

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93845 ; File No. SR-ICEEU-2021-020)

December 21, 2021

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICE Clear Europe Liquidity Management Procedures and Investment Management Procedures

I. Introduction

On October 22, 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”),¹ and Rule 19b-4,² a proposed rule change to amend its Liquidity Management Procedures and Investment Management Procedures. The proposed rule change was published for comment in the Federal Register on November 10, 2021.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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, Exchange Act Release No. 93523 (Nov. 4, 2021); 86 Fed. Reg. 62588 (Nov. 10, 2021) (SR-ICEEU-2021-020) (“Notice”).

II. Description of the Proposed Rule Change

A. Liquidity Management Procedures

The proposed rule change would make three changes to the Liquidity Management Procedures, as described below.⁴ In addition, the proposed rule change would correct typographical errors in Section 2.4.1 and Section 2.7.2.

First, Section 2.1.1 of the Liquidity Management Procedures provides an overview of ICE Clear Europe's payment obligations and liquidity needs. Currently, this section describes three sources of payment obligations relevant to liquidity management: (i) paying variation margin; (ii) paying delivery or settlement monies when trades deliver or settle; and (iii) returning surplus Initial Margin or other margin to Clearing Members. The proposed rule change would add to this, as a fourth payment obligation, cash substitution requests by Clearing Members. ICE Clear Europe is making this change to make the list more comprehensive, by expressly taking into account cash substitution, which, as a current practice, ICE Clear Europe allows Clearing Members to request.⁵

Second, the proposed rule change would add a new section relating to special considerations for account opening. This section would provide that when ICE Clear Europe 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

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICE Clear Europe Rules, Liquidity Management Procedures, or Investment Management Procedures, as applicable.

⁵ Notice, 86 Fed. Reg. at 62588.

acknowledgement letters are obtained, and any required regulatory submissions are timely made, as appropriate. This section would provide that this process would include, for example, the opening of new accounts for futures customer funds in accordance with CFTC Rule 1.20(g).⁶

Finally, the proposed rule change would amend provisions relating to haircutting (i.e., risk-based discounting) of non-cash collateral and cash collateral in currencies other than the required currency. Section 2.3.1 currently provides that the Clearing Risk Team monitors the price of non-cash collateral and cash that is in currencies other than the required currency during the day and calls for additional Initial Margin if there is a shortfall in the value of the collateral held. The proposed rule change would amend this provision so that it is the Credit Risk Team, not the Clearing Risk Team, which monitors the price of such assets. This change is intended to correct the reference to the responsible internal team, as this monitoring practice is currently performed by the Credit Risk Team. The proposed rule change would also add that the price of such assets would be monitored during the day against the applied haircuts, as a clarification that reflects current practice. Finally, the proposed rule change would remove the statement about calling for additional Initial Margin in the event of a shortfall in the value of the collateral held. ICE Clear Europe represents that this statement would be unnecessary as it is addressed in the ICE Clear Europe Collateral and Haircut Procedures.⁷

B. Investment Management Procedures

The Investment Management Procedures set out the permitted investments and related concentration limits for ICE Clear Europe when investing or securing cash received from

⁶ 17 CFR 1.20(g).

⁷ Notice, 86 Fed. Reg. at 62588.

Clearing Members, ICE Clear Europe's contributions to the Guaranty Fund, or ICE Clear Europe's own regulatory capital. As such, the Investment Management Procedures contain a table listing investments authorized for cash from Clearing Members and ICE Clear Europe's contributions to the Guaranty Fund. This table provides, among other things, the instrument for investment and maximum issuer/counterparty concentration limits.

The proposed rule change would amend this table with respect to the maximum issuer/counterparty concentration limits for reverse repurchase agreements. Currently, the limits apply per counterparty family. Under the proposed rule change, the limits would apply per counterparty group. The proposed rule change also would add a footnote to explain 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. ICE Clear Europe represents that these updates provide additional detail about existing practices but do not reflect any change to such practices.⁸

The proposed rule change would add another table to the Investment Management Procedures that would specify the additional concentration limits for reverse repurchase agreements involving funds from customers of Futures Commission Merchants ("FCM"). For those investments, the Maximum Issuer/Counterparty Concentration Limits would be 25% of total FCM customer cash balance per counterparty group. ICE Clear Europe represents this amendment would document an existing limitation based on CFTC Rule 1.25.⁹

⁸ Notice, 86 Fed. Reg. at 62588.

⁹ 17 CFR 1.25. Notice, 86 Fed. Reg. at 62588.

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.¹⁰ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,¹¹ and Rules 17Ad-22(e)(2)(v), (e)(7), and (e)(16) thereunder.¹²

A. 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.¹³ Overall, the Commission believes that the changes to the Liquidity Management Procedures discussed above would help improve ICE Clear Europe's management of liquidity. Specifically, the Commission believes that listing cash substitution as a liquidity need, adding procedures for opening new accounts, and clarifying how the Credit Risk team monitors the price of cash denominated in other currencies and the price of non-cash assets, would help to ensure that ICE Clear Europe calculates its liquidity needs,

¹⁰ 15 U.S.C. 78s(b)(2)(C).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17Ad-22(e)(2)(v), (e)(7), and (e)(16).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

establishes new accounts, and values the price of cash in other currencies and non-cash assets in a consistent, predictable manner. Moreover, the Commission believes correcting typographical errors would help to ensure that ICE Clear Europe personnel apply the Liquidity Management Procedures in an accurate and consistent manner.

The Commission similarly believes that the proposed changes to the Investment Management Procedures discussed above, taken together, would help improve ICE Clear Europe's management of its investments. For example, the Commission believes that clarifying that the numerical concentration limits are based on total cash balance per counterparty group would help to ensure that ICE Clear Europe calculates the limits consistently on the basis of counterparty groups. Moreover, adding a specific concentration limit of 25% of total FCM customer cash balance per counterparty group for reverse repurchase agreements involving funds from customers of FCMs should help to ensure that ICE Clear Europe does not concentrate FCM customer cash in a single reverse repurchase counterparty.¹⁴ Finally, clarifying that breaches of issuer limits for reverse repurchase agreements solely due to valuation differences or operational failure/error would not be a breach of the policy would help ICE Clear Europe accommodate different valuation methodologies from a variety of repo market participants by not considering breaches resulting only from valuation differences or time delays in obtaining valuations resulting from operational errors.

In making these improvements, the Commission believes the changes discussed above would help ICE Clear Europe to better manage its liquidity and investments and thereby avoid

¹⁴ The Commission notes that ICE Clear Europe represents that this change would document an existing limitation based on CFTC Rule 1.25. See 17 CFR 1.25; Notice, 86 Fed. Reg. at 62588

losses related to its liquidity and investments. Because such losses, if realized, could impede ICE Clear Europe's operations and therefore its ability to clear and settle transactions and safeguard securities and funds, the Commission believes the proposed rule change would help to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. Moreover, the Commission believes that better of ICEEU's liquidity and investments, and avoiding losses related to such investments, could reduce the likelihood that ICE Clear Europe would need to access liquid resources provided or backed by a surviving clearing member's collateral in case of a default, and therefore would help 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.

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹⁵

B. Consistency with Rule 17Ad-22(e)(2)(v) under the Act

Rule 17Ad-22(e)(2)(v) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.¹⁶ As discussed above under Section II.A, the proposed rule change would describe certain responsibilities of the ICE Clear Europe Treasury Department when adding new accounts or amending existing accounts with counterparties. The Commission believes this change would specify a clear and direct line of

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(2)(v).

responsibility for the Treasury Department. Similarly, the proposed rule change would clarify the direct line of responsibility of the Credit Risk Team, not the Clearing Risk Team, to monitor the intraday price of non-cash collateral and cash that is in currencies other than the required currency. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(2)(v).¹⁷

C. Consistency with Rule 17Ad-22(e)(7) under the Act

Rule 17Ad-22(e)(7) generally requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by ICE Clear Europe, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.¹⁸ As discussed above, the proposed rule change would add to the Liquidity Management Procedures a fourth payment obligation, cash substitution requests by Clearing Members, which would be another liquidity need for ICE Clear Europe. The Commission believes that this additional description would help to clarify the potential liquidity needs that ICE Clear Europe would need to satisfy. Moreover, as described in the Liquidity Management Procedures, ICE Clear Europe treats non-cash collateral and cash that is in currencies other than the requirement as two sources of available liquidity, among other sources. Accordingly, the Commission believes that the changes described above, which would clarify that the Credit Risk team monitors the price of these assets during the day against the applied

¹⁷ 17 CFR 240.17Ad-22(e)(2)(v).

¹⁸ 17 CFR 240.17Ad-22(e)(7).

haircuts, would help to clarify the value of these potential sources of liquidity. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(7).¹⁹

D. Consistency with Rule 17Ad-22(e)(16) under the Act

Rule 17Ad-22(e)(16) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to safeguard its own and its 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.²⁰ The Commission believes that the changes to the Investment Management Procedures described above, in clarifying that the numerical concentration limits are based on total cash balance per counterparty group, rather than per counterparty family, would help to ensure that ICE Clear Europe consistently applies its concentration limits to groups of counterparties, in line with related ICE Clear Europe procedures. The Commission believes that this change would therefore help to ensure that ICE Clear Europe considers the risks of concentrating investments of cash in one counterparty group, and thereby would help to safeguard the investment of ICE Clear Europe's and its Clearing Members' assets. Similarly, the Commission believes that the additional concentration limit for reverse repurchase agreements involving funds from customers of FCMs would help to safeguard the assets of those customers by helping to ensure that ICE Clear Europe not concentrate FCM customer cash in a single reverse repurchase investment counterparty.²¹

¹⁹ 17 CFR 240.17Ad-22(e)(7).

²⁰ 17 CFR 240.17Ad-22(e)(16).

²¹ The Commission notes that ICE Clear Europe represents that this change would document an existing limitation based on CFTC Rule 1.25. See 17 CFR 1.25; Notice, 86 Fed. Reg. at 62588

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(16).²²

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)(F) of the Act,²³ and Rules 17Ad-22(e)(2)(v), (e)(7), and (e)(16).²⁴

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²⁵ that the proposed rule change (SR-ICEEU-2021-020) be, and hereby is, approved.²⁶

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²² 17 CFR 240.17Ad-22(e)(16).

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ 17 CFR 240.17Ad-22(e)(2)(v), (e)(7), and (e)(16).

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 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).

²⁷ 17 CFR 200.30-3(a)(12).