

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93839; File No. SR-ICEEU-2021-024)

December 21, 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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 9, 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. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4)(ii) thereunder,⁴ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 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 amend Part CC thereof (“Part CC”) to revise the delivery specifications applicable to Midland West Texas Intermediate American Gulf Coast Crude Oil Futures (formerly Permian West Texas Intermediate Crude Oil Futures), consistent with changes to the contract terms being made by ICE Futures Europe, and to make certain conforming changes elsewhere in the Delivery Procedures.⁵

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.

⁵ Capitalized terms used but not defined herein have the meanings specified in the Delivery Procedures or, if not defined therein, the ICE Clear Europe Clearing Rules.

(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 Part CC of the Delivery Procedures to revise delivery specifications to reflect amendments being made to the relevant futures contract by ICE Futures Europe, the exchange on which it is traded. As ICE Futures Europe has announced, it is changing the name of its existing ICE Futures Europe Permian West Texas Intermediate Crude Oil Futures (“Permian WTI Contracts”) to ICE Futures Europe Midland West Texas Intermediate American Gulf Coast Crude Oil Futures (“Midland WTI Contracts”), adding the Enterprise ECHO Terminal as a delivery point for the contract and changing the crude oil quality specification to a Permian Basin originated WTI crude oil that aligns with the current quality of light sweet crude oil originating from the Permian Basin, among other changes. To maintain consistency of the Delivery Procedures with the amended contract specifications for the Midland WTI Contracts, ICE Clear Europe is proposing to amend Part CC of the Delivery Procedures to references to “ICE Futures Europe Permian West Texas Intermediate Crude Oil Futures” with “ICE Futures Europe Midland West Texas Intermediate American Gulf Coast Crude Oil Futures”, and make conforming changes in Part CC and elsewhere in the Delivery Procedures. The amendments would also provide that delivery of Midland WTI Contracts may be made out of and into the Enterprise ECHO Terminal (a crude oil storage terminal owned and operated by Enterprise) in addition to the Magellan MEH Terminal (formerly defined as “MEH”), and conforming changes would be made

throughout Part CC to refer to either or both terminals where applicable, as well as to refer to Enterprise as well as Magellan where applicable.

The amendments to Section 1 of Part CC would replace all references to Permian WTI Contracts with Midland WTI Contracts. Conforming changes would be made to all such references elsewhere in the Delivery Procedures. Section 1 would also be updated to add new definitions used in Part CC, including definitions for “Enterprise” and “Enterprise Echo Terminal”, a new definition of “Specified Terminal” (which is used to reference the relevant delivery terminal under the Contract), as well as an updated definition for the Magellan MEH Terminal. Certain definitions such as “CT” and “LPT” would also be clarified.

The amendments to Section 2.1 of Part CC would remove as inapplicable the reference to in-line transfer as a means for effecting delivery under Midland WTI Contracts, consistent with the revised contract specifications. The provision relating to tolerance of delivery into and out of the terminal would be revised to reflect relevant terminal operation by Enterprise as well as Magellan. Amendments would further provide that delivery under Contracts would be made at Enterprise ECHO Terminal and/or the Magellan MEH Terminal. Each of the Enterprise ECHO Terminal and the Magellan MEH Terminal would be a Delivery Facility for purposes of Midland WTI Contracts.

The updates to Section 2.1 would also make clear that in order to make and take delivery, the Seller and Buyer must be approved customers and have executed documentation governing such delivery process at the applicable Specified Terminal (instead of referring to Magellan-specific documentation). Conforming changes would

be made throughout Part CC. The amendments would further provide that in accordance with the Contract Terms, the Seller would be obliged to have all the required permits, licenses and authorizations to operate as a customer at the applicable Specified Terminal, and that the Buyer would be obliged to have all the required permits, licenses and authorizations to operate as a customer at both Enterprise ECHO Terminal and Magellan MEH Terminal.

Section 2.2 would be revised to describe the origin and quality of Midland WTI as Permian Basin originated West Texas Intermediate crude oil conforming to the Specifications, as described in the Contract Terms and the ICE Futures Europe Rules.

An update would be made to Section 3.1 to correct a reference to the “Rules” with “ICE Futures Europe Rules”. Similar updates would be made elsewhere in Part CC where “Rules” is used. Section 3.2 would be amended to provide that neither the Clearing House nor ICE Futures Europe would be responsible for performance of Enterprise or any person who operates the Enterprise ECHO Terminal (in addition to the existing provisions relating to Magellan or person who operates the Magellan MEH Terminal).

An update would be made to Section 3.3 to replace a reference to the “Procedures” with “Delivery Procedures”, for clarity.

In Section 4.1 an errant reference to “Buyer Contract Security” would be removed.

In Section 5, the Delivery timetable would be updated to reflect changes in the delivery process that relate to the option of delivery through the Enterprise ECHO Terminal. No changes would be made to the delivery timeline itself. The amendments

would provide that on the Notice Day, Buyers would be able to elect a preference for delivery at a Specified Terminal (or split deliveries at both Specified Terminals), however such preference would only become effective once confirmed by the Clearing House, which confirmation would be final and binding on the Buyer. The amendments would further clarify the formula for undelivered volume which factors into the Clearing House's calculation of Delivery Margin. The amendments also provide that Nominations to be submitted on Nomination Day may be submitted to Enterprise via Enterprise's ESTREAM System in addition to Magellan via Magellan's COBALT system (as applicable).

(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 Act⁶ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁷ 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 clarify the delivery procedures to conform to changes made to the renamed Midland WTI Contracts under ICE Futures Europe rules, principally to allow delivery to be made through the Enterprise ECHO

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

Terminal as well as the Magellan MEH Terminal. Changes also clarify the quality specifications for the product, consistent with the exchange rules. In all other respects, the Midland WTI Contracts will be cleared by the Clearing House in the same manner as the prior Permian WTI Contracts, 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 continue to be sufficient to support clearing of such contracts as amended 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.⁸ (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).⁹)

In addition, Rule 17Ad-22(e)(10)¹⁰ 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

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22(e)(10).

risks associated with such physical deliveries.” As discussed above, the amendments would amend the Delivery Procedures applicable to the settlement of Midland WTI Contracts in light of the addition of the Enterprise ECHO Terminal as a Delivery Facility. The procedures would revise, among other matters, quality specifications, limitation of liability for the Clearing House and ICE Futures Europe in respect of the delivery under such contracts at the relevant terminals, and documentation requirements regarding the election of the relevant terminal, consistent with the requirements of the Clearing House. Clearance of the Midland WTI Contracts would continue to 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).¹¹

(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 update the existing procedures applicable to the delivery of Midland WTI Contracts to be consistent with changes in exchange rules, principally to add an additional delivery terminal option. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost

¹¹ 17 CFR 240.17Ad-22(e)(10).

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 Act¹² and paragraph (f) of Rule 19b-4¹³ 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

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-2021-024 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-2021-024. 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 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-2021-024 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

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).