

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96791; File No. SR-ICEEU-2023-003)

February 2, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Part N1 of the 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 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. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(4)(ii)⁴ thereunder, 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 Part N1 of its Delivery Procedures (“Delivery Procedures” or

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).

“Procedures”) to update the delivery timetable for ICE Deliverable US Emissions 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

ICE Clear Europe is proposing to amend Part N1 of the Delivery Procedures which applies to ICE Deliverable US Emissions Contracts (i) for which physical delivery is specified as being “Applicable” in the relevant Contract Terms, (ii) which go to physical delivery on the expiry date; and (iii) to which the Clearing House will announce by Circular that Part N1 specifically applies (such contracts “ICE Deliverable US Emissions Contracts”).⁵ The Clearing House is proposing to amend the delivery

⁵ Part N1 of the Delivery Procedures (as filed pursuant to filing SR-ICEEU-2021-023, Exchange Act Release No. 34-93764 (Dec. 13, 2021), 86 Fed. Reg. 71692 (Dec. 17, 2021)) will not be operative until the Effective Date referenced below. Part N1, as amended by the proposed amendment set forth herein, will come into effect on or about 23 February 2023, with the specific effective date announced at least one week in advance through ICE Clear Europe Circular (the “Effective Date”).

timetable to remove extraneous and unnecessary provisions in the final row relating to the relevant parties' obligations on the Delivery Day. The relevant delivery and payment obligations are already covered in the preceding rows of the timetable. Specifically, the provisions in the final row relating to final payment to the Seller are already addressed in the row titled "Payment to Seller." Similarly, the provisions in the final row relating to the return of Seller's Delivery Margin are addressed in the row titled "Payment to Seller." The amendment would also remove an inconsistency between the deleted provision and the deadline for delivery of Allowances as set forth in the row titled "Seller's Delivery to the Clearing House." The amendments would additionally remove a statement in the final row relating to the treatment of deliveries after the specified deadline as being deemed received on the next business day. ICE Clear Europe believes that this statement was unnecessary and could have been read to imply that a late delivery was acceptable, which is not consistent with the deadline set forth in the row titled "Seller's Delivery to the Clearing House" and current Clearing House practice. The amendments do not otherwise change the terms and conditions of the relevant contract.

(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 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

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

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 to the Delivery Procedures are designed to clarify the obligations of the relevant parties for the Delivery Day in the delivery timetable under Part N1. The amendments will not change the manner in which ICE Deliverable US Emissions Contracts delivered through a Clearing House Registry Account under Part N1, once it becomes operative in accordance with this filing, will be cleared by the Clearing House. 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, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁸ (In ICE Clear Europe's view, the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).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

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 C.F.R. 240.17Ad-22(e)(10).

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 for ICE Deliverable US Emissions Contracts to clarify the obligations for the Delivery Day and remove extraneous provisions. The amendments thus appropriately clarify 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 make certain clarifications to the delivery timetable procedures applicable to the settlement of ICE Deliverable US Emissions Contracts. The amendments would not change the obligations of 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

¹¹ 17 C.F.R. 240.17Ad-22(e)(10).

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-2023-003 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-2023-003. 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-2023-003 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

Sherry R. Haywood
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).