

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93864; File No. SR-ICEEU-2021-025)

December 23, 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 16, 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.

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 HH thereto (“Part HH”) to address new ICE Endex French PEG Natural Gas Futures

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).

and ICE Endex French PEG Natural Gas Daily Futures (each a “Contract” and together the “Contracts”), natural gas futures contracts that will be traded on ICE Endex and cleared by ICE Clear Europe. The proposed updates would also 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.

(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 HH as well as make certain conforming changes elsewhere in the Delivery Procedures. Part HH would apply to the Contracts, which are to be traded on ICE Endex and cleared at ICE Clear Europe. The amended Delivery Procedures would provide the delivery specifications and processes related to delivery under such Contracts.

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.

Delivery under the Contracts would be settled by the transfer of rights to Natural Gas at the PEG (the title transfer point in the Transmission System where the Licensed Shipper would exchange daily quantities of energy with other shippers or with one of the operators of the Transmission System in France) from a Transferor nominated by the Seller to the Clearing House and the [sic] from the Clearing House to a Transferee nominated by the Buyer. The amendments would provide that the Clearing Members grant authority to ICE Clear Europe to make Trade Nominations on their behalf in connection with deliveries under Contracts. Clearing Members would not be required to send Trade Nominations themselves. Clearing Members would also acknowledge that GRTgaz (one of the operators of the Transmission System in France) may take into consideration the Trade Nominations made by the Clearing House, and ignore Trade Nominations sent by Buyers, Sellers, Transferors and Transferees.

The amendments would further specify certain details of the delivery process for the Contracts including denominations of relevant quantity, settlement price, relevant time zones, timing of cessation of trading and certain requirements for exchange of futures for physical and swap transactions under exchange rules.

The amendments would also address the responsibilities of the Clearing House and relevant parties for delivery under Contracts, as well as certain limitations of liability for the Clearing House. Specifically, the Clearing House would not be responsible for the performance or non-performance of GRTgaz, including of its obligations under the GRTgaz Rules. Additionally, neither the Buyer, Seller nor their Transferees or Transferors would have any claim against the Clearing House for any loss, damage, cost or expense incurred as a result of (i) any actions taken by the Clearing House pursuant to

the GRTgaz Rules, or (ii) technical issues, technical measures, authorisations, limitations, prohibitions, or failures imposed on, the condition or operation of, or the performance or non-performance of the Transmission System, GRTgaz and the TRANS@actions Platform ties except as expressly provided in the ICE Endex Rules. Each of the Buyer, Seller and their Transferees or Transferors would be required to accept any consequences arising from Trade Nominations made by the Clearing House pursuant to Part HH.

The amendments would provide details related to delivery contact [sic] security, which is the delivery margin to be provided by Buyer and Seller, and which would take into account the possibility of costs or charges arising from the balancing regime under the GRTgaz Rules. The Clearing House would be permitted to alter the calculation of each of the Buyer's Security and the Seller's Security at any time or make adjustments in respect of a specific Seller or Buyer.

The amendments would include delivery timetables with detailed timeframes and descriptions of the delivery processes for delivery under Contracts, and such timetables would detail, among other processes, the time for cessation of trading, provision of Buyer's and Seller's Security, submission of delivery intentions, confirmations of intent to deliver or receive, nominations of parties to delivery [sic] or receive, delivery confirmations, invoicing, release of delivery margin and sales proceeds following completion of delivery, and other matters. The amendments would also include delivery tables with detailed times and processes relating to failed delivery under Contracts. In respect of invoicing, the amendments would detail how amounts included in invoices prepared by the Clearing House would be calculated for confirmed deliveries and failed deliveries of each Contract.

In addition, the amendments would detail the reports produced by the Clearing House in respect of each Contract and made available to Buyers and Sellers electronically.

The amendments would also update Section 5.1 of the Delivery Procedures to include ICE Endex French PEG Natural Gas Futures Contracts and ICE Endex French PEG Natural Gas Daily Futures Contracts in the list of contracts under which, subject to delivery obligations, sellers and buyers can nominate transferors and transferees.

(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 establish delivery procedures relating to ICE ENDEX French PEG Natural Gas Futures Contracts and ICE Endex French PEG Natural Gas Daily Futures Contracts, which will be traded on ICE Endex and cleared at ICE Clear Europe. The amendments would set out the role, responsibilities and liabilities of the

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

Clearing House, Clearing Members and designated transferors and transferees in the physical delivery process, in line with Delivery Procedures for other types of deliverable energy futures contracts. Contracts providing for delivery under Part HH will be cleared by the Clearing House in the substantially same manner as other types of deliverable energy futures 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 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.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 reasonably designed to, as applicable [...] establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments,

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).

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 delivery and settlement of ICE ENDEX French PEG Natural Gas Futures Contracts and ICE Endex French PEG Natural Gas Daily Futures Contracts. The procedures would address, among other matters, delivery specifications for such contracts, the obligations and roles of Clearing Members and the Clearing House, certain limitations of liability for the Clearing House, and certain other documentation and timing matters, consistent with the requirements of the Clearing House. Clearance of the 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).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 establish a new set of procedures applicable to the delivery and settlement of ICE ENDEX French PEG Natural Gas Futures Contracts and ICE Endex French PEG Natural Gas Daily Futures Contracts in connection with the listing of such contracts for

¹¹ 17 CFR 240.17Ad-22(e)(10).

trading on the ICE Endex market. ICE Clear Europe believes that such contracts would provide opportunities for interested market participants to engage in trading activity in the relevant French natural gas market. 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 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

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. Please include File Number SR-ICEEU-2021-025 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-2021-025. 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-2021-025 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

Eduardo A. Aleman
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).