

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-87558; File No. SR-ICEEU-2019-025

November 18, 2019

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to Amendments to the ICE Clear Europe Clearing Rules and General Contract Terms

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 November 12, 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. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4)(ii) thereunder,⁴ such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

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

The principal purpose of the proposed amendments is for ICE Clear Europe to amend its Clearing Rules (the “Rules”)⁵ and General Contact Terms in connection with the clearing of F&O contracts for a new market, ICE Futures Abu Dhabi (“IFAD”).

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 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 proposing to amend its Rules in order to provide clearing services to IFAD, an affiliated newly established futures exchange which will form part of the Intercontinental Exchange, Inc. global network of exchanges.⁶ IFAD will operate an energy futures and options market and intends to initially launch a physically delivered

⁵ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the “Rules”).

⁶ Intercontinental Exchange, Inc. has announced the planned launch of IFAD, which will be a recognized investment exchange under the laws of the Abu Dhabi Global Market (“ADGM”).

futures contract whose underlying is Murban crude oil.⁷ The proposed amendments to the Rules reflect the addition of IFAD as a trading market cleared by ICE Clear Europe and include relevant references to applicable ADGM laws and regulations. Contracts traded on IFAD and cleared at ICE Clear Europe will be F&O Contracts for purposes of the Rules.

In Rule 101, new defined terms would be added to reference IFAD itself, its rules and the various types of IFAD transactions, in a manner generally consistent with the defined terms applicable to other F&O energy markets (and transactions thereon) cleared by ICE Clear Europe. These defined terms include “IFAD,” “IFAD Block Contract,” “IFAD Block Trade Facility,” “IFAD Block Transaction,” “IFAD Contract,” “IFAD Matched Contract,” “IFAD Matched Transaction,” “IFAD Rules” and “IFAD Transaction”. In addition, defined terms would be added for relevant regulatory matters, including “FSMR” (the Financial Services and Markets Regulations 2015 of the Abu Dhabi Global Market), “FSRA” (the Abu Dhabi Global Market's Financial Services Regulatory Authority) and “FSRA Rules” (the rules and similar materials of the FSRA).

Certain existing definitions would be updated to reference IFAD and the new defined terms (consistent with existing references to other cleared markets), including: “Applicable Law” to include references to the FSMR and the FSRA Rules; “Regulatory

⁷ The initial launch of IFAD trading is expected to be in the first half of 2020, subject to completion of all regulatory approvals and other conditions. ICE Clear Europe expects that prior to the launch, it will adopt amendments to its Delivery Procedures relating to settlement of the launched contracts, which will be filed with the Commission under Rule 19b-4.

IFAD has stated that it may in the future list other crude oil and crude-oil related products and other financial futures or options contracts on such futures contracts, subject to applicable regulatory authorizations.

Authority” to include the FSRA; “Energy” to also refer to the clearing of IFAD Markets; “Energy Transaction” to include IFAD Transactions; “Market” to include IFAD; and “Non-DCM/Swap” to include an IFAD Transaction and an IFAD Contract.

The introductions to Part 9 (Default Rules) and Part 12 (Settlement Finality Regulations and Companies Act 1989) of the Rules would also be amended to reference the FSMR among other relevant Applicable Laws on which the Clearing House may rely for purposes of default management.

A new Rule 1208 would be added to address specifically settlement finality under ADGM laws. Pursuant to the proposed rule, Clearing Members and other Participants would acknowledge that modifications to Applicable Laws in the Abu Dhabi Global Market related to insolvency, which may affect Clearing Members, the Clearing House and other Participants, may apply pursuant to the FSMR as a matter of ADGM law. The rule would give notice to Clearing Members and other Participants that these modifications may apply in relation to a broader range of circumstances than those set out in Part 12 itself, and may provide expanded settlement finality protections as a matter of ADGM law compared to those which are available under English and European law, particularly as regards the settlement finality upon delivery of non-securities products such as oil.

ICE Clear Europe would also make a conforming change to its General Contact Terms to include a reference to the IFAD rules, which set out certain contract terms for IFAD contracts.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁸ 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 amendments are designed to facilitate the clearing of F&O Contracts, including physically delivered crude oil futures contracts, that are expected to be launched for trading on the IFAD exchange and that will be cleared by ICE Clear Europe. The amendments would supplement the Rules to include references to IFAD and related transactional and regulatory definitions, on a similar basis to the other F&O markets that ICE Clear Europe currently clears. ICE Clear Europe believes that its existing financial resources, account infrastructure, risk management, systems and operational arrangements would be sufficient to support clearing of such Contracts and to manage the risks associated with such Contracts in compliance with applicable law. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of IFAD contracts under the Rules, the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁹

The amendments are also consistent with relevant requirements under Rule 17Ad-22.¹⁰

Legal Framework. Consistent with the requirement that clearing agencies provide a well-founded, clear, transparent, and enforceable legal basis for their activities pursuant to Rule 17Ad-22(e)(1),¹¹ the amendments add references to ADGM regulations and regulatory authorities into relevant provisions of the Rules, such as the defined term Applicable Laws, as well as generally incorporate IFAD transactions into the framework of the Rules. Other amendments would further clarify the Clearing House’s ability to rely on rights under the FSMR in managing a default, where applicable.

Financial Resources. ICE Clear Europe will apply its existing energy margin methodology to IFAD contracts. ICE Clear Europe believes that this methodology will provide sufficient margin to cover the risks from clearing such contracts, which are similar to other energy contracts cleared by ICE Clear Europe. In addition, for similar reasons, ICE Clear Europe will apply its existing F&O Guaranty Fund methodology in connection with the IFAD contracts. In ICE Clear Europe’s view, the existing methodology will be sufficient to support clearing of the IFAD contracts in addition to other F&O Contracts. As a result, ICE Clear Europe believes that its financial resources

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 C.F.R. 270.17Ad-22.

¹¹ 17 C.F.R. 240.17Ad-22(e)(1), which requires that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (1) Provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.”

will be sufficient to support clearing of IFAD contracts, consistent with the requirements of Rule 17Ad-22(b)(2-3)¹² and (e)(4)¹³.

¹² 17 C.F.R. 240.17Ad-22(b)(2-3), which requires that “[a] registered clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to:

(2) Use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.

(3) Maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions; provided that a registered clearing agency acting as a central counterparty for security-based swaps shall maintain additional financial resources sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a central counterparty for security-based swaps. Such policies and procedures may provide that the additional financial resources may be maintained by the security-based swap clearing agency generally or in separately maintained funds.

¹³ 17 C.F.R. 240.17Ad-22(e)(4), which requires that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (4) [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by:

(i) Maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence;

(ii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency providing central counterparty services that is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile, 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;

(iii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency not subject to paragraph (e)(4)(ii) of this section, maintaining additional financial resources at the minimum to enable it to

Operational Resources. ICE Clear Europe will have sufficient operational and managerial capacity to clear the IFAD contracts. Specifically, ICE Clear Europe believes that its existing systems and procedures are appropriately scalable to handle the additional IFAD contracts, which will be generally similar to other energy contracts currently cleared by ICE Clear Europe. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad-22(e)(17).¹⁴

Default Management. These amendments make clarifications to the default management provisions in Parts 9 and 12 of the Rules to reflect relevant rights under

cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;

(iv) Including prefunded financial resources, exclusive of assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under paragraphs (e)(4)(i) through (iii) of this section, as applicable;

(v) Maintaining the financial resources required under paragraphs (e)(4)(ii) and (iii) of this section, as applicable, in combined or separately maintained clearing or guaranty funds;..."

¹⁴ 17 C.F.R. 240.17Ad-22(e)(4), which requires that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (17) Manage the covered clearing agency's operational risks by:

(i) Identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls;

(ii) Ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and

(iii) Establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations.

ADGM regulations. As such, the amendments are consistent with the Clearing House's ability to take timely action to continue to meet its obligations in the case of default, as required under Rule 17Ad-22(e)(13).¹⁵

(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 changes are being proposed in connection with the addition of clearing services for contracts traded on IFAD, a new energy futures and options market. ICE Clear Europe believes that its clearing of IFAD contracts would provide additional opportunities for interested market participants to engage in cleared trading activity in the energy derivatives markets market, and will not adversely affect its existing cleared markets or participants in them. Specifically, ICE Clear Europe does not believe the 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 appropriate in furtherance of the purpose of the Act.

¹⁵ 17 C.F.R. 240.17Ad-22(e)(13), which requires that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (13) ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum requiring the covered clearing agency’s participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures....”

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

ICE Clear Europe has conducted a public consultation with respect to the proposed amendments.¹⁶ ICE Clear Europe received one question from a Clearing Member with respect to the launch of clearing of IFAD contracts which has been addressed and did not require changes to the proposed rules.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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:

¹⁶ Circular C19/164 (25 October 2019), available at https://www.theice.com/publicdocs/clear_europe/circulars/C19164.pdf.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 C.F.R. 240.19b-4(f).

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-2019-025 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-2019-025. 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-2019-025 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.¹⁹

Jill M. Peterson
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).