

**SECURITIES AND EXCHANGE COMMISSION**  
(Release No. 34-98237; File No. SR-ICEEU-2023-021)

August 29, 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 its Operational Risk and Resilience Policy

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 15, 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 primarily by ICE Clear Europe. On August 24, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make certain changes to the Exhibit 5.<sup>3</sup> 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 modify its Operational Risk and Resilience Policy (the “Operational Risk and Resilience Policy” or “Policy”).<sup>4</sup> The amendments would modify the Policy to enhance

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 corrects the presentation of changes in Exhibit 5 by reflecting the deletion of the prior “Oversight of the Policy” section as part of the updated governance and oversight provisions.

<sup>4</sup> Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the Operational Risk and Resilience Policy.

scenario analysis and testing relating to operational risk and resilience, introduce an element for emerging risks, and update the review process for the document, among other changes discussed herein.

**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 amend its Operational Risk and Resilience Policy to incorporate enhanced procedures for analysis and testing of operational risk and resilience scenarios into the policy, among other amendments discussed herein. The description of the Clearing House's overall operational risk and resilience framework would update a reference to the Outsourcing Policy to reflect its new name, the Outsourcing and Third Party Risk Management Policy (and reflect that the updated policy has been approved by the Board and is pending regulatory approval).

With respect to scenario analysis and testing relating to operational risk and resilience, the amendments would add that the Clearing House must maintain an inventory of scenarios for the purposes of scenario analysis and testing. The amendments

would clarify that testing must include scenarios that take into account both internal and external dependencies. The amendments would also state that a portion of the scenarios should be identified and selected for reverse stress testing (through a practical test where possible or desk top exercise). Over a three year cycle all scenarios would have to be tested at least once by a practical test or a desk top exercise. The inventory would also be reviewed on at least an annual basis in order to determine if the scenarios are still fit for purpose and if updates are required. The annual review of the inventory would be the responsibility of the First Line with Second Line review and would be approved by the Executive Risk Committee (ERC). The Executive Risk Committee would also be responsible for approving any changes to the list of scenarios outside of the annual review cycle. The detailed scope of the testing based on the scenarios in the inventory and the results of testing and assessment against the risk register would be shared with the Second Line for review. The amendments would also specify that the scenario analysis and testing results would be submitted to the ERC or relevant Board sub-committee (instead of the ERC and Board), which ICE Clear Europe believes is the most appropriate governance level for review of such matters.

A new section on Control Validation and Assessment would be added, outlining that upon entry to the risk register or when a material change is made to a Key Control, Enterprise Risk Management (ERM) will confirm that validation of Key Controls is carried out. Additionally, the amendments would state that Validation may be verified directly by ERM or through ERM's oversight of validations performed by the First Line. The amendments would also replace references to control testing with control validation throughout the Policy to be consistent with the new section.

In the Risk Assessment section, the amendments would address Emerging Risks. The amendments would specify that there should be an assessment of the Velocity for Emerging Risks. Velocity would be defined as an estimate of the time frame within which impact of a risk may be realized. Velocity would be considered as an additional factor utilized in prioritizing Emerging Risks, as further detailed in the Appendix G. Certain other non-substantive drafting clarifications would be made in this section.

In the Government and Oversight section, the amendments would add provisions relating to Reviews of the Policy that are consistent with other Clearing House policies. The amendments would provide that the document owner identified by the Clearing House would be responsible for ensuring that the Policy remains up-to-date and reviewed in accordance with the Clearing House's governance processes. Generally, review of the Policy would be conducted by the document owner and/or relevant staff as appropriate, with sign off being provided by the head of the department and the CRO (or their delegates). The amendments would detail the key aspects of document reviews, including at minimum, regulatory compliance, documentation and purpose, implementation, use, and open items from previous validations or reviews (where appropriate). The results of the review, including priority of findings, proposed remediations and target due date to remediate the findings would be reported to the ERC and in certain cases to the Model Oversight Committee. The amendments would add the Head of Regulation and Compliance (or their respective delegates) to the parties to whom the document owner would report any material breaches or deviations from the Policy.

The amendments would modify and update the table on Assessment of Expected Level of Risk (Appendix D). The column labeled Mitigation would be renamed to Rating. The updated chart would also add examples for each level of rating.

The amendments would slightly modify and update the table on Control Effectiveness Ratings (Appendix E). The column labeled Effectiveness would be renamed to Rating and the column labeled Guidelines would be renamed to the more specific Control Assessment Guidelines. Moreover, an additional bullet point would be added to the guidelines under Unsatisfactory, specifying that this rating would apply where the control validation and/or assessment and audit programs result in major findings.

The amendments would update the table on Control Remediation Recommendation & Timelines (Appendix F). The heading labeled Control Effectiveness would be renamed to Control Effectiveness Rating and, likewise the heading labeled Mitigation would be renamed to Level of Risk Mitigation. In the scenario with a Control Effectiveness Rating of Needs Improvement and a High Level of Risk Mitigation, the recommended would be changed from Medium to High.

A new appendix, labeled Appendix G – Velocity Assessment Guidance would be added to the Policy in connection with the amendments discussed above relating to Velocity of emerging risks. This section would include a chart separating the Velocity Rating into categories of Immediate (<6 months), Short Term (>6 months <18 months), and Medium Term (>18 months). The chart would also include a description for each Velocity Rating.

Finally, the amendments would remove the section labeled Control Testing Scope following the chart on Risk Mitigation (Appendix H), to conform to the change in the Policy to refer to control validation rather than control testing.

Various provisions would be renumbered or relabeled throughout the Policy.

(b) Statutory Basis

ICE Clear Europe believes that the amendments to the Operational Risk and Resilience Policy are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 (the “Act”)<sup>5</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>6</sup> 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 Policy are designed to strengthen ICE Clear Europe’s policies and procedures to manage operational risk and enhance resilience. The amendments in particular would enhance scenario analysis and testing relating to operational risk and resilience, including through a framework for maintaining an inventory of relevant scenarios and ongoing review and testing of those scenarios. The amendments would provide for validation of key controls, and also introduce velocity as an additional factor when analyzing and prioritizing Emerging Risks. Various other

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<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

drafting clarifications and similar enhancements would be made in the Policy and related appendices. As proposed to be revised, the Policy will facilitate the Clearing House's ability to manage operational risk and enhance its operational resilience. The proposed amendments would thus promote the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts and the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible. The enhanced risk management is therefore also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House.

Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).<sup>7</sup>

The amendments to the Policy are also consistent with relevant provisions of Rule 17Ad-22.<sup>8</sup> Rule 17Ad-22(e)(3) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [...] [m]aintain a sound risk management framework for comprehensively managing . . . operational . . . and other risks that arise in or are borne by the covered clearing agency”.<sup>9</sup> As set forth above, the amendments are intended to enhance the Clearing House's risk management framework as it relates to operational risks. Among other changes, the amendments would add an additional factor for assessing emerging risks and provide for inventory, review and testing of relevant scenarios used in evaluating operational risk and resilience. The amendments would thus strengthen the management of operational risks and risk management more generally. In

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 17 CFR 240.17 Ad-22.

<sup>9</sup> 17 CFR 240.17 Ad-22(e)(3).

ICE Clear Europe’s view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(3).<sup>10</sup>

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 [...] [p]rovide for governance arrangements that are clear and transparent”<sup>11</sup> and “[s]pecify clear and direct lines of responsibility”.<sup>12</sup> The amendments to the Policy would add a more detailed review process for updating and reviewing the Policy, in a manner generally consistent with other Clearing House policies and procedures. The amendments would also clarify the reporting of material breaches or unapproved deviations. In ICE Clear Europe’s view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(2).<sup>13</sup>

The proposed amendments are also consistent with Rule 17Ad-22(e)(17)(i), which provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [...] [m]anage the clearing agency’s operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls”.<sup>14</sup> The amendments to the Policy enhance scenario analysis and testing relating to operational risk and resilience, including through inventory and review of relevant scenarios. The amendments would also expand

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<sup>10</sup> 17 CFR 240.17 Ad-22(e)(3).

<sup>11</sup> 17 CFR 240.17 Ad-22(e)(2)(i).

<sup>12</sup> 17 CFR 240.17 Ad-22(e)(2)(v).

<sup>13</sup> 17 CFR 240.17 Ad-22(e)(2).

<sup>14</sup> 17 CFR 240.17 Ad-22(e)(17)(i).

the factors used in evaluating emerging risks with the addition of Velocity as a factor, and provide for validation of key controls. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(17)(i).<sup>15</sup>

(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 enhance the Clearing House's Operational Risk and Resilience Policy, which relates to the Clearing House's internal processes for operational risk management. The amendments would not change the Rules or Procedures, or the rights or obligations of Clearing Members or the Clearing House. ICE Clear Europe does not believe the amendments would affect 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.

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<sup>15</sup> 17 CFR 240.17 Ad-22(e)(17)(i).

**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](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2023-021 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-2023-021. 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.ice.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-2023-021 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.<sup>16</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>16</sup> 17 CFR 200.30-3(a)(12).