

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98207; File No. SR-ICEEU-2023-022)

August 23, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Membership Policy and Clearing Membership 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 August 8, 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. On August 22, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make certain changes to the Exhibits 5A and 5B.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 (hereafter “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 (i) modify its Clearing Membership Policy (“Policy”)⁴ to update certain

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 amends the Exhibit 5A and Exhibit 5B to correctly reflect the addition of the Document Handling subsection to each document’s Table of Contents. The proposed rule change includes an Exhibit 4A and Exhibit 4B. Exhibit 4A shows the change that Amendment No. 1 makes to Exhibit 5A, and Exhibit 4B does the same with respect to Exhibit 5B.

⁴ Capitalized terms used but not defined herein have the meanings specified in the Policy and Procedures or, if not defined therein, the ICE Clear Europe Clearing Rules.

monitoring and document review procedures and to make certain drafting clarifications and (ii) amend its Clearing Membership Procedures (“Procedures”) to clarify the Clearing House’s discretion with respect to certain requirements and to add notification requirements, among other changes. The updates would also make certain other non-substantive amendments.

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

I. Clearing Membership Policy

In the discussion of the purpose of the Policy, the amendments would change an incorrect reference to “model documents” to “parameter documents” (reflecting that relevant parameters will be set out in parameter documents). Further changes would clarify that Clearing Members are required to notify the Clearing House promptly when there is any change to its business which would have an impact on meeting the membership criteria. Additionally, the monitoring of membership criteria would be revised to reflect that the Clearing House conducts ongoing (rather than only quarterly or

other periodic) monitoring of compliance with membership criteria. Ongoing monitoring for this purpose consists of continuous monitoring and additional trigger-based reviews, including relating to credit and AML/KYC risk and to daily operational matters (such as margin calls). References to quarterly reviews of financial position through Audited Annual Accounts, quarterly review of financial information, quarterly updates of the Counterparty Rating System (“CRS”), and the requirement to maintain a watch list would be removed (as such matters relate to credit issues that are addressed in the Clearing House’s Counterparty Credit Risk Policy,⁵ and do not need to be referenced in this policy). A cross reference to the Clearing Membership Procedures and the Counterparty Credit Risk Policy for monitoring information would also be removed as unnecessary.

The amendments would also update document governance requirements, consistent with other ICE Clear Europe policies.⁶ Document review would be conducted by the document owner or relevant staff, with approval of the head of department (or their delegate) and the Chief Risk Officer (or their delegate). The amendments would specify that document review, at a minimum, would encompass regulatory compliance, documentation and purpose, implementation, use and open items from prior reviews. The results of the review would be reported to the Executive Risk Committee (and in certain cases, to the Model Oversight Committee). The document owner would aim to remediate

⁵ See Exchange Act Release No. 34-97169 (SR-ICEEU-2023-004) (March 20, 2023), 88 Fed. Reg. 17886 (March 24, 2023).

⁶ See, e.g., The Counterparty Credit Risk Policy and Procedures as described in Exchange Act Release No. 34-97169, SR ICEEU-2023-004 (March 20, 2023) 88 FR 17886 (March 24, 2023); the Investment Management Procedures as described in Exchange Act Release No. 34-97528, SR ICEEU-2023-009 (May 19, 2023) 88 FR 33949 (May 25, 2023); the Futures and Options Default Management Policy as described in Exchange Act Release No. 34-97383, SR ICEEU-2023-012 (Apr. 26, 2023) 88 FR 27539 (May 2, 2023).

any findings, complete internal governance and obtain regulatory approvals (as applicable) before the next annual review. The amendments would also state explicitly that changes to the Policy would need to be approved in accordance with the Clearing House governance process and take effect after completion of all necessary internal and regulatory approvals.

Certain other non-substantive typographical and similar corrections would also be made in the Policy, such as using the correct name of the Clearing Membership Policy.

II. Clearing Membership Procedures

ICE Clear Europe is proposing to amend its Clearing Membership Procedures to make certain clarifications and updates, including for consistency with the amendments to the Policy described above. Under the discussion of the application process, the amendments would specifically require notifications by Clearing Members of changes to their business that may impact the membership criteria, consistent with the change to the Policy described above. Additionally, under the diligence process, the amendments would clarify that the applicant would be required to provide sufficient evidence, details and information as required by the Rules. The proposed amendment would also state that the membership team would ensure that all applicants would be added to the applicable schedule of insured entities by the ICE Group insurer.

The amendments would remove a provision that the Product Risk Committee would be notified of new applications, after approval of an application by the Executive Risk Committee. ICE Clear Europe does not believe notification of applications to the Product Risk Committee is necessary in light of the duties and functions of those committees. The proposed amendments would also clarify that the Circular confirming

approval is issued once the application is approved. In addition, the amendments would make non-substantive clarifications concerning the requirement for Clearing Members to respond in a timely manner to any additional information requested by the Clearing House.

The proposed changes would also clarify and make consistent throughout the Procedures certain provisions relating to decisions that may be taken or requirements that may be imposed by the Clearing House in its discretion. Specifically, the amendments would clarify ICE Clear Europe's absolute legal discretion in making certain determinations, imposing additional requirements and granting exceptions relating to the minimum capital requirement, acceptability of subordinated loans, acceptability of controller guarantee, requirements for additional cash or collateral and the size of additional guaranty fund assessments. The amendments would similarly clarify that the Clearing House will define the maximum period between in-depth counterparty reviews and the threshold for taking further action on negative changes in Clearing Member financial condition in its absolute discretion. ICE Clear Europe does not believe these amendments change its existing authority, but rather state more explicitly the scope of its discretion, which remains subject to the Rules and applicable law.

The discussion of document governance and oversight in the Policy and Procedures would be replaced with a new Document Governance and Exception Handling section that is substantially the same as that described above for the Policy, and is consistent with other Clearing House policies recently adopted or modified⁷.

⁷ See, e.g., The Counterparty Credit Risk Policy and Procedures as described in Exchange Act Release No. 34-97169, SR ICEEU-2023-004 (March 20, 2023) 88 FR 17886 (March 24, 2023); the Investment Management Procedures as described in Exchange Act Release No. 34-97528, SR

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Clearing Membership Policy and Procedures are consistent with the requirements of Section 17A of the Act⁸ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁹ 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 Clearing Membership Policy and Procedures are intended to update and more clearly document the Clearing House's procedures for reviewing applications for clearing membership, criteria for membership, and on-going monitoring of membership of ICE Clear Europe. The amendments update the Policy to better reflect the ongoing monitoring of Clearing Members and to update document governance processes. The amendments to the Procedures clarify the discretion that ICE Clear Europe has to make certain determinations, clarify certain notification requirements, and make other drafting improvements. The amendments would therefore facilitate the prompt and accurate clearing of cleared contracts and protect investors and

ICEEU-2023-009 (May 19, 2023) 88 FR 33949 (May 25, 2023); the Futures and Options Default Management Policy as described in Exchange Act Release No. 34-97383, SR ICEEU-2023-012 (Apr. 26, 2023) 88 FR 27539 (May 2, 2023).

⁸ 15 U.S.C. 78q-1.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

the public interest in the sound operations of the Clearing House, consistent with the requirements of Section 17A(b)(3)(F).¹⁰ Further, the amendments will not affect the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, within the meaning Section 17A(b)(3)(F).¹¹

The amendments to the Procedures are also consistent with relevant provisions of Rule 17Ad-22.¹² Rule 17Ad-22(e)(18) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] establish objective, risk-based and publicly disclosed criteria for participation, which permit fair and open access by direct . . . participants . . . require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis”.¹³ As set forth above, the amendments to the Clearing Membership Procedures are intended to clarify and enhance the Clearing House’s procedures and policies as they relate to Clearing Membership application and monitoring processes. The amendments do not substantively change the requirements for membership or the related Rules, but rather update the Policy and Procedures to reflect the Clearing House’s current practices, and make other updates to improve clarity, including to state more clearly the Clearing House’s discretion to make certain determinations as part of the application process. The

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.

¹³ 17 CFR 240.17 Ad-22(e)(18).

amendments will facilitate the Clearing House's ability to implement and monitor its participation requirements. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(18).¹⁴

Rule 17Ad-22(e)(2) further provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] provide for governance arrangements that are (i) clear and transparent, (ii) clearly prioritize the safety and efficiency of the covered clearing agency; and (iii) support the public interest requirement in Section 17A of the Act”¹⁵ among other requirements. As set forth above, the amendments update the documentation governance, review and approval provisions, in a manner consistent with other ICE Clear Europe policies and procedures. As such, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad-22(e)(2).¹⁶

(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 amendments are being adopted to update and clarify the Clearing Membership Policy and Procedures, which relates to the Clearing House's internal processes for implementation, reviewing and ongoing monitoring of its membership requirements and criteria. No substantive changes are being made to the membership requirements themselves or the Rules. Accordingly, ICE Clear Europe does

¹⁴ 17 CFR 240.17Ad-22(e)(18).

¹⁵ 17 CFR 240.17Ad-22(e)(2).

¹⁶ 17 CFR 240.17Ad-22(e)(2).

not believe the amendments would affect the ability of an applicant to become a Clearing Member, the costs of clearing, the ability of market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate 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 amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 (<https://www.sec.gov/rules/sro.shtml>) or
- Send an email to rule-comments@sec.gov. Please include file number SR-ICEEU-2023-022 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-2023-022. This file number should be included on the subject line if email 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 (<https://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 am and 3 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-2023-022 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).