

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85908; File No. SR-ICEEU-2019-010)

May 21, 2019

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to Amendments to the ICE Clear Europe Membership Policy

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 13, 2019, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

ICE Clear Europe proposes to amend its Clearing Membership Policy (the “Policy”) to provide further clarification for the Clearing Membership requirements and to update certain ICE Clear Europe internal governance requirements applicable to all Clearing Membership applications.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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, Security-Based Swap Submission or Advance Notice

(a) Purpose

ICE Clear Europe is amending its Clearing Membership Policy. The proposed update allows for (i) the introduction of internal standards to be used by the Clearing House to assess the CDS Clearing Members' operational abilities to adhere to the existing CDS Clearing Membership requirements in relation to the end-of-day pricing submission obligations, (ii) the removal of the references to the F&O and CDS Product Risk Committees' (collectively, the "Product Risk Committees") role from the ICE Clear Europe internal governance steps to approve or reject new Clearing Members, as the Executive Risk Committee has obtained the authority from the ICE Clear Europe Board of Directors to approve or reject applications, and (iii) the introduction of an explicit requirement for the Clearing Risk Department to consider the performance of the applicant Clearing Members in the Default Management Test and to review such applicants' internal policies and procedures to assess the efficacy of their default management process, as part of the on boarding process.

(b) Statutory Basis

ICE Clear Europe believes that the proposed Policy changes would be consistent with the requirements of Section 17A of the Securities Exchange Act 1934 (the “Act”)³ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-224.

In particular, Section 17A(b)(3)(F) of the Act⁵ 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. The proposed changes to the Policy would both (i) enhance the ability of ICE Clear Europe to assess the capacity of applicant Clearing Members to adhere to the rules of the Clearing House and (ii) streamline the on boarding approval process of applicant Clearing Members. The changes would thus facilitate continued clearing by Clearing Members in compliance with the applicable rules of the Clearing House and promote the prompt and accurate clearance and settlement of transactions by these persons. Through enhancing risk management processes relating to Clearing Member pricing capability and default management, the amendments may also enhance the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible as well as the protection of investors and the public interest.

³ 15 U.S.C. 78q-1

⁴ 17 C.F.R. 240.17Ad-22.

⁵ 15 U.S.C. 78q-1

In addition, Section 17A(b)(3)(F) of the Act⁶ requires, among other things, that the rules of a clearing agency are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate matters not related to the purposes of the Section of the Act⁷ or the administration of the clearing agency.

The proposed changes would be aligned with such requirements as they introduce further clarity on how ICE Clear Europe shall test the ability of the CDS applicant Clearing Members to provide the required information on the end of day prices to the Clearing House, in line with the relevant rules of the Clearing House, and on the elements that ICE Clear Europe shall consider to assess the effectiveness of the applicant Clearing Members' default management process. The other set of the proposed changes, which refer to certain changes to the internal governance process for the approval or rejection of applicant Clearing Members, would apply uniformly to all applicant Clearing Members, ensuring that a consistent and non-discriminatory internal governance process is followed for the approval or rejection of applicant Clearing Members.

The amendments would also satisfy the specific relevant requirements of Rule 17Ad-22⁸, as set forth in the following discussion.

Specifically Rule 17Ad-22(e)(2)⁹ requires, among other things, that the written policies and procedures of a clearing agency be designed to provide for governance arrangements that are clear and transparent.

⁶ 15 U.S.C. 78q-1

⁷ *Id.*

⁸ 17 C.F.R. § 240.17Ad-22.

ICE Clear Europe believes the proposed amendment to remove the references to the Product Risk Committees' role in the new Clearing Members approval process, as the ICE Clear Europe Executive Risk Committee has obtained the authority from the ICE Clear Europe Board of Directors to approve or reject applications, would allow for a more accurate description in the Policy of the actual internal governance process followed by ICE Clear Europe.

Finally, Rule 17Ad-22(e)(18)¹⁰ requires, among other things, that the written policies and procedures of a clearing agency be designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, and to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.

ICE Clear Europe believes the proposed amendments would be consistent with such requirements. Indeed, the additional clarifications on the end-of-day pricing requirements for CDS Clearing Members and on the elements that ICE Clear Europe shall consider to assess the effectiveness of the applicant Clearing Members' default management process allow for the introduction of clearer and more objective parameters for the ICE Clear Europe Clearing Risk Department to make a determination on the Clearing Member's ability to adhere to the ICE Clear Europe Clearing Membership requirements.

⁹ 17 C.F.R. 240.17Ad-22(e)(2).

¹⁰ 17 C.F.R. 240.17Ad-22(e)(18).

In relation to the requirement on the public disclosure of the criteria for participation to the Clearing House, ICE Clear Europe achieves compliance with such requirement by making the ICE Clear Europe Membership Procedures available on its website¹¹. The proposed amendments do not trigger any change to the ICE Clear Europe Membership Procedures, as the amendments do not refer to any of the four areas covered by the ICE Clear Europe Membership Procedures: Application Process, Resignation Process, Capital Requirements and Matters Requiring Notification by Clearing Members.

As a result, in ICE Clear Europe's view, the amendments would be consistent with the obligations of Rule 17Ad-22(e)(18)¹² that require clearing agencies to have objective, risk-based, and publicly disclosed criteria for participation of Clearing Members.

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

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed amendments related to the changes for CDS Membership shall be applied uniformly to all CDS Clearing Members. Additionally, the proposed changes on the elements to be considered by the Clearing House to assess the effectiveness of the applicant Clearing Members' default management process and the proposed changes to the internal governance approval process of new Clearing Members shall apply uniformly to all new Clearing Members. Therefore, ICE Clear Europe does not believe the

¹¹ <https://www.theice.com/clear-europe/regulation>.

¹² 17 C.F.R. 240.17Ad-22(e)(18).

amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in Contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not at 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 comments received with respect to the proposed amendments.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice and Timing for Commission Action

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based

swap submission or advance notice 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-2019-010 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-2019-010. 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, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice 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, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 pm. 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-2019-010 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Eduardo A. Aleman
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).