

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsBZX-2017-43 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-BatsBZX-2017-43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. 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-BatsBZX-2017-43 and should be submitted on or before July 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-81031; File No. SR-ICEEU-2017-006]

**Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Changes Relating to the CDS End-of-Day Price Discovery Policy and Price Submission Disciplinary Framework**

June 27, 2017.

**I. Introduction**

On April 26, 2017, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (SR-ICEEU-2017-006) to amend ICE Clear Europe's End-of-Day Price Discovery Policy ("EOD Price Discovery Policy") (1) to change the calculation of firm trade notional limits with respect to single-name credit default swap ("CDS") contracts; (2) to update references to ICE Clear Europe's Clearing Risk Department, head of clearing risk, and other relevant risk personnel, and to add references to ICE Clear Europe's risk appetite, related risk metrics, and model validation and review policies; and (3) to amend ICE Clear Europe's Price Submission Disciplinary Framework with respect to the imposition of fines associated with missed price submissions. The proposed rule change was published for comment in the **Federal Register** on May 15, 2017.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

**II. Description of Proposed Rule Change**

ICE Clear Europe proposed changes to its EOD Price Discovery Policy with respect to the calculation of firm trade notional limits for single-name CDS. Under its current EOD Price Discovery Policy, ICE Clear Europe requires CDS Clearing Members<sup>4</sup> to submit end-of-day prices with respect to instruments relating to a Clearing Member's open interest. Based on these Clearing Member price submissions, ICE Clear Europe calculates CDS end-of-day price

levels.<sup>5</sup> As a mechanism for ensuring that Clearing Members provide high-quality submissions, ICE Clear Europe selects a subset of CDS instruments, on random days, to be eligible for required firm trades between Clearing Members. Where Clearing Members are identified for the purposes of a firm trade pursuant to ICE Clear Europe's "cross and lock algorithm" based on their price submissions, ICE Clear Europe may require such Clearing Members to enter into firm trades with each other.<sup>6</sup>

In connection with the firm trade obligation, ICE Clear Europe has established pre-defined maximum notional amounts for firm trades in single-name CDS contracts ("firm trade notional limits"), which are currently set at the Clearing Member level.<sup>7</sup> ICE Clear Europe proposed to amend the manner in which it applies the firm trade notional limits so that such limits apply on a group level to affiliated Clearing Members, or "CP affiliate group" level, rather than at the individual Clearing Member level. A CP affiliate group consists of all CDS Clearing Members that own, are owned, or are under common ownership with other CDS Clearing Members.<sup>8</sup>

ICE Clear Europe believes that such an approach is appropriate because an affiliate group may have multiple CDS Clearing Members, which, in the absence of the proposed amendments, could result in a group-wide limit being multiples of the single entity notional limit.<sup>9</sup>

In addition to the changes to the firm trade notional limits, ICE Clear Europe also proposed changes to the EOD Price Discovery Policy to update references to ICE Clear Europe's Clearing Risk department and Head of Clearing Risk, as well as to certain other risk personnel.<sup>10</sup>

Other proposed changes to the EOD Price Discovery Policy include adding background information regarding standards relating to ICE Clear Europe's risk appetite, and related metrics and limits. Additionally, ICE Clear Europe proposed to amend the EOD Price Discovery Policy to include additional procedures relating to model validation and policy review. Under these amendments, the underlying models used to support the EOD Price Discovery Policy will be subject to an annual independent validation, and, pursuant to its terms of reference, the

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

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

<sup>3</sup> Securities Exchange Act Release No. 34-80631 (May 9, 2017), 82 FR 22357 (May 15, 2017) (SR-ICEEU-2017-006) ("Notice").

<sup>4</sup> Capitalized terms used in this order, but not defined herein, have the same meaning as in the ICE Clear Europe Clearing Rules.

<sup>5</sup> Notice, 82 FR at 22358.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>14</sup> 17 CFR 200.30-3(a)(12).

ICE Clear Europe CDS Risk Committee will review the EOD Price Discovery Policy at least annually before such Policy is submitted to the ICE Clear Europe Board for its approval.<sup>11</sup> In addition to the annual review process, any material changes to the EOD Price Discovery Policy require ICE Clear Europe Board approval, on the advice of the CDS Risk Committee and Board Risk Committee, prior to implementation of such changes.<sup>12</sup> The proposed amendments also set forth various metrics to be used by the Clearing Risk Department and Risk Oversight department, as well as escalation and Risk Committee and Board notification protocols related to those metrics.<sup>13</sup>

Beyond amendments to its EOD Price Discovery Policy, ICE Clear Europe also proposed to amend its Price Submission Disciplinary Framework with respect to the provisions regarding the imposition of fines, known as fixed cash assessments, in instances where members do not submit required prices. Under the proposed amendments to the Price Submission Disciplinary Framework, at the end of each calendar month ICE Clear Europe will collect the details of alleged Clearing Member missed price submissions. Once these details are obtained, ICE Clear Europe will issue a Notice of Investigation pursuant to Rule 1002 of its CDS Clearing Rulebook to the relevant Clearing Member setting forth the details of the missed price submission. ICE Clear Europe would then perform its investigation, and within five days of sending the Notice of Investigation, provide the Clearing Member with a Letter of Mindedness, which sets forth ICE Clear Europe's preliminary factual conclusions and proposed cash assessment. Thereafter, ICE Clear Europe would provide the Clearing Member ten days from the date of the Letter of Mindedness to inform ICE Clear Europe of any factual errors or objections. After this ten-day period, ICE Clear Europe would finalize its findings and course of action.<sup>14</sup>

Furthermore, under the proposed amendments ICE Clear Europe's Price Submission Disciplinary Framework would provide that, if a Clearing Member is able to demonstrate that (i) the alleged missed price submissions are the first instance(s) of a missed submission with respect to a specific instrument in that month; (ii) provide an adequate explanation for the missed price submissions; and (iii) offer a

remedial plan to prevent future missed submissions, ICE Clear Europe may determine to take no action. However, if another missed price submission for the same type of instrument occurs within ninety days of the first missed price submission then, under the proposed amendments, the Clearing Member will be subject to a cash assessment for both the first and subsequent missed price submissions. Additionally, ICE Clear Europe's head of clearing compliance would have the ability to determine that a Clearing Member should not be subject to a cash assessment if a Clearing Member is able to demonstrate that an alleged missed submission occurred due to extraordinary circumstances outside of the Clearing Member's control.<sup>15</sup> ICE Clear Europe did not propose to amend the established levels for cash assessments.

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>16</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. Section 17A(b)(3)(F)<sup>17</sup> of the Act requires, among other things, that the rules of a registered 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 and, in general, to protect investors and the public interest. Section 17A(b)(3)(D)<sup>18</sup> of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable fees, dues, and other charges among its participants. Section 17A(b)(3)(G) of the Act<sup>19</sup> requires that the rules of a clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fines, censure, or any other fitting sanction. Section 17A(b)(5)(A) of the Act<sup>20</sup> requires, in relevant part, that in any

proceeding by a registered clearing agency to determine whether a participant should be disciplined, the clearing agency shall bring specific charges, notify such participant thereof, and give him an opportunity to defend against such charges, and keep a record. Section 17A(b)(5)(A) further requires that a determination by the clearing agency to impose a disciplinary sanction shall be supported by a statement setting forth (i) any act or practice in which such participant has been found to have engaged or to have omitted; (ii) the specific provisions of the rules of the clearing agency which any such practice or omission to act is deemed to violate; and (iii) the sanction imposed and the reasons therefore. Rule 17Ad-22(e)(3)(i)<sup>21</sup> requires covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to include risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually. Rule 17Ad-22(e)(6)(vii)<sup>22</sup> requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require a model validation for the covered clearing agency's margin system and related models to be performed not less than annually, or more frequently as may be contemplated by the covered clearing agency's risk management framework.

The Commission finds that the proposed rule change, which amends ICE Clear Europe's EOD Price Discovery Policy and Price Submission Disciplinary Framework, is consistent with relevant provisions of Section 17A of the Act and the applicable provisions of Rule 17Ad-22 thereunder.

With respect to the changes to ICE Clear Europe's EOD Price Discovery Policy that amend the application of the firm trade notional limit to be imposed at the CP affiliate group level rather than at the individual Clearing Member level, the changes are intended to manage what, in ICE Clear Europe's view, is an inappropriate level of risk to its Clearing Members, while also ensuring the integrity of the end-of-day price submission process. ICE Clear Europe asserts that the proposed change is intended to apply to Clearing Members fairly, and ICE Clear Europe has represented that the proposed rule

<sup>15</sup> Notice, 82 FR at 22358-59.

<sup>16</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(G).

<sup>20</sup> 15 U.S.C. 78q-1(b)(5)(A).

<sup>21</sup> 17 CFR 240.17Ad-22(e)(3)(i).

<sup>22</sup> 17 CFR 240.17Ad-22(e)(6)(vii).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

change recognizes common price submission practices whereby end-of-day submissions from multiple affiliated entities often reflect the institution's overall view on the value of the relevant instrument.<sup>23</sup> Accordingly, the Commission finds that the proposed amendment regarding firm trade notional limits is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions consistent with the requirements of Section 17A(b)(3)(F), and also finds that the proposed rule change provides for the equitable allocation of reasonable fees, dues and other charges among its participants, consistent with Section 17A(b)(3)(D) of the Act.

Regarding the changes to the EOD Price Discovery Policy that provide for validation of models supporting the end-of-day price discovery process and for review of the EOD Price Discovery Policy by the Board, the Commission believes that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act, Rule 17Ad-22(e)(3)(i), and Rule 17Ad-22(e)(6)(vii). By requiring an independent validation of models used to support the EOD Price Discovery Policy, ICE Clear Europe will be better able to ensure that the end-of-day pricing models are appropriately designed and provide reliable results in the end-of-day pricing process. Additionally, with the requirement that the EOD Price Discovery Policy be reviewed at least annually by the CDS Risk Committee, and ICE Clear Europe Board and separately requiring that material changes be approved by ICE Clear Europe's Board, with the advice of both the CDS and Board Risk Committees, the proposed rule changes will provide for more substantial involvement in the ongoing management of, and review of changes to, the end-of-day pricing processes by those responsible for ICE Clear Europe's risk governance. Thus, the Commission believes that the proposed rule change will result in more consistent oversight and improvement of the EOD Price Discovery Policy and the underlying models and processes related thereto. The Commission therefore finds that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, consistent with the requirements of Section 17A(b)(3)(F), and also is consistent with the requirements of Rule 17Ad-22(e)(3)(i) regarding periodic review and

annual approval by the Board, and the requirements of Rule 17Ad-22(e)(6)(vii) regarding model validation of models related to the covered clearing agency's margin system.

The Commission also finds that the proposed changes to ICE Clear Europe's Price Submission Disciplinary Framework are consistent with the requirements of the Act. Specifically, the proposed changes would amend and formalize the process in which Clearing Members are sanctioned for failure to comply with the price submission process. Specifically, the proposed rule change will set forth the process under which ICE Clear Europe will provide notice to Clearing Members of its allegation(s) of their failures to meet the price submission requirements, methods in which the Clearing Members can respond or object, and the sanctions that will be imposed for failures to meet the price submission requirements. The Commission finds that the formalization of this process in ICE Clear Europe's Price Submission Disciplinary Framework is consistent with the requirement of Section 17A(b)(3)(G) of the Act that the rules of a clearing agency provide that its participants shall be appropriately disciplined for violations of any provision of the clearing agency's rules by sanction; and that Clearing Members will be duly informed regarding such discipline, consistent with Section 17A(b)(5)(A) of the Act.

#### IV. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-ICEEU-2017-006) be, and hereby is, approved.<sup>24</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-13897 Filed 6-30-17; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32712; 812-14783]

#### Nationwide Fund Advisors, et al.

June 27, 2017.

**AGENCY:** Securities and Exchange Commission ("Commission").

<sup>24</sup> 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).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(j) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

**APPLICANTS:** Nationwide Fund Advisors (the "Adviser"), ETF Series Solutions (the "Trust"), and Quasar Distributors, LLC (the "Distributor").

**SUMMARY OF APPLICATION:** Applicants request an order ("Order") that permits: (a) Actively managed series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at the next-determined net asset value plus or minus a market-determined premium or discount that may vary during the trading day; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to create and redeem Shares in kind in a master-feeder structure. The Order would incorporate by reference terms and conditions of a previous order granting the same relief sought by applicants, as that order may be amended from time to time ("Reference Order").<sup>1</sup>

**FILING DATE:** The application was filed on June 7, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 24, 2017, and should be accompanied by proof of service on applicants, in the form of an

<sup>1</sup> Eaton Vance Management, *et al.*, Investment Company Act Rel. Nos. 31333 (Nov. 6, 2014) (notice) and 31361 (Dec. 2, 2014) (order).

<sup>23</sup> Notice, 82 FR at 22359.