

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95682; File No. SR-ICEEU-2022-018)

September 7, 2022

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures and the ICE Clear Europe Clearing Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 2022, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4)(ii) thereunder,⁴ such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to amend (i) Parts C, D, F, H, K, L, AA, EE, and HH of its Delivery Procedures

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

(“Delivery Procedures”) and (ii) Part I of its Clearing Procedures (“Clearing Procedures”), in each case to implement the use of Contingent Variation Margin for certain UK and European energy futures contracts.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Background

The amendments are intended to extend the Clearing House’s use of Contingent Variation Margin (“CVM”) requirements during the tender or delivery period to certain additional UK and European natural gas and electricity futures contracts. Under the existing Rules and Procedures (including paragraph 4.6 of the Clearing Procedures), CVM can be imposed by the Clearing House on specified F&O Contracts to account for the difference, during the delivery period, between the final settlement price for the relevant contract (typically established on the last trading day of the contract, before the commencement of the delivery period) and the price of the relevant contract for the next contract month. CVM is intended to provide additional protection to the Clearing House

against potential exposure to Clearing Member default from movements in the market price of the underlying commodity during the delivery period. CVM is collected by the Clearing House from the applicable Clearing Members but not paid out to the opposite Clearing Members, although the opposite Clearing Member may apply the amount as a credit against other margin requirements.

ICE Clear Europe is proposing to amend the Clearing Procedures and the Delivery Procedures chapters for the relevant Contracts in order to implement the extension to specified UK and European energy futures contracts.

Clearing Procedures

Paragraph 4.6 of the Clearing Procedures would be updated to remove the two listed examples of contracts for which CVM would be required. Given the Clearing House's proposed extension of the use of CVM, the examples would be incomplete and are in any event unnecessary. Additionally, the amendments would make a clarification that Clearing Members will not receive payment of CVM in cash (as opposed to referring to repayment) but instead may credit CVM against other margin requirements, as discussed above. Paragraph 4.7, which described a prior contingent credit approach for sellers under natural gas and electricity futures, would be removed as it will be superseded by the extension of CVM to such contracts.

Delivery Procedures

ICE Clear Europe is proposing to amend Parts C, D, F, H, K, L, AA, EE, and HH of its Delivery Procedures to implement CVM for physically-settled monthly European and UK electricity and natural gas futures contracts.

The delivery timetable for routine deliveries of ICE UK Electricity Futures in Part C of the Delivery Procedures would be updated to provide that on the Delivery Day of such contract the Clearing House will apply CVM to the Buyer's and the Seller's remaining units of the underlying to be delivered. The amendments would further provide on the Business Day following the Delivery Day, the Clearing House will continue to apply CVM to the Buyer's and Seller's remaining units of the underlying to be delivered. The same updates would be made to the delivery timetable for routine deliveries of each of (i) ICE Futures UK Natural Gas Futures (Part D of the Delivery Procedures), (ii) ICE Endex TTF Natural Gas Futures (Part F of the Delivery Procedures), (iii) ICE Endex German THE Natural Gas Futures (Part H of the Delivery Procedures), (iv) ICE Endex Dutch Power Futures (Part K of the Delivery Procedures), (v) ICE Endex Belgian Power Base Load Futures (Part L of the Delivery Procedures), and (vi) ICE Endex French PEG Natural Gas Futures (Part HH of the Delivery Procedures). In respect of the delivery timetable for routine delivery of ICE Endex PSV Natural Gas Futures (Part AA of the Delivery Procedures) and ICE Endex VTP Natural Gas Futures (Part EE of the Delivery Procedures), similar updates would be made taking into account the delivery characteristics of those contracts: each such timetable would provide that on the first Business Day immediately preceding the first day of the month in which the Delivery Day specified in the relevant contract commenced, the Clearing House will apply CVM to the Buyer's and the Seller's remaining natural gas units. The amendments would further provide that on the Business Day following the Delivery Day, the Clearing House will continue to apply CVM to the Buyer's and Seller's remaining natural gas units.

The amendments would make certain other clarifications updates to the Delivery Procedures unrelated to the implementation of CVM. Specifically, references to ICE Futures UK Natural Gas (EUR/MWh) Futures Contracts in Part D of the Delivery Procedures would be removed as such contracts are no longer traded. In Part F of the Delivery Procedures (ICE Endex TTF Natural Gas Futures), references to weekly contracts (and related defined terms such as “Delivery Week” and “W+” and “W-” would be removed as no such TTF natural gas contracts of this type are traded. The remaining provisions would apply to the continuing monthly contracts (with some references to “monthly” removed as no longer necessary to distinguish from weekly contracts). In Part K of the Delivery Procedures (ICE Endex Base Load Futures), references to the ICE Endex Dutch Power Base Load Week Futures and related references to weekly contracts and related defined terms are being removed since such weekly contract will no longer be listed for trading. The remaining provisions would apply to the continuing monthly contracts (with some references to “monthly” removed as no longer necessary to distinguish from weekly contracts). In Part HH of the Delivery Procedures (ICE Endex PEG Natural Gas Futures) references to the applicable ICE Endex confirmation reports are being corrected.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures and the Clearing Procedures are consistent with the requirements of Section 17A of the Act⁵ and the regulations thereunder applicable to it. In particular, Section

⁵ 15 U.S.C. 78q-1.

17A(b)(3)(F) of the Act⁶ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes are intended to apply CVM to certain additional UK and European electricity and natural gas futures contracts to enhance the protections for the Clearing House against the risk of market movements in the underlying commodity during the delivery period. The amendments to the Delivery Procedures are designed to add applicable references to CVM requirements in respect of the routine delivery of certain physically-settled European and UK Natural Gas futures contracts in order to reflect the Clearing House's application of CVM. The changes to the Clearing Procedures are intended to align with such updates to the Delivery Procedures. Certain additional updates and clarifications would be made to the Delivery Procedures. The amendments would not otherwise affect the manner in which such contracts are cleared and settled. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁷

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

Rule 17Ad-22(e)(6) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum (i) considers, and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio and market....”⁸ As discussed above, ICE Clear Europe has determined to apply CVM to certain additional UK and European natural gas and electricity futures contracts to address the particular risks faced by the Clearing House with respect to such contracts as a result of price movements during the delivery period. As a result, in ICE Clear Europe’s view, the amendments are consistent with the requirements of Rule 17Ad-22(e)(6).⁹

In addition, Rule 17Ad-22(e)(10)¹⁰ provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] 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.” The proposed changes to the Delivery Procedures are designed to amend delivery specifications in respect of the routine delivery of certain physically-settled European and UK Natural Gas futures contracts to

⁸ 17 C.F.R. 240.17Ad-22(e)(6).

⁹ 17 C.F.R. 240.17Ad-22(e)(6).

¹⁰ 17 C.F.R. 240.17Ad-22(e)(10).

reflect the application of CVM. Clearance of such contracts would not otherwise be affected. As amended, the Delivery Procedures thus appropriately state the role and responsibilities of the Clearing House and Clearing Members with respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad-22(e)(10).¹¹

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

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments to the Delivery Procedures are intended to implement the Clearing House's application of CVM in respect of certain physically-settled European and UK electricity and natural gas futures contracts. The imposition of CVM may impose certain costs on market participants trading such contracts, as they may be required to provide CVM amounts to the Clearing House during the delivery period. ICE Clear Europe believes that such costs are appropriate, however, to account for the risks to the Clearing House from market movements during the delivery period, and reflect the particular positions of the market participant that have gone to delivery. The CVM requirements will apply in the same way to all similarly situated market participants. ICE Clear Europe does not believe the amendments would otherwise materially affect the cost of clearing, adversely affect competition among Clearing Members, adversely affect access to clearing in the relevant contracts for Clearing Members or their customers, or otherwise adversely affect competition in

¹¹ 17 C.F.R. 240.17Ad-22(e)(10).

clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

Electronic Comments:

- Use the Commission's Internet comment form
(<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2022-018 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2022-018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2022-018 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,
Deputy Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).