

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93523; File No. SR-ICEEU-2021-020)

November 4, 2021

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Liquidity Management Procedures and 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 22, 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

The principal purpose of the proposed amendments is for ICE Clear Europe to amend its Liquidity Management Procedures and Investment Management Procedures to make certain clarifications and updates.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is proposing to amend its Liquidity Management Procedures to (i) reflect that cash substitution requests may be as a source of payment obligations relevant to liquidity management, (ii) include certain additional procedures and requirements for the Clearing House with respect to adding new accounts or amending existing accounts with counterparties and (iii) clarify how intraday collateral is being monitored. ICE Clear Europe also proposes to amend its Investment Management Procedures to (i) add additional detail with respect to Maximum Issuer/Counterparty Concentration Limits in respect of reverse repurchase agreements and (ii) add additional concentration limits for investment of customer funds of FCM/BD Clearing Members.

I. Liquidity Management Procedures

The list of payment obligations relating to liquidity management would be revised to reflect explicitly that any cash substitution requests by Clearing Members would be a source of payment obligations. The amendment does not reflect a change in any Clearing House practice or source of obligations but is intended to make the list more comprehensive.

A new section relating to special considerations for account opening would be added. The amendments would provide that when the Clearing House is adding new accounts or amending existing accounts with counterparties, the Treasury Department

would advise the Legal and Compliance Departments in accordance with relevant departmental procedures to ensure that relevant banking agreements are modified, any side or acknowledge letters are obtained and any required regulatory submissions are timely made, as appropriate. Such scenarios would include the opening of new accounts for futures customer funds in accordance with CFTC § 1.20(g).

Provisions relating to haircutting of non-cash collateral and cash collateral in currencies other than the required currency would be amended to correct the reference to the Credit Risk team (not the Clearing Risk team) that monitors the price of such assets. The amendments would also state that the price of such assets would be monitored during the day against the applied haircuts, as a clarification that reflects current practice. The statement that the Credit Risk team would call for additional IM in the event of a shortfall in the value of the collateral held would be removed as unnecessary to be in the Liquidity Management Procedures as that is addressed in other existing Clearing House policies.

Other technical, typographical and formatting edits would be made.

II. Investment Management Procedures

In the Table of Authorised Investments and Concentration Limits for Cash from CMs and from Skin In The Game (the “Table”), the Maximum Issuer/Counterparty Concentration Limits applicable to reverse repurchase agreements would be revised to clarify that the numerical concentration limits are based on total cash balance per counterparty group, consistent with existing practice. Additionally, a footnote would be added to such section to provide that breaches of those issuer limits for reverse repurchase agreements solely due to valuation differences or operational failure/error will not be considered as a breach of policy. Such updates are to provide additional detail

about existing practices in order to provide clarification and are not intended to reflect any change such practices.

The Table would also be updated to add an additional concentration limits for FCM customer funds. Specifically, with respect to reverse repurchase agreements, the Maximum Issuer/Counterparty Concentration Limits would be 25% of total FCM customer cash balance per counterparty group. The amendment is intended to document an existing limitation based on CFTC Rule 1.25.

(b) Statutory Basis

ICE Clear Europe believes that the amendments to the Liquidity Management Procedures and the Investment Management Procedures are consistent with the requirements of Section 17A of the Act³ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁴ 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 to the Liquidity Management Procedures and the Investment Management Procedures are designed to update certain of the Clearing House's practices with respect to the management of liquidity and investments,

³ 15 U.S.C. 78q-1.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

respectively. The proposed updates to the Liquidity Management Procedures would more clearly certain practices relating to monitoring of collateral prices and enhance certain account opening procedures. The proposed updates to the Investment Management Procedures would clarify certain concentration limits relating to investments of assets provided by Clearing Members. The proposed amendments thus enhance the overall risk management of the Clearing House and promote the accuracy and stability of the Clearing House's policies and procedures and the prompt and accurate clearance and settlement of cleared contracts. The proposed amendments to the Liquidity Management Procedures and the Investment Management Procedures are thus also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. The updates to each of the Liquidity Management Procedures and the Investment Management Procedures will also facilitate safe management of the cash held by the Clearing House from Clearing Member's and their customers, and thus enhance the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).⁵

The proposed revisions to the Liquidity Management Procedures and the Investment Management Procedures are also consistent with relevant provisions of Rule 17Ad-22. Rule 17Ad-22(e)(3)(i)⁶ requires clearing agencies to maintain a sound risk management framework that identifies, measures, monitors and manages the range of

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 17 CFR 240.17 Ad-22(e)(3)(i).

risks that it faces. As described above, the proposed updates to the Liquidity Management Procedures are intended to more clearly document and enhance certain policies, practices and considerations for monitoring and reviewing liquidity risks. The proposed updates to the Investment Management Procedures would provide further description with respect to the Clearing House’s investments, as described above, particularly with respect to concentration limits applicable to reverse repurchase agreements. The proposed amendments would thus strengthen the management of potential counterparty investment risks, and risk management more generally. In ICE Clear Europe’s view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(3)(i).⁷

Rule 17A-22(e)(16) requires clearing agencies to safeguard their own and their “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.”⁸ As discussed above, the amendments to the Liquidity Management Procedures are intended to enhance account opening procedures, which will facilitate protection of assets of Clearing Members and their customers provided to the Clearing House. The proposed updates to the Investment Management Procedures would clarify Maximum Issuer/Counterparty Concentration Limits applied in connection with the investment of assets of Clearing Members and their customers. As such, the revised Liquidity Management Procedures and Investment Management Procedures will help enable the

⁷ 17 CFR 240.17 Ad-22(e)(3)(i).

⁸ 17 CFR 240.17Ad-22(e)(16).

Clearing House to safeguard such assets and minimize the risk of loss from liquidity and investment risks, consistent with the requirements of Rule 17Ad-22(e)(16).⁹

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

ICE Clear Europe does not believe the proposed documents would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to update the Liquidity Management Procedures and the Investment Management Procedures to provide clarifications and additional details where necessary in order to reflect existing practices and are not intended to impose new requirements on Clearing Members. The terms of clearing are not otherwise changing. ICE Clear Europe does not believe that proposed amendments would adversely affect competition among Clearing Members or other market participants or affect the ability of market participants to access clearing 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.

(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 and adoption.

⁹ 17 CFR 240.17Ad-22(e)(16).

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 such 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-2021-020 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-2021-020. 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 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-2021-020 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.¹⁰

J. Matthew DeLesDernier
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).