

**SECURITIES AND EXCHANGE COMMISSION**  
(Release No. 34-92652; File No. SR-ICEEU-2021-014)

August 12, 2021

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Clearing Membership Policy and Clearing Membership Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 2, 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. On August 11, 2021, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1 (hereafter referred to as the “proposed rule change”), from interested persons.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Partial Amendment No. 1 amended the filing to delete from the filed Exhibit 5B, Clearing Membership Procedures, certain statements in sections 2.4.1 and 2.4.2 of such Procedures concerning the termination of clearing membership by a Clearing Member. Specifically, ICE Clear Europe proposes to remove the statements that it will define a minimum notice period and may publish a Circular confirming that a Termination Notice has been issued, because the appropriate minimum notice period and requirements for publishing a Circular are set forth in existing Clearing Rule 209, which is not proposed to be amended.

**I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change**

ICE Clear Europe proposes to adopt a new Clearing Membership Policy (the “Policy”) and new Clearing Membership Procedures (the “Procedures”, and collectively with the Policy, the “Documents”). The revisions would not involve any changes to the ICE Clear Europe Clearing Rules.<sup>4</sup>

**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 adopt the new Policy and Procedures to consolidate and summarize its existing clearing membership criteria and to document certain existing processes and procedures concerning the membership application process.

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<sup>4</sup> Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the “Rules”).

### Clearing Membership Policy

ICE Clear Europe is proposing to adopt the new Policy which would describe its clearing membership criteria (which are set forth in full detail in the Rules). The Policy would not change existing membership criteria. The Policy would also address related processes for assessing applicants for membership, variations of permissions and termination of membership.

The Policy would describe clearing membership criteria, starting with a description of the objectives, which accounts for membership risk and ensures that such risks are properly managed and that admission criteria is non-discriminatory, transparent and objective to ensure fair and open access, as well as consistent with relevant regulatory requirements. The Policy would describe how these objectives are met through setting and monitoring appropriate membership criteria, establishing a due diligence process and requiring notifications regarding changes to Clearing Member business. The core clearing membership criteria, including holding sufficient capital, being a party to a Clearing Membership Agreement and others, would be summarized in the Policy (with the full criteria set out in Rule 201 and the CDS Procedures).

The Policy would provide that ICE Clear Europe has established processes for clearing membership application, permission variations and clearing membership termination which are set out in further detail in the Procedures. The Policy would also address monitoring in respect of membership criteria, including periodic in-depth counterparty reviews, periodic review of financial positions and use of its counterparty rating system, maintenance of a watch list, requiring an annual member return, and other operational monitoring.

The Policy would also provide arrangements for breach management, ongoing reviews and exception handling. This section is consistent with other ICE Clear Europe policies and governance processes. In particular, it would provide that (i) the document owner would be responsible for ensuring that documents remain up-to-date and are reviewed in accordance with the Clearing House's governance processes, (ii) the document owner would report material breaches or unapproved deviations from the Framework to their Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who would determine if further escalation would be made to relevant senior executives, the Board and/or competent authorities, and (iii) exceptions to the Policy would be approved in accordance with the Clearing House's governance process for the approval of changes to such document.

### Procedures

The Procedures would describe in further detail the processes for reviewing applications for clearing membership, variations of membership permissions, on-going monitoring and membership termination. The objective would be to establish a due diligence process to ensure applicants meet ICE Clear Europe membership criteria and, once members, provide notifications of any changes to their business that could impact their ability to meet the criteria.

The Procedures would describe the Clearing Member application process, the consideration by relevant ICE Clear Europe departments, the process for approval or rejection of applications by the Executive Risk Committee under authority delegated by the Board and the right to appeal to the Board, additional membership conditions or criteria that the Clearing House may, at its discretion, require prior to approval and

additional information requests that ICE Clear Europe may make during the application process. The Procedures would also describe the process for a Clearing Member to obtain membership to a different membership class and the procedure through which a Clearing Member may resign or be terminated by the Clearing House (both of which would be in accordance with Rule 209).

The Procedures would detail the core membership requirements, which would include minimum capital requirements as well as a description of additional financial requirements ICE Clear Europe may impose and of certain aspects of the calculation of member capital, including the use of subordinated debt and controller guarantees where approved by ICE Clear Europe and the disallowance of certain assets from the calculation. The Procedures also reference Guaranty Fund contributions for CDS and F&O clearing services, including replenishments in the event of application of the funds; the margin-to-capital ratio requirement; (iv) default management capabilities; and (v) EOD price submissions (for CDS Clearing Members only) as required by the CDS EOD Price Discovery Policy.

The Procedures would further provide for a description of ongoing monitoring which would include: (i) periodic review of the financial position and compliance with the relevant membership requirements of each Clearing Member ; (ii) quarterly review of Clearing Member capital situation and monthly review of FCM/BD Clearing Members; (iii) the quarterly counterparty rating system report, which aggregates risk factors covering credit, market price, liquidity and operational risk for each Clearing Member; (iv) the watch list highlighting Clearing Members with special risk situations; (v) annual member returns pursuant to which Clearing Members must provide certain information to

ICE Clear Europe; (vi) daily monitoring of Clearing Member performance in relation to fulfilment of obligations to cover cash payments, margin collateral and Guaranty Fund contributions as well as delivery obligations.

The Procedures would also set out the same governance requirements as those described above with respect to the Policy.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act<sup>5</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>6</sup> 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 Documents are intended generally to more clearly document and consolidate the Clearing House's criteria for admitting and monitoring Clearing Members. In ICE Clear Europe's view the new documentation would facilitate implementation of the Clearing House's existing membership criteria as well as ongoing risk management with respect to Clearing Members by the Clearing House through monitoring of their particular situations. These amendments would therefore promote overall Clearing House risk management and facilitate the prompt and accurate clearing of cleared contracts and protect investors and the public interest in the

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<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

sound operations of the Clearing House, consistent with the requirements of Section 17A(b)(3)(F).<sup>7</sup> Further, the amendments will not affect the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, within the meaning of Section 17A(b)(3)(F).

The proposed amendments to the Documents are further consistent with the risk management requirements of Rule 17Ad-22(e)(3)(i)<sup>8</sup> as they relate to clearing membership. As noted above, the amendments would formalize and consolidate membership application and monitoring processes to ensure that Clearing Members meet admission criteria upon initial membership and continue to meet such criteria throughout their membership. The amendments will facilitate the Clearing House's ability to manage the potential risks posed by such Clearing Members.

Rule 17Ad-22(b)(7)<sup>9</sup> requires clearing agencies to provide the ability to obtain membership to persons that maintain net capital equal to or greater than \$50 million,

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 17 CFR 240.17Ad-22(e)(3)(i) - (ii). The rule states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: [m]aintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which:

(i) Includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually;”

<sup>9</sup> 17 CFR 240.17 Ad-22(b)(7). The rule states that “[a] registered clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to:

...

(7) Provide a person that maintains net capital equal to or greater than \$50 million

providing such persons can comply with other reasonable membership standards and that any net capital requirements be scalable so that they are proportional to the risks posed by the member's activities to the clearing agency. The Procedures do not change ICE Clear Europe's existing membership and minimum capital standards in this regard, but more clearly document those requirements and the process for monitoring compliance. The amendments are thus consistent with Rule 17Ad-22(b)(7).<sup>10</sup>

Rule 17Ad-22(e)(2)(i) and (v)<sup>11</sup> requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The proposed Documents clearly define the roles and responsibilities of the document owner, the Head of Department, the senior members of the Risk Oversight Department and the senior members of the Compliance Department, consistent with governance arrangement for

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with the ability to obtain membership at the clearing agency, provided that such persons are able to comply with other reasonable membership standards, with any net capital requirements being scalable so that they are proportional to the risks posed by the participant's activities to the clearing agency; provided, however, that the clearing agency may provide for a higher net capital requirement as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application.”

<sup>10</sup> 17 CFR 240.17 Ad-22(b)(7).

<sup>11</sup> 17 CFR 240.17 Ad-22(e)(2). The rule states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:  
(2) Provide for governance arrangements that:  
  
(i) Are clear and transparent...  
  
(v) Specify clear and direct lines of responsibility...”

other ICE Clear Europe policies and procedures. ICE Clear Europe believes that the amendments to the Documents are therefore consistent with the requirements of Rule 17Ad-22(e)(2)(i) and (v).<sup>12</sup>

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

ICE Clear Europe does not believe the proposed Documents would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The Documents are not changing existing membership criteria and would apply uniformly to all Clearing Members. As a result, ICE Clear Europe does not believe the amendments would affect the cost of clearing for Clearing Members or other market participants, the market for cleared services generally or access to clearing by Clearing Members or other market participants, or otherwise affect competition among Clearing Members or market participants in a manner not necessary or appropriate in furtherance of the purposes 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 Documents have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it

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<sup>12</sup> 17 CFR 240.17 Ad-22(e)(2).

finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **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](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2021-014 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-2021-014. 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-2021-014 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.<sup>13</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).