

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97230; File No. SR-ICEEU-2023-007)

March 31, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments of 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 March 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 primarily prepared 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. On March 27, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice

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).

to solicit comments on the proposed rule change, as modified by Amendment No. 1 (hereafter the “proposed rule change”),⁵ 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 its Delivery Procedures (“Delivery Procedures” or “Procedures”) to add a new Part N2 thereto (“Part N2”), which will apply to certain ICE Futures Europe Deliverable Carbon Credit Contracts (together the “Contracts”), for which delivery will be made through a registry account of the Clearing House.⁶

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

⁵ Amendment No. 1 amended and restated in its entirety the Form 19b-4 and Exhibit 1A in order to correct the narrative description of the proposed rule change.

⁶ 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.

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 add a new Part N2 to the Delivery Procedures. Part N2 would apply to the Contracts, which are to be traded on ICE Futures Europe and cleared at ICE Clear Europe, and would address settlement that will occur through a Registry Account of the Clearing House. The proposed Delivery Procedures are intended to become operative on March 28, 2023, subject to regulatory approval. ICE Clear Europe will announce by Circular the specific Contracts to which Part N2 of the Delivery Procedures will apply. ICE Clear Europe currently expects that Part N2 will apply to all ICE Futures Europe physically deliverable carbon credit contracts.

Pursuant to Part N2, delivery under the Contracts, in the case of the Seller, would be effected upon the transfer of the relevant Carbon Credits from the Registry Account of the Seller into the Registry Account of the Clearing House and acceptance of the Carbon Credits by the Clearing House. In the case of the Buyer, delivery would be effected upon transfer of the relevant Carbon Credits from the relevant Registry Account of the Clearing House to the relevant Registry Account of the Buyer, and there would not be a prerequisite for the Buyer to accept the Carbon Credits. Part N2 would set out the Clearing House's ability not to accept a transfer from the Seller in the event the transferred carbon credits are not in accordance with the contract specifications. Delivery would take place during the Delivery Period for the relevant Contracts in accordance with the contract specifications, and neither delivery by Seller nor receipt by Buyer would

require performance by the other to occur simultaneously. Consistent with the foregoing, the amendments would also state that both the Buyer and Seller would deal directly with the Clearing House in the settlement.

The amendments would set out relevant definitions related to delivery under the contract, including as to the underlying deliverable Carbon Credits. The amendments provide that the Carbon Credits must conform to the specification described in the Contract and the specifications of the Registry to and from which delivery may be made under the relevant Contract. In cases where the Seller effected the transfer of carbon credits that are not in accordance with the relevant Contract specifications, the Clearing House would reserve the right to reject the transfer and return the respective carbon credits. In such scenario the Seller would remain under an obligation to deliver the Carbon Credits of the specified quantity along with the Contract within the appropriate timeline. The amendments would further specify certain details of the delivery process for the Contracts including quantity, settlement price, and timing of cessation of trading.

The amendments would state that the Contracts would be based on Open Contract Positions after expiration of the relevant Contract Set and the delivery process would occur over a three consecutive Business Day period. In addition, the amendments would include delivery timetables with detailed timeframes and descriptions of the processes for delivery under Contracts. Such timetables would set out, among other processes, the time for cessation of trading, submission of delivery intentions, confirmation reports, confirmations of delivery position/expiry, payment by the Buyer, payment and return of

delivery margin, Seller's delivery to the Clearing House, payment to Seller, and Clearing House delivery to the Buyer.

The amendments would also address the responsibilities of the Clearing House and relevant parties for delivery under Contracts, as well as certain limitations of liability for the Clearing House. Specifically, the Clearing House would not be responsible for the performance or non-performance of, or any delay or error in performance by any Registry or Registry Operator; the compliance or lack of compliance of any Seller or Buyer or their respective Transferors or Transferees with any rules of the relevant Registry or any laws applicable to it; any errors in the Registry Account details entered into the relevant Registry systems or provided to the Clearing House by a Seller, Transferor, Buyer or Transferee in respect of a delivery; closure of any Registry Accounts; or the compliance with the contractual obligations owed to the Registry in respect of any Clearing House Registry Accounts, among other matters. Additionally, neither the Buyer or Seller would have any claim against the Clearing House for any loss, cost, damage or expense incurred or suffered as a result of the condition or operation of any Registry Operator or the performance or non-performance of any Registry Operator. The amendments would state that the section on liability would be without prejudice to the generality of and subject to the provisions of the Rules relating to liability and would be in addition to the general requirements of the Delivery Procedures. Furthermore, the Clearing House would not make any representation regarding the authenticity, validity or accuracy of any delivery tender notice, description of a Registry, market tracking system or any other Registry instructions, confirmations of transfer or any other notice, document, file, record or

instrument used or delivered pursuant to the Contract Terms or pursuant to the procedures of any Registry.

The amendments would provide details related to delivery contract security, which is the delivery margin to be provided by Buyer and Seller, and which would take into account the Finance Procedures. The Clearing House would retain the Seller's security until the full contract value is released to the Seller following the delivery timetables.

The amendments would outline the use of the relevant Registry. Clearing Members would have to ensure their Transferors/Transferees have established the appropriate Registry Accounts at the relevant Registry for the Contracts in question and provide necessary instructions or confirmations to the Registry. Furthermore, Clearing Members making or taking delivery of the Contracts for their own account would be required to have established Registry Accounts in the relevant Registry for the Contract in question. In addition, it would be the responsibility of the Clearing Members to comply, and ensure their Transferors/Transferees also comply, with the rules, regulations and laws applicable to the Registry. The Clearing Members would also have to provide, and ensure their respective Transferors/Transferees also provide, correct Registry account details at all times.

The amendments would also provide for the use of an Alternative Delivery Procedure ("ADP") in the event of a failure to transfer carbon credits in the manner and on the terms specified in the Contract. In such case, a Clearing Member may request agreement of the Clearing House to enter into an ADP to provide for delivery outside the terms of the Contract. In such case, settlement of the Contract would be dealt with in the

manner specified in the ADP, and the affected parties and the Clearing House would be released from their rights and obligations in respect of the existing Contract. If the existing Contract would be liquidated under the ADP Agreement, it would be on the basis of the Exchange Delivery Settlement Price. A new Contract or Contracts would then be formed for purposes of the Rules, and delivery under an ADP Agreement would be subject to the specified requirements of the Delivery Procedures, the same Contract Terms as the Contracts replaced by the ADP Agreement (subject to the terms agreed in the ADP), the directions by the Clearing House that it may issue under its discretion, and the terms of the ADP Agreement. Any Clearing Member that enters into an ADP agreement would be deemed to have agreed to indemnify the Clearing House in respect of all and any of the Clearing House's costs, losses, charges and expenses incurred by the Clearing House in connection with the ADP. If a Clearing Member and the Clearing House are unable to enter into an ADP Agreement or effect delivery under an ADP within a reasonable time period after the failed delivery, the Clearing House may refer the matter to ICE Futures Europe and it will consider in its discretion what other reasonable next steps it should take, if any, under applicable exchange rules.

(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

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

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 establish delivery procedures relating to ICE Futures Europe Deliverable Carbon Credit Contracts under which delivery will be made through a Registry Account of the Clearing House. The amendments would set out the role, responsibilities and liabilities of the Clearing House, Clearing Members and designated transferors and transferees in the delivery process, in line with Delivery Procedures for other types of carbon credit futures contracts. Contracts providing for delivery under Part N2 will be cleared by the Clearing House in the substantially same manner as other types of deliverable carbon credit contracts that have been settled bilaterally rather than through a Clearing House Registry Account, and will be supported by ICE Clear Europe's existing F&O financial resources, risk management, systems and operational arrangements. Accordingly, ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements 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.⁹ (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).¹⁰)

In addition, Rule 17Ad-22(e)(10)¹¹ provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably 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 establish a new set of procedures applicable to the delivery and settlement of ICE Futures Europe Deliverable Carbon Credit Contracts that are to be settled by delivery through the Clearing House’s Registry Account. The procedures would address, among other matters, delivery specifications for such contracts, the obligations and roles of Clearing Members and the Clearing House, certain limitations of liability for the Clearing House, and certain other documentation and timing matters. Clearance of the Contracts would otherwise be supported by ICE Clear Europe’s existing financial resources, risk management, systems and operational arrangements. The amendments thus appropriately clarify the role and responsibilities of the Clearing House and Clearing Members with

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR 240.17Ad-22(e)(10).

respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad-22(e)(10).¹²

(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 establish a new set of procedures applicable to the delivery and settlement of ICE Futures Europe Deliverable Carbon Credit Contracts under which delivery will be made through a Registry Account of the Clearing House. In ICE Clear Europe's view, the amendments will thus enhance the settlement process, and would not otherwise materially affect the terms of the contract. 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 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

¹² 17 CFR 240.17Ad-22(e)(10).

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 Act¹³ and paragraph (f) of Rule 19b-4¹⁴ 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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2023-007 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-2023-007. 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-2023-007 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).