

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84754; File No. SR-ICEEU-2018-015)

December 7, 2018

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the ICE Clear Europe Limited Liquidity Plan

I. Introduction

On October 22, 2018, 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 (SR-ICEEU-2018-015) to amend its Liquidity Plan³ to (i) refer to approved financial institutions (“AFI”) (such as investment agents and custodians) more generally, rather than to specific institutions; (ii) add an additional default scenario; (iii) revise procedures related to liquid resources and make other miscellaneous updates, including (a) clarifying the sources of liquidity to be relied upon in stress scenarios, (b) indicating which resources are excluded from those considered potential sources of liquidity, (c) updating key risk and performance indicators used in determining credit and liquidity standards of investments, and (d) removing unnecessary risk default scenarios and correcting typographical errors; and (iv) streamline its internal reporting process. The proposed rule change was published for comment in the Federal Register on November 9,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used in this order, but not defined herein, have the same meaning as in the ICE Clear Europe Rules.

2018.⁴ On November 30, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make a technical change to the Liquidity Plan. The Commission did not receive comments on the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

A. Changes to Approved Financial Institution

ICE Clear Europe proposes to amend its Liquidity Plan to reflect changes in its treasury arrangements and certain other enhancements.⁵ Specifically, the approved AFI default and AFI plus Member default liquidity stress testing scenarios have been revised to refer to AFIs more generally, rather than to specific institutions.⁶ Currently, these two scenarios refer to specific institutions. However, ICE Clear Europe believes that because it may use a number of different financial institutions in these roles at various times, not naming a specific institution would assist in keeping its Liquidity Plan up to date as these service providers change.⁷

B. Additional Default Scenario

ICE Clear Europe proposes to amend the Liquidity Plan to add a new Central Securities Depository (CSD) default scenario, which is defined as a CSD being unable to

⁴ Securities and Exchange Act Release No. 34-84533 (November 5, 2018), 83 FR 56107 (November 9, 2018) (SR-ICEEU-2018-015) (“Notice”).

⁵ Notice, 83 FR 56107.

⁶ Id.

⁷ Id.

process settlements.⁸ Currently, the Liquidity Plan does not have a stress testing scenario assessing the liquidity impact of the possibility that CSDs such as Euroclear Bank or Euroclear UK & Ireland cease to be functional and not able to process settlements. Under the scenario being proposed, available liquidity is assessed against the expected net cash payment outflow for a single day on a per currency basis, to determine if such a default could result in a delay in payment to clearing members.⁹

C. Updates and Clarifications to Liquidity Stress Testing Scenarios

Other proposed updates and clarifications to the Liquidity Plan include: adding intra-day overdraft facilities to the sources used for the risk tolerance and risk appetite evaluations in the liquidity stress testing scenarios; eliminating references to an ICE Inc. (ICE Clear Europe's parent company) credit facility; in calculating the investment loss component of liquidity stress losses in clearing member default scenario, time deposits are assumed to have a 100% liquidity loss; for liquidity stress testing scenarios that look at cash invested with a one-day maturity, US dollar investments in reverse repurchase agreements in assets denominated in Euro or pounds sterling will be excluded from available liquidity resources and cross-currency investments for Euro and British pounds sterling balances are not permitted; key risk and performance indicators used by ICE Clear Europe to determine if investments meet its credit and liquidity standards have been added; typographical errors corrected and a cross-reference to various treasury

⁸ Id.

⁹ Id.

operating procedures was updated; and certain risk default scenarios have been removed.¹⁰

D. Changes in Reporting and Governance

ICE Clear Europe has also proposed changes related to its internal reporting process. Specifically, several weekly and monthly liquidity reports will no longer be sent to the Board Risk Committee and the Board. Instead, the Audit Committee will receive certain liquidity metrics, the Business Risk Committee will receive a liquidity management summary and other summary data, and the Board will receive collateral and investment data, certain liquidity metrics and assessments, and key risk and performance indicators.¹¹

Other proposed revisions to the Liquidity Plan include that the Executive Risk Committee, as opposed to the Business Control Committee, will review the plan annually and that aspects of the Liquidity Plan will be tested annually.¹²

III. Discussion and 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 such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.¹³ For the reasons given below, the Commission finds

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ 15 U.S.C. 78s(b)(2)(C).

that the proposal is consistent with Section 17A(b)(3)(F) of the Act, and Rule 17Ad-22(e)(7).

A. Consistency with Section 17A(b)(3)(F)

Section 17A(b)(3)(F) 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, derivatives agreements, contracts and transactions, and 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.¹⁴

The Commission believes that the proposed changes described above, taken as a whole, should improve ICE Clear Europe's ability to monitor and test its liquidity in a variety of scenarios. First, by referring to AFIs generally, ICE Clear Europe can efficiently plan for the default by any AFI rather than having its plans linked to a particular financial institution. This gives ICE Clear Europe the ability to replace an AFI with another AFI without needing to first change the text of its Liquidity Plan. This in turn would promote ICE Clear Europe's ability manage the liquidity needed to promptly and accurately clear and settle securities transactions and to safeguard the securities and funds which are in its custody or control or for which it is responsible by helping to ensure that ICE Clear Europe always has an AFI to serve as an investment agent and / or custodian.

Similarly, the Commission believes that the other amendments described above serve to enhance the Liquidity Plan, thereby promoting prompt and accurate clearance

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

and settlement and the safeguarding of funds and securities. For example, the Commission believes that adding a new default scenario to liquidity stress testing and clarifying the sources used to evaluate risk tolerance and appetite would enhance ICE Clear Europe's ability to use the Liquidity Plan to anticipate liquidity risks and the sources necessary to cope with such risks. Further, the Commission believes that excluding investments in repurchase agreements with foreign currency as collateral from available liquid resources would assist ICE Clear Europe in avoiding reliance on assets considered to contain more risk, thereby bolstering ICE Clear Europe's overall approach to liquidity management. Likewise, the Commission believes that the manner in which ICE Clear Europe has added to and revised its key risk and performance indicators would enhance the compliance tool used to test if investments made by investment agents meet credit and liquidity requirements. As a result, the Commission believes that these proposed changes to the Liquidity Plan would in turn assist ICE Clear Europe in maintaining a level of liquidity sufficient to promptly and accurately clear and settle transactions and safeguard securities and funds. The Commission therefore finds that the proposed rule changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹⁵

B. Consistency with Rule 17Ad-22(e)(7)

Rule 17Ad-22(e)(7) requires in relevant part that a clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by it,

¹⁵ Id.

including through liquidity testing and by holding qualified liquid resources.¹⁶ As described above, ICE Clear Europe proposes to refer in its liquidity stress testing procedures to third party financial institutions that serve as investment agents or custodians in general terms rather than naming a specific institution. The Commission believes that this change would bolster the Liquidity Plan by enhancing the efficiency of the process ICE Clear Europe will use to account for changes in such agents. This in turn would contribute to ICE Clear Europe's ability to manage its liquidity risks.

As described above, ICE Clear Europe proposes to add a CSD default scenario to its stress testing procedures. The Commission believes that adding another default scenario would enhance ICE Clear Europe's Liquidity Plan by anticipating specifically how to prepare for a default of a key participant in the clearing process, thereby furthering ICE Clear Europe's ability to effectively measure, monitor, and manage its liquidity risk.

The Commission believes that the various other updates to the Liquidity Plan described above would help ICE Clear Europe to effectively measure, monitor, and manage its liquidity risk. For instance, clarifying in the Liquidity Plan that ICE Clear Europe has intra-day overdraft facilities to rely upon in various stress scenarios would explain with greater specificity what sources of liquidity are available to ICE Clear Europe to manage its liquidity risk. Additionally, as noted above, other changes to the Liquidity Plan include the fact that time deposits are assumed to have 100% liquidity loss similar to other unsecured investments and that in scenarios which include cash invested with a one day maturity, collateral underlying investments that are denominated in

¹⁶ 17 C.F.R. § 240.17Ad-22(e)(7).

foreign currency are excluded from available liquid resources. The Commission believes that these changes would enhance ICE Clear Europe's ability to manage liquidity risk by specifying more clearly which resources constitute potential measures to manage liquidity risk for the purposes of Rule 17Ad-22(e)(7) and which resources do not.

As described above, the Liquidity Plan also updates the table of key performance indicators that it uses to determine if investments meet credit and liquidity standards. For instance, the Liquidity Plan now includes, among others, ratings checks for unsecured investments and repo balance per counterparty. The Commission believes the proposed changes to the key risk and performance indicators would enhance ICE Clear Europe's liquidity monitoring by giving it more tools to monitor investments and hence its liquidity.

As described above, ICE Clear Europe also is revising its reporting process so that certain reports would no longer be routinely provided to the Board but rather to the Audit and Business Risk Committees. The Commission believes these changes would enhance the Liquidity Plan by prioritizing reporting to the most relevant level. Additionally, ICE Clear Europe is revising its procedures so that certain testing is done on an annual rather than periodic basis, the Liquidity Plan is reviewed by the Executive Risk Committee, and certain irrelevant risk default scenarios have been removed. Overall, the Commission believes that these changes will enable ICE Clear Europe to efficiently measure and monitor its liquidity risk by ensuring that relevant scenarios are reviewed by appropriate staff on a regular basis.

As a result of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(7).¹⁷

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 e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2018-015 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-ICEEU-2018-015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

¹⁷ Id.

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, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation#rule-filing>. 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-2018-015 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

In its filing, ICE Clear Europe requested that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2) of the Exchange Act.¹⁸ Under Section 19(b)(2)(C)(iii) of the Act,¹⁹ the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. ICE Clear Europe believes that accelerated approval is warranted because the proposed rule change, as modified by Amendment No. 1, is not expected to change the rights or obligations of clearing members or other persons using the clearing service or the terms or conditions of any cleared contract. Accordingly, ICE Clear Europe does not believe that any delay in implementing amendments with respect to such matters will benefit

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 15 U.S.C. 78s(b)(2)(C)(iii).

clearing members, their customers or any other market participants. Rather, ICE Clear Europe is seeking to enable the full onboarding of additional treasury service providers as soon as possible.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,²⁰ for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, prior to the 30th day after the date of publication of notice in the Federal Register, because the proposed rule change is required as soon as possible in order to facilitate ICE Clear Europe's efforts to provide further treasury services. The Commission also finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of the notice of Amendment No. 1 in the Federal Register. As discussed above, ICE Clear Europe submitted Amendment No. 1 to make a technical change to the Liquidity Plan. The Commission believes that Amendment No. 1 does not raise any novel issues or alter the proposed changes in any way. In addition, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and applicable rules thereunder for the reasons discussed above. Accordingly, the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.

VI. Conclusion

²⁰ 15 U.S.C. 78s(b)(2)(C)(iii).

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act,²¹ and Rule 17Ad-22(e)(7)²² thereunder.

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²³ that the proposed rule change (File Number SR-ICEEU-2018-015), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.²⁴

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

Brent J. Fields
Secretary

²¹ 15 U.S.C. 78q-1.

²² 17 C.F.R. § 240.17Ad-22(e)(7).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 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).

²⁵ 17 CFR 200.30-3(a)(12).