

**SECURITIES AND EXCHANGE COMMISSION**  
(Release No. 34-93764; File No. SR-ICEEU-2021-023)

December 13, 2021

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 1, 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. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4)(ii) thereunder,<sup>4</sup> 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.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(ii).

**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 Delivery Procedures (“Delivery Procedures” or “Procedures”) to add a new Part N1 to address ICE Futures US Emissions Futures Contracts which would be settled by delivery through the account of the Clearing House with the relevant registry and to make certain conforming changes elsewhere in the Delivery 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 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 add a new Part N1 to the Delivery Procedures as well as make certain conforming changes elsewhere in the Delivery Procedures. Part N1 would apply to ICE Futures US Emissions Futures Contracts (i) for which physical delivery is specified as being “Applicable” in the relevant Contract Terms, (ii) which go to physical delivery on the expiry date; and (iii) to which the Clearing House will announce by Circular that Part N1 specifically applies (such contracts “ICE Deliverable

US Emissions Contracts”). These would apply to all physically deliverable US emissions futures contracts that are delivered via the Californian CITSS Registry.

Part N1 would provide that deliveries under ICE Deliverable US Emissions Contracts are effected upon (i) in the case of the Seller effecting delivery, the completion of the transfer of the relevant Allowances from the relevant Registry Account of the Seller to the relevant Registry Account of the Clearing House, and (ii) in the case of the Buyer taking delivery, the completion of the transfer of the relevant Allowances from the relevant Registry Account of the Clearing House to the relevant Registry Account of the Buyer. Such delivery would take place during the Delivery Period for the relevant ICE Deliverable US Emissions Contracts in accordance with the relevant Contract Terms, and neither delivery by Seller nor receipt of delivery by Buyer would require performance by the other to occur simultaneously.

The amendments would further specify certain details of the delivery process and address certain responsibilities of the Clearing House and relevant parties for delivery under ICE Deliverable US Emissions Contracts. Delivery under an ICE Deliverable US Emissions Contract would be based on Open Contract Positions after expiration of the relevant Contract Set. The delivery process would occur over three consecutive Business Days. The amendments would include a delivery timetable with a detailed timeframe for relevant confirmations of intent to deliver or receive, nominations of parties to delivery or receive, delivery confirmations, invoicing, release of delivery margin and sales proceeds following completion of delivery and other matters.

The amendments would also detail certain limitations of liability for the Clearing House and ICE Futures US. Neither such party would be liable as a result of the

performance or non-performance of any Registry or Registry Operator, any errors in the account details entered into the relevant Registry systems or otherwise provided in respect of a delivery, or for complying with the contractual obligations owed to the Registry in respect of any registry account(s), among other matters.

In addition, the amendments would also update Section 5.1 of the Delivery Procedures to include the ICE Deliverable US Emissions Contracts in the list of Clearing House contracts which, subject to delivery obligations, would allow sellers and buyers to nominate transferors and transferees, respectively, and to more clearly distinguish emissions contracts subject to bilateral delivery under existing Part N of the Delivery Procedures from those under the new Part N1.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures are consistent with the requirements of Section 17A of the Act<sup>5</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>6</sup> 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 to the Delivery Procedures are designed to establish delivery procedures relating

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<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

to certain ICE Futures US Emissions Futures Contracts under which delivery will be made through the Registry Account of the Clearing House. The amendments would also set out the role, responsibilities and liabilities of the Clearing House, Clearing Members and designated transferors and transferees in the physical delivery process, in line with Delivery Procedures for other types of ICE Futures US Emissions Contracts. As a result, ICE Deliverable US Emissions Contracts delivered through a Clearing House Registry Account under Part N1, will be cleared by the Clearing House in the substantially same manner as ICE Deliverable US Emissions Contracts delivered bilaterally, with modifications to reflect the different mode of delivery, and will be supported by ICE Clear Europe's existing F&O financial resources, risk management, systems and operational arrangements. Accordingly, ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such contracts and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.<sup>7</sup> (In ICE Clear Europe's view, the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).<sup>8</sup>)

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

In addition, Rule 17Ad-22(e)(10)<sup>9</sup> provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries.” As discussed above, the amendments would establish a new set of procedures applicable to the settlement of certain ICE Deliverable US Emissions Contracts that are to be settled by delivery through the Clearing House Registry Account. The procedures would address, among other matters, delivery specifications for such contracts, limitation of liability for the Clearing House and ICE Futures US in respect of the delivery of such contracts, and certain other documentation and timing matters, consistent with the requirements of the Clearing House. Clearance of the ICE Deliverable US Emissions Contracts would otherwise be supported by ICE Clear Europe’s existing financial resources, risk management, systems and operational arrangements. The amendments thus appropriately clarify the role and responsibilities of the Clearing House and Clearing Members with respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad-22(e)(10).<sup>10</sup>

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<sup>9</sup> 17 CFR 240.17Ad-22(e)(10).

<sup>10</sup> 17 CFR 240.17Ad-22(e)(10).

(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 proposed amendments to the Delivery Procedures are intended to establish a new set of procedures applicable to the settlement of certain ICE Futures US Emissions Futures Contracts under which delivery will be made through the Registry Account of the Clearing House. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in the new contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose 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 comments received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4<sup>12</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2021-023 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.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-ICEEU-2021-023. 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, 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/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-2021-023 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.<sup>13</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).