

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92786; File No. SR-ICEEU-2021-010)

August 27, 2021

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Granting Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the Clearing Rules, Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures, and General Contract Terms

I. Introduction

On May 13, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its Clearing Rules (the “Rules”),<sup>3</sup> Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures, and General Contract Terms (collectively, the “Amended Documents”) to make various updates and enhancements. The proposed rule change was published for comment in the Federal Register on June 2, 2021.<sup>4</sup> The Commission did not receive comments regarding the proposed rule change. On June 16, 2021, ICE Clear Europe filed Partial Amendment No. 1 to the

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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> Capitalized terms used but not defined herein have the meanings specified in the Rules.

<sup>4</sup> Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the Clearing Rules, Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures and General Contract Terms, Exchange Act Release No. 92020 (May 26, 2021), 86 Fed. Reg. 29612 (June 2, 2021) (SR-ICEEU-2021-010) (“Notice”).

proposed rule change.<sup>5</sup> Partial Amendment No. 1 to the proposed rule change was published for comment in the Federal Register on July 21, 2021.<sup>6</sup> The Commission did not receive comments regarding Partial Amendment No. 1 to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter the “proposed rule change”).

## II. Description of the Proposed Rule Change

ICE Clear Europe proposes specific changes to the Amended Documents that would generally make various drafting improvements, clarifications, and updates, in each case as described below.<sup>7</sup> These changes are organized below according to each Amended Document.

### A. The Rules

#### i. Removal of “Default Portability Preference” in the Rules

ICE Clear Europe proposes to remove the process by which Non-FCM/BD Clearing Members may deliver a “Default Portability Preference,” with advance, pre-default, porting information to ICE Clear Europe. Currently, the Default Portability Preference allows a

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<sup>5</sup> ICE Clear Europe filed Partial Amendment No. 1 to update Exhibit 5D, the Delivery Procedures, to correct a formatting error that resulted in the omission of several proposed definitions to update references to ICE Clear Europe systems.

<sup>6</sup> Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Partial Amendment No. 1 and Designation of Longer Period for Commission Action on Proposed Rule Change Relating to the Clearing Rules, Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures, and General Contract Terms, Exchange Act Release No. 92418 (July 15, 2021), 86 Fed. Reg. 38521 (July 21, 2021) (SR-ICEEU-2021-010).

<sup>7</sup> The following description of the proposed rule change is substantially excerpted from the Notice.

Customer or Specified Principal (*i.e.*, a principal-client for an Individually Segregated Sponsored Account) to specify, in advance of a default, one of more preferred Transferee Clearing Members to receive its Customer-CM Transactions under ICE Clear Europe’s Default Portability Rules. ICE Clear Europe represents that it developed this process and preference mechanism as part of its default planning processes prior to post-financial crisis legislation coming into effect, such as the European Market Infrastructure Regulation (“EMIR”).<sup>8</sup> Given that EMIR requires post-default porting notices to be served as a pre-condition to porting, ICE Clear Europe proposes to replace its current pre-default portability preference structure with a post-default portability preference structure using “Porting Notices,” as discussed below.

To implement this change, ICE Clear Europe proposes to delete the existing definitions of “Default Portability Preference” and “Non-Transfer Positions” in Rule 101 (Definitions), and to add a new definition of “Porting Notice” in Rule 101, which would cross-reference the existing definition of the term in the relevant Standard Terms of the Rules. The existing definition of “Porting Notice” would not change, and is generally defined in the Standard Terms as a post-default notification to ICE Clear Europe from a Customer or Sponsored Principal of a porting preference to a designated Transferee Clearing Member.

In Rule 904 (Transfer of Contracts and Margin on a Clearing Member Event of Default), the proposed rule change would amend Rules 904(g) and 904(j) to remove the existing references to Default Portability Preference and replace them with references to Porting Notices. In addition, the proposed rule change also would amend Rule 904(g) to provide that a Transferee

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<sup>8</sup> Notice, 86 Fed. Reg. at 29612.

Clearing Member's consent can only be evidenced in a Porting Notice that is countersigned by such Clearing Member or otherwise agreed in writing. ICE Clear Europe represents that this change would clarify that simply being named by a customer as a potential Transferee Clearing Member is not sufficient to evidence a Clearing Member's consent to being named a Transferee Clearing Member by the Clearing Member's customer.<sup>9</sup> ICE Clear Europe proposes additional changes in Rules 904(m), 904(p), 904(u) and 904(w) to reflect the proposed deletion of Default Portability Preference.

In Rule 907(d), the proposed rule change would delete existing references to Default Portability Preference and Non-Transfer Positions, and would instead provide that in connection with porting, ICE Clear Europe will be entitled to rely on any information provided to it by a Defaulter prior to declaration of default in respect of Contracts, Customer-CM Transactions, Margin, and the Accounts in which Contracts and Margin were recorded or which relate to particular Customers or particular groups of Customers. ICE Clear Europe represents that this proposed change would allow it to continue to be able to act efficiently in default scenarios, and rely on more of the relevant information available to it in relation to the Defaulter.<sup>10</sup> The proposed rule change to Rule 907(b) would also clarify that ICE Clear Europe has no obligation to inquire of any person as to any Porting Notice.

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<sup>9</sup> Notice, 86 Fed. Reg. at 29613.

<sup>10</sup> Notice, 86 Fed. Reg. at 29613.

The proposed rule change would also remove references to Default Portability Preferences and include reference to Porting Notices in the CDS Standard Terms (paragraph 6), F&O Standard Terms (paragraph 6) and FX Standard Terms (paragraph 6) annexed to the Rules.

ii. Amendments to the definitions relating to Energy transactions

The proposed rule change would amend certain definitions relating to Energy transactions to simplify and make such terms consistent with previous amendments to definitions for other F&O Products.<sup>11</sup> Specifically, in Rule 101, the proposed rule change would shorten the existing definition of the term “Energy” to refer to the term “Market” rather than naming all specific ICE markets. The proposed rule change would also introduce new definitions of the terms “Energy Matched Transaction” (referencing an energy transaction conducted on a Market) and “Energy Transaction” (covering an Energy Matched Transaction or an Energy Block Transaction meeting specified criteria).

iii. EFRP (exchange for related positions) definition amendments

ICE Clear Europe proposes several changes to the Rules to address more clearly exchange for related position transactions, referred to as EFRPs, under applicable Market rules, including to revise defined terms and clarify that such transactions are available on exchanges for products other than soft commodities.

In Rule 101, the proposed rule change would add a new “EFRP” definition using a similar drafting structure to that for EFP (exchange for physicals) and EFS (exchange for swaps)

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<sup>11</sup> See Exchange Act Release No. 34-87275 (File No. SR-ICEEU-2019-020) (Oct. 10, 2019), 84 Fed. Reg. 55649 (Oct. 17, 2019) (changes to definitions using the term Market).

transactions by including the phrase “or any similar transaction under any Market Rules.” Also, the proposed rule change would clarify the current definition of “EFS” in Rule 101 to refer only to exchange for swaps or similar transactions under Market Rules and to remove an existing reference to exchange for related positions, which would instead be covered by the proposed EFRP definition. In the “Financials & Softs Block Transaction” definition, the proposed rule change would broaden the reference to “Soft Commodity EFRPs” to include all EFRPs under all Market Rules, as Soft Commodity EFRPs are specific to ICE Futures Europe. Accordingly, the proposed rule change would delete the “Soft Commodity EFRP” definition which is not otherwise used.

iv. Amendments to product termination rules

The proposed rule change would amend Rule 105(a) to shorten the termination period (generally from four months to one month) for a service withdrawal for a product in circumstances in which there is no open interest in the relevant Set. ICE Clear Europe represents that a longer termination period is unnecessary in such circumstances, since no action is required by Clearing Members to close out their positions.<sup>12</sup> The proposed amendments to Rule 105(a) would also clarify that where a product termination occurs following actions of the relevant exchange (*e.g.*, a de-listing), the notice period required under the exchange’s rules would instead apply and the exchange would be responsible for providing such notice.

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<sup>12</sup> Notice, 86 Fed. Reg. at 29613.

v. Amendments to the termination rules for Clearing Members

ICE Clear Europe proposes amendments to Rule 209(d) to facilitate membership terminations in the context of a corporate group reorganization where a new Clearing Member that is an Affiliate will be receiving the terminating Clearing Member's Open Contract Positions. In such context, the proposed amendment would establish an exception to the requirement for terminating Clearing Members to immediately pay to ICE Clear Europe, upon service of a Termination Notice, Assessment Contributions equal to three times the required relevant guaranty fund contribution. ICE Clear Europe represents that such an exception is warranted since all positions would be received by an affiliated Clearing Member in good standing that would remain liable with respect to any obligations arising from or related to the holding of such positions under the Rules (including as to future Assessment Contributions).<sup>13</sup>

The proposed rule change would further amend Rule 209(d) to clarify that references in the Clearing Rules to Assessment Contributions being called or to Guaranty Fund Contributions being replenished or applied, where the Clearing Member has provided Permitted Cover to ICE Clear Europe (whether under Rule 209(d) or prior to the Clearing Member serving its termination notice or the Termination Date), would be interpreted as a reference to that Permitted Cover being applied. The proposed rule change would also clarify that the Permitted Cover which has been provided by the Clearing Member prior to the serving of a termination notice or a Termination Date could, as is currently intended, also be included as part of, for example, any applications of Guaranty Fund by ICE Clear Europe under Part 9 or Part 11.

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<sup>13</sup> Notice, 86 Fed. Reg. at 29613.

The proposed amendments to Rule 209(d) would further clarify for the avoidance of doubt that the following obligations would apply to a terminating Clearing Member until Open Contract Positions have been closed, the Termination Date has passed, and all Guaranty Fund Contributions have been returned under Rule 1102(g): application of Guaranty Fund Contributions, application of Assessment Contributions (to the extent paid under Rule 209(d) or otherwise prior to the Termination Date), position limits under Part 6, disciplinary actions under Part 10, and the declaration and consequences of an Event of Default under Part 9 of the Rules.

ICE Clear Europe represents that the foregoing proposed amendments to Rule 209(d) reflect its experience with both default planning and recent Clearing Member terminations involving group reorganizations.<sup>14</sup>

vi. Amendments to Notice provisions

ICE Clear Europe represents that the proposed changes regarding the delivery of notices under the Rules have been informed by default simulation planning and, in particular, the requirements around default notices under Rule 901, but are not limited to that context.<sup>15</sup> Specifically, the proposed rule change would amend Rules 113(a) and 113(a)(i) to delete the current references to telephone as a valid mode of service of notices (since ICE Clear Europe represents that this is not supported operationally) and to replace such references with email.<sup>16</sup>

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<sup>14</sup> Notice, 86 Fed. Reg. at 29614.

<sup>15</sup> Notice, 86 Fed. Reg. at 29614.

<sup>16</sup> Notice, 86 Fed. Reg. at 29614.



Accordingly, under the proposed rule change, the email address last notified to ICE Clear Europe by a Clearing Member would become an option for service of notices. The proposed addition of new Rule 113(a)(ii) would clarify that ICE Clear Europe may also validly deliver notices to a process agent nominated by the Clearing Member to act as its agent. Rule 113(e) currently refers to such agents for service of process, and would be expanded under the proposed rule change to explicitly refer to service of other contractual notices and communications. The proposed amendments to Rule 113(a) would further clarify that delivery in accordance with this section would be deemed made to the Clearing Member or Sponsored Principal, as well as to an agent appointed by the Clearing Member or Sponsored Principal.

The proposed rule change would also amend Rules 113(c) and 113(d) to clarify the precise time when effective service is deemed to be made for communications by fax, email, and courier, and that effective service and delivery can be achieved outside of opening hours on a business day, consistent with current operational practices.

Similarly, the proposed rule change would amend Rule 1901(n) to clarify that process agents for Sponsored Principals will act as agents for service of process of any notice, order, or other communication under the Rules and the Sponsored Principal Agreement.

ICE Clear Europe proposes to amend Part E of the summary table at paragraph 4.2 of the Membership Procedures to provide that the termination of a Clearing Membership Agreement or membership as a Clearing Member would become effective no less than 30 Business Days after the date of the Termination Notice Time or pursuant to Rule 917(c) instead of the current notice period of no less than three months' advance notice if termination is not for cause and otherwise as specified in and allowed pursuant to the Rules. This change would make the summary table

consistent with current Rule 209. Finally, throughout the summary table at paragraph 4.2 of the Membership Procedures, the proposed rule change would update the email address to which Clearing Members should send certain notifications.

vii. Clarifying Clearing Membership Criteria and Clearing Member Obligations

The proposed rule change would amend Rule 201(a)(ix) to reference existing Rule 201(b), under which ICE Clear Europe may require that potential Clearing Members enter into additional annexes or agreements to the Clearing Membership Agreement in order to be, and remain, eligible for Clearing Membership. ICE Clear Europe represents that it had to develop certain annexes to cater for local law issues arising in certain EU member states as part of Clearing Members' post-Brexit group legal structuring.<sup>17</sup> By specifically referencing Rule 201(b), the proposed amendments to Rule 201(a)(ix) would clarify the basis in the Rules for ICE Clear Europe to require such additional documentation to be executed, where necessary.

The proposed rule change would also amend Rule 202(a)(xxii), which currently requires Clearing Members to have competent persons accessible to ICE Clear Europe during opening hours and for two hours immediately after the business day. Under the proposed amendment, Clearing Members would be required to have competent persons accessible to ICE Clear Europe for two hours prior to the start of the business day as well. ICE Clear Europe represents that this

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<sup>17</sup> Notice, 86 Fed. Reg. at 29614.

change is consistent with current operational practice and necessary to ensure that staff are available to process and deal with questions relating to morning margin calls.<sup>18</sup>

ICE Clear Europe proposes to add a new Rule 301(o) that would allow it to request information on account balances of nominated accounts of the Clearing Member at financial institutions when needed, including for the purpose of calling on available cash where the Clearing Member has failed to meet a payment obligation or determining whether the Clearing Member is, or is likely to be, in default. ICE Clear Europe represents that this change would address issues that have arisen in practice where payment banks have refused to provide such information to ICE Clear Europe.<sup>19</sup>

viii. Greater flexibility in financial reporting by Clearing Members

The proposed rule change would amend Rule 205(a)(ii) to give ICE Clear Europe greater flexibility to accept different kinds of financial statements (for example, semi-annual accounts) from Clearing Members as part of their financial reporting obligations, in circumstances where that Clearing Member does not produce a quarterly financial statement for its regulators. This amendment would also result in a conforming change to Part A of the summary table at paragraph 4.2 of the Membership Procedures. ICE Clear Europe represents that these proposed amendments would formalize current operational practice for those Clearing Members who do not prepare regulatory quarterly financials.<sup>20</sup>

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<sup>18</sup> Notice, 86 Fed. Reg. at 29614.

<sup>19</sup> Notice, 86 Fed. Reg. at 29614.

<sup>20</sup> Notice, 86 Fed. Reg. at 29614.

ix. Clarifying CDS Contract formation

The proposed rule change would amend Rule 401(o) to clarify that, where a CDS Contract of a Non-FCM/BD Clearing Member for a customer account arises pursuant to Rule 401, a Customer-CM CDS Transaction arises between the Customer and the Non-FCM/BD Clearing Member at the same time as the Contract. The current rule does not specify the timing of the Customer-CM CDS Transaction. The proposed amendment would reflect the equivalent rule for a Customer-CM F&O Transaction in Rule 401(n).

x. Clarifying how open contract positions are aggregated and netted

The proposed rule change would amend Rules 406(b) and (c) to address contractual netting for F&O contracts by aligning the provisions for F&O Contracts more closely with the corresponding rule provisions on contractual netting for CDS contracts in Rule 406(d), *et seq.* In particular, the proposed changes would expressly address aggregation of open contract positions of an F&O Clearing Member in addition to netting of such positions, and would clarify that the process for aggregation or netting takes place via contractual novation.

xi. Clarifying how the Clearing House may amend Contract Terms

The proposed rule change would amend Rule 409(a) so that ICE Clear Europe can evidence its consent to amendments, waivers, and variations of the Contract Terms by a Circular. ICE Clear Europe represents that a Circular has been the usual way of issuing such amendments, waivers, and variations, and the proposed change would conform the Rules to operational practice.<sup>21</sup>

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<sup>21</sup> Notice, 86 Fed. Reg. at 29615.

xii. Pledged collateral not for settlement payments

The proposed rule change would amend Rule 1603(c) to clarify that only “original” or “initial” types of Margin payments shall be provided in the form of Pledged Collateral, and that such collateral excludes Variation Margin, Mark-to-Market Margin, and FX Mark-to-Market Margin, which is provided to or by ICE Clear Europe by outright transfer of cash as a settlement payment. ICE Clear Europe represents that this proposed change is intended to be consistent with amendments previously made to the Rules to clarify that such variation and mark-to-market margin are settlement payments rather than collateral, and was inadvertently omitted from such prior amendments.<sup>22</sup>

xiii. Hedging following an Event of Default

The proposed rule change would amend Rule 903(c) to clarify that ICE Clear Europe’s right to authorize hedging transactions in a Default scenario would include transactions on a Market, any other Exchange, or over the counter. The proposed amendments would also provide that such transactions taking place on an exchange which is not a Market, or where requested or directed otherwise by ICE Clear Europe, need not themselves be cleared.

xiv. Affiliate cross-defaults

The proposed rule change would amend Rule 901(a)(iv) to clarify that the declaration of an Event of Default in respect of one Clearing Member is a circumstance in which ICE Clear Europe can declare an Event of Default in respect of another Clearing Member that is a Group

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<sup>22</sup> See Notice, 86 Fed. Reg. at 29615. See also Exchange Act Release No. 34-88665 (File No. SR-ICEEU-2020-003) (Apr. 16, 2020), 85 Fed. Reg. 22892 (Apr. 23, 2020).

Company, *i.e.*, a parent or a subsidiary entity of such Clearing Member. ICE Clear Europe represents that this proposed clarification addresses questions raised in default planning exercises.<sup>23</sup>

xv. “Eligible contract participant” status

The proposed rule change would amend Rule 201(a)(xx) to provide that the requirement for a Clearing Member to be an “eligible contract participant”<sup>24</sup> only applies if it is to be a CDS Clearing member or an FX Clearing member. The amendment reflects that such status is required under applicable U.S. law for persons that trade swaps and security-based swaps (such as CDS), but not for futures.<sup>25</sup> Similarly, the proposed rule change would amend Section 10 of the F&O Standard Terms to remove a requirement that an F&O Clearing Member and Customer be an eligible contract participant. The proposed rule change would also amend Rule 1901(b)(xv) and Rule 1901(d)(ix) to provide that the requirement for a Sponsored Principal to be an eligible contract participant only applies in relation to CDS Contracts and FX Contracts.

xvi. Corrected names of internal risk committees

The proposed rule change would amend Rule 916(d) to change the term “Risk Committee” to “relevant product risk committee.” ICE Clear Europe represents that this change

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<sup>23</sup> Notice, 86 Fed. Reg. at 29615.

<sup>24</sup> Commodity Exchange Act Section 1a(18), 7 U.S.C. 1a(18).

<sup>25</sup> See Section 6(l) of the Act, 15 U.S.C. 78f(l); Commodity Exchange Act Section 2(e), 7 U.S.C. 2(e).

reflects that there are different product risk committees addressing topics specific to F&O and CDS.<sup>26</sup>

xvii. Clarifications relating to negative EDSP

The proposed rule change would amend the definition of “Exchange Delivery Settlement Price” or “EDSP” in Rule 101 (Definitions) to clarify, for the avoidance of doubt, that the EDSP can be a positive or negative number, or zero. The proposed rule change would amend Rule 703(b) (Delivery) by adding new language to clarify the process for payment obligations if the EDSP is a negative number. In such event, amended Rule 703(b) would provide that the roles of the Buyer and Seller as set forth in the Rules, Delivery Procedures, Contract Terms, and Market Rules shall be reversed solely in respect of the payment obligation related to that EDSP.

xviii. Prospectus Directive

The proposed rule change would amend Rule 1501 (Definitions) in Part 15 (Credit Default Swaps) of the Rules to change the definition of “Prospectus Directive” to “Prospectus Regulation,” because the EU Prospectus Directive has been repealed and replaced with the Prospectus Regulation. The proposed rule change would also make conforming changes to the following definitions: “Offer to the Public,” by replacing the obsolete term “Prospectus Directive” with “Prospectus Regulation”; “Relevant Member State,” by using a new defined term “Relevant State” that would remove the current reference to the Prospectus Directive and add the phrase “or the United Kingdom”; and “Securities,” by replacing the current references to the Prospectus Directive with a reference to the Prospectus Regulation. Similarly, the proposed

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<sup>26</sup> Notice, 86 Fed. Reg. at 29615.

rule change would delete the definition of “2010 PD Amending Directive” (and references thereto) as this directive is also no longer in force. Additional conforming changes would be made in Rule 1503 to remove obsolete legislative references to the Prospectus Directive.

xix. Updates for changes to applicable anti-money laundering law

The proposed rule change would amend Rule 101 (Definitions) by updating the definition of the term “Money Laundering Directive” to reflect the implementation of the fifth EU Anti-Money Laundering Directive. The proposed rule change would also add a new definition of “Money Laundering Regulations” to reference the applicable UK regulations corresponding to that Directive, including after its exit from the European Union.

In Rule 201(a)(xxix) (Clearing Membership Criteria) and Rule 1901(d)(xi) (Attaining status of a Sponsored Principal), the proposed rule change would remove the existing references to “simplified due diligence.” ICE Clear Europe represents that this change reflects the repeal and restatement of the U.K.’s former Money Laundering Regulations 2007 pursuant to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, which removed simplified due diligence as the default option for a defined list of entities and replaced it with discretionary risk-based levels of due diligence.<sup>27</sup>

The proposed rule change also would amend Rule 201(a)(xxxi) to add anti-money laundering laws to the existing list of applicable laws that are required to be acceptable to ICE Clear Europe in the respective jurisdictions of Clearing Members. The proposed rule change would add a new Rule 201(a)(xxxiii) to require Clearing Members to have adequate policies,

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<sup>27</sup> Notice, 86 Fed. Reg. at 29617.



procedures, systems, and controls relating to Applicable Laws, including relating to anti-money laundering and the prevention of financial crime. The proposed rule change would make similar amendments to Rules 202(a)(xii) and 1901(m) to update references to relevant laws, clarify that the Clearing Member is required to make certain representations and warranties to ICE Clear Europe with respect to the matters in those subsections, require the Clearing Member to have the necessary authority from customers and others to disclose the necessary information about beneficial owners in order to comply with requirements under Applicable Laws, and to retain copies of documents required to be retained under anti-money laundering laws.

Similarly, the proposed rule change would amend Rule 1607 (Additional FCM/BD Requirements for Customer Transactions) by adding a new clause (g) to require FCM/BD Customers to obtain the authority from “beneficial owners” to disclose information necessary for anti-money laundering due diligence to the Clearing Member and ICE Clear Europe. The proposed rule change would add similar new requirements to the CDS Standard Terms in clause 3(q), F&O Standard Terms in clause 3(r), and FX Standard Terms in clause 3(q).

xx. Introduction of a Summary Disciplinary Process and Other Disciplinary Process Updates

The proposed rule change would amend the Rules to introduce new Rule 1008, which would provide ICE Clear Europe with the authority to issue a summary fine to a Clearing Member under certain conditions, and to make certain minor drafting improvements to the disciplinary process provisions of the Rules. ICE Clear Europe represents that the new authority to issue a summary fine would be consistent with the authority to issue summary fines provided under the rules of other ICE exchanges for which ICE Clear Europe provides clearing services. ICE Clear Europe further represents that it intends to introduce a more streamlined sanctioning

process for clear-cut and minor rules violations, rather than subjecting such violations to the formal and more cumbersome proceedings of a disciplinary committee.<sup>28</sup> To implement such changes, ICE Clear Europe proposes a number of specific changes as described below.

In Rule 101 (Definitions), the proposed rule change would amend the definition of “Appeal Panel” to include a reference to the new Summary Disciplinary Process, and would add a new definition of “Summary Disciplinary Process.” In Rule 102 (Interpretation), the proposed rule change would amend Rule 102(j) to refer to new Rule 1008 in the context of disciplinary proceedings under the Rules. The proposed rule change would amend Rule 102(p) to add language that any Disciplinary Panel, Summary Disciplinary Committee, or Appeal Panel appointed pursuant to Part 10 of the Rules (Disciplinary Proceedings) would be able to exercise discretion in the same way as ICE Clear Europe under Rule 102(p). In Rule 1005(c), the proposed rule change would make a related amendment to delete the word “exclusive” before the word “discretion” with respect to the Appeal Panel given the proposed changes to Rule 102(p).

ICE Clear Europe proposes other amendments in the Rules to implement the new Summary Disciplinary Process. Specifically, the proposed rule change would amend Rule 1002(i) (Investigations) to replace existing language with a new reference to the proposed Summary Disciplinary Process under Rule 1008. Current Rule 1002(i) provides that ICE Clear Europe may order that a Clearing Member pay a fine which ICE Clear Europe decides in its discretion is commensurate with a breach of the Rules, which fine is appealable directly to the Appeal Panel. As revised, Rule 1002(i) would provide that ICE Clear Europe may impose

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<sup>28</sup> Notice, 86 Fed. Reg. at 29618.

sanctions pursuant to the Summary Disciplinary Process under Rule 1008. The proposed rule change would amend Rule 1003(b) (Disciplinary Proceedings) to add a new sentence that ICE Clear Europe must also establish a Disciplinary Panel where so required by an Appeal Panel pursuant to Rule 1005(a)(iii)(Appeals) or Rule 1008(h) (Summary Disciplinary Process).

Proposed new Rule 1005(g) would be added to state that Rule 1005 applies as the appeal process concerning an imposed sanction pursuant to the Summary Disciplinary Process under Rule 1008.

The proposed rule change would add new Rule 1008 (Summary Disciplinary Process) to set out the summary disciplinary process that ICE Clear Europe may adopt against a Clearing Member, which process would clarify the situations in which the new process may apply, the sanctioning power of the Summary Disciplinary Process, and the process by which ICE Clear Europe would conduct the Summary Disciplinary Process. Specifically, ICE Clear Europe may apply the proposed Summary Disciplinary Process in relation to: the late filing or submission of any document, notice or information; the late making of any payment; any failure to record a Contract in the correct Account; the late making or taking of any delivery; any breach of Rule 202(a)(xix) (participation in default management simulations, new technology testing and other exercises); any breach of Rule 503(g) (the submission of end-of-day prices relating to Sets of CDS Contracts required of Clearing Members to aid in the establishment of Mark-to-Market Prices); any breach of a position limit under Part 6 of the Rules; any breach of any provision of the Rules or Procedures that ICE Clear Europe considers to be of a factual nature where ICE Clear Europe holds sufficient evidence of such facts; any breach of any provision of the Rules or Procedures that ICE Clear Europe considers to be minor in nature; or any breach of the Rules or

Procedures which ICE Clear Europe considers would be appropriately addressed by the Summary Disciplinary Process.

Proposed Rule 1008 would limit sanctions to the following: issuance of a private warning or reprimand naming the Clearing Member or a Clearing Member Customer, client or Representative; a fine of up to £50,000; or any combination of the foregoing. Proposed Rule 1008 would also specify the process of imposing any sanction, including the notice process by ICE Clear Europe, the opportunity for a Clearing Member to appeal, the grounds for appeal and the actions the appeal panel may take (*i.e.*, to affirm, vary or revoke a sanction). Proposed Rule 1008 also would allow ICE Clear Europe to provide further guidance by way of Circular in relation to the operation of, or procedures for, the Summary Disciplinary Process.

#### xxi. Other Updates

The proposed rule change would make a number of other drafting enhancements, clarifications, and improvements throughout the Rules, primarily in the definitions.

In Rule 101 (Definitions), the proposed rule change would add a new definition of “Acceptance Time,” which is defined to mean: “(i) in relation to a CDS Contract, the ‘Acceptance Time’ (as defined in the CDS Procedures); or (ii) in relation to an FX Contract, the ‘FX Acceptance Time’ (as defined in the FX Procedures).” The proposed definition would ensure definitional consistency with respect to specifying the applicable time for the acceptance of such Contracts for clearing by ICE Clear Europe, and clarify the meaning of certain undefined references to such term in the Rules, *e.g.*, in Rule 1204 (Variations to or Cancellation of Transfer Orders) and in paragraph 10 (Reliance on CDS Trade Particulars and submissions to Deriv/SERV) of the Standard Terms exhibits annexed to the Rules. In the definition of

“Applicable Law,” the proposed rule change would add “direction” to the list of included types of Applicable Law, and also would add a reference to the “FSMA,” which is an existing defined term that means the UK’s Financial Services and Markets Act 2000 that ICE Clear Europe unintentionally omitted from the existing “Applicable Law” definition. In the “Clearing Organisation” definition, the proposed rule change would add a reference to “securities clearing agency” to ensure that the defined term includes securities clearing agencies regulated by the Commission. In the definition of “Defaulter,” the proposed rule change would clarify that the defined term refers to a person in respect of whom an Event of Default has occurred, rather than a person in respect of whom a Default Notice has been issued. The proposed rule change would add a new definition of “FINRA,” to mean the U.S. Financial Industry Regulatory Authority, Inc., or any successor thereto, as the term FINRA is currently used in the existing definition of “Regulatory Authority” without clear definition. In the definition of “Regulatory Authority,” the proposed rule change would add a reference to the “National Futures Association.” The proposed rule change would amend the definition of “Original Margin” to clarify that buyer’s security, seller’s security and delivery Margin would all be included within the scope of the term. The proposed rule change would amend the definition of “Rule Change” expressly to include changes to Contract Terms, and would revise the existing cross-reference to Rule 109 (Alteration of Rules, Procedures, Guidance and Circulars) to reflect that it is not the sole provision governing the process for Rule Changes. In the definition of “Segregated Customer,” the proposed rule change would make typographical corrections. The proposed rule change also would amend the definitions of “Transferee” and “Transferor” to clarify that the subject of a transfer or delivery is a Deliverable, as such term is currently defined in the Rules.

The proposed rule change would amend Rule 201(a)(v) (Clearing Membership Criteria) to change an erroneous singular phrase “Contract is” to the plural “Contracts are.” The proposed rule change would amend Rules 304(a)(ii)(A), 304(a)(ii)(B), and 1901(e) regarding Sponsored Principals to correctly reference the term “Nominated Bank Account” in place of the current term “Nominated Account.”

The proposed rule change would amend Rule 401(g) (Formation of Contracts) to reflect that under existing practice and as stated and assumed elsewhere in the Rules (*e.g.* Rule 906, Clearing Procedures), Clearing Members can have multiple Proprietary Position Accounts. The proposed rule change would amend Rule 406(a) (Open Contract Positions) to remove an erroneous reference to the legacy term “Clearing Processing System” and replace it with the correct defined term “ICE System.”

The proposed rule change would amend Rule 904(b) (Transfer of Contracts and Margin on a Clearing Member Default) to change an incorrect term “Market-to-Market Value” to the correct defined term “Mark-to-Market Price.” Similarly, the proposed rule change would amend Rule 905(g) (Termination and close out of Contracts on a Clearing Member Event of Default) to delete a reference to “Market-to-Market Value” as well as the unused term Reference Price. In Rule 905(b)(ix), the proposed rule change would make a grammatical change to reflect that there may be multiple Defaulters rather than just one. The proposed rule change would amend Rule 908(i) (Application of Assets upon an Event of Default) to correct existing typographical errors and an incorrect cross-reference. The proposed rule change would amend clause (ii) of Rule 908(i) to reflect that the applicable modifications would be set out in the Default Auction Procedures as opposed to a Circular. In the definition of “MTM/VM” in Rule 913(a)(xxxii), the

proposed rule change would amend the existing language to reflect that MTM/VM is transferred to, rather than held as a deposit by, the Clearing House. The proposed rule change would delete the definition of “Product Termination Amount” in Rule 913(a)(xxxviii) as this term is already defined in existing Rule 916. The proposed rule change would amend Rule 913(a)(lviii) to clarify, for the avoidance of doubt, that amounts payable in respect of transfers are included in the definition of “Transfer Cost.” The proposed rule change would amend Rule 915(e) (Partial Tear-Up) to correctly reference all categories of mark-to-market or variation margin for all product categories. The proposed rule change would amend Rule 916(i) to clarify that Guaranty Fund and Assessment contributions due pursuant to Rule 916(i) are subject to the provisions of Rule 917 (Cooling-off period and Clearing Member termination rights), including the limitations thereon during a Cooling-off Period. The proposed rule change would amend Rule 918(d) to refer to any Event of Default rather than multiple Events of Default. The proposed rule change would also incorporate references to Rules 916 (Contract Termination following Certain Conditions or Under-priced Auction) and 918 (Termination of membership) into Rule 1102(g) (Clearing Members’ Contributions) to reflect that these Rules could apply in certain cases to determine the return of Guaranty Fund Contributions.

The proposed rule change would delete Rule 1901(d)(vi), because the referenced Council Directive has been repealed. As a result, the proposed rule change would renumber subsequent provisions and update cross-references in other provisions.

The proposed rule change would correct a typographical error in the title of Part 23, Rules for Market Transactions. The proposed rule change would make other typographical and

drafting corrections in various provisions of the Rules, including 102(q), 202(a)(xxi), 203(a)(xx) and 504(c)(vi).

The proposed rule change would amend Part 3(b) of the F&O Standard Terms to more clearly state that Customer-CM F&O Transactions would arise in accordance with Part 4 of the Rules. This change would align with the drafting used in the other Standard Terms.

The proposed rule change would amend Rule 1607(d)(iii), CDS Standard Terms 7(iii), F&O Standard Terms 7(iii) and FX Standard Terms 7(iii) to refer to “Personal Data” rather than “Personal Data of its Data Subjects.” This change would eliminate unnecessary language.

#### B. Clearing Procedures

The proposed rule change would amend paragraph 1.1(a) of the Clearing Procedures to remove existing references to the PTMS/ACT systems, because they are legacy systems that ICE Clear Europe represents that it no longer uses.<sup>29</sup> ICE Clear Europe proposes to replace them with a reference to ICE FEC, which is a new defined term in the Delivery Procedures that means “the single user interface used by the Clearing House offering functions to view and manage trades, transfers, allocations and claims.” The proposed rule change would amend paragraphs 1.1(f) and 3.1(c) of the Clearing Procedures to remove the definitions of MFT and ECS, respectively, as these terms would now be defined in the Delivery Procedures.

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<sup>29</sup> Notice, 86 Fed. Reg. at 29617.



### C. Finance Procedures

The proposed rule change would amend the Finance Procedures in Part 4 (Assured Payment System: Accounts), paragraphs 4.1(a)(i) and (iv) and 4.4(a)(i) and (iv), concerning the account requirements for members to reflect that ICE Clear Europe clears both EUR and USD denominated CDS contracts; accordingly, all CDS Clearing Members are required to have both EUR and USD accounts and would no longer be required to have a GBP account.

The proposed rule change would amend paragraph 6.1(i)(ix) of the Finance Procedures to clarify that the additional margin requirement that applies where payment of variation or mark-to-market margin is made in a currency other than the contractual currency would apply on a Currency Holiday. ICE Clear Europe represents that this reflects current practice.<sup>30</sup>

The proposed rule change would also update and correct the committee references in the Finance Procedures. Specifically, ICE Clear Europe proposes to change the references in paragraph 14(2) and 14(3) from the CDS Risk Committee and FX Risk Committee to “CDS Product Risk Committee” and “FX Product Risk Committee,” respectively. The proposed rule change would also make similar changes throughout the CDS Procedures where “CDS Risk Committee” is currently used.

The proposed rule change would make amendments to paragraphs 3.10, 3.11, 3.21 and 4.5 in the Finance Procedures to remove clarify that the terms MFT and ECS would now be defined in the Delivery Procedures.

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<sup>30</sup> Notice, 86 Fed. Reg. at 29617.

The proposed rule change would amend paragraph 15.4(b) of the Finance Procedures by deleting an outdated reference to the Continuing CDS Rule Provisions, which are no longer in effect.

#### D. Delivery Procedures

##### i. Anti-Money Laundering

The proposed rule change would add new paragraph 1.1(d) to the Delivery Procedures to obligate Clearing Members to conduct appropriate anti-money laundering due diligence for any transferors and transferees and provide relevant documentation to ICE Clear Europe and/or the Clearing Member. The proposed amendments to paragraphs 5.4 and 5.5 of the Delivery Procedures would add language to clarify that transferors and transferees that are customers would be bound by the F&O Standard Terms, including with respect to delivery of information, and also to clarify that transferors and transferees are not customers of ICE Clear Europe for purposes of relevant anti-money laundering laws and other Applicable Law.

##### ii. Updates to ICE Clear Europe systems

The proposed rule change would add new definitions in the Delivery Procedures to “ECS,” “MFT,” “ICE FEC,” and “MPFE” to ensure there are consistent references to ICE Clear Europe systems in the various Amended Documents. The proposed rule change would define the term “ECS” to mean “the extensible clearing system that provides functionality for position maintenance (including close-outs), options exercise and delivery, in addition to cash and collateral management for the Clearing House (or any successor system).” The proposed rule change would define the term “MFT” to mean “the managed file transfer system through which the Clearing House provides access to all clearing reports and data files.” The proposed rule

change would define the term “ICE FEC” to mean “the single user interface used by the Clearing House, offering functions to view and manage trades, transfers, allocations and claims.” The proposed rule change also would define the term “MPFE” to mean “the futures expiry report generated by the Clearing House.”

Similarly, the proposed rule change would remove existing references to the legacy ICE System Crystal throughout the Delivery Procedures and replace them with new references to ECS, MFT, and ICE FEC, which are the systems that ICE Clear Europe now uses. Similarly, the proposed rule change would delete Delivery Documentation Summaries and form references throughout the Delivery Procedures where ECS has replaced the manual submission of forms to ICE Clear Europe. Specifically, these changes would be made in Part B (ICE Gasoil Futures), Part D (ICE Futures UK Natural Gas Contracts), Part F (ICE Endex TTF Natural Gas Contracts), Part G (ICE Endex Gaspool Natural Gas Contracts), Part H (ICE Endex NCG Natural Gas), Part I (ICE Endex ZTP Natural Gas Contracts), Part N (ICE Deliverable US Emissions Contracts), Part Q (Financials & Softs White Sugar Contracts), Part U (Financials & Softs Gilt Contract) and Part Z (Equity Futures/Options).

### iii. Other Updates

ICE Clear Europe proposes changes to the Delivery Procedures to update various operational practices and to make other updates and drafting improvements.

The proposed rule change would add a new paragraph 7 to the Delivery Procedures to reference the alternative delivery procedure for Emission Contracts as set out in paragraph 7 of Part A of the Delivery Procedures (ICE Endex Deliverable EU Emissions Contracts). Subsequent

paragraphs would be renumbered and conforming amendments to cross-references would be made.

The proposed rule change would amend Part A (ICE Endex Deliverable EU Emissions Contracts) of the Delivery Procedures to change existing references to “Account,” which is no longer a defined term in the Delivery Procedures, to the defined term “Registry Account.” The proposed rule change would amend the defined term “Contract Date.” Under the current definition, “Contract Date” means, for an ICE Endex EUA, an individual Business Day on which (a) trading commences, (b) trading ceases, and (c) the Delivery Period commences for those trades executed on that Business Day. The proposed rule change would delete clause (c) of the current definition because ICE Clear Europe found it was redundant in light of clauses (a) and (b). ICE Clear Europe represents that the term “Contract Date” is only used in connection with daily contracts, and in that context, only one daily contract is available at a time, and so the date on which trading commences and trading ceases sufficiently defines the Contract Date. The proposed rule change also would delete Section 9.3 (ICE EUA and EUAA Auction Contracts), because Part A no longer references auction contracts.

The proposed rule change would also amend paragraph 7 (Emissions Alternative Delivery Procedure (“EADP”)) in Part A following the entry into an EADP Agreement (*i.e.*, an agreement to adopt an EADP) by a Clearing Member and ICE Clear Europe. In such event, paragraph 7.3 currently provides that the existing Contract would be liquidated on the basis of the Exchange Delivery Settlement Price. Under paragraph 7.3 as revised, the existing Contract would no longer be liquidated, but instead would be dealt with in the manner specified in the EADP. If the existing Contract were to be liquidated under the EADP, this would be done on the

basis of the Exchange Delivery Settlement Price. Delivery under the EADP Agreement would be subject to the requirements set out in the entirety of paragraph 7 instead of just paragraph 7.3. The proposed rule change also would amend paragraph 7.5 with respect to the timing and process for addressing a Failed Delivery. Current paragraph 7.5 provides that in the event that the Clearing Member and ICE Clear Europe are unable to enter into an EADP Agreement or effect delivery under EADP by the close of business on the Business Day following the day of the Failed Delivery, ICE Clear Europe will refer the matter to ICE Endex and Invoice Back affected Contracts and may itself, begin disciplinary proceedings, levy a fine, call additional Margin or declare an Event of Default. The proposed amendments to paragraph 7.5 would provide that the Clearing Member and ICE Clear Europe would have a reasonable period of time after the Failed Delivery to enter into an EADP Agreement or effect delivery under the EADP, rather than by the close of business on the Business Day following the day of the Failed Delivery, before ICE Clear Europe may refer the matter to the relevant exchange. The proposed amendments to paragraph 7.5 also would provide that ICE Clear Europe will consider in its discretion what other reasonable next steps it should take, if any. As an example, ICE Clear Europe may decide to take one of the currently listed actions, but would not be limited by such list and would not be required to Invoice Back affected Contracts.

The proposed rule change would delete Part M (ICE Endex German Power Futures), because these contracts have been delisted from the relevant exchange. The proposed rule change also would delete outdated references to ICE OTC Contracts in Part N (ICE Deliverable US Emissions Contracts (Bilateral Delivery)), as revised.

In Part U (Financials & Softs Gilt Contracts), the proposed rule change would add a new paragraph 2 (Failed Settlement and Non-Delivery of Stock) to establish a procedure to address the Seller's non-delivery of securities under a Financials & Softs Gilt Contract, including the actions ICE Clear Europe may take to promote settlement in accordance with the contract terms and the requirements of the CREST central securities depository, as well as the express allocation of the costs of such steps to the Clearing Member who failed to make delivery. New paragraph 2.1 in amended Part U would address ICE Clear Europe's procedure to address the Seller's partial delivery of available Gilts and the resulting partial settlement between the Buying Clearing Member and the Selling Clearing Member. ICE Clear Europe represents that these proposed provisions are intended to reflect existing practices and to provide consistency with the corresponding provisions of the Delivery Procedures for other contracts, including Part Z (Equity Futures/Options).

In Part Z, the proposed rule change would make various updates to reference the correct settlement facilities and relevant settlement details and settlement procedures for Equity Futures/Options Contracts. Specifically, the proposed rule change would amend paragraph 1.4 (Deliverable Equities) to clarify the treatment of corporate events relating to underlying securities by reference to the relevant Exchange corporate action policy and the relevant contract terms. The proposed rule change also would amend the provisions in paragraph 2.3 (Partialling) and paragraph 3 (Failed Settlements and Non-Delivery of Stock) to clarify the processes for dealing with partial deliveries and failed deliveries, including the steps that ICE Clear Europe may take to facilitate delivery, the rights and responsibilities of the buying clearing member with respect to onward deliveries under other contracts, and the allocation of costs to clearing

members. The proposed rule change would amend paragraph 2.4 (Daylight Indicator) to clarify that ICE Clear Europe may in its discretion decide to accept, or not to accept, any request for daylight settlement. In paragraph 3.1 (Buying In Summary Timetable), the proposed rule change would make various drafting clarifications and improvements.

In Part FF (ICE Futures New York Harbour Ultra Low Sulphur Diesel Futures, ICE Futures Europe New York Harbour Ultra Low Sulphur Heating Oil Futures), the proposed rule change would amend the first table with respect to the receipt of documents by ICE Clear Europe by removing the statement that in the event of non-availability of any of the listed delivery documents, Seller may substitute a letter of indemnity in favor of the Buyer.

Finally, the proposed rule change would make various drafting clarifications, typographical corrections, and updates to defined terms and cross-references throughout the Delivery Procedures.

#### E. CDS Procedures

##### i. List of Eligible Single Name Reference Entities

The proposed rule change would amend paragraph 11.4 of the CDS Procedures (Modifications to List of Eligible Single Name Reference Entities). Paragraph 11.4 gives ICE Clear Europe the ability to make certain modifications to its list of Eligible Single Name Reference Entities, subject to consultation with the CDS Product Risk Committee. Currently, upon making any such modifications, ICE Clear Europe must give notice by Circular. The proposed rule change would amend this provision such that upon making any changes, ICE Clear Europe would be required to update certain relevant information relating to CDS Contracts on its website, rather than giving notice by Circular of such actions. ICE Clear Europe represents that it

discusses changes to the list of eligible reference entities prior to implementation with the Trading Advisory Group, which has weekly meetings to which trader representatives of CDS Clearing Members are invited. Members of the Trading Advisory Group are also notified by email of changes to reference obligations. In addition, ICE Clear Europe represents that its Operations Working Group discusses changes to clearing reference obligations prior to implementation, and the Operations Working Group has weekly meetings to which operational personnel of CDS Clearing Members are invited. Once agreed, ICE Clear Europe would reflect the changes on the cleared product website on the date they are made eligible or modified, in accordance with amended paragraph 11.4. Given these procedures, ICE Clear Europe believes that CDS Clearing Members will have sufficient information about changes in reference obligations and that the current requirement of a circular is unnecessary.

ii. Allow Clearing Members to Nominate Affiliates

ICE Clear Europe proposes to amend paragraph 4.4(f) of the CDS Procedures by adding a new sentence to specify that a CDS Clearing Member could designate an Affiliate that is also a CDS Clearing Member to accept CDS Contracts in lieu of the designating Clearing Member for CDS Contracts arising as a result of the existing CDS end-of-day pricing process pursuant to Rule 401(a)(xi). Similarly, the proposed rule change would amend paragraph 11.5 of the CDS Procedures (Self-referencing CDS) to allow a CDS Clearing Member to designate an Affiliate to accept transactions arising out of the existing auction process to be used in the case of self-referencing CDS transactions. ICE Clear Europe represents that this change reflects existing practice for CDS Clearing Members, as documented in certain arrangements between ICE Clear



Europe and certain CDS Clearing Members allowing this to take place, but was unintentionally omitted from the CDS Procedures.<sup>31</sup>

iii. CDS Clearing Member sign-off of weekly cycles

The proposed rule change would amend Section 3 of the CDS Procedures regarding margin. Specifically, ICE Clear Europe proposes to add a new paragraph 3.5 to the CDS Procedures to require CDS Clearing Members to provide sign-off via email on weekly cycles by a specified time and day. This change would document existing operational processes.<sup>32</sup>

F. Membership Procedures

i. Deadlines for Financial Statements

The proposed rule change would amend the summary table at paragraph 4.2 of the Membership Procedures to extend the deadline for submitting financial statements from 30 to 45 days after the relevant period so that the deadline aligns with other regulatory reporting deadlines, such as the UK's Financial Conduct Authority (FCA) deadlines.

ii. Adjustments to Clearing Member capital requirements

The proposed rule change would make a number of changes to the Membership Procedures to implement the Basel III standard for Clearing Member capital. First, the proposed rule change would amend paragraph 3.3. Paragraph 3.3 provides a definition of the term "Capital" with respect to a Non-FCM/BD Clearing Member. This definition currently provides that capital, as a general matter, includes fully-paid ordinary and preference share capital,

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<sup>31</sup> Notice, 86 Fed. Reg. at 29616.

<sup>32</sup> Notice, 86 Fed. Reg. at 29616.

retained reserves and, for some purposes and subject to limits, subordinated debt that is perpetual or repayable on 5 years or more notice. The proposed rule change would amend this definition to instead provide that capital, as a general matter, includes fully-paid ordinary and preference share capital, retained reserves and, for some purposes and subject to limits, subordinated debt that is perpetual or repayable with more than one year outstanding.

The proposed rule change would amend paragraph 3.5(a) of the Membership Procedures to lower, from the current 50% to the proposed 25%, the portion of a Clearing Member's Capital requirement that may be covered by subordinated loans before ICE Clear Europe would require a written undertaking from the Clearing Member to not repay subordinated loans without its consent. ICE Clear Europe represents that this proposed change would align the Clearing Member capital requirement more closely with Basel III requirements, under which subordinated debt may be used, to an upper limit of 25%.<sup>33</sup>

The proposed rule change also would amend paragraph 3.5 of the Membership Procedures to remove irrevocable letters of credit as a potential method that Clearing Members or Sponsored Principals may use to satisfy capital requirements, and to add a new paragraph 3.5(c) to give ICE Clear Europe authority to, at its discretion, require a Clearing Member to post additional cash or collateral in addition to the normal margin requirements. ICE Clear Europe represents that these proposed changes in capital requirements would promote greater

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<sup>33</sup> Notice, 86 Fed. Reg. at 29616-29617.

consistency with its existing operational implementation of capital requirements for Clearing Members.<sup>34</sup>

#### G. Complaint Resolution Procedures

ICE Clear Europe proposes to make various clarifications and changes throughout the Complaint Resolution Procedures, including to address typographical errors and promote consistency with its Rules.

Specifically, the proposed rule change would amend paragraph 1.1 to reframe the Complaint Resolution Procedures based on ICE Clear Europe's obligations as a CCP under EMIR.<sup>35</sup> Throughout the procedures, the proposed rule change would replace references to the term "Complaints Resolution Procedure" with the plural term "Complaint Resolution Procedures" to correct a typographical error and for consistency with the term used in Rule 101.

The proposed rule change would amend paragraph 1.1 to use the defined term "Person" (which is defined in Rule 101) rather than "person," with conforming changes throughout the Complaint Resolution Procedures. The proposed rule change also would amend paragraphs 1.1 and 1.2 to provide for an independent "Commissioner," who is responsible for the investigation of complaints generally, and for the appointment of an "Investigator" to investigate a particular

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<sup>34</sup> Notice, 86 Fed. Reg. at 29616-29617.

<sup>35</sup> As a result of ICE Clear Europe Circular C20/163, this reference to EMIR is to be interpreted as including a reference to EMIR as applicable in the United Kingdom under the European Union (Withdrawal) Act 2018. See Exchange Act Release No. 34-90746 (File No. SR-ICEEU-2020-016) (Dec. 21, 2020), 85 Fed. Reg. 85704 (Dec. 29, 2020).

complaint. In paragraph 1.3, ICE Clear Europe proposes minor drafting updates to improve clarity.

The amended Complaint Resolution Procedures would refer where appropriate to “Eligible Complaint” instead of the undefined term “complaint” to clarify that only Eligible Complaints (and not other complaints) would be within the scope of the procedures. As a result, the proposed rule change would replace the defined term “Complaint” by the undefined term “complaint” to allow a distinction between complaints generally speaking and those that qualify as “Eligible Complaints.”

In paragraph 2.1, the proposed rule change would amend the definition of “Eligible Complaints” by broadening it to include complaints against any Directors, officers, employees or committees (or committee members) of ICE Clear Europe, which ICE Clear Europe believes is the proper scope for the Complaint Resolution Procedures. The amendments would also clarify that Eligible Complaints may relate to the manner in which ICE Clear Europe has failed to perform applicable regulatory functions. In paragraph 2.2, ICE Clear Europe proposes minor drafting amendments to correct typographical errors and use of defined terms.

The proposed rule change would make drafting improvements in paragraph 3.6 to include “investigation of the” before “Eligible Complaint,” and in paragraph 4.1 to clarify that acknowledgment of the complaint by ICE Clear Europe must be made promptly, and in any case within 5 Business Days of receipt.

ICE Clear Europe proposes to add new paragraph 4.2, which would allow ICE Clear Europe to refer complaints to another recognized body or authorized person if such entity is entirely or partly responsible for handling the subject matter of the complaint, such as an

exchange for which ICE Clear Europe clears. To establish the process for ICE Clear Europe to refer such a complaint, the proposed rule change would also add new paragraph 4.3. Such amendments are intended to clarify existing procedures, and avoid a situation where ICE Clear Europe would be forced to address a duplicative complaint or a complaint better handled by another entity. In paragraph 4.4, the proposed rule change would correct minor typographical errors.

The proposed amendments to paragraph 4.5 would clarify that the Investigator must be an individual who has no personal interest or involvement in the matter of the Eligible Complaint, and would also make typographical corrections and similar drafting improvements.

In paragraph 4.7, the proposed rule change would clarify that the Investigator would not be required to disclose any information about the Complainant's identity when drafting its report of the Eligible Complaint, and also would correct minor typographical errors and update cross-references.

In paragraph 4.8 as revised, the proposed rule change would include delivery disputes and appeals in the list of potential ongoing matters that could warrant delay in the consideration of an Eligible Complaint. Amended paragraph 4.12 would include a similar change and correct certain typographical errors.

In paragraph 4.11 as revised, the proposed rule change would clarify that where ICE Clear Europe objects to the referral of a complaint to the Commissioner under specified circumstances (such that ICE Clear Europe can conclude its own investigation), it must submit to the Commissioner the reasons for that determination. The proposed rule change would also update several cross-references in paragraph 4.11.

In paragraph 4.12 as revised, the proposed rule change would expand the list of ongoing matters that would justify delay in the Commissioner’s consideration of an Eligible Complaint to be consistent with the list in paragraph 4.8, and also reference other processes under Part 10 of the Rules. The proposed rule change would also amend paragraph 4.14 to make non-substantive drafting improvements.

In paragraph 5 as revised, the proposed rule change would clarify that the Investigator recommends, rather than takes, remedial action. The proposed rule change would amend paragraph 6.3 to add “appeal process” to the list of dispute resolution procedures that a Complainant cannot use if it requires the referral of any Eligible Complaint to the Commissioner pursuant to the Complaint Resolution Procedures. The proposed rule change would also delete the reference to “mediation” in paragraph 5 as it is no longer necessary in light of the other listed types of dispute resolution.

The proposed rule change would amend paragraph 7.2 to clarify that the Commissioner does not have to continue investigating a complaint if the complaint is not an Eligible Complaint. In addition, the proposed rule change would amend paragraph 7.3 to clarify that the Commissioner would only be required to produce a final response where the complaint is an Eligible Complaint.

The proposed rule change would amend paragraph 7.6 to ensure that the Commissioner has access to all relevant personnel (including directors, officers and other persons to whom functions have been outsourced) that may be needed for the purposes of the Eligible Complaint. In addition, the proposed rule change would amend paragraph 7.8 to obligate ICE Clear Europe

to inform the Complainant of an alternative Commissioner, when one is appointed, within five Business Days of the date of appointment.

The proposed rule change would also amend paragraph 8.1 to state explicitly that ICE Clear Europe is required to consider the Commissioner's report and recommendations, in addition to informing the Commissioner of any proposed steps it would take in response to the report and recommendations. In addition, the proposed rule change would also make other non-substantive drafting clarifications in paragraph 8.1, and correct typographical errors in paragraphs 8.2 and 8.3. Lastly, the proposed rule change would amend paragraph 11 to include the Investigator as a person subject to the confidentiality obligations with respect to the complaint, and make certain drafting clarifications.

#### H. General Contract Terms

Similar to certain of the changes to Rules described above, the proposed rule change would amend the introduction to the General Contract Terms by removing references to named ICE markets and, in their place, would use the more generic term "relevant Market." The proposed rule change would also add the standard term "Amendments" to the General Contract Terms to clarify that the terms of any Contract may be amended in the same way as ICE Clear Europe may amend the Rules in accordance with Rule 109 (Alteration of Rules, Procedures, Guidance and Circulars).

### 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.<sup>36</sup> For the reasons given below, the Commission finds that the proposed rule change is consistent with Sections 17A(b)(3)(F), 17A(b)(3)(G), and 17A(b)(3)(H) of the Act,<sup>37</sup> and Rules 17Ad-22(e)(1), 17Ad-22(e)(2)(i), 17Ad-22(e)(6)(ii), 17Ad-22(e)(10), 17Ad-22(e)(13), 17Ad-22(e)(14), 17Ad-22(e)(17)(i), and 17Ad-22(e)(18).<sup>38</sup>

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.<sup>39</sup>

As discussed above, the proposed rule change would make a number of clarifications and drafting improvements to the Amended Documents, to ensure that the Amended Documents are clear, consistent, and provide an enforceable legal basis for ICE Clear Europe's activities. In the Commission's view, a lack of clarity and consistency in ICE Clear Europe's Rules and Procedures could hinder ICE Clear Europe's ability to promptly and accurately clear and settle transactions and safeguard securities and funds, by possibly leading to disputes over the terms of

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<sup>36</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>37</sup> 15 U.S.C. 78q-1(b)(3)(F), 15 U.S.C. 78q-1(b)(3)(G), and 15 U.S.C. 78q-1(b)(3)(H).

<sup>38</sup> 17 CFR 240.17Ad-22(e)(1), 17Ad-22(e)(2)(i), 17Ad-22(e)(6)(ii), 17Ad-22(e)(10), 17Ad-22(e)(13), 17Ad-22(e)(14), 17Ad-22(e)(17)(i), and 17Ad-22(e)(18).

<sup>39</sup> 15 U.S.C. 78q-1(b)(3)(F).



transactions. Likewise the Commission believes a lack of enforceable legal basis could undermine the legitimacy and finality of ICE Clear Europe's actions in clearing and settling transactions. Thus, the Commission believes the proposed rule change, in general, should help ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible.

In particular, the Commission believes all of the proposed changes to the Rules, as discussed in Part II.A above, would help ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible. For example, the Commission believes the changes to Rule 904 (Transfer of Contracts and Margin on a Clearing Member Event of Default), Rule 907 (Administrative matters concerning an Event of Default), and to relevant definitions in Rule 101 would enhance ICE Clear Europe's default planning and post-default porting processes by providing an EMIR-compliant post-default porting preference structure using Porting Notices that require written consent by the designated Transferee Clearing Member. The Commission further believes that this aspect of the proposed rule change would help facilitate the porting of Customer positions and collateral and the settlement of the transactions resulting from such transfers, which in turn would help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions in the event of a Clearing Member's default and safeguard securities and funds which are in its custody or control or for which it is responsible. Similarly, the Commission believes the changes to Rule 901(a)(iv) to clarify that the declaration of an Event of Default in respect of one Clearing Member is a circumstance in which ICE Clear Europe can declare an Event of Default in respect of another Clearing Member that is a parent or

a subsidiary of such Clearing Member would better enable ICE Clear Credit to invoke such default declaration powers and thereby prevent or reduce losses that could result from affiliate cross-defaults. The Commission further believes that losses from a default could interfere with ICE Clear Europe's ability to clear and settle transactions and safeguard securities and funds. Therefore, the Commission believes that these aspects of the proposed rule change, in facilitating ICE Clear Europe's ability to respond to defaults and thereby prevent or reduce losses, would help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible. Moreover, the Commission believes the changes to add new Rule 301(o), which would allow ICE Clear Europe to request information when needed on account balances of nominated accounts of the Clearing Member at financial institutions, including for the purpose of calling on available cash where the Clearing Member has failed to meet a payment obligation or determining whether the Clearing Member is, or is likely to be, in default, would help to ensure that ICE Clear Europe's Clearing Members are able to perform their obligations that enable ICE Clear Europe to clear and settle transactions, such as transferring margin and contributing to the Guaranty Fund. Finally, the Commission believes the changes to add a new summary disciplinary process in proposed Rule 1008 to improve and streamline ICE Clear Europe's process for disciplining Clearing Members for specified violations of the Rules and Procedures, such as the late making of a payment or the late making or taking of a delivery, would help to ensure that Clearing Members meet their membership obligations to ICE Clear Europe and thereby help to ensure that ICE Clear Europe is able to clear and settle transactions.

For these reasons, the Commission believes all of the changes to the Rules discussed in Part II.A above would help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.

Moreover, the Commission believes the changes to the Clearing Procedures discussed in Part II.B above would increase the clarity of the Clearing Procedures by removing references to systems no longer used by ICE Clear Europe. Similarly, the Commission believes that removing the definitions of MFT and ECS, and instead referring to those terms as defined in the Delivery Procedures, would help to ensure that the Clearing Procedures use the correct definitions of those terms, as defined in the Delivery Procedures. The Commission believes that these changes would help to ensure the Clearing Procedures are up-to-date and use correct terms and references, thus decreasing the possibility for error in using and applying the Clearing Procedures, and therefore facilitating the prompt and accurate clearance and settlement of transactions using the Clearing Procedures.

The Commission similarly believes the changes to the Finance Procedures discussed in Part II.C above would help to ensure the Finance Procedures are up-to-date and use correct terms and references. As with the Clearing Procedures, the proposed rule change would remove the definitions of MFT and ECS, and instead refer to those terms as defined in the Delivery Procedures, thus helping to ensure that the Finance Procedures use the correct definitions. Moreover, the Commission believes that removing a reference to the Continuing CDS Rule Provisions, which are no longer in effect, and updating and correcting references to certain ICE Clear Europe committees throughout the Finance Procedures would help to ensure that the

Finance Procedures reflect the current documentation and committees in effect at ICE Clear Europe. Finally, the Commission believes that amending the account requirements for members to reflect that ICE Clear Europe clears both EUR and USD denominated CDS contracts, clarifying the effect of negative rates on payments of interest and price alignment amounts, and clarifying that the additional margin requirement would apply on a Currency Holiday would help to ensure that the Finance Procedures are consistent with ICE Clear Europe's operational practices. The Commission believes that these changes would help to ensure the Finance Procedures are up-to-date, clear, and use correct terms and references, thus decreasing the possibility for error in using and applying the Finance Procedures, and therefore facilitating the prompt and accurate clearance and settlement of transactions using the Finance Procedures.

The Commission further believes the changes to the Delivery Procedures discussed in Part II.D above would clarify and update the Delivery Procedures. Specifically, the Commission believes that clarifying the application of current applicable law regarding anti-money laundering and the obligation of Clearing Members to conduct anti-money laundering due diligence would help to ensure the application of relevant and current anti-money laundering obligations to ICE Clear Europe and Clearing Members. Similarly, the Commission believes that adding definitions for current ICE Clear Europe technology systems used in the Delivery Procedures (ECS, MFT, ICE FEC, and MPFE), updating references to those technology systems, and removing references to systems no longer in use, like Crystal, would help reduce the possibility for error in using and applying the Delivery Procedures by ensuring they reference the correct and current ICE Clear Europe internal systems. The Commission further believes that amending Part A of the Delivery Procedures to add a reference to the alternative delivery procedure for Emission

Contracts, update references to certain defined terms, and revise the process for the Emissions Alternative Delivery Procedure and a Failed Delivery, would help to ensure the correct application and operation of the delivery provisions with respect to EU Emissions Contracts. Moreover, the Commission believes that deleting Part M and related references to those contracts delisted from the relevant exchange, establishing a procedure to address the Seller's non-delivery of securities under a Financials & Softs Gilt Contract in Part U, correcting references to the settlement facilities and relevant settlement details and settlement procedures for Equity Futures/Options Contracts in Part Z, and updating the table in Part FF regarding the receipt of documents by ICE Clear Europe, would help to ensure the Delivery Procedures reflect the contracts currently cleared by the relevant exchanges and would help to establish effective operational processes for the contracts found in Parts U, Z, and FF. Finally, the Commission believes that making drafting clarifications and typographical corrections throughout the Delivery Procedures would help to reduce the possibility for error in applying the Delivery Procedures. Thus, the Commission believes all of the changes to the Delivery Procedures discussed in Part II.D would clarify and update the Delivery Procedures, thereby facilitating the prompt and accurate clearance and settlement of transactions using the Delivery Procedures

Similarly, the Commission believes that the proposed changes to the CDS Procedures discussed in Part II.E above would, in general, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody or control. Specifically, the Commission believes that the changes to the CDS Procedures would enhance the flexibility of ICE Clear Europe's operations, benefitting both ICE Clear Europe and Clearing Members. For example, the Commission believes that

adding a new paragraph 3.5 to require CDS Clearing Members to provide sign-off via email on weekly cycles by the time specified by ICE Clear Europe would provide a flexible and efficient means for sign-off, via email. Similarly, the Commission believes that allowing a Clearing Member to designate an Affiliate that is also a CDS Clearing Member to accept CDS Contracts in lieu of it for CDS Contracts arising as a result of the existing CDS end-of-day pricing process and to accept transactions arising out of the existing auction process to be used in the case of self-referencing CDS transactions would give Clearing Members flexibility in determining who is best positioned to accept transactions in those situations. Moreover, the Commission believes that allowing ICE Clear Europe to provide notice of certain modifications to its list of Eligible Single Name Reference Entities via its website rather than by Circular would provide ICE Clear Europe operational efficiency and flexibility in making these changes. Finally, the Commission believes that correcting references throughout the CDS Procedures to the CDS Product Risk Committee and FX Product Risk Committee would help to decrease the possibility for error in applying the CDS Procedures by ensuring usage of the current and correct committee names. The Commission therefore believes that these changes would generally improve the flexibility and efficiency of ICE Clear Europe's operations and the application of the CDS Procedures, thus promoting ICE Clear Europe's ability to promptly and accurately clear and settle securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's possession or control.

The Commission further believes that the changes to the Membership Procedures discussed in Part II.F above would, in general, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE

Clear Europe's custody or control. Specifically, the Commission believes that updating the definition of Capital; lowering to 25% the portion of a Clearing Member's Capital requirement that may be covered by subordinated loans; removing irrevocable letters of credit as a potential method that Clearing Members or Sponsored Principals may use to satisfy capital requirements; and giving ICE Clear Europe authority to, at its discretion, require a Clearing Member to post additional cash or collateral in addition to the normal margin requirements would help to align ICE Clear Europe's standards for Clearing Member capital with the Basel III standard. The Commission believes this in turn would help to assure consistent and reasonable capital standards for Clearing Members, thereby contributing to the overall financial resiliency of ICE Clear Europe and its ability to promptly and accurately clear and settle transactions and assure the safeguarding of securities and funds in its custody or control.

Moreover, the Commission believes that amending the summary table at paragraph 4.2 to change the deadline for submitting financial statements from 30 to 45 days and to allow ICE Clear Europe to accept different kinds of financial statements from Clearing Members as part of their financial reporting obligations, in circumstances where they do not produce quarterly financial statements, consistent with the proposed change to Rule 205(a)(ii), would provide additional operational flexibility to ICE Clear Europe and Clearing Members. The Commission also believes that amending the summary table at paragraph 4.2 to be consistent with Rule 209 and updating the email address to which Clearing Members should send certain notifications would help to decrease the possibility for error in submitting such notifications. The Commission therefore believes that these changes would generally improve the flexibility of ICE Clear Europe's operations and the application of the Membership Procedures, thus promoting ICE

Clear Europe's ability to promptly and accurately clear and settle securities transactions and assure the safeguarding of securities and funds in its custody or control.

As noted above in Part II.G, the proposed rule change would make various changes to the Complaint Resolution Procedures to correct typographical errors and promote consistent use of terminology such as replacing the term "Complaints Resolution Procedure" with "Complaint Resolution Procedures," and using defined terms such as "Person," "Commissioner," and "Eligible Complaint." The Commission believes these changes would help to strengthen ICE Clear Europe's Complaint Resolution Procedures by making them easier to reference, which in turn supports ICE Clear Europe's ability to carry out the prompt clearance and settlement of transactions while addressing this aspect of its operations. The Commission similarly believes that the other proposed changes to the Complaint Resolution Procedures described in Part II.G above, such as the referral of complaints to another recognized body and details regarding the handling of Eligible Complaints, support the efficient handling of complaints and thus would help to support its clearance and settlement functions.

Finally, as described in Part II.H above, the proposed rule change would amend the introduction to the General Contract Terms to remove references to named ICE markets and instead use the more generic term "relevant Market." The proposed rule change would also add the standard term "Amendments" to the General Contract Terms to clarify that the terms of any Contract may be amended in the same way as ICE Clear Europe may amend the Rules in accordance with Rule 109 (Alteration of Rules, Procedures, Guidance and Circulars). The Commission believes that these changes to the General Contract Terms will generally help clarify and simplify the Rules and Procedures, and make it easier for ICE Clear Europe to keep



such documents up to date notwithstanding potential future changes in the Markets cleared and similar events, as well as to enhance the usefulness of the Procedures with appropriate cross-references. Further, the Commission believes that these proposed changes will in turn help make ICE Clear Europe's documents more effective and consistent with current operational practices and processes, thereby supporting ICE Clear Europe's ability to promptly and accurately clear and settle securities transactions.

Therefore, for these reasons, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.<sup>40</sup>

B. Consistency with Section 17A(b)(3)(G) of the Act

Section 17A(b)(3)(G) of the Act requires, among other things, that ICE Clear Europe's rules provide that Clearing Members shall be appropriately disciplined for violation of any provision of ICE Clear Europe's rules by fine or other fitting sanction.<sup>41</sup>

As discussed above, the proposed rule change would add a new summary disciplinary process in proposed Rule 1008 to improve and streamline ICE Clear Europe's process for disciplining Clearing Members for specified violations of the Rules and Procedures, including those that ICE Clear Europe considers to be minor in nature. ICE Clear Europe would be limited to the following sanctions it could impose against Clearing Members for such violations under

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<sup>40</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>41</sup> 15 U.S.C. 78q-1(b)(3)(G).

proposed Rule 1008: the issuance of a private warning or reprimand naming the Clearing Member or a Clearing Member Customer, client or Representative; a fine of up to £50,000; or any combination of the foregoing. The Commission believes that such limited sanctions under the proposed summary disciplinary process would be appropriate forms of discipline against Clearing Members who commit the applicable types of violations under new Rule 1008.

For these reasons, the Commission finds the proposed rule change is consistent with Section 17A(b)(3)(G) of the Act.<sup>42</sup>

C. Consistency with Section 17A(b)(3)(H) of the Act

Section 17A(b)(3)(H) of the Act<sup>43</sup> requires, among other things, that ICE Clear Europe's rules, in general, provide a fair procedure with respect to the disciplining of participants. As discussed above, the proposed rule change would add a new summary disciplinary process under proposed Rule 1008 for sanctioning Clearing Members that breach certain Rules or Procedures, including by specifying the process by which ICE Clear Europe may impose any of the specified sanctions, the opportunity for a Clearing Member to appeal, the grounds for appeal, and the actions the appeal panel may take (*i.e.*, to affirm, vary, or revoke a sanction). The Commission believes these aspects of the proposed rule change would provide a fair procedure for disciplining Clearing Members.

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<sup>42</sup> 15 U.S.C. 78q-1(b)(3)(G).

<sup>43</sup> 15 U.S.C. 78q-1(b)(3)(H).

For these reasons, the Commission finds the proposed rule change is consistent with Section 17A(b)(3)(H) of the Act.<sup>44</sup>

D. Consistency with Rule 17Ad-22(e)(1)

Rule 17Ad-22(e)(1) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.<sup>45</sup> As discussed above, the proposed amendments to the General Contract Terms would clarify, simplify, and harmonize various aspects of the Rules and Procedures, to be consistent with current operations, remove outdated references, address changes in Markets served, and similar matters. The Commission believes that these proposed changes will enhance the clarity of the legal framework provided by the Rules and Procedures under which ICE Clear Europe operates, and are therefore consistent with Rule 17Ad-22(e)(1).<sup>46</sup>

As noted above, the proposed rule change would reframe the Complaint Resolution Procedures as based on ICE Clear Europe's obligations as a CCP under EMIR; clarify that only certain kinds of complaints, "Eligible Complaints," would be part of the complaint resolution process; broaden the definition of "Eligible Complaints" to include complaints against any directors, officers, employees or committees; clarify procedural delays and timing in the process;

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<sup>44</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>45</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>46</sup> 17 CFR 240.17Ad-22(e)(1).

and add the ability to refer complaints to other responsible entities. The Commission believes that these proposed changes express a well-founded, clear, transparent, and enforceable legal basis for how ICE Clear Europe manages complaints and is therefore consistent with Rule 17Ad-22(e)(1).<sup>47</sup>

As discussed above, the proposed rule change would update various definitions and other provisions in the Rules and Procedures to reflect current laws and regulations in the EU and UK governing anti-money laundering requirements and the requisite levels of due diligence. Proposed new Rule 201(xxxiii) would require Clearing Members to have adequate policies, procedures, systems, and controls relating to Applicable Laws, including anti-money laundering laws. The proposed rule change would amend Rule 1607 (Additional FCM/BD Requirements for Customer Transactions) to require FCM/BD Customers to obtain the authority from beneficial owners to disclose information necessary for anti-money laundering due diligence to the Clearing Member and ICE Clear Europe, and add similar new requirements to the Standard Terms exhibits to the Rules. Similarly, the proposed amendments to the Delivery Procedures would obligate Clearing Members to conduct appropriate anti-money laundering due diligence for any transferors and transferees and provide relevant documentation to ICE Clear Europe and/or the Clearing Member. The Commission believes that these proposed changes would help to establish and maintain a well-founded legal basis for the Rules and Procedures governing ICE

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<sup>47</sup> 17 CFR 240.17Ad-22(e)(1).

Clear Europe’s operations under applicable anti-money laundering laws, and are therefore consistent with Rule 17Ad-22(e)(1).<sup>48</sup>

As discussed above, the proposed rule change would amend Rule 201 to clarify the legal basis in the Rules for ICE Clear Europe to require Clearing Members to execute additional documentation in the form of annexes or agreements to the Clearing Membership Agreement in order to be, and remain, eligible for Clearing Membership. As ICE Clear Europe would impose such documentation requirements where necessary to comply with, or address post-Brexit local law group structuring issues in certain EU member states, the Commission believes these proposed amendments provide a well-founded legal basis for ICE Clear Europe to impose such additional documentation requirements, and are therefore consistent with Rule 17Ad-22(e)(1).<sup>49</sup>

As discussed above, the proposed rule change would amend Rule 201 (Clearing Membership Criteria), Rule 1901 (Attaining status as a Sponsored Principal), and Section 10 of the F&O Standard Terms to remove the requirement for Clearing Members, Customers, and Sponsored Principals to be an “eligible contract participant” if they are engaging solely in F&O Contracts. As eligible contract participant status is required under applicable U.S. law to trade swaps and security-based swaps, such as CDS, but is not required to trade futures, the Commission believes these proposed amendments provide a well-founded legal basis for ICE

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<sup>48</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>49</sup> 17 CFR 240.17Ad-22(e)(1).

Clear Europe to remove such status requirement, and are therefore consistent with Rule 17Ad-22(e)(1).<sup>50</sup>

As discussed above, the proposed rule change would amend paragraph 3.5(a) of the Membership Procedures to lower the threshold, from 50% to 25%, at which ICE Clear Europe would require a written undertaking from the Clearing Member to not repay subordinated loans without its consent. As this proposed change would align the Clearing Member capital requirement more closely with Basel III requirements applicable to Clearing Members, the Commission believes these proposed amendments provide a well-founded legal basis for ICE Clear Europe to lower such threshold, and are therefore consistent with Rule 17Ad-22(e)(1).<sup>51</sup>

As discussed above, the proposed rule change would make a number of clarifications and drafting improvements to the Amended Documents to explicitly and correctly reference current law; eliminate discrepancies and inconsistencies; comply with applicable legal requirements; use consistent terminology; update cross-references and numbering; and correct drafting errors. The Commission believes that these changes, taken as a whole, would help to ensure that the Amended Documents provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of ICE Clear Europe's activities in all relevant jurisdictions.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(1).<sup>52</sup>

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<sup>50</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>51</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>52</sup> 17 CFR 240.17Ad-22(e)(1).

E. Consistency with Rule 17Ad-22(e)(2)(i)

Rule 17Ad-22(e)(2)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.<sup>53</sup> As noted above, the proposed changes to the Complaint Resolution Procedures would clarify the roles of those investigating complaints, state explicitly that ICE Clear Europe must consider the investigative complaint report and recommendations, and inform the complaining party. The Commission believes that these proposed changes therefore provide for governance arrangements related to the complaint resolution process that are clear and transparent and are consistent with Rule 17Ad-22(e)(2)(i).<sup>54</sup>

As discussed above, the proposed rule change would also amend and update committee references in Rule 916(d) to change the term “Risk Committee” to “relevant product risk committee” to clarify that there are different product risk committees addressing topics specific to F&O and CDS. The proposed rule change would make similar updates to the CDS Risk Committee and FX Risk Committee references in the Finance Procedures by changing them to “CDS Product Risk Committee” and “FX Product Risk Committee,” respectively, and also throughout the CDS Procedures where “CDS Risk Committee” is currently used. The Commission believes that these changes would help to ensure that ICE Clear Europe’s

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<sup>53</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>54</sup> 17 CFR 240.17Ad-22(e)(2)(i).

governance arrangements are clear and transparent by clearly identifying the various product risk committees involved in governance at ICE Clear Europe.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(2)(i).<sup>55</sup>

F. Consistency with Rule 17Ad-22(e)(6)(ii)

Rule 17Ad-22(e)(6)(ii) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its Clearing Members by establishing a risk-based margin system that, at a minimum, among other matters, marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances.<sup>56</sup> As discussed above, Rule 1603(c) would be amended to clarify that only “original” or “initial” types of Margin payments would be provided in the form of Pledged Collateral, and that such collateral excludes Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin, which are provided to or by ICE Clear Europe by outright transfer of cash as a settlement payment. This proposed change is intended to be consistent with ICE Clear Europe’s previous amendments to the Rules to clarify that such variation and mark-to-market margin are settlement payments rather than collateral. Because, as discussed above, ICE Clear Europe inadvertently omitted this proposed amendment from its prior amendments, the Commission believes these changes would facilitate ICE Clear

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<sup>55</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>56</sup> 17 CFR 240.17Ad-22(e)(6)(ii).



Europe's consistent treatment and collection of variation and mark-to-market margin from Clearing Members.

For this reason, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(6)(ii).<sup>57</sup>

G. Consistency with Rule 17Ad-22(e)(10)

Rule 17Ad-22(e)(10) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to 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.<sup>58</sup> As discussed above, the proposed rule change would amend the definition of "Exchange Delivery Settlement Price" or "EDSP" in Rule 101 (Definitions) to clarify, for the avoidance of doubt that the EDSP can be a positive or negative number, or zero. The proposed rule change would amend Rule 703(b) (Delivery) to clarify the process for payment of the EDSP in a physical settlement if the EDSP is a negative number. The Commission believes that these proposed changes would increase the clarity and transparency of the physical settlement process, which in turn would help ICE Clear Europe avoid the risk of settlement discrepancies associated with the delivery of physical instruments.

As discussed above, the proposed rule change would amend the Delivery Procedures to update various operational practices and to make other updates and drafting improvements.

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<sup>57</sup> 17 CFR 240.17Ad-22(e)(6)(ii).

<sup>58</sup> 17 CFR 240.17Ad-22(e)(10).

Specifically, proposed new paragraph 7 would make explicit reference to the alternative delivery procedure for Emission Contracts in the event of a failed delivery, as set out in paragraph 7 (Emissions Alternative Delivery Procedure (“EADP”)) of Part A of the Delivery Procedures (ICE Endex Deliverable EU Emissions Contracts). Amended paragraph 7.3 of Part A would update the manner of settlement of an existing Contract following the entry into an EADP Agreement by a Clearing Member and ICE Clear Europe, so that it would no longer be limited to liquidation on the basis of the Exchange Delivery Settlement Price, but rather, dealt with in the manner specified in the EADP. In addition, amended paragraph 7.5 would provide for a longer time period after a failed delivery for the Clearing Member and ICE Clear Europe to enter into an EADP Agreement or effect delivery under the EADP before ICE Clear Europe may refer the matter to the relevant exchange or take other reasonable next steps in its discretion. The Commission believes these changes would establish and update transparent written procedures for failed deliveries of Emissions Contracts, and provide greater flexibility for ICE Clear Europe to manage the risks associated with such failed deliveries.

With respect to Financials & Softs Gilt Contracts, the proposed rule change would amend Part U of the Delivery Procedures to add a new paragraph 2 (Failed Settlement and Non-Delivery of Stock) to establish a procedure to address the Seller’s non-delivery of securities under a Financials & Softs Gilt Contract, including the actions ICE Clear Europe may take to promote settlement in accordance with the contract terms and the requirements of the CREST central securities depository, as well as the express allocation of the costs of such steps to the Clearing Member who failed to make delivery. Proposed new paragraph 2.1 in amended Part U would establish ICE Clear Europe’s procedure to address the Seller’s partial delivery of available

Gilts and the resulting partial settlement between the Buying Clearing Member and the Selling Clearing Member. The Commission believes these changes in Part U would establish transparent written standards and procedures for handling failed deliveries and partial deliveries of Financials and Softs Gilt Contracts and for managing their associated risks.

The proposed rule change also would amend Part Z of the Delivery Procedures to make various updates to reference the correct settlement facilities and relevant settlement details and settlement procedures for Equity Futures/Options Contracts. Amended paragraph 2.3 (Partialling) and paragraph 3 (Failed Settlements and Non-Delivery of Stock) would clarify the processes for dealing with partial deliveries and failed deliveries, including the steps that ICE Clear Europe may take to facilitate delivery, the rights and responsibilities of the buying clearing member with respect to onward deliveries under other contracts, and the allocation of costs to clearing members. Similar to the changes in Part U, the Commission believes these changes in Part Z would establish transparent written standards and procedures for handling partial deliveries and failed deliveries of Equity Futures/Options Contracts and for managing their associated risks.

Throughout the Delivery Procedures, the proposed rule change would also update and clarify operational processes and ICE Clear Europe systems, delivery documentation summaries, timetables, and other relevant provisions. The Commission believes these changes would help ICE Clear Europe establish and maintain transparent and up-to-date operational practices to help manage the risks associated with physical deliveries and settlement.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(10).<sup>59</sup>

H. Consistency with Rule 17Ad-22(e)(13)

Rule 17Ad-22(e)(13) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its Clearing Members and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.<sup>60</sup> As discussed above, the proposed rule change would amend ICE Clear Europe's default planning process by removing the current pre-default porting preference structure, and replacing it with a post-default porting preference structure using Porting Notices (which refers to a post-default notification of a porting preference) that require written consent by the designated Transferee Clearing Member. The proposed rule change also would amend Rule 907(b) to clarify that ICE Clear Europe has no obligation to inquire of any person as to any Porting Notice. In the interest of further enhancing efficiencies in default scenarios, the proposed rule change would amend Rule 907(d) to authorize ICE Clear Europe's ability to rely on relevant information concerning Contracts, Customer-CM Transactions, Margin, and customer accounts that a defaulting Clearing Member provided to ICE Clear Europe prior to declaration of default. The Commission believes that these aspects of the

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<sup>59</sup> 17 CFR 240.17Ad-22(e)(10).

<sup>60</sup> 17 CFR 240.17Ad-22(e)(13).

proposed rule change would help ICE Clear Europe continue to take timely action to contain losses and liquidity demands in the case of a Clearing Member default.

As discussed above, the proposed rule change would amend Rule 903(c) to clarify that ICE Clear Europe's right to authorize hedging transactions in a default scenario would include transactions on a Market, any other Exchange, or over the counter, and that hedging transactions need not be cleared if transacted on an exchange which is not a Market, or as requested or directed otherwise by ICE Clear Europe. The Commission believes such changes would enhance ICE Clear Europe's authority to use hedging to help contain losses and liquidity demands following an Event of Default.

As discussed above, the proposed rule change would amend Rule 901 (Events of Default affecting Clearing Members or Sponsored Principals) to clarify that the declaration of a Clearing Member's Event of Default would authorize ICE Clear Europe to declare an Event of Default in respect of another Clearing Member that is a Group Company, *i.e.*, a parent or subsidiary of such defaulting Clearing Member. The Commission believes that this change would enhance ICE Clear Europe's authority to declare cross-defaults of affiliated Clearing Members to help contain losses and liquidity demands in a default scenario.

Finally, as discussed above, the proposed rule change would make a number of drafting improvements to Rule 904(b) (Transfer of Contracts and Margin on a Clearing Member Default), Rule 905(g) (Termination and close out of Contracts on a Clearing Member Event of Default), and Rule 908(i) (Application of Assets upon an Event of Default), that would enhance the clarity of ICE Clear Europe's default management procedures and support ICE Clear Europe's operational capacity to take timely action to contain losses and liquidity demands.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(13).<sup>61</sup>

I. Consistency with Rule 17Ad-22(e)(14)

Rule 17Ad-22(e)(14) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a Clearing Member's customers and the collateral provided to ICE Clear Europe with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that Clearing Member.<sup>62</sup> As discussed above, the proposed rule change would remove the current Default Portability Preference process by which Non-FCM/BD Clearing Members may deliver porting information to ICE Clear Europe in advance of a Clearing Member default, which was rarely used in practice, and replace such process with a post-default portability preference notification process using Porting Notices to designate a customer's preferred Transferee Clearing Member. This change is consistent with the EMIR requirement for post-default notices to be served as a pre-condition to porting. The proposed rule change would make conforming amendments to Rules 904 and 907 to reflect this change and would clarify the process for providing post-default Porting Notices. In particular, amended Rule 904(g) would require that the Transferee Clearing Member must consent in writing to the customer's designation of such Transferee Clearing Member in a Porting Notice. The Commission believes these aspects of the proposed rule change would clarify and facilitate

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<sup>61</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>62</sup> 17 CFR 240.17Ad-22(e)(14).

the process of post-default porting that is consistent with EMIR, and effectively protects customer positions and collateral in the event of a Clearing Member default.

As discussed above, the proposed rule change would amend Rule 209(d) to facilitate membership terminations in the context of a corporate group reorganization where a new Clearing Member that is an Affiliate will be receiving the terminating Clearing Member's Open Contract Positions, which include Customer Account Positions. The Commission believes these amendments would help to enable the portability of a customer's contracts in the specific context of a Clearing Member termination.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(14).<sup>63</sup>

J. Consistency with Rule 17Ad-22(e)(17)(i)

Rule 17Ad-22(e)(17)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by 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.<sup>64</sup> As discussed above, the proposed rule change would amend the provisions for delivery of notices in various Rules as part of ICE Clear Europe's default simulation planning. The proposed amendments would generally replace telephone with email delivery, and clarify the delivery to nominated process agents, as well as the timing for effective service and delivery of notices. The

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<sup>63</sup> 17 CFR 240.17Ad-22(e)(14).

<sup>64</sup> 17 CFR 240.17Ad-22(e)(17)(i).

Commission believes these changes would help to improve the efficiencies in the delivery of notices, which in turn would help ICE Clear Europe manage the related operational risks associated with the delivery and receipt of notices in case of a Clearing Member default or termination, among other operational scenarios.

The Commission believes that the proposed amendment to Rule 202 (Obligations of Clearing Members) to require Clearing Members to have competent staff representatives accessible to ICE Clear Europe for two hours before the start of the business day would help ICE Clear Europe ensure that its operational policies are consistent with its operational practices for appropriately managing the risks associated with Clearing Members meeting time-sensitive morning margin calls.

The Commission believes that the proposed addition of new Rule 301(o), which would allow ICE Clear Europe to request information when needed on account balances of nominated accounts of the Clearing Member at financial institutions, including for the purpose of calling on available cash where the Clearing Member has failed to meet a payment obligation or determining whether the Clearing Member is, or is likely to be, in default, would help ICE Clear Europe reduce operational risks that have arisen in practice when payment banks have refused to provide such information to ICE Clear Europe.

The Commission believes that the proposed new definitions of ICE Clear Europe's operational systems in the Delivery Procedures and updated references to such systems throughout the Amended Documents would help ICE Clear Europe manage operational risks by upgrading legacy systems and ensuring that all internal and external stakeholders are aware of the new systems and their basic operational purposes and functionalities.



As discussed above, the proposed rule change would make various amendments to certain Rules to ensure clear and consistent operational practices for Contracts. Amended Rule 401(o) would clarify that a Customer-CM CDS Transaction arises at the same time as the Contract for consistency with the equivalent rule for a Customer-CM F&O Transaction. Amended Rule 406 would clarify how open contract positions in F&O Contracts are netted and aggregated. Amended Rule 409 would clarify that ICE Clear Europe may evidence its consent to amendments, waivers, and variations of Contract Terms by issuing a Circular. The Commission believes these changes would help ICE Clear Europe reduce operational risks by formalizing appropriate and consistent operational practices related to the Contracts it clears.

Finally, the Commission believes the proposed amendments to Rule 105(a) to shorten the termination period for ICE Clear Europe's service withdrawal as a clearing house for any product where there is no open interest in the relevant Set, and to clarify that the relevant exchange's notice period and notification responsibility would apply to a product termination that follows actions by the exchange, such as a de-listing, would help ICE Clear Europe manage and mitigate both internal and external sources of operational risks associated with product terminations.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(17)(i).<sup>65</sup>

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<sup>65</sup> 17 CFR 240.17Ad-22(e)(17)(i).

K. Consistency with Rule 17Ad-22(e)(18)

Rule 17Ad-22(e)(18) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation, and monitor compliance with such participation requirements on an ongoing basis.<sup>66</sup>

The Commission believes that the changes to the Membership Procedures discussed above would establish objective, risk-based, and publicly disclosed criteria for participation, by updating the definition of Clearing Member Capital and related requirements applicable to Clearing Members to align with the Basel III standard. Similarly, the Commission believes that changing the deadline for submitting financial statements from 30 to 45 days; allowing ICE Clear Europe to accept different kinds of financial statements from Clearing Members as part of their financial reporting obligations; and providing that termination of a Clearing Membership Agreement or membership as a Clearing Member would become effective no less than 30 Business Days after the date of the Termination Notice Time or pursuant to Rule 917(c), would establish objective, risk-based, and publicly disclosed criteria for participation, by setting forth clear deadlines and standards applicable to Clearing Members. Finally, the Commission believes that adding a new paragraph 3.5 to the CDS Procedures to require Clearing Members to provide

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<sup>66</sup> 17 CFR 240.17Ad-22(e)(18).

sign-off via email on weekly cycles by the time specified by ICE Clear Europe would establish an objective, risk-based, and publicly disclosed requirement upon Clearing Members. Therefore, the Commission finds these aspects of the proposed rule change are consistent with Rule 17Ad-22(e)(18).<sup>67</sup>

Finally, the Commission believes that the proposed amendment to Rule 202 (Obligations of Clearing Members) to require Clearing Members to have competent staff representatives accessible to ICE Clear Europe for two hours before the start of the business day would help ICE Clear Europe ensure that its participants have sufficient financial resources and operational capacity to meet their morning margin call obligations.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(18).<sup>68</sup>

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<sup>67</sup> 17 CFR 240.17Ad-22(e)(18).

<sup>68</sup> 17 CFR 240.17Ad-22(e)(18).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the requirements of the Act, and in particular, with the requirements of Sections 17A(b)(3)(F), 17A(b)(3)(G), and 17A(b)(3)(H) of the Act, and Rules 17Ad-22(e)(1), (e)(2)(i), 17Ad-22(e)(6)(ii), 17Ad-22(e)(10), 17Ad-22(e)(13), 17Ad-22(e)(14), 17Ad-22(e)(17)(i), and (e)(18).<sup>69</sup>

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>70</sup> that the proposed rule change, as modified by Partial Amendment No. 1 (SR-ICEEU-2021-010), be, and hereby is, approved.<sup>71</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>72</sup>

Vanessa A. Countryman  
Secretary

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<sup>69</sup> 15 U.S.C. 78q-1(b)(3)(F); 15 U.S.C. 78q-1(b)(3)(G); 15 U.S.C. 78q-1(b)(3)(H); 17 CFR 240.17Ad-22(e)(1), (e)(2)(i), (e)(6)(ii), (e)(10), (e)(13), (e)(14), (e)(17)(i), and (e)(18).

<sup>70</sup> 15 U.S.C. 78s(b)(2).

<sup>71</sup> 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).

<sup>72</sup> 17 CFR 200.30-3(a)(12).