

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97737; File No. SR-ICEEU-2023-014)

June 15, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Futures and Options Default Management 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 June 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 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.

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).

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”) is proposing to adopt new Futures and Options Default Management Procedures (the “Procedures”)⁵. The new Procedures are intended to supplement the Clearing House’s existing Futures and Options Default Management Policy by describing in further detail the actions the Clearing House may take in the event of a Clearing Member default.

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 adopt new Futures and Options Default Management Procedures, which would supplement the Clearing House’s existing F&O Default Management Policy (the “Default Management Policy”) and describe in further detail the actions the Clearing House will take if an Event of Default is declared in

⁵ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the Procedures.

relation to an F&O Clearing Member. The Procedures are generally intended to document, in a consolidated way, the Clearing House's current practices around default management in the F&O clearing business and would not generally change those practices.

The Procedures would outline the Clearing House's overall purposes and objectives when managing an Event of Default by a Clearing Member.⁶ The first objective is to take quick action to contain losses and liquidity pressures while returning the Clearing House to a matched book, as soon as reasonably practicable. In addition, the Clearing House may consider other objectives, depending on the characteristics of the default, including ensuring timely completion of settlement, limiting disruptions to the market, and managing and closing out the defaulter's positions and liquidating any applicable collateral in a prudent and orderly manner. The Clearing House's default management framework would be guided by ICE Clear Europe's default Rules and the Default Management Policy and supporting procedures (including the Procedures). The Procedures would further recognize that each default is unique and the Procedures do not provide an exhaustive list of actions ICE Clear Europe would take.

The Procedures would detail the governance and responsibilities of various Clearing House personnel and committees with respect to default management, consistent with the Default Management Policy. (These provisions are intended to more clearly document existing practice, rather than change practice.) The Procedures would in

⁶ The Procedures would also provide that similar provisions would apply in the case of a Sponsored Principal default. The Procedures also note that in the case of a default of a customer of a Clearing Member, the default Rules would not be expected to apply.

particular reflect the following: the Board of Directors has delegated to the President the authority to declare an Event of Default and take all actions the Clearing House may take under the Rules in managing an Event of Default. The President has the discretion to consult the ERC Default Management Committee (“DMC”), which is a subcommittee of the Executive Risk Committee. The President has the authority to make final decisions but may delegate powers as appropriate. The DMC would also assume the responsibilities of the President in the declaration and management of an Event of Default if the President is unavailable. The DMC would require a quorum of the majority of voting members of the Executive Risk Committee for the DMC to make decisions and the decisions would have to be by unanimous agreement of the voting members of the Executive Risk Committee present in the meeting. If there are dissenting views at the DMC level, the issue must be escalated to the Board. Consistent with the requirements of the Rules, the Procedures would state that a declaration of an Event of Default would be limited to circumstances where an event in Rule 901(a) has occurred with respect to a Clearing Member. Following an Event of Default, the Board would have to be informed as soon as practicable of the relevant circumstances, key steps or actions taken or determinations made or approvals given.

The Procedures would detail the actions that may be taken with respect to a potential defaulter prior to the occurrence of an Event of Default. The Procedures would reflect that the Clearing Risk Department (“CRD”) may perform heightened monitoring of the potential defaulter including an increase in daily credit risk monitoring, scenario planning for a potential default management strategy and appropriate risk mitigation through additional collateralization. The Treasury Department (“Treasury”) would also

review its relationships and accounts with the potential defaulter in the context of auxiliary banking services. The Operations Department (“Operations”) may conduct a review of operational activities relevant to the potential defaulter. The Compliance Department (“Compliance”) would be expected to be in close contact with regulators at times when there is an anticipated default in relation to a Clearing Member. The Legal Department (“Legal”) may seek the advice of outside legal counsel regarding the laws of the defaulter’s domicile country. Senior Management may inform the senior management of the other ICE clearing houses and exchanges of the increased monitoring of a potential defaulter and the President may provide the Board with an update on increased monitoring of a potential defaulter.

The Procedures would also set out the Clearing House’s actions in a declaration of an Event of Default, in accordance with the Rules. The President or its delegate would be expected to be in contact with the potential defaulter in order to ensure accurate and up to date information is available to declare an Event of Default. Prior to a declaration of an Event of Default, Compliance would consult with and keep informed the relevant regulatory authorities. The President or the President’s delegate may convene the DMC to discuss the potential default. The Procedures would address internal reports that may be considered by the DMC in connection with a potential default. If the criteria for an Event of Default under the Rules are met, the President (or the President’s delegate) would declare an Event of Default. The Procedures would address the process for issuing a Default notice to the Defaulter, communicating this issuance to the relevant regulators, issuing a Circular to the Clearing Members and a notice on its website, as well as for communication to the Board and other relevant ICE exchanges and clearing houses.

The Procedures would also detail the actions ICE Clear Europe would take immediately following the Default Notice in order to protect itself from any further losses related to the default event. These actions would include the convening of the DMC, suspension of the Defaulter's trading access, prevention of payments to the Defaulter, communication with brokers that may be used in any liquidation strategy for default management, and confirmation of the Defaulter's positions.

The Procedures would address procedures for client porting in circumstances where the defaulting Clearing Member provides clearing services to customers. Consistent with the Rules and applicable law, the Clearing House would attempt within a predefined period to port client positions and assets to another solvent Clearing Member, subject to specified conditions and requirements. The Procedures would set out certain requirements for porting notices to be provided to the Clearing House under the Rules with respect to customers' porting preferences. Consistent with the Rules, where porting is not performed, the Clearing House would liquidate customer positions.

The Procedures would set out the responsibilities of various Clearing House departments for aspects of the default management process. For example, the CRD is responsible for assessing the defaulter's positions and proposing whether splitting the portfolio would be the appropriate strategy. In making its determination the CRD may consider combining offsetting positions of different accounts and liquidating or hedging the remaining positions. Moreover, the CRD would consider the portfolio's complexity and timing for the execution of the default management process. The Procedures would note that the CRD could determine to take various actions depending on market circumstances, such as liquidation through private sales or brokers or liquidation through

default auctions with broader participation. The Procedures would further address considerations in circumstances where the Defaulter holds physically delivered contracts close to maturity and where the defaulter's positions are in products traded across different ICE exchanges.

The Procedures would also address potential hedging strategies. The CRD has the responsibility to assess the Defaulter's positions and determine if hedge trades are useful to reduce the portfolio's risk prior to liquidation. Hedge trades could be executed through brokers, voluntary auctions or private sales. During the course of the hedging strategy, the CRD would periodically re-evaluate the risk exposure as hedges are executed and positions are liquidated. Hedging may continue until reaching hedging/liquidation targets.

The Procedures would also address liquidation of remaining positions following hedging, through various strategies. The Procedures would set out the responsibilities of the President, with advice of the CRD, in deciding how the remaining positions can be liquidated. Liquidation options would include holding and financing open positions until maturity, liquidating positions or sub-portfolios via brokers, arranging a private sale of part or the entire book, and Default Auctions.

The Procedures would describe the key features of the Default Auctions, which are more fully set out in the existing published Auction Terms for F&O Default Auctions. The Procedures would describe, among other features, the use of a modified Dutch auction methodology, the use of "all or nothing" bids, the establishment of minimum bid requirements, customer participation, use of mirrored auctions, and "juniorization" of guaranty fund contributions, in accordance with the Auction Terms for F&O Default

Auctions. The Procedures also address the process for establishing positions with winning bidders and payment of related amounts. An annex to the Procedures would set out examples of the operation of the auction methodology.

The Procedures would also describe the Treasury's responsibility in proposing to the President a liquidation strategy of non-cash collateral provided by the Defaulter. The liquidation strategy would take into account the liquidity waterfall as defined under the Liquidity Stress testing methodology.

The Procedures would also address the steps taken at the conclusion of the transfer and close out of all the Defaulter's positions, including an analysis of the cost of managing the event in accordance with the default Rules. The Procedures would reflect the requirement of the Rules that post-default, a net sum would be calculated separately for house and customer accounts according to the methodology in the Rules, and the net sum would be reported to the officer or administrator responsible for the Clearing Member in default.

The Procedures would also provide for the testing and review of the Default Management Procedures on a quarterly basis, through practicing certain aspects of the default management process. In addition, the Procedures provide for the Clearing House to conduct a default test on an annual basis with mandatory participation of the Clearing Members. Additionally, the Procedures would list the aims of the annual default test and quarterly reviews, and the elements that may be included in a default management test plan.

Finally, the Procedures would describe the process for reviews, breach management, exception handling and document governance in a manner generally

consistent with other ICE Clear Europe policies. The document owner identified by the Clearing House would be responsible for ensuring that the Procedures remain up-to-date and reviewed in accordance with the Clearing House's governance processes. Any changes to the document would have to be approved in accordance with ICE Clear Europe's governance process and will be implemented after the completion of all required internal and regulatory approvals. Document reviews would encompass at the minimum regulatory compliance, documentation and purpose, implementation, use and open items from previous validations or reviews. Results of the review would have to be reported to the Executive Risk Committee or in certain cases to the Model Oversight Committee. The document owner would also aim to remediate the findings, complete internal governance and receive regulatory approvals before the following annual review is due. The document owner would also be responsible for reporting any material breaches or deviations to the Head of Department, Chief Risk Officer and Head of Regulation and Compliance. Exceptions to the Procedures would also be approved in accordance with such governance processes.

(b) Statutory Basis

ICE Clear Europe believes that the 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 requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

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 Procedures are designed to supplement the Default Management Policy by setting out in additional detail the actions and processes of the Clearing House in declaring and managing an Event of Default, recognizing that the details of any particular default will vary. The Procedures would more clearly set out the responsibilities of the President, DMC and various ICE Clear Europe departments, including the CRD, in declaring and managing an Event of Default. The Procedures would also outline various aspects of the default management process, including convening and use of the DMC, suspension of the Defaulter's trading access, prevention of payments to the Defaulter, confirmation of the Defaulter's positions, liquidity considerations, hedging strategy and liquidation strategy (including as to various means of liquidation, such as the use of brokers, private sales and auctions). The Procedures would also address annual default testing with mandatory involvement of Clearing Members, and quarterly reviews to address various aspects of the default management process. In ICE Clear Europe's view, the Procedures will thus facilitate management of the risks related to a default or anticipated default from a Clearing Member, so that the Clearing House can promptly restore a matched book and contain losses. The Procedures will thus promote the prompt and accurate clearing and settlement of cleared transactions and are consistent with the protection of investors and the public interest in the continued operation of the Clearing House in the event of a Clearing Member default. (ICE Clear Europe would not expect

the adoption of the Procedures to materially affect the safeguarding of securities and funds in ICE Clear Europe’s custody or control or for which it is responsible.)

Accordingly, the Procedures satisfy the requirements of Section 17A(b)(3)(F).⁹

The Procedures are also consistent with relevant provisions of Rule 17Ad-22.¹⁰ Rule 17Ad-22(e)(2) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [...] provide for governance arrangements that are clear and transparent”¹¹ and “[s]pecify clear and direct lines of responsibility”¹². As discussed, the Procedures would state relevant responsibilities of the President, Board, DMC, Executive Risk Committee, CRD and other ICE Clear Europe departments in relation to oversight of default management processes in the period leading up and following an Event of Default. Specifically, and consistent with the Rules, Default Management Policy and current practice, the President would have full authority in declaring and managing an Event of Default, with the ability to delegate if necessary or for the DMC to assume certain responsibilities if the President is unavailable. The CRD would have the responsibility of advising the President throughout various actions and decisions when managing an Event of Default. In line with the Clearing House’s other policies and procedures, the Procedures would also describe the responsibilities of the document

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17 Ad-22. [sic]

¹¹ 17 CFR 240.17 Ad-22(e)(2)(i). [sic]

¹² 17 CFR 240.17 Ad-22(e)(2)(v). [sic]

owner and appropriate escalation and notification requirements for responding to exceptions and deviations from the Procedures. In ICE Clear Europe’s view, the Procedures are therefore consistent with the requirements of Rule 17Ad-22(e)(2).¹³

Rule 17Ad-22(e)(13) provides that the “covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [...] ensure that [sic] the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring the covered clearing agency’s participants and, where [sic] practicable, other stakeholders to participate [sic] the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.”¹⁴ As discussed above, the Procedures would address the Clearing House’s practices for testing its default management framework, which includes annual default tests in which participation by Clearing Members is mandatory, and further provides for additional quarterly reviews. In ICE Clear Europe’s views, these testing measures, together with the other aspects of the Procedures and the underlying Rules, will facilitate its ability to take timely action to contain losses and liquidity pressure in the event of a Clearing Member default. As such, the Procedures are consistent with the requirements of Rule 17Ad-22(e)(13).¹⁵

¹³ 17 CFR 240.17 Ad-22(e)(2). [sic]

¹⁴ 17 CFR 240.17Ad-22(e)(13).

¹⁵ 17 CFR 240.17Ad-22(e)(13).

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

ICE Clear Europe does not believe the Procedures would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The Procedures are being adopted to document the Clearing House's practices and actions in the event of an Event of Default in relation to a Clearing Member. The Procedures do not change the rights or obligations of Clearing Members or the Clearing House under the Rules or Procedures. The Procedures set out certain requirements for Clearing Members to participate in annual default testing, but these requirements reflect current practices and Clearing House does not believe this requirement would impose a material burden on Clearing Members. (In any event such participation is required of all Clearing Members under Commission regulations as set out above.) Accordingly, ICE Clear Europe does not believe that adoption of the Procedures would adversely affect competition among Clearing Members, materially affect the costs of clearing, adversely affect the ability of market participants to access clearing or the market for clearing services generally, or otherwise adversely affect competition in clearing services. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is not necessary or appropriate 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 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 Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2023-014 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.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-ICEEU-2023-014. 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, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. 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>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-ICEEU-2023-014 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.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).