

accurate clearance and settlement of transactions in such products.

Moreover, the Commission believes the Instrument On-boarding Policy, by setting standards for instrument selection, operational set up, risk and pricing evaluation, and governance for clearing new products would help to mitigate potential risks created by clearing new products, such as the risk that ICC's risk model would not adequately manage the risks associated with a new product. Similarly, the Commission believes that the required dress rehearsal would allow ICC to identify potential issues with the end-of-day pricing process before accepting a new product for clearing. The Commission believes that the risks associated with clearing a new product, including application of ICC's existing risk model and end-of-day pricing process, could, if not adequately managed, disrupt ICC's ability to clear and settle transactions in other products and safeguard securities and funds in its custody and control. Thus the Commission believes that, in providing ICC means for managing the risks associated with clearing a new product, the proposed rule change should help to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.<sup>9</sup>

#### B. Consistency With Rule 17Ad-22(d)(4)

Rule 17Ad-22(d)(4) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures.<sup>10</sup> As discussed above, the Commission believes that the Instrument On-boarding Policy would help to mitigate potential risks associated with new products. In particular, the Commission believes that in requiring ICC to complete an operational configuration to evaluate and accept transactions, process and net transactions, and price the proposed new product, the Instrument On-boarding Policy should help ICC to identify potential operational risks before clearing the new

product. Similarly, the Commission believes that the required dress rehearsal should allow ICC to identify potential operational issues with the end-of-day pricing process and settlement before accepting a new product for clearing. Taken together, the Commission believes the Instrument On-boarding Policy should enable ICC to identify the operational risks associated with a new product and minimize those risks prior to clearing a new product. For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(d)(4).<sup>11</sup>

#### 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 Section 17A(b)(3)(F) of the Act<sup>12</sup> and Rule 17Ad-22(d)(4).<sup>13</sup>

It is therefore ordered pursuant to Section 19(b)(2) of the Act<sup>14</sup> that the proposed rule change (SR-ICC-2020-004), be, and hereby is, approved.<sup>15</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-11401 Filed 5-27-20; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88928; File No. SR-ICEEU-2020-007]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Auction Terms for CDS Default Auctions and CDS Default Management Policy (formerly the CDS Default Management Framework).

May 21, 2020.

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 May 12,

<sup>11</sup> 15 U.S.C. 17Ad-22(d)(4).

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 17 CFR 240.17Ad-22(d)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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>16</sup> 17 CFR 200.30-3(a)(12).

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

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

2020, ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. On May 20, 2020, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter the "proposed rule change"), from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") proposes to amend its Auction Terms for CDS Default Auctions (the "CDS Auction Terms") and CDS Default Management Policy (the "Policy"), formerly the CDS Default Management Framework. The revisions do not involve any changes to the ICE Clear Europe Clearing Rules (the "Rules") or other Procedures.<sup>4</sup>

#### II. Clearing Agency'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 such statements.

(A) *Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### (a) Purpose

ICE Clear Europe is proposing to amend its CDS Auction Terms and the Policy. The proposed amendments to the CDS Auction Terms would (1) add a new "all or nothing" bidding type, (2) clarify certain procedures regarding determination of minimum bid requirements, (3) provide for the use of ICEU's default management system, in lieu of email or other manual forms of communication, for submission of bids

<sup>3</sup> Partial Amendment Number 1 amended Exhibit 5A of the filing to correct the paragraph numbering in Part 2 of the CDS Auction Terms.

<sup>4</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 15 U.S.C. 17Ad-22(d)(4).

and provision of certain notices to auction participants by the Clearing House, (4) clarify certain regulatory and compliance obligations of auction participants, and (5) generally update and clarify certain terms and provisions and correct certain typographical errors. The proposed amendments to the Policy would make corresponding changes to reference the new “all or nothing” bidding type and make general updates and clarifications.

## I. CDS Auction Terms

### 1. All or Nothing Bid Type

The amendments would allow auction participants to submit a new type of bid for an Auction Lot, an “All or Nothing Bid.” As provided in the proposed new definition in paragraph 1.2 as well as paragraph 3.8 of Part 1 and paragraph 3.6 of Part 2, an All or Nothing Bid would constitute a bid for the entire Auction Lot which, if it is the winning bid, would provide for the bidder to receive 100% of the Auction Lot without that award being split among more competitively priced bids (as may occur with bids under the current bidding process (referred to as “Standard Bids”). Use of All or Nothing Bids would be optional, and auction participants could continue to use Standard Bids as under the current process. An auction participant may also submit both Standard Bids and an All or Nothing Bid. Revised paragraph 3.8 of Part 1 and paragraph 3.6 of Part 2 would also address the manner in which an All or Nothing Bid may satisfy the Minimum Bid Requirement for an Auction Lot and the requirement to identify an All or Nothing Bid as such.

The term “BP” would be similarly amended to include the price of any valid All or Nothing Bid made by a Primary CDS Auction Participant or Secondary CDS Auction Participant in the Primary CDS Auction or Secondary CDS Auction, in either case proportionately scaled to a portfolio size representing 100% of the relevant Auction Lot. This definition would be further amended to provide that where the Standard Bids submitted by an auction participant do not comply with any applicable Minimum Bid Requirement, the BP shall be only the price of any All or Nothing Bid made by such participant, should it have made one. If a participant does not comply with any applicable Minimum Bid Requirement based on its Standard Bids, and does not provide a valid All or Nothing Bid, then the participant would be considered a Non-Bidding CDS Clearing Member. Where a participant submitted only Standard Bids, or only

an All or Nothing Bid, BP would be the weighted average bid price of the Standard Bids, or the price of the All or Nothing Bid, respectively.

The definitions of Primary CDS Auction Priority AC Sequence and Primary CDS Auction Priority GF Sequence (previously CDS Auction Priority AC Sequence and CDS Auction Priority GF Sequence) would be amended to clarify that each amount in the sequence would be applied pro rata for the relevant Auction Lot of a Primary CDS Auction by applying the Auction Lot Guaranty Fund Weighting. As discussed below, the terms CDS Auction Priority AC Sequence and CDS Auction Priority GF Sequence, would be renamed to indicate more clearly that these terms relate to the Primary CDS Auction. A number of other terms relating to the Primary CDS Auction would be similarly renamed. The clarification that the amount in the sequence would be applied pro rata would provide additional detail that is consistent with existing practice. The term Lot Guaranty Fund Weighting has been renamed Auction Lot Guaranty Fund Weighting, consistent with the update from the term Lot to Auction Lot. The definition of this term has been clarified to refer to the aggregate of the PRIs for all Auction Lots in a Defaulter’s portfolio rather than all Lots in a CDS Auction or Secondary CDS Auction, which is a more precise definition, but the change is not intended to result in a substantive change in practice. The definitions of Secondary CDS Auction Priority AC Sequence, Secondary CDS Auction Priority GF Sequence would be amended generally to conform to the corresponding Primary CDS Auction definitions, including to cross-refer, for clarity, to Rule 908(i) (which is the relevant provision of the Rules relating to the order of application of Guaranty Fund Contributions) and to clarify that each amount in the sequence would be applied pro rata for the relevant Auction Lot of a Secondary CDS Auction by applying the Auction Lot Guaranty Fund Weighting. The cross-reference would be added to ensure clarity and consistency between the relevant terms used for Primary and Secondary Auctions and between the CDS Auction Terms and the Rules, but is not intended to change the substance of current practice. The definition of CDS Auction Clearing Price would be redefined as Primary CDS Auction Clearing Price and a proviso would be added to this defined term and to the defined term Secondary CDS Auction Clearing Price stating that in the event that an All or Nothing Bid is included

in such sum of the notional amount of CDS Contracts, the term would mean the price of the All or Nothing Bid in accordance with paragraph 5.4 of Part 1 or paragraph 5.4 of Part 2, as applicable, of the CDS Auction Terms. If an All or Nothing Bid is not submitted to or accepted by the Clearing House, then consistent with the current CDS Auction Terms, the Auction Lot will be allocated in full to bids at or above the Primary CDS Auction Clearing Price or Secondary CDS Auction Clearing Price, as applicable. If, however, an All or Nothing Bid is included in the group of bids with equal or higher bid prices, then the price of such All or Nothing Bid would be the Primary CDS Auction Clearing Price. The examples in Paragraph 5.4 of Part 1 would be modified to take into account All or Nothing Bids, including to show information regarding a “price rank”, whether it is an All or Nothing Bid, the bid size (as a percentage of auction lot), bid price (payment per 100%), size multiplied by price and the allocation percentage of the auction lot. The examples in Paragraph 5.4 of Part 2 would be removed, and cross-reference to the examples in Paragraph 5.4 of Part 1 would be added instead.

Paragraph 5.5 of Parts 1 and 2 would clarify that All or Nothing Bids are given precedence over Standard Bids, in the sense that if an All or Nothing Bid is accepted, a Standard Bid will not be accepted even if it had a higher price than the Primary CDS Auction Clearing Price or Secondary CDS Auction Clearing Price, as applicable. It would also provide that if multiple All or Nothing Bids are received at the Primary CDS Auction Clearing Price or Secondary CDS Auction Clearing Price, as applicable, the Auction Lot will be allocated equally among those bidders.

Paragraph 5.6 in Part 1 would be amended to clarify that in the scenario where the Clearing House elects to determine the CDS Auction Clearing Price for less than 100% of the contracts in the lot and hold a further auction (a “Repeat CDS Auction”) for the remainder, any All or Nothing Bids would be disregarded. Related examples in paragraph 5.6 have been amended accordingly.

### 2. Minimum Bid Requirement

The amendments would revise Paragraph 2.2 of Parts 1 and 2 to reflect that a Clearing Member could have a zero Minimum Bid Requirement (in which case it would not be required to bid for the relevant lot) and to remove a stated exception from the requirement for each CDS Clearing Member to bid in every Primary CDS Auction or

Secondary CDS Auction (as such terms are defined in the CDS Auction Terms), as applicable, for those whose membership privileges permit them not to participate (as there are no such CDS Clearing Members).

Paragraph 2.4 of Parts 1 and 2 would be amended such that a CDS Clearing Member's Minimum Bid Requirement would be communicated to it through the DMS (or via such other means as specified by the Clearing House), as discussed below, as soon as practicable prior to the relevant CDS Auction instead of through the template notification set out in an annex to the CDS Auction Terms (which would accordingly be removed). The amendments to Paragraph 2.4 of Part 1 and Paragraphs 2.4 and 2.5 of Part 2 would also clarify the procedures for the Clearing House to determine that a Minimum Bid Requirement would be inappropriate for a particular CDS Clearing Member in particular circumstances, which would permit the Clearing House greater flexibility in appropriate circumstances. A CDS Clearing Member would be required to notify the Clearing House promptly, but in any event within one hour of the Clearing House publishing details of the CDS Contracts comprising the relevant Auction Lot (instead of 12 hours prior to the opening of the auction), in writing, if it reasonably considers that the Minimum Bid Requirement would not apply to it. ICE Clear Europe does not believe the current 12 hour period is necessarily practicable as an operational matter, as the Clearing House may need to conduct an auction with less than 12 hours' notice. The current requirement could thus either create an undesirable delay in conducting an auction or impose an unnecessary limitation on the CDS Clearing Member's ability to request an exception to the Minimum Bid Requirement. The proposed change, to allow notice within one hour after the Clearing House publishes auction details, will allow the Clearing House to move more quickly to minimize losses and preserve the CDS Clearing Member's ability to request an exception where warranted. The amendments would also clarify that CDS Clearing Members could outsource the operational processing of any of their auction obligations under Rule 102(w) (regarding outsourcing). CDS Clearing Members could also transfer their Minimum Bid Requirements to an Affiliate that is also a CDS Clearing Member, subject to notification to the Clearing House prior to an auction and execution of an agreement in an

approved format. The amendments would clarify that a CDS Clearing Member that outsources any of its obligations would remain liable for any breach by any Affiliate or outsourcee of the CDS Auction Terms or the Primary CDS Auction Specifications, including without limitation in respect of CDS Guaranty Fund juniorization. This amendment broadens the existing requirement which only refers to transfers or outsources of the Minimum Bid Requirement rather than any obligation, and makes specific reference to the CDS Guaranty Fund juniorization, and reflects the general principle that outsourcing or transfer of an obligation does not avoid responsibility for complying with the obligation. The amendments would further add that a CDS Clearing Member that transfers or outsources its Minimum Bid Requirement to an Affiliate would, for the purposes of determining its Senior Guaranty Fund Contribution, Subordinate Guaranty Fund Contribution, Senior Assessment Contribution and/or Subordinate Assessment Contribution, and for determining whether it should be designated as a Non-Bidding CDS Clearing Member, assume the same position as a Senior Bidder, Split Bidder, Subordinate Bidder or Non-Bidding CDS Clearing Member as the Affiliate, as appropriate.

### 3. Default Management System

The amendments would provide for the use of the DMS for a number of communications between the Clearing House and auction participants, in lieu of the current manual notice process. Pursuant to amended paragraph 2.1 of Parts 1 and 2 and the revised definitions of Primary CDS Auction Announcement and Secondary CDS Auction Announcement, the Clearing House would notify CDS Clearing Members electronically through the DMS (or other means specified by the Clearing House) of an auction taking place instead of by Circular. Conforming changes would be made throughout the CDS Auction Terms to make reference to communication through the DMS instead of through existing means. For example, as noted above, the Clearing House would notify Clearing Members of Minimum Bid Requirements through the DMS, pursuant to revised paragraph 2.4 in Parts 1 and 2. Paragraph 2.5 of Part 1 and Paragraph 2.7 of Part 2 would be amended to state that Primary CDS Auction Specifications or Secondary CDS Auction Specifications, as applicable would be provided through the DMS instead of in the template format currently attached to the CDS

Auction Terms. Further, in Paragraph 2.5 of Part 1 and Paragraph 2.7 of Part 2, the statement that the Clearing House will provide each auction participant (other than Defaulters) with information about CDS Contracts to be auctioned would be amended to remove the exception for Defaulters because it is clear that Defaulters would not be auction participants and as such, the exception was unnecessary. The requirement that any minimum or maximum reserve price be provided would be deleted because, consistent with Paragraph 5.2, any reserve price would not necessarily be disclosed to bidders.

Paragraph 2.9 and 2.10 of Part 1 and Paragraphs 2.10 and 2.11 of Part 2 would be amended to state that all bids must be submitted via DMS (or other means specified by the Clearing House) instead of through the existing bid form. Former Paragraph 2.11 of Part 1 and Paragraph 2.12 of Part 2 has been correspondingly removed as no longer relevant with electronic submission through DMS. Paragraph 3.12 of Part 1 and Paragraph 3.10 of Part 2 (each as renumbered) would be amended to provide that modified or amended bids may be submitted through DMS (or another format specified by the Clearing House). Pursuant to revised Paragraph 5.7 of Part 1, further Primary CDS Auction Specifications for any repeat CDS Auction would be notified by the Clearing House through the Primary CDS Auction Announcement and through the DMS (or via such other means and in such format as is specified by the Clearing House). Pursuant to revised Paragraph 5.8 of Part 1 and Paragraph 5.9 of Part 2, winning bidders could also be notified through the DMS. References to submission of a bid form would be removed from the definition of "Bid" and the term "Bid Form" would be amended to "Bid Submission" and would mean submission of a bid via DMS rather than via the ICE file transfer server.

### 4. Clarification of Certain Regulatory and Compliance Obligations

Paragraph 7.7 of Parts 1 and 2 would be amended to clarify and state explicitly certain obligations for auction participants in respect of information they may receive in connection with an auction, including the contents of the portfolio or the outcome or timing of an auction. Specifically, the auction participant would acknowledge that such information may constitute inside information for the purposes of the Market Abuse Regulation (Regulation (EU) No 596/2014) ("MAR") or fall within the definition of any similar term

under Applicable Law (“Market Abuse Laws”) in respect of any Contracts cleared by the Clearing House or in respect of securities of a Defaulter. Under the revisions, each such participant would be required to assess whether such information is inside information and, if so, agree to: (a) Comply with applicable Market Abuse Laws; (b) generally not disclose such information to persons outside of its organization; (c) prevent persons engaged in client trading at such organization from possessing such information; (d) prevent those in possession of such information from trading on such information until it ceases to be inside information; and (e) where such information constitutes inside information under Regulation (EU) No. 596/2014, maintain an insider list of persons with access to this information.

#### 5. Other Clarifications and Updates

The amendments would make a number of other clarifications, drafting improvements and corrections to the CDS Auction Terms. Certain changes to defined terms would be made throughout the CDS Auction Terms, including the use of the term “CDS Default Auction Procedures” instead of CDS Auction Procedures, the new defined term “Bidding Close Time” instead of “Closing Time” (which ICE Clear Europe views as a more precise term in this context (as the concept of closing time more generally has other uses), but which would have the same definition), and the defined term “Auction Lot” instead of “Lot” to better distinguish the term from the generic term, “lot”. The definition of Auction Lot would also be clarified to refer only to CDS Contracts of the Defaulter (rather than the generic term “portfolio” of a Defaulter), and to all or any part of such contracts as determined by the Clearing House for a particular discrete auction. ICE Clear Europe does not believe such change would result in any change in practice. Conforming changes would be made to the defined terms for Lot Assessment Contribution, Lot CDS Direct Auction Participant Contribution, Lot Guaranty Fund Contribution, Lot Guaranty Fund Weighting, Lot Resources and Lot Resource Shortfall.

A series of other changes is intended to more clearly distinguish between primary auctions under Part 1 and secondary auctions under Part 2. Thus, the term “CDS Auction” would be amended to “Primary CDS Auction” with corresponding changes to CDS Auction Announcement, CDS Auction Clearing Price, CDS Auction Participant, CDS Auction Priority, CDS Auction

Priority AC Sequence, CDS Auction Priority GF Sequence and CDS Auction Specifications to refer to Primary CDS Auction Announcement, Primary CDS Auction Clearing Price, Primary CDS Auction Participant, Primary CDS Auction Priority, Primary CDS Auction Priority AC Sequence, Primary CDS Auction Priority GF Sequence and Primary CDS Auction Specifications. Conforming changes would be made throughout the CDS Auction Terms. The terms “Non-Bidding CDS Clearing Member” and “Non-Bidding Direct Participating Customer” would be clarified to explicitly reference such persons that do not submit or make (or would not be deemed to submit or make) a bid in the relevant Primary CDS Auction or Secondary CDS Auction in order to clarify that the terms capture those persons who do not participate or who are deemed not to participate (such as where their bid has been declared invalid under the CDS Auction Terms), whether or not they can be said to have “chosen” not to participate. The term “Elective CDS Auction Participants” and references to this term would be removed, as there are no CDS Clearing Members in such category. The term “Second CDS Auction” would be amended to “Repeat CDS Auction”, which term currently refers to a further Primary CDS Auction under Part 1 after an unsuccessful or partially unsuccessful first CDS auction, with the intention to more clearly distinguish such an auction from a Secondary CDS Auction under Part 2. The terms “Split Bidder” and “Subordinate Bidder” would be amended to explicitly note that this could be either a Primary CDS Participant or a Secondary CDS Auction Participant, as applicable for the relevant auction. This does not reflect a change in substance, but is intended to make the drafting consistent with the deletion of the term “CDS Auction Participant” and addition of the more specific terms, Primary CDS Auction Participant and Secondary CDS Auction Participant.

Proposed amendments to paragraph 1.64 would clarify that references to CDS Contracts, for purposes of the CDS Auction Terms, include (i) where automatic early termination has taken place under Part 9 of the Rules or Contract Terms, a reference to the terminated CDS Contracts or notional amounts representing such terminated CDS Contracts and (ii) where contracts have arisen from hedging transactions pursuant to Rule 903(c), a reference to any such hedging contracts executed by the Clearing House. These amendments thus clarify that such contracts may be

auctioned for purposes of establishing replacement contracts with non-defaulting Clearing Members to balance the Clearing House’s positions as part of the default management process, and thereby also establishing an auction price to be used in determining the Clearing House’s loss with respect to the close out of the defaulter’s positions for purposes of the Rules. Amendments to this paragraph would also add a general introductory note that the CDS Auction Terms govern the auctioning of lots representing one or more CDS Contracts to which a Defaulter is or was a party, where such auction is administered by the Clearing House pursuant to Part 9 of the Rules. In paragraph 1.65, the amendments would clarify that nothing in the CDS Auction Terms would prevent the Clearing House from administering a sale or entering into offsetting transactions without holding an auction to which the CDS Auction Terms apply. This reflects the Clearing House’s existing authority under the Rules, and is intended to avoid any potential confusion as to the scope of the CDS Auction Terms.

Introductory provisions would be added in paragraph 1.67 and following paragraphs to address matters such as governing law and dispute resolution (including submission to arbitration and jurisdiction). These are substantially similar to existing provisions in the Rules and the other Procedures, and ICE Clear Europe is proposing to add them here for consistency across its documentation.

Paragraph 2.11 of Part 1 and Paragraph 2.13 of Part 2 would be amended to clarify that after the Bidding Close Time, the Clearing House will notify participants of the fact that the CDS Auction took place, in addition to the outcome.

Paragraph 3.3 of Parts 1 and 2 would clarify that the specified order of application of CDS Guaranty Fund Contributions and Assessment Contributions in the Primary CDS Auction Priority or Secondary CDS Auction Priority, as applicable, would only apply to bids indicated or deemed related to Minimum Bid Requirements (*i.e.*, those Standard Bids, or if applicable the All or Nothing Bid, that count toward the Minimum Bid Requirement).

An additional clarification would be made in Paragraph 3.8 of Part 1 and Paragraph 3.6 of Part 2 that the Minimum Bid Requirement could be satisfied by submitting multiple bids provided that any individual bid is *equal to* (and not merely larger than) any applicable minimum bid size.

A clarification would be made in Paragraph 3.11 of Part 1 and Paragraph 3.9 of Part 2 that a bidder making a referential Bid (e.g. a Bid which purports to be a Bid which is €1 higher or lower than the highest or lowest Bidder) would be treated as if it had not made such bid. This change is consistent with other changes to the CDS Auction Terms to refer to a person that does not bid in the auction (or is deemed not to bid) as “Non-Bidding CDS Clearing Member” or “Non-Bidding Direct Participating Customer”, without regard to whether the person “chose” not to participate. Similarly, under revised Paragraph 3.12 of Part 1 and Paragraph 3.10 of Part 2, following the bidding close time, upon request of a CDS Auction Participant stating that a mistake was made in the bid submission, the Clearing House could invalidate the bid and the participant would be treated as if it had not made such a bid. The Clearing House would no longer provide for the submitter to withdraw or correct the bid in this case. This reflects the operation of DMS, which does not permit submission of a bid following the bidding close time, and further reflects ICE Clear Europe’s view that given the objective of ensuring a fair and orderly auction, it is not appropriate for Clearing Members to modify bids following the bidding close deadline.

Similar amendments changing “treated as if it had chosen not to participate” to “as if it had not made such Bid” would be made to Paragraphs 3.13, 3.14, 3.15, 4.4 and 5.5 of Part 1 and Paragraphs 3.11, 3.12, 3.13, 4.4, 5.4 and 5.5 of Part 2 for similar reasons. An additional amendment to Paragraph 5.4 of Parts 1 and 2 would provide that in the event of invalid or void bid or no CDS Contract being established, such bid would not be accepted and the CDS Auction Participant would be treated as if it had not made such bid, instead of chosen not to participate, for similar reasons.

The amendments to Paragraph 4.1 of Parts 1 and 2 would remove a statement that a CDS Clearing Member may make an unlimited number of separate bids and clarify that the member may make separate bids for Customers or Sponsored Principals for whom it acts as Sponsor in the same way as it may make a bid for one of its Proprietary Accounts and subject to the same provisions of the relevant Part of the CDS Auction Terms. This amendment reflects that relevant systems do not permit an infinite number of separate bids, and in practice is intended to give ICE Clear Europe flexibility to set a maximum number of bids if it

determines that is appropriate. Amendments to Paragraph 4.3 of Parts 1 and 2 would require that each Direct Participating Customer (as defined in the CDS Auction Terms) enter into a CDS Auction Participation Agreement with its CDS Clearing Member prior to participation in a Primary CDS Auction or Secondary CDS Auction, as applicable (rather than deeming them to be bound by the CDS Auction Terms). ICE Clear Europe believes it is preferable to have a formal agreement with the Direct Participating Customer in this situation, as it provides a clearer and stronger basis for enforcement of the CDS Auction Terms against the Direct Participating Customer.

Amendments to Paragraph 5.3 of Parts 1 and 2 would also permit the Clearing House to at its discretion withdraw an auction lot after (as well as prior to) the bidding close time.

In Paragraph 5.5 of Parts 1 and 2, an additional clarification would add that bids invalidated pursuant to certain Paragraph 3 (Bidding Process) provisions could, at the Clearing House’s discretion, be excluded for purposes of calculating the auction clearing price or allocating sizes at that price.

Amendments to Paragraph 5.8 of Part 1 and Paragraph 5.9 of Part 2 would clarify the mechanism under the Rules through which CDS Contracts are entered into as a result of an auction, by providing that each bid constitutes an offer by the CDS Clearing Member to the Clearing House to enter into CDS Contracts pursuant to a Transfer governed by Rule 904(b) (but without regard to any Customer or Customer-CM Transactions of the Defaulter) and Part 4 of the Rules. The amendment is intended as a clarification of the existing process for entering into contracts and is not a substantive change in the CDS Auction Terms. Any unnecessary reference to acceptance of such offer by the Clearing House would be removed (as the paragraph provides for the relevant contracts to arise between the Clearing House and the winning bidder without need for any further step). Other changes in this paragraph would clarify that resulting CDS Contracts would arise between the Clearing House and the winning bidder, in accordance with such a Transfer and Part 4 of the Rules, but without regard to any Customer or Customer-CM Transactions of the Defaulter, on economically identical terms to the CDS Contracts that are the subject of the auction lot in the relevant Primary CDS Auction or Secondary CDS Auction, as applicable.

Clarifying amendments as to the treatment of Individually Segregated Sponsored Accounts as a form of Customer Account, consistent with other amendments discussed above, would be made in Paragraph 7.1 of Parts 1 and 2.

Throughout the CDS Auction Terms, various provisions would be renumbered as a result of the changes described above and related cross-references would be corrected and updated.

## II. CDS Default Management Policy

ICE Clear Europe is also proposing to make various amendments to its CDS Default Management Framework, which would be renamed the CDS Default Management Policy. The amendments would be consistent with the amendments to the CDS Auction Terms discussed above and make certain other clarifications and updates. Conforming changes would also be made throughout the document to reflect the name change.

In terms of the procedures for declaring a default, the Policy would be revised to remove a requirement that the default management process be implemented “immediately” after approval by appropriate management of the declaration of a default. Although ICE Clear Europe expects that such process would be implemented in a timely manner under the circumstances, it is not necessary (or necessarily feasible) to specify that it do so immediately. A similar change would be made to the requirement that ICE Clear Europe cease clearing trades for the defaulting Clearing Member when it is declared in default.

With respect to activation of the clearing risk team, the Policy would be amended to remove the statement that in the event that the President/Chief Operating Officer being absent, the Head of Clearing Risk has the ability to overrule any other head of department (including Head of Treasury and Head of Operations) where necessary, on matters relating to default management. The amendment reflects a change in the Board’s delegation of authority to the President (and not to the Chief Operating Officer or Head of Clearing Risk in the President’s absence).

With respect to liquidation of a defaulting member’s collateral, the amendments would remove a statement that for all assets the Clearing House ensures that it can sell the collateral, subject to settlements terms, within a single working day. This statement is unnecessary and an oversimplification, and the Clearing House in any event relies on its existing and detailed

collateral and liquidity policies to ensure it has sufficient access to liquidity in case of default. A related statement that the Head of Clearing Risk will have the discretion to postpone the collateral sale would be removed as unnecessary in light of the general standard that the Clearing House will take appropriate action to ensure an orderly close out. Amendments would also clarify that the Clearing House may (but need not) convert any portion of the defaulting Clearing Member's non-cash margin or collateral into cash, as the Clearing House determines appropriate. This is intended as a drafting improvement that provides greater clarity, but does not affect the Clearing House's rights with respect to such margin or collateral.

The provisions of the Policy regarding bidding mechanics would be amended to address "All or Nothing" bids. A paragraph would be added to this section to provide that auction participants may submit "All or Nothing" bids for each auction. The amendments provide explanation as to the meaning of such a bid and an example of how such bids work. The amendments would also provide that further information on the bidding types utilized in any given auction would be published as part of the CDS Default Auction Terms Specifications.

The existing requirement that ICE Clear Europe conduct quarterly reviews of the Policy would be deleted as the Policy would be reviewed as part of the ICE Clear Europe's separate annual documentation review process. The Policy would continue to require ICE Clear Europe, in coordination with its Clearing Members, conduct an annual mock Clearing Member default test with the Clearing Risk Department, appropriate Clearing House management and CDS Default Committee Members for each Clearing Member.

The amendments to the Policy would also update arrangements for breach management, ongoing Policy reviews and exception handling. The amendments are intended to make the Policy consistent in this regard with other ICE Clear Europe policies and governance processes. Pursuant to the amendments, the document owner, as specified in ICE Clear Europe policies, would be responsible for reporting report material breaches or unapproved deviations from this document to the Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who together would determine if further escalation should be made to relevant senior executives, the Board and/or competent authorities.

Exceptions to the Policy would be approved in accordance with ICE Clear Europe's governance process for the approval of changes to the Policy.

#### (b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act<sup>5</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>6</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. ICE Clear Europe believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICE Clear Europe, in particular, to Section 17(A)(b)(3)(F),<sup>7</sup> because ICE Clear Europe believes that the proposed changes to the CDS Auction Terms enhance ICE Clear Europe's ability to manage the risk of defaults. The proposed changes introduce All or Nothing Bidding to ICE Clear Europe's existing auction methodology. This new bid type is intended to reward auction participants for bidding competitively on both size and price, rather than just price (as with a Standard Bid). If an All or Nothing Bid sets the auction clearing price, the revised CDS Auction Terms award 100% to that bid, rather than splitting the award with participants bidding more competitively on price but with smaller size. Such changes incentivize competitive bidding by rewarding auction participants for bidding competitively on both price and size and are designed to promote effective and efficient auctions to facilitate the close-out of the defaulter's portfolio.

The proposed amendments also implement the use of the automated DMS to replace certain manual communication tasks in the auction process, including announcing the auction, communicating Minimum Bid Requirements and auction specifications, submitting bids and notifying winning bidders. Such changes allow ICE Clear Europe to more efficiently and safely manage its auction process and reduce the risk of

miscommunication or error. The added compliance requirements around treatment of information concerning the auction will help prevent market abuse, enhance compliance with applicable law and thus generally promote the public interest. Finally, the clarification and clean-up changes provide greater specificity with respect to the CDS Auction Terms such that auction participants have greater certainty and clarity regarding the auction process and the requirements for their participation. ICE Clear Europe believes that the proposed amendments augment ICE Clear Europe's procedures relating to default management and enhance ICE Clear Europe's ability to withstand defaults and continue providing clearing services, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible; and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>8</sup>

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.<sup>9</sup> Rule 17Ad-22(e)(4)(ii)<sup>10</sup> requires ICE Clear Europe to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. ICE Clear Europe believes that the proposed revisions enhance its CDS Auction Terms. As described above, the optional All or Nothing Bid incentivizes competitive bidding, promoting the goal of reaching an efficient auction clearing price that permits ICE Clear Europe to close out the defaulter's portfolio and return ICE Clear Europe to a matched book. Such new bid type rewards auction participants for bidding competitively on both size and price and may increase the willingness and ability of participants and their

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 17 CFR 240.17Ad-22.

<sup>10</sup> 17 CFR 240.17Ad-22(e)(4)(ii).

customers to participate in an auction and absorb the defaulter's positions through the default management process. In ICE Clear Europe's view, these enhancements represent tools that strengthen ICE Clear Europe's ability to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad-22(e)(4)(ii).<sup>11</sup>

In addition, ICE Clear Europe believes the amendments satisfy Rule 17Ad-22(e)(13),<sup>12</sup> which requires a clearing agency to ensure that it "has the authority and operational capacity to take timely action to contain losses and liquidity demands" in the case of default. As discussed above, the proposed amendments would enhance ICE Clear Europe's default management capabilities in CDS default auctions. Specifically, ICE Clear Europe believes the proposed addition of All or Nothing Bidding and the automated DMS enhance ICE Clear Europe's ability to withstand defaults and continue providing clearing services, including by incentivizing competitive bidding to promote effective and efficient auctions that facilitate the close-out of the defaulter's portfolio and maximizing ICE Clear Europe's ability to efficiently and safely manage its auction process in default events, to ensure that ICE Clear Europe can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default consistent with the requirements of Rule 17Ad-22(e)(13).<sup>13</sup>

Rule 17Ad-22(e)(1)<sup>14</sup> requires that clearing agencies establish policies and procedures that provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. The amendment to Paragraph 7.7 of Parts 1 and 2 are designed to enhance compliance by CDS auction participants with Market Abuse Laws to the extent that they receive any inside information relating to any Contracts cleared by the Clearing House or in respect of securities of a Defaulter. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(1).<sup>15</sup>

Rule 17Ad-22(e)(3)(i)<sup>16</sup> requires clearing agencies to maintain a sound risk management framework that identifies, measures, monitors and manages the range of risks that it faces.

The amendments to the Policy are intended to ensure that the Policy is consistent with the CDS Auction Terms and to ensure risks relating to defaults continue to be well managed. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(3)(i).<sup>17</sup>

Rule 17Ad-22(e)(2)<sup>18</sup> requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The proposed amendments to the Policy more clearly define the roles and responsibilities of the document owner, the Head of Department, the senior members of the Risk Oversight Department and the senior members of the Compliance Department, and are therefore consistent with the requirements of Rule 17Ad-22(e)(2).<sup>19</sup>

*(B) Clearing Agency's Statement on Burden on Competition*

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted further clarify and update the CDS Auction Terms, with the goal of enhancing default management. The addition of All or Nothing Bids would provide an additional bidding option for Clearing Members if they choose to use it. The amendments will otherwise apply to all CDS Clearing Members. ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise impact competition among Clearing Members or other market participants or limit market participants' choices for selecting clearing services. Accordingly, ICE Clear Europe does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

**IV. 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2020-007 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-ICEEU-2020-007. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

<sup>11</sup> 17 CFR 240.17Ad-22(e)(4)(ii).

<sup>12</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>13</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>14</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>16</sup> 17 CFR 240.17 Ad-22(e)(3)(i).

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

<sup>18</sup> 17 CFR 240.17 Ad-22(e)(2).

<sup>19</sup> 17 CFR 240.17 Ad-22(e)(2).



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 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 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/clear-europe/regulation>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2020-007 and should be submitted on or before June 18, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88932; File No. SR-NASDAQ-2020-019]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Certain Amendments To Eliminate the Requirement That the Intraday Indicative Value Be Disseminated for Certain Series of Index Fund Shares and All Series of Managed Fund Shares

May 22, 2020.

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 May 14, 2020, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and

II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to eliminate the requirement that the Intraday Indicative Value be disseminated as set forth under Nasdaq Rule 5705(b) ("Index Fund Shares") for certain series of Index Fund Shares and under Nasdaq Rule 5735 ("Managed Fund Shares") for all series of Managed Fund Shares. Additionally, the Exchange proposes to define the term "Portfolio Holdings" as it pertains to Index Fund Shares. Finally, the Exchange proposes to amend Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts) as it pertains to dissemination of the Intraday Indicative Value.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

Nasdaq Rules 5705(b) and 5735 relate to the listing and trading of Index Fund Shares and Managed Fund Shares, respectively, on the Exchange. Among a number of other requirements, numerous subparagraphs of each of these rules require that an intraday estimate of the value of a share of each series (the "Intraday Indicative Value" or "IIV") of Index Fund Shares and Managed Fund Shares be disseminated and updated at least every 15 seconds.<sup>3</sup>

<sup>3</sup> See subparagraphs (3)(C), (6)(A), and (9)(B)(i) of Nasdaq Rule 5705(b). See also subparagraphs

The Exchange is proposing to eliminate the requirement to disseminate an IIV for all series of Managed Fund Shares<sup>4</sup> listed on the Exchange and for those series of Index Fund Shares that also publish their Portfolio Holdings (as defined below) on a daily basis.

As part of this proposal, the Exchange is also proposing to adopt proposed Nasdaq Rule 5705(b)(1)(F) to define the term "Portfolio Holdings" to mean the holdings of a particular series of Index Fund Shares that will form the basis for the calculation of its net asset value ("NAV") at the end of the business day.<sup>5</sup> Existing Nasdaq Rules require issuers of Managed Fund Shares to provide IIV and daily disclosure of the Disclosed Portfolio.<sup>6</sup> Similarly, existing Exchange Rules require issuers of Index Fund Shares to disseminate an IIV for each fund, but do not universally require daily disclosure of a fund's underlying holdings.

The dissemination of an IIV, together with disclosure of the fund's underlying holdings, was designed to allow investors to determine the value of the underlying portfolio of such funds on a daily basis and provide a close estimate of that value throughout the trading day. However, as consistently highlighted in the adopting release of Rule 17 CFR 270.6c-11 ("Rule 6c-11")<sup>7</sup> under the Investment Company Act of 1940<sup>8</sup> (the "1940 Act"), the Commission has expressed concerns regarding the

(c)(3), (c)(4), (d)(2)(A), (d)(2)(C)(ii), and (d)(2)(D) of Nasdaq Rule 5735.

<sup>4</sup> The Exchange notes that Nasdaq Rule 5735(d)(2)(B)(i) requires that the Disclosed Portfolio for a series of Managed Fund Shares be disseminated at least once daily and be made available to all market participants at the same time. Further, Nasdaq 5735(d)(2)(C)(ii) requires that the Exchange consider suspension of trading in and commence delisting proceedings for a series of Managed Fund Shares where the Disclosed Portfolio is not made available to all market participants at the same time. As such, the Exchange is proposing to eliminate the IIV dissemination requirements entirely from Nasdaq Rule 5735.

<sup>5</sup> For purposes of Nasdaq Rule 5705(b), Portfolio Holdings would include various information, to the extent applicable, as listed in proposed subparagraphs (1)(F)(i) through (1)(F)(xi). The proposed definition of Portfolio Holdings is substantively identical to the definition of "Disclosed Portfolio" as set forth in Nasdaq Rule 5735(c)(2).

<sup>6</sup> See subparagraphs (c)(2), (d)(1)(B), and (d)(2)(B)(i) of Nasdaq Rule 5735. The term "Disclosed Portfolio" (as defined in Nasdaq Rule 5735(c)(2)) means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

<sup>7</sup> See Investment Company Act Release No. 10695 (September 25, 2019), 84 FR 57162 (October 24, 2019) (the "Adopting Release").

<sup>8</sup> 15 U.S.C. 80a-1.

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

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