

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92120; File No. SR-ICEEU-2021-013)

June 7, 2021

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Articles of Association

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 25, 2021, 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

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to modify its Articles of Association (the “Articles”). The revisions would not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The purpose of the amendments is to update the Articles to reflect certain changes in the composition of the ICE Clear Europe Board and the composition and structure of Board committees, to clarify certain director independence standards, to clarify certain super-quorum standards applicable to certain actions relating to CDS clearing, to revise certain provisions regarding directors and to reflect the use of gender-neutral language, as discussed in more detail herein.

In article 3,³ definitions of certain specific committees would be deleted, including the Audit Committee, Board Risk Committee, Compensation Committee and Nomination Committee, and the definition of Committee would be revised to generally reference any committee constituted by the Board under the Articles. Although ICE Clear Europe is not proposing to change its current committee structure at this time, it does not believe the committees need to be defined in the Articles. Since the Board is authorized to create, modify or dissolve committees as it determines to be appropriate, the amendments would facilitate future changes to the committee structure by the Board without need to amend the Articles. The definition of Product Risk Committee, however, would not be removed from the Articles because there are references to this committee throughout the Articles in light of certain specific requirements relating to the CDS Director.

³ References herein to the numbering of particular articles will be to the articles as amended.

In addition, the amendments would modify certain other definitions, including CDS Director, Committees, Independent Director, Risk Committee and Super-Quorum Matters. These definitions would be updated as follows:

- CDS Director – a sentence would be added to the definition to clarify that the CDS Director may also meet the criteria required of an Independent Director, however, for the avoidance of doubt they will continue to be classified only as a CDS Director.
- Independent Director – this definition would be updated such that instead of describing this person as independent of the Company and of the Clearing House (without further definition of independence), the definition would require the director to meet the independence criteria for a director, as defined under relevant applicable legislation.⁴
- Risk Committee – this definition would be renamed Product Risk Committee, and references to this committee would be updated throughout the Articles. This change reflects the correct current name and function of this committee (and distinguishes the Product Risk Committee from other existing risk committees). Further, the statement that it is composed of directors would be deleted as it does not reflect the composition of the committee under its terms of reference (which includes clearing member representatives, among others).

⁴ Specifically, such legislation would include the definition of “independent member” pursuant to Article 2(28) of the European Market Infrastructure Regulation (EMIR), 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 as incorporated into UK law under the European Union (Withdrawal) Act 2018 (UK EMIR)

- Super-Quorum Matters – this definition would be updated to clarify, as a matter of drafting, that such matters include the criteria for CDS Clearing Membership. A reference to the terms of reference for the CDS Risk Committee would be updated to the terms of reference for the Product Risk Committee with responsibility for CDS (which is the current name for the relevant committee). The amendments would also resolve a drafting ambiguity by removing the subject and content of the Board Resolution as a Super-Quorum Matter as, by current practice, not all Board resolutions are Super-Quorum Matters.

A new article 11 would provide that a member shall be deemed present at a general meeting if participating by telephone or other electronic means and all participating members can hear each other.

The amendments would make certain revisions to the composition of the board and board committees. Amended article 26 would provide that one third of directors appointed to the board should be classed as Independent Directors (instead of at least two and not more than four), and at least one CDS Director would be required to be appointed to serve in such a capacity at any one time (instead of two). The proposed change to the required number of CDS Directors follows the retirement of one of the previous CDS Directors and the determination by the Clearing House that it is not necessary to appoint a minimum of two CDS Directors to serve in such capacity in order to adequately address the interests of Clearing Members in Clearing House governance. In addition to the remaining CDS Director, Clearing Members would continue to be represented through the CDS Product Risk Committee which, other than the Chair, is composed entirely of representatives of Clearing Members. The change was approved by the CDS Product

Risk Committee, and no Clearing Members objected to the change in the required number of CDS Directors.

In article 27, consistent with the changes to the definitions of Committees described above, the reference to the Nomination Committee would be deleted and replaced with language referring to a committee appointed by the board which would be responsible for appointing directors by ordinary resolution. Article 28 would be amended to reflect the change in article 26 to require only a single CDS Director.

Article 30A would be amended to delete certain language pertaining to a CDS Director's retirement date that is no longer necessary with a single CDS Director. In article 32, the reference to the Nomination Committee would be deleted and replaced with language referring to a committee of the board appointed to consider retirement of directors under the Articles. Likewise, article 33 would be amended to delete the reference to the Nomination Committee and replaced such reference with language referring to a committee appointed by the board to considering the reappointment of an Independent Director.

Article 44, which discusses the delegation of directors' power to certain committees, would be amended to delete references to the specific committees that were deleted from article 3 (i.e., the Risk Committee(s), an Audit Committee, a Board Risk Committee, a Nominations Committee and a Compensation Committee).

Amended Article 49 would clarify that directors may be paid certain expenses that are reasonable and the amendments would remove the requirement that this be subject to board approval as such expenses would be approved by the ICE Clear Europe President.

Amendments to article 59(a) would clarify the operation of the super-quorum requirement for Super-Quorum Matters, which relate to CDS Contracts including to reflect the requirement to only have one CDS Director. For such matters, if a CDS Director has been appointed, such director must be present at the meeting, together with the normal quorum of a majority of the directors serving on the board at the time. The amendments would add a defined term for “Super-Quorum” and make revisions throughout the Articles to use such term as appropriate. The amendments also clarify that the CDS director must be present at the present for a super-quorum meeting, but need not vote in favor of the resolution. Amendments to article 59(b) would state explicitly that in order for a quorum to be met for non-super-quorum matters, the required directors must be present at the meeting. Article 59(c) would be amended to clarify that for super-quorum matters that need to be resolved in an emergency, the presence of a CDS Director is not necessary. The amendments would also clarify that whether an emergency exists for this purpose is to be determined by the President or their delegate.

Similarly, article 59A, would be revised to clarify that where Super-Quorum matters have to be adjourned to a subsequent meeting because no CDS Director is present, the subsequent meeting must have a quorum present at the meeting but need not include a CDS Director.

Throughout the Articles, various provisions would be amended to use gender-neutral language. Certain non-substantive typographical and similar corrections would also be made.

Various articles would be renumbered due to the changes discussed above.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Articles 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 changes are designed to clarify and update certain aspects of ICE Clear Europe's Articles, particularly around board committees, the number of CDS Directors, and the application of certain super-quorum requirements applicable to matters relating to CDS Contracts. The amendments are intended to facilitate use of board committees where appropriate, without need to update the Articles. The amendments reduce the required number of CDS Directors to one, and clarify the operation of the CDS super-quorum requirements in light of that change. In ICE Clear Europe's view, these amendments would enhance and streamline the clearing house's overall governance framework, and thus facilitate the efficient operation of the clearing house and the prompt and accurate clearance and settlement of transactions and the public interest, within the meaning of the Act. For these reasons, the amendments would also promote governance arrangements that are clear and

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

transparent to fulfill the public interests requirements in Section 17A of the Act⁷ applicable to clearing agencies, support the objectives of owners and participants and promote the effectiveness of the clearing agency's risk management procedures.

Further, Section 17A(b)(3)(C) of the Act⁸ requires that the rules of a clearing agency "assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs." Following the proposed amendments, Clearing Members will continue to be represented on the Board by the existing CDS Director and the Articles will continue to require the appointment of at least one CDS Director to the Board. In addition, the interests of Clearing Members will continue to be represented through the F&O and CDS Product Risk Committees and the Client Risk Committee. The majority of the members of all the three committees are Clearing Member representatives.⁹As such, ICE Clear Europe believes its governance arrangements, as modified by the amendments to the Articles, will continue to provide a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs, within the meaning of Section 17A(b)(3)(C).¹⁰

Rule 17Ad-22(e)(2)(i)¹¹ requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78q-1(b)(3)(C).

⁹ Under UK EMIR Article 28, ICE Clear Europe is required to ensure that the Client Risk Committee maintains Clearing Member and client representation.

¹⁰ 15 U.S.C. 78q-1(b)(3)(C).

¹¹ 17 CFR 240.17 Ad-22(e)(2)(i).

and transparent. The proposed amendments to the Articles more clearly set out the composition of the board and board committees, the appointment of directors, delegation of directors' powers and requirements relating to a quorum and super-quorum. ICE Clear Europe believes that the amendments to the Articles are therefore consistent with the requirements of Rule 17Ad-22(e)(2).¹²

(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 to further strengthen Clearing House governance arrangements by more clearly setting out requirements relating to the composition of the board and board committees, the appointment of directors, delegation of directors' powers and meeting quorum and super-quorum requirements. The amendments do not affect any terms or conditions of cleared contracts, and are not intended to affect directly Clearing Members or market participants, or the markets for cleared products. As a result, ICE Clear Europe does not otherwise believe the amendments would affect the costs of or access to clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

¹² 17 CFR 240.17 Ad-22(e)(2).

(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, security-based swap submission or advance notice 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-2021-013 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-2021-013. 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, 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-2021-013 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.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).