

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90290; File No. SR-ICEEU-2020-013)

October 30, 2020

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Investment Management Procedures

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 October 23, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

ICE Clear Europe proposes to amend its Investment Management Procedures (the “Procedures”) to make certain clarifications and updates with respect to permissible investments, as further described herein. The revisions would not involve any changes to the ICE Clear Europe Clearing Rules.³

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

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 ICE Clear Europe Clearing Rules (the “Rules”).

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 adopt the amendments to the Procedures to clarify the requirements for investment of customer funds provided by FCM/BD Clearing Members, in light of the expansion of permitted investments to include qualifying Euro-denominated non-U.S. sovereign debt pursuant to an exemptive order issued by the Commodity Futures Trading Commission (the "CFTC Order").⁴ The amendments would also remove certain credit rating requirements for government bonds, clarify certain matters relating to the use of central bank deposits and update certain portfolio concentration limits in light of market conditions.

ICE Clear Europe is proposing to amend the investment management objectives to clarify that the references to cash subject to investment under the Procedures are not intended to refer to ICE Clear Europe's corporate cash held for operating purposes and not for meeting skin-in-the-game contributions, regulatory capital or other purposes

⁴ Order Granting Exemption From Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and From Certain Related Commission Regulations, 83 F.R. 35241 (July 25, 2018).

connected to treasury activities in connection with the management of Clearing Member margin or guaranty fund contributions. This is consistent with current practice.

In the discussion of overall investment considerations, the amendments would clarify that the overall goal that non-overnight investments should have a variety of maturity dates is not necessarily applicable in all cases (such as investments in bank deposits). Further, the description of how futures commission merchant (“FCM”) customer funds may be invested would be amended to permit investments in cash deposits, to clarify that direct purchases with U.S. dollar cash are limited to U.S. sovereign bonds and to provide that direct purchases with Euro cash may be made in French and German sovereign bonds as permitted in the CFTC Order. The requirement that no more than 5% of the investible funds should be held as unsecured cash would be clarified to state that the calculation would be made over an averaging period of one calendar month. Certain other typographical and similar corrections would be made to this section.

The table of authorised investments and concentration limits for cash from Clearing Members and Clearing House “Skin In The Game” would be amended such that: (i) instead of stating that the maximum issuer/counterparty concentration limit is 15% of the total EUR balance in a single government issuer, there would be no limit for French/German government bonds and the 15% limit would apply for government bonds issued by Belgium and the Netherlands; and (ii) an additional concentration limit for EU government bonds would be imposed at 20% of the total EUR balance in a single issue for German or French government bonds and 10% of the total EUR balance in a single issue for Belgian or Dutch government bonds. For investments of FCM customer funds in

EU government bonds, additional criteria would apply as set out in the CFTC Order.

With respect to central bank deposits, the Federal Reserve and the European Central Bank (“ECB”) would be added to the list of allowed central banks. While ICE Clear Europe does not necessarily have access to deposits at such central banks at this time, the amendment is intended to allow for possible future developments.

The amendments would add an additional category to the table of authorised investments and concentration limits for regulatory capital for commercial bank deposits with unsecured cash limits to be set separately for financial service providers, the maximum portfolio concentration limit being no more than 5% of the total investible funds in unsecured cash on average each calendar month, the maximum maturity being overnight and the minimum credit ratings being A-1/P-1.

The acceptable collateral table for reverse repurchase agreements would be amended to add GBP and EUR agency bonds with AA-/Aa3 credit ratings and a 2% haircut. The credit rating requirement (currently (AA-/Aa3)) would be removed for UK and US sovereign bonds. The amendments would also specify that for FCM customer funds invested in EUR reverse repo, only collateral meeting the requirements of the CFTC Order would be accepted.

The Glossary section would be updated such that central banks would be added to the definition of Permitted Depositories for FCM Customer Funds where the CFTC has provided the relevant exemption to ICE Clear Europe. A definition of Permitted Purchases of Euro denominated debt for FCM Customer Funds would be added to set forth the restrictions and conditions on investment of FCM customer funds in euro

denominated sovereign debt issued by the French Republic and the Federal Republic of Germany under the CFTC Order.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁵ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁶ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments are intended generally to clarify the Clearing House's criteria for investments of cash provided by Clearing Members and certain other cash held by the Clearing House, including to take advantage of the authorization under the CFTC to invest FCM customer funds in qualifying Euro-denominated sovereign debt. The amendments would also clarify the permitted use of commercial and central bank deposits margin, remove unnecessary rating requirements for UK and US sovereign debt under reverse repurchase agreements, and update certain concentration and similar limits. Overall, in ICE Clear Europe's view, the amendments would provide appropriate flexibility for investment of cash balances while remaining consistent with regulatory requirements. The amendments would thus facilitate ongoing

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

investment risk management by the Clearing House and facilitate the Clearing House's ability to meet its short-term financial obligations in the event of clearing member defaults or other liquidity stress events. These amendments would therefore promote overall Clearing House risk management and facilitate the prompt and accurate clearing of cleared contracts and protect investors and the public interest in the sound operations of the Clearing House, consistent with the requirements of Section 17A(b)(3)(F).⁷ In ICE Clear Europe's view, the amendments are also consistent with maintaining the value of, and access to, funds invested by the Clearing House, and therefore would enhance the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, within the meaning of Section 17A(b)(3)(F).⁸

For similar reasons, the proposed amendments to the Procedures are also consistent with the risk management requirements of Rule 17Ad-22(e)(3)(i)⁹ through enhancing ICE Clear Europe's investment management procedures and providing greater investment flexibility, including for FCM customer funds, in a manner consistent with applicable regulatory requirements.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22(e)(3)(i) - (ii). The rule states that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: [m]aintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which:(i) Includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually;"

The proposed amendments to the Procedures are also consistent with the provisions of Rule 17Ad-22(e)(7)(i) and (ii) and Rule 17Ad-22(a)(14)¹⁰ which require ICE Clear Europe to maintain sufficient qualifying liquid resources. In compliance with this requirement, the proposed amendments would update investment concentration limits and criteria to better manage liquidity of ICE Clear Europe's Clearing Member customer funds and regulatory capital. The amendments would also allow greater flexibility to maintain liquid resources in the form of central bank and commercial bank deposits.

¹⁰ 17 CFR 240.17Ad-22(e)(7)(i)-(ii). The rule states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: [e]ffectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, doing the following:(i) 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;(ii) Holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under paragraph (e)(7)(i) of this section in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members;17 CFR 240.17Ad-22(a)(14) Qualifying liquid resources means, for any covered clearing agency, the following, in each relevant currency: (i) Cash held either at the central bank of issue or at creditworthy commercial banks;(ii) Assets that are readily available and convertible into cash through prearranged funding arrangements, such as:(A) Committed arrangements without material adverse change provisions, including:1) Lines of credit;2) Foreign exchange swaps; and3) Repurchase agreements; or(B) Other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and(iii) Other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank in a jurisdiction that permits said pledges or other transactions by the covered clearing agency.

The amendments to the Procedures would be similarly compliant with Rule 17Ad-22(e)(16)¹¹, which requires assets of the Clearing House and Clearing Members be held in a manner that minimizes risk of loss and invested in assets with minimal credit, market and liquidity risk. The amendments to the acceptable collateral table permit the use of certain government agency collateral (subject to appropriate limitations), remove unnecessary rating requirements on US and UK government bonds and update concentration and similar requirements for EU government bonds. In ICE Clear Europe's view, these amendments update and clarify investment options in a manner that appropriately minimizes credit, market and liquidity risks from these investments, taking into consideration the benefits of sufficient flexibility to diversify investments.

Rules 17Ad-22(e)(7)(iii) and (e)(9)¹² require clearing agencies, where possible, to access accounts and services at a central bank. The proposed addition of the Federal

¹¹ 17 CFR 240.17Ad-22(e)(16). The rule states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: [s]afeguard the covered clearing agency's own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.”

¹² 17 CFR 240.17Ad-22(e)(7)(iii). The rule states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: [e]ffectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, doing the following:(iii) Using the access to accounts and services at a Federal Reserve Bank, pursuant to Section 806(a) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5465(a)), or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, to enhance its management of liquidity risk;(9) [c]onduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, and minimize and manage credit and liquidity risk arising from

Reserve and the ECB to the allowed entities for central bank deposits in the table of authorized investments would provide greater flexibility for the Clearing House to use central bank deposits, consistent with these requirements, where permissible.

The amendments to the Procedures would also be compliant with Rule 17Ad-22(e)(15)(ii).¹³ The proposed addition of commercial bank deposits to the table of authorized investments and concentration limits for investment of ICE Clear Europe's regulatory capital will be consistent with the treatment of such investments as liquid net assets for purposes of this rule and provide ICE Clear Europe with additional flexibility to meet this requirement.

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

conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.”

¹³ 17 CFR 240.17Ad-22(e)(15)(ii). The rule states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (15) Identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by: (ii) Holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii) of this section, and which:(A) Shall be in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraphs (e)(4)(i) through (iii) of this section, as applicable, and the liquidity risk standard in paragraphs (e)(7)(i) and (ii) of this section; and(B) Shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions;”

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 to the authorized investments would apply uniformly to all investments of Clearing Member customer funds made by the Clearing House, are being adopted to strengthen and clarify the Clearing House's investment management procedures and should not affect the rights or obligations of Clearing Members. The amendments also provide the Clearing House greater flexibility to hold its own regulatory capital in commercial bank deposits, which would not have any significant impact on Clearing Members. As a result, ICE Clear Europe does not believe the amendments would affect the cost of clearing for Clearing Members or other market participants, the market for cleared services generally or access to clearing by Clearing Members or other market participants, or otherwise affect competition among Clearing Members or market participants in a manner 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 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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it

finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2020-013 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-2020-013. 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 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/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-2020-013 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.¹⁴

Jill M. Peterson,
Assistant Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).