

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98032; File No. SR-ICEEU-2023-013)

August 1, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the Collateral and Haircut Procedures

I. Introduction

On June 9, 2023, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4,² a proposed rule change to amend the ICE Clear Europe Collateral and Haircut Procedures (the “Procedures”). The proposed rule change was published for comment in the Federal Register on June 26, 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

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 provides services to its Clearing Members and Clearing Members transfer assets to ICE Clear Europe.⁴ For example, ICE Clear Europe’s Clearing Members transfer to ICE Clear Europe cash and other assets as collateral to cover the exposures presented by the positions that

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 Amendments to the Collateral Haircut Procedures, Exchange Act Release No. 97766 (June 20, 2023); 88 FR 41439 (June 26, 2023) (SR-ICEEU-2023-013) (“Notice”).

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in the Procedures or the ICE Clear Europe Clearing Rules.

ICE Clear Europe clears. ICE Clear Europe communicates such collateral requirements as Initial Margin and Guaranty Fund requirements.⁵ ICE Clear Europe generally refers to the assets that it accepts from Clearing Members to cover their Initial Margin and Guaranty Fund requirements as Permitted Cover.⁶

The Procedures describe ICE Clear Europe’s operational activities and related governance processes with respect to Permitted Cover. These operational activities include, among other things, enforcing basic eligibility criteria that assets must satisfy to be Permitted Cover, valuing Permitted Cover, and applying haircuts to that value.⁷

The proposed rule change relates to the eligibility criteria that ICE Clear Europe uses to determine whether to accept a particular asset as Permitted Cover. Section 2 of the Procedures sets out the general criteria that all assets must satisfy to be considered Permitted Cover. Among other things, to be considered Permitted Cover an asset must be highly liquid with an active sale or repurchase agreement market with a diverse group of buyers and sellers.

In addition to the general criteria found in Section 2, which applies to all assets submitted as Permitted Cover, Appendix A to the Procedures provides additional eligibility criteria for two

⁵ ICE Clear Europe’s Clearing Rules note that Initial Margin means “the Permitted Cover required to be provided or actually provided . . . to the Clearing House as collateral for the obligations of a Clearing Member or Sponsored Principal in respect of CDS Contracts . . .” ICE Clear Europe Clearing Rule 101. Guaranty fund contributions serve to secure the obligations of a Clearing Member to ICE Clear Europe and may be used to cover losses sustained by ICE Clear Europe in the event of a default of the Clearing Member. ICE Clear Europe Clearing Rule 1103.

⁶ ICE Clear Europe Rule 101 defines “Permitted Cover” as “. . . cash in Eligible Currencies and other assets determined by the Clearing House as permissible for Margin or Guaranty Fund Contributions and includes, where the context so requires, any such cash or assets transferred to the Clearing House and any proceeds of realisation of the same. A particular kind of currency or asset may be determined by the Clearing House to be Permitted Cover only in respect of Proprietary Accounts, particular kinds of Customer Accounts, Energy Contracts, Financials & Softs Contracts, F&O Contracts, FX Contracts, CDS Contracts or certain Sets of Contracts.”

⁷ ICE Clear Europe uses these haircuts to reduce the value of the Permitted Cover. Doing so helps account for a potential decline in value that ICE Clear Europe could face if it had to liquidate the Permitted Cover in stressed market conditions.

specific asset classes: financial instruments and gold. To qualify as Permitted Cover, financial instruments and gold must satisfy both the general eligibility criteria in Section 2 and the specialized criteria in Appendix A.

The proposed rule change would amend the specialized criteria for gold found in Appendix A. Currently ICE Clear Europe will accept gold as Permitted Cover in either of the following circumstances: (i) the gold is owned as allocated gold bullion, meaning ICE Clear Europe directly owns an interest in specific gold bars or (ii) the gold is owned as unallocated gold bullion through a firm with low credit risk based on ICE Clear Europe's own assessment. Unallocated means ICE Clear Europe owns an interest in a pool of gold bars rather than specific gold bars. Thus, unallocated gold represents a claim against the relevant custodian for an amount of metal held in bulk, while allocated gold held by a custodian is specifically identified for a particular owner. The proposed rule change would delete the unallocated option. Under Appendix A as amended, ICE Clear Europe would only accept gold if it is specifically allocated to ICE Clear Europe.

Specifically, the amended Appendix A would state that ICE Clear Europe would only recognize gold as Permitted Cover where the gold is transferred from an unallocated account to an allocated account of a custodian in the name of ICE Clear Europe. Once the gold meets those criteria, it will be deemed to be allocated pure gold bullion of recognized good delivery.

This amendment would help to ensure that ICE Clear Europe's eligibility criteria for gold collateral conforms to certain requirements under the European Market Infrastructure Regulation that gold collateral be held in allocated form.⁸

⁸ See Notice, 88 FR 41440; Commission Delegated Regulation (EU) No 153/2013 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 requirements for central counterparties, Annex I, Section 3.

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.⁹ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁰ and Rule 17Ad-22(e)(5) thereunder.¹¹

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 ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.¹² Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Procedures are consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions.

The Commission believes that accepting gold as Permitted Cover only if in allocated form would help to ensure the availability of that gold for liquidation. Should ICE Clear Europe need to liquidate gold to satisfy a Clearing Member's Initial Margin or Guaranty Fund requirement, the Commission believes gold in allocated form is more likely to be available than gold not in allocated form. The Commission believes this to be the case because allocated gold

⁹ 15 U.S.C. 78s(b)(2)(C).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR 240.17Ad-22(e)(5).

¹² 15 U.S.C. 78q-1(b)(3)(F).

would be held by a custodian in the name of ICE Clear Europe, giving ICE Clear Europe an interest in specific bars of gold, rather than an interest in shared pool of bars of gold.

The Commission therefore believes that accepting only allocated gold would improve ICE Clear Europe's ability to liquidate that gold if needed, thereby helping to improve ICE Clear Europe's ability to manage potential losses that could result from a Clearing Member's default. The Commission further believes these potential losses, if not properly managed, could disrupt ICE Clear Europe's ability to clear and settle transactions. Accordingly, the Commission believes the proposed rule change, by requiring ICE Clear Europe to only accept allocated gold as Permitted Cover, would be consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions.

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹³

B. Consistency with Rule 17Ad-22(e)(5) under the Act

Rule 17Ad-22(e)(5) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, limit the assets it accepts as collateral to those with low credit, liquidity, and market risks. The Commission believes that accepting gold as Permitted Cover only in allocated form would help to lower the credit risk associated with that gold. As discussed above, allocated gold would give ICE Clear Europe an interest in specific bars of gold, rather than an interest in shared pool of bars of gold. Unallocated gold represents a claim against the custodian for an amount of metal held in bulk, while allocated gold held by a custodian is specifically identified for a particular

¹³ 15 U.S.C. 78q-1(b)(3)(F).

owner and therefore represents a lower credit risk than unallocated gold. The Commission therefore believes that accepting gold as Permitted Cover only in allocated form would support ICE Clear Europe's ability to limit the assets it accepts as collateral to those with low credit risks.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(5).¹⁴

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 Act¹⁵ and Rule 17Ad-22(e)(5) thereunder.¹⁶

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁷ that the proposed rule change (SR-ICEEU-2023-013), be, and hereby is, approved.¹⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

¹⁴ 17 CFR 240.17Ad-22(e)(5).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(5).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 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).

¹⁹ 17 CFR 200.30-3(a)(12).