

unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Comments should be directed to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: February 7, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-03271 Filed 2-12-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

#### *Upon Written Request Copies Available*

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

#### *Extension:*

Rule 15b1-1/Form BD; SEC File No. 270-19, OMB Control No. 3235-0012.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information provided for in Rule 15b1-1 (17 CFR 240.15b1-1) and Form BD (17 CFR 249.501) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Form BD is the application form used by firms to apply to the Commission for registration as a broker-dealer, as required by Rule 15b1-1. Form BD also is used by firms other than banks and registered broker-dealers to apply to the Commission for registration as a municipal securities dealer or a government securities broker-dealer. In addition, Form BD is used to change information contained in a previous Form BD filing that becomes inaccurate.

The total industry-wide annual time burden imposed by Form BD is approximately 5,941 hours, based on approximately 15,890 responses (288 initial filings + 15,602 amendments). Each application filed on Form BD requires approximately 2.75 hours to complete and each amended Form BD

requires approximately 20 minutes to complete. (288 × 2.75 hours = 792 hours; 15,602 × 0.33 hours = 5,149 hours; 792 hours + 5,149 hours = 5,941 hours.) The staff believes that a broker-dealer would have a Compliance Manager complete and file both applications and amendments on Form BD at a cost of \$279/hour. Consequently, the staff estimates that the total internal cost of compliance associated with the annual time burden is approximately \$1,657,539 per year (\$279 × 5941). There is no external cost burden associated with Rule 15b1-1 and Form BD.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers and government securities broker-dealers, and where the Commission, other regulators and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: February 7, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68864; File No. S7-27-11]

### Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of "Security" to Encompass Security-Based Swaps, and Request for Comment

February 7, 2013.

#### I. Introduction

On July 1, 2011, the Securities and Exchange Commission ("Commission") issued an order granting temporary exemptive relief from compliance with certain provisions of the Securities Exchange Act of 1934 ("Exchange Act") in connection with the revision of the Exchange Act definition of "security" to encompass security-based swaps ("Exchange Act Exemptive Order").<sup>1</sup> Certain temporary exemptions contained in the Exchange Act Exemptive Order are set to expire upon the compliance date for final rules further defining the terms "security-based swap" and "eligible contract participant," which is scheduled to occur on February 11, 2013 ("Expiring Temporary Exemptions").<sup>2</sup> The

<sup>1</sup> See *Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of "Security" to Encompass Security-Based Swaps*, Exchange Act Release No. 64795 (Jul. 1, 2011), 76 FR 39927 (Jul. 7, 2011).

<sup>2</sup> *Id.* See also *Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, Exchange Act Release No. 67453 (Jul. 18, 2012), 77 FR 48207 (Aug. 13, 2012) (Joint Final Rule with the CFTC) ("Product Definitions Adopting Release"), which postpones the Expiring Temporary Exemptions expiration date to February 11, 2013. The Financial Industry Regulatory Authority ("FINRA") filed a proposed rule change, which was effective upon receipt by the Commission, extending the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), which temporary limits the application of certain FINRA rules with respect to security-based swaps, to July 17, 2013. See Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing and

Commission is extending the expiration date for these Expiring Temporary Exemptions until February 11, 2014<sup>3</sup> and requesting comment on any exemption contained in the Exchange Act Exemptive Order and any additional relief that should be granted upon the expiration of the extension.

## II. Discussion

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Exchange Act definition of "security" to expressly encompass security-based swaps.<sup>4</sup> The expansion of the definition of the term "security" results in the expansion of the scope of the regulatory provisions of the Exchange Act to security-based swaps. This expansion has raised certain complex questions that require further consideration by the staff.

On July 1, 2011, the Commission granted temporary relief from compliance with certain provisions of the Exchange Act by providing for the Expiring Temporary Exemptions.<sup>5</sup> Specifically, the Expiring Temporary Exemptions, which are set to expire on the compliance date for final rules further defining the terms "security-based swap" and "eligible contract participant," provide for the following

Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), Exchange Act Release No. 68471 (Dec. 19, 2012).

<sup>3</sup> The Exchange Act Exemptive Order also provided a temporary exemption from Sections 5 and 6 of the Exchange Act until the earliest compliance date set forth in any of the final rules regarding registration of security-based swap execution facilities. The Exchange Act Exemptive Order also provided a temporary exemption that no security-based swap contract entered into on or after July 16, 2011 shall be void or considered voidable by reason of Section 29(b) of the Exchange Act because any person that is a party to the contract violated a provision of the Exchange Act for which the Commission has provided exemptive relief in the Exchange Act Exemptive Order, until such time as the underlying exemptive relief expires. This Order does not affect the timing of the expiration of either of these exemptions.

<sup>4</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124, Stat. 1376 (2010); Exchange Act Section 3(a)(10), 15 U.S.C. 78c(a)(10), as revised by Section 761(a)(2) of the Dodd-Frank Act.

Title VII established a new regulatory framework for swaps and security-based swaps. Under the comprehensive framework established in Title VII, the Commission is given authority over security-based swaps, the CFTC is given regulatory authority over swaps, and the CFTC and SEC are provided with joint regulatory authority over mixed swaps. See Section 3(a)(68) of the Exchange Act, 15 U.S.C. 78c(a)(68) (as added by Section 761(a)(6) of the Dodd-Frank Act) and Section 1a(47) of the CEA, 7 U.S.C. 1a(47) (as added by Section 721(a) of the Dodd-Frank Act) for the definitions of security-based swap and swap, respectively. See also *Product Definitions Adopting Release*.

<sup>5</sup> See Exchange Act Exemptive Order.

exemptions from Exchange Act: (a) Temporary exemptions in connection with security-based swap activity by certain "eligible contract participants"; and (b) temporary exemptions specific to security-based swap activities by registered brokers and dealers.<sup>6</sup> As previously noted, these Expiring Temporary Exemptions are currently scheduled to expire on February 11, 2013 for purposes of the Exchange Act Exemptive Order.<sup>7</sup>

The Commission recently received a request to extend the Expiring Temporary Exemptions until July 17, 2013, citing concerns that key issues and questions regarding the application of the federal securities laws to security-based swaps remain unresolved and that the expiration of these exemptions on February 11, 2013 would be premature.<sup>8</sup> The request also noted concerns about the potential for unnecessary disruption to the security-based swap market.<sup>9</sup>

To date, the Commission has proposed substantially all of the rules related to the new regulatory regime for derivatives under Title VII and has recently begun the process of adopting these rules.<sup>10</sup> In furtherance of the Dodd-Frank Act's stated objective of promoting financial stability in the U.S. financial system, the Commission has expressed its intent to move forward

<sup>6</sup> See Exchange Act Exemptive Order at 39-44.

<sup>7</sup> See *Product Definitions Adopting Release*.

<sup>8</sup> See SIFMA Request for Extension of the Expiration Date of the SEC's Exchange Act Exemptive Order and SBS Interim final Rules (Dec. 20, 2012), which is available at <http://www.sec.gov/comments/s7-27-11/s72711-12.pdf>. The Commission has also received a request for certain permanent exemptions upon the expiration of the exemptions contained in the Exchange Act Exemptive Order. See SIFMA SBS Exemptive Relief Request (Dec. 5, 2011), which is available at <http://www.sec.gov/comments/s7-27-11/s72711-10.pdf>.

<sup>9</sup> See SIFMA Request for Extension of the Expiration Date of the SEC's Exchange Act Exemptive Order and SBS Interim final Rules (Dec. 20, 2012).

<sup>10</sup> See *Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act*, Exchange Act Release No. 67177 (Jun. 11, 2012). See also *Product Definitions Adopting Release; Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant"*, Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) ("*Entity Definitions Adopting Release*"); *Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to all Self-Regulatory Organizations*, Exchange Act Release No. 67286 (Jun. 28, 2012), 88 FR 41602 (Jul. 13, 2012); *Clearing Agency Standards*, Exchange Act Release No. 68080, (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

deliberatively in implementing the requirements of the Dodd-Frank Act, while minimizing unnecessary disruption and costs to the markets.<sup>11</sup>

The Commission believes it is necessary or appropriate in the public interest and consistent with the protection of investors to extend the Expiring Temporary Exemptions until February 11, 2014 in order to both avoid a potential unnecessary disruption to the security-based swap market that may result without an extension,<sup>12</sup> and provide the Commission with additional time to consider the potential impact of the revision of the Exchange Act definition of "security" in light of recent Commission rulemaking efforts under Title VII of the Dodd-Frank Act. Extending the Expiring Temporary Exemptions also would facilitate a coordinated consideration of these issues with related relief provided by FINRA under its rulebook.<sup>13</sup> While the comment letter recommended extending the temporary relief to July 17, 2013, we have determined to extend the relief to February 11, 2014. Accordingly, pursuant to the Commission's authority under Section 36 of the Exchange Act,<sup>14</sup> the Commission is extending the expiration date for the Expiring Temporary Exemptions contained in the Exchange Act Exemptive Order until February 11, 2014.<sup>15</sup>

## III. Request for Comment

The Commission believes that it would be useful to continue to provide interested parties opportunity to comment on any exemption contained in the Exchange Act Exemptive Order and any additional relief that should be granted upon the expiration of the extension for the Expiring Temporary Exemptions. Comments may be

<sup>11</sup> See Exchange Act Exemptive Order.

<sup>12</sup> See *supra* note 8 and 9.

<sup>13</sup> See *supra* note 2.

<sup>14</sup> 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt, by rule, regulation, or order any person, security or transaction (or any class or classes of persons, securities, or transactions) from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

<sup>15</sup> The expiration date coincides with the Commission's recent amendment to the expiration dates in interim final rules that provide exemptions under the Securities Act of 1933, the Exchange Act, and the Trust Indenture Act of 1939 for those security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as "securities" under the Securities Act and the Exchange Act as of July 16, 2011 due solely to the provisions of Title VII of the Dodd-Frank Act. See *Extension of Exemptions for Security-Based Swaps*, Release No. 33-9383 (Jan. 29, 2013), 78 FR 7654 (Feb. 4, 2013).

submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/exorders.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-27-11 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### *Paper Comments*

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

All submissions should refer to File Number S7-27-11. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/exorders.shtml>). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F St. NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. 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.

#### **IV. Conclusion**

*It is hereby ordered*, pursuant to Section 36 of the Exchange Act, that, the Expiring Temporary Exemptions contained in the Exchange Act Exemptive Order in connection with the revision of the Exchange Act definition of "security" to encompass security-based swaps are extended until February 11, 2014.

By the Commission.

**Elizabeth M. Murphy**,  
Secretary.

[FR Doc. 2013-03214 Filed 2-12-13; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68867; File No. SR-ICEEU-2013-02]

### **Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Revise Rules Related to Legal Segregation With Operational Commingling**

February 7, 2013.

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 February 6, 2013, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I and II 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**

The purpose of the proposed rule changes is to implement the enhanced margin segregation model for cleared swaps that the Commodity Futures Trading Commission ("CFTC") adopted in Part 22 of the CFTC regulations (generally referred to as "legal segregation with operational commingling" or "LSOC"). As result of the LSOC requirements, ICE Clear Europe principally proposes to (i) introduce new procedures for allocating initial margin to the positions carried for each customer of an FCM/BD Clearing Member on a customer-by-customer basis, (ii) introduce new procedures for calling for, holding and returning customer margin in light of the requirement to allocate initial margin on a customer-by-customer basis, and (iii) change the net sum calculation for defaulting Clearing Members to limit ICE Clear Europe's ability to use customer margin in the event that an FCM/BD Clearing Member defaults, consistent with the requirements of LSOC. The LSOC requirements are intended to mitigate the risk that one customer of an FCM/BD Clearing Member would suffer a loss because of a default by another customer. ICE Clear Europe also will be

removing existing provisions of the ICE Clear Europe Rules ("Rules") that addressed the holding of excess margin for customers of such Clearing Members and will not be necessary in ICE Clear Europe's initial implementation of LSOC.

Specifically, ICE Clear Europe proposes to amend Parts 9 and 16 of the Rules, as well as related definitions, to incorporate Part 22 of the CFTC Regulations. The amendments to Part 9 of the Rules change the net sum calculation for defaulting FCM/BD Clearing Members. The amendments to Part 16 of the Rules contain the procedures for allocating initial margin on a customer-by-customer basis and related procedures for calling for, holding and returning such margin. The other proposed changes in the Rules reflect conforming changes and drafting clarifications, and do not affect the substance of the ICE Clear Europe Rules or forms of cleared products.

Another purpose of the proposed rule changes is to adopt a set of settlement and notices terms ("Settlement and Notices Terms") that will apply to all Customer-CM CDS Transactions and, where specified, to the clearing arrangements between an FCM/BD CDS Clearing Member and its FCM/BD Customers and, in each case, to the related CDS Contracts. The Settlement and Notices Terms will be published by ICE Clear Europe as an exhibit to the Rules but will not form part of ICE Clear Europe's Rules, Procedures or Standard Terms. The Settlement and Notices Terms adopt certain notice and related procedures for the customer clearing model for CDS products (in which customers of ICE Clear Europe Clearing Members will have the ability to clear CDS products through ICE Clear Europe Clearing Members).

#### **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 proposing the LSOC changes to the Rules and the Settlement and Notices Terms exhibit. The text of these statements may be examined at the places specified in Item III 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>3</sup>

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

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

<sup>3</sup> The Commission has modified the text of the summaries prepared by ICE Clear Europe.