

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88909; File No. SR-ICEEU-2020-006)

May 19, 2020

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to Amendments to the ICE Clear Europe Auction Terms for F&O Default Auctions and F&O Default Management Policy (formerly the F&O Default Management Framework).

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 11, 2019, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4)(ii) thereunder,⁴ such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The principal purpose of the proposed amendments is for ICE Clear Europe to amend its Auction Terms for F&O Default Auctions (the “Auction Terms”) and F&O

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

Default Management Policy (the “Policy”), formerly the F&O Default Management Framework. The revisions do not involve any changes to the ICE Clear Europe Clearing Rules (the “Rules”) or other Procedures.⁵

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

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

(a) Purpose

ICE Clear Europe is proposing to amend its Auction Terms. The proposed amendments would (1) add a new “all or nothing” bidding type, (2) provide for determination of minimum bid requirements based on the relative margin requirements of Clearing Members, (3) provide for the use of ICEU’s default management system, in lieu of email or other manual forms of communication, for submission of bids and provision of certain notices to auction participants by the Clearing House, (4) clarify certain regulatory and compliance obligations of auction participants, and (5) generally update and clarify certain terms and provisions and correct certain typographical errors. The

⁵ Capitalized terms used but not defined herein have the meanings specified in the Rules.

proposed amendments to the Policy would make corresponding changes to reference the new “all or nothing” bidding type, the minimum bid requirement and the default management system and to make general updates and clarifications.

I. Auction Terms

1. All or Nothing Bid Type

The amendments would allow auction participants to submit a new type of bid for an Auction Lot, an “All or Nothing Bid.” As provided in amendments to paragraph 3.2 of the Auction Terms, an All or Nothing Bid would constitute a bid for the entire Auction Lot which, if it is the winning bid, would provide for the bidder to receive 100% of the Auction Lot without that award being split among more competitively priced bids (as may occur with bids under the current bidding process (referred to as “Standard Bids”)). Use of All or Nothing Bids would be optional, and auction participants could continue to use Standard Bids as under the current process. An auction participant may also submit both Standard Bids and an All or Nothing Bid. Revised paragraph 3.2 would also address the manner in which an All or Nothing Bid may satisfy the Minimum Bid Requirement for an Auction Lot and the requirement to identify an All or Nothing Bid as such.

Paragraph 3.1 would be amended to provide for determining the competitiveness of an All or Nothing Bid for purposes of the “juniorization” provisions in that paragraph relating to the application of F&O Guaranty Fund Contributions and F&O Assessment Contributions under the Rules, based on an appropriate scale factor to calculate a deemed price per unit.

Paragraph 5.3 would be amended to provide for the determination of whether an All or Nothing Bid is a winning bid. As under the current process, the auction clearing

price (proposed to be defined as the F&O Auction Clearing Price”) would be the price of the bid at which the sum of the notional amount of F&O Contracts with equal or higher bid prices equals or is greater than the notional amount of F&O Contracts being auctioned. If an All or Nothing Bid is not accepted, the Auction Lot will be allocated in full to bids at or above the F&O Auction Clearing Price, but at the F&O Auction Clearing Price. If, however, an All or Nothing Bid is included in the group of bids with equal or higher bid prices, then the All or Nothing Bid will be accepted for the entire Lot, and the F&O Auction Clearing Price will be price of the All or Nothing Bid. The examples in Paragraph 5.3 would be modified to take into account All or Nothing Bids, including to show information regarding a “price rank”, whether it is an All or Nothing Bid, the bid size (as a percentage of auction lot), bid price (payment per 100%), size multiplied by price and the allocation percentage of the auction lot.

Paragraph 5.4 would clarify that All or Nothing Bids are given precedence over Standard Bids, in the sense that if an All or Nothing Bid is accepted, a Standard Bid will not be accepted even if it had a higher price than the F&O Auction Clearing Price. It would also provide that if multiple All or Nothing Bids are received at the F&O Auction Clearing Price, the Auction Lot will be allocated equally among those bidders.

Paragraph 5.5 would be amended to clarify that in the scenario where the Clearing House elects to determine the F&O Auction Clearing Price for less than 100% of the contracts in the lot and hold a Second F&O Auction for the remainder, any All or Nothing Bids would be disregarded. Related examples in paragraph 5.5 have been amended accordingly.

2. Minimum Bid Requirement.

The amendments would revise paragraph 2.2 to provide that each F&O Clearing Member's Minimum Bid Requirement for a lot would be determined separately for each category of F&O Contract and would be determined pro rata based on the Original Margin requirement applicable to the Open Contract Positions of such F&O Clearing Member as compared to the total Original Margin requirements for all the Open Contract Positions of all F&O Clearing Members. Further, setting Minimum Bid Requirements would no longer require consultation with the F&O Default Committee. ICE Clear Europe believes that this approach (as opposed to the current minimum bid requirement, which is the same for all F&O Clearing Members) is more appropriately tied to each Clearing Member's relative risk position in the relevant contract, as demonstrated by original margin levels. A further conforming change would be made in paragraph 2.2 to reflect that a Clearing Member could have a zero Minimum Bid Requirement (in which case it would not be required to bid for the relevant lot).

Minor amendments to paragraph 2.3 would better clarify what is counted to toward the Minimum Bid Requirement. Specifically, a Clearing Member's bid for *one of* its Proprietary Accounts or Customer Accounts, including Individually Segregated Sponsored Accounts for the account of any Sponsored Principal for which it acts as Sponsor, would count towards its Minimum Bid Requirement. The precise wording of the paragraph has also been revised to improve general clarity. The amendments are also consistent with changes throughout the Auction Terms, as discussed herein, to clarify that Individually Segregated Sponsored Accounts are treated as Customer Accounts for purposes of the Auction Terms.

Paragraph 2.4 would be amended such that an F&O Clearing Member's Minimum Bid Requirement would be communicated to it through the DMS (or via such other means as specified by the Clearing House), as discussed below, as soon as practicable prior to the relevant F&O Auction instead of through the template notification set out in an annex to the Auction Terms (which would accordingly be removed). The amendments would also clarify the procedures for the Clearing House to determine that a Minimum Bid Requirement would be inappropriate for a particular F&O Clearing Member in particular circumstances, and explicitly provides that the Clearing House must confirm that it agrees with the Clearing Member's assessment that an exception to the Minimum Bid Requirement applies. An F&O Clearing Member would be required to notify the Clearing House promptly, but in any event within one hour of the Clearing House publishing details of the F&O Contracts comprising the relevant Auction Lot (instead of 12 hours prior to the opening of the auction), in writing, if it reasonably considers that the Minimum Bid Requirement would not apply to it. ICE Clear Europe does not believe the current 12 hour period is necessarily practicable as an operational matter, as the Clearing House may need to conduct an auction with less than 12 hours' notice. The current requirement could thus either create an undesirable delay in conducting an auction or impose an unnecessary limitation on the F&O Clearing Member's ability to request an exception to the Minimum Bid Requirement. The proposed change, to allow notice within one hour after the Clearing House publishes auction details, will allow the Clearing House to move more quickly to minimize losses and preserve the F&O Clearing Member's ability to request an exception where warranted. The amendments would also clarify that F&O Clearing Members could outsource the operational processing of any of

their auction obligations under Rule 102(w) (regarding outsourcing). F&O Clearing Members could also transfer their Minimum Bid Requirements to an Affiliate that is also an F&O Clearing Member, subject to notification to the Clearing House prior to an auction and execution of an agreement in an approved format.

Paragraph 2.5 would be amended to state that the Clearing House would expect to create one or more separate Auction Lots consisting of F&O Contracts for which one or more F&O Clearing Members is excused from a Minimum Bid Requirement or has a zero Minimum Bid Requirement under paragraphs 2.2 and 2.4. This change is intended to state more clearly the Clearing House's existing practice in establishing separate lots in connection with an auction. Consistent with changes discussed above relating to setting Minimum Bid Requirements, paragraph 2.5 would also be amended to remove a requirement to consult with the F&O Default Committee in establishing Auction Lots, which ICE Clear Europe believes is unnecessary in light of the standards set out in paragraph 2.5.

3. Default Management System

The amendments would provide for the use of the Clearing House's electronic default management system ("DMS") for a number of communications between the Clearing House and auction participants, in lieu of the current manual notice process. Pursuant to amended paragraph 2.1, the Clearing House would notify F&O Clearing Members electronically through the DMS (or other means specified by the Clearing House) of an auction taking place instead of by Circular. Conforming changes would be made throughout the Auction Terms to make reference to communication through the DMS instead of through existing means. For example, as noted above, the Clearing

House would notify Clearing Members of Minimum Bid Requirements through the DMS, pursuant to revised paragraph 2.4. Paragraph 2.6 would be amended to state that F&O Auction Specifications would be provided through the DMS instead of in the template format currently attached to the Auction Terms. Paragraphs 2.8 and 2.9 would be amended to state that all bids must be submitted via DMS (or other means specified by the Clearing House) instead of through the existing bid form. Certain provisions such as paragraph 2.10 have been correspondingly removed as no longer relevant with electronic submission through DMS. Paragraph 3.7 would be amended to provide that modified or amended bids may be submitted through DMS (or another format specified by the Clearing House). Pursuant to revised paragraph 5.8, winning bidders could also be notified through the DMS.

4. Clarification of Certain Regulatory and Compliance Obligations.

Paragraph 7.7 would be amended to clarify and state explicitly certain obligations for auction participants in respect of information they may receive in connection with an auction, including the contents of the portfolio or the outcome or timing of an auction. Specifically, the auction participant would acknowledge that such information may constitute inside information for the purposes of the Market Abuse Regulation (Regulation (EU) No 596/2014) (“MAR”) or fall within the definition of any similar term under Applicable Law (“Market Abuse Laws”) in respect of any Contracts cleared by the Clearing House or in respect of securities of a Defaulter. Under the revisions, each such participant would be required to assess whether such information is inside information and, if so, agree to: (a) comply with applicable Market Abuse Laws; (b) generally not disclose such information to persons outside of its organization; (c) prevent persons

engaged in client trading at such organization from possessing such information; (d) prevent those in possession of such information from trading on such information until it ceases to be inside information; and (e) where such information constitutes inside information under Regulation (EU) No. 596/2014, maintain an insider list of persons with access to this information.

5. Other Clarifications and Updates.

The amendments would make a number of other clarifications, drafting improvements and corrections to the Auction Terms. Certain changes to defined terms would be made throughout the Auction Terms, including the use of the term “F&O Default Auction Terms” instead of F&O Auction Terms, the new defined term “Bidding Close Time” instead of “Closing Time”, and the defined term “Auction Lot” instead of the undefined “lot”. Proposed amendments to paragraph 1.1 would clarify that references to F&O Contracts, for purposes of the Auction Terms, include (i) where automatic early termination has taken place under Part 9 of the Rules or Contract Terms, a reference to the terminated F&O Contracts or notional amounts representing such terminated F&O Contracts and (ii) where contracts have arisen from hedging transactions pursuant to Rule 903(c), a reference to any such hedging contracts executed by the Clearing House. These amendments thus clarify that such contracts may be auctioned for purposes of establishing replacement contracts with non-defaulting Clearing Members to balance the Clearing House’s positions as part of the default management process, and thereby also establishing an auction price to be used in determining the Clearing House’s loss with respect to the close out of the defaulter’s positions for purposes of the Rules. In paragraph 1.2, the amendments would clarify that nothing in the Auction Terms would

prevent the Clearing House from administering a sale or entering into offsetting transactions without holding an auction to which the Auction Terms apply. This reflects the Clearing House's existing authority under the Rules, and is intended to avoid any potential confusion as to the scope of the Auction Terms. New paragraph 1.11 would cross-reference defined terms in the Rules, F&O Procedures, Finance Procedures or F&O Standard Terms as applicable, and in the order of priority specified in Rule 102(f).

Paragraph 2.3 would be amended to remove an unnecessary statement that F&O Clearing Members are deemed to have confirmed their intention to bid in a particular auction prior to the time window for bidding and the Auction closing time. In this regard, the Auction Terms (in paragraph 2.2) already impose a requirement on F&O Clearing Members to bid in the auction.

Paragraph 2.10 (former paragraph 2.11) would be amended to clarify that after the Bidding Close Time, the Clearing House will notify participants of the fact that the F&O Auction took place, in addition to the outcome.

Paragraph 3.1 would be amended to provide that where, in respect of a particular F&O auction, the portfolio of a Defaulter is split into multiple auction lots, the process for determining the competitiveness of bids described (which is used for determining the priority of application of Clearing Members' F&O Guaranty Fund Contribution and F&O Assessment Contributions) would be carried out separately for each Auction Lot. In such case, the weighted average price per unit for each auction lot would be scaled based on the proportion that the Original Margin requirement applicable to the Open Contract Positions comprising such Auction Lot represents in relation to the total Original Margin requirements for all the Open Contract Positions of the Defaulter in relation to auctioned

F&O Contracts. Paragraph 3.1 would only apply to bids indicated or deemed related to Minimum Bid Requirements (i.e., those Standard Bids, or if applicable the All or Nothing Bid, that count toward the Minimum Bid Requirement).

An additional clarification would be made in Paragraph 3.2 that the Minimum Bid Requirement could be satisfied by submitting multiple bids provided that any individual bid is *equal to* (and not merely larger than) any applicable minimum bid size.

Under revised Paragraph 3.7, following the bidding close time, upon request of an F&O Auction Participant stating that a mistake was made in the bid submission, the Clearing House could invalidate the bid and the participant would be treated as if it had not made such a bid. The Clearing House would no longer be required to permit the participant to submit a corrected bid. This reflects the operation of DMS, which does not permit submission of a bid following the bidding close time, and further reflects ICE Clear Europe's view that given the objective of ensuring a fair and orderly auction, it is not appropriate for Clearing Members to modify bids following the bidding close deadline.

The amendments to Paragraph 4.1 would remove a statement that an F&O Clearing Member may make an unlimited number of separate bids and clarify that the member may make separate bids for Customers or Sponsored Principals for whom it acts as Sponsor in the same way as it may make a bid for one of its Proprietary Accounts and subject to the same provisions of the Auction Terms. This amendment reflects that relevant systems do not permit an infinite number of separate bids, and in practice is intended to give ICE Clear Europe flexibility to set a maximum number of bids if it determines that is appropriate. Amendments to paragraph 4.2 would clarify that F&O

Clearing Members are liable for the entry into of F&O Contracts resulting from bids made on behalf of a Customer or Sponsored Principal (including a Customer or Sponsored Principal that is an F&O Auction Participant) in the same manner and to the same extent as for other customer contracts. The amendments clarify the drafting to remove statements that the F&O Clearing Member becomes liable for the bid (as opposed to the contract resulting from the bid if accepted).

Amendments to Paragraph 4.3 would require that each F&O Auction Participant that is not an F&O Clearing Member enter into an F&O Auction Participation Agreement with its F&O Clearing Member prior to participation in an F&O Auction (as opposed to merely deeming the F&O Auction Participant to have agreed to be bound by the Auction Terms). ICE Clear Europe believes it is preferable to have a formal agreement with the F&O Auction Participant in this situation, as it provides a clearer and stronger basis for enforcement of the Auction Terms against the F&O Auction Participant.

Amendments to Paragraph 5.1 would clarify a reference to the Clearing House's F&O default management policies and procedures generally, as opposed to only the Default Management Policy.⁶ This would ensure that the Auction Terms themselves as well as the relevant provisions of the Rules are also incorporated in these references. Amendments to Paragraph 5.2 would also permit the Clearing House to at its discretion withdraw an auction lot after (as well as prior to) the bidding close time. An additional amendment to Paragraph 5.3 would provide that in the event of invalid or void bid or no

⁶ This change would be consistent with similar clarifications made in Paragraphs 5.5.

F&O Contract being established, such bid would not be accepted and the F&O Auction Participant would be treated as if it had not made such bid.

In Paragraph 5.4, an additional clarification would add that bids invalidated pursuant to certain Paragraph 3 (Bidding Process) provisions could, at Clearing House discretion, be excluded for purposes of calculating the auction clearing price or allocating sizes at that price.

Paragraph 5.7 would be amended to provide that the Winning Bidder will be the relevant F&O Clearing Member, acting for its Proprietary Accounts or Customer Account, including Individually Segregated Sponsored Accounts, as applicable. This amendment clarifies that an Individually Segregated Sponsored Account is treated as a Customer Account for this purpose and that the relevant F&O Clearing Member (and not the Sponsored Principal for which it is acting) is treated as the Winning Bidder.

Amendments to Paragraph 5.8 would state in more detail the mechanism under the Rules through which F&O Contracts are entered into as a result of an auction, by providing that each bid constitutes an offer by the F&O Clearing Member to the Clearing House to enter into F&O Contracts pursuant to a Transfer governed by Rule 904(b) (but without regard to any Customer or Customer-CM Transactions of the Defaulter) and Part 4 of the Rules. The amendment is intended as a clarification of the existing process for entering into contracts and is not a substantive change in the Auction Terms. A reference to such an offer being made by a Sponsored Principal would be removed, as the F&O Clearing Member would be offering to enter into the contract on behalf of the Sponsored Principal in such case. Other changes in this paragraph clarify that resulting F&O Contracts would arise between the Clearing House and the winning bidder (acting for one

of its Proprietary Accounts or Customer Accounts, including for an Individually Segregated Sponsored Account, as applicable), in accordance with such a Transfer and Part 4 of the Rules, but without regard to any Customer or Customer-CM Transactions of the Defaulter, on economically identical terms to the F&O Contracts that are the subject of the auction lot in the relevant F&O Auction. The additional text has been added for clarification and for consistency with the amendments to Paragraph 5.7 as discussed above.

Paragraph 5.10 would be amended such that if the Clearing House accepts bids below a reserve price or above a maximum price, the F&O auction for that lot would not be treated as a failed F&O auction.

Paragraph 6.2 would be amended to clarify that Customer-CM F&O Transactions would only arise as a result of the F&O auction for Customers of the Winning Bidder. The amendment was intended to make a drafting clarification and does not reflect a substantive change in the operation of the Auction Terms.

Clarifying amendments as to the treatment of Individually Segregated Sponsored Accounts as a form of Customer Account, consistent with other amendments discussed above, are made in paragraph 7.1.

II. Default Management Policy

ICE Clear Europe is also proposing to make various amendments to its F&O Default Management Framework, which would be renamed the F&O Default Management Policy. The amendments would be consistent with the amendments to the Auction Terms discussed above and make certain other clarifications and updates.

Conforming changes would also be made throughout the document to reflect the name change.

In the statement of purpose of the document, a reference to the “Executive” would be replaced with the “Senior Management Team” (to more accurately reflect relevant ICE Clear Europe governance arrangements). References to Executive elsewhere in the Policy would similarly be updated. With respect to default declarations, the Policy would be updated to clarify that the Board has delegated authority to declare an event of default to the President (instead of the President & COO or the Head of Clearing Risk). This reflects a change in the authority that has been delegated by the Board. Also, the Policy would state more clearly that legal representation as appropriate would be present at meetings of the Default Management Committee where required.

The amendments would also clarify that the Clearing House expects to liaise with the relevant regulators prior to the declaration of an Event of Default and issuance of a Default Notice, but removes a statement that it would do so in all instances. In ICE Clear Europe’s view, there may be circumstances in which liaising with regulators in advance may not be feasible, such as where a default may require immediate action to protect the Clearing House. The revised Policy nonetheless retains the requirement that the Clearing House notify its regulators prior to declaration of an Event of Default.

With respect to the issuance of a circular and the posting of a website notice regarding an event of default, the amendments would remove a requirement that such actions be taken “immediately” following notice to the Defaulter. Similarly, the amendments would remove the requirement that the Clearing House act “immediately” to take certain additional actions relating to forming committees, suspending Defaulter

trading access and preventing payments from the Clearing House to the Defaulter following issuance of the Default Notice. Although ICE Clear Europe expects that such actions would be implemented in a timely manner under the circumstances, it is not necessary (or necessarily feasible) to specify that it do so immediately.

Pursuant to the amendments, the statement that in the event that the President and COO are absent, the Head of Clearing Risk would have the ability to overrule any other head of department (including Head of Treasury and Head of Operations) where necessary on matters relating to default management, would be removed. The amendment is intended to be consistent with the change in the Board's delegation of authority to the President referred to above. With respect to preventing payments from the Clearing House to the Defaulter, the requirement for treasury to call and e-mail the Clearing House's account manager to stop the auto-release of funds would be amended to remove the reference to a specific bank (as a number of financial institutions may be relevant in particular circumstances). Certain other clarifications would be made as to the means of contacting default brokers (by phone or email) and to refer to relevant liquidity groups rather than sub-markets, as discussed in further detail below.

Certain references to the "Risk Management" would be updated to refer to the "Clearing Risk Department" to better reflect the Clearing House's internal organization.

The provisions of the Policy regarding bidding mechanics would be amended to address "All or Nothing" bids and the "Minimum Bid Requirement", among other general clarifications and drafting improvements. The amendments would clarify that the positions to be auctioned will generally be divided by liquidity group. The term "liquidity group" replaces the less accurate term "sub-market", but the change is not

intended to result in a substantive change in product grouping. The term liquidity group is intended to indicate product categories within the broader F&O Guaranty Fund segments. The liquidity groups, as listed in the Policy, are defined by underlying product and in some cases by margin group. The amendments would also reference the ability for Auction Participants to also submit an “All or Nothing” bid type and would explain this bid type. Amendments would also clarify that Clearing Member participation in the auction is mandatory provided that Clearing Members have an initial margin requirement in the liquidity group of the auctioned portfolio and that each Clearing Member is allocated a Minimum Bid Requirements based its portion of the initial margin of a liquidity group. This amendment is intended to be the same as set forth in the revised Auction Terms as discussed above (with certain differences in terminology (such as the use of the term “initial margin” to be consistent with the use of terms in the Policy). Clearing Members who do not participate in an auction where they have an allocated Minimum Bid Requirement would be liable to the juniorization of their own Guaranty Fund contributions related to that liquidity group. The example regarding the bidding process as well as the distinctions in the process relating to listed contracts would be removed as no longer representative of the amended bidding process. The description of the bid submission process would be updated to refer to submission of bids through the DMS. Winning bidders would also receive notice through the ICE DMS rather than through the ICE secure server. The statement that in the event that a Clearing Member would receive a partial fill at auction if its bid is over the cusp for clearing the auction would be amended to clarify that this is only true of standard (i.e., non All or Nothing) bids. The statement that the Clearing House only expects to utilize mirror portfolios for

the Dutch auction methodology would be removed (as it is unnecessary in the context of current F&O products).

The amendments also remove certain provisions of the Policy that would be inconsistent with or superseded by the amended Auction Terms. This includes statements with respect to requirements for participation by clients in auctions (which are now addressed in paragraph 4.3 of the Auction Terms, among other provisions). A statement as to a requirement by certain clients to post collateral to the F&O Guaranty Fund in connection with auctions has been removed as not reflecting current practice or practice under the Auction Terms as proposed to be amended. A statement that auction procedures are executed by asset class and then sub-market has been removed as it has been superseded by paragraph 2.5 of the Auction Terms. The amendments would also clarify that trades resulting from the auction would be booked against the margin account specified in the portfolio bid submission, instead of the DTCC account ID specified. The change reflects current Clearing House practices for identification of relevant accounts, and is consistent with the operation of the new DMS system for bid submission.

The amendments to the Policy would also update arrangements for breach management, ongoing Policy reviews and exception handling. The amendments are intended to make the Policy consistent in this regard with other ICE Clear Europe policies and governance processes. Pursuant to the amendments, the document owner would be responsible for ensuring that the Policy remains up-to-date and is reviewed in accordance with ICEU's governance processes. The owner would also be responsible for reporting report material breaches or unapproved deviations from this document to the Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who

together would determine if further escalation should be made to relevant senior executives, the Board and/or competent authorities. Exceptions to the Policy would be approved in accordance with ICE Clear Europe's governance process for the approval of changes to the Policy.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁷ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁸ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. ICE Clear Europe believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICE Clear Europe, in particular, to Section 17(A)(b)(3)(F),⁹ because ICE Clear Europe believes that the proposed changes to the Auction Terms and the Policy enhance ICE Clear Europe's ability to manage the risk of defaults. The proposed changes introduce All or Nothing Bidding to ICE Clear Europe's existing auction methodology. This new bid type is intended to reward auction participants for bidding competitively on

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

both size and price, rather than just price (as with a Standard Bid). If an All or Nothing Bid sets the auction clearing price, the revised Auction Terms award 100% to that bid, rather than splitting the award with participants bidding more competitively on price but with smaller size. Such changes incentivize competitive bidding by rewarding auction participants for bidding competitively on both price and size and are designed to promote effective and efficient auctions to facilitate the close-out of the defaulter's portfolio.

The amendments to the determination of the Minimum Bid Requirement are intended to enhance default management by more closely linking the bid requirement for a clearing member with the risk of the clearing member's particular positions, as evidenced through original margin requirements. The amendments are designed to allocate potential risk in the auction taking into account the ability of the clearing member to trade in the particular product and thus to manage the risk of positions that it may acquire in the auction as a result of its minimum bid requirement. The amendments would thus reduce the risk to a clearing member of being forced to bid on a type of contract that it does not typically trade and may have less capability to manage. ICE Clear Europe believes this approach is more appropriate than the current approach of assigning each clearing member the same minimum bid requirement.¹⁰ ICE Clear Europe further believes that the revised approach, with a more tailored minimum bid

¹⁰ The change is also consistent with recently adopted requirements of the Commodity Futures Trading Commission applicable to derivatives clearing organizations, including ICE Clear Europe. See 17 C.F.R. 39.16(c)(2)(iii)(C) (a DCO shall not require a clearing member to bid for a portion of the defaulting clearing member's positions that is not proportional to the size of bidding clearing member's positions in the same product class at the DCO).

requirement, will be more likely to result in competitive bidding by those clearing members consistent with their ability to manage the resulting positions.

The proposed amendments also implement the use of the automated DMS to replace certain manual communication tasks in the auction process, including announcing the auction, communicating Minimum Bid Requirements and auction specifications, submitting bids and notifying winning bidders. Such changes allow ICE Clear Europe to more efficiently and safely manage its auction process and reduce the risk of miscommunication or error. The added compliance requirements around treatment of information concerning the auction will help prevent market abuse, enhance compliance with applicable law and thus generally promote the public interest. Finally, the clarification and clean-up changes provide greater specificity with respect to the Auction Terms and the Policy such that auction participants have greater certainty and clarity regarding the auction process and the requirements for their participation. ICE Clear Europe believes that the proposed amendments augment ICE Clear Europe's procedures relating to default management and enhance ICE Clear Europe's ability to withstand defaults and continue providing clearing services, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible; and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.¹¹

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.¹² Rule 17Ad-22(e)(4)(ii)¹³ requires ICE Clear Europe to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources at a 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 exposures in extreme but plausible market conditions. ICE Clear Europe believes that the proposed revisions enhance its Auction Terms. As described above, the optional All or Nothing Bid incentivizes competitive bidding, promoting the goal of reaching an efficient auction clearing price that permits ICE Clear Europe to close out the defaulter's portfolio and return ICE Clear Europe to a matched book. Such new bid type rewards auction participants for bidding competitively on both size and price and may increase the willingness and ability of participants and their customers to participate in an auction and absorb the defaulter's positions through the default management process. Similarly, the changes to the Minimum Bid Requirement will incentivize bidding by clearing members that have taken on positions of the relevant type and may be better placed to manage the risks of the auctioned positions. In ICE Clear Europe's view, these enhancements represent tools that strengthen ICE Clear Europe's ability to manage its financial

¹² 17 CFR 240.17Ad-22.

¹³ 17 CFR 240.17Ad-22(e)(4)(ii).

resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad-22(e)(4)(ii).¹⁴

In addition, ICE Clear Europe believes the amendments satisfy Rule 17Ad-22(e)(13),¹⁵ which requires a clearing agency to ensure that it “has the authority and operational capacity to take timely action to contain losses and liquidity demands” in the case of default. As discussed above, the proposed amendments would enhance ICE Clear Europe’s default management capabilities in F&O default auctions. Specifically, ICE Clear Europe believes the proposed addition of All or Nothing Bidding, the new methodology for calculating Minimum Bid Requirements and the automated DMS enhance ICE Clear Europe’s ability to withstand defaults and continue providing clearing services, including by incentivizing competitive bidding to promote effective and efficient auctions that facilitate the close-out of the defaulter’s portfolio and maximizing ICE Clear Europe’s ability to efficiently and safely manage its auction process in default events, to ensure that ICE Clear Europe can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default consistent with the requirements of Rule 17Ad-22(e)(13).¹⁶

Rule 17Ad-22(e)(1)¹⁷ requires that clearing agencies establish policies and procedures that provide for a well-founded, clear, transparent, and enforceable legal basis

¹⁴ 17 CFR 240.17Ad-22(e)(4)(ii).

¹⁵ 17 C.F.R. § 240.17Ad-22(e)(13).

¹⁶ 17 C.F.R. § 240.17Ad-22(e)(13).

¹⁷ 17 C.F.R. § 240.17Ad-22(e)(1).

for each aspect of its activities in all relevant jurisdictions. The amendment to Paragraph 7.7 of the Auction Terms are designed to enhance compliance by F&O auction participants with Market Abuse Laws to the extent that they receive any inside information relating to any Contracts cleared by the Clearing House or in respect of securities of a Defaulter. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(1)¹⁸.

Rule 17Ad-22(e)(3)(i)¹⁹ requires clearing agencies to maintain a sound risk management framework that identifies, measures, monitors and manages the range of risks that it faces. The amendments to the Policy are intended to ensure that the Policy is consistent with the Auction Terms and to ensure risks relating to defaults continue to be well managed. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(3)(i).²⁰

Rule 17Ad-22(e)(2)²¹ requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The proposed amendments to the Policy more clearly define the roles and responsibilities of the document owner, the Head of Department, the senior members of the Risk Oversight

¹⁸ 17 C.F.R. § 240.17Ad-22(e)(1).

¹⁹ 17 CFR 240.17 Ad-22(e)(3)(i).

²⁰ 17 CFR 240.17 Ad-22(e)(3)(i).

²¹ 17 CFR 240.17 Ad-22(e)(2).

Department and the senior members of the Compliance Department, and are therefore consistent with the requirements of Rule 17Ad-22(e)(2).²²

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

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted further clarify and update the Auction Terms and better calibrate how market risks are allocated among F&O Clearing Members. The addition of All or Nothing Bids would provide an additional bidding option for Clearing Members if they choose to use it. Although the amendments to the Minimum Bid Requirement determination may result in some Clearing Members having higher Minimum Bid Requirements than others, ICE Clear Europe believes that this result is appropriate as it reflects the position risk in contracts of the relevant type that the Clearing Member has taken on, as exhibited by original margin requirements. As such, in ICE Clear Europe's view, the approach more appropriately allocates the risk of mandatory participation in default auctions to those clearing members that may have better ability to manage the risk of the contracts being auctioned, as demonstrated by their existing positions. ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise impact competition among Clearing Members or other market participants or limit market

²² 17 CFR 240.17 Ad-22(e)(2).

participants' choices for selecting clearing services. Accordingly, ICE Clear Europe does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²³ and paragraph (f) of Rule 19b-4²⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 C.F.R. 240.19b-4(f).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2020-006 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-2020-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 am. 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-2020-006 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Matthew DeLesDernier
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).