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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88013; File No. SR–ICEEU–2019–027]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to Amendments to the ICE Clear Europe CDS Procedures

January 22, 2020.

I. Introduction

On December 2, 2019, ICE Clear Europe Limited (''ICE Clear Europe''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its CDS Procedures to implement the 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions (the ''NTCE Supplement''). On December 10, 2019, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Partial Amendment No. 1, was published for comment in the **Federal Register** on December 18, 2019.[4] The Commission did not receive comments on the proposed rule change, as modified by Partial Amendment No. 1. For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, ''proposed rule change'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Partial Amendment No. 1 amended the filing to remove from the filed Exhibit 5 certain dates in brackets and replace them with new dates and remove other language left in brackets; update page numbering in the filed Exhibit 2 so that the page numbering in the filed Exhibit 2 states ''of 59'' instead of ''of 60''; and update a reference to paragraph 8(c) of the CDS Procedures in the original filing so that it instead refers to paragraph 8.1(c) of the CDS Procedures.

[4] Securities Exchange Act Release No. 87722 (Dec. 12, 2019), 84 FR 69421 (Dec. 18, 2019) (SR–ICEEU–2019–027) (''Notice'').

II. Description of the Proposed Rule Change

A. Background

Following certain events in the credit default swap (''CDS'')[5] market, the International Swaps and Derivatives Association, Inc. (''ISDA''), in consultation with market participants, developed and published the NTCE Supplement.[6] The NTCE Supplement reflects an effort by ISDA to address so-called narrowly-tailored credit events. According to ISDA, a narrowly-tailored credit event is an arrangement between a participant in the CDS marketplace and a corporation, through which the corporation triggers a credit event on CDS covering the corporation, thereby increasing payment to the buyers of CDS protection on the corporation while minimizing the impact on the corporation.[7]

The NTCE Supplement, if applied to a CDS transaction, would make two principal changes to the 2014 ISDA Credit Derivatives Definitions to address narrowly-tailored credit events.[8] First, the NTCE Supplement would change the definition of the ''Failure to Pay'' credit event to exclude certain narrowly-tailored credit events through a new Credit Deterioration Requirement. The Credit Deterioration Requirement would provide that a failure of a corporation to make a payment on an obligation would not constitute a Failure to Pay Credit Event triggering CDS on that corporation if the failure does not directly or indirectly result from, or result in, a deterioration in the creditworthiness or financial condition of the corporation.[9] Thus, a narrowly-tailored or manufactured failure to pay that does not reflect or result in a credit deterioration by a corporation would not constitute a Credit Event for CDS Contracts that incorporate the NTCE Supplement and thus would not necessarily trigger payment to buyers of CDS protection. The NTCE Supplement would also provide guidance related to the factors that would be relevant to determining whether a Failure to Pay Credit Event satisfies the Credit Deterioration Requirement. As would be the case with other Failure to Pay Credit Events under CDS contracts, the relevant Credit Derivatives Determinations Committee would, in the normal course, make the determination as to whether a Failure to Pay Credit Event satisfies the Credit Deterioration Requirement.

Second, the NTCE Supplement would reduce the amount of payout a CDS protection buyer could claim in certain circumstances by imposing a new provision for Fallback Discounting. Fallback Discounting would discount a CDS protection buyer's claim for payout under a CDS contract where that claim for payout is based on an obligation issued by a corporation at a discount.[10] This would address the potential scenario where a corporation issues a bond at a substantial discount to its principal amount and the bond is delivered in settlement of a CDS at its full principal amount. In this scenario, Fallback Discounting would prevent a buyer of CDS protection from using the full principal amount of the bond issued at a discount as a basis for payout under the CDS contract.

B. Changes to CDS Procedures

As described below, the proposed rule change would apply the NTCE Supplement to any non-sovereign single-name and index CDS contract that incorporates the 2014 ISDA definitions (a ''2014-type CDS Contract'') and that is open on, or entered into after, January 27, 2020 (or such later date as designated by ICE Clear Europe by Circular).

The proposed rule change would add new defined terms to the CDS Procedures to include new definitions related to the NTCE Supplement. The proposed rule change would further define the effective date of the changes, the ''NTCE Protocol Effective Date,'' as January 27, 2020, or such later date as designated by ICE Clear Europe by Circular.

The proposed rule change would next incorporate these new definitions into the defined terms associated with non-

[5] The following description is substantially excerpted from the Notice. *See* Notice, 84 FR at 69421. Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICE Clear Europe Rules or CDS Procedures.

[6] *See* ISDA Board Statement on Narrowly Tailored Credit Events, *available at https://www.isda.org/2018/04/11/isda-board-statement-on-narrowly-tailored-credit-events/; see also* Joint Statement on Opportunistic Strategies in the Credit Derivatives Market (''The continued pursuit of various opportunistic strategies in the credit derivatives markets, including but not limited to those that have been referred to as 'manufactured credit events,' may adversely affect the integrity, confidence and reputation of the credit derivatives markets, as well as markets more generally.'') *available at https://www.sec.gov/news/press-release/2019-106.*

[7] *See* ISDA Board Statement on Narrowly Tailored Credit Events, *available at https://www.isda.org/2018/04/11/isda-board-statement-on-narrowly-tailored-credit-events/.*

[8] *See* ISDA 2019 NTCE Protocol FAQ, *available at https://www.isda.org/protocol/isda-2019-ntce-protocol.*

[9] *See* ISDA 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions (Published on July 15, 2019), *available at https://www.isda.org/a/KDqME/Final-NTCE-Supplement.pdf.*

[10] *Id.*

sovereign single-name and index CDS contracts by amending the CDS Procedures to specify that the applicable contract definitions shall include the NTCE Supplement. This change would apply to any 2014-type CDS Contract that is part of an Open Contract Position on the NTCE Protocol Effective Date or is entered into on or after the NTCE Protocol Effective Date.

In addition to this change, the proposed rule change would make specific changes to the terms associated with single-name CDS and index CDS to update those terms in light of the NTCE Supplement. With respect to single-name CDS, the proposed rule change would update certain single-name CDS contracts that are open on the NTCE Protocol Effective Date to reference the new physical settlement matrix that will apply to new single-name CDS entered into after the NTCE Protocol Effective Date. This change would apply to CDS with non-sovereign reference entities that are 2014-type CDS Contracts.

With respect to index CDS, the proposed rule change would amend the terms associated with index CDS contracts to include the new standard terms supplement and confirmations issued in response to the NTCE Supplement. Such new standard terms supplement and confirmations would incorporate the NTCE Supplement. For new index CDS, the proposed rule change would apply the new standard terms supplement and confirmations incorporating the NTCE Supplement to any index CDS submitted for clearing on or after the NTCE Protocol Effective Date. For open index CDS, the proposed rule change would apply the NTCE Supplement to 2014-type CDS Contracts and those that include a 2014-type CDS Contract as a component position on the NTCE Protocol Effective Date. The proposed rule change therefore would convert existing index CDS contracts to reference the new standard terms incorporating the NTCE Supplement, thereby ensuring that those existing contracts would be fungible with new index CDS contracts after the NTCE Protocol Effective Date.

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[11] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[12] and Rule 17Ad–22(e)(1) thereunder.[13]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe 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 ICE Clear Europe or for which it is responsible, and, in general, to protect investors and the public interest.[14]

As described above, the NTCE Supplement would amend the underlying legal terms applicable to CDS contracts to which it applies by, among other things, limiting Credit Events to those that reflect a deterioration in the creditworthiness or financial condition of the relevant company. It also would reduce the amount of payout a CDS protection buyer could claim in certain circumstances where the claim for payout is based on an obligation issued by a company at a discount. Further, because ISDA has determined that the Protocol Effectiveness Condition is satisfied and set an implementation date of January 27, 2020, the NTCE Supplement will apply to all single-name CDS contracts and components of index CDS contracts that incorporate the 2014 ISDA Credit Derivatives Definitions currently in place or entered into on or after that date.

As noted above, because ICE Clear Europe will clear and settle CDS contracts that are subject to the changes being made by the NTCE Supplement, the proposed rule change would amend the CDS Procedures to incorporate the amendments resulting from the NTCE Supplement, thereby ensuring that ICE Clear Europe's CDS Procedures accurately reflect and appropriately apply the legal terms and conditions applicable to such CDS contracts.

In the Commission's view, a lack of clarity in the underlying legal terms and conditions applicable to the transactions that ICE Clear Europe clears and settles could hinder ICE Clear Europe's ability to promptly and accurately clear and settle such transactions. Likewise, disputes regarding the applicable legal terms and conditions of such transactions could lead to disputes or confusion regarding the necessary and appropriate margin submitted in connection with such transactions, thereby threatening ICE Clear Europe's ability to safeguard such margin. Accordingly, by making the changes described above, and in particular by ensuring ICE Clear Europe's CDS Procedures accurately reflect and appropriately apply the legal terms and conditions applicable to the CDS contracts that are cleared and settled by ICE Clear Europe, the Commission believes that the proposed rule change would help ensure that ICE Clear Europe's CDS Procedures continue to promote the prompt and accurate clearance and settlement of such CDS contracts and assure the safeguarding of securities and funds in ICE Clear Europe's custody and control. For these same reasons the Commission also finds that the proposed rule change would, in general, protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[15]

B. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[16] As discussed above, the proposed rule change would help to clarify and ensure that ICE Clear Europe's CDS Procedures accurately reflect and appropriately apply the legal terms and conditions applicable to the CDS contracts that are cleared and settled by ICE Clear Europe. The Commission believes that this, in turn, would help ensure that the ICE Clear Europe CDS Procedures provide a consistent and enforceable legal basis for clearing and settling CDS contracts to which the NTCE Supplement applies in light of the amendments made by the NTCE Supplement.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(1).[17]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of

[11] 15 U.S.C. 78s(b)(2)(C).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(1).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(1).

[17] *Id.*

Section 17A(b)(3)(F) of the Act[18] and Rule 17Ad–22(e)(1) thereunder.[19]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[20] that the proposed rule change, as modified by Partial Amendment No. 1 (SR–ICEEU–2019–027), be, and hereby is, approved.[21]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–01367 Filed 1–27–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88016; File No. SR–CTA–2019–02]

Consolidated Tape Association; Notice of Filing of the Thirty-First Substantive Amendment to the Second Restatement of the CTA Plan

January 23, 2020.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on September 11, 2019,[3] the Consolidated Tape Association (''CTA'') Plan participants (''Participants'')[4] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan (''Plan'').[5] This Amendment represents the Thirty-First Substantive Amendment to the CTA Plan (''Amendment''). Under the Amendment, the Participants propose to amend the Plan to align provisions governing the reporting of last sale prices in an Eligible Security[6] by the Processor[7] during a Regulatory Halt[8] with corresponding provisions under the Nasdaq/UTP Plan.[9] The Participants also propose a non-substantive amendment to update cross references to the rules of NYSE and NYSE American in Section XI(a) of the Plan.

The proposed Amendment has been filed by the Participants pursuant to Rule 608(b)(2) under Regulation NMS.[10] The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendment. Set forth in Sections I and II is the statement of the purpose and summary of the Amendment, along with the information required by Rules 608(a) and 601(a) under the Act, prepared and submitted by the Participants to the Commission.

I. Rule 608(a)

A. Purpose of the Amendment

Section XI(a) of the Plan currently prohibits the Processor from including any reports of last sale prices in an Eligible Security during a Regulatory Halt, even if the Processor receives a report due to a race condition or a late print where the trade occurred prior to the Regulatory Halt. The Processor only disseminates these reports of last sale prices after the Regulatory Halt is lifted or after the close of the market. In particular, when a primary market initiates a Regulatory Halt, it sends notifications to the Processor and other Participants. A trade may occur at a Participant before that Participant receives notification of the Regulatory Halt while a report of the trade is made to the Processor after the Processor receives notification of the Regulatory Halt. This race condition currently results in a transaction occurring at a Participant while the Processor delays the dissemination of the trade report.

With respect to the UTP Plan, the Processor will immediately disseminate such reports of last sale prices that occurred prior to the Regulatory Halt but received by the Processor after the Regulatory Halt. The Participants, in consultation with the Advisory Committee, have deemed it appropriate to align the operation of the Plan with the operation of the UTP Plan. As a result, the Participants are amending the language of the Plan to permit the dissemination of reports of last sale prices during a Regulatory Halt.

In addition, while the primary aim of this Amendment is to address situations associated with the race condition described above, it would be impractical for the Processor to determine that a transaction occurred either before or after a Participant received notification of a Regulatory Halt, and therefore whether to immediately disseminate or refrain from disseminating the trade report until permissible. Consequently, the Participants believe that it is appropriate to place the responsibility on the individual Participants to determine whether or not a transaction should be printed during a Regulatory Halt, and the Processor should simply act as a pass-through for the information that it receives from the Participants. Therefore, the Amendment will permit the Processor to disseminate any reports of last sale prices received during a Regulatory Halt, without reference to the specific race condition identified above.

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[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(1).

[20] 15 U.S.C. 78s(b)(2).

[21] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission, dated September 6, 2019.

[4] The Participants are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; NYSE Chicago, Inc.; Financial Industry Regulatory Authority, Inc.; The Investors' Exchange LLC; Long-Term Stock Exchange, Inc.; Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX, Inc.; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; and NYSE National, Inc. (collectively, the ''Participants'').

[5] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective). The most recent restatement of the Plan was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

[6] Section VII(a) of the CTA Plan provides, in part, that the term ''Eligible Securities'' shall mean ''(i) NYSE and AMEX. Any common stock, long-term warrant or preferred stock registered or admitted to unlisted trading privileges on the NYSE or the AMEX on April 30, 1976; (ii) Other exchanges. Any common stock, long-term warrant or preferred stock registered or admitted to unlisted trading privileges on any other exchange which, on April 30, 1976, substantially met the original listing requirements of the NYSE or the AMEX for such securities; (iii) New listings. After April 30, 1976, any common stock, long-term warrant or preferred stock which becomes registered on any exchange or is admitted to unlisted trading privileges thereon and which at the time of such registration or at the commencement of such trading substantially meets the original listing requirements of the NYSE or the AMEX for such securities, as the same may be amended from time to time; (iv) Rights. Any right admitted to trading on an exchange which entitles the holder thereof to purchase or acquire a share or shares of an Eligible Security, provided that both the right and the Eligible Security to the holders of which the right is granted are admitted to trading on the same exchange.''

[7] The term ''Processor'' is defined in Section I(x) of the CTA Plan as ''the organization designated as recipient and processor of last sale price information furnished by Participants pursuant to this CTA Plan, as Section V describes.''

[8] A ''Regulatory Halt'' is defined in Section Xl(a) of the CTA Plan as a halt or suspension of trading in an Eligible Security by a listing market ''because such listing market has determined (i) that there are matters relating to such Security or the issuer thereof which have not been adequately disclosed to the public, or (ii) that there are regulatory problems relating to such Security which should be clarified before trading therein is permitted to continue.''

[9] The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for NASDAQ-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (the ''Nasdaq/UTP Plan'') governs the collection, consolidation, processing, and dissemination of last sale and quotation information for Network C securities.

[10] 17 CFR 242.608(b)(2).