

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96943; File No. SR-ICEEU-2023-006)

February 16, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments Part Q of its White Sugar 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 February 6, 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.

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 Q of its White Sugar Delivery Procedures to make certain

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).

clarifications around the origin of the deliverable crop and certain matters relating to delivery notifications and presentation of delivery documents.⁵

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 Q of its Delivery Procedures to clarify certain provisions relating to delivery specifications for ICE Futures Europe Financial and Softs White Sugar futures contracts, to be consistent with amendments that have been made to the contract specifications under exchange rules. The proposed amendments would provide that deliverable sugar under such contracts must have been produced in a country included in the list of deliverable countries of production maintained by the exchange, consistent with exchange rules. Delivery would have to be

⁵ Capitalized terms used but not defined herein have the meanings specified in the Delivery Procedures or, if not defined therein, the ICE Clear Europe Clearing Rules.

made at an eligible delivery port (as defined in exchange rules as a port located in one of such countries that meets the requirements in exchange rules).

The amendments would update documentation and other requirements under the delivery timetable. The amendments would clarify the relevant Tender Day (which is the business day following the Last Trading Day). The concept of Notice of Tender would be replaced with Delivery Notification, to be consistent with exchange rules, and the amendments would clarify that a separate notification must be provided for each underlying client at each Delivery Port. The contents of the Delivery Notification and manner of submission would also be specified. The timing of allocations of white sugar to Buyers (and related notifications) would be moved from after 10:30 LPT to after 14:00 LPT.

Consistent with exchange rules, the concept of “Insufficient Seller” would be revised to be a seller in respect of a Delivery Port for which the minimum lot requirement under exchange rules is not satisfied (and the concept of non-qualifying port would be removed). Requirements for Insufficient Sellers to submit revised Delivery Notifications would be clarified (including that relevant notifications must be made to and from the Clearing House, instead of the exchange). The amendments would add that revised Delivery Notifications that do not meet a minimum Delivery Port lot requirement will be rejected, and Insufficient Sellers would be required to submit a further revised Delivery Notification meeting the relevant requirement. Where the Insufficient Seller fails to do so, the Clearing House will determine the Deliver Port from which tenders are to be made.

The amendments would also clarify the delivery documentation to be provided by the seller, including relevant certifications in accordance with the contract terms, as well as procedures for rejection of presented documents. The amendments would also provide that certain related notifications are to be made to and from the Clearing House (rather than the exchange), consistent with the role of the Clearing House in the delivery process.

Certain typographical corrections and similar non-substantive drafting clarifications have been made in Part Q.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to Part Q of 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 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 ICE Clear Europe's arrangements and delivery procedures relating to Financial and Softs White Sugar futures contracts and ensure consistency with the relevant contract specifications under exchange rules. Notably, the amendments would reflect the requirement under exchange rules that

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

deliverable sugar be produced in one of the countries listed in the list of deliverable countries of production maintained by the exchange. In addition, the amendments clarify the timing of allocations by the Clearing House and certain related delivery notification and delivery documentation requirements. The contracts will otherwise continue to be cleared by ICE Clear Europe in the same manner as they are currently. In ICE Clear Europe's view, the amendments are thus consistent with the prompt and accurate clearance and settlement of cleared contracts and the protection of investors and the public interest. (ICE Clear Europe would not expect the amendments to affect 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

In addition, Rule 17Ad-22(e)(10)⁹ requires that each covered clearing agency "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 clarify the delivery specifications for Financial and Softs White Sugar futures contracts. The amendments would also clarify the obligations of the Clearing House (as opposed to the exchange) in the notification and delivery documentation process. The amendments would not otherwise change the manner in which the contracts are cleared or in which delivery is

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22(e)(10).

made, as supported by ICE Clear Europe's existing financial resources, risk management, systems and operational arrangements. The amendments thus 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).¹⁰

(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 are being adopted to update and clarify the delivery specifications in Part Q of the Delivery Procedures in connection with White Sugar contracts. ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise impact competition among Clearing Members or other market participants or limit market participants' choices for selecting clearing services. Accordingly, ICE Clear Europe does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

¹⁰ 17 CFR 240.17Ad-22(e)(10).

(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 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 Act¹¹ and paragraph (f) of Rule 19b-4¹² 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:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2023-006 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-2023-006. 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-2023-006 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.¹³

Sherry R. Haywood,
Assistant Secretary.

¹³ 17 CFR 200.30-3(a)(12).