

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91740; File No. SR-ICEEU-2021-011)

May 3, 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 April 28, 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)⁴ thereunder, such that the proposed rule 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 (the “Delivery Procedures”) in connection with the addition of delivery terms relating to the Ice Deliverable UK Emissions Contracts.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 amend its Delivery Procedures to add a new Part A1 regarding delivery procedures relating to a new ICE Deliverable UK Emissions Futures Contracts (“ICE Deliverable UK Emissions Contracts”), which include ICE Futures UKA Auction Contracts, ICE Futures UKA Futures Contracts and ICE Futures UKA Daily Contracts, that would be traded on ICE Futures Europe and cleared by ICE Clear Europe.

⁵ Capitalized terms used but not defined herein have the meaning specified in the ICE Clear Europe Clearing Rules (the “Rules”).

Proposed Part A1 would set out the delivery specifications and procedures for deliveries under the ICE Deliverable UK Emissions Contracts.

Proposed Part A1 would apply to ICE Deliverable UK Emissions Contracts which go to physical delivery on the expiry date and provides that deliveries under ICE Deliverable UK Emissions Contracts are effected upon (i) in the case of Seller effecting delivery, the completion of the transfer of the relevant UK Carbon Emissions Allowances, or “UKAs”, from the relevant Nominating Holding Account of the Seller to the relevant Nominating Holding Account of the Clearing House, and (ii) in the case of the Buyer taking delivery, the completion of the transfer of the relevant UKAs from the Nominating Holding Account of the Clearing House to the relevant Nominating Holding Account of the Buyer. Such delivery takes place during the Delivery Period for the relevant Emissions Contracts in accordance with the ICE Futures Europe Rules. UKAs to be delivered must conform to the specifications in ICE Futures Europe Rules and the registry through which delivery may be made.

Proposed Part A1 would address certain the responsibilities of the Clearing House and relevant parties for delivery under the ICE Deliverable UK Emissions Contracts. Routine delivery of ICE UKA Auction Contracts would be based on submission of delivery intentions via the Clearing House ECS system.

Proposed Part A1 would further specify the pricing for delivery under the ICE Deliverable UK Emissions Contracts and the method for calculation of invoices. The amendments would include delivery timetables, which would distinguish between ICE UKA Futures Contracts, the ICE UKA Daily Futures Contracts and the ICE UKA Auction Contracts.

The timetables would each include a detailed timeframe for submission of Registry Account Details, submission of delivery intentions, submission of Transfer Requests to the relevant registry, payment and release of delivery Margin (if relevant), payment and other matters. Delivery timetables would also be set out for late and failed deliveries.

Proposed Part A1 would also detail limitation of liability for the Clearing House. The Clearing House would not be liable as a result of the performance or non-performance of any Auction Seller, Auction Monitor, Administrator, GG ETS Regulator, Governmental Authority, Registry or UK Transaction Log, the validity of any UKA for purposes of meeting the requirements of the Scheme, any act or omission of any operator the Registry or UK Transaction Log or Authorised Representative of any other party, among other matters.

In addition, Proposed Part A1 would address the posting of EFPs and EFSs in respect of the ICE UKA Futures Contracts. Finally, Proposed Part A1 would also address an alternative delivery procedure in the event of a transfer request failure relating to ICE Deliverable UK Emissions Contracts other than the ICE UKA Auction Contract, pursuant to which a Clearing Member may seek agreement of the Clearing House to make or take delivery beyond the point of failure on terms other than those required under ICE Futures Europe Rules.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁶ 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 are designed to facilitate the clearing of a new physically settled UK emissions contracts that are being launched for trading by the ICE Futures Europe exchange. The amendments would set out the obligations and roles of Clearing Members and the Clearing House. ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such contract (and to address physical delivery under such contract) and to manage the risks associated with such contract. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the Contract as set out in the proposed Delivery Procedures amendments, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁷ (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).⁸)

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

In addition, Rule 17Ad-22(e)(10)⁹ requires that each covered clearing agency 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 to the Delivery Procedures relating to the delivery and settlement under the ICE Deliverable UK Emissions Contracts and ICE Futures Europe exchange contract terms would set out the obligations and roles of Clearing Members and the Clearing House. The amendments would also adopt relevant procedures for such deliveries, which would facilitate identifying, monitoring and managing risks associated with delivery.

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

ICE Clear Europe does not believe the proposed rule changes 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 Delivery Procedures in connection with the listing of the ICE Deliverable UK Emissions Contracts on the ICE Futures Europe market. ICE Clear Europe believes that such contracts would provide opportunities for interested market participants to engage in trading activity in the UK emissions 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 in Contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing

⁹ 17 C.F.R. 240.17Ad-22(e)(10).

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 Act¹⁰ and paragraph (f) of Rule 19b-4¹¹ 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:

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 C.F.R. 240.19b-4(f).

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-2021-011 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-2021-011. 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-2021-011 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).