

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89862; File No. SR-ICEEU-2020-012)

September 14, 2020

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Clearing Rules (the “Rules”).

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 September 11, 2020, 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 primarily 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)(6)⁴ thereunder, 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

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)(6).

ICE Clear Europe proposes to make certain amendments to its Rules⁵ in connection with its application to the European Securities and Markets Authority (“ESMA”) for recognition as a third country central counterparty (“CCP”).

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

(a) Purpose

ICE Clear Europe proposes to amend the definitions of “Applicable Law” and “Regulatory Authority” set out in Rule 101. The amendments are being made to clarify the scope of such definitions in the context of the application by ICE Clear Europe to ESMA for recognition as a third country CCP under the European Market Infrastructure Regulation (EMIR)⁶. Such recognition will be necessary in order for ICE Clear Europe to continue to provide clearing services in the European Union following the exit of the United Kingdom from the European Union and the termination of certain transitional

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

⁶ Regulation 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

arrangements currently in effect under the UK European Union (Withdrawal) Act 2018. Termination of such transitional arrangements is currently expected to occur with effect from January 1, 2021.

Specifically, the defined term “Applicable Law” would be amended to include expressly any consent entered into by the Clearing House for the benefit or one or more Governmental Authorities. The term “Regulatory Authority,” which is defined as a Governmental Authority that exercise certain regulatory or supervisory functions, would be amended specifically to refer to ESMA, among other enumerated regulatory authorities. The amendments are intended to clarify that the term Applicable Law will include a consent required to be executed by the Clearing House in favor of ESMA under EMIR⁷ in connection with the third country CCP application, pursuant to which ICE Clear Europe will, under certain circumstances set out in EMIR, provide ESMA on request with certain information and allow ESMA access to its business premises (the “Consent”). The amendments will thereby clarify that the Consent, and the provision of information and access pursuant to the Consent, are consistent with the Rules, including Rule 106.⁸

(b) Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act⁹ and the regulations thereunder applicable to

⁷ EMIR article 25(2b)(c)(i).

⁸ Rule 106(c) permits the Clearing House to disclose certain confidential information in certain circumstances, including to a Regulatory Authority upon a lawful request therefrom or pursuant to Applicable Law.

⁹ 15 U.S.C. 78q-1.

it. Section 17A(b)(3)(F) of the Act¹⁰ in particular requires, among other things, that the rules of the 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, to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and, in general, protect investors and the public interest. In order to continue to provide clearing services in the European Union (including to EU-based clearing members) following the United Kingdom's withdrawal from the European Union and the termination of the UK-EU transitional arrangements currently in effect, ICE Clear Europe must obtain recognition from ESMA as a third country CCP under EMIR. One of the requirements under EMIR that will be applicable to ICE Clear Europe, as a third country CCP, is to enter into the Consent. ICE Clear Europe is proposing to amend the Rules to provide certainty that the Consent falls within the definition of Applicable Law and accordingly that the obligations of ICE Clear Europe thereunder are permissible under the Rules, including Rule 106(c). As a result, in ICE Clear Europe's view, the amendments will facilitate approval of its application to ESMA for third country recognition and thereby permit it to continue to provide clearing services in the EU, and avoid the significant market disruption that could otherwise result. As such, the amendments are consistent with the continued prompt and accurate clearance and settlement of cleared transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

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

The amendments are also consistent with Rule 17Ad-22(e)(1), which requires in relevant part that a covered clearing agency have 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.”¹² As noted above, the amendments would provide certainty that the terms of the Consent are permissible under the Rules, which in turn would facilitate approval of its application to ESMA for third country CCP status which is required in order for ICE Clear Europe to continue to offer clearing services in the European Union following the termination of UK-EU transitional measures.

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

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments are limited to modifying certain defined terms in order to clarify that the Consent, and the related provision of certain required information, and required access, to ESMA as a regulatory authority under EMIR, is consistent with the Rules. To the extent the amendments affect Clearing Members or Sponsored Principals, they will apply consistently across all such persons. The amendments are also not expected to affect the cost of, or access to, clearing or affect the market for cleared derivatives generally. As a result, in ICE Clear Europe’s view, the

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 C.F.R. 240.17Ad-22(e)(1).

amendments would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes 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 rule changes have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) 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 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-2020-012 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ICEEU-2020-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

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-2020-012 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).