

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66538; File No. SR-ICEEU-2012-03)

March 8, 2012

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Revise Rules Related to Certain Operational Changes Relating to Timing, Effectiveness and Operation of Transfer Orders for Purposes of Compliance With Non-U.S. Legislation

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 March 6, 2012, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

ICE Clear Europe is in regular communication with representatives of its Clearing Members, as that term is defined in the Rules of ICE Clear Europe<sup>3</sup> (“Rules”) in relation to the operation of clearing processes and arrangements. From time-to-time, ICE Clear Europe must amend its Rules with reference to its home country and home region regulation. These changes follow recent amendments and changes to home country and home region regulation. Following consultation with its applicable home country regulators ICE Clear Europe has published these

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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> See ICE Clear Europe Rule 101. The Rules are available on-line at: <https://www.theice.com/Rulebook.shtml?clearEuropeRulebook>. All capitalized terms not defined herein are defined in the Rules.

proposed rule changes, has carried out a public consultation process in respect of all of the changes described below, and has presented and agreed to the changes described below with its Clearing Members. These changes seek to clarify the timing and operation of various clearing processes, for existing clearing activities. Specifically, ICE Clear Europe is making changes to Part 12 of its Rules, which set out how certain transfer, clearing and settlement orders are treated for purposes of non-U.S. insolvency legislation, namely the U.K. Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the “U.K. Settlement Finality Rules”) and the EU Settlement Finality Directive (Directive 98/26/EC) (together with the U.K. Settlement Finality Rules, the “Settlement Finality Legislation”). These proposed changes reflect changes to ICE Clear Europe's clearing and payment systems that have been proposed following designation by U.K. authorities as a “designated system” for purposes of such legislation; the proposed changes follow various meetings and discussions with the relevant U.K. authorities. These changes were published in ICE Clear Europe circular no. C11/169 on November 25, 2011, available at: [https://www.theice.com/publicdocs/clear\\_europe/circulars/C11169\\_att1.pdf](https://www.theice.com/publicdocs/clear_europe/circulars/C11169_att1.pdf).

II. Self-Regulatory Organization'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 these statements.<sup>4</sup>

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<sup>4</sup> The Commission has modified the text of the summaries prepared by ICE Clear Europe.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of the proposed rule change is for applicable provisions of the Rules to be updated to reflect technical details relating to the treatment of certain transfer, clearing and settlement orders for purposes of the Settlement Finality Legislation.

The Rule changes affect Part 12 of the ICE Clear Europe Rules. In general, the rule changes create specific rules regarding: the creation of various Transfer Orders, which include certain Clearing Orders, and Settlement Orders (each as defined for purposes of the Rules); the times at which such orders become irrevocable; the manner by which non-irrevocable Transfer Orders may be varied; and the manner by which Transfer Orders may be satisfied. Finally, certain definitions found in Part 12 of the Rules are amended to account for the Settlement Finality Legislation, and to correspond to other changes to Part 12. Each of these changes is described in detail as follows.

Part 12 of the ICE Clear Europe Rules sets forth Rules that are designed to comply with the Settlement Finality Legislation. In order to update those rules to comply with the Settlement Finality Legislation, Rule 1202 is modified to change the manner by which immediate and automatic entry of various Payment Transfer Orders occurs.

In this regard, various changes are made to Rule 1202.

Rule 1202(a)(i) gives rise to a Payment Transfer Order at any time that a Contract is formed by virtue of the operation of ICE Clear Europe Rule 401. Under the rule changes, such Open Offer Payment Transfer Orders are renamed "New Contract Payment Transfer Orders". Rule 1202(a)(i) is also modified to exclude energy contracts arising under Rule 401(a)(vii), and any CDS Contract arising pursuant to Rule 401(a)(x) pursuant to a Bilateral CDS Transaction

submitted for Weekly Clearing.

Rule 1202(a)(ii) gives rise to a Payment Transfer Order upon the Clearing House sending an instruction pursuant to Rule 302. Such Payment Transfer Orders are renamed “Debit Payment Transfer Orders.”

Rule 1202(a)(iii) gives rise to a Payment Transfer Order if and when the Clearing House sends an instruction by means of an electronic, telephone or other message means to an Approved Financial Institution to transfer a sum of money from a Clearing House Account to an account of the Clearing House at the Concentration Bank. Under The rule changes, such Payment Transfer Orders are renamed “AFI-CB Payment Transfer Orders.”

Rule 1202(a)(iv) creates a Payment Transfer Order where the Clearing House sends an instruction by means of an electronic, telephone or other message means to a Concentration Bank to transfer a sum of money from an account of the Clearing House at the Concentration Bank to a Clearing House Account. Under the rule changes, such Payment Transfer Orders are renamed “CB-AFI Payment Transfer Orders.”

Rule 1202(a)(v) gives rise to a Payment Transfer Order in the event that the Clearing House receives a notification pursuant to Rule 1205(b). This form of Payment Transfer Order is called an “Insufficient Funds Payment Transfer Order.” Under the rule changes, Rule 1202(a)(v) is deleted, as are other references to Insufficient Funds Payment Transfer Orders that exist elsewhere in Part 12.

Rule 1202(e) sets forth the scope of Payment Transfer Orders. Under (i) in that Rule, in the case of an Open Offer Payment Transfer Order, the Payment Transfer Order applies and has effect in the amount due to or from the Clearing House pursuant to the Contract Terms as a result of the Contract to which the confirmation referred to in Rule 1202(a)(i) relates arising. For any

CDS Contract arising as a result of Trade Date Clearing, this will be the Initial Payment. In the case of a Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order or CB-AFI Payment Transfer Order, the Payment Transfer Order applies and has effect in the amount specified in the relevant instruction referred to in Rule 1202(a). This Rule is amended to specify the change in name from “Open Offer Payment Transfer Order” to “New Contract Payment Transfer Order.” No substantive change is made to Rule 1202(e).

Rule 1202(b) sets forth the circumstances under which a Securities Transfer Order arises. Under Rule 1202(b)(i), a Position Transfer Order, which is a form of Securities Transfer Order, arises only if both of the Clearing Members are Participants. Under the rule changes, Rule 1202(b)(i)(A) is modified such that the Securities Transfer Order arises if the Clearing House, the relevant Market, and the two Clearing Members involved have already agreed to a transfer, assignment or novation of Contracts from one Clearing Member to another pursuant to Rule 408(a)(i). Rule 1202(b)(i)(a) is modified to include parenthetical text that both Clearing Members must be Participants for purposes of this Rule 1202(b)(i). This change is not substantive. Rule 1202(b)(i)(B) permits a Securities Transfer Order to arise if the Clearing House has declared an Event of Default under Rule 901 and any Contracts to which a Defaulter is party are proposed to be transferred from the Defaulter to another Clearing Member pursuant to the Clearing House's powers under Rule 902, Rule 903 or otherwise. Rule 1202(b)(i)(B) is modified to specify that the Clearing Member to whom the Defaulter's position is being transferred must be a Participant for purposes of the creation of a Securities Transfer Order. The scope of Position Transfer Orders under Rule 1202(f) is unchanged: each Position Transfer Order applies and has effect in respect of the Contracts to be transferred, assigned or novated.

Additional means of creating Securities Transfer Orders are added at Rules 1202(b)(ii)

through (b)(vi). These Securities Transfer Orders are new to Part 12 of the Rules.

Under Rule 1202(b)(ii) a “Collateral Transfer Order” arises if and when the Clearing House accepts, through the ICE Systems, that a Clearing Member has validly requested either the transfer of Non-Cash Collateral to the order of the Clearing House, or a transfer to that Clearing Member or to its order of Non-Cash Collateral. Under Rule 1202(g), a Collateral Transfer Order applies and has effect in respect of the Non-Cash Collateral to be transferred to or to the order of the Clearing House or Clearing Member.

Under Rule 1202(b)(iii), a Securities Transfer Order arises when the Clearing House has received full, complete and correct information in relation to an ICE OTC Block Transaction or ICE Futures Europe Block Transaction from the relevant Market. Such Securities Transfer Orders are designated “Energy Block Clearing Orders.” In accordance with Rule 1202(h) Energy Block Clearing Orders apply and have effect in respect of the ICE OTC Transaction or ICE Futures Europe Transaction in question and any resulting Energy Contract.

A Securities Transfer Order arises under Rule 1202(b)(iv) in respect of a Bilateral CDS Transaction submitted for Weekly Clearing if the Clearing House provides a report of such transaction to a Clearing Member after it has checked whether a Bilateral CDS Transaction submitted for Clearing is consistent with the records submitted by another Clearing Member and with the records in Deriv/SERV. Such a Securities Transfer Order is designated a “Weekly CDS Clearing Order.”

Under Rule 1202(b)(v), a Securities Transfer Order arises in respect of a Bilateral CDS Transaction that is submitted for Trade Date Clearing if the Clearing House issues an acceptance notice in accordance with Rule 401(a)(ix) to a Clearing Member through the ICE System. Such a Securities Transfer Order is designated a “Trade Date CDS Clearing Order.” Trade Date CDS

Clearing Orders and Weekly CDS Clearing Orders are together designated as “CDS Clearing Orders.” Under Rule 1202(i), each CDS Clearing Order shall apply and have effect in respect of the Bilateral CDS Transaction in question and any resulting CDS Contract.

Under Rule 1202(b)(vi), a “CDS Physical Settlement Order” arises in one of two situations. Under Rule 1202(b)(vi)(A), a CDS Physical Settlement Order arises if the Clearing House is provided with a copy of a notice delivered by a Matched CDS Buyer to a Matched CDS Seller in a Matched Pair of a Notice of Physical Settlement in respect of Matched CDS Contracts, where the Notice of Physical Settlement specifies an instrument to be delivered that is an SFD Security. Under Rule 1202(b)(vi)(B), a CDS Physical Settlement Order will arise when the Clearing House is provided with a copy of a notice delivered by a Matched CDS Buyer to a Matched CDS Seller in a Matched Pair of a NOPS Amendment Notice in respect of Matched CDS Contracts, where the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security but where the Notice of Physical Settlement (including, as amended by any previous NOPS Amendment Notice) had specified an instrument that is not an SFD Security as the instrument that was to be delivered. Since CDS Physical Settlement Orders, as described in Rule 1202(b)(vi), arise in respect of Matched Pairs, then, correspondingly, under Rule 1202(j), two separate CDS Physical Settlement Orders apply and have effect separately in respect of each of the CDS Contracts in the Matched Pair that are subject to a physical settlement obligation, and the instrument to be delivered pursuant thereto.

Rule 1202(k) sets forth the scope of each Transfer Order in respect of the persons against whom such Transfer Order has effect. In this respect, Existing Rule 1202(g) (now renumbered Rule 1202(k)) is unchanged in respect of New Contract Payment Transfer Orders, Credit/Debit Payment Transfer Orders, AFI-CB Payment Transfer Orders or CB-AFI Payment Transfer

Orders. This Rule is, however, amended to specify the change in name from “Open Offer Payment Transfer Order” to “New Contract Payment Transfer Order.”

Rule 1202(k) is also amended to set forth the scope (in respect of the persons against whom such Transfer Order has effect) of Collateral Transfer Orders, Energy Block Clearing Transfer Orders, CDS Clearing Orders, and CDS Physical Settlement Orders. Each of Rules 1202(k)(v) through (viii) is new text.

Under Rule 1202(k)(v), a Collateral Transfer Order has effect against and between each of the following Persons: (A) the Clearing Member that is the transferor of the Non-Cash Collateral in question; (B) any Custodian of the Clearing Member or the Clearing House; and (C) the Clearing House.

Under Rule 1202(k)(vi), in the case of an Energy Block Clearing Order, such Energy Block Clearing Order has effect against and between each of the following Persons: (A) each Clearing Member that has submitted or confirmed details of the ICE OTC Block Transaction or ICE Futures Europe Block Transaction; (B) any Affiliate of the Clearing Member that was party to an ICE OTC Block Transaction or ICE Futures Europe Block Transaction and which is an Indirect Participant (if any); and (C) the Clearing House.

Under Rule 1202(k)(vii), a CDS Clearing Order has effect against and between the following Persons: (A) each Clearing Member that has submitted or confirmed details of the Bilateral CDS Transaction; (B) any Affiliate of a Clearing Member that is or was party to a Bilateral CDS Transaction and which is an Indirect Participant (if any); and (C) the Clearing House.

Under Rule 1202(k)(viii), a CDS Physical Settlement Order will have effect against and between the following Persons: (A) each Clearing Member in the Matched Pair; and (B) the



Clearing House.

In order to ensure that Intermediary Financial Institutions are also subject to any Transfer Order, new Rule 1202(l) sets forth that where a Transfer Order applies to an Approved Financial Institution, it also applies to and is effective against any Intermediary Financial Institution used by that Approved Financial Institution.

Rule 1203 sets forth the time(s) at which a Transfer Order becomes irrevocable. With respect to Credit/Debit Payment Transfer Orders, AFI-CB Payment Transfer Orders, and CB-AFI Payment Transfer Orders, no substantial change is made: Rules 1203(a) through (c) specify that such Transfer Orders become irrevocable at the time that the specified party sends a message confirming that the relevant payment will be made. These Rules are amended solely to add, in each case, that such Transfer Orders also become irrevocable at the time that the specified party sends a message confirming that the relevant payment has been made.

Under Rule 1203(d) as it read prior to amendment, an Open Offer Payment Transfer Order becomes irrevocable upon an Approved Financial Institution sending specified form of message confirming that the relevant payment will be made. This Rule is amended to specify the change in name from Open Offer Payment Transfer Order to New Contract Payment Transfer Order, and to specify that such Transfer Order becomes irrevocable when the specified party sends a specified form of message confirming that amount to which the New Contract Payment Transfer Order relates (as specified in Rule 1202(e)(i), described above) will be or has been made.

Rule 1203(e) sets forth when a Position Transfer Order becomes irrevocable. Under that Rule, prior to amendment, a Position Transfer Order would become irrevocable at the time when the definitive record of the long or short position of the Clearing Member (that is the assignee,

transferee or person that assumes rights, liabilities and obligations pursuant to a novation) is updated as a result of a successful position transfer clearing run in the ICE Systems to reflect the transfer of Contracts given effect pursuant to the Position Transfer Order. This Rule is amended to change the designation from “long or short position” to the defined term “Open Contract Position,” and it is also amended to ensure that the definitive record referenced may be updated to show assignment or novation in addition to transfer of Contracts which are given effect pursuant to the Position Transfer Order.

Rules 1203(f) through (j) set forth the irrevocability standards for Collateral Transfer Orders, Energy Block Transfer Orders, CDS Clearing Orders, and CDS Physical Settlement Orders. Rules 1203(f) through (j) are new rule text.

Under Rule 1203(f), a Collateral Transfer Order becomes irrevocable at the earlier of two times: either when the Clearing House receives the Non-Cash Collateral, or when any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which a securities transfer order in a designated system for purposes of the Settlement Finality Legislation which is not the Designated System) becomes irrevocable.

Under Rule 1203(g), an Energy Block Clearing Order becomes irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(iii) or (iv).

Under Rule 1203(h), a CDS Clearing Order shall become irrevocable when the time specified pursuant to the Procedures occurs for the acceptance of the resulting CDS Contracts in question, pursuant to Rule 401(a)(x).

Under Rule 1203(i), a CDS Physical Settlement Order shall become irrevocable at the earliest of three times: first, when the Matched CDS Buyer in the Matched Pair has submitted

irrevocable instructions to a securities system, depository, nominee or custodian for the transfer of securities to or to the account of the Matched CDS Seller; second, at the time at which the instrument subject to physical settlement is delivered or assigned or at which physical settlement obligations are otherwise discharged; or third, if the Matched CDS Buyer or Matched CDS Seller has (in the absence of any Matching Reversal Notice or not later than one Business Day after any Matching Reversal Notice) given notice to the Clearing House in accordance with Rule 1511 or the Procedures (as applicable) that the relevant Matched Pair have settled the relevant Matched CDS Contracts.

Rule 1204 sets forth the rules regarding cancellation and variation of Transfer Orders. The following amendments are made to Rule 1204 to correspond to the amendments noted above.

Rule 1204(a)(i) provides a residual category of rules for determination of cancellation. That residual category is where the Transfer Order in question is affected by manifest or proven error. While Rule 1204(a)(i) is new text, it generally tracks the circumstances permitting cancellation of Transfer Orders found in Rule 1206 (as the same is written prior to amendment). Rule 1206 is now deleted, as cancellation and variation of Transfer Orders is consolidated into Rule 1204.

Rule 1204(a)(ii) through (v) set forth cancellation and variation rules for New Contract Payment Transfer Orders, Credit/Debit Payment Transfer Orders, Position Transfer Orders, Weekly CDS Clearing Orders, CDS Clearing Orders, Physical Settlement Orders, or Energy Block Clearing Orders.

Under Rule 1204(a)(ii), New Contract Payment Transfer Orders, Credit/Debit Payment Transfer Orders, or Position Transfer Orders may be cancelled or varied if they are void ab initio

pursuant to Rule 403, avoided pursuant to Rule 404, or amended as a result of the Clearing House exercising its discretion pursuant to Rule 104 or otherwise pursuant to the Rules.

Without prejudice to the generality of Rule 1204(a)(i), Rule 1204(a)(iii) sets forth that cancellation or variation, in the case of a Weekly CDS Clearing Order, may occur if an error or omission is noted by or notified to the Clearing House prior to the Acceptance Time or the data relating to any Bilateral CDS Transaction to which the Weekly CDS Clearing Order relates is otherwise capable of being amended in accordance with the Procedures. Rule 1204(a)(iii) is new text.

Under Rule 1204(a)(iv), variation or cancellation may occur, in the case of a CDS Physical Settlement Order, if a NOPS Amendment Notice is validly delivered by the Matched CDS Buyer in accordance with Rule 1505 and Rule 1509. Rule 1204(a)(iv) is new text.

Without prejudice to the generality of Rule 1204(a)(i), (ii) or (iii), under Rule 1204(a)(v), variation or cancellation may occur, in the case of an Energy Block Clearing Order or CDS Clearing Order, if such Order relates to a Transaction which is not eligible for Clearing or which is not accepted for Clearing by the Clearing House. Rule 1204(a)(v) is new text.

Under Rule 1204(b) prior to amendment, neither the validity nor the irrevocability of any Transfer Order would of itself be affected by any event described in Rule 1204(a) occurring. This Rule is amended to ensure that it is subject to new Rules 1205(d), (f), and (g) relating to termination of Transfer Orders. Rules 1205(d), (f), and (g) are described below.

Rule 1204(c) states that the terms of all Transfer Orders that have not become irrevocable shall each be subject to a condition (which, if not satisfied, shall enable the Clearing House to exercise its rights under Rule 1204) that the circumstances described above in Rule 1204(a) have not occurred. Rule 1204(c) is new text.

Rule 1204(d) describes the procedure for Transfer Order Variation. Under that Rule, if any of the circumstances described in Rule 1204(a) has occurred, then the amount payable, Contracts to be transferred or to arise or SFD Securities or Non-Cash Collateral to be delivered pursuant to the affected Transfer Order may at the discretion of ICE Clear Europe be increased, decreased or otherwise varied (as necessary) to reflect payments, transfers, Contracts, assignments, novations, SFD Securities, Non-Cash Collateral or deliveries that would have been required under specified circumstances. Specifically, the variation permitted by ICE Clear Europe is that which would have been required: (i) in the case of Rule 1204(a)(i) applying, had there been no error; (ii) in the case of Rule 1204(a)(ii)(A), Rule 1204(a)(ii)(B) or Rule 1204(a)(v) applying as described above, had no Contract or Transaction ever arisen or occurred; (iii) in the case of Rule 1204(a)(ii)(C) applying as described above, had the Contract always been subject to such amended terms as are agreed or determined; (iv) in the case of Rule 1204(a)(iii) applying as described above, had the details of the Bilateral CDS Transaction always been corrected or amended as permitted in accordance with the Procedures; or (v) in the case of Rule 1204(a)(iv) applying as described above, and the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security, as if the Notice of Physical Settlement had been originally issued as amended pursuant to the NOPS Amendment Notice. This text replaces the earlier procedure for variation by ICE Clear Europe, which permitted variation to amounts that would have been required, in the case of the application of Rule 1204(a)(i) or (ii), had no Contract or Transaction ever arisen or occurred, and in the case of application of Rule 1204(a)(iii), had the Contract always been subject to such amended terms as are agreed or determined.

Rule 1204(e) is unchanged in that a Transfer Order Variation may be effected only by the

Clearing House delivering a notice of amendment of an existing Transfer Order to all affected Participants. However, the rule amendments clarify that valid delivery of a NOPS Amendment Notice in accordance with Rules 1505 and 1509 by a Matched CDS Buyer in a Matched Pair is deemed to constitute notice by the Clearing House for purposes of Rule 1204(e) in respect of a Transfer Order Variation to a CDS Physical Settlement Order, if the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security.

Rule 1204(f) replaces former Rule 1206(a) relating to cancellation of Transfer Orders in lieu of Variation. Under Rule 1204(f), if any of the circumstances described in Rule 1204(a) has occurred, then the Transfer Order in question may at the discretion of the Clearing House alternatively be cancelled. Any such cancellation may under Rule 1204(f) be effected by the Clearing House serving a notice of cancellation on all affected Participants. Rule 1204(f) also clarifies that in respect of an Energy Block Clearing Order or CDS Clearing Order, such notice shall be deemed to have been given if the Clearing House (or, in the case of an Energy Block Clearing Order, any Market) rejects a Transaction for Clearing.

Under Rule 1204(g), which is new text, a CDS Physical Settlement Order shall be cancelled immediately and automatically if and when a copy is provided to the Clearing House of a validly delivered NOPS Amendment Notice specifying an instrument for delivery which is not an SFD Security.

Rule 1204(h) replaces former Rule 1206(b) relating to the ability of ICE Clear Europe to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order that is subject to the events of Rule 1204(a). Rule 1204(h) retains the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof if any of the events described in Rule 1204(a) occur. However, the Rule as

amended states that no Transfer Order Variation shall preclude the cancellation of a Transfer Order in any circumstances in which a Transfer Order may alternatively be cancelled by the Clearing House, and also that the ability of the Clearing House to cancel a Transfer Order shall not preclude a Transfer Order Variation from taking effect.

Rule 1205 sets forth the provisions for termination (satisfaction) of Transfer Orders. Rules 1205(a) and (b), which are formerly designated Rules 1207(a) and (b), are unchanged, except that the term “terminate” is replaced with “be satisfied” to denote the satisfaction (rather than “termination”) of such Orders. Also, the provisions of Rule 1205(b) are modified to clarify that each Position Transfer Order shall be satisfied immediately and automatically at the same time that it becomes irrevocable under Rule 1203 (whereupon all Contracts to which the Transfer Order in question relates will have been transferred, assigned or novated pursuant to the Rules).

Rules 1205(c) through (g) describe satisfaction of Collateral Transfer Orders, CDS Clearing Orders, Energy Block Clearing Orders, CDS Physical Settlement Orders, Credit/Debit Payment Transfer Orders, and New Contract Payment Transfer Orders.

Rule 1205(c) sets out the procedures for satisfaction of Collateral Transfer Orders. This Rule comprises new text. Under the Rule, each Collateral Transfer Order shall be satisfied immediately and automatically at the later of two times: either when the Clearing House receives the Non-Cash Collateral in its account, or when the definitive record of the Permitted Cover transferred by the Clearing Member that is the transferor is updated in the ICE Systems to reflect the successful transfer of Non-Cash Collateral to or to the order of the Clearing House pursuant to the Collateral Transfer Order.

Under Rule 1205(d), the procedures for satisfaction of CDS Clearing Orders or Energy Block Clearing Orders are set forth. Rule 1205(d) is new. Under this Rule, CDS Clearing

Orders or Energy Block Clearing Orders are satisfied immediately and automatically at the same time that the relevant resulting Contracts arise under Rule 401(a).

The satisfaction of CDS Physical Settlement Orders is described in new Rule 1205(e). Under that Rule, a CDS Physical Settlement Order is satisfied immediately and automatically at the time when ICE Clear Europe updates its records of the relevant CDS Contracts in the ICE Systems to reflect that either physical delivery of the security in question has been completed or the delivery obligations of the parties under the relevant CDS Contracts have otherwise been discharged or settled.

Rule 1205(f) amends and replaces prior Rule 1207(c). Under Rule 1207(c), if a Credit/Debit Payment Transfer Order or Insufficient Funds Payment Transfer Order becomes irrevocable in respect of the same obligation to which an Open Offer Payment Transfer Order relates, the Open Offer Payment Transfer Order shall automatically be terminated and shall not become irrevocable. Under Rule 1205(f) as it is amended, the reference to Insufficient Funds Payment Transfer Order is deleted, the term Open Offer Payment Transfer Order is renamed New Contract Payment Transfer Order, and the term “terminated” is replaced with “satisfied.” Further, the amendment acknowledges that New Contract Payment Transfer Orders will generally terminate in accordance with Rule 1205(f) when standard clearing and payment processes apply.

Under Rule 1205(g), a New Contract Payment Transfer Order relating to an Energy Contract shall be satisfied immediately and automatically if and at the point that the relevant Energy Transaction or Contract is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii). This replaces former Rule 1207(d), under which an Open Offer Payment Transfer Order is terminated immediately and automatically if and at the point



that the relevant Transaction is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii).

ICE Clear Europe has engaged in a public consultation process in relation to all the changes, pursuant to the Circulars referred to above, and as required under U.K. legislation. ICE Clear Europe has received no opposing views or comments in relation to the proposed rule amendments.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule change would have any impact, or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have been solicited by ICE Clear Europe pursuant to public consultation processes in the circulars referred to above. No comments have been received. The time period for the public consultation has closed so ICE Clear Europe does not expect to receive any further written comments as a result of this process. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2012-03 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ICEEU-2012-03. 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 Section, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at [https://www.theice.com/publicdocs/regulatory\\_filings/ICE\\_Clear\\_Europe\\_Settlement\\_Finality\\_Rule\\_Filing.pdf](https://www.theice.com/publicdocs/regulatory_filings/ICE_Clear_Europe_Settlement_Finality_Rule_Filing.pdf).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2012-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act<sup>5</sup> 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. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,<sup>6</sup> and the rules and regulations thereunder applicable to ICE Clear Europe. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,<sup>7</sup> which requires, among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it will contribute to ICE Clear Europe ensuring settlement finality of certain transfer, clearing, and settlement orders under the Settlement Finality Legislation.

ICE Clear Europe has requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. The Commission finds good cause for

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

<sup>6</sup> 15 U.S.C. 78q-1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

accelerating approval because these changes are required pursuant to the Settlement Finality Legislation. Specifically, these changes reflect modifications to ICE Clear Europe's clearing and payment systems that have been proposed following designation by U.K. authorities as a “designated system” for purposes of such legislation; the proposed changes follow various meetings and discussions with the relevant U.K. authorities. If ICE Clear Europe does not make the changes described in this rule proposal, ICE Clear Europe may be in contravention of home country and home region legislation.

V. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-ICEEU-2012-03) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Kevin O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).