

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98790; File No. SR-ICEEU-2023-022)

October 24, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Membership Policy and Clearing Membership Procedures

I. Introduction

On August 8, 2023, ICE Clear Europe Limited (“ICEEU”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to modify its Clearing Membership Policy (“Policy”) and Clearing Membership Procedures (“Procedures”). 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 Notice of the proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on August 29, 2023.⁴ The Commission has not received any comments on the proposed rule change, as modified by Amendment No. 1 (hereinafter “Proposed Rule Change”). For the reasons discussed below, the Commission is approving the Proposed Rule Change.⁵

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 Securities Exchange Act Release No. 98207 (August 23, 2023), 88 FR 59547 (August 29, 2023) (File No. SR-ICEEU-2023-022) (“Notice”).

⁵ Capitalized terms not otherwise defined herein have the meanings assigned to them in the Policy or the Procedures or, if not defined therein, ICE Clear Europe’s Clearing Rules.

II. Description of the Proposed Rule Change

ICEEU 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 clearing security-based swaps, ICEEU provides services to its Clearing Members. ICEEU's Clearing Members enter into a Clearing Membership Agreement with ICEEU and are admitted as clearing members of ICEEU under Part 2 of ICEEU's clearing rules.⁶

As a result of its relationship with its Clearing Members, ICEEU faces a number of risks. For example, ICEEU's Clearing Members may not meet membership criteria which ultimately could increase the chances of both a Clearing Member defaulting and ICEEU needing to use mutualized funds.⁷ ICEEU manages these risks, and relationships with its Clearing Members, through the Policy and the Procedures. The Policy describes ICEEU's membership criteria and related processes for assessing applicants for membership, on-going monitoring of its Clearing Members, and termination of its Clearing Members. The Procedures in turn provide additional detail as to how ICE Clear Europe applies its policies for reviewing applications for clearing membership, variations of permissions for Clearing Members, ongoing monitoring of Clearing Members, and termination of clearing membership.⁸

Through the Proposed Rule Change, ICEEU proposes to make changes to both the Policy and the Procedures.⁹ These proposed changes correct an improper reference to model

⁶ The Clearing Membership Agreement is an agreement between ICEEU and a Clearing Member under which the Clearing House agrees to provide clearing in respect of Contracts to that Clearing Member and that Clearing Member agrees to be bound by and subject to ICEEU's Clearing Rules. ICE Clear Europe Clearing Rule 101.

⁷ Clearing Membership Policy 2.1

⁸ Securities Exchange Act Release No. 93178 (Sept. 29, 2021), 86 FR 55045, 55046 (Oct. 5, 2021) (File No. SR-ICEEU-2021-014).

⁹ In addition to the changes described below, ICEEU proposes various non-substantive changes to the Policy and Procedures.

documents; clarify that clearing members must provide notice of certain situations; update sections on monitoring membership criteria; update sections on document governance; update the Procedures' clearing membership application process; and clarify that ICEEU may take certain steps in its absolute discretion.

1. Correction of Improper Reference to Model Documents in the Policy

The current Policy notes that procedural aspects and relevant parameters related to the Policy are set out in the corresponding procedures and model documents. However, Policy parameters are set forth in parameter documents, not model documents.¹⁰ Therefore the Proposed Rule Change would remove the reference to model documents and state instead that procedural aspects and relevant parameters related to the Policy are set out in the corresponding procedures and parameter documents respectively.

2. Requiring Clearing Members to Provide Certain Notifications in the Policy and Procedures

In the “Objective” section of the current Policy, ICEEU notes that it achieves the objectives of the Policy by, among other things, “includ[ing] relevant notifications to ensure that Clearing Members” promptly notify ICEEU of certain changes that could impact their ability to meet ICEEU’s membership criteria. The “Objective” section of the current Procedures includes similar language. The Proposed Rule Change would change this language in both the Policy and the Procedures to specify that ICEEU achieves the objectives of the Policy and Procedures by, among other things, “requir[ing]” that Clearing Members promptly notify ICEEU of any changes to their business which may affect their ability to meet ICEEU’s membership criteria.¹¹

¹⁰ Notice, 88 FR at 59548.

¹¹ *Id.*

3. Monitoring of Membership Criteria in the Policy

The current Policy states that in order to monitor Clearing Members' on-going adherence to the membership criteria, ICEEU carries out periodic in-depth counterparty reviews; undertakes a quarterly review of financial position using Audited Annual Accounts and quarterly financial information; updates its Counterparty Rating System on a quarterly basis; maintains a Watch List; requires Clearing Members to complete an Annual Member Return; and monitors operational matters daily, including, for example, margin calls and end-of-day price submissions. ICEEU proposes to remove and consolidate much of this text. The Policy as revised would state that in order to monitor Clearing Members' on-going adherence to the membership criteria, ICEEU carries out periodic in-depth counterparty reviews; undertakes ongoing monitoring, which 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); and requires Clearing Members to complete an Annual Member Return.

ICEEU proposes to remove the text discussing quarterly review of financial position through Audited Annual Accounts and financial information, updates to its Counter Party Rating System done quarterly, and the requirement to maintain a Watch List because these subjects relate to credit issues that are covered in its Counterparty Credit Risk Policy and Procedures.¹² Given the deletion of this text, ICEEU proposes to remove the sentence noting that information on monitoring is available in the Clearing Membership Procedures and the Counterparty Credit Risk Policy because ICEEU believes this cross reference to support now-deleted references would no longer be necessary.¹³ Finally, ICEEU proposes deleting the sentence that provides

¹² *Id.*

¹³ *Id.*

that ICEEU monitors a number of specific operational matters daily because it would be replaced with the text noting that ICEEU undertakes ongoing monitoring.

4. Document Governance in the Policy and Procedures

The Proposed Rule Change would update the Document Governance and Exception Handling sections of both the Policy and the Procedures to make them consistent with similar document governance provisions in other ICEEU policies.¹⁴ The updates would specify that the scope of the document review encompasses, at a minimum, regulatory compliance, documentation and purpose, implementation, use, and open items from previous validations or reviews (where appropriate). The Proposed Rule Change would also add text identifying the document owner or relevant staff as the individuals responsible for conducting document reviews to ensure they are updated and reviewed in accordance with the internal governance processes. The changes would also specify that the head of the department (or their delegate) and the Chief Risk Officer (or their delegate) provide approval for document reviews and that, in some circumstances, the document review findings are reported to the Model Oversight Committee, but outside of those circumstances, the document review's results, including any findings, are reported to the Executive Risk Committee along with the priority of findings, proposed remediations, and target due date to remediate the findings. The updates also would provide that it is the document owner's responsibility to address any findings, complete internal governance, and, if necessary, obtain regulatory approvals before the subsequent annual review is due. Finally, the proposed changes would note that changes to the Policy and Procedures must be

¹⁴ *Id.* For example, ICEEU recently amended its Recovery Plan and Outsourcing Policy to make changes similar to those now proposed. *See* Securities Exchange Act Release No. 98337 (Sept. 8, 2023), 88 FR 63149, 63154-55 (Sept. 14, 2023) (File No. SR-ICEEU-2023-020) (Recovery Plan); Securities Exchange Act Release No. 98387 (Sept. 14, 2023), 88 FR 64953, 64955 (Sept. 20, 2023) (File No. SR-ICEEU-2023-018) (Outsourcing Policy).

approved in accordance with ICEEU’s governance process and will take effect after completion of all necessary internal and regulatory approvals.

5. Clearing Membership Procedures

The Proposed Rule Change would amend the Clearing Membership Procedures to make certain clarifications and updates. One proposed change would clarify that applicants must provide sufficient evidence, details, and information to ICEEU as required by the Rules, as opposed to sufficient evidence, details, or information.¹⁵ Another adds text indicating that the membership team will ensure that all Applicants are added to the schedule of insured entities by the ICE Group insurer. The Proposed Rule Change would also delete a provision noting that after approval of an application by the Executive Risk Committee, the relevant Product Risk Committees would be notified of a new application for clearing membership. ICEEU believes that it is unnecessary to notify the Product Risk Committees because those committees’ duties and functions are not implicated by a new member being admitted.¹⁶ ICEEU’s proposed amendments would also clarify that ICEEU issues a Circular confirming approval of a Clearing Member once their application is approved and move a clause indicating that Clearing Members are required to respond to additional information requests in a timely manner statement to a standalone sentence. ICEEU believes stating this requirement in a standalone sentence makes the information clearer.¹⁷

6. ICEEU’s Absolute Discretion in the Procedures

Throughout the Procedures, ICEEU proposes to add the phrase “in its absolute discretion” in connection with certain actions described in the Procedures. Specifically,

¹⁵ Notice, 88 FR at 59548.

¹⁶ *Id.*

¹⁷ *Id.*

ICEEU’s proposed changes note that ICEEU has absolute discretion to take certain actions with respect to its minimum capital requirements, standards and characteristics of subordinated loans, the acceptability of a Controller Guarantee, cash or collateral requirements, and its guaranty fund. ICEEU also proposes changes making clear that it defines a maximum period between in-depth counterparty reviews and a threshold for following up with the Clearing Member regarding negative changes to its financial condition in its absolute discretion. ICEEU believes that these amendments do not change its existing authority, but more explicitly state the scope of its discretion.¹⁸

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.¹⁹ For the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act²⁰ and Rules 17Ad-22(e)(2)(i), (e)(2)(v),²¹ and (e)(18).²²

A. Consistency with Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, ICEEU’s rules, among other things, must be “designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the

¹⁸ *Id.*

¹⁹ 15 U.S.C. 78s(b)(2)(C).

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

²¹ 17 CFR 240.17Ad-22(e)(2).

²² 17 CFR 240.17Ad-22(e)(18).

safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible . . . and, in general, to protect investors and the public interest”²³

Based on its review of the record, and for the reasons discussed below, the Commission concludes that ICEEU’s Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.

As noted above, ICEEU faces a number of risks as a result of its relationship with its Clearing Members. These risks include operational, default, and other risks that could impact or threaten ICEEU’s ability to clear and settle transactions, safeguard securities and funds which are in its possession or control or for which it is responsible, or otherwise protect investors and the public interest. ICEEU manages these risks through, among other things, the Policy and Procedures. Therefore, improving or enhancing the Policy and Procedures likewise improves or enhances ICEEU’s ability to manage or mitigate the risks it faces as a result of its relationship with its Clearing Members.

As discussed above, the Proposed Rule Change would enhance the Policy and Procedures in a number of ways, including clarifying certain provisions, highlighting certain important information, removing incorrect or duplicative information, and ensuring the Policy and Procedures are consistent with each other and with ICEEU’s other policies and procedures. For example, the Proposed Rule Change would clarify in both the Policy and Procedures that Clearing Members must promptly notify ICEEU of any changes to their business which may impact their ability to meet membership criteria. Additionally, the Proposed Rule Change would revise the Procedures to clarify that Clearing Membership applicants must provide sufficient evidence, details, and information to ICEEU as required by the Rules, that ICEEU will issue a

²³ 15 U.S.C. 78q-1(b)(3)(F).

Circular confirming approval of a Clearing Member once its membership application is approved, that Clearing Members must respond to information requests from ICEEU in a timely manner, and that ICEEU has absolute discretion to take certain steps.²⁴ Similarly, the Proposed Rule Change would update the Policy to note that procedural aspects and relevant parameters related to the Policy are set out in the corresponding procedures and parameter documents, rather than model documents as the current Policy states, and highlight that procedural aspects related to the Policy are set out in the corresponding procedures. The Proposed Rule Change also would delete as unnecessary and duplicative certain information related to its monitoring of Clearing Members' financial information because that information is addressed in other ICEEU policies.²⁵

The Proposed Rule Change will help clarify the Policy and Procedures and ensure that they are accurate and consistent both with each other and with ICEEU's other policies and procedures, which will enhance the ability of ICEEU and its stakeholders to understand the Policy and Procedures and apply them accurately and consistently. Ensuring the Policy and Procedures are easily understood and applied accurately and consistently will, in turn, help ensure that ICEEU effectively manages and mitigates the operational and other risks presented by its relationship with Clearing Members, thereby supporting ICEEU's ability to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in ICEEU's custody or control or for which it is responsible, and protect investors and the public interest.

For these reasons, the Commission finds that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.²⁶

²⁴ Notice, 88 FR at 59548.

²⁵ *Id.*

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

B. Consistency with Rule 17Ad-22(e)(2)(i) and (v)

Rules 17Ad-22(e)(2)(i) and (v) require ICEEU to “establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . provide for governance arrangements that are clear and transparent . . . and specify clear and direct lines of responsibility.”²⁷ Based on its review of the record, and for the reasons discussed below, the Commission finds that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(2)(i) and (v).

The Proposed Rule Change clearly defines responsibilities for a number of ICEEU employees. For instance, in both the Policy and Procedures, the Proposed Rule Change identifies the document owner and relevant staff as responsible for conducting document reviews, remediating findings, completing internal governance, and receiving regulatory approvals. The Proposed Rule Change also would add text to the Procedures that makes clear that the Membership team will ensure that all Applicants are added to the schedule of insured entities by the ICE Group insurer, and would remove as unnecessary text requiring notification of the relevant Product Risk Committees of new applications for clearing membership.²⁸ By defining who has or does not have responsibilities and making this information readily available in the Policy and Procedures the Proposed Rule Change achieves clarity and transparency.

The Commission finds, therefore, that the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(2)(i) and (v).²⁹

²⁷ 17 CFR 240.17Ad-22(e)(2).

²⁸ Notice, 88 FR at 59548.

²⁹ 17 CFR 240.17Ad-22(e)(2).

C. Consistency with Rule 17Ad-22(e)(18)

Rule 17Ad-22(e)(18) requires ICEEU to “establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, 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.”³⁰ Based on its review of the record, and for the reasons discussed below, the Commission finds that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(18).³¹

The Proposed Rule Change would update the Policy to specify that ICEEU undertakes ongoing monitoring to monitor Clearing Member’s adherence to membership criteria and that ongoing monitoring 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). Because these aspects of the Proposed Rule Change are reasonably designed to help ensure that ICEEU monitors compliance with its membership criteria on an ongoing basis, the Commission finds that the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(18).³²

³⁰ 17 CFR 240.17Ad-22(e)(18).

³¹ 17 CFR 240.17Ad-22(e)(18).

³² 17 CFR 240.17Ad-22(e)(18).

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, Section 17A(b)(3)(F) of the Act³³ and Rules 17Ad-22(e)(2)(i), (e)(2)(v),³⁴ and (e)(18) thereunder.³⁵

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change (SR-ICEEU-2023-022) be, and hereby is, approved.³⁶

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Sherry R. Haywood,

Assistant Secretary.

³³ 15 U.S.C. 78q-1(b)(3)(F).

³⁴ 17 CFR 240.17Ad-22(e)(2).

³⁵ 17 CFR 240.17Ad-22(e)(18).

³⁶ In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁷ 17 CFR 200.30-3(a)(12).