

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97018; File No. SR-ICEEU-2022-027)

March 2, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the Capital Replenishment Plan

I. Introduction

On December 29, 2022, ICE Clear Europe Limited (“ICEEU”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a capital replenishment plan. The proposed rule change was published for comment in the Federal Register on January 17, 2023.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

ICE Clear Europe is registered with the Commission as a clearing agency for the purpose of clearing security-based swaps. In its role as a clearing agency for security-based swaps, ICE Clear Europe maintains certain financial resources as capital. A number of different laws and regulations require ICEEU to maintain capital, as doing so promotes ICE Clear Europe’s resiliency and helps it withstand periods of market stress. In the proposed rule change, ICEEU

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the Capital Replenishment Plan; Exchange Act Release No. 96634 (Jan. 11, 2023), 88 FR 2668 (Jan. 17, 2023) (File No. SR-ICEEU-2022-027) (“Notice”).

would adopt a new Capital Replenishment Plan (“CRP”)⁴ to explain how ICEEU would replenish its capital following a loss. The proposed adoption of the CRP is designed to address ICEEU’s need to replenish capital because of a Clearing Member default, the occurrence of sudden extraordinary one-off losses, net losses resulting from custody or investment risks, or from recurring losses which may arise from general business risks.⁵ The CRP would consist of five sections, and would include two appendices and two annexes. Each of these sections is described below. ICEEU would review the CRP annually and would include capital replenishment within its annual default management test schedule.

B. Section 1 – Introduction and Background

Section 1 of the CRP introduces the plan, describes the purpose of the plan, and explains ICEEU’s approach in developing the plan. As mentioned above, the overall purpose of the plan is to replenish capital following a loss. The proposed CRP: (i) describes actions that ICEEU could take to replenish its capital, for both its own resources contribution to the guaranty fund and for its capital requirement under EMIR; (ii) explains ICEEU’s approach to capital management and maintaining capital; and (iii) identifies associated stakeholders and responsibilities.

Section 1 outlines the steps ICEEU would expect to take to replenish capital, including (i) first assessing and using available accumulated financial resources, (ii) then looking to use reasonably calculated forecasts as to future profits, (iii) if those resources are insufficient to restore capital to the legal requirement, by seeking resources from its parent company in the ICE

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in the CRF or ICEEU’s rulebook, as applicable.

⁵ See Notice, 88 FR 2668.

group, and (iv) thereafter, with the approval of its parent and subject to the rights of existing shareholders, by seeking additional capital from third parties. ICEEU may also bypass the first two steps outlined above and immediately request capital from its parent company.

Finally, Section 1 of the CRP assigns the overall accountability for the CRP to the ICEEU President, the ICEEU Finance Director, and the ICEEU Board.

C. Section 2 – Responsibilities

While Section 1 of the CRP assigns overall accountability to the President, Finance Director, and Board, Section 2 provides further details on that accountability. Specifically, under Section 2, ICEEU's Finance Director is responsible for monitoring ICEEU's compliance with the applicable regulatory capital requirements, reporting capital adequacy internally and to regulators, escalating matters relating to capital adequacy to ICEEU's President where appropriate, and contributing to the development of plans to increase and/or replenish Eligible Capital as required for ICEEU to continue to meet its regulatory capital requirements. ICEEU's Finance Director also prepares forward-looking calculations of capital adequacy and dividend recommendations.

ICEEU's President is responsible for ensuring ICEEU meets its capital adequacy obligations under relevant laws and regulations. ICEEU's President is also responsible for developing and executing any plans to increase and/or replenish capital as required in order for ICEEU to continue to meet its regulatory capital requirements, where necessary.

The Board Risk Committee is responsible for reviewing and recommending to the Board the principles underlying the capital planning process as well as the Plan itself, and the Board itself would be responsible for approving the principles and the Plan. The Board is also responsible for holding the President accountable for demonstrating adherence to ICEEU capital

policies and for reviewing and approving any capital transactions. The Board is also responsible for reviewing and recommending the principles that underpin the capital planning process and reviewing and approving any capital transactions.

D. Section 3 – Target Capital Amount

Section 3 of the CRP explains how ICEEU determines its target capital amount in excess of the legal minimum capital requirement. ICEEU is required to maintain capital under a number of different laws and regulations, including regulations issued by the Bank of England and the Commission. ICEEU considers its capital, as calculated in accordance with Article 1(1) of EMIR Capital RTS, to be its Base Capital Requirement.⁶

Section 3 of CRP explains that ICEEU seeks to maintain capital above the threshold at which ICEEU would be required to notify the Bank of England (which is generally 10% above the required capital level). In addition, ICEEU also endeavors to maintain additional capital, on a voluntary basis, approximately equal to an additional 10% of the required capital level plus the 10% buffer referenced above.

E. Section 4 – Capital Replenishment Tools

Section 4 of the CRP provides further detail regarding the use of the capital replenishment tools referenced above in different default loss and non-default loss scenarios and related actions to be taken for each tool, including as to the key individuals and departments involved and approvals required, the estimated timing for various actions, relevant

⁶ Commission Delegated Regulation (EU) No. 152/2013 of 19 December 2012 supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on capital requirements for central counterparties, as on-shored into UK law following the end of the Brexit transition period.

documentation requirements, the procedure for determination of the relevant amount of additional resources to be sought or applied from the relevant sources, and the process for consultation with Clearing Members and regulators, among other matters.

F. Section 5, Appendices, and Annexes

Section 5 of the CRP provides a version history. Appendix A provides additional detail on replenishment actions, including the timings for the actions and the personnel that are involved. Appendix B is a glossary of defined terms found in the CRP. Annex 1 consists of template corporate resolutions for ICEEU to use in carrying out certain replenishment actions, while Annex 2 consists of template corporate resolutions for ICEEU's parent company to use in authorizing ICE Clear Europe's replenishment actions.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁷ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,⁸ and Rules 17Ad-22(e)(2)(v), (3)(ii), and (e)(15) thereunder.⁹

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICEEU be designed to promote the prompt and accurate clearance and settlement of securities

⁷ 15 U.S.C. 78s(b)(2)(C).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22(e)(2)(v), (e)(3)(ii), and (e)(15).

transactions.¹⁰ Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed rule change is consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions at ICEEU because it would adopt the CRP, which establishes ICEEU’s procedures for replenishing capital.

The proposed rule is intended to document procedures for replenishing capital. The proposed CRP would facilitate the continued operation of ICEEU following a significant loss from one or more Clearing Member defaults or a non-default loss (including investment or custodial losses and losses from general business risk) by replenishing needed financial resources. The proposed rule would address replenishment to both the minimum legal capital requirement and the higher target level intended to provide additional resources as an operating buffer. The proposed CRP would therefore help enable ICEEU to continue operations, including clearing and settling transactions, following a significant loss that affects ICEEU’s capital. The proposed rule change is therefore consistent with the continued prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹¹

B. Consistency with Rule 17Ad-22(e)(2)(v) under the Exchange Act

Rule 17Ad-22(e)(2)(v)¹² provides that the “covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17 Ad-22(e)(2).

applicable [...] provide for governance arrangements” that “specify clear and direct lines of responsibility.”¹³

The Commission believes the proposed rule change is consistent with 17Ad-22(e)(2)(v). The CRP identifies responsibilities of key ICEEU personnel, including the Board, the President, and other stakeholders with respect to ongoing compliance with capital requirements and for capital replenishment when necessary. The proposed CRP also provides for annual review by ICEEU’s President, Finance Director, and Board to ensure that it remains up-to-date and is reviewed in accordance with the Clearing House’s internal governance processes.

C. Consistency with Rule 17Ad-22(e)(3)(ii) under the Exchange Act

Rule 17Ad-22(e)(3)(ii)¹⁴ provides 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 for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody and other risks that arise in or are borne by the covered clearing agency, which . . . includes plans for the recovery or orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.”¹⁵

The Commission believes that the proposed rule is consistent with Rule 17Ad-22(e)(3)(ii). The proposed CRP serves as a recovery tool and part of ICEEU’s broader Recovery Plan because it documents tools, arrangements and procedures for replenishing capital resulting from default losses or non-default losses, including losses from general business risk. The

¹³ 17 CFR 240.17 Ad-22(e)(2)(v).

¹⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

¹⁵ 17 CFR 240.17Ad-22(e)(3)(ii).

proposed CRP further sets out the roles and functions of the Board, ICEEU management and other internal personnel and committees in taking such steps to replenish financial resources.

D. Consistency with Rule 17Ad-22(e)(15) under the Exchange Act

Rule 17Ad-22(e)(15)¹⁶ states that a clearing agency shall “identify, monitor, and manage, the covered clearing agency’s general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses . . .” by “[m]aintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of this section.”¹⁷

The Commission believes the proposed rule is consistent with Rule 17Ad-22(e)(15). The proposed rule has been approved by the ICEEU Board of Directors, would be reviewed and updated annually, and would outline the tools available to restore additional capital if needed. Specifically, the proposed rule serves as a part of a broader recovery plan and is intended to document tools, arrangements and procedures for replenishing capital when needed, including as a result of losses from general business risk. The capital restoration levels detailed in the proposed rule are based on ICEEU’s legal capital requirements and its own target capital level. These are designed to exceed the amount required under Rule 17Ad-22(e)(15)(ii).¹⁸

¹⁶ 17 CFR 240.17Ad-22(e)(15).

¹⁷ 17 CFR 240.17 Ad-22(e)(15)(iii).

¹⁸ 17 CFR 240.17 Ad-22(e)(15)(ii).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act¹⁹ and Rules 17Ad-22(e)(2)(v), (e)(3)(ii), and (e)(15) thereunder.²⁰

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²¹ that the proposed rule change (SR-ICEEU-2022-027), be, and hereby is, approved.²²

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,
Assistant Secretary.

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

²⁰ 17 CFR 240.17Ad-22(e)(2)(v), (e)(3)(ii), and (e)(15).

²¹ 15 U.S.C. 78s(b)(2).

²² In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²³ 17 CFR 200.30-3(a)(12).