

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91775; File No. SR-ICEEU-2021-012)

May 5, 2021

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ICEEU Transition of the Rates Used for Calculating Price Alignment Amounts

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 29, 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 Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(1) thereunder⁴ 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

ICE Clear Europe Limited (“ICEU”) proposes to change the interest rates used for computing CDS Price Alignment Amounts. These revisions do not require any changes to the ICEU Clearing Rules (the “Rules”) or CDS Procedures (the “CDS Procedures”).⁵

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)(1).

⁵ Capitalized terms used but not defined herein have the meanings specified in the

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

ICEU proposes to change the interest rates used for computing CDS Price Alignment Amounts on CDS Notional Margin Balances under paragraph 3 of the CDS Procedures. The target date of the transition is Monday, June 14, 2021, subject to any regulatory review or approval process. On the transition date, ICEU would begin calculating price alignment amounts for Euro (“EUR”) denominated instruments using the Euro Short-Term Rate (“€STR”) rather than the Euro Overnight Index Average (“EONIA”) and for U.S. Dollar (“USD”) denominated instruments using the Secured Overnight Financing Rate (“SOFR”) rather than the Effective Federal Funds Rate (“EFFR”). Such changes do not require any revisions to the ICEU Rules or CDS Procedures or other written policies and procedures. In accordance with section 3.1 of the ICEU CDS Procedures, the CDS Price Alignment Amount is based upon the applicable

Rules or the CDS Procedures.

overnight rate notified by the Clearing House from time to time to CDS Clearing Members for each of the currencies in which Mark-to-Market Margin is paid.

The proposed changes are in response to requests by industry participants and follow similar changes for other cleared swap products. The European Central Bank's ("ECB") working group on EUR risk-free rates recommended €STR as the EUR risk-free rate and the replacement for EONIA in September 2018.⁶ The ECB began publishing €STR in October 2019 and the working group is assisting the market in transitioning to €STR before EONIA is discontinued on January 3, 2022.⁷ The Alternative Reference Rates Committee ("ARRC") was convened by the Federal Reserve Board and the Federal Reserve Bank of New York and identified SOFR as the rate representing best practice for use in certain new USD derivatives and other financial contracts in 2017.⁸ The ARRC published a transition plan including specific steps and timelines to encourage the adoption of SOFR.⁹

Feedback from market participants has indicated a desire for one-time adjustment payments to or from the Clearing Member ("CM"), as appropriate, to account for the reasonably expected valuation changes for Contracts associated with the use of the new

⁶ Additional information on the working group and the transition to €STR is available at: https://www.ecb.europa.eu/paym/interest_rate_benchmarks/WG_euro_risk-free_rates/html/index.en.html.

⁷ Id.

⁸ Additional information on the ARRC and transition to SOFR is available at: <https://www.newyorkfed.org/arrc>.

⁹ Id.

interest rates. ICEU proposes to calculate such one-time adjustment payments to or from the CM, as appropriate, and to make the corresponding payments to and collections from CMs.

Proposed Transition Process

On the transition date, ICEU proposes to begin using the new rates for calculation of price alignment amounts. CDS denominated in EUR will stop using EONIA and will start using €STR, and CDS denominated in USD will stop using EFFR and will start using SOFR. The target transition date at the time of this filing is Monday, June 14, 2021, but may be delayed by ICEU. Any revised transition date will fall on a Monday to maintain the proposed operational process and will be publicized by ICEU. The €STR and SOFR rates available on Monday, June 14, 2021 will be applied to CDS Notional Margin Balances of Friday, June 11, 2021 for the determination of the first day of price alignment amounts using the new rates.

In connection with the transition of the rates, ICEU proposes to calculate one-time adjustment amounts and pay or collect, as appropriate, such amounts to or from CMs to account for the reasonably expected valuation changes associated with the use of the new interest rates. In calculating the adjustment amounts, ICEU will use the following methodology that has been subject to substantial discussion and feedback from market participants.

One-Time Adjustment Methodology

The proposed one-time adjustment methodology is set out as follows:

- ICEU will obtain implied hazard term structures by using the end-of-day (“EOD”) settlement values and the near EOD discount rate term structure for

the rate being replaced (EFFR for USD denominated and EONIA for EUR denominated products) in the ISDA CDS standard model (fair value).

- For single name Contracts, the EOD prices of the nine benchmark tenors will be used to create the corresponding implied hazard rate term structure. Standard industry recovery rates will also be used except for distressed names where the standard recovery rate cannot result in a consistent hazard rate term structure. In such case, a recovery rate will be used that is close to the standard recovery rate that can result in a consistent hazard rate term structure.
- For index Contracts, the implied hazard rates for the tenors available for clearing will be used to create an implied hazard rate term structure. Based on feedback requesting that ICEU include the 3-year tenor of iTraxx Crossover and CDX High Yield index in determining the hazard rate term structure, ICEU has been collecting daily prices for these instruments even though they are not clearing eligible. ICEU will review the reasonability of the price collection with its CDS Product Risk Committee near the transition date to determine whether to use these tenors in determining the hazard term structures for iTraxx Crossover and CDX High Yield indexes.
- ICEU will calculate an adjusted EOD valuation using the implied hazard rate term structure and the replacement discount rate term structure (e.g., SOFR for USD and €STR for EUR denominated products).
- The EOD valuation less the adjusted EOD valuation will be the adjustment amount.

- EOD London snapshots of EONIA and €STER interest rate curves and EOD New York snapshots of EFFR and SOFR interest rate curves published by ICE Data Services will be used for the discount rate term structures ¹⁰.

Operational Process

ICEU has defined the operational process for the one-time adjustment payments and corresponding collections. ICEU will include the ad-hoc adjustments in CM EOD processing on Monday, June 14, 2021, which will be netted with other cash payments to determine Monday, June 14, 2021 EOD CM margin calls to be paid Tuesday, June 15, 2021. ICEU will provide CMs and clients with position level adjustment details after EOD Friday, June 11, 2021 and prior to Monday, June 14, 2021. ICEU will allow CMs to allocate adjustments at the level of individual house or client accounts. The proposed approach is intended to enable clients to reconcile adjustments they may receive from their CMs. Further, ICEU will provide CMs and clients the opportunity to review and consume relevant files as part of pre-transition simulations. One simulation was completed for March 26, 2021, and ICEU plans to hold future simulations closer to the transition date.

Market Participant Engagement and Outreach

The proposed transition has been discussed and coordinated by ICEU with market participants, as well as with ICE Clear Credit, to achieve an orderly and efficient

¹⁰ The proposed methodology, which has been subject to substantial discussion and feedback from market participants, has also been coordinated with ICE Clear Credit LLC (“ICE Clear Credit”). Based on feedback that the clearing houses should seek to achieve congruent adjustment amounts for positions at ICEU and ICE Clear Credit, EOD valuations for North American products will be taken from ICE Clear Credit’s EOD process during its North American pricing window.

transition to the new rates. ICEU has sought feedback from and engaged with market participants to determine the proposed approach throughout 2020 and 2021, including through the CDS Product Risk Committee and the ISDA Credit Steering Committee. In relation to CDS valuations, feedback has indicated a desire for one-time adjustment payments to account for the reasonably expected valuation changes associated with the use of the new interest rates. The proposed one-time adjustment methodology, among other details, has been subject to substantial discussion and feedback from market participants.

As discussed below, ICEU has issued a public Consultation on the proposed approach on April 8, 2021 via a circular¹¹ and made available on its website further details on the proposed transition¹².

(b) Statutory Basis

ICEU believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹³ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.¹⁴ In particular, Section 17A(b)(3)(F) of the

¹¹ ICEU Circular 2021/055 on the Proposed change to Mark-to-Market Margin Interest Rates, dated April 8, 2021, is available at: https://www.theice.com/publicdocs/clear_europe/circulars/C21055.pdf.

¹² A detailed presentation on the proposed transition is in the presentation located here: https://www.theice.com/publicdocs/ice/notifications/adhoc/110000348161/ICE_CDS_Clearing_PriceAlignmentTransition_20210324_v1.3_final.pdf

¹³ 15 U.S.C. 78q-1.

¹⁴ 17 CFR 240.17Ad-22.

Act¹⁵ requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICEU, the safeguarding of securities and funds in the custody or control of ICEU or for which it is responsible, and the protection of investors and the public interest. As described above, the proposed rule change would transition the interest rates used for computing price alignment amounts and is in response to requests by industry participants in connection with the broader transition in the derivatives markets to the use of SOFR and €STR in lieu of existing interest rate benchmarks. The proposed transition would include one-time adjustment payments to be made to or from CMs to account for the reasonably expected valuation changes associated with the use of the new rates. The proposed transition has been discussed and coordinated by ICEU with market participants to achieve an orderly and efficient transition to the new rates. In ICEU's view, the proposed approach reduces uncertainty in respect of the transition and the potential impact of the interest rate benchmark reforms and reduces the potential for market disruption given the industry outreach and operational testing done by ICEU. As such, the proposed rule change is consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds the custody or control of ICEU or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.¹⁶

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ Id.

The amendments would also satisfy relevant requirements of Rule 17Ad-22.¹⁷ Rule 17Ad-22(e)(2)(i), (iii) and (v)¹⁸ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; support the public interest requirements of Section 17A of the Act¹⁹ applicable to clearing agencies, and the objectives of owners and participants; and specify clear and direct lines of responsibility. The proposed changes are in response to requests by industry participants. Such changes to transition the rates used for computing price alignment amounts on CDS Notional Margin Balances, including one-time adjustment payments to account for the reasonably expected valuation changes associated with the use of the new interest rates, were determined in accordance with ICEU's governance process. ICEU believes that the proposed approach reduces uncertainty in respect of the transition and the potential impact of the benchmark reforms and reduces the potential for market disruption given the industry outreach and operational testing done by ICEU. ICEU's governance process allows multiple stakeholders to provide input and feedback regarding such proposed rule changes. ICEU has sought feedback from and engaged with market participants on the transition and the proposed approach is a product of the aforementioned consultation and

¹⁷ 17 CFR 240.17Ad-22.

¹⁸ 17 CFR 240.17Ad-22(e)(2)(i), (iii) and (v).

¹⁹ 15 U.S.C. 78q-1.

governance processes. As such, ICEU believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(2)(i), (iii) and (v).²⁰

Rule 17Ad-22(e)(4)(ii)²¹ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. The proposed rule change does not require any changes to ICEU's Rules or written policies and procedures, including ICEU's risk management methodology, model, or practices. Moreover, the proposed transition, including the approach and timing, has been discussed and coordinated by ICEU with market participants to promote an orderly and efficient transition to the new rates. ICEU will continue to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad-22(e)(4)(ii).²²

²⁰ 17 CFR 240.17Ad-22(e)(2)(i), (iii) and (v).

²¹ 17 CFR 240.17Ad-22(e)(4)(ii).

²² Id.

Rule 17Ad-22(e)(17)²³ requires, in relevant part, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls; and (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. ICEU has defined the operational process and considerations for the proposed transition, including the one-time adjustment payments. ICEU has publicized its process and planned for a pre-transition simulations to promote preparedness among itself and market participants. Such actions enhance ICEU's ability to identify relevant sources of operational risk and mitigate their impact in respect of the proposed transition and to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. ICEU believes that the proposed transition is appropriately designed to reduce operational complexity and sufficiently coordinated among ICEU and market participants to achieve an orderly and efficient transition to the new rates. The proposed rule change is thus consistent with the requirements of Rule 17Ad-22(e)(17).²⁴

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

ICEU does not believe the proposed rule change would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The proposed changes are in response to requests by industry participants in the

²³ 17 CFR 240.17Ad-22(e)(17)(i)-(ii).

²⁴ Id.

context of the broader transition in interest rate benchmark rates and follow similar changes for other cleared swap products. Such changes are designed to transition the interest rates used for computing price alignment amounts on CDS Notional Margin Balances and include one-time adjustment payments to account for the reasonably expected valuation changes associated with the use of the new interest rates. ICEU has sought feedback from and engaged with market participants on the transition and the proposed approach is a product of the aforementioned consultation and governance processes. The proposed rule change will apply uniformly across all market participants. ICEU does not believe the changes would adversely affect the ability of market participants to continue to clear contracts. ICEU also does not believe the changes would adversely affect the cost of clearing or otherwise limit market participants' choices for selecting clearing services. Therefore, ICEU does not believe the proposed rule change would impose any burden on competition not necessary or 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 Act²⁵ and paragraph (f) of Rule 19b-4²⁶ 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. Please include File Number SR-ICEEU-2021-012 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.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 C.F.R. 240.19b-4(f)(1).

All submissions should refer to File Number SR-ICEEU-2021-012. 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-2021-012 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.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).