

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96787; File No. SR-ICEEU-2023-004)

February 1, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Counterparty Credit Risk Policy and Counterparty Credit Risk 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 20, 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. 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 modify its Counterparty Credit Risk Policy (the “CC Risk Policy”) and Counterparty Credit Risk Procedures (the “CC Risk Procedures”) to provide that the Clearing House’s framework for monitoring counterparty credit risk covers links,³ as

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Link” means “a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding their services to additional instruments or participants, or for any other purposes material to their business.” 17 CFR 240.17Ad-22(a)(8).

defined in the Commission's standards for clearing agencies. The Clearing House also proposes to make certain further updates and clarifications to the CC Risk Procedures.⁴

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

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

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

(a) Purpose

ICE Clear Europe is proposing to revise the CC Risk Policy in order to provide that the Clearing House's policies for monitoring counterparty credit risk apply to links, as defined in the Commission's regulations. ICE Clear Europe is also proposing to revise the CC Risk Procedures to make conforming updates in respect of links and to make certain other clarifications and enhancements.

⁴ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the CC Risk Policy and CC Risk Procedures, as applicable.

I. Counterparty Credit Risk Policy

The amendments to the CC Risk Policy would include as part of the description of the Clearing House's counterparty credit risk the risk that a "link" defaults, leaving the Clearing House to fund material contractual or operational arrangements. A definition of "link", based on the definition in Rule 17Ad-22(a)(8),⁵ would be added. Conforming references to links would be added in relevant portions of the CC Risk Policy: the amendments would add that an objective of the CC Risk Policy is to minimize the risk of the Clearing House realizing a material loss due to a link defaulting, and that a means by which the Clearing House achieves this objective is to identify, monitor and manage risks from links. The amendments would also clarify the credit scoring with respect to links (which may use credit criteria other than those used with respect to CMs) and provide that for link counterparties whose credit scores are worse than a required threshold, a mitigating action that the Clearing House may take is to change its usage of links.

Non-substantive drafting and formatting updates would also be made.

II. CC Risk Procedures

The CC Risk Procedures, which supplement the CC Risk Policy, would be updated to make conforming changes to those discussed above with respect to links, including as to including the risk of a link default as a type of counterparty credit risk that Clearing House seeks to manage. The amendments would provide that in order to minimize counterparty credit risk, the Clearing House would identify, monitor and

⁵ 17 C.F.R. 240.17Ad-22(a)(8).

manage material risks from links as well as ensure that all counterparty risks are eliminated prior to off-boarding counterparties.

The amendments would remove a specific statement that FSPs must be legal entities in approved jurisdictions. Consistent with other ICE Clear Europe policies and current practice, the Clearing House legal department separately reviews and determines approved jurisdictions, and accordingly a reference to this process in the CC Risk Procedures is unnecessary. The amendments would also add a specific reference to Anti-Money Laundering and Know-Your-Customer screenings. These amendments would also state that agreements with FSPs are subject to review by the legal team, including analysis of legal risk relating to governing law and in that context jurisdiction. These changes are intended to more clearly reflect current practice of the Clearing House.

Similar to the changes in the CC Policy, the amendments would revise the discussion of credit scoring to reflect that the Clearing House may use related credit criteria (as opposed to credit scores) to evaluate credit quality of counterparties. The amendments reflect the fact that different criteria may be appropriate for evaluation of the credit risks of FSPs and links, as compared to CMs. Conforming changes to refer to such related criteria would be made where applicable in the CC Risk Procedures. Such evaluations will continue to be made daily as set out in the counterparty risk reviews section of the CC Risk Procedures and the related Counterparty Credit Risk Parameters (“Parameters”) (notwithstanding removal of certain duplicative language in the discussion of credit scoring). A statement that the CRS may incorporate exposure information reflecting the risk of the CM’s portfolio held with the Clearing House (specifically, loss given default) or analyze exposure with reference to financial metrics

would be removed, to be consistent with changes to the relevant credit risk model used in determining CRS scoring (which does not consider such exposures).

The amendments would provide that late submissions of quarterly financial statements by counterparties would be communicated and escalated as set out in the Parameters. In the discussion of risk classification, the amendments would provide that CMs who reach the Watch List Criteria are added automatically to the Watch List, and that the Watch List Criteria are set out in the Parameters. These updates are to ensure alignment between the Clearing House's risk management framework documentation, including the CC Risk Procedures and the Parameters.

In the section describing the Clearing House's counterparty credit risk monitoring, the amendments would add that such monitoring and review includes monitoring for cross-exposures of CMs' affiliates (defined in the relevant Parameters as uncollateralized stress loss for clearing members, unsecured exposure for FSPs and estimate loss for purposes of links). Such continuous monitoring would, in addition to other sources, be based on credit scores and public news. The continuous monitoring will facilitate production of daily, rather than weekly, risk reviews. Other reviews of monitoring activity would continue to be carried out monthly and quarterly. The amendments would also provide that review frequency and criteria in addition to findings and recommendations from the counterparty risk reviews would be approved based on the Parameters.

The amendments would add to the discussion of the Clearing House's practices for monitoring its exposures to CMs that the Clearing House also monitors at least monthly credit cross-exposures among counterparties and their affiliates in all their

capacities. These amendments are intended to reflect the expansive nature of the Clearing House's current risk management practices.

With respect to exposure limits and related capital calculations for purposes of CMs that are part of a Systemically Important Institution, the amendments will use the more specific definition of Systemically Important Institutions in the Parameters as an institution with assets greater than 200 billion Euros that is treated as a Globally Systemically Important Institution by the European Banking Authority. This would replace the previous, more subjective standard. A reference to the institution being in a robust legal jurisdiction has been removed as unnecessary in light of the revised definition and approach to AML/KYC and governing law review discussed above.

Non-substantive drafting and formatting updates would also be made.

(b) Statutory Basis

ICE Clear Europe believes that the amendments to the CC Risk Policy and the CC Risk Procedures are consistent with the requirements of Section 17A of the Act⁶ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁷ 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.

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

The amendments to the CC Risk Procedures and CC Risk Policy are designed to more clearly document certain of the Clearing House’s practices with respect to the management of counterparty credit risk and would explicitly include references to losses from defaulting links (in addition to the existing references to losses resulting from defaulting CMs and losses resulting from the default of other FSPs). The amendments would make certain other updates and clarifications with respect to counterparty credit risk evaluation more generally. The proposed amendments thus enhance the overall risk management of the Clearing House and promote the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. The proposed amendments to the CC Risk Policy and CC Risk Procedures are thus also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. The aspects of the updates to the CC Risk Policy and CC Risk Procedures that relate to counterparty credit risk for FSPs or links will also help manage the risk of assets held by the Clearing House from CMs and their customers that may otherwise be affected by the default of an FSP or link, and thus enhance the safeguarding of securities and funds in ICE Clear Europe’s custody or control or for which it is responsible. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).⁸

The amendments to the CC Risk Policy and the Risk Procedures are also consistent with relevant provisions of Rule 17Ad-22. Rule 17Ad-22(e)(3)(i)⁹ provides

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17 Ad-22(e)(3)(i).

that the “covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] maintain a sound risk management framework that” among other matters identifies, measures, monitors and manages the range of risks that it faces. The amendments to the CC Risk Policy and the CC Risk Procedures are to enhance the Clearing House’s policies and practices for monitoring and reviewing counterparty credit risk and related exposures, provide clear descriptions of such policies and processes, as well as align with other documents in ICE Clear Europe’s overall risk management framework. The amendments would thus strengthen the management of potential counterparty risks, and risk management more generally. In ICE Clear Europe’s view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(3)(i).¹⁰

Rule 17A-22(e)(16) provides that the “covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] safeguard [its] own and its participants’ assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.”¹¹ As discussed above, the amendments to the CC Risk Policy and CC Risk Procedures are intended to document Clearing House practices with respect to the management of credit risk with respect to FSPs and links, including any through which assets of the Clearing House and CMs may be invested or maintained. The policy and procedures address the monitoring of an FSP or link’s credit

¹⁰ 17 CFR 240.17 Ad-22(e)(3)(i).

¹¹ 17 CFR 240.17Ad-22(e)(16).

risk and the steps the Clearing House may take to mitigate such risk where it exceeds exposure limits. As such, the CC Risk Policy and CC Risk Procedures will continue to enable the Clearing House to safeguard such assets and minimize the risk of loss from FSP default, consistent with the requirements of Rule 17Ad-22(e)(16).¹²

For similar reasons, the amendments to the CC Risk Policy and the CC Risk Procedures are consistent with the requirements of Rule 17A-22(e)(20),¹³ which provides that the “covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets”. The amendments document the Clearing House practices and policies with respect to the management of credit risk and related exposure with respect to link counterparties, and in ICE Clear Europe’s view are therefore consistent with the requirements of Rule 17Ad-22(e)(20).¹⁴

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

ICE Clear Europe does not believe the proposed documents would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments to the CC Risk Policy and the CC Risk Procedures are intended to enhance practices with respect to counterparty credit risk

¹² 17 CFR 240.17Ad-22(e)(16).

¹³ 17 CFR 240.17Ad-22(e)(20).

¹⁴ 17 CFR 240.17Ad-22(e)(20).

monitoring and management, for CMs, FSPs and links, and are not intended to impose new requirements on CMs. The proposed amendments clarify ICE Clear Europe's risk management procedures and ensure that ICE Clear Europe continues to appropriately monitor and limit risks relating to CMs, FSPs and links' credit risk. The proposed amendments are not expected to materially change margin requirements or costs for CMs and any such change which may occur would be tailored to the counterparty credit risk presented by a particular CM. ICE Clear Europe does not believe that the proposed amendments will otherwise impact competition among Clearing Members or other market participants or affect the ability of market participants to access clearing generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate or unnecessary in furtherance of the purposes of the Act.

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2023-004 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-2023-004. 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-2023-004 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.¹⁵

Sherry R. Haywood
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).