SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88665; File No. SR-ICEEU-2020-003)

April 16, 2020

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

I. Introduction

On February 18, 2020, 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 to revise its Clearing Rules (the "Rules"),[3] the Standard Terms contained in the annexes to the Rules, the Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, FX Procedures, Complaint Resolution Procedures, Business Continuity Procedures, Membership Procedures, and General Contract Terms (collectively, the "Amended Documents") to make various updates and enhancements. The proposed rule change was published for comment in the Federal Register on March 6, 2020.[4] The Commission did not receive comments on the proposed rule change. On April 15, 2020, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Capitalized terms used but not defined herein have the meanings specified in the Rules.

4 Securities Exchange Act Release No. 88308 (Mar. 2, 2020), 85 Fed. Reg. 13200 (Mar. 6, 2020) (SR-ICEEU-2020-003) ("Notice").

5 ICE Clear Europe filed Partial Amendment No. 1 to update Exhibit 5C, the Finance Procedures, to reflect changes made to the Finance Procedures by filing SR-ICEEU-2020-004 subsequent to the initial filing of this proposed rule change. See Self-

Partial Amendment No. 1 from interested persons and, for the reasons discussed below, is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter the "proposed rule change") on an accelerated basis.

II. Description of the Proposed Rule Change

A. Background

The proposed rule change would modify the Amended Documents to make a variety of improvements and updates to reflect current operational practice at ICE Clear Europe. For purposes of discussing these changes and considering their consistency with the Act and the Rules, these changes have been categorized below according to the aspects of Rule 17Ad-22(e)[6] and the Exchange Act[7] which apply to ICE Clear Europe as a covered clearing agency.

B. 17Ad-22(e)(1)

As discussed in this section, the proposed rule change would make a number of clarifications and drafting improvements to the Amended Documents. ICE Clear Europe is making these changes to ensure that its Rules and Procedures provide for a well-founded, clear,

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Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Finance Procedures, Securities Exchange Act Release No. 88433 (Mar. 20 2020), 85 Fed. Reg. 17139 (Mar. 26 2020) (SR-ICEEU-2020-004). Partial Amendment No. 1 also corrects a typographical error in the amendment to Rule 1005(d) by restoring the requirement in Rule 1005(d) that no person shall serve on or sit with an Appeal Panel if that person has certain specified conflicts of interests, which had unintentionally been deleted. Finally, Partial Amendment No. 1 makes minor typographical corrections in relation to both of those changes.

6 17 CFR 240.17Ad-22(e).

7 15 U.S.C. 78q-1(b)(3).

transparent, and enforceable legal basis for each aspect of ICE Clear Europe's activities in all relevant jurisdictions, in accordance with the requirement of Rule 17Ad-22(e)(1).[8] These changes are discussed below, organized by the nature of each change.

i. Definition of Capital

Currently, the definition of the term "Capital" in Rule 101 references the Banking Consolidation Directive. This directive, which set out the capital requirements framework for EU banks and broker-dealers, was replaced and superseded by the Capital Requirements Regulation and Capital Requirements Directive. The proposed rule change would replace references to the Banking Consolidation Directive in the defined term Capital with references to the Capital Requirements Regulation and Capital Requirements Directive. The proposed rule change would also delete from Rule 101 the definition for the Banking Consolidation Directive and provide definitions for the terms Capital Requirements Regulation and Capital Requirements Directive.

ii. Definition of Failure to Pay

Currently, Rule 101 defines a "Failure to Pay" as the failure of ICE Clear Europe to make any payment when due if such failure is not remedied on or before the date falling three business days after notice of such failure is given to ICE Clear Europe. Under Rule 110(b), however, ICE Clear Europe may extend the time for making payments whenever in its discretion it considers that such extension is necessary or in the best interests of ICE Clear Europe but may not extend for longer than three business days after such payment is due unless such extension is approved

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[8] 17 CFR 240.17Ad-22(e)(1).

by ICE Clear Europe's Board. Currently, the definition of "Failure to Pay" provides that where ICE Clear Europe makes such an extension, a Failure to Pay shall occur if ICE Clear Europe does not remedy the failure by 10 a.m. on the next Business Day after service of a notice of that failure to ICE Clear Europe by the Clearing Member or Sponsored Principal to whom such payment or return is due, provided that such notice is given no earlier than the final day of the extended period. The proposed rule change would clarify this provision to provide that where ICE Clear Europe makes such extension, a Failure to Pay shall not occur until after the three business day period and the extended period have cumulatively elapsed. This proposed change would help to clarify an important point that is assumed in the current definition of "Failure to Pay," namely that if ICE Clear Europe makes an extension, the Failure to Pay does not occur after the end of such extended period and the normal three business day period.

iii. Use of Guaranty Fund in Part 9 of the Rules

Rule 906(a) defines how ICE Clear Europe calculates the net sum payable by or to a defaulting Clearing Member. Among other things, this calculation includes the value of the defaulting Clearing Member's contributions to the Guaranty Fund. The proposed rule change would amend this calculation to provide that Guaranty Fund contributions must be applied for this purpose "in accordance with Rules 906(b) and (c)." Those provisions set out restrictions on the setting off or aggregation of assets attributable to different accounts of a defaulting Clearing Member for the purposes of the net sum calculation. Thus, this proposed change would not change current practice but rather would help to resolve a potential conflict by clarifying in Rule 906(a) that these limitations apply to the use of the Guaranty Fund contributions in determining the net sum calculations under Rule 906(a).

The proposed rule change would make a similar change to the final subparagraph of Rule 906(b). As discussed above, Rule 906(b) sets out restrictions on the setting off or aggregation of assets attributable to different accounts of a defaulting Clearing Member. The final paragraph of Rule 906(b) provides that a defaulting Clearing Member's Guaranty Fund contributions may be used for the purpose of calculating any net sum on any Account relating to that defaulting Clearing Member in accordance with Rule 906(a) and subject to the restrictions in Rule 908, Rule 102(q), and Rule 906(b). For the sake of clarity, the proposed rule change add to this list of restrictions a reference to Rule 906(c), in addition to the existing rules that are referenced. Thus, this proposed change would not change current practice but rather would clarify that the limitation in 906(c) also applies in 906(b). .

iv. Set Off under Rule 906(a)

Rule 906(c) provides that ICE Clear Europe may aggregate, set off or apply any Margin, Surplus Collateral or other surplus assets available to it in relation to a defaulting Clearing Member's house account to meet a shortfall on any one or more of that defaulting Clearing Member's customer accounts or Individually Segregated Sponsored Accounts which the defaulting Clearing Member sponsored. The proposed rule change would amend this provision to provide that ICE Clear Europe "shall" aggregate, set off, or apply surplus assets, rather than "may." ICE Clear Europe represents that this proposed change would not change its default management practices, as in practice it has treated this provision as mandatory.[9] Rather, the proposed rule change would clarify the operation of Rule 906(a) by eliminating what could

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[9] Notice, 85 Fed. Reg. at 13210.

appear to be discretion granted to ICE Clear Europe in whether to aggregate, set off, or apply surplus assets.

v. Liability for an Individually Segregated Sponsored Account

The proposed rule change would clarify Rule 912(b)(iv). Rule 912(b)(iv) provides that both the Sponsor and Sponsored Principal remain jointly liability in respect of any liability on an Individually Segregated Sponsored Account, in the event of certain terminations of a Clearing Member's membership at ICE Clear Europe. The proposed rule change would clarify this provision to provide that the Sponsor and Sponsored Principal remain "jointly and severally" liable, rather than just "jointly" liable. According to ICE Clear Europe, counsel to an industry association suggested this change to ensure that the liabilities and assets on sponsored accounts have mutuality.[10] ICE Clear Europe also represents that the change would fix a drafting error as the revised language would be consistent with other provisions in Part 19, and ICE Clear Europe inadvertently omitted the "and severally" language when adopting Rule 912(b)(iv).[11]

vi. Transfer Orders

a. Changes to Ensure an Enforceable Legal Basis

The proposed rule change would make a number of amendments to Part 12 of the Rules, regarding ICE Clear Europe's use of Transfer Orders, a term which is defined in Rule 1201(r) to mean a Payment Transfer Order and a Securities Transfer Order. As discussed in the preamble to Part 12 of the Rules, ICE Clear Europe uses Transfer Orders, including Payment Transfer

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10 Notice, 85 Fed. Reg. at 13210.

11 Notice, 85 Fed. Reg. at 13210.

Orders and Securities Transfer Orders, pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 ("Settlement Finality Regulations"). The changes described below would make a number of updates and clarifications to Part 12 in order to help ensure that there is a sound and legally enforceable basis for ICE Clear Europe's use of Transfer Orders pursuant to the Settlement Finality Regulations. Because the Settlement Finality Regulations exclude Transfer Orders from certain provisions of insolvency law, like disclaimer and rescission of contracts, and also protect against application of national EU insolvency laws, the changes described below would help ensure the finality of such orders and thereby help to ensure that ICE Clear Europe's payments and transfers have a well-founded and enforceable legal basis.[12]

The proposed rule change first would amend Rule 1202(b)(i). Rule 1202(b)(i) defines the circumstances under which a Securities Transfer Order automatically arises, subject to Regulation 20 of the Settlement Finality Regulations. The proposed rule change would add a new paragraph (B) to provide that a Securities Transfer Order would be deemed to arise in the event one Clearing Member (or Sponsored Principal) allocated an F&O Contract to another Clearing Member (or Sponsored Principal) under Rule 401(a)(viii) and Rule 401(e) (both of which explain when an F&O contract is deemed to have arisen upon allocation). In providing that a Securities Transfer Order would arise in such a circumstance, ICE Clear Europe is in effect extending the protections provided by the Settlement Finality Regulations because, as discussed above, under Part 12 of the Rules, a Securities Transfer Order is covered by the Settlement

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[12] Notice, 85 Fed. Reg. at 13210.

Finality Regulations. Thus, ICE Clear Europe believes that this aspect of the proposed rule change would extend the protections against insolvency regimes to the allocation of F&O contracts.[13]

To further effectuate this change, the proposed rule change would make two additional clarifications to Rule 1202. Under Rule 1202(b), a Securities Transfer Order is further defined as a Position Transfer Order, and, under Rule 1202(f), each Position Transfer Order applies and has effect in respect of the Contracts to be transferred, assigned or novated. The proposed rule change would amend Rule 1202(b) and 1202(f), with respect to a Position Transfer Order, to further refer to Contracts that are "allocated." ICE Clear Europe is making this change to be consistent with the change to 1202(b)(i) discussed above, which treats the allocation of an F&O contract as a Securities Transfer Order.[14]

Along the same line of these changes to Part 12, the proposed rule change would add to Rule 902 a new paragraph (d). New paragraph (d) would state that "Transfer Orders shall be legally enforceable, irrevocable and binding on third parties in accordance with Part 12, even on the occurrence of an Event of Default." Thus, proposed paragraph 902(d) would bolster the protections provided by Part 12 and the Settlement Finality Regulations by further confirming that a Transfer Order, including one used to transfer contracts following a Clearing Member's default, is legally enforceable, irrevocable, and binding on third parties.

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13 Notice, 85 Fed. Reg. at 13215.

14 Notice, 85 Fed. Reg. at 13215.

b. Clarifications Related to the Use of Transfer Orders

In addition to the changes described above, the proposed rule change would also make a number of clarifications to Part 12 to ensure that Part 12 is consistent with the rest of ICE Clear Europe's Rules.

First, the proposed rule change would amend Rule 1202(m)(iv)(A), which refers to a Clearing Member whose rights, liabilities, and obligations are novated pursuant to a Position Transfer Order, to also refer to the Clearing Member's rights, liabilities, and obligations being "transferred" or "assigned" rather than just "novated." ICE Clear Europe is making these changes to ensure consistency with the terminology used elsewhere in the Rules (for example in Part 9) in relation to the transfer of positions from one Clearing Member to another Clearing Member (whether in a default scenario or otherwise).[15] These proposed changes would also ensure that the provisions in Part 12 relating to Position Transfer Orders capture the full range of mechanisms through which positions can be transferred from one Clearing Member to another.

Similarly, the proposed rule change would amend Rule 1202(m)(vi)(B) to add the words "or Customer" after the word "Affiliate" to correct an unintentional omission.[16]

Finally, the proposed rule change would amend Rule 1205(i), which explains when a New Contract Payment Transfer Order is deemed to be satisfied. The proposed rule change would provide that, in addition to the circumstances already listed in Rule 1205(i), New Contract Payment Transfer Orders shall also be satisfied if and at the point that the relevant F&O

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15 Notice, 85 Fed. Reg. at 13210.

16 Notice, 85 Fed. Reg. at 13210.

Transaction or F&O Contract "has become subject to a Position Transfer Order that has itself become satisfied under Rule 1205(b)." Under Rule 1205(b), a Position Transfer Order is satisfied when ICE Clear Europe updates its records to reflect the Open Contract Position of the Clearing Member to whom the contract is assigned, transferred, or novated. ICE Clear Europe is making this drafting change to clarify that a New Contract Payment Transfer Order would terminate if the relevant transaction or contract to which it relates has become subject to a Position Transfer Order that has been satisfied.

vii. Complaints Resolution Procedures

The proposed rule change would make a number of clarifications to ICE Clear Europe's Complaints Resolution Procedures, which detail how ICE Clear Europe would consider complaints made to it regarding the conduct of ICE Clear Europe or any of its officers, employees, or Directors. The proposed rule change would first amend Rule 1001(d), which details the scope of complaints subject to the Complaints Resolution Procedures. Rule 1001(d) currently subjects to the Complaints Resolution Procedures any complaint against ICE Clear Europe or any of its officers, employees, or agents in their capacity as such. The proposed rule change would amend Rule 1001(d) to clarify that the Complaints Resolution Procedures also apply to complaints against ICE Clear Europe's Directors, committees, and any individual committee members. ICE Clear Europe is making this change to fix an error in the drafting of Rule 1001(d), and ICE Clear Europe represents that it did not intend to exclude directors and

committees from the scope of the Complaints Resolution Procedures.[17] Thus, ICE Clear Europe is making this change to fix a drafting error.[18]

In addition to that change, the proposed rule change would amend the Complaints Resolution Procedures to ensure that they are consistent with the requirements of UK law applicable to ICE Clear Europe, clarify the scope of the procedures, clarify the process and timing for resolving complaints, clarify the effect of referring a complaint to an independent Complaints Commissioner, and update cross-references and correct typographical errors. As discussed below, ICE Clear Europe is making these changes to ensure that it maintains the Complaints Resolution Procedures in accordance with the requirements of UK law, and therefore ICE Clear Europe believes these changes would help ensure that its activities in the UK have an enforceable legal basis.[19]

Beginning with the requirements of UK law, the proposed rule change would amend Paragraph 2.1 of the Complaints Resolution Procedures to clarify that a complaint eligible to be heard under the Procedures (an "Eligible Complaint") is only a complaint relating to the manner

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17 Notice, 85 Fed. Reg. at 13206.

18 Notice, 85 Fed. Reg. at 13215.

19 Notice, 85 Fed. Reg. at 13215. The Commission has previously stated that under Rule 17Ad-22(e)(1), a Covered Clearing Agency such as ICE Clear Europe should consider whether its policies and procedures for legal risk provide a high degree of certainty for each material aspect of its activities in all relevant jurisdictions and whether it has rules, policies and procedures, and contracts that are enforceable in all relevant jurisdictions and whether it has a high degree of certainty that actions taken by it under such rules, policies and procedures, and contracts will not be voided, reversed, or subject to stays. See Securities Exchange Act Release No. 78961 (Sep. 28, 2016), 81 Fed. Reg. 70786, 70802 (Oct. 13, 2016) ("Covered Clearing Agencies Release").

in which ICE Clear Europe has performed, or failed to perform, its regulatory functions as defined by Section 291(3) of the Financial Services and Markets Act 2000 ("FSMA"). The FSMA requires that ICE Clear Europe maintain procedures for resolving complaints related to its regulatory functions.[20] Similarly, the proposed rule change would add references to the FSMA in Paragraphs 4.4 and 7.4 of the Complaints Resolution Procedures. Thus, ICE Clear Europe is making these changes to help ensure that it maintains the procedures required under UK law, specifically the FSMA.

The proposed rule change would also clarify the scope of the Complaints Resolution Procedures. The proposed rule change first would amend the Complaints Resolution Procedures to clarify that they apply to complaints against ICE Clear Europe's Directors, committees, and any individual committee members, consistent with the change to Rule 1001(d) discussed above. Moreover, the proposed rule change would clarify that the Complaints Resolution Procedures do not apply to any complaint arising out of a contractual or commercial dispute that is not connected to the manner in which ICE Clear Europe has performed or failed to perform its regulatory functions under the FSMA.

The proposed rule change also would revise and clarify the process for investigating and resolving complaints. First, the proposed rule change would amend Paragraph 3.5, which currently states that ICE Clear Europe will not charge Complainants in relation to any Complaint, by clarifying that ICE Clear Europe may seek to recover costs if it can be shown that the Complaint was frivolous and vexations. In new Paragraph 3.6, the proposed rule change

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[20] Notice, 85 Fed. Reg. at 13208.

would provide ICE Clear Europe the authority to resolve complaints through an alternative process, like mediation, provided that ICE Clear Europe may only do so within four weeks of receiving the Eligible Complaint. Relatedly, in Section 4, the proposed rule change would update the timelines applicable to ICE Clear Europe for acknowledging receipt of a Complaint and for dismissing a Complaint that is not an Eligible Complaint to account for the possibility of an alternative resolution under Paragraph 3.6.

The proposed rule change would next add new provisions dealing with the process for appointing of an investigator, procedures for delaying the complaints process where there are contemporaneous court or other proceedings dealing with the same or a related matter, timelines for complaints investigations, and procedures surrounding the referral of complaints to the independent Complaints Commissioner where they are not dealt with expeditiously by an investigation. The proposed rule change would also add provisions in Paragraph 4.4 to specify the matters that the investigator must consider when deciding whether to uphold or reject a complaint against ICE Clear Europe, consistent with the FSMA. In Paragraph 5, the proposed rule change would clarify the manner in which the investigator would provide to ICE Clear Europe and the complainant its conclusions and recommendations for remedial action, if any, and the proposed rule change would remove an unnecessary reference to referral of a complaint to an independent Complaints Commissioner because that is covered in Section 4 and Section 6.

In Sections 6, 7, and 8, the proposed rule change would clarify the effect of referring a complaint to an independent Complaints Commissioner. First, the proposed rule change would confirm, in new Paragraph 6.3, that if a complaint is referred to an independent Complaints Commissioner, the Complainant agrees to be bound by the Commissioner's recommendation, if

adopted by ICE Clear Europe, and accepts that the recommendation, if adopted by ICE Clear Europe, would be the full and final resolution and settlement of the complaint. The proposed rule change would remove similar language in existing Paragraph 1.4 of the Complaints Resolution Procedures because that provision would now be duplicative in that event. In Section 7, the proposed rule change would revise the timing for certain actions of the Commissioner upon referral of a complaint and make similar changes as discussed above regarding Paragraph 4.4 to clarify the basis for upholding or rejecting a complaint, consistent with the FSMA. Finally, in Section 8, the proposed rule change would clarify the procedures for the Commissioner to report on the results of the investigation. The proposed rule change would also modify Paragraph 8.2 to remove the Commissioner's authority to require ICE Clear Europe to publish its report and give to ICE Clear Europe the discretion to decide whether to publish a Commissioner's report.

Finally, throughout the Complaints Resolution Procedures, the proposed rule change would make a number of typographical and similar corrections, updates to cross-references, and similar non-substantive drafting corrections. For example, the proposed rule change would update the title of the procedures to the "Complaints Resolution Procedures" and change "should" to "must" and "shall" to "will" to clarify the binding nature of certain aspects of the Procedures.

As discussed above, ICE Clear Europe is making these changes to improve the functioning of the Complaints Resolution Procedures and clarify certain matters as required

under UK law, specifically the FSMA. In so doing, ICE Clear Europe believes that it is helping to ensure that its activities in the UK have an enforceable legal basis.[21]

viii. F&O Contract Settlement

a. Clarifying Concepts that Apply to Both Futures and Options

ICE Clear Europe proposes a number of changes to harmonize the terms used with respect to the settlement of Futures and Options and to make other drafting improvements. Because ICE Clear Europe treats Futures and Options as part of one related category of F&O Contracts, having one harmonized set of terms should improve the efficiency of ICE Clear Europe's processes with respect to F&O Contracts.

First, the proposed rule change would amend the definitions of "Put," "Set," and "Short" in Rule 101, to improve their clarity and consistency with terminology used for Futures and Options. ICE Clear Europe is making this change to ensure that these terms clearly refer to Futures and Options, avoiding potential confusion over the use of the terms.[22]

Next, the proposed rule change would amend the term "Deliverable," which Rule 101 currently defines as "any property, right, interest, register or book entry, commodity, certificate, property entitlement or Investment, which is capable of being delivered pursuant to an F&O Contract." The proposed rule change would update this definition to add "or with respect to which settlement amounts are calculated" at the end of the definition. ICE Clear Europe is making this change to reflect the fact that the term is used not only in relation to property

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21 Notice, 85 Fed. Reg. at 13215.

22 Notice, 85 Fed. Reg. at 13205.

deliverable under F&O Contracts, but also in relation to the calculation of cash amounts to settle F&O Contracts.[23] Thus, this change would improve the clarity of the term and help to ensure that it is defined consistently with ICE Clear Europe's operational practice.[24]

Similarly, the proposed rule change would delete the term "Reference Price" from Rule 101 and revise the definition of "Exchange Delivery Settlement Price." Under the proposed rule change, ICE Clear Europe would no longer use the term Reference Price to refer to the settlement price of an F&O Contract, but rather the term Exchange Delivery Settlement Price. Exchange Delivery Settlement Price is already defined in Rule 101 as the closing, delivery, or cash settlement price determined pursuant to Rule 701 with respect to an F&O Contract or set of F&O Contracts. Although this definition already refers to Options, through the use of the term F&O (which is defined in Rule 101 to include Futures and Options), it does not refer to Rule 802, which is the rule that provides the procedure for determining the settlement price for Options. Moreover, the definition of Exchange Delivery Settlement Price already captures this concept with respect to Futures, because it refers to the price determined pursuant to Rule 701, and Rule 701 provides the procedure for determining the settlement price for Futures. Thus, to clarify that the term Exchange Delivery Settlement Price is applicable to the settlement price of Options the same as it is for Futures, ICE Clear Europe would add a cross-reference to Rule 802 to the definition. ICE Clear Europe further believes this change is appropriate because it would

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23 Notice, 85 Fed. Reg. at 13205.

24 Notice, 85 Fed. Reg. at 13215.

ensure that the Rules use one consistent, clear term for Futures and Options with respect to the concept of settlement price, which applies equally to Futures and Options.[25]

Relatedly, the proposed rule change would make non-substantive drafting clarifications to other rules and procedures to further these changes to the defined terms. Specifically, the proposed rule change would amend Rules 802, Rule 810(d), and 904(b) to use the term Exchange Delivery Settlement Price instead of Reference Price. Moreover, the proposed rule change would make changes throughout the Clearing Procedures and paragraph 3.1(b) of the General Contract Terms to use the term Exchange Delivery Settlement Price. ICE Clear Europe is making these changes to further the changes described above, which it believes would ensure that the Rules use one consistent, clear term for Futures and Options with respect to the concept of settlement price, which applies equally to Futures and Options.[26]

The proposed rule change would also amend Rule 905(b)(vi), which gives ICE Clear Europe the power to pair and cancel offsetting Long and Short positions in the same Future or Option Set to close out contracts of a defaulting Clearing Member. The proposed rule change would insert the words "buy and sell or" before "Long and Short Positions" to reflect the terminology used throughout the Rules to refer to opposite positions in Futures. Thus, ICE Clear Europe is making this particular change to ensure this provision remains consistent with other provisions that apply to Futures, and therefore believes this change would enhance the clarity of this provision.

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25 Notice, 85 Fed. Reg. at 13215.

26 Notice, 85 Fed. Reg. at 13215.

b. Amendments to Part 7 and Part 8 of the Rules

In addition to the changes to improve the clarity of concepts that apply to both Futures and Options, the proposed rule change would amend Part 7 and Part 8 of the Rules, the Clearing Procedures, and the General Contract Terms to clarify ICE Clear Europe's written procedures for settling Futures and Options and ensure that those written procedures accurately reflect ICE Clear Europe's current operational practice, as discussed below.

Beginning with Rule 701, which describes the determination of the Exchange Delivery Settlement Price for Futures, the proposed rule change would amend the title of Rule 701 to add "for Futures" at the end of the title. ICE Clear Europe is making this change to clarify that Rule 701 applies to Futures and distinguish it from Rule 802, which describes the determination of the Exchange Delivery Settlement Price for Options. This change is necessary because under the proposed rule change, as described above, the concept of Exchange Delivery Settlement Price would apply to both Futures and Options.

The proposed rule change would also amend Rule 701(b), which currently provides that the Exchange Delivery Settlement Price will generally be determined on the basis of data provided by the Market on which the Contract in question is traded. The proposed rule change would amend this to refer to data that is published by the Market on which the contract in question is traded, in addition to data that is provided by the Market. The proposed rule change would also amend Rule 701(b) to state that ICEEU would determine the Exchange Delivery Settlement Price in accordance with applicable Market Rules, subject to Rule 701(c). Rule 701(c) provides that ICE Clear Europe shall be entitled to determine the Exchange Delivery Settlement Price itself, in certain circumstances at its discretion. In Rule 701(c), the proposed

rule change add a provision to explain that ICE Clear Europe would communicate to its Clearing Members any Exchange Delivery Settlement Price determined by ICE Clear Europe under Rule 701(c). Finally, the proposed rule change would make corresponding changes to Rule 802, which describes the determination of the Exchange Delivery Settlement Price for Options. ICE Clear Europe is making these changes to reflect the fact that Markets also publish data and that ICE Clear Europe must act in accordance with applicable Market rules.[27] ICE Clear Europe is also adding the reference to existing Rule 701(c) to make clear that Rule 701(b) is subject to 701(c).[28] Thus, in making these changes, ICE Clear Europe believes its Rules and Procedures with respect to F&O Contracts are free from potential conflicts.[29]

Rule 702(a) describes the situations in which a Futures Contract shall be settled in cash, and Rule 702(b) explains that cash settlement and delivery amounts are determined for Customer Accounts based on gross positions. The proposed rule change would add to Rule 702(b) the phrase "without prejudice to any contractual netting under Rule 406 or the Clearing Procedures." The proposed rule change would make an identical change to Rule 705(a). Under Rule 406, contractual netting may be applied to offsetting positions in respect of one of a Clearing Member's Customer Accounts even though such positions are ordinarily held gross. ICE Clear Europe is adding the language in Rule 702(b) and Rule 705(a) to clarify that while cash settlement and delivery amounts are determined for Customer Accounts based on gross positions

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27 Notice, 85 Fed. Reg. at 13205.

28 Notice, 85 Fed. Reg. at 13205.

29 17 CFR 240.17Ad-22(e)(1); Notice, 85 Fed. Reg. at 13215.

under Part 7, this does not preclude contractual netting of positions where provided for under Rule 406 or the Clearing Procedures (including contractual netting within the positions of a particular Customer of a Clearing Member), thus avoiding a potential conflict between Part 7 and Rule 406.

In addition, the proposed rule change would amend Rule 703, which relates to deliveries under Futures contracts. Rule 703(a) provides that the Delivery Procedures and the requirements of Rule 703 shall apply to any Futures that are not settled in cash. The proposed rule change would make a clarification by providing that a Market may administer matters or exercise rights on behalf of ICE Clear Europe pursuant to Rule 703 and the Delivery Procedures. This amended provision is needed to reflect the fact that Markets are typically involved in the delivery process for Futures and may carry out functions otherwise specified to be discharged by ICE Clear Europe pursuant to the Rules or the Delivery Procedures.[30] Thus, ICE Clear Europe is making this change to ensure that Rule 703 is consistent with current operational practice in which Markets are involved in the delivery process for Futures.[31]

In addition to these changes, the proposed rule change would amend Paragraph 5.2(d) of the Clearing Procedures, which currently provides that when an Option is exercised, a Contract at the Strike Price of the Option will arise in accordance with Rule 401. The proposed rule change would amend this to specify that it only applies in relation to Options "whose Deliverable is a Future Contract." ICE Clear Europe is making this change to distinguish from Options

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30 Notice, 85 Fed. Reg. at 13206.

31 17 CFR 240.17Ad-22(e)(1); Notice, 85 Fed. Reg. at 13215.

where the deliverable is a security.[32] The proposed rule change also would amend paragraph 5.7(a), which explains the methods for determining whether elective exercise and/or abandonment of Options on the relevant expiry day is permitted. The proposed rule change would amend 5.7(a) to state that it is subject to the automatic Option exercise facility (as applicable). Paragraph 5.5 of the Clearing Procedures sets out the provisions for automatic exercise of Options, and these provisions would be relevant to determining whether elective exercise and/or abandonment of Options on the relevant expiry day is permitted under paragraph 5.7(a). Thus, for the sake of clarity, the proposed rule change would add the cross reference to beginning of paragraph 5.7(a). ICE Clear Europe is making both of these changes to further improve the clarity of the Clearing Procedures, both to distinguish certain Options and to ensure that the provisions regarding automatic exercise work as intended with respect to exercise and abandonment of Options.[33]

ix. Intellectual Property

ICE Clear Europe is also proposing changes to its Rules to help ensure that its rights with respect to intellectual property are enforceable in all of the jurisdictions where it operates. First, the proposed rule change would amend the definition of "Intellectual Property" in Rule 101 to specify that the definition includes "all intellectual property rights in any part of the world and for the entire duration of such rights." ICE Clear Europe is making this change to improve the international coverage of the definition, by expressly confirming that it covers all rights in any

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32 Notice, 85 Fed. Reg. at 13206.

33 Notice, 85 Fed. Reg. at 13206.

part of the world and the entire duration of such rights.[34] ICE Clear Europe believes that this change would help to confirm that ICE Clear Europe's Intellectual Property specifically includes its rights world-wide, thereby providing further protection and enforceability of ICE Clear Europe's Intellectual Property Rights in accordance with Rule 17Ad-22(e)(1).[35]

In addition, the proposed rule change would add a new Section 12(d) in each of the Standard Terms, to require Customers to agree to Rule 406(g). Rule 406(g) confirms that all Intellectual Property in data relating to Transactions, Contracts, and Open Contract Positions provided to ICE Clear Europe under the Rules or generated by ICE Clear Europe shall be the property of ICE Clear Europe. ICE Clear Europe is making this change to avoid any uncertainty as to the applicability of Rule 406(g) in the context of customer transactions and to support ICE Clear Europe's rights to the Intellectual Property in data provided under the Rules.[36] This change would also help ensure the consistent application of Rule 406(g) by ensuring that ICE Clear Europe receives the same contractual representation from Customers as regards Intellectual Property rights as it does from Clearing Members. Thus, ICE Clear Europe believes this change would assist in the enforcement of its Intellectual Property rights by helping to ensure that Customers, as well as Clearing Members, acknowledge ICE Clear Europe's rights as defined in

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34 Notice, 85 Fed. Reg. at 13211.

35 17 CFR 240.17Ad-22(e)(1); Notice, 85 Fed. Reg. at 13215.

36 Notice, 85 Fed. Reg. at 13206.

Rule 406(g), thereby helping to ensure the enforceability of ICE Clear Europe's Intellectual Property Rights in accordance with Rule 17Ad-22(e)(1).[37]

x. Confidentiality

Rule 106(a) currently provides that ICE Clear Europe shall keep confidential certain information received concerning Transactions, Contracts, past or current Open Contract Positions, and other information received from Clearing Members, subject to certain permitted disclosures, such as disclosures pursuant to a formal request from a Regulatory Authority. The proposed rule change would re-organize this provision by moving the list of information that ICE Clear Europe must keep confidential to re-designated paragraph (b) and moving the list of permitted disclosures to paragraph (c). Moreover, with respect to the information that ICE Clear Europe must keep confidential, the proposed rule change would clarify that any information concerning Margin payments between ICE Clear Europe and another clearing house, a Clearing Member, or Sponsored Principal, including in relation to a Customer, must be kept confidential. The previous formulation covered information concerning Margin payments between ICE Clear Europe and another clearing house, a Clearing Member, or Sponsored Principal, but did not specifically include information in relation to a Customer.

With respect to the list of permitted disclosures in re-designated paragraph (c), the proposed rule change would clarify that ICE Clear Europe could make a disclosure to a Regulatory Authority or Governmental Authority where a lawful request is made (rather than a "formal" request, as under the current rule) and where disclosure is necessary for the making of a

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[37] 17 CFR 240.17Ad-22(e)(1); Notice, 85 Fed. Reg. at 13215.

complaint or report under Applicable Laws for an offence alleged or suspected to have been committed under Applicable Laws. Moreover, the proposed rule change would also add a provision to specifically permit disclosure pursuant to any Applicable Law, not simply pursuant to a court order as may be required by Applicable Law, as currently provided by Rule 106.

Finally, Rule 115(b) generally allows ICE Clear Europe to make arrangements with Governmental Authorities for the sharing of information. The proposed rule change would amend this provision to specifically state that it is subject to Rule 106, which, as discussed above, specifies the information that ICE Clear Europe must keep confidential and explains the circumstances under which ICE Clear Europe may disclose confidential information.

ICE Clear Europe designed these changes following an internal review and is making these changes to clarify and enhance its ability to disclose confidential information when requested to do so by a government or regulator or otherwise by Applicable Law.[38] ICE Clear Europe believes these changes are important because they will clearly provide ICE Clear Europe legal authority to disclose confidential information, and ICE Clear Europe may be required to disclose such information to maintain its licensure with a regulator or otherwise under Applicable Law.[39] Thus, ICE Clear Europe believes that in clarifying its ability to disclose confidential information in response to requests from governments and regulators or as required

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38 Notice, 85 Fed. Reg. at 13211.

39 Notice, 85 Fed. Reg. at 13211.

by Applicable Law, the proposed rule change would help to ensure that ICE Clear Europe's rules are consistent with relevant laws and regulations.[40]

xi. Waivers

The proposed rule change would also clarify ICE Clear Europe's authority to extend or waive requirements of the Rules. ICE Clear Europe is making these changes because it believes the current provisions of the Rules regarding waivers do not provide sufficiently clear authority for ICE Clear Europe to waive provisions of the Rules, as needed in relation to the organization and operation of ICE Clear Europe.[41]

Specifically, the proposed rule change would add a sentence to Rule 110(a), which currently allows ICE Clear Europe to waive performance by any Clearing Member or Sponsored Principal of any of its obligations under the Rules or any Contract whenever it considers that such waiver is necessary or in its best interests, to provide that ICE Clear Europe may, in its discretion, publicize such waivers. ICE Clear Europe believes this change, while not altering its existing authority to waive requirements, would provide ICE Clear Europe the ability to publicize such waivers and thereby increase the clarity and transparency of such waivers.

Moreover, Paragraph 4.2 of the Business Continuity Procedures currently provides that ICE Clear Europe may defer or amend any procedure or practice of ICE Clear Europe, any

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40 The Commission has previously stated that under Rule 17Ad-22(e)(1), a Covered Clearing Agency such as ICE Clear Europe should consider whether its rules, policies and procedures, and contracts are clear, understandable, and consistent with relevant laws and regulations. See Covered Clearing Agencies Release, 81 Fed. Reg. at 70802.

41 Notice, 85 Fed. Reg. at 13211.

procedure or practice of Clearing Members, and any Contract Terms following a Business Continuity Event. The proposed rule change would clarify this provision by specifying that the Business Continuity Event in question must affect a Clearing Member and/or ICE Clear Europe. The proposed rule change would further specify that in the case of a Business Continuity Event affecting a Clearing Member, ICE Clear Europe may only defer or amend ICE Clear Europe's procedures and practices with respect to that Clearing Member. ICE Clear Europe is making this change to further clarify its authority to defer or amend its procedures and practices following a Business Continuity Event and provide certainty to Clearing Members that if they are not affected by a Business Continuity Event, they will not be affected by ICE Clear Europe deferring or amending its procedures and practices.

Finally, the proposed rule change would add a new Rule 114(d) to provide expressly that ICE Clear Europe may take any measure that it deems reasonably necessary in relation to the organization and operation of ICE Clear Europe. ICE Clear Europe is proposing to add this provision to ensure that it is not prevented from taking action under a range of circumstances that may arise, including, but not limited to a default scenario, merely because there is no specific provision of the Rules explicitly empowering it to do so. This authority is subject to a limitation that ICE Clear Europe may not take any action in breach of any provision of the Rules or Procedures or that would modify the Rules or Procedures, and that any such action must be taken in accordance with ICE Clear Europe's internal governance requirements. ICE Clear Europe does not believe that this amendment would alter its existing ability to take actions in such

circumstances but would provide greater clarity and legal certainty as to ICE Clear Europe's permitted scope of action.[42]

xii. Voiding F&O Contracts

Rule 404(a) provides ICE Clear Europe the discretion to void F&O Contracts in certain circumstances. Under Rule 404(a)(vii), ICE Clear Europe may void an F&O Contract if the relevant Contract is one for which ICE Clear Europe has requested additional Margin or Permitted Cover from the Clearing Member or Sponsored Principal and no Margin or Permitted Cover is provided by the time required. The proposed rule change would clarify Rule 404(a)(vii) by providing that ICE Clear Europe must have requested additional Margin or Permitted Cover "at the time of the Transaction." ICE Clear Europe is making the amendment to provide greater legal certainty by ensuring that its ability to void the F&O Contract is limited to the specific situation where additional margin is requested at the time of the transaction and is not provided.[43] This change would also distinguish Rule 404 from the default rules, which are intended to provide ICE Clear Europe remedies where there is a failure to provide margin requested at times other than at the time of the Transaction.

xiii. Termination of Contracts

The proposed rule change would amend paragraph 3.1(m) of the General Contract Terms. Currently, paragraph 3.1(m) provides that a contract shall terminate automatically, and Rule 209(c) shall apply, upon the Insolvency of ICE Clear Europe. Paragraph 3.1(m) is a standard

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42 Notice, 85 Fed. Reg. at 13211.

43 Notice, 85 Fed. Reg. at 13212.

contract term that applies to all F&O Contracts and to CDS Contracts and FX Contracts to the extent specified in the CDS Procedures and FX Procedures. The proposed rule change would amend paragraph 3.1(m) to provide simply that the contract shall terminate automatically only in accordance with and at the time set out in the Rules. ICE Clear Europe is making this change to ensure that paragraph 3.1(m) captures all possible instances of automatic termination under the Rules and to ensure that this provision of the General Contract Terms does not need to be updated when termination provisions in the Rules are amended or re-numbered.[44]

xiv. Approved Financial Institutions Acting in Other Capacities

Rule 501(a) provides that ICE Clear Europe shall only permit Approved Financial Institutions to open and operate, on behalf of Clearing Members, accounts from which ICE Clear Europe can draw amounts pursuant to a direct debit mandate, for the collection of amounts due to ICE Clear Europe from time to time. Rule 501(a) also provides that Approved Financial Institutions may also act in other capacities from time to time, as approved by ICE Clear Europe. The proposed rule change would modify this slightly to specify that ICE Clear Europe's approval, if any, for an Approved Financial Institution to act in another capacity must be "in writing." ICE Clear Europe is making this amendment to clarify how it would approve requests under Rule 501(a) for Approved Financial Institutions to act in other capacities, but it does not believe that this change would alter the substance of Rule 501(a).[45]

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44 Notice, 85 Fed. Reg. at 13213.

45 17 CFR 240.17Ad-22(e)(1); Notice, 85 Fed. Reg. at 13215.

xv. Clearing Procedures

ICE Clear Europe would also amend Paragraphs 6.1 and 6.2 of the Clearing Procedures. Paragraph 6.1(a) allows a Clearing Member to request that ICE Clear Europe convert a transaction of one of its Customers into a proprietary transaction of the Clearing Member upon the default of the Customer or other termination of the Customer's transaction. The proposed rule change would revise the language in Paragraph 6.1(a)(i) to refer to the "transfer" of the Customer's transaction, rather than a conversion of the Customer transaction. ICE Clear Europe is making this change to ensure that language in Paragraph 6.1 is consistent with the language used in similar provisions in ICE Clear Europe's Rules and Procedures.

Paragraph 6.2 of the Clearing Procedures sets out the procedures and conditions for the transfer of contracts absent an Event of Default. Paragraph 6.2(a) requires that each Clearing Member with a Customer Account, upon the request of one of its Customers, transfer the Clearing Member's rights and obligations with respect to Contracts recorded in that Customer's Account to another Clearing Member. In that situation, Paragraph 6.2(g) further provides, to Non-FCM/BD Clearing Members only, the right to impose margin requirements that the Customer must satisfy prior to transfer. The proposed rule change would modify Paragraph 6.2(g) so that it applies to all Clearing Members, not just Non-FCM/BD Clearing Members. ICE Clear Europe is making this change to correct a drafting error, as it intended Rule 6.2(g) to apply all Clearing Members, not just Non-FCM/BD Clearing Members.

xvi. Finance Procedures

The proposed rule change would also make a number of clarifications and updates to the Finance Procedures. ICE Clear Europe is making these changes to ensure that the Finance

Procedures accurately reflect, and are applied in a manner consistent with, other ICE Clear Europe Rules and Procedures.

First, the proposed rule change would amend Paragraph 2.1. Paragraph 2.1 describes the six currencies that ICE Clear Europe supports and in which ICE Clear Europe settles transactions and holds accounts. The proposed rule change would amend Paragraph 2.1 to specify that certain F&O Contracts may settle wholly or partly in those currencies. ICE Clear Europe does not believe this change would alter the substance of Paragraph 2.1.[46] Rather, ICE Clear Europe is making this change to ensure that the Finance Procedures can accommodate Contracts that settle wholly or partly in a particular currency.

In Paragraph 2.2, the proposed rule change would add a reference to Rule 502(c). Paragraph 2.2 provides that ICE Clear Europe supports cross currency collateral, which means that it is not necessary to cover Margin requirements in the same currency as the underlying Contract. The proposed rule change would amend this by adding a clarification that this does not apply to variation margin, in accordance with Rule 502(c).[47] Rule 502(c) currently provides that variation margin payments may be made only in cash in the Eligible Currency in which the Contract in question is to be or can be settled. Thus, in adding this provision referencing Rule 502(c), ICE Clear Europe believes the proposed rule change would not alter the substance of Paragraph 2.2. Rather, ICE Clear Europe believes this change would ensure that Paragraph 2.2 is applied consistent with existing Rule 502(c).

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46 Notice, 85 Fed. Reg. at 13213.

47 Notice, 85 Fed. Reg. at 13213.

Similarly, the proposed rule change would amend Table 1 in Paragraph 5.6 and Paragraph 6.1(i)(*i*). Paragraph 6.1(i)(*i*) provides that contracts will be revalued and subject to calls for variation margin on a daily basis, for settlement next day for payments in Japanese Yen or same day for payments in other currencies. Table 1 in Paragraph 5.6, which sets out the deadlines for various deliveries under the Finance Procedures, repeats the substance of this provision. The proposed rule change would amend both to state that settlement will be next day for payments in currencies other than Euros, Dollars, and Pounds or same day for payments in other currencies. Thus, as under the current provisions, payments in Euros, Dollars, and Pounds will be made same day, while payments in currencies other than Euros, Dollars, and Pounds will be next day. ICE Clear Europe is making this change to clarify this provision and ensure that it reflects the full range of currencies supported by the Clearing House, as described in Paragraph 2.1. Thus, ICE Clear Europe believes this change will eliminate any potential inconsistency between Paragraph 2.1 and Table 1 in Paragraph 5.6 and Paragraph 6.1(i)(*i*).

The proposed rule change would next re-organize Paragraph 6.1(b), which generally describes how Adjustments in Margin calls resulting from price changes in underlying open Contracts will result in a payment from the Clearing Member to ICE Clear Europe or vice versa. The proposed rule change also would add a provision to make clear that any such payments will be subject to Part 3 of the Rules. Part 3 of the Rules describes the financial requirements for Clearing Members and contains provisions regarding payments to and from Clearing Members. Thus, ICE Clear Europe is making this change to ensure that Paragraph 6.1(b) is applied consistent with the related provisions in Part 3 of the Rules.

Paragraphs 6.1(e) and (f) contain provisions regarding withdrawals of cash by Clearing Members from their accounts at ICE Clear Europe. Paragraph 6.1(e) provides a table listing relevant deadlines, organized by currency, by which Clearing Members should provide instructions for withdrawal. Paragraph 6.1(f) further provides that no withdrawals will be possible after these deadlines. The proposed rule change would re-organize these provisions so that Paragraph 6.1(e), rather than (f), specifies that no withdrawals of cash will be possible on the same day if instructions are received after the deadlines in the table in 6.1(e). The proposed rule change would also describe these withdrawals as "*ad hoc* withdrawals" and add a provision to state that Paragraph 6.1(f), which provides details on the mechanics of such payments, is subject to Rule 301(f). Rule 301(f) provides details on the payment of amounts by electronic transfer. Thus, similar to the changes above, this change ensures that Paragraph 6.1(f) is applied consistent with the related provisions in Part 3 of the Rules.

Finally, Paragraph 6.1(i)(*vii*) provides that any amount payable by a Clearing Member to the Clearing House (or vice versa) pursuant to the Rules or any Contract may be included within an end-of-day or *ad hoc* payment, and lists examples of the types of amounts payable that would be subject to this provision, such as settlement amounts. The proposed rule change would update the list of examples to include Option premiums, corporate action payments, amounts resulting from reduced gain distributions, and product terminations or non-default loss contributions under Part 9 of the Rules. ICE Clear Europe is making this change to reflect the full range of payments that may be made to and from ICE Clear Europe, but does not believe that this change would

alter the substance of Paragraph 6.1(i)(*vii*).[48] Thus, similar to the changes above, this change ensures that Paragraph 6.1(i)(*vii*) is applied consistent with the full range of payments that may be made to and from ICE Clear Europe.

Various changes have been proposed in paragraph 7.2 of the Finance Procedures in relation to non-cash assets provided as Permitted Cover. The changes are intended to update and improve the drafting of this provision and more clearly reflect the operational detail of how ICE Clear Europe deals with Permitted Cover, including the use of the ECS system to provide information in relation to non-cash Permitted Cover provided to the Clearing House.

Similarly, the proposed rule change would add a clarification in Paragraph 8.2, which allows Clearing Members and Sponsored Principals to suggest to ICE Clear Europe that a new class or series of permitted cover be included within the list of acceptable Permitted Cover. The proposed rule change would add a provision to state that a request form to lodge new certificates of deposit, pursuant to Paragraph 8.2, is available on ICE Clear Europe's website. ICE Clear Europe believes that this change would not affect the substance of Paragraph 8.2 but would merely cross-reference relevant information available elsewhere.

Finally, the proposed rule change would update Paragraph 11.4 to state that matching criteria for a settlement system or depository (which are needed when a Clearing Member transfers securities to ICE Clear Europe to meet margin obligations) would be published via circular rather than on ICE Clear Europe's website. ICE Clear Europe believes this change would ultimately not affect the communication of this information to Clearing Members or the

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[48] Notice, 85 Fed. Reg. at 13213.

content of the information communicated, but rather the vehicle for making that communication. Moreover, given that ICE Clear Europe publishes its circulars on its website, ICE Clear Europe does not believe this change would alter the substance of this provision.

As discussed above, ICE Clear Europe is making these changes to ensure that the Finance Procedures accurately reflect, and are applied in a manner consistent with, other ICE Clear Europe Rules and Procedures, in accordance with Rule 17Ad-22(e)(1).[49]

C. 17Ad-22(e)(2)(i)

As discussed in this section, the proposed rule change would clarify a number of terms used with respect to the persons involved in the governance of ICE Clear Europe. ICE Clear Europe is making these changes, following an internal review, to improve the governance functions of ICE Clear Europe. ICE Clear Europe believes that these changes would help ensure that its governance arrangements are clear and transparent in accordance with Rule 17Ad-22(e)(2)(i).[50]

First, the proposed rule change would expand the definition of "Board" in Rule 101. As currently defined, "Board" means the board of Directors or any other body established thereunder (whether called a board, a committee, or otherwise) of ICE Clear Europe. The proposed rule change would amend this definition to mean the Board of Directors of ICE Clear Europe and any other body given powers or discretion by the Board of Directors. The proposed rule change would also amend this definition to clarify that the definition includes other bodies

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49 17 CFR 240.17Ad-22(e)(1).

50 17 CFR 240.17Ad-22(e)(2)(i).

established under, or given power by, the Board of Directors only in the context of any power, discretion or authority of the Board of ICE Clear Europe. Following an internal review of this and related definitions, ICE Clear Europe is making this change to clarify that the term Board includes, in the context of any power, discretion or authority of the board, other similar bodies and committees established by or under the Board of Directors of ICE Clear Europe.[51] ICE Clear Europe believes that doing so would help to ensure the clarity and transparency of this definition by being more specific about the legal bodies that would be included in the definition of Board.[52]

Similarly, in a number of the Rules, where reference is made to persons exercising governance or other functions for ICE Clear Europe or a Clearing Member, such as directors or officers, the proposed rule change would expand the reference to include committees, individual committee members, and similar terms. Following an internal review, ICE Clear Europe determined these changes would more accurately describe the persons involved in governance and use a consistent list of such persons involved in governance through the Rules.[53] ICE Clear Europe therefore believes this change would help to ensure the clarity and transparency of the various persons involved in the governance of ICE Clear Europe.[54]

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51 Notice, 85 Fed. Reg. at 13211.

52 Notice, 85 Fed. Reg. at 13216.

53 Notice, 85 Fed. Reg. at 13211.

54 Notice, 85 Fed. Reg. at 13216.

Finally, the proposed rule change would similarly expand the definition of "Representative." Rule 1010 currently defines "Representative" generally as "any Person that carries out or is responsible for (or purports to carry out or be responsible for) any of the functions of another Person." The proposed rule change would expand this to also include "any Persons that any such Person employs, authorises or appoints to act on its behalf." Again, following an internal review, ICE Clear Europe determined to make this change to more accurately describe the persons who act as representatives on behalf of its Clearing Members.[55] This expansion would help to ensure employees of a Clearing Member's Representative are also included in the definition of Representative, such as, for example, employees of a law firm representing a Clearing Member. The proposed rule change would also carry through this change to the introductory sentence of Rule 102(j). Under Rule 102(j), a Clearing Member is bound by an act, omission, conduct, or behaviour of its Customers and clients of its Customers in certain circumstances. The proposed rule change would modify this to clarify that a Clearing Member is also bound by an act, omission, conduct, or behaviour of its Representatives in certain circumstances. Following an internal review, ICE Clear Europe determined to make this change because in certain circumstances Representatives might be authorized to take actions on behalf of Clearing Members, and therefore ICE Clear Europe should be able to rely on the actions of the Representatives in binding the Clearing Member. ICE Clear Europe also determined to make this change to correct a drafting error, as other parts of Rule 102(j) refer to Clearing Members

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[55] Notice, 85 Fed. Reg. at 13211.

and their Representatives.[56] ICE Clear Europe therefore believes this change would help to ensure the clarity and transparency of the definition of "Representative" by being more specific about the persons included in the definition and by specifically binding Clearing Members to the actions of their representatives in certain circumstances under Rule 102(j).[57]

D. 17Ad-22(e)(4)(v)

As discussed in this section, the proposed rule change would amend ICE Clear Europe's Finance Procedure as they relate to changes to ICE Clear Europe's Guaranty Funds. Through its Guaranty Funds, ICE Clear Europe maintains 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 ICE Clear Europe in extreme but plausible market conditions, in accordance with Rule 17Ad-22(e)(4)(ii).[58] As discussed below, ICE Clear Europe believes the change would help ICE Clear Europe to maintain these Guaranty Funds, in accordance with Rule 17Ad-22(e)(4)(v).[59]

Specifically, in Paragraph 6.1(i)(*iii*) of the Finance Procedures, the proposed rule change would amend the time periods that apply to ICE Clear Europe's ability to adjust Clearing Members' Guaranty Fund Contributions. As described in Paragraph 6.1(i)(*iii*), each relevant

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56 Notice, 85 Fed. Reg. at 13211.

57 Notice, 85 Fed. Reg. at 13216.

58 17 CFR 240.17Ad-22(e)(4)(ii).

59 17 CFR 240.17Ad-22(e)(4)(v); Notice, 85 Fed. Reg. at 13217.

Guaranty Fund Period, ICE Clear Europe reviews, and may amend, the total value of the Guaranty Funds and required Guaranty Fund Contributions. ICE Clear Europe then notifies each Clearing Member of its total Guaranty Fund Contribution requirements and the adjustments to its Guaranty Fund Contribution. Under the current version of Paragraph 6.1(i)(*iii*), such adjustments take effect for the F&O Guaranty Fund five business days after notification and two business days after notification for the CDS Guaranty Fund and FX Guaranty Fund. The proposed rule change would harmonize these time periods by providing that for all three Guaranty Funds, adjustments take effect five business days after notification. In other words, the time period would remain unchanged for adjustments to the F&O Guaranty Fund but would increase to five business days for adjustments to the CDS Guaranty Fund and FX Guaranty Fund.

ICE Clear Europe believes that it is operationally easier and more efficient to have a single time period for adjustments to Guaranty Fund Contributions. Thus, ICE Clear Europe believes it is appropriate to harmonize this time period across all three Guaranty Funds. Moreover, ICE Clear Europe believes the five business day period, rather than the two business day period, is appropriate because it provides additional time to Clearing Members and because ICE Clear Europe does not anticipate needing to make adjustments in the ordinary course sooner than five business days.[60] For these reasons, ICE Clear Europe is making this change and further believes that the change would be consistent with Rule 17Ad-22(e)(4)(v).[61]

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60 Notice, 85 Fed. Reg. at 13213.

61 17 CFR 240.17Ad-22(e)(4)(v); Notice, 85 Fed. Reg. at 13217.

E. 17Ad-22(e)(6)(i) and (ii)

As discussed in this section, the proposed rule change also would revise ICE Clear Europe's Rules and Procedures with respect to the calculation of margin under certain options contracts, the settled-to-market treatment of variation margin, a new mechanism for paying variation margin, and authority to treat amounts payable by a Clearing Member as additional margin. As discussed below, ICE Clear Europe is making these changes, following an internal review and feedback from Clearing Members, to improve its operational practices and facilitate a different legal treatment of variation margin.[62] ICE Clear Europe believes these changes would help to ensure that it maintains a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market and marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances, in accordance with Rule 17Ad-22(e)(6)(i) and (ii).[63]

i. Calculation of Margin Under Certain Options Contracts

The proposed rule change would amend Paragraph 4.4(c) of the Clearing Procedures to clarify how ICE Clear Europe would calculate net liquidating value ("NLV") for Premium Up-Front Options. The new language would also confirm that for long Option holders, a positive NLV amount would be applied against the requirement for Original Margin, and that for short

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62 Notice, 85 Fed. Reg. at 13203.

63 17 CFR 240.17Ad-22(e)(6)(i), (ii); Notice, 85 Fed. Reg. at 13215-13216.

Option holders, negative NLV would contribute to the requirement for Original Margin. ICE Clear Europe is making these changes to provide greater detail in the written Clearing Procedures regarding the operational methods for calculating and applying NLV.[64] ICE Clear Europe believes that this aspect of the proposed rule change would help to ensure that ICE Clear Europe establishes, implements, maintains, and enforces written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[65]

ii. Settled-to-Market Variation Margin

The proposed rule change also would establish the settled-to-market treatment of variation margin. Variation margin, also known as mark-to-market margin, is a daily payment of cash, to ICE Clear Europe by a Clearing Member or vice versa, meant to cover the change in market value of a CDS, F&O, or FX contract. ICE Clear Europe's Rules use three terms to refer to variation margin: Mark-to-Market Margin (for CDS contracts); FX Mark-to-Market Margin (for FX contracts); and Variation Margin (for F&O contracts). The proposed changes described below would apply to Mark-to-Market Margin, FX Market-to-Market Margin, and Variation Margin; in other words, ICE Clear Europe is making the changes described below with respect to payment of variation margin under CDS, FX, and F&O contracts.[66]

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64 Notice, 85 Fed. Reg. at 13206.

65 17 CFR 240.17Ad-22(e)(6)(i); Notice, 85 Fed. Reg. at 13215-13216.

66 Although ICE Clear Europe has not yet launched clearing of FX products, the proposed rule change would make similar changes to the relevant provisions of the Rules and

ICE Clear Europe is making changes to establish the settled-to-market treatment of variation margin at the request of Clearing Members.[67] Under the settled-to-market treatment, variation margin is treated as a cash payment to settle outstanding exposure following specific payment dates, rather than as collateralizing the exposure.[68] ICE Clear Europe represents that Clearing Members view settled-to-market treatment as beneficial because it may enable them to reduce their capital requirements with respect to cleared contracts.[69] To ensure such treatment, the proposed rule change would revise terminology and make other drafting changes to clarify the legal characterization that payments of variation margin represent settlement payments rather than collateral payments. These changes would not, however, affect how ICE Clear Europe calculates variation margin or other operational aspects of variation margin.

The proposed rule change would first amend the defined terms "Margin," "Mark-to-Market Margin," "FX Mark-to-Market Margin," and "Variation Margin" in Rule 101 to characterize such margin as settlement payments. The proposed rule change would do so by referring to the margin as an outright transfer of cash as a settlement payment. For similar reasons, the proposed rule change would revise the defined term "Original Margin" to exclude Variation Margin from the entire definition of Original Margin. This change is necessary

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Procedures regarding FX clearing. Doing so would maintain consistency throughout the rules and ensure settled-to-market treatment when ICE Clear Europe begins clearing of FX products. Notice, 85 Fed. Reg. at 13204.

67 Notice, 85 Fed. Reg. at 13203.

68 Notice, 85 Fed. Reg. at 13203.

69 Notice, 85 Fed. Reg. at 13203.

because the definition of Original Margin refers to the title transfer or pledge of Permitted Collateral, rather than a settlement payment.

Similar to those revisions, the proposed rule change would also make various amendments to the Rules and Procedures to use terms that are more consistent with characterizing variation margin as a settlement payment. For example, the proposed rule change would replace terms like "deposit," "pledge," "deposited," and "pledged" with "transfer," "transferred," "transferred to," and cash "transfer." As with the changes described above, these amendments would not reflect a change in actual operational practice, but rather would facilitate the settled-to-market treatment of variation margin.

The proposed rule change would next amend Rule 505 to continue this characterization of payments of variation margin. Under Rule 505, a Customer acknowledges that the Financial Collateral Regulations[70] apply in relation to all Permitted Cover, Margin, and Guaranty Fund Contributions transferred to ICE Clear Europe. The proposed rule change would amend Rule 505 to clarify that payments of Variation Margin, Mark-to-Market Margin, and FX Mark-to-Market Margin do not constitute financial collateral under the Financial Collateral Regulations. This is necessary to ensure that such payments are considered to be settlement payments rather than collateral. Moreover, the proposed rule change would replace the term "collateral" in the last sentence of Rule 505 with the more general term "such assets" to make Rule 505 more

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70 Rule 101 of the ICE Clear Europe Rules defines the term Financial Collateral Regulations as "the Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral arrangements)." These regulations affect ICE Clear Europe's use of collateral provided by Clearing Members and Customers.

consistent with the definitions used in the Financial Collateral Regulations. As with the changes described above, ICE Clear Europe is proposing these changes based upon feedback received by ICE Clear Europe from some Clearing Members and to ensure consistency with the characterization of such payments at settlement rather than collateral.[71]

To further the characterization of payments of variation margin as settlement payments rather than payments of collateral, the proposed rule change would add a new concept of CDS Price Alignment Amount and FX Price Alignment Amount to replace interest paid on Mark-to-Market Margin and FX Mark-to-Market Margin. Currently, ICE Clear Europe pays or charges a CDS Clearing Member interest with respect to net Mark-to-Market Margin transferred between the parties.[72] Under Rule 1519(e), ICE Clear Europe would instead pay or charge a Price Alignment Amount, which would be economically equivalent to the interest that ICE Clear Europe currently pays or charges. Because the term interest is more typically associated with collateral, however, ICE Clear Europe proposes to refer to such amounts as Price Alignment Amounts to better characterize the Mark-to-Market Margin as a settlement payment.[73] Accordingly, the proposed rule change would add new defined terms, update existing defined terms, and update cross references.

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71 Notice, 85 Fed. Reg. at 13204.

72 This concept would apply to FX Mark-to-Market Margin as well, but as noted above, ICE Clear Europe has not yet launched clearing of FX products. See supra note 66.

73 Notice, 85 Fed. Reg. at 13204.

Finally, the proposed rule change would amend the Finance Procedures to make other changes to further characterize variation margin as settled-to-market. First, the proposed rule change would add to the Finance Procedures a new paragraph 2.3 which would state that Variation Margin, Mark-to-Market Margin, and FX Mark-to-Market Margin is transferred to and from ICE Clear Europe by way of outright transfer and is not pledged. Second, the proposed rule change would revise paragraph 6.1(i)(*i*) of the Finance Procedures to state that the value of a CDS, F&O, and FX Contract would reset to zero once the settlement payments of variation margin have been made. ICE Clear Europe represents that resetting to zero is required to receive settled-to-market treatment under certain regulations applicable to ICE Clear Europe's Clearing Members.[74] Finally, the proposed rule change would also make a drafting change to paragraph 6.1(i)(*i*) to clarify that ICE Clear Europe would ordinarily calculate adjustments to margin requirements and execute payments in the currency of the relevant Contracts.

ICE Clear Europe believes that these changes, in general, would enable ICE Clear Europe to establish settled-to-market treatment for payments of Mark-to-Market Margin, FX Mark-to-Market Margin, and Variation Margin, at the request of certain Clearing Members to improve the capital treatment of CDS, FX, and F&O contracts for these clearing members. ICE Clear Europe further believes that these changes would place ICE Clear Europe in a better position to collect

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74 Notice, 85 Fed. Reg. at 13204-13205.

Mark-to-Market Margin, FX Mark-to-Market Margin, and Variation Margin from these Clearing Members in accordance with Rule 17Ad-22(e)(6)(ii).[75]

iii. Externalised Payments Mechanism

In addition to settled-to-market treatment of variation margin, ICE Clear Europe's Clearing Members have requested that it adopt a new mechanism for the payment of variation margin. These members believe this new mechanism for the payment of variation margin between ICE Clear Europe and Clearing Members would make the payment of variation margin more consistent with how payments are made between those Clearing Members and their customers.[76] In accordance with their request, ICE Clear Europe proposes to adopt this new method of collecting variation margin, which it refers to as the "Externalised Payments Mechanism."[77] Under the Externalised Payments Mechanism, Clearing Members may opt not to net together payments of variation margin with other payments, like clearing house and exchange fees, between ICE Clear Europe and the Clearing Member. Under the existing approach, ICE Clear Europe would net these payments together (the amended Rules call this approach the "Standard Payments Mechanism"). The effect of using the Externalised Payments Mechanism for cash payments would be that payments would be settled pursuant to a separate process and at a separate time from the Standard Payments Mechanism.

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75 17 CFR 240.17Ad-22(e)(6)(ii); Notice, 85 Fed. Reg. at 13215-13216.

76 Notice, 85 Fed. Reg. at 13202.

77 Notice, 85 Fed. Reg. at 13202.

To establish the Externalised Payments Mechanism, the proposed rule change would first add new defined terms for the Standard Payments Mechanism and the Externalised Payments Mechanism in Rule 101. Those terms in Rule 101 would cross-reference to the full definitions of those terms as found in proposed changes to Rule 302(a). The proposed changes to Rule 302(a) would clarify that the Externalised Payments Mechanism is an alternative payments mechanism that would only apply in respect of specified Accounts as requested by the Clearing Member and confirmed by ICE Clear Europe in writing. Moreover, Rule 302(a), as proposed to be amended, would state that the Standard Payments Mechanism shall apply unless ICE Clear Europe has agreed that the Externalised Payments Mechanism shall apply to a particular cash payment and that the current provisions regarding the calculation of a net amount payable by or to ICE Clear Europe in respect of each Account are part of the Standard Payments Mechanism.

Next, the proposed rule change would make various changes to the Finance Procedures to implement the Externalised Payments Mechanism. To distinguish the Externalised Payments Mechanism from the Standard Payments Mechanism, the proposed rule change would amend Paragraph 6.1(b) to clarify that cash payments between ICE Clear Europe and a Clearing Member (including Margin) may only be set off and consolidated under the Standard Payments Mechanism. Similarly, the proposed rule change would amend paragraphs 6.1(i)(*i*) and (*ii*) to explain that under the Externalised Payments Mechanism, cash payments would be settled through a separate cash flow and not included in a combined overnight call or return as would apply under the Standard Payments Mechanism. Next, the proposed rule change would amend Paragraph 6.1(b) to describe the types of payments that Clearing Members may elect to settle through the Externalised Payments Mechanism: upfront fees, Mark-to-Market Margin, FX Mark-

to-Market Margin, Variation Margin, and other payments. Similarly, the proposed rule change would clarify in paragraph 6.1(i)(*vii*) that any amount payable by a Clearing Member to ICE Clear Europe (or vice versa) pursuant to the Rules or any Contract may be included within an end-of-day or *ad hoc* payment under the Standard Payments Mechanism and would include, for the sake of clarity, examples of the types of payments that could be included. Finally, the proposed rule change would add new paragraph 6.1(i)(*viii*) to address the applicability of the Externalised Payments Mechanism in circumstances where certain payments are being made under ICE Clear Europe's Default Rules.

Relatedly, the proposed rule change would update Rules 110(g), 303(a), and 1902(h)(i) to reflect the introduction of the Externalised Payments Mechanism and differentiate between payments made under the Standard Payments Mechanism and those made under the Externalised Payments Mechanism.

ICE Clear Europe maintains that these changes, in general, would enable ICE Clear Europe to establish the Externalised Payments Mechanism at the request of certain Clearing Members. ICE Clear Europe further believes that this change would put ICE Clear Europe in a better position to collect variation margin using the Externalised Payments Mechanism in accordance with Rule 17Ad-22(e)(6)(ii).[78]

iv. Amounts Payable as Additional Margin

Paragraph 6.1 of the Finance Procedures generally describes how payments are made to and from ICE Clear Europe. Paragraph 6.1(g) sets deadlines by which Clearing Members must

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78 17 CFR 240.17Ad-22(e)(6)(ii); Notice, 85 Fed. Reg. at 13215-13216.

make overnight and *ad hoc* payments to ICE Clear Europe, *i.e.* complete their daily settlement obligations. The proposed rule change would add to Paragraph 6.1(g) a provision to give ICE Clear Europe the ability to delay any payments due to the Clearing Member from ICE Clear Europe if there are outstanding amounts payable by that Clearing Member (or any Affiliate of that Clearing Member) to ICE Clear Europe and further provides that such amounts withheld would be treated as additional required margin of the Clearing Member under Rule 502(g) (which allows ICE Clear Europe to impose, amend or withdraw additional Margin requirements in respect of any Clearing Member at any time). ICE Clear Europe believes this amendment would enhance its ability to manage the credit and liquidity risk presented by a Clearing Member that has failed to complete its daily settlement obligations by allowing ICE Clear Europe to treat that failure as additional required margin.[79] ICE Clear Europe further believes that this change would help to ensure that ICE Clear Europe has a margin system that includes the authority and operational capacity to make intraday margin, in accordance with Rule 17Ad-22(e)(6)(ii).[80]

Moreover, paragraphs 6.1(i)(*i*) and 6.1(i)(*ii*) of the Finance Procedures provide that if an intra-day margin call affects a significant number of Clearing Members, ICE Clear Europe will issue a circular. ICE Clear Europe is amending this provision to provide that where an intra-day margin call affects a significant number of Clearing Members, it *may* issue a circular. ICE Clear Europe is making this change so it has flexibility to determine the best means of communicating with affected Clearing Members under the particular circumstances. ICE Clear Europe does not

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79 Notice, 85 Fed. Reg. at 13213.

80 17 CFR 240.17Ad-22(e)(6)(ii); Notice, 85 Fed. Reg. at 13215-13216.

believe that a circular, which is widely distributed to the market, will always be the best means of communicating this information.[81] ICE Clear Europe further believes that this flexibility will help to ensure that it has the authority and operational capacity to make intraday margin calls in defined circumstances, in accordance with Rule 17Ad-22(e)(6)(ii).[82]

F. 17Ad-22(e)(7)(i)

As discussed in this section, the proposed rule change also would codify an important ability that ICE Clear Europe uses to generate additional liquidity as needed. Specifically, the proposed rule change would amend Paragraph 7.2 of the Finance Procedures to provide that ICE Clear Europe may use repurchase agreements, secured lending facilities, and sales to generate liquidity from non-cash assets provided that, in the case of Margin and Guaranty Fund Contributions, ICE Clear Europe will remain liable for returning the same kind of assets if the relevant secured obligations are performed or closed out by the Clearing Member. ICE Clear Europe is making this change to reflect its existing ability to generate liquidity from non-cash assets transferred to ICE Clear Europe, subject to the requirement to return unused Margin and Guaranty Fund contributions of the same kind as was provided.[83] This ability is already described in Rule 1103, and ICE Clear Europe is adding this provision to the Finance Procedures

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81 Notice, 85 Fed. Reg. at 13213.

82 17 CFR 240.17Ad-22(e)(6)(ii); Notice, 85 Fed. Reg. at 13215-13216.

83 Notice, 85 Fed. Reg. at 13213.

to further confirm its ability to maintain sufficient liquid resources in accordance with the requirements of Rule 17Ad-22(e)(7)(i).[84]

G. 17Ad-22(e)(10)

As discussed in this section, the proposed rule change would also update Rule 703 and ICE Clear Europe's Delivery Procedures with respect to physical settlement. ICE Clear Europe is making these changes to be consistent with market practices regarding settlement and the operational practices of associated trading venues for which ICE Clear Europe clears Contracts. ICE Clear Europe believes these changes would help to ensure that ICE Clear Europe establishes, implements, maintains, and enforces written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries, in accordance with Rule 17Ad-22(e)(10).[85]

The proposed rule change would add to the end of Rule 703 a new paragraph (j), which would require Sellers under a Futures Contract to represent that they convey good title to products (free of encumbrances) when physical settlement takes place. ICE Clear Europe is making this change to be consistent with market expectation around deliveries and to be consistent with other deliveries made of such products in the relevant cash markets.[86] ICE Clear

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84 17 CFR 240.17Ad-22(e)(7)(i); Notice, 85 Fed. Reg. at 13213.

85 17 CFR 240.17Ad-22(e)(10); Notice, 85 Fed. Reg. at 13215.

86 Notice, 85 Fed. Reg. at 13206.

Europe also believes this change would help to ensure that Rule 703 is in accordance with Rule 17Ad-22(e)(10).[87]

In the Delivery Procedures, which describe ICE Clear Europe's procedures for physical settlement, the proposed rule change would make various updates to ensure that the procedures are consistent with the operational practices and systems of ICE Clear Europe and the operations of affiliated trading venues. Specifically, in Paragraph 19 of the General Provisions, the proposed rule change would make an amendment to reflect the fact that other deliverable products may be dealt with in ICE Clear Europe's Guardian system in addition to those deliverables already specifically listed in that paragraph. Moreover, the proposed rule change would add a new paragraph to Part A and Part C of the Delivery Procedures to clarify that all references to timings or times of day are references to London times. In addition, the proposed rule change would make updates throughout the Delivery Procedures to reflect current operational practices under which certain submissions (such as delivery intentions) are made electronically through the ECS system, rather than through submission of specified delivery forms. The proposed rule change would also update deadlines and descriptions for particular delivery steps or, in some cases, delete delivery steps that are no longer carried out. Finally, the proposed rule change would delete in its entirety Section 7, which addressed alternative delivery procedure for certain European emissions contracts, as ICE Clear Europe maintains that it is unnecessary in light of the provisions of Part A of the Delivery Procedures.[88] ICE Clear Europe

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87 17 CFR 240.17Ad-22(e)(10); Notice, 85 Fed. Reg. at 13215.

88 Notice, 85 Fed. Reg. at 13210-13211.

believes that the proposed rule change would help to ensure that its Delivery Procedures provide clear written standards that state ICE Clear Europe's obligations with respect to the delivery of physical instruments and that identify, monitor, and manage the risks associated with physical deliveries in accordance with Rule 17Ad-22(e)(10).[89]

H. 17Ad-22(e)(13)

As discussed in this section, the proposed rule change would make a number of changes to protect and further enhance ICE Clear Europe's ability to manage the default of a Clearing Member and contain losses resulting from such a default. The proposed rule change would do so by expanding the scope of events that could lead to ICE Clear Europe declaring an event of default with respect to a Clearing Member, clarifying ICE Clear Europe's authority with respect to conducting default auctions, and expanding the net sum payable to or by a defaulting Clearing Member to include the effects of abandoning an Option. ICE Clear Europe is making these changes, following an internal review, to improve its management of Clearing Member defaults. ICE Clear Europe believes these changes are consistent with the requirement of Rule 17Ad-22(e)(13) that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[90]

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89 17 CFR 240.17Ad-22(e)(10); Notice, 85 Fed. Reg. at 13215.

90 17 CFR 240.17Ad-22(e)(13); Notice, 85 Fed. Reg. at 13216.

i. Expanding Event of Default

The proposed rule change would expand the situations in which ICE Clear Europe could declare an Event of Default and therefore employ its default management powers under Part 9 of the Rules. The proposed rule change would do so by amending the definitions of certain events which themselves could be the basis for ICE Clear Europe declaring an Event of Default with respect to a Clearing Member. First, the proposed rule change would amend the definition of "Bankruptcy" and of "Insolvency" to include a scenario where a person is "granted suspension of payments." Insolvency laws may sometimes allow for a suspension of payments, and treating such a situation as a Bankruptcy would allow ICE Clear Europe to employ the full range of default management powers available as needed to address the suspension of payments.

Second, the proposed rule change would amend Rule 901(a)(viii) to expand the list of approvals and similar legal statuses, the revocation of which may constitute an Event of Default, to include loss of relevant "exemptions" by any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation, or Delivery Facility. ICE Clear Europe believes that the loss of such an exemption could be equivalent to the loss of a licence or regulatory authorization, which is already an event that could constitute an Event of Default under Rule 901(a)(viii).[91] ICE Clear Europe accordingly believes that loss of an exemption should similarly be treated as an Event of Default under Rule 901(a)(viii).

Third, the current definition of "Insolvency" includes "a Governmental Authority making an order, pursuant to which any of that Person's securities, property, rights, or liabilities are

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91 Notice, 85 Fed. Reg. at 13209.

transferred." The proposed rule change would expand this to include a Governmental Authority making an "instrument or other measure" pursuant to which any of that Person's securities, property, rights or liabilities are transferred, in addition to just "making an order." Similarly, the proposed rule change would expand the definition of "Insolvency Practitioner" in Rule 101 to include a "judicial manager." ICE Clear Europe believes these changes would ensure that all relevant insolvency scenarios and insolvency office-holders are covered by the definitions of Insolvency and Insolvency Practitioner, which themselves could lead to ICE Clear Europe declaring an Event of Default under Rule 901.[92]

ICE Clear Europe believes that these changes, taken together, would expand the possible events for which ICE Clear Europe could declare an Event of Default with respect to a Clearing Member to include the situations described above.[93] ICE Clear Europe believes that the proposed rule change would to help ensure that its powers in responding to defaults, which are only available after ICE Clear Europe declares an Event of Default, are accessible as appropriate and necessary to respond to such situations. ICE Clear Europe believes that this would mean that it generally has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in accordance with Rule 17Ad-22(e)(13).[94]

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92 Notice, 85 Fed. Reg. at 13209.

93 Notice, 85 Fed. Reg. at 13209.

94 17 CFR 240.17Ad-22(e)(13); Notice, 85 Fed. Reg. at 13216.

ii. Default Auctions

Rule 905(b) describes actions that ICE Clear Europe may take to close out contracts upon a Clearing Member's default. The proposed rule change would add to this, in new paragraph (xix), explicit authority for ICE Clear Europe to carry out default auctions in accordance with the Default Auction Procedures and construct auction lots out of the defaulting Clearing Member's contracts. The lots may include positions relating to multiple customer accounts of a Non-FCM/BD Clearing Member. An auction lot relating to Contracts of a defaulting FCM/BD Clearing Member could only contain positions relating to a single account, however, and a single auction lot could not consist of both proprietary and client positions. Moreover, new paragraph (xix) would provide ICE Clear Europe with the explicit power to use a single bid price received for a particular lot of auctioned positions to calculate liquidation values and net sums by apportioning this bid price across the various accounts in which the contracts in the auction lot are recorded. ICE Clear Europe is making this change to make explicit its authority to take these actions. Although the existing CDS Default Management Framework permits ICE Clear Europe to conduct auctions in lots,[95] ICE Clear Europe's Rules currently do not expressly grant this authority, and the proposed rule change would make express ICE Clear Europe's authority to do so. In making clear ICE Clear Europe's authority with respect to auctions, which ICE Clear Europe would use to sell a defaulting Clearing Member's contracts and contain potential losses on those contracts, ICE Clear Europe believes that the proposed rule change would help to

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95 See Securities Exchange Act Release No. 86783 (Aug. 28, 2019), 84 Fed. Reg. 46575 (Sep. 4, 2019) (SR-ICEEU-2019-014) (approving the CDS Default Management Framework).

ensure that it generally has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in accordance with the requirement of Rule 17Ad-22(e)(13).[96]

iii. Net Sum Payable

Rule 906(a) defines how ICE Clear Europe calculates the net sum payable by a defaulting Clearing Member. Among other things, this calculation includes the value of the exercise of an Option. The proposed rule change would modify Rule 906(a) to refer to the "abandonment" of an Option in addition to the exercise of an Option. ICE Clear Europe proposes this change because abandoning an Option could also affect the aggregate amount payable by or to a defaulting Clearing Member in respect of positions recorded in a given account and such impact should be taken into account in addition to the impact of any exercise of an Option.[97] ICE Clear Europe believes that taking into account the exercise of an Option would help to ensure that the net sum payable by or to a defaulting Clearing Member accurately reflects the possible consequences of abandoning Options in the defaulting Clearing Member's portfolio.[98] ICE Clear Europe therefore believes this change would help improve its ability to take timely action to contain losses and liquidity demands associated with a defaulting Clearing Member's Options in accordance with Rule 17Ad-22(e)(13).[99]

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96 17 CFR 240.17Ad-22(e)(13); Notice, 85 Fed. Reg. at 13216.

97 Notice, 85 Fed. Reg. at 13206.

98 Notice, 85 Fed. Reg. at 13206.

99 17 CFR 240.17Ad-22(e)(13); Notice, 85 Fed. Reg. at 13216.

I. 17Ad-22(e)(14)

As discussed in this section, the proposed rule change would make a number of changes to protect and further enhance ICE Clear Europe's ability to transfer the positions of a Clearing Member's customers to a different Clearing Member in the event of the first Clearing Member's default. This process, generally known as porting, allows customers uninterrupted access to clearing at ICE Clear Europe in the event of a Clearing Member's default. As discussed below, the proposed rule change would clarify: the application of the Standard Terms, ICE Clear Europe's use or transfer of margin, the timing of the creation, termination, and pricing of contracts subject to porting, and the price at which positions are ported. ICE Clear Europe is making these changes, following an internal review, to ensure its ability to conduct porting. ICE Clear Europe believes these changes are consistent with the requirement of Rule 17Ad-22(e)(14) that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a Clearing Member's customers and the collateral provided to ICE Clear Europe with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that Clearing Member.[100]

i. Application of the Standard Terms

The first set of proposed changes to help facilitate porting would make changes with respect to the application of the Standard Terms. The Standard Terms are uniform contractual terms, as published by ICE Clear Europe, that form the basis for transactions between Non-

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100 17 CFR 240.17Ad-22(e)(14).

FCM/BD Clearing Members and their Customers in credit default swaps.[101] The Standard Terms facilitate porting by binding Customers and Clearing Members to a set of uniform contractual provisions that help to ensure that all terminations and re-establishments of cleared contracts occur at the same time and at the same price, reducing the possibility of valuation disputes or other claims that might prevent or reduce the likelihood of porting. The Standard Terms also contain provisions that help to ensure that ICE Clear Europe may use and transfer margin provided by Customers to Clearing Members.

The proposed rule change would make a number of amendments to help ensure that the Standard Terms are contractually binding as between Non-FCM/BD Clearing Members and their Customers and that the Standard Terms cannot be overridden or modified. Specifically, the proposed rule change would add to existing Rule 202(b) an additional provision that Customers and Non-FCM/BD Clearing Members will be deemed to be bound by the Standard Terms through acceptance by conduct as a result of their continued use of ICE Clear Europe. This proposed change would provide an additional basis for certainty that the Standard Terms would apply as between the Customer and Non-FCM/BD Clearing Member, notwithstanding that a Non-FCM/BD Clearing Member had otherwise failed to obtain its Customer's agreement to the Standard Terms (under existing Rule 202(b), Non-FCM/BD Clearing Members are required to ensure that the Standard Terms are contractually binding as between themselves and their

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101 The Standard Terms do not apply to FCM/BD Clearing Members and their customers. Notice, 85 Fed. Reg. at 13201.

Customers).[102] ICE Clear Europe believes that this additional protection is a reasonable approach in light of the Customer's choice to clear its transaction through the Non-FCM/BD Clearing Member at ICE Clear Europe, and represents that the provisions in question are published and referred to in ICE Clear Europe's customer disclosures under the European Market Infrastructure Regulation.[103]

Moreover, the proposed rule change would amend section 2 of each of the Standard Terms (CDS, F&O, and FX), to state that ICE Clear Europe is a third party beneficiary under the Standard Terms and to further provide that, as a result, any modification or amendment to the Standard Terms without ICE Clear Europe's prior written consent shall have no effect. ICE Clear Europe believes this amendment would help to promote post-default porting by ensuring the Standard Terms apply uniformly and by ensuring that ICE Clear Europe is able to object to any modifications to the Standard Terms that would interfere with post-default porting.[104]

Finally, to further clarify the status of the Standard Terms and the Settlement and Notices Terms (which, like the Standard Terms, apply as between the Non-FCM/BD Clearing Member and its Customer), the proposed rule change would amend Rule 102(o). Existing Rule 102(o) provides that the Rules, together with the applicable Clearing Membership Agreement and certain documents given contractual force pursuant to the Rules, form a contract between ICE

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102 Notice, 85 Fed. Reg. at 13201.

103 Notice, 85 Fed. Reg. at 13201 (citing to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories).

104 Notice, 85 Fed. Reg. at 13201.

Clear Europe and each Clearing Member. The proposed rule change would amend Rule 102(o) to specifically exclude the Standard Terms and the Settlement and Notices Terms from this provision. In doing so, ICE Clear Europe believes the proposed rule change would further clarify that the Standard Terms are a contract between the Non-FCM/BD Clearing Member and its Customer, rather than between ICE Clear Europe and each Clearing Member.[105] Moreover, ICE Clear Europe believes that the Standard Terms could not, as discussed above, help facilitate porting if the Standard Terms do not represent a binding contact between the Non-FCM/BD Clearing Member and its Customer.[106] Finally, the proposed rule change would also add to Rule 102(o) a reference to Rule 102(f), which contains the list of the documents that are given contractual force pursuant to the Rules.

ii. Margin

The second set of proposed changes to help facilitate porting would help to ensure that ICE Clear Europe is able to transfer margin provided by a Customer from the defaulting Clearing Member to a new Clearing Member (*i.e.*, porting of margin) and further would help to ensure that ICE Clear Europe is able to use margin as needed in response to a Clearing Member's default. Specifically, the proposed rule change would amend existing Rule 504(c)(iv) to provide that a Clearing Member is deemed to represent and warrant that the Clearing Member will not claim that any transfer of Permitted Cover[107] to or use of Permitted Cover by the Clearing House

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105 Notice, 85 Fed. Reg. at 13201.

106 Notice, 85 Fed. Reg. at 13201.

107 Under ICE Clear Europe Rule 101, the term Permitted Cover is defined as "cash in Eligible Currencies and other assets determined by the Clearing House as permissible for

in accordance with the Rules or the relevant Clearing Membership Agreement is contrary to or in breach of any requirement of Applicable Law, third party right or other contractual obligation. By extending the existing representation in Rule 504(c)(iv) to the transfer of Permitted Cover to ICE Clear Europe (rather than merely the usage of Permitted Cover), ICE Clear Europe believes that the proposed rule change would further assure that ICE Clear Europe can accept Permitted Cover without risk of interference from third party claims.[108] Specifically, if it is necessary for ICE Clear Europe to transfer Permitted Cover after the default of a Clearing Member to facilitate porting of a Customer's positions and margin, this proposed amendment would help to facilitate that porting by providing ICE Clear Europe assurance that the defaulting Clearing Member will not claim that the transfer is contrary to or in breach of any requirement of Applicable Law, third party right or other contractual obligation.

Moreover, in section 4(b) of each of the Standard Terms, the proposed rule change would add language to provide that when a Clearing Member transfers collateral provided by a Customer to ICE Clear Europe for credit to that Customer's account, the Customer shall be deemed to give all the same representations, warranties, and acknowledgments as are given by the Clearing Member pursuant to Rule 504(c)(iii), (iv), and (v); Rule 504(g); and Rule 505. Under Rule 504(c)(iii), (iv), and (v), a Clearing Member is deemed to represent and warrant that Permitted Cover is provided on the basis that it may be used by ICE Clear Europe and applied in

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Margin or Guaranty Fund Contributions and includes, where the context so requires, any such cash or assets transferred to the Clearing House and any proceeds of realisation of the same."

108 Notice, 85 Fed. Reg. at 13201, 13215.

accordance with ICE Clear Europe's Rules; that the Clearing Member will not claim that any transfer (as amended) of Permitted Cover to or use of Permitted Cover by the Clearing House in accordance with the Rules or the relevant Clearing Membership Agreement is contrary to or in breach of any requirement of Applicable Law, third party right or other contractual obligation; and that the Clearing Member is not in breach of any of its contractual obligations or regulatory requirements or other Applicable Laws towards any third party as a result of the transfer of Permitted Cover to the Clearing House or its collection from or receipt of any assets from its clients. Rule 504(g) provides ICE Clear Europe the right to (i) apply any amount or asset recorded in a particular Account to the extent permitted under Part 9 of the Rules (regarding default) as against the net sum for such Account or (ii) transfer any amount or asset recorded in a particular Account to the extent permitted under Rule 906 (regarding net sums payable) regardless of the origin or status of such amount or assets. Under Rule 505, Clearing Members and Customers acknowledge that the Financial Collateral Regulations[109] apply in relation to all Permitted Cover, Margin, and Guaranty Fund Contributions transferred to ICE Clear Europe in the form of cash or financial instruments. Clearing Members and Customers also agree that they will not dispute the construction of the arrangements regarding the provision of collateral a "financial collateral arrangements." ICE Clear Europe believes these amendments collectively would enhance its ability to use collateral ultimately provided by a Customer, including to cover

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109 Rule 101 of the ICE Clear Europe Rules defines the term Financial Collateral Regulations as "the Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral arrangements)." These regulations affect ICE Clear Europe's use of collateral provided by Clearing Members and Customers.

default losses and to provide for porting of the Customer's positions in case of the relevant Non-FCM/BD Clearing Member's default, by providing additional clarity as to ICE Clear Europe's ability to use collateral provided by a Customer, the Customer's representations and acknowledgments with respect to such collateral, and the legal status of such collateral.[110]

Finally, the proposed rule change would add language in section 4(b) of each of the Standard Terms to provide that the Customer shall take any action reasonably requested by ICE Clear Europe or the Clearing Member that may be necessary or desirable to create, preserve, perfect or validate the right, title, or interests of ICE Clear Europe in any Margin or Permitted Cover or to enable ICE Clear Europe to exercise or enforce any of its rights under the Rules with respect to Margin or other Permitted Cover and that the Customer shall not create or give notice of any Encumbrance related to Permitted Cover that is held by ICE Clear Europe in any Account. The proposed rule change would also add language to section 4(b) of each of the Standard Terms to provide that the Customer shall not assert that: (i) it is the beneficiary of or interested party in any Encumbrance with respect to any Permitted Cover held by ICE Clear Europe; (ii) it has given any notice of any such Encumbrance to ICE Clear Europe; or (iii) ICE Clear Europe otherwise should be attributed with notice in respect of any such Encumbrance. This provision would not, however, prevent any Encumbrance arising under Applicable Laws in favour of a Customer in respect of a Customer Account. ICE Clear Europe believes these amendments collectively would enhance its ability to use collateral ultimately provided by a Customer, including to cover default losses and to provide for porting of the Customer's

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110 Notice, 85 Fed. Reg. at 13201, 13216.

positions in case of the relevant Non-FCM/BD Clearing Member's default, by providing additional clarity as to ICE Clear Europe's ability to use collateral provided by a Customer and reducing the risk of any Customer or third party claims with respect to such collateral.[111]

iii. Timing

ICE Clear Europe is also making a set of proposed changes to help facilitate porting by improving the clarity and uniformity of the provisions that determine the time at which contracts are formed and terminated.

The proposed rule change would first clarify Rule 401(n), which currently states that where an F&O Contract (other than an ICE Futures US Contract) arises pursuant to Rule 401 as a result of trading, submission of trade data, or other action by or relating to a Customer of a Non-FCM/BD Clearing Member, an opposite Customer-CM F&O Transaction shall arise between such Customer and Clearing Member. The proposed rule change would specify that the opposite Customer-CM F&O Transaction would arise at the same time as the Contract. Doing so would clarify that the opposite Customer-CM F&O Transaction arises at the same time as the F&O Contract arises, thereby ensuring that both contracts have a uniform time of formation. Similarly, the proposed rule change would remove from the Standard Terms the current reference in Section 3(b) to transactions arising (as between Non-FCM/BD Clearing Member and Customer) "at the Acceptance Time." Acceptance Time is not a defined term in the Rules. Instead, the proposed rule change would provide that transactions would arise "as set out in Part 4 of the Rules." Part 4 of the Rules, specifically Rule 401, determines the time of formation of

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111 Notice, 85 Fed. Reg. at 13201, 13216.

cleared contracts at ICE Clear Europe. Again, this proposed change would clarify when contracts arise under the Standard Terms and help to ensure a uniform time of formation by referring to a single set of rules (*i.e.* Part 4 of the Rules) that determine when cleared contracts are formed at ICE Clear Europe. ICE Clear Europe is making these changes to ensure a uniform time for formation of contracts, which it believes would help to facilitate porting by reducing the possibility of disagreements or confusion over when contracts subject to porting have formed.[112]

The proposed rule change would next amend the Standard Terms and Rule 202(b)(iii) to eliminate the use of automatic early termination in client clearing documentation of Non-FCM/BD Clearing Members. As ICE Clear Europe described in the Notice, some Non-FCM/BD Clearing Members may use automatic early termination provisions in their client clearing documentation even though Rule 202(b)(iii) as currently in force generally prohibits this.[113] In such a case, the transaction between the Non-FCM/BD Clearing Member and its Customer may terminate at a different time than the transaction between the Non-FCM/BD Clearing Member and ICE Clear Europe, which could lead to the transactions having different values upon termination following a close-out of a defaulting Non-FCM/BD Clearing Member's contracts (because the transactions were terminated at different times). Moreover, as ICE Clear Europe described in the Notice, automatic or early termination clauses also may give rise to legal uncertainties as to whether certain protections from the disapplication of insolvency law for

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112 Notice, 85 Fed. Reg. at 13201, 13216.

113 Notice, 85 Fed. Reg. at 13201-13202.

porting in Part VII of the UK's Companies Act 1989 are available, since following an automatic termination there would be no contract left to port or transfer.[114]

To resolve these issues regarding use of early termination clauses and therefore facilitate porting of contacts, the proposed rule change would first remove Rule 202(b)(iii) in its entirety. Rule 202(b)(iii) currently provides that automatic early termination does not apply to the Standard Terms in respect of either the Non-FCM/BD Clearing Member or its Customer and the relevant Customer-CM Transactions. The proposed rule change would replace this provision with a new Section 5(c) in each of the Standard Terms, which would provide that any provision requiring termination of a Customer-CM CDS Transaction upon, prior to, or following an ICE-Declared Default, or giving a party the right to terminate, shall be ineffective unless (i) one of the parties is incorporated in Switzerland[115] or any other jurisdiction as may be specified by ICE Clear Europe for such purposes or (ii) ICE Clear Europe provides its written consent to such termination provision being effective. Moreover, new Section 5(c)(iii) would provide that even if automatic early termination of the Customer-Clearing Member transaction occurred, the provisions of the Standard Terms relating to calculation of termination values and portability would still apply. Finally, new section 5(c)(i) would provide in case of default, instead of automatic early termination, the suspension of performance under the Customer-Clearing

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114 Notice, 85 Fed. Reg. at 13202.

115 As described in the Notice, the exception for Switzerland reflects the fact that such jurisdiction is the only Clearing Member jurisdiction for which automatic early termination is recommended for derivatives by the International Swaps and Derivatives Association, Inc. Notice, 85 Fed. Reg. at 13202, n.6.

Member Transaction until the corresponding cleared Contract is terminated or the relevant payment date for the net sum owed between the Customer and Non-FCM/BD Clearing Member following termination has occurred. ICE Clear Europe believes suspension of performance provides similar economic protections for Customers as compared to automatic termination because the Customer would not be obligated to make payments while avoiding the risks, as discussed above, of inconsistent timing or valuation or of positions not being portable.[116]

iv. Price

Finally, the proposed rule change would clarify the price at which positions are ported from a defaulting Clearing Member to a non-defaulting Clearing Member and the relevant time for the determination of such price. Currently, Rule 904(b) provides that all Contracts subject to a Transfer shall be Transferred on the basis of the applicable Exchange Delivery Settlement Price, Reference Price, Market-to-Market Value, or other price specified by ICE Clear Europe. ICE Clear Europe would notify Transferee Clearing Members of applicable prices determined pursuant to this provision prior to the Transfer. The proposed rule change would modify this to provide that ICE Clear Europe, at its discretion, shall determine the price of any contract subject to a Transfer and that this price may be determined on basis of the applicable Exchange Delivery Settlement Price (for F&O Contracts), the Market-to-Market Value (for CDS Contracts), the FX Market Price (for FX Contracts), or as zero (for certain Options), in any case as at the time specified by ICE Clear Europe. The proposed rule change would also allow ICE Clear Europe to calculate the price at which positions are ported with reference to any time determined at ICE

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116 Notice, 85 Fed. Reg. at 13202.

Clear Europe's discretion, which may be the time of the Transfer, the time of an Event of Default, Insolvency or Unprotected Resolution Step, or the end of the Business Day prior to porting, Event of Default, Insolvency or Unprotected Resolution Step. Similarly, the proposed rule change would amend Rule 905(b)(xiv), which currently allows ICE Clear Europe to transfer a defaulting Clearing Member's contracts to another Clearing Member at a price agreed to with the transferee Clearing Member, to provide instead that ICE Clear Europe may transfer at a price determined by ICE Clear Europe pursuant to part 9 of the Rules. Because ICE Clear Europe, and its Clearing Members, operate in multiple jurisdictions, ICE Clear Europe is making these changes to facilitate porting by giving ICE Clear Europe flexibility to establish prices for contracts to be transferred, as needed to take into consideration different insolvency regimes in Clearing Member jurisdictions.[117]

For similar reasons, the proposed rule change would add a new Rule 905(g). New Rule 905(g) would give ICC discretion to determine the price at which it liquidates, terminates, or closes out a Contract, while Rule 904(b) would only apply to the Transfer of a Contract. The terms of new Rule 905(g) would be similar to those of amended Rule 904(b). Specifically, for all liquidations, terminations and close outs of Contracts, ICE Clear Europe would, at its discretion, determine the price of the Contract, which may be on the basis of the Exchange Delivery Settlement Price, the Mark-to-Market Price, the FX Market Price, Reference Price, Market-to-Market Value, current market value or any other price specified by ICE Clear Europe. ICE Clear Europe would be able to calculate the price with reference to any time determined at

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[117] Notice, 85 Fed. Reg. at 13209.

its discretion, which may be at the time such cancellation is ordered, the time an Event of Default, Insolvency, Unprotected Resolution Step occurs or is declared, or the time of calculation of any price as at the end of the Business Day prior to the Transfer, Event of Default, Insolvency or Unprotected Resolution Step. Moreover, the proposed rule change would amend Rule 905(b)(vi), which allows ICE Clear Europe to pair and cancel offsetting Long and Short positions in the same Future or Option Set or Selling Counterparty and Buying Counterparty positions in any Set of CDS Contracts or FX Contracts. Under Rule 905(b)(vi) as amended, ICE Clear Europe would still have authority to pair and cancel such positions, but the amended rule would refer to Rule 905(g) with respect to determining the price when needed to conduct the pair and cancel. ICE Clear Europe represents that this change is necessary to be consistent with the discretion granted to ICE Clear Europe under amended Rule 905(g). .

J. 17Ad-22(e)(17)(i)

As discussed in this section, the proposed rule change would also make changes with respect to requirements applicable to ICE Clear Europe under U.S. tax law and the timing and operational aspects associated with ICE Clear Europe's clearance and settlement of CDS, F&O, and FX Contracts. ICE Clear Europe is making these changes to better manage the operational risks associated with these aspects of ICE Clear Europe's clearance and settlement processes. ICE Clear Europe believes these changes would be consistent with Rule 17Ad-22(e)(17)(i)'s requirement that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by, among other things,

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.[118]

i. U.S. Tax Requirements

The proposed rule change would adopt a new Paragraph 6.1(k) of the Finance Procedures to address the application of Section 871(m) ("Section 871(m)") of the Internal Revenue Code to Clearing Members. Under Section 871(m), unless a Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes enters into certain agreements with the Internal Revenue Service, ICE Clear Europe would be required to withhold taxes on dividend equivalents with respect to any transactions with that Clearing Member that are subject to Section 871(m).[119]

To avoid having to withhold taxes and manage the operational risks associated with such withholding, ICE Clear Europe is proposing to adopt a new Paragraph 6.1(k) of the Finance Procedures. This new paragraph would require that, as a precondition for a Clearing Member to clear equity contracts with ICE Clear Europe, any Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes must enter into appropriate agreements with the IRS and meet certain other specified qualifications under procedures of the IRS, such that ICE Clear Europe will not be responsible for withholding taxes under Section 871(m). Moreover, new Paragraph 6.1(k)(ii) would require each Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes to certify annually that they satisfy these requirements. New Paragraph 6.1(k)(iii) also would require each Clearing Member that is treated as a non-U.S.

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118 17 CFR 240.17Ad-22(e)(17)(i); Notice, 85 Fed. Reg. at 13216.

119 Notice, 85 Fed. Reg. at 13208.

entity for U.S. federal income tax purposes to provide, on an annual basis, certain information necessary for ICE Clear Europe to make required IRS filings. Finally, new Paragraph 6.1(k)(iv) would require each Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes to notify ICE Clear Europe of relevant changes in their circumstances affecting compliance with paragraph 6.1(k).

ICE Clear Europe is making this proposed change to manage the operational risks associated with the application of Section 871(m) to Clearing Members. Because, as discussed above, Section 871(m) could require ICE Clear Europe in certain circumstances to withhold taxes on dividend equivalents with respect to any transactions with a Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes that are subject to Section 871(m), ICE Clear Europe believes application of Section 871(m) could hinder its operational processes for clearing and settling transactions.[120] ICE Clear Europe therefore believes that application of Section 871(m) represents an operational risk to ICE Clear Europe, and that the proposed response to that risk would be consistent with the requirement in Rule 17Ad-22(e)(17) that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks and mitigate their impact through the use of appropriate policies and procedures.[121]

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120 Notice, 85 Fed. Reg. at 13208-13209.

121 17 CFR 240.17Ad-22(e)(17)(i); Notice, 85 Fed. Reg. at 13216.

ii. Timing and Operations

ICE Clear Europe is also making changes to clarify and harmonize references to timing in the Rules, the CDS Procedures, Clearing Procedures, Finance Procedures, and mitigate other aspects of the operational risk associated with clearing contracts. ICE Clear Europe is doing so to manage and mitigate the operational risks presented by having divergent standards of timing applied to its clearing of contracts.

Beginning with CDS Contracts, the proposed rule change would clarify, at the beginning of Part 15 of the Rules and at Paragraph 1.86 of the CDS Procedures, that references to timings or times of day in connection with CDS Contracts are to Greenwich Mean Time (without taking into account daylight savings time (British Summer Time)). ICE Clear Europe is making these changes to reflect applicable timings for the CDS market under standard CDS documentation, and to avoid application of Rule 102(h) (which specifies London time by default, including with daylight savings time adjustments). ICE Clear Europe believes this change would help to avoid a risk that cleared CDS Contracts at ICE Clear Europe would diverge from the timing of uncleared CDS contracts, which also follow standard CDS documentation using Greenwich Mean Time.[122]

With respect to the Clearing Procedures, Section 2 describes the operational aspects of ICE Clear Europe's systems for clearing trades and managing positions. The proposed rule change would delete, in Paragraph 2.2(c)(ii), a reference to allocation of trades within one hour. The timing of allocation may be a matter of the relevant Market Rules, so ICE Clear Europe is

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[122] Notice, 85 Fed. Reg. at 13212.

making this change to avoid potential conflict with those Market Rules, including a situation where ICE Clear Europe's systems allocate trades at a time different from the relevant Market where those trades occur.[123]

Similarly, the proposed rule change would amend Paragraph 2.4(c), which specifies that close-outs of Options must be complete at or before 10:00 am to be reflected in Open Contract Positions and Margin calls calculated at the end of that day, to instead specify that close-outs must be complete at or before the time specified by the relevant Market from time to time. Again, ICE Clear Europe is making this change to avoid potential conflict with those Market Rules and to reduce the operational risks that could result from such a conflict.[124]

The proposed rule change would also add a new Paragraph 2.6 and Paragraph 2.7. New Paragraph 2.6 would make explicit that Clearing Members bear the risk of late or incorrect instructions to ICE Clear Europe. Paragraph 2.7 would specify technical reasons for which ICE Clear Europe may reject an F&O contract, such as the trader not being recognized, the Clearing Member not being approved, or the relevant market member code is not recognized or approved. Paragraph 2.7 would also specify how ICE Clear Europe would respond to the rejected contract, which would include, for example, contacting the relevant Market. As with the changes discussed above, ICE Clear Europe is adding these new paragraphs to manage and mitigate the operational risks presented by late or incorrect instructions and invalid F&O Contracts.[125]

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123 Notice, 85 Fed. Reg. at 13213.

124 Notice, 85 Fed. Reg. at 13213.

125 Notice, 85 Fed. Reg. at 13213.

Similarly, in paragraphs 11.2 and 11.4 of the Finance Procedures, ICE Clear Europe would remove a presumption that deposits and withdrawals of non-cash collateral should be settled on the same day as a Clearing Member places with ICE Clear Europe an instruction for deposit or withdrawal. Instead, the proposed rule change would state that ICE Clear Europe accepts settlement instructions specifying a settlement date up to two business days after the relevant trade date and that the proposed settlement must be specified in the instruction and agreed to by ICE Clear Europe. If ICE Clear Europe assumes same-day settlement where a Clearing Member does not intend same-day settlement, this could result in a mismatch and a failure to complete settlement. Thus, this change would mitigate the operational risk that could be presented by use of such an assumption, in accordance with Rule 17Ad-22(e)(17)(i).[126]

K. 17Ad-22(e)(18)

As discussed in this section, ICE Clear Europe is also proposing a number of changes to the standards that govern membership in ICE Clear Europe. ICE Clear Europe is making these changes to enhance these requirements following an internal review that identified areas for improvement. ICE Clear Europe believes the proposed rule change would help to ensure that ICE Clear Europe satisfies Rule 17Ad-22(e)(18), which requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably 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, require participants to have sufficient financial resources and robust operational capacity

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126 17 CFR 240.17Ad-22(e)(17)(i); Notice, 85 Fed. Reg. at 13213.

to meet obligations arising from participation, and monitor compliance with such participation requirements on an ongoing basis.[127]

i. Rule 117

The proposed rule change would first amend Rule 117. Rule 117 requires that Clearing Members arbitrate any disputes with ICE Clear Europe that are not subject to ICE Clear Europe's Disciplinary Procedures or Complaints Resolution Procedures. Rule 117(k) further requires that Clearing Members waive any ability to claim sovereign immunity with respect to such arbitration. The proposed rule change would amend Rule 117(k) slightly to provide that Clearing Members "irrevocably" waive any ability to claim sovereign immunity with respect to such arbitration. ICE Clear Europe is making this change so its Rules reflect the typical practice for waivers of sovereign immunity and the documentation thereof in the derivatives markets and therefore believes that this change should not be inconsistent with other waivers its Clearing Members may have already made.[128]

ii. Rule 201

The proposed rule change would also make various enhancements to Rule 201(a), which sets out the basic standards for membership in ICE Clear Europe. As discussed above, following an internal review, ICE Clear Europe is making these changes to further specify the operational, managerial, back office, systems, controls, business continuity and banking requirements applicable to Clearing Members. As with the changes to Rule 117 discussed above, ICE Clear

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127 17 CFR 240.17Ad-22(e)(18); Notice, 85 Fed. Reg. at 13217.

128 Notice, 85 Fed. Reg. at 13212.

Europe is making these changes to further clarify and establish objective, risk-based, and publicly disclosed criteria for participation by its Clearing Members, in accordance with Rule 17Ad-22(e)(18).[129] Each of these changes is described below according to the numbering of Rule 201.

First, the proposed rule change would amend Rule 201(a)(vi), which currently requires a Clearing Member to nominate a Person meeting certain requirements to act on behalf of the Clearing Member, to further require that the nominated Person have all authorisations, registrations, licences, permissions, non-objections, consents, or approvals required under Applicable Law in any jurisdiction in order to act as a representative for the relevant Clearing Member's business in connection with ICE Clear Europe. ICE Clear Europe is making this change to ensure that representatives of Clearing Members hold all authorizations, licences, consents, or approvals required under applicable laws needed to act on behalf of Clearing Members.

The proposed rule change would next amend Rule 201(a)(xi), which requires that a Clearing Member be fit and proper and have sufficient qualities of financial responsibility and operational capacity, to further require that a Clearing Member have sufficient qualities of compliance and managerial responsibilities, including having adequate segregation of front and back office functions and adequate back office and compliance support, as required under Applicable Laws. ICE Clear Europe is making this change to add an explicit reference to

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[129] 17 CFR 240.17Ad-22(e)(18); Notice, 85 Fed. Reg. at 13216-13217.

Applicable Laws and ensure that Clearing Members have adequate back office and compliance support.

The proposed rule change would amend Rule 201(a)(xiv), which requires that a Clearing Member have in place business continuity procedures to satisfy ICE Clear Europe's minimum requirements, to require instead that a Clearing Member have in place business continuity procedures to enable it to meet its obligations as a Clearing Member. ICE Clear Europe is making this change in wording to clarify that rather than meeting certain minimum requirements, the business continuity procedures must enable the Clearing Member to meet its obligations to ICE Clear Europe.

The proposed rule change would amend Rule 201(a)(xxv), which requires that a Clearing Member have provided details of an office which is staffed during normal business hours and sufficient for its proposed activities as a Clearing Member under the direct supervision and responsibility of an executive officer, to expand this to include its proposed activities as a Clearing Member under the direct supervision and responsibility of an executive director or other executive officer. ICE Clear Europe is making this change to expand the scope of this provision to include those offices under the supervision of an executive director or other officer.

The proposed rule change would amend Rule 201(a)(xxvi), which requires that a Clearing Member satisfy ICE Clear Europe that it, its officers, directors, and Controllers would each meet the requirements for an "approved person" under applicable rules of the UK Financial Conduct Authority and Prudential Regulation Authority, to further apply this requirement to the Clearing Member's relevant employees and further require that the Clearing Member satisfy ICE Clear Europe that such persons are fit and proper. ICE Clear Europe is making this change to

further extend this requirement to relevant employees subject to the applicable rules of the UK Financial Conduct Authority and Prudential Regulation Authority.

Finally, the proposed rule change would amend Rule 201(a)(xxvi), which requires that a Clearing Member hold a Nominated Bank Account or Accounts (as necessary) at an Approved Financial Institution or Institutions in relation to each of which a direct debit mandate has been established in favour of the Clearing House. The proposed rule change would update the wording to refer to "one or more" Approved Financial Institutions and to further require that the Clearing Member satisfy ICE Clear Europe of the adequacy of its contingency banking arrangements in the event of an Insolvency or failure to pay or default of an Approved Financial Institution which affects the operation of a Nominated Bank Account or Accounts or a Clearing House Account. ICE Clear Europe is making this change to ensure that its Clearing Members have sufficient back-up arrangements in the event that an Approved Financial Institution is no longer able to operate on their behalf.

iii. Rule 202

Similar to the changes to Rule 201, ICE Clear Europe would also make changes to Rule 202. Rule 202 sets out the ongoing obligations of Clearing Members, while Rule 201 sets out the criteria for membership. As discussed above, following an internal review, ICE Clear Europe is making these changes to include additional detail on system and controls requirements and to add new requirements to ensure that ICE Clear Europe has sufficient access rights in relation to its Clearing Members. ICE Clear Europe believes these proposed changes would address identified commercial and operational risks for ICE Clear Europe and ensure that Clearing Members meet appropriate and evolving standards concerning their systems and

operations. ICE Clear Europe believes that in making these changes the proposed rule change would further clarify and establish objective, risk-based, and publicly disclosed criteria for participation by its Clearing Members, in accordance with Rule 17Ad-22(e)(18).[130] Each of these changes is described below according to the numbering of Rule 202.

The proposed rule change would first amend Rule 202(a)(xi), to replace references to the deposit of funds with a reference to "cash transfers." ICE Clear Europe is making this change to further establish a settled-to-market treatment of variation margin, as discussed above.[131]

Next, the proposed rule change would amend Rule 202(a)(xiv), which defines the standards for systems and controls that a Clearing Member must have in place. The proposed rule change would specify that a Clearing Member must have adequate systems and controls in place to ensure that it has adequate separation policies to mitigate concentration risk of critical business functions and compliance oversight in place to enable it to meet its obligations as a Clearing Member, adequate segregation of front and back office functions, and adequate back office and compliance support, as required under Applicable Laws. The proposed rule change would also require that a Clearing Member have adequate systems and controls in place to ensure that it has internal audit processes that are applied appropriately. ICE Clear Europe is making this change to require additional detail on system and controls requirements for Clearing Members.

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130 17 CFR 240.17Ad-22(e)(18); Notice, 85 Fed. Reg. at 13216-13217.

131 See supra section II.E.ii.

The proposed rule change would next add a new paragraph in Rule 202(a)(xxii) to require a Clearing Member to be accessible during and for two hours immediately after close of business on every business day. ICE Clear Europe is making this change to ensure that Clearing Members remain accessible following close of business, during which time ICE Clear Europe may need to contact Clearing Members regarding events that happened during the business day.

Finally, the proposed rule change would add a new paragraph in Rule 202(a)(xxiii) to require a Clearing Member to provide such access as ICE Clear Europe requires to its premises, records, and personnel for the purposes of, for example, carrying out investigations or audits. ICE Clear Europe is making this change to further enhance its ability to investigate and audit a Clearing Member, such as, for example, an investigation in connection with a disciplinary proceeding.

iv. Rule 203

Rule 203 sets out certain prohibitions on Clearing Members. The proposed rule change would amend Rule 203(a)(xvi) to specify that a Clearing Member is prohibited from engaging in conduct that would render it unable to satisfy obligations under Rule 202(a). Rule 203(a)(xvi) already prohibits a Clearing Member from engaging in conduct that would render it unable to satisfy the membership criteria in Rule 201(a). ICE Clear Europe views Rule 202(a) as working in conjunction with Rule 201(a), and, accordingly, is making the proposed amendment to close a potential gap in the coverage of Rule 203(a).[132]

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[132] Notice, 85 Fed. Reg. at 13212.

The proposed rule change would also add a new paragraph at Rule 203(a)(xxii). New Rule 203(a)(xxii) would explicitly limit the ability of a Clearing Member or its Affiliates to exercise set-off rights against ICE Clear Europe where such Clearing Member (or its Affiliates) have a relationship in another capacity, for example providing banking or custodial services to ICE Clear Europe. ICE Clear Europe is making this change to reduce the risks that other contractual agreements contain provisions that could interfere with ICE Clear Europe's default management or operational processes.[133] ICE Clear Europe also believes this change would provide a level playing field for all Clearing Members, regardless of any other commercial relationships with ICE Clear Europe, and therefore would help to ensure that ICE Clear Europe establishes objective criteria for participation applicable to all of its Clearing Members, in accordance with Rule 17Ad-22(e)(18).[134]

v. Rule 204

ICE Clear Europe would also make changes to Rule 204, which requires a Clearing Member to notify ICE Clear Europe in certain circumstances. Specifically, Rule 204(a)(xii) requires that a Clearing Member notify ICE Clear Europe of any breach by the Clearing Member of any Applicable Law relating to its status and performance as a Clearing Member. The proposed rule change would amend this to further require that the Clearing Member provide notice of any non-frivolous or non-vexatious investigation or allegation of a breach by the Clearing Member of any Applicable Law relating to its status and performance as a Clearing

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133 Notice, 85 Fed. Reg. at 13212.

134 17 CFR 240.17Ad-22(e)(18); Notice, 85 Fed. Reg. at 13212.

Member. Moreover, Rule 204(b)(i) requires that a Clearing Member notify ICE Clear Europe of a change of control where that change of control is notifiable to the UK Financial Conduct Authority or Prudential Regulation Authority. The proposed rule change would extend this to require notification where a change of control is subject to the approval of the UK Financial Conduct Authority or Prudential Regulation Authority, in addition to a change of control that is notifiable. ICE Clear Europe believes these are appropriate extensions of Rule 204 and that the proposed changes would facilitate ongoing monitoring by ICE Clear Europe of circumstances that may significantly affect Clearing Members.[135] ICE Clear Europe also believes the proposed amendments would close a potential gap in notification requirements based on a distinction between regulatory notice and approval.

vi. Rule 206

ICE Clear Europe also proposes a minor change to Rule 206. Rule 206 requires that a Clearing Member maintain at all times the requisite types and amount of Capital as required under the CDS Procedures, Finance Procedures, and Membership Procedures, and further requires that a Clearing Member, upon request, provide financial statements and other documentation supporting calculations of Capital. The proposed rule change would amend Rule 206 to add a reference to other financial resources requirements (in addition to Capital) under the relevant procedures. ICE Clear Europe is making this change to correctly cross-refer to the existing requirements of the various procedures documents, which may impose requirements for other financial resources in addition to capital. In doing so, ICE Clear Europe believes that the

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135 Notice, 85 Fed. Reg. at 13212.

change would help to ensure that its criteria for participation are objective and clear and help ensure that Clearing Members have sufficient financial resources, in accordance with Rule 17Ad-22(e)(18).[136]

vii. Membership Procedures

The proposed rule change would amend the Membership Procedures in various places to be consistent with the amendments to the membership provisions of the Rules discussed above and to ensure that the Membership Procedures use terminology consistent with the Rules.

The proposed rule change would first amend Paragraph 1.1, which describes the membership application process, to specify that ICE Clear Europe would require evidence of authority of the persons who sign the Clearing Membership Agreement, Sponsor Agreement, and Sponsored Principal Clearing Agreement on behalf of a Clearing Member. ICE Clear Europe is making this change to be consistent with ICE Clear Europe's other practices requiring signatories.

Paragraph 4.2 of the Membership Procedures provides, in a table, details of the various notifications that Clearing Members should make to ICE Clear Europe, including when to submit the notification and the form to use. The proposed rule change would update various entries in the table to reflect the wording used in the current Rules and the changes discussed above, by, for example, removing use of the word "deposit," referring to the board of directors of a Clearing Member in addition to key personnel, specifying that certain days for providing a notice are business days, requiring notification of a suspension of a clearing arrangements with an Eligible

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136 17 CFR 240.17Ad-22(e)(18); Notice, 85 Fed. Reg. at 13212, 13216, and 13217.

Person, requiring notice of any Insolvency of the Clearing Member or its shareholders or any death of a substantial shareholder, and requiring notice of changes to the board of directors of a Clearing Member.

Like the changes discussed above, ICE Clear Europe is making these changes to ensure that its Membership Procedures provide objective, risk-based, and publicly disclosed criteria for participation, in accordance with Rule 17Ad-22(e)(18).[137]

viii. Rule 301

Rule 301 sets out certain financial requirements and payment obligations on Clearing Members. Rule 301(f) requires that a Clearing Member pay all amounts payable to ICE Clear Europe by electronic transfer from an account at an Approved Financial Institution only. The proposed rule change would modify Rule 301(f) to require instead that a Clearing Member pay all amounts payable to ICE Clear Europe by electronic transfer from an account at an Approved Financial Institution only except with the written consent of ICE Clear Europe and delete an existing exception for application fees. ICE Clear Europe is making this change to provide it and Clearing Members greater flexibility to make all payments using a method other than electronic transfer from an account at an Approved Financial Institution should that become necessary due to, for example, an outage or other interruption to the operation of an Approved Financial Institution.[138] Like the changes discussed above, ICE Clear Europe is making this change to

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137 17 CFR 240.17Ad-22(e)(18); Notice, 85 Fed. Reg. at 13216-13217.

138 Notice, 85 Fed. Reg. at 13212.

ensure that this aspect of its membership requirements is objective, risk-based, and publicly disclosed, in accordance with Rule 17Ad-22(e)(18).[139]

L. 17A(b)(3)(F)

As discussed in this section, the proposed rule change would amend Part 7 and Part 8 of the Rules to simplify and clarify the drafting of provisions relating to the cash settlement of Futures and Options Contracts.[140] ICE Clear Europe is making these changes to improve its procedures regarding cash settlement and to ensure that its written procedures for cash settlement accurately describe its current operational practices and processes.[141] As such, ICE Clear Europe believes these changes would help ensure that ICE Clear Europe's Rules promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, in accordance with Section 17A(b)(3)(F) of the Act.[142]

Beginning with Part 7 of the Rules, the proposed rule change would amend Rule 702(c) to clarify the method of determining the amount payable for cash settlement of a Future. Currently, Rule 702(c) provides that the amount payable shall be the net gain or loss, based on the difference between the price at which Open Contract Positions are recorded on ICE Clear Europe's books and the Exchange Delivery settlement price. The proposed amended language

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139 17 CFR 240.17Ad-22(e)(18); Notice, 85 Fed. Reg. at 13216-13217.

140 Notice, 85 Fed. Reg. at 13205-13206.

141 Notice, 85 Fed. Reg. at 13205-13206.

142 15 U.S.C. 78q-1(b)(3)(F); Notice, 85 Fed. Reg. at 13214.

would confirm that the relevant amount is based on the price at which Open Contract Positions were last recorded on ICE Clear Europe's books and the Exchange Delivery Settlement Price (and not necessarily the difference between these two prices), in any case as provided in the applicable Contract Terms.

Rule 703(f) gives ICE Clear Europe the authority, at its discretion, to direct a Clearing Member who is a Seller under a Futures Contract to deliver the Deliverable that is the subject matter of such Contract to another Clearing Member that is a Buyer. Rule 703(f) further provides that in such a case, the Clearing Members shall make all payments in relation to such Contracts only to and from ICE Clear Europe. The proposed rule change would caveat this point by adding the phrase "(except with the prior written consent of the Clearing House)." The proposed rule change would make an identical change to Rule 809(d) with respect to Options Contracts. ICE Clear Europe is making this change to Rule 703(f) and Rule 809(d) to provide flexibility to also permit payments to be made directly between Clearing Members rather than to and from ICE Clear Europe. ICE Clear Europe believes this operational flexibility would improve its ability to cash settle Futures and Options Contracts by allowing ICE Clear Europe to facilitate direct payments between Clearing Members.[143]

The proposed rule change would also revise Rule 703(h). Rule 703(h) currently provides that where a Clearing Member that is a Buyer or Seller under a Futures Contract subject to delivery is subject to grounds for declaring an Event of Default or Force Majeure Event, the

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143 Notice, 85 Fed. Reg. at 13206.

rights, liabilities, and obligations of the defaulter may, at the option of ICE Clear Europe, be subject to mandatory cash settlement. The proposed rule change would revise this provision to provide that in such a situation, the obligations of both Clearing Members under the Contract (not just the defaulting Clearing Member) may be subject to mandatory cash settlement directions. ICE Clear Europe is making this change to facilitate management of such a default and avoid need for ICE Clear Europe to make or take delivery of the underlying asset from the non-defaulting clearing member.

Finally, the proposed rule change would amend Rule 810, which describes the cash settlement of Options. Specifically, the proposed rule change would amend Rule 810(d) to clarify that ICE Clear Europe would determine the cash settlement price for an Option using the Exchange Delivery Settlement Price on the day of settlement or exercise and that, to receive cash settlement, all outstanding premium payments must have been made in relation to the relevant set of Options (in addition to Margin payments). ICE Clear Europe is making these changes to clarify the practices and processes for cash settlement of Options.

M. 17A(b)(3)(H)

As discussed in this section, the proposed rule change would amend Part 10 of the Rules to streamline and improve ICE Clear Europe's process for disciplining Clearing Members. ICE Clear Europe is making the changes to implement lessons learned from an internal review at ICE Clear Europe and from the practice of previous complaint and disciplinary processes, especially at the exchanges affiliated with ICE Clear Europe through its corporate structure, where such processes occur more regularly. As such, ICE Clear Europe believes these changes would help to ensure that its Rules provide a fair procedure with respect to the disciplining of Clearing

Members, in accordance with Section 17A(b)(3)(H) of the Act.[144] As discussed below, ICE Clear Europe proposes these changes to Rules 1002, 1003, 1004, and 1005, and further proposes creating a new 1006.

i. Rule 1002

The proposed rule change would begin with Rule 1002, making various changes to improve the process for investigating potential breaches of the Rules by Clearing Members.

Starting with Rule 1002(c), the proposed rule change help to ensure that external advisers, such as accountants or attorneys hired by ICE Clear Europe to assist an investigation, keep information confidential. Specifically, the proposed rule change would add language to Rule 1002(c) to ensure that any external advisers appointed by ICE Clear Europe treat information that the advisers have been given access to as confidential, in addition to treating information obtained in the course of the investigation as confidential (as required currently under Rule 1002(c)).

The proposed rule change would also revise Rule 1002(d)(i) and (d)(iv) to ensure that ICE Clear Europe can access the information it needs to conduct an investigation. As revised, Rule 1002(d)(i) and (iv) would require a Clearing Member, at ICE Clear Europe's direction, to provide access to (i) information and documentary and other material documents and (ii) documents, records, or materials in its possession, in addition to the making such materials available for inspection (as required currently under Rule 1002(d)).

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144 15 U.S.C. 78q-1(b)(3)(H); Notice, 85 Fed. Reg. at 13214.

The proposed rule change would also revise Rule 1002(e) to clarify that non-compliance with an investigation can lead to additional disciplinary action being brought against a Clearing Member. Rule 1002(e) currently specifies that failure to cooperate with an investigation would constitute a breach of the Rules, but the added language would specify that non-compliance is capable of giving rise to separate and/or additional disciplinary action in accordance with Part 10 of the Rules. This change would thus clarify the consequences to Clearing Members of failing to cooperate with an investigation.

The proposed rule change would amend Rule 1002(g), which provides details regarding an initial meeting between ICE Clear Europe and the Clearing Member subject to investigation, to improve the drafting of the provision. Under Rule 1002, after ICE Clear Europe provides a Letter of Mindedness (which explains ICE Clear Europe's preliminary conclusions and its intended course of action), ICE Clear Europe must invite the Clearing Member to attend an initial meeting, or send written comments, to provide the Clearing Member an opportunity to correct any factual error in the Letter of Mindedness. The initial meeting would take place on a confidential basis. The proposed rule change would make minor amendments to this provision to clarify that ICE Clear Europe would serve the Letter of Mindedness to the Clearing Member rather than issue it; that the Clearing Member would be afforded an opportunity to address any factual "inaccuracy" in addition to a factual "error"; and that the initial meeting would take place "in private on a confidential basis" rather than just "on a confidential basis." Thus, ICE Clear Europe is making this change to improve the overall drafting of 1002(g).

The proposed rule change would amend 1002(h), which currently requires that ICE Clear Europe finalize its initial findings and communicate those in writing to the Clearing Member, to

further require that ICE Clear Europe communicate any steps it proposes to take and notify the Clearing Member of the acts or practices which ICE Clear Europe has found the Clearing Member to have taken or omitted, the relevant provisions breached, and the proposed sanctions. Thus, this change would improve the availability of information to Clearing Members regarding the investigation by requiring that ICE Clear Europe communicate certain information to Clearing Members.

The proposed rule change would also amend Rule 1002(i) to clarify certain steps that ICE Clear Europe may take following the communication of its initial findings to a Clearing Member. In Rule 1002(i)(*iv*), which currently provides that ICE Clear Europe may commence disciplinary proceedings following the communication of its initial findings to a Clearing Member, the proposed rule change would add a cross-reference to Rule 1003 (under which such disciplinary proceedings would take place). Moreover, in Rule 1002(i)(*v*), which provides that ICE Clear Europe may refer a matter for further inquiry following the communication of its initial findings to a Clearing Member, the proposed rule change would add a list of the entities to whom ICE Clear Europe may refer the matter for further inquiry: ICE Clear Europe, a Market, or a Governmental Authority. The proposed rule change would amend Rule 1002(i)(*vii*), which gives ICE Clear Europe the ability to publish its findings following the initial meeting discussed above, to also provide that ICE Clear Europe could publish its initial findings following receipt of written comments from the Clearing Member. As discussed above, following the service of the Letter of Mindedness under Rule 1002(g), a Clearing Member may submit written comments to ICE Clear Europe instead of conducting an initial meeting, and thus this change would clarify Rule 1002(i)(*vii*) to take this circumstance into account. Finally, the proposed rule change would

add a new Rule 1002(i)(*viii*) to state expressly that ICE Clear Europe may take a combination of the actions listed in Rule 1002(i). Thus, this change would provide further clarity to the actions that ICE Clear Europe could take in response to its investigation.

ii. Rule 1003

The proposed rule change would also make various amendments to Rule 1003 to enhance and clarify the process for conducting disciplinary proceedings. ICE Clear Europe is making these proposed changes to reduce unnecessarily complex drafting, describe the various steps involved in the disciplinary process in more detail (similar to those changes proposed for Rule 1002(h) described in the context of investigations), and specify further the timing by which certain actions must be taken. ICE Clear Europe believes the changes would help to ensure that ICE Clear Europe's Rules provide a fair procedure with respect to the disciplining of Clearing Members, in accordance with 17A(b)(3)(H) of the Act.[145]

Specifically, in Rule 1003(b), the proposed amendments would require, upon ICE Clear Europe's determination to commence disciplinary proceedings, that ICE Clear Europe provide written notice to the Clearing Member that disciplinary proceedings are to be commenced. This requirement to provide written notice of commencement already exists in current Rule 1003(g), and the proposed rule change would move this requirement to Rule 1003(b) and revise Rule 1003(g) as appropriate. Because Rule 1003(b) details other actions that ICE Clear Europe must take upon determining to commence disciplinary proceedings, ICE Clear Europe is moving this

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145 15 U.S.C. 78q-1(b)(3)(H); Notice, 85 Fed. Reg. at 13214.

notification requirement to Rule 1003(b) to consolidate in Rule 1003(b) the requirements applicable to ICE Clear Europe upon determining to commence disciplinary proceedings.

Currently, under Rule 1003(b), upon ICE Clear Europe's determination to commence disciplinary proceedings, ICE Clear Europe must establish a Disciplinary Panel. The proposed rule change would revise Rule 1003(b) to state explicitly that ICE Clear Europe shall appoint the chairman and members of the Disciplinary Panel, a point that is assumed in the current rule. Moreover, the proposed rule change would clarify the use of independent assessors by the Disciplinary Panel, but would not alter the substance of those provisions as they exist in current Rule 1003(b). Specifically, current Rule 1003(b) provides that "Expert assessors may be appointed, at the discretion of the Disciplinary Panel itself, to sit with and advise the Disciplinary Panel but not to vote," and the proposed rule change would clarify this by specifying that "such persons shall not be entitled" to vote. Similarly, current Rule 1003(b) provides that no person shall serve on or sit with a Disciplinary Panel if the person has a personal or financial interest in or has been involved in any investigation into or previous Disciplinary Panel hearing on the matter. The proposed rule change would modify this to state that no person shall be appointed to a Disciplinary Panel or be eligible as an expert assessor if he has any personal or financial interest in the investigation which has led to the current disciplinary proceedings or has been involved in any investigation into or previous Disciplinary Panel dealing with or relating to the matter which is the subject of the current disciplinary proceedings. Thus, these changes would clarify the existing provisions of Rule 1003(b) by making more specific ICE Clear Europe's authority with respect to appointing members to the Disciplinary Panel and the standard of independence for members of the Disciplinary Panel and expert assessors.

Currently, Rule 1003(c) provides that the Clearing Member may object to any particular appointment to the Disciplinary Panel, which objection will be determined in the first instance by the chairman of the Disciplinary Panel and, in the event that the objection is to the chairman, then the Chairman of ICE Clear Europe. The proposed rule change would revise Rule 1003(c) to explicitly state that the Clearing Member shall be notified of the composition of the Disciplinary Panel. This point is assumed in the current rule, and the proposed rule change would clarify this provision by making it explicit. The proposed rule change would further require that the Clearing Member be notified within seven calendar days of the panel being established and that the Clearing Member have ten further calendar days to object in writing to any particular appointment. Thus, these changes would clarify Rule 1003(c) by making explicit certain matters assumed in the rule, clarify the method for objecting to an appointment, and further place limits on the use of such objections by Clearing Members.

In Rule 1003(d), the proposed rule change would make minor drafting improvements by, for example, changing "of" to "that" and by referring to the "subject matter of the disciplinary proceedings" rather than the "outcome" of the proceedings. Thus, this change would further clarify and improve the coherency of this provision.

Rule 1003(e) currently provides that in the event of equality of votes, the chairman of the Disciplinary Panel shall have a second or casting vote in reaching any determination. The proposed rule change would clarify this provision by stating that it applies to in relation to any matter before the Disciplinary Panel. This point is assumed in the current rule, and this change would further clarify the rule by making this point explicit.

As discussed above, ICE Clear Europe would revise Rule 1003(g) to consolidate the requirement to provide written notice of commencement of disciplinary proceedings in Rule 1003(b). Instead, under the proposed rule change, Rule 1003(g) would require that ICE Clear Europe send a formal written notice of the alleged breach of the Rules to the Clearing Member after the appointment of a Disciplinary Panel. The proposed rule change would make other minor drafting improvements to Rule 1003(g). These changes would improve the information available to Clearing Members and help to ensure that Clearing Members are aware of the alleged breaches that would be the subject of the disciplinary proceedings.

Current Rule 1003(h) gives the Clearing Member or other person subject to the notice of the alleged breach of the Rules 20 days from the service of the notice to provide a statement of defence. The proposed rule change would modify this provision slightly to clarify that the 20 day time period consists of 20 calendar days, and that it begins on the date of service of the notice. Moreover, the proposed rule change would add a provision to require that the statement of defence state explicitly whether the Clearing Member accepts the allegations. The proposed rule change would make other minor drafting clarifications, like referring to matters "specified" rather than "alleged." Thus, this change would clarify this rule by being explicit about the days used to count the deadline for the statement of defence and by further requiring that the Clearing Member be explicit about whether it accepts the allegations.

Current Rule 1003(i) provides that having seen and considered the state of defence, ICE Clearing Europe may proceed with the disciplinary proceedings, discontinue the disciplinary proceedings, or deal with the matter as set out in Rule 1003(j). The proposed rule change would delete this provision as unnecessary because ICE Clear Europe has the authority to continue or

discontinue disciplinary proceedings at any time and as such Rule 1003(j) did not provide any additional authority.

Current Rule 1003(j) allows ICE Clear Europe to amend the notice of alleged breach that is required by Rule 1003(g) and explains certain limitations on ICE Clear Europe's ability to amend that notice. The proposed rule change would renumber this provision as Rule 1003(i) and further specify ICE Clear Europe's ability to amend by explicitly stating that ICE Clear Europe may change the breach alleged in the notice or add another breach. The proposed rule change would also make certain drafting clarifications and improvements to the limitations on ICE Clear Europe's to amend the notice, but would not alter the substance of those limitations. Finally, the proposed rule change would explicitly require that following any deletion, amendment, or other alteration, ICE Clear Europe serve an amended notice on the Clearing Member. Thus, this aspect of the proposed rule change would enhance the fairness of the disciplinary proceedings by clarifying the limits on ICE Clear Europe's ability to amend a notice and requiring that ICE Clear Europe serve an amended notice to the Clearing Member.

Current Rule 1003(k) specifies that ICE Clear Europe's power to amend a Notice exists where it has determined that a separate or unrelated *prima facie* breach of ICE Clear Europe's Rules has occurred. The proposed rule change would renumber this provision as Rule 1003(j) and make drafting improvements, by for example, changing "exist" to "exists" and adding a reference to the disciplinary proceeding. Moreover, current Rule 1003(k) provides that ICE Clear Europe is not obliged to hold a further initial meeting or otherwise consult with a Clearing Member in response to additional or new alleged breaches. The proposed rule change would maintain this provision but would further specify that it only applies to additional or new alleged

breaches that come to ICE Clear Europe's attention during the ongoing disciplinary proceedings. Similar to the change to Rule 1003(j), this aspect of the proposed rule change would enhance the fairness of the disciplinary proceedings by limiting Rule 1003(k), which exempts ICE Clear Europe from holding a further initial meeting or otherwise consulting with a Clearing Member with respect to new or additional breaches, to breaches that come to ICE Clear Europe's attention during the ongoing disciplinary proceedings.

The proposed rule change would also make non-substantive drafting improvements to renumbered Rules 1003(l), (m), (o), (q), (r), and (t). These changes would include, for example, specifying dates or deadlines as constituting calendar days, capitalizing defined terms, adding explicit references to the Disciplinary Panel and disciplinary proceedings, specifying that agreements shall be written, and updating or adding cross-references as needed. These changes would improve the overall clarity of these provisions.

In renumbered Rule 1003(p) (currently Rule 1003(q)), the proposed rule change would specify in further detail what information the Disciplinary Panel must communicate to ICE Clear Europe and the relevant Clearing Member once a decision has been made as to whether a breach of the Rules has been proven following a hearing. This would include, for example, the rationale for the Disciplinary Panel's decision, details of the breach of the Rules, and any sanctions to be imposed. The proposed rule change would also clarify that sanctions would be suspended pending the determination of any appeal, unless ICE Clear Europe determined that any order of suspension of the Clearing Member should be enforced during that period. This proposed change would help to enhance the fairness of the disciplinary proceedings by specifying the

information that ICE Clear Europe must communicate to a Clearing Member regarding a decision and allow a Clearing Member to appeal without sanctions going into effect.

Finally, the proposed rule change would amend renumbered Rule 1003(s) (currently Rule 1003(t)), which gives the Disciplinary Panel authority to order any party to the proceedings to pay costs as it thinks appropriate, including the costs of running the Disciplinary Panel. The proposed rule change would modify this slightly by specifying that the Disciplinary may order a party to pay the fees and expenses of the members of the Disciplinary Panel. Moreover, the proposed rule change would specify that any order in relation to payment of costs may also specify the manner of assessment and timetable for payment. ICE Clear Europe intends this specific amendment to clarify current practice, under which a Disciplinary Panel has broad discretion to give awards on costs, and not substantively change the Disciplinary Panel's authority with respect to assessment of costs.[146] Thus, this change would further clarify Rule 1003(s) by making this point explicit.

iii. Rule 1004

In Rule 1004, the proposed rule change would make various amendments to clarify conditions surrounding the use of the Summary Procedure and to improve the drafting of the provisions in Rule 1004. Currently, under Rule 1004, a Clearing Member may submit in writing to ICE Clear Europe a request to use the Summary Procedure, and ICE Clear Europe may in its discretion refer a matter to the Summary Procedure. The Summary Procedure is designed to be used in a scenario where a full disciplinary process would be disproportionate in terms of time or

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146 Notice, 85 Fed. Reg. at 13207.

cost. The proposed rule change would modify Rule 1004(a) to clarify that the Summary Procedure would be used for disposing of a matter within 14 days of Notice being served. ICE Clear Europe is making this change to facilitate prompt resolution of matters subject to the Summary Procedure.

The proposed rule change would next amend Rule 1004(b) to provide ICE Clear Europe with the express ability to refuse the use of the Summary Procedure for matters which are more serious or are considered of particular significance or relevance to the market in general or in the public interest. This change thus would clarify the circumstances in which ICE Clear Europe may reject the inappropriate use of the Summary Procedure.

Rule 1004(c) currently provides that upon reference of the matter to the Summary Procedures, ICE Clear Europe shall nominate three Directors or employees of ICE Clear Europe to form the Summary Disciplinary Committee. The proposed rule change would modify this provision first to provide that it applies upon agreement to refer the matter to the Summary Procedure. This change would carry forth the change to Rule 1004(b) described above, giving ICE Clear Europe the express ability to refuse the use of the Summary Procedure. Moreover, the proposed rule change would modify Rule 1004(c) to state that ICE Clear Europe shall appoint members to the Summary Disciplinary Committee rather than nominate, because use of the term nominate gives the impression that ICE Clear Europe's choice would need to be ratified by someone else, which is not the case.

Current Rule 1004(d) provides the Summary Disciplinary Committee discretion to make such directions as to the conduct of the case as it sees fit. The proposed rule change would

clarify that this provision also applies to the hearing of the case as well as the conduct of the case.

Current Rule 1004(e) provides that the Summary Disciplinary Committee may accept as conclusive any finding of fact by a court or Governmental Authority. The proposed rule change would clarify that this provision applies to any legally appointed court, tribunal, expert, arbitrator, or Governmental Authority. Thus, this change would clarify the scope of this provision.

Current Rule 1004(f) requires that the Summary Disciplinary Committee hold a private hearing where the Clearing Member may respond to the alleged breach of the Rules. The proposed rule change would simplify this provision to state that all hearings before the Summary Disciplinary Committee shall be held in private unless ICE Clear Europe and the Clearing Member agree otherwise. Thus, this change would simplify the drafting of this provision but not alter its substance.

Finally, the proposed rule change would amend Rule 1004(i) to specify the information that the Summary Disciplinary Committee must communicate to the Clearing Member in greater detail (mirroring the changes to similar requirements imposed on the Disciplinary Panel under Rule 1003). The proposed rule change would also clarify in Rule 1004(i) that in keeping with the summary nature of the proceeding, the range of sanctions available to the Summary Disciplinary Committee would be limited to those set out in the Notice and any additional sanctions arising out of the conduct of the proceedings.

As discussed above, ICE Clear Europe believes that these changes to Rule 1004, in clarifying the timeline for disposing of matters under the Summary Proceeding, requiring ICC's

consent to use the Summary Proceeding, clarify ICE Clear Europe's authority in appoint members to the Summary Disciplinary Committee, and clarifying the scope of the Summary Disciplinary Committee's authority, would help to ensure that ICE Clear Europe's Rules provide a fair procedure with respect to the disciplining of Clearing Members, in accordance with Section 17A(b)(3)(H) of the Act.[147]

iv. Rule 1005

Throughout Rule 1005, which addresses appeals in the context of disciplinary proceedings, the proposed rule change would make a number of drafting clarifications and typographical corrections, like capitalizing defined terms and adding cross-references as needed. The proposed rule change also would amend Rule 1005(a)(ii) to clarify that the grounds for appeal listed in Rule 1005(a)(ii) are the only grounds for appeal and a party may not otherwise appeal on other grounds. Finally, the proposed rule change would amend Rule 1005(d) to require that the lawyer appointed to the Appeal Panel has been in practice for more than ten years and to clarify that an expert assessor, in addition to any other person sitting on an Appeal Panel, may not have a personal or financial interest in or have been involved in the investigation of or proceedings with respect to the matter under consideration. ICE Clear Europe believes that in making these changes, the proposed rule change would help to improve the use of appeals, and thereby would help to ensure that ICE Clear Europe's Rules provide a fair

147 15 U.S.C. 78q-1(b)(3)(H).

procedure with respect to the disciplining of Clearing Members, in accordance with 17A(b)(3)(H) of the Act.[148]

v. Rule 1006

The proposed rule change would add new Rule 1006 to address the interaction between ICE Clear Europe's disciplinary procedures under the Rules and any similar procedures under the rules of an Exchange. Exchanges that ICE Clear Europe clears are likely to have their own disciplinary procedures, with the result that a single disciplinary issue may give rise to two different disciplinary procedures dealing with the same fundamental issues. For example, ICE Futures Europe has disciplinary procedures set out in Section E of its Regulations.[149] ICE Clear Europe intends new Rule 1006 to: (i) ensure that the existence of parallel disciplinary procedures under Market Rules does not preclude ICE Clear Europe's own disciplinary procedures; and (ii) confirm that where an exchange is carrying out disciplinary proceedings at the same time as ICE Clear Europe in relation to an exchange member that is also a Clearing Member, such proceedings may be consolidated with those of ICE Clear Europe to avoid unnecessary duplication of efforts and resources. This, for example, would allow the exchange and ICE Clear Europe to rely on the same pieces of evidence or conduct combined interviews of witnesses, to avoid unnecessary duplication of effort. ICE Clear Europe believes such coordinated proceedings may be appropriate in a range of circumstances, such as market abuses and delivery

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148 15 U.S.C. 78q-1(b)(3)(H); Notice, 85 Fed. Reg. at 13214.

149 Notice, 85 Fed. Reg. at 13207.

failures.[150] In providing for these coordinated proceedings, ICE Clear Europe believes the proposed rule change would improve the efficiency of disciplinary proceedings and avoid unnecessary effort or expenditure by Clearing Members in responding to multiple, simultaneous proceedings, and thereby would help to ensure that ICE Clear Europe's Rules provide a fair procedure with respect to the disciplining of Clearing Members, in accordance with 17A(b)(3)(H) of the Act.[151]

III. 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 the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization. For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, 17A(b)(3)(H) of the Act, and Rules 17Ad-22(e)(1), (e)(2)(i), (e)(4)(v), (e)(6)(i), (e)(6)(ii), (e)(7)(i), (e)(10), (e)(13), (e)(14), (e)(17)(i), and (e)(18).[152]

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to

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150 Notice, 85 Fed. Reg. at 13207-13208.

151 15 U.S.C. 78q-1(b)(3)(H); Notice, 85 Fed. Reg. at 13214.

152 15 U.S.C. 78q-1(b)(3)(F); 15 U.S.C 78q-1(b)(3)(H); 17 CFR 240.17Ad-22(e)(1), (e)(2)(i), (e)(4)(v), (e)(6)(i), (e)(6)(ii), (e)(7)(i), (e)(10), (e)(13), (e)(14), (e)(17)(i), and (e)(18).

assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible, and, in general, to protect investors and the public interest.[153]

As discussed in Section II.B above, the proposed rule change would make a number of clarifications and drafting improvements to the Amended Documents, to ensure that the Amended Documents are clear, consistent, and provide an enforceable legal basis for ICE Clear Europe's activities. In the Commission's view, a lack of clarity and consistency in ICE Clear Europe's Rules and Procedures could hinder ICE Clear Europe's ability to promptly and accurately clear and settle transactions, by possibly leading to disputes over the terms of transactions. Likewise the Commission believes a lack of enforceable legal basis could undermine the legitimacy and finality of ICE Clear Europe's actions in clearing and settling transactions. Thus, the Commission believes this aspect of the proposed rule change should help ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.C above, the proposed rule change would clarify the scope of the terms used with respect to the persons involved in the governance of ICE Clear Europe. The Commission believes that this change would help to ensure clarity regarding the persons involved in the governance processes at ICE Clear Europe. The Commission believes that a lack of clarity could lead to potential confusion regarding the proper persons to take action on behalf of ICE Clear Europe, thereby potentially hindering ICE Clear Europe's ability to operate and therefore clear and settle transactions. Thus, the Commission believes this aspect of the

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153 15 U.S.C. 78q-1(b)(3)(F).

proposed rule change should help ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.D above, the proposed rule change would unify the time period for adjustments under the CDS, F&O, and FX Guaranty Funds, thereby helping ICE Clear Europe to maintain the Guaranty Funds. Because ICE Clear Europe maintains the Guaranty Funds to absorb potential losses, including losses from the default of the two participant families that would potentially cause the largest aggregate credit exposure for ICE Clear Europe in extreme but plausible market conditions, the Commission believes that this aspect of the proposed rule change, in facilitating ICE Clear Europe's maintenance of the Guaranty Funds, would also facilitate ICE Clear Europe's ability to cover such losses. The Commission further believes that such losses could, if not covered, interfere with ICE Clear Europe's ability to clear and settle transactions and safeguard securities and funds. Therefore, the Commission believes that this aspect of the proposed rule change, in facilitating ICE Clear Europe's maintenance of the Guaranty Funds, should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible.

As discussed in Section II.E above, the proposed rule change would clarify how ICE Clear Europe would calculate NLV for Premium Up-Front Options relating to Original Margin and would provide ICE Clear Europe authority to treat amounts owed to it by a Clearing Member as additional margin. The Commission believes that this aspect of the proposed rule change should help ICE Clear Europe to calculate such margin by clarifying the calculation of NLV and giving authority with respect to treating amounts owed as margin. Moreover, as discussed in

Section II.E above, the proposed rule change would, at the request of Clearing Members, establish the settled-to-market treatment of variation margin and adopt the Externalised Payments Mechanism for the payment of variation margin. The Commission believes that this aspect of the proposed rule change should help ICE Clear Europe to collect such margin by establishing a legal treatment of variation margin that may benefit Clearing Members' capital requirements and by establishing a method for paying variation margin that is more consistent with market practices. The Commission believes that in calculating and collecting margin, including initial margin and variation margin, ICE Clear Europe manages and mitigates potential losses associated with clearing and settling transactions. The Commission further believes that losses associated with clearing and settling transactions, if not managed and mitigated by margin, could interfere with ICE Clear Europe's ability to clear and settle transactions and safeguard securities and funds. Therefore, the Commission believes that this aspect of the proposed rule change, in facilitating ICE Clear Europe's calculating and collection of margin, should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible.

As discussed in Section II.F above, the proposed rule change would give ICE Clear Europe explicit authority to use repurchase agreements, secured lending facilities, and sales to generate liquidity from non-cash assets, subject to certain conditions. The Commission believes that this aspect of the proposed rule change would provide ICE Clear Europe an additional source of liquidity to use as needed to meet liquidity demands from clearing and settling transactions and potential liquidity demands resulting from the default of a Clearing Member. The Commission further believes that such liquidity may be needed for ICE Clear Europe to

clear and settle transactions, including clearing and settling transactions in the event of a Clearing Member's default. The Commission therefore believes that this aspect of the proposed rule change would help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.G above, the proposed rule change would update Rule 703 and ICE Clear Europe's Delivery Procedures regarding physical settlement to be consistent with market practices and the operational practices of associated trading venues for which ICE Clear Europe clears Contracts. The Commission believes that discrepancies between ICE Clear Europe's stated practices in the Delivery Procedures and the operational practices of associated trading venues could lead to failures to conduct physical settlement, and therefore failures to finalize and clear transactions. Therefore, the Commission believes that in resolving these potential discrepancies, the proposed rule change would help to ensure that physical settlement is completed. Moreover, the Commission believes that in updating Rule 703 to require Sellers under a Futures Contract to represent that they convey good title to products (free of encumbrances) when physical settlement takes place, the proposed rule change would help to mitigate the risk that a Seller would deliver a product subject to an encumbrance that could interfere with settlement of a transaction. The Commission therefore believes that this aspect of the proposed rule change should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.H above, the proposed rule change would expand the scope of events that could lead to ICE Clear Europe declaring an Event of Default with respect to a Clearing Member, clarify ICE Clear Europe's authority with respect to conducting default

auctions, and amend the net sum payable to or by a defaulting Clearing Member to include the effects of abandoning an Option. Upon declaring an Event of Default, ICE Clear Europe has certain powers under Part 9 of the Rules to respond to the default. The Commission therefore believes that expanding the scope of events that could lead to ICE Clear Europe declaring an Event of Default would better enable ICE Clear Europe to invoke these powers and thereby prevent or reduce the losses that could result from a default. Similarly, the Commission believes that clarifying ICE Clear Europe's authority with respect to conducting default auctions and amending the net sum payable to or by a defaulting Clearing Member to include the effects of abandoning an Option would help ICE Clear Europe to respond to a default and thereby prevent or reduce the losses that could result from such a default. The Commission further believes that losses from a default could interfere with ICE Clear Europe's ability to clear and settle transactions and safeguard securities and funds. Therefore, the Commission believes that this aspect of the proposed rule change, in facilitating ICE Clear Europe's ability to respond to defaults and thereby prevent or reduce losses, should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible.

As discussed in Section II.I above, the proposed rule change would clarify the application of the Standard Terms; ICE Clear Europe's use or transfer of margin; the timing of the creation, and termination of contracts subject to porting; and the price at which positions are ported, all for the purpose of enhancing ICE Clear Europe's ability to conduct porting of a Customer's positions. The Commission believes that, in further enabling ICE Clear Europe to conduct porting, the proposed rule change would help facilitate the transfer of Customer positions from

one Clearing Member to another Clearing Member and the settlement of the transactions resulting from such transfers. Therefore, the Commission believes that this aspect of the proposed rule change, in facilitating porting, should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.J above, the proposed rule change would make changes to manage and mitigate the operational risks associated with requirements applicable to ICE Clear Europe under U.S. tax law and the timing and operational aspects associated with ICE Clear Europe's clearance and settlement of CDS, F&O, and FX Contracts. The Commission believes that such operational risks, if not properly managed and mitigated, could interfere with ICE Clear Europe's ability to clear and settle transactions. Therefore, the Commission believes that this aspect of the proposed rule change, in facilitating the management and mitigation of these operational risks, should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

As discussed in Section II.K above, the proposed rule change would also enhance and update the standards and requirements applicable to membership in ICE Clear Europe. Moreover, as discussed in Section II.M above, the proposed rule change would amend Part 10 of the Rules to streamline and improve ICE Clear Europe's process for disciplining Clearing Members that violate these standards and requirements, and other aspects of the Rules. The Commission believes that these membership standards and requirements, among other things, would help to ensure that ICE Clear Europe's Clearing Members are able to perform their obligations that enable ICE Clear Europe to clear and settle transactions, such as transferring margin and contributing to the Guaranty Fund. Moreover, the Commission believes that ICE

Clear Europe's process for disciplining Clearing Members that violate these membership standards and requirements, and other aspects of the Rules, would help to ensure that Clearing Members meet their obligations to ICE Clear Europe under the Rules. Therefore, the Commission believes that in enhancing these standards and requirements and the process ICE Clear Europe uses to discipline Clearing Members, the proposed rule change should thereby help to ensure that ICE Clear Europe is able to clear and settle transactions.

Finally, as discussed in Section II.L above, the proposed rule change would amend Part 7 and Part 8 of the Rules to simplify and clarify the drafting of provisions relating to the cash settlement of Futures and Options Contracts. Specifically, the proposed rule change would ensure that ICE Clear Europe's written procedures for cash settlement accurately describe its current operational practices and processes and would clarify the method of determining the amount payable for cash settlement of a Future. In doing so, the Commission believes that the proposed rule change should help to avoid any possible disputes or discrepancies over these operational processes, which could hinder cash settlement.

The proposed rule change would also give ICE Clear Europe the authority to require both Clearing Members that are party to a Futures contract to engage in cash settlement if one of the Clearing Members defaults and give ICE Clear Europe flexibility to permit payments to be made directly between Clearing when directing Clearing Members to deliver to other Clearing Members under Rules 703(f) and 809(d). In doing so, the Commission believes that the proposed rule change should help ICE Clear Europe to continue settling transactions even in cases of default and help ICE Clear Europe to facilitate deliveries and payments among clearing members.

Finally, the proposed rule change would clarify that ICE Clear Europe could determine the cash settlement price for an Option using the Exchange Delivery Settlement Price on the day of settlement or exercise and would also require that, to receive cash settlement, all outstanding premium payments must have been made in relation to the relevant set of Options (in addition to Margin payments). The Commission believes that these changes allow ICE Clear Europe additional operational flexibility and help to ensure that the Clearing Member has made the payments necessary to clear and settle an Option. Thus, the Commission believes that these aspects of the proposed rule change should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions.

For these reasons, the Commission finds the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, derivative agreements, contracts, and transactions and would assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. Therefore, the Commission finds the proposed rule change is consistent with section 17A(b)(3)(F) of the Act.[154]

B. Consistency with Section 17A(b)(3)(H) of the Act

Section 17A(b)(3)(H) of the Act requires that the rules of ICE Clear Europe in general provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation of any person with respect to access to services offered by ICE Clear Europe.[155] As discussed in

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154 15 U.S.C. 78q-1(b)(3)(F).

155 15 U.S.C. 78q-1(b)(3)(H).

Section II.M above, the proposed rule change would amend Part 10 of the Rules to streamline and improve ICE Clear Europe's process for disciplining Clearing Members, including amendments to Rule 1002. The Commission believes that these changes to Rule 1002, in ensuring the confidentiality of information and increasing the information that ICE Clear Europe must disclose, would help to ensure that ICE Clear Europe provides a fair procedure with respect to disciplining its Clearing Members by providing Clearing Members with additional information about the consequences of the investigation and ICE Clear Europe's conclusions. Moreover, in ensuring that ICE Clear Europe can access information it needs to conduct its investigation, the Commission believes that these changes would help to ensure the efficacy of ICE Clear Europe's investigation, thereby improving ICE Clear Europe's ability to conduct a fair investigation.

The changes to Part 10 discussed in Section II.M above would also include amendments to Rule 1003. The Commission believes that these amendments, in clarifying ICE Clear Europe's authority to appoint members to the Disciplinary Panel and providing the Clearing Member an ability to object to such appointments, would help to ensure that ICE Clear Europe provides a fair procedure with respect to disciplining its Clearing Members by giving Clearing Members a voice in the establishment of the disciplinary panel. Similarly, the Commission believes that in establishing the standard of independence for members of the Disciplinary Panel and expert assessors and clarifying limits on ICE Clear Europe's ability to amend a notice and requiring that ICE Clear Europe serve an amended notice to the Clearing Member, the amendments to Rule 1003 should help to ensure that ICE Clear Europe provides a fair procedure with respect to disciplining its Clearing Members by limiting ICE Clear Europe's ability to add

additional charges and helping to ensure a minimum level of independence, and therefore objectivity, among the members of the Disciplinary Panel and expert assessors. Finally, in clarifying a Disciplinary Panel's ability to award costs, the Commission believes the changes to Rule 1003 should make clear to both parties of the proceeding the potential risk they would face to pay for the costs of the proceeding.

Moreover, as discussed in Section II.M above, the proposed rule change would also amend Rule 1004 to clarify certain conditions surrounding the use of the Summary Procedure and to improve the drafting of Rule 1004. Similarly, as discussed in Section M above, the proposed rule change would make a number of drafting clarifications and typographical corrections in Rule 1005 and clarifying the scope of the grounds for appeal. The Commission believes that the changes would improve the clarity of these aspects of the disciplinary procedures and reduce any potential confusion or disputes over their application, thereby helping to ensure that ICE Clear Europe provides a fair procedure with respect to disciplining its Clearing Members.

Finally, as discussed in Section II.M above, the proposed rule change would add a new Rule 1006 to address the interaction between ICE Clear Europe's disciplinary procedures under the Rules and any similar procedures under the rules of an Exchange. The Commission believes that this change would help to avoid any potential conflicts between ICE Clear Europe's disciplinary procedures and any similar procedures of an Exchange and help to ensure the efficiency of proceedings by allowing ICE Clear Europe and an Exchange to consolidate proceedings and share evidence and other materials. In doing so, the Commission believes Rule 1006 should help Clearing Members to avoid the burden of having to respond to simultaneous,

separate proceedings. Therefore, the Commission believes this change would help to ensure that ICE Clear Europe provides a fair procedure with respect to disciplining its Clearing Members.

For these reasons, the Commission finds the proposed rule change is consistent with section 17A(b)(3)(H) of the Act.[156]

C. Consistency with Rule 17Ad-22(e)(1)

Rule 17Ad-22(e)(1) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[157] As discussed in Section II.B above, the proposed rule change would make a number of clarifications and drafting improvements to the Amended Documents to explicitly and correctly reference current law; eliminate discrepancies and inconsistencies; comply with applicable legal requirements; use consistent terminology; update cross references and numbering; and correct drafting errors. The Commission believes that these changes, taken as a whole, would help to ensure that the Amend Documents provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of ICE Clear Europe's activities in all relevant jurisdictions. For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(1).[158]

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156 15 U.S.C. 78q-1(b)(3)(H).

157 17 CFR 240.17Ad-22(e)(1).

158 17 CFR 240.17Ad-22(e)(1).

D. Consistency with Rule 17Ad-22(e)(2)(i)

Rule 17Ad-22(e)(2)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[159] As discussed in Section II.C above, the proposed rule change would clarify the scope of terms used with respect to the persons involved in the governance of ICE Clear Europe by (i) revising the definition of Board and Representative and (ii) expanding references to persons exercising governance for ICE Clear Europe to include committees and individual committee members. The Commission believes that these changes should help to ensure that ICE Clear Europe's governance arrangements are clear and transparent by clarifying the definition of Board and Representative and clearly identifying the persons involved in governance at ICE Clear Europe. For this reason, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(2)(i).[160]

E. Consistency with Rule 17Ad-22(e)(4)(v)

Rule 17Ad-22(e)(4)(v) requires that ICE Clear Europe 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 the financial resources required under Rule 17Ad-22(e)(4)(ii) in combined or separately maintained clearing or guaranty

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159 17 CFR 240.17Ad-22(e)(2)(i).

160 17 CFR 240.17Ad-22(e)(2)(i).

funds.[161] As discussed in Section II.D above, the proposed rule change would establish a single time period under which adjustments to Contributions to the CDS, F&O, and FX Guaranty Funds would take effect. The Commission believes that establishing a single time period would improve the efficiency of ICE Clear Europe's operations with respect to adjustments to the Guaranty Fund and reduce the possibility for any discrepancy or confusion among Clearing Members who contribute ton multiple Guaranty Funds. Moreover, the Commission believes that the five business day period provided for by the proposed rule change, rather than the two business day period currently applicable to adjustments to the CDS and FX Guaranty Funds, would provide additional time to Clearing Members to adapt to adjustments without materially affecting ICE Clear Europe's ability to adjust the Guaranty Funds. Thus, in general, the Commission believes this change would better enable ICE Clear Europe to maintain the CDS, F&O, and FX Guaranty Funds. For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(4)(v).[162]

F. Consistency with Rule 17Ad-22(e)(6)(i) and (ii)

Rule 17Ad-22(e)(6)(i) and (ii) require that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its Clearing Members by establishing a risk-based margin system that, at a minimum (i) considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market and (ii) marks participant positions to

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161 17 CFR 240.17Ad-22(e)(4)(v).

162 17 CFR 240.17Ad-22(e)(4)(v).

market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances.[163] As discussed in Section II.E above, the proposed rule change would clarify how ICE Clear Europe would calculate NLV for Premium Up-Front Options; establish the settled-to-market treatment of variation margin; adopt the Externalised Payments Mechanism for the payment of variation margin; and provide ICE Clear Europe authority to treat amounts owed to it by a Clearing Member as additional margin. Because, as discussed in Section II.E above, ICE Clear Europe is establishing the settled-to-market treatment of variation margin and the Externalised Payments Mechanism at the request of Clearing Members, the Commission believes these changes would facilitate ICE Clear Europe's collection of variation margin from Clearing Members. The Commission further believes that, in further clarifying the calculation of NLV and establishing ICE Clear Europe's authority to treat amounts owed to it by a Clearing Member as additional margin, the proposed rule change should help to ensure that ICE Clear Europe's margin system produces margin commensurate with the risks presented by a Clearing Member. For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(6)(i) and (ii).[164]

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

Rule 17Ad-22(e)(7)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor,

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163 17 CFR 240.17Ad-22(e)(6)(i), (ii).

164 17 CFR 240.17Ad-22(e)(6)(i), (ii).

and manage the liquidity risk that arises in or is borne by ICE Clear Europe, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.[165] As discussed in Section II.F above, the proposed rule change would amend the Finance Procedures to give ICE Clear Europe explicit authority use repurchase agreements, secured lending facilities, and sales to generate liquidity from non-cash assets, subject to certain conditions. The Commission believes that this change would provide ICE Clear Europe a source of liquidity, effectively borrowing from Clearing Members' Margin and Guaranty Fund contributions by using non-cash collateral to generate liquidity. The Commission further believes that this source of liquidity, along with ICE Clear Europe's existing sources of liquidity, should help to ensure that ICE Clear Europe maintains sufficient liquid resources. For this reason, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(7)(i).[166]

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165 17 CFR 240.17Ad-22(e)(7)(i).

166 17 CFR 240.17Ad-22(e)(7)(i).

H. Consistency with Rule 17Ad-22(e)(10)

Rule 17Ad-22(e)(10) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries.[167] As discussed in Section II.G above, the proposed rule change would add a new Rule 703(j) to require Sellers under a Futures Contract to represent that they convey good title to products (free of encumbrances) when physical settlement takes place. In doing so, the Commission believes the proposed rule change would establish an operational practice to manage the risks associated with physical deliveries, by mitigating the risk that a Seller would deliver products subject to encumbrances.

Moreover, as discussed in Section II.G above, the proposed rule change would update the Delivery Procedures to be consistent with ICE Clear Europe's and affiliated trading venues' operational practices. The Commission believes that these changes should help to ensure that the Delivery Procedures accurately reflect delivery obligations, in line with operations at ICE Clear Europe and affiliated trading venues, and mitigate the risks that could arise from discrepancies between such operational practices and the Delivery Procedures.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(10).[168]

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167 17 CFR 240.17Ad-22(e)(10).

168 17 CFR 240.17Ad-22(e)(10).

I. Consistency with Rule 17Ad-22(e)(13)

Rule 17Ad-22(e)(13) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure it 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 its Clearing Members and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.[169] As discussed in Section II.H above, the proposed rule change would expand the scope of events that could lead to ICE Clear Europe declaring an Event of Default with respect to a Clearing Member by amending the definitions of certain events which themselves could be the basis for ICE Clear Europe declaring an Event of Default. In doing so, the Commission believes the proposed rule change should help ensure that ICE Clear Europe's powers in responding to defaults, which are only available after ICE Clear Europe declares an Event of Default, are accessible as appropriate and necessary to respond to situations not currently considered to be an Event of Default.

Moreover, as discussed in Section II.H above, the proposed rule change would give ICE Clear Europe explicit authority to carry out default auctions in accordance with the Default Auction Procedures and construct auction lots out of the defaulting Clearing Member's contracts. The Commission believes that this aspect of the proposed rule change would help facilitate ICE Clear Europe's conduct of default auctions, which ICE Clear Europe uses to contain losses and liquidity demands in the event of a Clearing Member's default.

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169 17 CFR 240.17Ad-22(e)(13).

Finally, as discussed in Section II.H above, the proposed rule change would expand the net sum payable to or by a defaulting Clearing Member to include the effects of abandoning an Option. The Commission believes this would help ensure that the net sum payable by or to a defaulting Clearing Member accurately reflects the possible consequences of abandoning Options in the defaulting Clearing Member's portfolio, and therefore reflects any potential losses to ICE Clear Europe resulting from such abandonment.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(13).[170]

J. Consistency with Rule 17Ad-22(e)(14)

Rule 17Ad-22(e)(14) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a Clearing Member's customers and the collateral provided to ICE Clear Europe with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that Clearing Member.[171] As discussed in Section I above, the proposed rule change would further enhance ICE Clear Europe's ability to transfer the positions of a Clearing Member's customers in the event of that Clearing Member's default by ensuring that the Standard Terms are contractually binding between Customers and Clearing Members and cannot be overridden. Because the Standard Terms are uniform contractual provisions that ensure that all terminations and re-establishments of cleared contracts occur at the

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170 17 CFR 240.17Ad-22(e)(13).

171 17 CFR 240.17Ad-22(e)(14).

same time and at the same price, the Commission believes this change would help facilitate porting by helping to ensure that all terminations and re-establishments of cleared contracts occur at the same time and at the same price, thereby reducing the possibility of valuation disputes or other claims that might prevent or reduce the likelihood of porting.

Moreover, as discussed in Section II.I above, the proposed rule change would require Clearing Members and Customers to make representations regarding the transfer of collateral to ICE Clear Europe and further would require Customers to take any action reasonably requested by ICE Clear Europe or Clearing Member that may be necessary or desirable to create, preserve, perfect, or validate the right, title or interests of ICE Clear Europe in the collateral. The Commission believes this change would help to ensure that ICE Clear Europe is able to transfer and use collateral as needed, including as needed for porting, free from any other claim or encumbrance.

The proposed rule would also, as discussed in Section II.I above, clarify the time at which contracts are deemed to arise and replace automatic early termination clauses with suspension of performance. Because discrepancies in the timing of the creation and termination of a contract could lead to disputes about whether that contract could be ported, the Commission believes that this change would help to enable the portability of a customer's contracts.

Finally, as discussed in Section II.I above, the proposed rule change would give ICE Clear Europe discretion to determine the price at which it transfer or liquidates a contract and the time for determining such price. Because ICE Clear Europe may need to consider different prices and times under the different insolvency regimes of the jurisdictions in which it operates,

the Commission believes this change should further facilitate ICE Clear Europe's ability to port by giving it flexibility with respect to the determination of those prices.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(14).[172]

K. Consistency with Rule 17Ad-22(e)(17)(i)

Rule 17Ad-22(e)(17)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by 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.[173] As discussed in Section II.J above, the proposed rule change would require that, before clearing equity contracts with ICE Clear Europe, any Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes enter into appropriate agreements with the IRS and meet certain other specified qualifications under procedures of the IRS, such that ICE Clear Europe would not be responsible for withholding taxes under Section 871(m) of the Internal Revenue Code. The Commission believes that this change would help ICE Clear Europe to avoid having to withhold taxes and further believes that having to withhold taxes could hinder ICE Clear Europe's operational processes for clearing and settling transactions. As such, the Commission believes that this change would help ICE Clear Europe to manage the operational risks associated with the application of Section 871(m) of the Internal Revenue Code.

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172 17 CFR 240.17Ad-22(e)(14).

173 17 CFR 240.17Ad-22(e)(17)(i).

Moreover, as discussed in Section II.J above, the proposed rule change would clarify and harmonize references to timing in the Rules, the CDS Procedures, Clearing Procedures, and Finance Procedures; revise the timing of certain actions taking by ICE Clear Europe to avoid any potential conflict with the practices of the markets that ICE Clear Europe clears; make explicit that Clearing Members bear the risk of late instruction; and remove a presumption that deposits and withdrawals of non-cash collateral should be settled on the same day as a Clearing Member places with ICE Clear Europe an instruction for deposit or withdrawal. The Commission believes that these changes should help mitigate the operational risks that could result from discrepancies about the timing for certain actions or unclear deadlines, such as the risk that ICE Clear Europe's assumption about the timing of settlement does not match a Clearing Member's instruction.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(17)(i).[174]

L. Consistency with Rule 17Ad-22(e)(18)

Rule 17Ad-22(e)(18) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably 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, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation, and monitor compliance with such participation requirements on an ongoing

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174 17 CFR 240.17Ad-22(e)(17)(i).

basis.[175] As discussed in Section II.K above, the proposed rule change would revise the standards that govern membership in ICE Clear Europe; clarify the waiver of sovereign immunity that all Clearing Members must make; expand and enhance Rule 201(a) and Rule 202(a), which set out the requirements for membership in ICE Clear Europe and obligations on Clearing Members; amend Rule 203 to prohibit a Clearing Member from engaging in conduct that would render it unable to satisfy the membership and from exercising set-off rights against ICE Clear Europe; expand the events for which a Clearing Member must notify ICE Clear Europe under Rule 204; clarify that Rule 206 also requires Clearing Members to maintain financial resources in addition to capital; and update the Membership Procedures in light of these changes. The Commission believes that these changes, taken as a whole, would enhance the criteria for participation in ICE Clear Europe and would help to ensure that ICE Clear Europe continues to maintain objective, risk-based, and publicly disclosed criteria for participation, that permit fair and open access.

Moreover, as discussed in Section II.K above, the proposed rule change would clarify that Rule 301(f) requires written consent from ICE Clear Europe for an exception to the requirement that a Clearing Member pay all amounts payable to ICE Clear Europe by electronic transfer from an account at an Approved Financial Institution only. Again, the Commission believes that this revision would enhance and clarify this requirement with respect to membership in ICE Clear Europe and therefore would help to ensure that ICE Clear Europe

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175 17 CFR 240.17Ad-22(e)(18).

continues to maintain objective, risk-based, and publicly disclosed criteria for participation, that permit fair and open access.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(18).[176]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, 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-2020-003 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-2020-003. 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

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176 17 CFR 240.17Ad-22(e)(17)(i).

proposed rule change, as modified by Partial Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Partial Amendment No. 1, 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 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-2020-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[177] to approve the proposed rule change, as modified by Partial Amendment No. 1, prior to the 30th day after the date of publication of Partial Amendment No. 1 in the Federal Register. As discussed above, Partial Amendment No. 1 updates Exhibit 5C to reflect changes made to the Finance Procedures

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177 15 U.S.C. 78s(b)(2).

subsequent to the initial filing of this proposed rule change, corrects a typographical error in the amendment to Rule 1005(d) by restoring a requirement that had been unintentionally deleted, and makes minor typographical corrections in relation to both of those changes. By updating Exhibit 5C, correcting the error in amended Rule 1005(d), and making typographical corrections in relation to those changes, Partial Amendment No. 1 provides for a more clear and comprehensive understanding of the estimated impact of the proposed rule change, which helps to improve the Commission's review of the proposed rule change for consistency with the Act.

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Act and the applicable rules thereunder. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.[178]

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178 15 U.S.C. 78s(b)(2).

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act, 17A(b)(3)(H) of the Act, and Rules 17Ad-22(e)(1), (e)(2)(i), (e)(4)(v), (e)(6)(i), (e)(6)(ii), (e)(7)(i), (e)(10), (e)(13), (e)(14), (e)(17)(i), and (e)(18).[179]

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act[180] that the proposed rule change, as modified by Partial Amendment No. 1 (SR-ICEEU-2020-003), be, and hereby is, approved on an accelerated basis.[181]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[182]

J. Matthew DeLesDernier
Assistant Secretary

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179 15 U.S.C. 78q-1(b)(3)(F); 15 U.S.C 78q-1(b)(3)(H); 17Ad-22(e)(1), (e)(2)(i), (e)(4)(v), (e)(6)(i), (e)(6)(ii), (e)(7)(i), (e)(10), (e)(13), (e)(14), (e)(17)(i), and (e)(18).

180 15 U.S.C. 78s(b)(2).

181 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).

182 17 CFR 200.30-3(a)(12).