

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92492; File No. SR-ICEEU-2021-013)

July 26, 2021

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

I. Introduction

On May 25, 2021, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4,<sup>2</sup> a proposed rule change to amend its Articles of Association (the “Articles”). The proposed rule change was published for comment in the Federal Register on June 11, 2021.<sup>3</sup> The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

As discussed further below, the proposed rule change would amend the Articles to: (i) update definitions related to the ICE Clear Europe Board of Directors (the “Board”) and references to Board committees; (ii) modify the composition and structure of the Board and Board committees; (iii) revise the provisions regarding Super-Quorum Matters; (iv) add an article regarding presence at a Board meeting and amend an article related to expenses for

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Articles of Association, Exchange Act Release No. 92120 (June 7, 2021); 86 Fed. Reg. 31348 (June 11, 2021) (SR-ICEEU-2021-013) (“Notice”).

directors; and (v) adopt gender-neutral language and make non-substantive typographical edits throughout the Articles.<sup>4</sup>

A. Definitions Related to the Board and Board Committees

Beginning in the defined terms found in Article 3, the proposed rule change would change the name of the Risk Committee to Product Risk Committee and update references to this committee throughout the Articles accordingly. This change would reflect the correct current name and function of this committee (and distinguish the Product Risk Committee from other existing risk committees). Further, the proposed rule change would delete from the definition of Product Risk Committee the statement that it is composed of the directors, to reflect that the committee is comprised of directors as well as representatives of Clearing Members.

The proposed rule change would next delete definitions of, and references to, Board committees other than the Product Risk Committee. The proposed rule change would delete from article 3<sup>5</sup> the definitions of Audit Committee, Board Risk Committee, Compensation Committee, and Nomination Committee. In addition, the proposed rule change would also amend the defined term Committees. Currently that term is defined to mean certain committees of the Board (Audit Committee, Board Risk Committee, etc.). The proposed rule change would revise this definition to mean any committee constituted by the Board under the Articles. Although ICE Clear Europe

---

<sup>4</sup> The description that follows is excerpted from the Notice, 86 Fed. Reg. at 31348. Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICE Clear Europe Clearing Rules or the Articles, as applicable.

<sup>5</sup> References herein to the numbering of particular articles will be to the articles as amended.

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. Given that 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.<sup>6</sup> The proposed rule change would retain the definition of, and references to, the Product Risk Committee, however, because that Committee plays a specific role relating to the CDS Director, as discussed below.<sup>7</sup>

B. Composition and Structure of the Board and Board Committees

The proposed rule change also would make certain revisions to the composition of the Board and Board committees. Currently, the Articles provide that the number of directors shall be not less than six and not more than twelve, with at least two and not more than four Independent Directors. The proposed rule change would not alter the size of Board; it would retain the not less than six and not more than twelve numerical requirement. The proposed rule change would provide, however, that at least one third of directors should be Independent Directors, replacing the current requirement of at least two and not more than four. Under a minimum Board size of six, this would result in two Independent Directors, and under a maximum Board size of twelve, this would result in four Independent Directors. Thus, this proposed change would in effect keep the number of independent directors the same, while providing flexibility and clarifying the language.

---

<sup>6</sup> Notice, 86 Fed. Reg. at 31348.

<sup>7</sup> Notice, 86 Fed. Reg. at 31348.

Relatedly, the proposed rule change would update the definition of Independent Director. Independent Director is currently defined as a person who is independent of the Company and of the Clearing House and who is appointed as a non-executive director of the Company. The proposed rule change would modify this definition to mean a person who meets the independence criteria for a director, as defined under relevant applicable legislation and who is appointed as a non-executive director.<sup>8</sup>

Similarly, the proposed rule change would clarify the definition of CDS Director. A CDS Director is defined as a person, reasonably acceptable to the Board and approved by the Bank of England, with appropriate experience of credit derivatives and the credit default swaps marketplace, and further experience including, but not limited to, corporate governance, management oversight, and financial markets, who is appointed by the Board as a non-executive director of the Company and who has been nominated by the Product Risk Committee with responsibility for CDS. The proposed rule change would retain this definition but would add a sentence to clarify that the CDS Director may also meet the criteria required of an Independent Director but, for the avoidance of doubt, would continue to be classified only as a CDS Director. Thus, even if the CDS Director meets the criteria required of an Independent Director, they will be classified only as a CDS Director and not as an Independent Director.

---

<sup>8</sup> Specifically, ICE Clear Europe represented 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). Notice, 86 Fed. Reg. at 31349, n.4.

The proposed rule change would also modify the Board composition requirement with respect to CDS Directors. Currently, the Articles require that two CDS Directors be appointed to serve on the Board. The proposed rule change would modify this provision to require only that one CDS Director serve on the Board. The proposed rule change also would amend the provisions relating to the appointment and retirement of CDS Directors to reflect this change. ICE Clear Europe represented that the proposed reduction to the required number of CDS Directors follows the retirement of one of the previous CDS Directors and that it was unnecessary to have two CDS Directors because Clearing Members would continue to be represented through the remaining CDS Director and the CDS Product Risk Committee.<sup>9</sup>

C. Super-Quorum Matters

Super-Quorum Matters are certain matters before the Board that are subject to additional requirements regarding the presence of a CDS Director at the meeting where those matters are considered. Article 3 currently defines Super-Quorum Matters as matters regarding those aspects of the Rules that relate to: CDS Clearing Members; CDS contracts; the structure, size, or application of the CDS guaranty fund; the methodology for calculating a CDS Clearing Member's CDS guaranty fund contribution or the components thereof; permitted cover for CDS guaranty fund contributions; powers of assessment in respect of CDS Clearing Members; the time period for, or means by which, CDS margin is returned to a CDS Clearing Member; the methodology for determining the rate of return on the CDS guaranty fund; the use, re-hypothecation or investment of the CDS guaranty fund; the terms of reference for the CDS Risk

---

<sup>9</sup> Notice, 86 Fed. Reg. at 31349.

Committee; and, the subject and content of the Board Resolution relating to those matters. The proposed rule change would retain this definition, with some additional clarifications.

Specifically, the proposed rule change would clarify that the definition includes those aspects of the Rules that relate to “criteria for CDS Clearing Membership” instead of just “CDS Clearing Members.” Because seemingly any aspect of the Rules could relate to CDS Clearing Members, including those aspects of the rules that are already specifically covered in the definition of Super-Quorum Matters, this specific change would narrow and clarify this aspect of the definition. Moreover, clarifying that the definition covers those aspects of the Rules that relate to criteria for CDS Clearing Membership would ensure that those provisions of the Rules are also covered by the definition. Finally, the remaining portions of the definition of the Super-Quorum Matters would continue to broadly cover other aspects of the Rule that could relate to CDS Clearing Members, including any aspects of the rules relating to CDS contracts.

In addition, the proposed rule change would update a reference to the terms of reference for the CDS Risk Committee to the terms of reference for the Product Risk Committee, in furtherance of the change discussed above. The proposed rule change 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.

The proposed rule change next would amend the Articles to clarify the operation of the super-quorum requirement for Super-Quorum Matters, and to reflect the requirement to have one CDS Director present. The Articles currently require that, in relation to Super-Quorum Matters, a super-quorum is needed for the transaction of business, which means a majority of the directors serving on the Board at that time including at least one CDS Director. The proposed rule change

would modify this provision to make the term “Super-Quorum” a defined term, meaning a majority of the directors serving on the Board at that time and, for as long as a CDS Director has been nominated by the Product Risk Committee with responsibility for CDS and appointed by the Board, the Super-Quorum must include a CDS Director who must be present at the meeting. Because under the Articles as revised there will only be one CDS Director, the proposed rule change would add this language to clarify that where a CDS Director has retired or resigned and a new CDS Director has not yet been nominated by the Product Risk Committee and appointed by the Board, the Board could still act on a Super-Quorum Matter. Thus, as in the current Articles, under the proposed rule change a Super-Quorum would include a CDS Director.

The proposed rule change would further clarify that while the CDS Director must be present at a meeting requiring a Super-Quorum, the CDS Director need not vote in favor of the resolution. The Articles do not currently require that the CDS Director vote in favor of the Board resolution relating to the Super-Quorum Matter, so this provision would clarify this point.

Moreover, the Articles currently provide that in relation to Super-Quorum Matters that need to be resolved in an emergency the quorum necessary shall be the number equal to a majority of the directors serving on the Board at that time. Thus, under the current Articles, the Board could resolve a Super-Quorum Matter at an emergency meeting without a CDS Director present. The proposed rule change would retain this provision, but would clarify that the ICE Clear Europe President or their delegate would deem whether there is an emergency. The proposed rule change would also add language to would clarify that, for the avoidance of doubt, the presence of a CDS Director is not necessary at the emergency meeting, as under the current Articles.

Finally, the Articles currently provide that where no CDS Directors are present at a meeting requiring a Super-Quorum, consideration of the business relating to relevant Super-Quorum Matters shall be adjourned to a re-convened meeting to be called subject to a minimum of two Business Days' notice to the Board, at which transaction of business in relation to the relevant Super-Quorum Matters shall not require a Super-Quorum and may be transacted by a quorum equal to a majority of the directors serving on the Board at that time. The proposed rule change would retain this provision but would clarify that at the subsequent meeting, a CDS Director need not be present.

D. Presence and Directors' Expenses

The proposed rule change, through a new article, 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. Relatedly, the proposed rule change would amend the Articles to state explicitly that for a quorum to be met for non-Super-Quorum Matters, the required majority of directors must be present at the meeting (under the new definition).

The proposed rule change also would amend the Articles regarding directors' expenses. The Articles provide that directors may, subject to the approval of the Board, be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or separate meetings of the Company or otherwise in connection with the discharge of their duties. The proposed rule change would modify this provision by adding the word "reasonable" immediately before "travelling," thus in effect requiring the expenses to be reasonable. The proposed rule change also would remove the requirement that the expenses be subject to Board approval. ICE

Clear Europe represented that, instead, the ICE Clear Europe President would approve such expenses.<sup>10</sup>

E. Gender Neutral Language and Typographical Errors

Throughout the Articles, the proposed rule change would amend various provisions to use gender-neutral language. The proposed rule change also would correct certain non-substantive typographical errors and update numbering due to the changes discussed above.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>11</sup> For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(C) of the Act,<sup>12</sup> Section 17A(b)(3)(F) of the Act,<sup>13</sup> and Rule 17Ad-22(e)(2)(i).<sup>14</sup>

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

Section 17A(b)(3)(C) of the Act requires, among other things, that the rules of ICE Clear Europe assure a fair representation of its shareholders (or members) and participants in the

---

<sup>10</sup> Notice, 86 Fed. Reg. at 31349.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>14</sup> 17 CFR 240.17Ad-22(e)(2)(i).

selection of its directors and administration of its affairs.<sup>15</sup> The Commission believes that the proposed rule change, in general, would be consistent with assuring a fair representation of ICE Clear Europe's shareholders, members, and participants in the selection of its directors and administration of its affairs. Although, as discussed in Part II.B above, one aspect of the proposed rule change would reduce the minimum representation of CDS Directors on the Board of Directors from two to one, the proposed rule change would not reduce any of the authority or responsibility of the remaining CDS Director. Currently under the Articles the presence of at least one CDS Director is required at Board meetings relating to Super-Quorum Matters, and no provision explicitly requires that a CDS Director vote in favor of Board resolutions relating to Super-Quorum Matters. Similarly under the proposed rule change, the presence of the CDS Director is required at Board meetings relating to Super-Quorum Matters, but the CDS Director need not vote in favor of a Board resolution relating to a Super-Quorum Matter for the resolution to pass. Moreover, the current provisions relating to the conduct of emergency meetings and re-convened meetings relating to Super-Quorum matters without a CDS Director present are largely the same under the Articles as proposed to be amended, with some additional clarifications. Finally, the Commission notes ICE Clear Europe's representation that 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.<sup>16</sup>

---

<sup>15</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>16</sup> Notice, 86 Fed. Reg. at 31349.

Taking these factors together, the Commission finds that the proposed rule change is consistent with 17A(b)(3)(C) of the Act.<sup>17</sup>

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

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.<sup>18</sup> As discussed in more detail below, the Commission generally believes that the changes discussed above should facilitate the efficient operation of the clearing house and a clear and transparent governance structure, which would promote the prompt and accurate clearance and settlement of transactions and assure the safeguarding of securities and funds. Therefore, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>19</sup>

The Commission believes the changes discussed in Part II.A above would ensure that the Articles are consistent with the current operations of ICE Clear Europe by correcting the name of the Risk Committee to the Product Risk Committee and amending the definition of that committee to reflect its current composition. Moreover, revising the defined term “Committees” and removing references to other Board committees would make the Articles more flexible by

---

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(F).

allowing for the addition, modification, or elimination of Board committees without the need to amend the Articles. The Commission believes that these changes should improve ICE Clear Europe's ability to adapt its Board to evolving circumstances and unforeseen areas of priority.

Similarly, the Commission believes that the changes discussed in Part II.B above would clarify the Articles with respect to the composition of the Board. Specifically, changing the minimum number of Independent Directors to one third of the Board, from at least two but not more than four, would in effect result in the same number of Independent Directors as currently, given that the size of the Board could still range from six to twelve directors. This change would clarify and simplify the language of this requirement, however. Similarly, the Commission believes that revising the definition of an Independent Director to refer to independence criteria as defined under applicable legislation would allow this definition to change in response to changes to relevant legislation, thus furthering the clarity and flexibility of this definition. The Commission also believes that clarifying the definition of CDS Director, by adding language that a CDS Director can also meet the criteria for an Independent Director, will clarify the Articles by absolving a potential ambiguity of director classification. Finally, the Commission believes that changing the required Board representation of CDS Directors from two to one and revising other provisions to reflect this change would clarify the number of CDS Directors on the Board without substantially reducing the representation of Clearing Members.

The Commission also believes that amending the Articles pertaining to Super-Quorum Matters as discussed in Part II.C above would clarify the requirements applicable to Super-Quorum Matters. Specifically, the Commission believes clarifying the definition of Super-Quorum Matters would make it easier to determine what matters fall within the category of

Super-Quorum Matters. Similarly, the Commission believes that by making the term “Super-Quorum” a defined term and including, as in the current Articles, a requirement that a CDS Director be present at a meeting to achieve a Super-Quorum, the proposed rule change would clarify these provisions. Finally, the Commission believes the other changes discussed in Part II.C above would clarify points currently implied in the Articles: that a CDS Director need not vote in favor of a resolution during a Super-Quorum Matter; that the President or their delegate would determine the existence of an emergency as needed for an emergency meeting; and that a CDS Director need not be present at an emergency or reconvened Board meeting involving a Super-Quorum Matter

Similarly, the Commission believes that the changes to the Articles concerning the acceptable criteria constituting presence at a Board meeting, as discussed in Part II.D above, would clarify when a director is present at a Board meeting, especially when participating by telephone. Revising the provision regarding directors’ expenses discussed in Part II.D above should would clarify this provision given that the ICE Clear Europe President, and not the Board, approves such expenses. Finally, the Commission believes that the changes to the Articles to reflect gender-neutral language, correct typographical errors, and renumber the Articles in accord with the above changes to the Articles would clarify the Articles and eliminate drafting mistakes.

The Commission believes that by clarifying and revising the Articles, the proposed rule change would reduce the possibility for error in interpreting and applying the Articles, thus improving the operation of ICE Clear Europe’s governance in general and the Board in particular. The Commission further believes that improved governance and Board oversight may facilitate the efficient and effective operations of ICE Clear Europe, including its clearance and

settlement of transactions and safeguarding of securities and funds. Therefore, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.<sup>20</sup>

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

Rule 17Ad-22(e)(2)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.<sup>21</sup> As discussed above, the Commission believes that the proposed rule change would clarify the Articles and the operation of the Board pursuant to the Articles. For example, by establishing when a director is present at a Board meeting, including when participating by telephone, the Commission believes the proposed rule change would clarify when a director is present and counted for purposes of establishing a quorum or Super-Quorum. Moreover, a number of changes discussed in Part II.C above would clarify points currently implied in the Articles: that the CDS Director need not vote in favor of the Board resolution relating to the Super-Quorum Matter; that the President would determine the existence of an emergency as needed for an emergency meeting; and that a CDS Director need not be

---

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>21</sup> 17 CFR 240.17Ad-22(e)(2)(i).

present at an emergency or reconvened Board meeting. Thus, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(2)(i).<sup>22</sup>

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(C) of the Act,<sup>23</sup> 17A(b)(3)(F) of the Act,<sup>24</sup> and Rule 17Ad-22(e)(2)(i).<sup>25</sup>

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>26</sup> that the proposed rule change (SR-ICEEU-2021-013), be, and hereby is, approved.<sup>27</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

J. Matthew DeLesDernier  
Assistant Secretary

---

<sup>22</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>23</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>24</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>25</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>28</sup> 17 CFR 200.30-3(a)(12).