 U.S.C. 78q-1.

¹⁴ 17 CFR 240.17Ad-22.

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22.

Financial Resources. As discussed above, ICE Clear Europe believes it has structured the F&O Guaranty Fund to provide sufficient additional financial resources to support the clearing of LIFFE Contracts consistent with the requirements of Rule 17Ad-22.¹⁷ The proposed amendments do not impact ICE Clear Europe's financial resources devoted to its security-based swap related (i.e., credit default swap) clearing business. Moreover, new policies were approved covering margin requirements, mark-to-market margin, capital to margin, membership, internal rating, backtesting, wrong-way risk, concentration charges, intraday margin and stress testing in respect of the LIFFE A&M clearing relationship. Relevant models applicable to the clearing of LIFFE Contracts were subjected to independent validation as required by ICE Clear Europe's model governance framework.

Operational Resources. ICE Clear Europe believes it will have the operational and managerial capacity to clear the LIFFE Contracts as of the commencement of clearing, consistent with the requirements of Rule 17Ad-22(d)(4).¹⁸ Staffing levels and resources at ICE Clear Europe related to operational and technology needs for the clearing of LIFFE Contracts will be subject to ongoing review. ICE Clear Europe believes that its existing systems are appropriately scalable to handle the expected increase in volume. ICE Clear Europe may also enter into services arrangements with LIFFE A&M from time to time in connection with the clearing of LIFFE Contracts, under which LIFFE A&M or its personnel may assist with certain clearing functions, particularly with respect to contracts that go to delivery.

Participant Requirements. ICE Clear Europe believes that the Proposal and the clearing of LIFFE Contracts are consistent with the requirements of Rule 17Ad-22(d)(2)¹⁹ to provide fair

¹⁷ Id.

¹⁸ 17 CFR 240.17Ad-22(d)(4).

¹⁹ 17 CFR 240.17Ad-22(d)(2).

and open access through participation requirements that are objective and publicly disclosed. ICE Clear Europe believes that the Proposal establishes fair and objective criteria for the eligibility to clear LIFFE Contracts. ICE Clear Europe clearing membership is available to participants that meet such criteria. ICE Clear Europe Clearing Members that wish to clear LIFFE Contracts will have to satisfy the financial resources requirements to clear these products and continue to do so in order to preserve their eligibility to clear LIFFE Contracts. Clearing Member compliance with the requirements to clear LIFFE Contracts will be monitored by ICE Clear Europe.

Settlement. ICE Clear Europe believes that the Proposal will improve the finality and accuracy of its daily settlement process and reduce the risk to ICE Clear Europe of settlement failures, consistent with the requirements of Rule 17Ad-22(d)(5), (12) and (15).²⁰ The Proposal would require ICE Clear Europe Clearing Members that clear LIFFE Contracts to maintain accounts at approved financial institutions and that are denominated in the settlement currency of the LIFFE Contracts such Clearing Member clears. Also, the proposed amendments to the Finance Procedures clarify the steps a Clearing Member (and its approved financial institutions) must take in order for the Clearing Member's obligations to pay ICE Clear Europe to be deemed satisfied and complete.

Likewise, the proposed amendments to the Delivery Procedures clarify the obligations of ICE Clear Europe and its Clearing Members in respect of physically-settled LIFFE Contracts. The Proposal contemplates that ICE Clear Europe may, from time to time, enter into clearing services arrangements with LIFFE A&M, in respect of LIFFE Contracts, pursuant to which certain functions may be performed by LIFFE A&M for ICE Clear Europe. In general, the terms

²⁰ 17 CFR 240.17Ad-22(d)(5), (12) and (15).

to be added to the ICE Clear Europe Delivery Procedures in large part reflect the terms currently applicable to the LIFFE Contracts under their existing clearing arrangements.

ICE Clear Europe believes these changes are thus in furtherance of, and are consistent with, the requirements of Rule 17Ad-22²¹ and will facilitate the continued operation of the clearing house's settlement process. ICE Clear Europe believes that its Rules and procedures related to settlements (including physical settlements), as amended, appropriately identify and manage the risks associated with settlements under LIFFE Contracts.

Default Procedures. ICE Clear Europe believes that the Rules and its relevant procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of Clearing Member insolvencies or defaults, including in respect of LIFFE Contracts, in accordance with Rule 17Ad-22(d)(11).²²

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act²³ 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. Section 17A(b)(1) of the Act²⁴ prohibits any clearing agency from directly or indirectly making use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security), unless it is registered with the Commission. Section 17A(b)(3)(F) of the Act²⁵

²¹ 17 CFR 240.17Ad-22.

²² 17 CFR 240.17Ad-22(d)(11).

²³ 15 U.S.C. 78s(b)(2)(C).

²⁴ 15 U.S.C. 78q-1(b)(1).

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

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 which are in the custody or control of the clearing agency or for which it is responsible.

After careful review, the Commission finds that the Proposal, in conjunction with exemptive relief granted by the Commission to ICE Clear Europe (the “Exemptive Order”),²⁶ is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, the Commission finds that the Proposal, in conjunction with the Exemptive Order, is consistent with the requirement of Section 17A(b)(1) of the Act²⁷ regarding clearing agency registration. Section 17A(b)(1) of the Exchange Act requires a clearing agency that makes use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security) to register with the Commission, unless an exemption is granted by the Commission. The Commission has required a foreign clearing agency to register or obtain an exemption from clearing agency registration if the foreign clearing agency provides clearance and settlement services for U.S. securities directly to U.S. persons.²⁸

²⁶ Order Pursuant to Section 17A of the Securities Exchange Act of 1934 Granting Exemption from the Clearing Agency Registration Requirement under Section 17A(b) of the Exchange Act for ICE Clear Europe Limited in Connection With its Proposal to Clear Contracts Traded on the LIFFE Administration and Management Market, Exchange Act Release No. 34-69872 (Jun. 27, 2013), 78 FR _____ (July __, 2013).

²⁷ 15 U.S.C. 78q-1(b)(1).

²⁸ See, e.g., Order Approving Application for Exemption from Registration as a Clearing Agency, Exchange Act Release No. 38328 (Feb. 24, 1997), 62 FR 9225 (Feb. 28, 1997) (granting an exemption from registration as a clearing agency under Section 17A in connection with performing the functions of a clearing agency with respect to transactions involving U.S. government and agency securities for U.S. entities);

ICE Clear Europe is a foreign clearing agency registered in the U.S. solely for the purpose of clearing SBS. In light of the Commission's precedents pertaining to registration requirements for foreign clearing agencies, ICE Clear Europe has proposed to amend its Rules to include new ICE Clear Europe Rule 207(f), which would prohibit Clearing Members that are U.S. participants²⁹ from clearing U.S. securities. In addition, ICE Clear Europe has developed policies and procedures to enforce proposed Rule 207(f), including market access controls that prevent U.S. participants from creating or holding cleared positions in U.S. securities and, consequently, from engaging in any clearing-related activity (including give-ups or take-ups in respect of those products). In addition, when a new U.S. participant is approved for clearing, LIFFE A&M and ICE Clear Europe will be jointly responsible to ensure that these access limitations are properly in place.

Notwithstanding new ICE Clear Europe Rule 207(f) and its attendant policies and procedures and operational controls, the Commission believes that the proposed clearing of the LIFFE Securities Products would exceed the scope of activities permitted by ICE Clear Europe's

Euroclear Order, supra n. 11; and Order Approving Application to Modify an Existing Exemption from Clearing Agency Registration, Exchange Act Release No. 43775 (Dec. 28, 2000), 66 FR 819 (Jan. 4, 2001) (replacing MGT-Brussels with Euroclear Bank as operator of the Euroclear System).

²⁹ The term "U.S. participant" was previously defined for the limited purposes of a clearing agency exemptive order as a person having a U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act), (ii) a foreign branch of a U.S. bank or U.S. registered broker-dealer, and (iii) any broker-dealer registered as such with the Commission even if such broker-dealer does not have a U.S. residence. See Euroclear Order, supra n. 11, at n. 62. Consistent with this definition of U.S. participant, ICE Clear Europe's Proposal contains rule changes that would prohibit a person (i) that is a FCM/BD, (ii) organized in the United States of America, or (iii) having a U.S. residence, based on the location of its executive office or principal place of business, including, without limitation, a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act) or a foreign branch of a U.S. bank or U.S. registered broker-dealer, from participating in clearing U.S. securities.

registration solely to clear SBS under Section 17A(l) of the Exchange Act. Thus, ICE Clear Europe must register or seek an exemption from registration as a clearing agency under Section 17A(b) of the Exchange Act in order to provide clearing services for the LIFFE Securities Products. Accordingly, ICE Clear Europe has submitted, and the Commission has granted, ICE Clear Europe's application for exemptive relief from clearing agency registration under Section 17A(b) of the Exchange Act and Rule 17Ab2-1 thereunder solely with respect to ICE Clear Europe's provision of clearance and settlement services for LIFFE Securities Products.³⁰ Given the Exemptive Order,³¹ the Commission finds that the Proposal is consistent with the requirement of Section 17A(b)(1) of the Act³² regarding clearing agency registration.

In addition, the Commission finds that the Proposal is consistent with the requirement of the Exchange Act with respect to promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. The Proposal contains provisions designed to permit and facilitate LIFFE Contracts to be transitioned to and cleared on an ongoing basis by ICE Clear Europe, including changes to ICE Clear Europe's Rules, as well as its Finance Procedures, Clearing Procedures, Delivery Procedures, and Membership Procedures.

In addition, the Commission finds that the Proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act³³ regarding the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. Among other

³⁰ ICE Clear Europe's Form CA-1 incorporates a letter from Paul Swann, President, ICE Clear Europe, to Elizabeth Murphy, Secretary, SEC, dated June 11, 2013, requesting exemptive relief from clearing agency registration in connection with the clearing of LIFFE Securities Products.

³¹ Supra n. 26.

³² 15 U.S.C. 78q-1(b)(1).

³³ 15 U.S.C. 78q-1(b)(3)(F).

things, the Proposal revises margin requirements, establishes the F&O Guaranty Fund to accommodate the clearing of both LIFFE contracts and ICE Clear Europe's existing Energy Contracts, and revises ICE Clear Europe's risk management framework with respect to LIFFE contracts. The Proposal includes new policies covering margin requirements, mark-to-market margin, capital to margin, membership, internal rating, backtesting, wrong-way risk, concentration charges, intraday margin and stress testing in respect of the LIFFE A&M clearing relationship. Relevant models applicable to the clearing of LIFFE Contracts were subjected to independent validation as required by ICE Clear Europe's model governance framework.

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 Act³⁴ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁵ that the proposed rule change (File No. SR-ICEEU-2013-09) be, and hereby is, approved.³⁶

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Kevin M. O'Neill
Deputy Secretary

³⁴ 15 U.S.C. 78q-1.

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁷ 17 CFR 200.30-3(a)(12).