

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96749; File No. SR-ICEEU-2023-002)

January 25, 2023

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 12, 2023, 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

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

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to amend its Delivery Procedures (“Delivery Procedures”) to make certain clarifications and updates.

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

The amendments to Part A, which applies to ICE Endex Deliverable EU Emissions Contracts, would reflect that, as provided in ICE Endex’s Circular E22/012,⁵ ICE Endex will delist Aviation Emissions Allowance or “EUAA” Futures Contracts following the expiry of the December 2022 contract month and, commencing with the January 2023 contract month, EUAAs would become eligible for delivery under the existing ICE Endex Carbon Emissions Allowance or “EUA” daily and monthly

⁵ ICE Endex Circular E22/012 is available at the following website: <https://www.theice.com/publicdocs/endex/circulars/E22012.pdf>.

Contracts.⁶ Conforming changes would be made in Part A, including to remove references to “ICE Endex EUAA Futures Contracts” and to reflect that EUAAs may be delivered under the delivery specifications applicable to the EUA daily and monthly contracts (through an amendment to the term Carbon Emission Allowance Contract and related changes in the delivery timetable). Certain related drafting amendments would be made in Part A to reflect such updates including the removal of related definitions and other terms (for example, the removal of the definitions of “Allowance Type” and “Aviation Emissions Allowance Contract”) which would no longer be applicable.

The definition for the term “Communication Link” would be included in Part A in place of the cross-reference to the definition assigned in the ICE Endex Rules. The amendments provide that “Communication Link” means the electronic exchange of messages or notifications by which Buyers and Sellers communicate with the Registry, and/or by which the Registry communicates with the European Union Transaction Log which is necessary to facilitate a Transfer Request. This update is intended to improve clarity. The definition of “Emissions Directive” would be amended to include a reference to the most recent relevant EU directive, Directive 2018/410 of the European Parliament and of the European Council of 14 March 2018. The amendments also amend the definition of the term “Transfer Request” to mean a request to affect a transfer of an EUA and/or EUAA submitted by a Seller to the Registry as required by the Registry Regulations, relevant applicable law and otherwise in accordance with the ICE Clear Europe Rules and ICE Endex Rules. Previously, such definition crossed-referenced a

⁶ Accordingly, the amendments to Part A will become operative following expiry of the December 2022 contract month.

definition of “Allowance Transfer Request” which was not defined in the Delivery Procedures. Separate definitions of “Aviation Emissions Allowance Transfer Request” and “Carbon Emissions Allowance Transfer Request” would be removed as unnecessary given the revised definition of Transfer Request. Certain other non-substantive drafting clarifications would be made.

Timing for EFP Reporting

The amendments to Parts D (which apply to ICE Futures UK NBP Natural Gas Daily Futures), F (which applies to ICE Endex Dutch TTF Natural Gas Daily Futures), and EE (which applies to ICE Endex Austrian CEGH VTP Natural Gas Daily Futures) are intended to address inconsistencies regarding the timing of reporting of Exchange for Physicals (EFP) and Exchange for Swaps (EFS) transactions related to certain contracts. The amendments to Part D would correct Section 2.5(b) to state that ICE Futures UK NBP Natural Gas Daily Futures cease trading at 17:00 hours on the Business Day prior to the Delivery Day, to be consistent with exchange rules. The amendments to Part D would provide in Section 2.6 that for ICE Futures UK NBP Natural Gas Daily Futures, in accordance with the ICE Clear Europe Clearing Rules, EFPs and EFSs may be posted up to 30 minutes following the cessation of trading. (The change thus eliminates an inconsistency with exchange rules.) Such timing update would also be reflected in the delivery table for the same contracts in Section 5.2. In the delivery timetable for ICE Endex Dutch TTF Natural Gas Daily Futures in Section 6.2 of Part F, the amendments would clarify that EFPs and EFS may be posted up to 30 minutes following the cessation of trading (in order to make the timetable consistent with paragraph 3.6 of Part F). The amendments would also update the delivery timetable for ICE Endex Austrian CEGH

VTP Natural Gas Daily Futures in Section 8 of Part EE such that the time specified in such table reflects the narrative which provides that EFPs and EFSs may be posted up to 30 minutes following the cessation of trading.

Changes to Naming Conventions

To apply consistency to the contract names of certain natural gas futures contracts, the Clearing House would change the name of “TTF Natural Gas Futures” to “Dutch TTF Natural Gas Futures”, “TTF Natural Gas Daily Futures” to “Dutch TTF Natural Gas Daily Futures”, “TTF Natural Gas Working Days Next Week” to “Dutch TTF Natural Gas Working Days Next Week”, “UK Natural Gas Futures” to “UK NBP Natural Gas Futures”, “UK Natural Gas Daily Futures” to “UK NBP Natural Gas Daily Futures”, “UK Natural Gas (EUR/MWh) Futures” to “UK NBP Natural Gas (EUR/MWh) Futures”, “PSV Natural Gas Futures” to “Italian PSV Natural Gas”, “ICE Endex VTP Natural Gas Futures” and “CEGH Austrian VTP Natural Gas Futures” to “ICE Endex Austrian CEGH VTP Natural Gas Futures”, “ICE Endex VTP Natural Gas Daily Future” to “ICE Endex Austrian CEGH VTP Natural Gas Daily Futures, and “ICE Endex PEG Natural Gas Futures” to “ICE Endex French PEG Natural Gas Futures”. Such changes would be made where relevant in Parts D (which applies to UK natural gas futures contracts), F (which applies to ICE Endex Dutch natural gas futures), AA (which applies to Italian natural gas futures), EE (which applies to Austrian natural gas futures), and HH (which applies to the French natural gas futures) of the Delivery Procedures. Paragraphs 5 and 13 of the introductory section to the Delivery Procedures would also be updated to reflect the name changes.

Delisting of Belgian ZTP Natural Gas Contracts

Part I of the Delivery Procedures (which applied to ICE Endex ZTP Natural Gas Futures Contracts) would be deleted in its entirety as such contracts are no longer listed for trading at ICE Endex. Similarly, Part J would be amended to remove all references to ICE Endex Spot Market ZTP Natural Gas Spot Contracts and ICE Endex Spot Market ZTPL Natural Gas Spot Contracts, which are also no longer listed for trading at ICE Endex. Corresponding changes would be made in paragraph 5 of the introductory section of the Delivery Procedures and in the Table of Contents.

Delivery Timetable for Deliverable US Emissions Contracts

The amendments would revise the delivery timetable in Part N (which applies to ICE Deliverable US Emissions Contracts) to remove unnecessary provisions in the final row relating to confirmation of delivery on the Delivery Day. The relevant obligations relating to confirmation of delivery are already covered in the preceding rows of the timetable. The remaining language in that row would be removed in order to avoid any incorrect implication that delivery could be made following the relevant Delivery Day. The amendments do not change the terms and conditions of the relevant contract.

Other Updates

Updates to the table of contents and various section headings would be made to conform to changes described above. A conforming reference to the ICE Endex Austrian CEGH VTP Natural Gas Daily Futures Contract would be added in paragraph 5.1 (such reference had previously been omitted).

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures are consistent with the requirements of Section 17A of the Act⁷ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁸ 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 make a number of updates and clarifications to the Delivery Procedures for physically settled F&O Contracts. The amendments remove from the Delivery Procedures certain contracts that have been delisted by the relevant exchange. The amendments also clarify the deadline for submission of EFPs, EFSs for certain contracts and update relevant naming conventions, and remove duplicative information, among other clarifications and drafting updates. The amendments would not otherwise affect the manner in which such contracts are cleared and settled. Accordingly, ICE Clear Europe believes that the Delivery Procedures, as amended, are sufficient to support clearing of such contracts and to manage the risks associated with such contracts. 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

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

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.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.” As discussed above, the amendments would amend the delivery specifications to make certain updates and clarifications, and to remove provisions relating to delisted contracts. As amended, the Delivery Procedures appropriately set out 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 clarify certain delivery procedures in respect of certain physically settled

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 C.F.R. 240.17Ad-22(e)(10).

¹¹ 17 C.F.R. 240.17Ad-22(e)(10).

energy contracts. The amendments would not materially change the rights or obligations of Clearing Members or other market participants. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in the new contracts for Clearing Members or their customers, or otherwise adversely affect competition in 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2023-002 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-2023-002. 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-2023-002 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).