

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98815; File No. SR-ICEEU-2023-011)

October 27, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Wind Down Framework and Plan

I. Introduction

On August 11, 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 amend its Wind Down Framework and Plan (to be renamed the “Wind Down Plan”) (the “Plan”). On August 22, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make certain changes to the Exhibit 5.³ Notice of the proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on August 30, 2023.⁴ On September 26, 2023, the Commission designated a longer period for Commission action on the proposed rule change until November 28, 2023.⁵ The Commission has not received any comments on the proposed rule change, as modified by Amendment No. 1 (hereinafter, “Proposed Rule Change”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 updates the Exhibit 5 to correct the presentation of three of the proposed changes to the Wind Down Framework and Plan that were filed with the Commission on August 11, 2023. The proposed rule change includes an Exhibit 4. Exhibit 4 shows the change that Amendment No. 1 makes to the Exhibit 5.

⁴ Securities Exchange Act Release No. 98217 (August 24, 2023), 88 FR 60001 (August 30, 2023) (File No. SR-ICEEU-2023-011) (“Notice”).

⁵ Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Wind Down Framework and Plan; Exchange Act Release No. 98536 (Sept. 26, 2023), 88 FR 67834 (Oct. 2, 2023) (File No. SR-ICEEU-2023-011).

For the reasons discussed below, the Commission is approving the Proposed Rule Change.⁶

II. Description of the Proposed Rule Change

ICEEU is a covered clearing agency. Under Rule 17Ad-22(e)(3)(ii), ICEEU must “establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or other losses.”⁷ The Plan addresses scenarios in which ICEEU determines to wind down in an orderly fashion. For example, one circumstance that could lead ICEEU to wind down in an orderly fashion is insolvency because of either member default or some other reason (*e.g.*, fraud). ICEEU may also choose to wind down in an orderly fashion when it is not insolvent (*e.g.*, for business reasons).⁸

Through the Proposed Rule Change, ICEEU proposes to make changes to the Plan. These proposed changes update the Plan’s introduction, preparations for winding down, planning options, discussion of meeting liquidity requirements during wind-down, and document governance.⁹

⁶ Capitalized terms not otherwise defined herein have the meanings assigned to them in the Plan or, if not defined therein, ICE Clear Europe’s Clearing Rules.

⁷ 17 CFR 240.17Ad-22(e)(3)(ii).

⁸ Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Changes Related to the ICE Clear Europe Recovery and Wind-Down Plans; Exchange Act Release No. 83651 (July 17, 2018), 83 FR 34891, 34893 (July 23, 2018) (File No. SR-ICEEU-2017-016 and SR-ICEEU-2017-017).

⁹ In addition to the proposed changes described below, the Proposed Rule Change makes grammatical and non-substantive edits throughout the Plan.

1. The Plan's Introduction

The Plan currently has an overview and context section. The overview section contains background information on ICEEU. For example, it identifies ICEEU's regulators, parent entities, functions, clearing strategy, and tools for risk management. Among other things, the context section discusses certain regulatory requirements imposed on ICEEU and ICEEU's Recovery Plan. The Proposed Rule Change would delete the overview section and portions of the context section. Specifically, the Proposed Rule Change would delete portions of the context section that discuss regulatory requirements and ICEEU's Recovery Plan, and a statement that the Plan also reflects feedback received from certain regulators, because ICEEU no longer considers this level of detail of background information to be necessary.¹⁰ It would also delete a reference to EMIR requirements, because these no longer apply to ICEEU.¹¹

The Proposed Rule Change would divide the rest of the remaining context section into a new four-part executive summary section. The first part of the executive summary would be titled "Purpose of the Plan." This section would include portions of the existing context section describing when the Plan would be required and the time span for a wind-down. The Proposed Rule Change would add a sentence noting that the Plan sets out the relevant information, the steps to take, and the options available with respect to winding down some or all of ICEEU's business. The Proposed Rule Change would also note that the Plan seeks to support ICEEU's compliance with all relevant regulatory obligations with respect to wind-down. Finally, the Proposed Rule Change would add a footnote to explain that references to EMIR requirements and other EU legislation refer to legislation on-shored into United Kingdom legislation following

¹⁰ Notice, 88 FR at 60001-02.

¹¹ *Id.* at 60002.

the withdrawal of the United Kingdom from the European Union.

The second portion of the executive summary would be titled “Summary of the Plan.” This section would include portions of the existing context section describing the things the Plan considers (*e.g.*, scenarios). The current Plan already notes that it includes consideration of all existing contractual obligations with, for example, exchanges, payment banks, custodians, CSDs, repo counterparties, data providers, IT providers, contractors, buildings, and staff. The Proposed Rule Change would add that the Plan also considers other services that ICEEU may be providing, such as intra-group services.

The third part of the executive summary would be titled “Structure of the Plan.” This section would include portions of the existing context section describing the Plan’s contents, central aspects of the Plan, and assumptions underlying the Plan. The Proposed Rule Change would amend the content to state that extensive consultation with relevant stakeholders will be likely, rather than always occurring, prior to any final decisions regarding the execution of the Plan. ICEEU proposes this change to reflect that different forms and extents of consultation with particular stakeholders may be appropriate for different circumstances and proposed actions.¹²

The fourth section of the executive summary would be titled “Execution of the Plan.” It would not include any portions of the existing context section. This new section would add to the Plan a discussion of the establishment, responsibilities, and composition of the Wind Down Planning Committee. For example, this new section would note that ICEEU establishes the Wind Down Planning Committee, this committee reports to the Board, and the committee liaises with all stakeholders. Further, this committee includes a non-executive director chair, senior

¹² *Id.*

officers, and other advisors as appropriate.¹³

2. Preparations for Winding Down

ICEEU also proposes changes to the Plan related to its preparations for winding down. The Proposed Rule Change would add text clarifying that the Wind Down Planning Committee will try to ensure that the impact of any plans on relevant stakeholders (in addition to members) would be as minimal as possible. In considering a potential transfer to an alternative CCP, the Proposed Rule Change would clarify that the Wind Down Planning Committee should answer if there are any jurisdictional complications, materially differing membership requirements, or regulatory processes that should be factored into the timeline for wind-down. Additionally, the Proposed Rule Change would edit the Plan so that it no longer requires the Wind Down Planning Committee to consider whether the members would accept a particular contract not being available for clearing at the time of transfer. The Proposed Rule Change would eliminate this consideration because ICEEU believes transfer would likely not be feasible in a scenario where a particular contract is not available for clearing at the time of transfer.¹⁴ In considering a potential termination, the Proposed Rule Change would add that the Wind Down Planning Committee should answer whether the relevant regulators are likely to be accepting of the termination and whether the relevant regulatory processes have been adequately factored into the proposed timeline.

The Proposed Rule Change would note that as part of planning for wind-down, ICEEU shall assess the impact of services it receives and provides. Relevant factors in this assessment

¹³ The Proposed Rule Change would make similar changes to the “Analysis, Consultation, and Planning” section of the Plan. Specifically, it would note that the composition of the Planning Committee shall include relevant members of the senior management of ICEEU and any other senior ICE representatives as considered appropriate by ICEU senior management rather than simply noting that the composition of the Planning Committee would include the senior management of ICEEU.

¹⁴ Notice, 88 FR at 60002.

include timing and costs. The Proposed Rule Change would also state that ICEEU's plans assume that ICEEU continues to call and receive all margin requirements and operate during the wind-down period. The Proposed Rule Change would provide a caveat that under certain circumstances, such as an unplanned disruption from a Clearing Member default or a material non-default event or loss, revised timelines and other actions may be required.

3. Planning Options

According to the Plan, ICEEU may either transfer certain aspects of its business (*e.g.*, F&O clearing or CDS clearing) to another clearinghouse or terminate those aspects of its business. Additionally, the Plan includes a section dedicated to terminating service agreements. ICEEU proposes changes to the Plan impacting a potential transfer of its business, the potential termination of its business, and how it would go about terminating service agreements in the event of any type of wind-down.

A. Transfer Option

The current Plan states that if a particular market wishes and is able to continue trading and settling via a CCP then the wind down plan is based on the transfer option. The Proposed Rule Change would clarify that if a particular market wishes and is able to continue trading and settling via an alternative CCP, then the wind-down plan is based on the transfer option. The Proposed Rule Change would adjust multiple aspects of the Plan's discussion of the transfer option. Specifically, the current Plan describes how ICEEU would implement a transfer, for both its F&O and CDS businesses. The Plan describes the transfer of each business in terms of an overall approach to transfer, assumptions ICEEU makes as part of the transfer, activities that ICEEU will undertake, the timeline for transfer, and the resources needed for transfer.

Overall Approach to Transfer

The proposed rule change would update the description of ICEEU's overall approach to the transfer of its F&O and CDS businesses. With respect to transfer of the F&O business, the current Plan states that where an F&O contract is not cleared by the clearing house receiving the transfer, then ICEEU would terminate the contract and exclude it from transfer until the recipient clearing house begins clearing the contract. The Proposed Rule Change would modify this statement to state instead that ICEEU will just exclude the contract from transfer. ICEEU proposes this modification because it believes that the delay accompanying a later transfer would not be feasible.¹⁵

With respect to ICEEU's approach to transfer of the CDS business, the current Plan states that for ICEEU CDS contracts that are not currently cleared on the recipient clearing house's platform, the necessary capability to clear the contract will be built and tested by the recipient clearing house in time for transfer and will be included in the transfer. The Proposed Rule Change would add language to this provision subjecting this requirement to the clearing house's relevant new product approval and regulatory processes. The Proposed Rule Change would further note that if the recipient clearing house cannot build and test clearing methods in an acceptable timeframe, then ICEEU's clearing of those CDS contracts may, rather than will, be terminated through rebilateralisation.¹⁶

¹⁵ *Id.*

¹⁶ Transactions that ICEEU clears and settles centrally may also be cleared and settled bilaterally, using only two parties as opposed to clearing and settling a transaction through a CCP. Rebilateralisation describes the process of clearing and settling positions bilaterally that were once cleared and settled centrally.

Assumptions

Another aspect of the Plan's discussion of the transfer option that the Proposed Rule Change addresses are the assumptions underlying a plan for the transfer of ICEEU's F&O or CDS business. In both the F&O and CDS contexts, the current Plan assumes that the questions around viable and willing clearing houses have been answered. The Proposed Rule Change would clarify in both the F&O and CDS contexts that the questions around viable and willing clearing houses include jurisdictional considerations.¹⁷

In the F&O context, the current Plan assumes that ICEEU's clearing of the F&O market may legally be transferred to one or more clearing houses. The Proposed Rule Change would add an explanation to this assumption acknowledging that ICEEU clears a diverse profile of markets so that it may not be possible to transfer all to a single clearing house.¹⁸ Where the current Plan assumes that the questions around viable and willing clearing houses have been answered, it also includes a clause stating that there would be a maximum of two viable and willing clearing houses. The Proposed Rule Change would remove this clause.

In the assumptions for CDS transfers, as well as in other locations throughout the Plan's discussion of the CDS transfer option, the Proposed Rule Change would add language recognizing that alternative CCPs may have different membership requirements from ICEEU. For example, the current Plan assumes that the receiving clearing house's rules contain no impediments to the transfer. The Proposed Rule Change would add to this assumption by noting that the receiving clearing house's rules (including membership criteria) contain no impediments to the transfer.

¹⁷ Notice, 88 FR at 60002.

¹⁸ A similar explanation is added to the portion of the Plan addressing the timeline for transfer of ICEEU's F&O business.

Activities

A third aspect of the Plan's discussion of the transfer option that the Proposed Rule Change addresses are plan activities with respect to the transfer of ICEEU's F&O or CDS business. In the discussion of plan activities for both the transfer of ICEEU's F&O business and its CDS business, the current Plan calls for the transfer of margin funds to recipient clearing houses at the end of the weekend. The Proposed Rule Change would highlight that relevant collateral must be transferred to a recipient clearing house at the end of the weekend rather than margin funds.¹⁹

In the discussion of plan activities for the transfer of ICEEU's F&O business, the Proposed Rule Change would update references to ICEEU's position management and other systems (*e.g.*, FEC and ECS). The current Plan indicates that novation of member F&O contract positions from ICEEU to recipient clearing houses would be agreed. The Proposed Rule Change would add that Novation of related collateral from ICEEU to recipient clearing houses would also be agreed as appropriate. Finally, the current Plan calls for open position data migration to recipient clearing houses, excluding any non-transferring contracts, to be built and tested. The Proposed Rule Change would call for relevant collateral migration to recipient clearing houses to be built and tested as well.

In the discussion of plan activities for the transfer of ICEEU's CDS business, the current Plan states that following a gap analysis, the members and contracts that were missing from the alternative clearing house's platform would be identified and the timeframe for adding them agreed. If the timescale for adding any missing contracts was not acceptable to the market, then they would be terminated, positions would not be migrated, and once the recipient clearing house

¹⁹ The Proposed Rule Change makes changes throughout the Plan that align with this change.

is able to clear them they would be back-loaded. The Proposed Rule Change would note that if the timescale for adding any missing contracts was not acceptable to the market, then they would be terminated, positions would not be migrated, and once the recipient clearing house is able to clear them they could (rather than would) be back-loaded.

Timeline

The Proposed Rule Change also would adjust sections on the timeline for transfer of ICEEU's F&O and CDS businesses. The Proposed Rule Change would adjust the timeline for transfer of ICEEU's F&O and CDS businesses from no more than six months to approximately six months.²⁰ Moreover, the Proposed Rule Change would add text to the sections on the timeline for transfer of ICEEU's F&O and CDS businesses acknowledging that a transfer may need to involve more than one recipient clearing house which may affect the timeline for transfer.

Resources

The Proposed Rule Change would make one edit in the context of both its F&O and CDS business related to the resources needed for transfer. The current plan notes that risk management will continue with initial margin (IM) and variation margin (VM) operating unchanged. The Proposed Rule Change would note that risk management will therefore continue with initial margin (IM) and variation margin (VM) operating unchanged.

b. Termination Option

The Proposed Rule Change would clarify that a wind-down is based on the termination option if market conditions are so distressed that trading cannot continue, or an alternative CCP

²⁰ The Proposed Rule Change adjusts a graphic in a different section of the Plan in a manner that aligns with this change. Likewise, the Proposed Rule Change adjusts the Plan's conclusion to both align with this timeline and note that the timeline could be affected by factors such as the need for multiple alternative clearing venues.

cannot be found. The Proposed Rule Change would adjust multiple aspects of the Plan's discussion of the termination option, including the timeline for termination, overall approach to termination, activities that ICEEU will undertake, resources needed for termination, and the rules applicable to termination.

Timeline

The Proposed Rule Change would contemplate a more fluid timeline for termination of both the F&O and CDS business. Throughout the Plan, the Proposed Rule Change would make changes so that the timeline for termination in the case of the F&O business, or termination, wind-down, or rebilateralisation in the case of the CDS business, will take approximately five months, as opposed to exactly five months. Moreover, the Proposed Rule Change would contemplate that F&O and CDS termination occur on a designated Withdrawal Date. This added flexibility would allow ICEEU to account for the particular circumstances of the termination, such as differing maturity profiles in the context of F&O termination.²¹

Approach

The Proposed Rule Change also addresses the approach to terminating the F&O business. The Proposed Rule Change would clarify that F&O members will be notified by circular of ICEEU's intent to terminate the clearing of contracts. It also would revise the maturity profile for different product groups based on expiration date, because the maturity profile may be materially different between product groups.²² While acknowledging that the maturity profile may materially differ between product groups within the F&O clearing service, ICEEU would note that a common approach to termination may not be appropriate across all groups; therefore,

²¹ Notice, 88 FR at 60002.

²² *Id.*

the wind-down plan should consider the profile by relevant group, specifically with respect to the time required for termination. At the same time, ICEEU would note that the process of terminating open positions at Withdrawal Date is common across all maturities and product groups. Moreover, the Proposed Rule Change would note that the percentage of total open contracts expected to wind down naturally via expiration within three months is approximately 30 percent as opposed to approximately 35 percent. The Proposed Rule Change would also add that new trades would be accepted until the Withdrawal Date, with the expectation that they serve to reduce risk and therefore reduce open interest. ICEEU would also note that open F&O positions will be terminated through closing them down via offsetting transactions at the end-of-day settlement price, which is calculated in accordance with Clearing House Rules 701 and 802. It also would adjust the options available to F&O members to close out open positions themselves leading up to the Withdrawal Date. For example, the Proposed Rule Change would add that F&O members may use comparable trading strategies to Exchanges for Swaps to take positions off-market (in addition to being allowed to use Exchanges for Swaps).²³ Conforming changes would also be made to the assumptions underlying an F&O termination and the activities associated with an F&O termination in the Proposed Rule Change.

Activities

The Proposed Rule Change would also amend the activities associated with termination of ICEEU's F&O business. In the context of activities associated with ICEEU's F&O business, the Proposed Rule Change would note that all related margin, rather than only initial margin, is returned at contract termination.

²³ Exchanges for Swaps are off-exchange bilaterally-negotiated transactions involving the simultaneous exchange of an exchange futures position for a corresponding related OTC swap or other OTC derivative in the same or related product. ICE Futures U.S. EFRP FAQs.

Resources

The Proposed Rule Change would also amend a section addressing resources needed for termination in the context of ICEEU's CDS business. The Proposed Rule Change would note that ICEEU will continue to provide CDS clearing while reducing open interest, as opposed to reducing volume, until the time that clearing is terminated.

Rules

In the current Plan, Continuing CDS Rule Provisions specify the basis for calculating close-out amounts. These provisions also form the legal basis for any wind down. The Proposed Rule Change would remove text related to references to Continuing CDS Rule Provisions because the Continuing CDS Rule Provisions have been deleted from the Rules.²⁴

c. Terminating Service Agreements

The Proposed Rule Change would change portions of the Plan governing the termination of service contracts. It would change the length of the notice provided for terminating service contracts from exactly six months to approximately six months, and note that appropriate notice should be given with respect to termination of relevant employee contracts instead of six months' notice.

The Proposed Rule Change would add introductory text to a table listing relevant services and contracts. The introductory text would explain that the list is an illustrative summary only, and that a more complete, separately maintained list of service arrangements is available for reference as part of any wind-down planning. Additionally, the introductory text would state that IT services and licenses are largely provided by ICEEU's parent or affiliates and that IT services provided by external third parties are not expected to have a material impact on timelines or costs

²⁴ Notice, 88 FR at 60002.

relating to wind-down plans.

The Proposed Rule Change would also adjust the table listing relevant services and contracts. It would combine the treatment of a number of clearing services agreements with different affiliated ICE markets into a single category to ensure that the treatment is presented consistently in the Plan. Additionally, the Proposed Rule Change would also clarify that exit provisions are not included as part of intra-group agreements regarding property; add a Clearing and Settlement Services Agreement with Intercontinental Exchange Holdings; replace Dutch National Bank with European Central Bank in order to reflect that ICEEU uses European Central Bank as a concentration bank; change a reference from referring to specific exchanges to referring to relevant ICE Exchanges; and change the notice time period for Clearing and Settlement Services Agreements from twelve months to twenty-four months.

4. Meeting Liquidity Requirements During Wind-Down

The Proposed Rule Change would edit a section of the Plan discussing how ICEEU will meet its liquidity requirements during wind-down. The Plan currently states that “members cash held as cash is immediate or available in short term.” The Proposed Rule Change would make edits clarifying that collateral held as cash from Clearing Members should be immediately accessible or available at short notice. Further, the Proposed Rule Change would make edits that note that the vast majority, instead of approximately 99 percent, of funds should be invested in high-quality, short-term instruments. Moreover, the Proposed Rule Change would note that all investments are made in accordance with ICEEU’s Liquidity and Investment Management Policy. The Proposed Rule Change would remove a specific reference to maximum maturity and liquidity requirements mentioning the weighted-average life of investments and reverse repos. It would edit a liquidity requirement to note that outright purchases are limited to high-quality and

liquid government debt that can be liquidated on short notice in the secondary market. With respect to non-cash assets, the Proposed Rule Change would note that these assets are immediately available for meeting any liquidity requirements arising in a wind-down scenario, and that the non-cash collateral pool consists of highly liquid assets. The Proposed Rule Change would also highlight that ICEEU runs liquidity stress tests every day inclusive of extreme-but-plausible scenarios to ensure that it can maintain a healthy liquidity position. ICEEU proposes these changes to make this portion of the Plan consistent with the Liquidity and Investment Management Policy.²⁵

5. Document Governance

The Proposed Rule Change would delete the Plan's Governance section and replace it with a Document Governance and Exception Handling section that is consistent with recently-adopted ICEEU policies.²⁶ Under this section, the owner of the Plan would be responsible for ensuring that the Plan remains up to date and is reviewed in accordance with ICE Clear Europe's governance processes. Such reviews would encompass, at a minimum, regulatory compliance; documentation and purpose; implementation; use; and open items from previous validations or reviews (where appropriate). The results of the review, including any findings, would be reported to ICE Clear Europe's Executive Risk Committee along with the priority of findings, proposed remediations and target due date to remediate the findings.

The document owner also would be responsible for reporting material breaches or unapproved deviations from the Plan to their Head of Department, the Chief Risk Officer, and

²⁵ *Id.* at 60003.

²⁶ *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).

the Head of Regulation and Compliance (or, as applicable, their respective delegates). Those individuals together would determine if further escalation should be made to relevant senior executives, the Board, and/or competent authorities.

Finally, exceptions to the Plan would be approved in accordance with ICE Clear Europe's governance process for the approval of changes, and changes to the Plan would have to be approved in accordance with ICE Clear Europe's governance process. Such changes only would take effect after completion of all necessary internal and regulatory approvals.

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.²⁷ For the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act²⁸ and Rules 17Ad-22(e)(2)(i), (e)(2)(v),²⁹ and (e)(3)(ii) thereunder.³⁰

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 safeguarding of securities and funds which are in the custody or control of the clearing agency or

²⁷ 15 U.S.C. 78s(b)(2)(C).

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

²⁹ 17 CFR 240.17Ad-22(e)(2).

³⁰ 17 CFR 240.17Ad-22(e)(18).

for which it is responsible”³¹ Based on its review of the record, and for the reasons discussed below, ICEEU’s Proposed Rule Change is consistent with Section 17A(b)(3)(F).

The Proposed Rule Change would focus the Plan on the wind-down process. For example, the Proposed Rule Change would delete unnecessary portions of the overview and context section of the current Plan. It would also create a new Executive Summary section centered around aspects of the Plan (*e.g.*, the purpose of the Plan, summary of the Plan, structure of the Plan, and execution of the Plan) and populate that Executive Summary with remaining portions of the current Plan’s context section with a few modifications.

The Proposed Rule Change would also add or update details integral to operating the Plan. For example, the Proposed Rule Change would add text to clarify that the Wind Down Planning Committee will try to ensure that the impact of any plans on relevant stakeholders (in addition to members) would be as minimal as possible; add additional text identifying the Wind Down Planning Committee’s composition and duties; revise the maturity profile for different product groups based on expiration date; update numerous timelines within the plan; delete inapplicable references to statutes or rules; update the meaning of other references to statutes; edit questions that ICEEU’s Wind Down Planning Committee should consider as it tries to determine whether ICEEU should terminate or transfer its business; and acknowledge that a transfer may need to involve more than one recipient clearing house. Further, ICEEU proposes additions that would consider differences among stakeholders and products, as well as whether a specific course of action would be feasible. For example, the Proposed Rule Change would amend the Plan to state that extensive consultation with relevant stakeholders will be likely, rather than will always occur, prior to any final decisions regarding the execution of the Plan,

³¹ 15 U.S.C. 78q-1(b)(3)(F).

because different forms and extents of consultation with particular stakeholders may be appropriate for different circumstances and proposed actions. The Proposed Rule Change would also edit the Plan so that it no longer requires the Wind Down Planning Committee to consider whether the members would accept a particular contract not being available for clearing at the time of transfer, because ICEEU believes transfer would likely not be feasible in a scenario where a particular contract is not available for clearing at the time of transfer.

Finally, the Proposed Rule Change would make a number of changes to ensure that the Plan is consistent with itself and other ICEEU policies. For example, the Proposed Rule Change would combine the treatment of a number of clearing services agreements with different affiliated ICE markets into a single category on a table and would make edits to a section of the Plan discussing how ICEEU will meet its liquidity requirements during a wind-down.

In focusing the Plan and ensuring that it is internally consistent and consistent with other ICEEU policies, the Proposed Rule Change would make Plan clearer and easier to apply and thereby improve ICEEU's ability to facilitate the orderly close out of positions and potential transfer of positions to other clearing houses. The Proposed Rule Change would also facilitate the orderly close out of positions and potential transfer of positions to other clearing houses through adding and updating details integral to operating the Plan. Facilitation of the orderly close out of positions and potential transfer of positions to other clearing houses enhances ICEEU's ability to maintain and continue the prompt and accurate clearance and settlement of transactions by assuring that such transactions are closed-out and transferred to other clearing houses in an orderly and transparent manner. Further, by adding and updating details integral to operating the Plan, the Proposed Rule Change would also help assure an efficient and orderly wind-down. This, in turn, would help assure the safeguarding of securities or funds in the

custody or control of ICE Clear Europe by reducing the likelihood of an inefficient or disorderly wind-down, which could disrupt access to such securities or funds.

Therefore, the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.³²

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

Rule 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.”³³ Based on its review of the record, and for the reasons discussed below, ICEEU’s Proposed Rule Change is consistent with Rule 17Ad-22(e)(2)(i) and (v).

As discussed above, the Proposed Rule Change would add a Document Governance and Exception Handling Section. This section would make the document owner responsible for ensuring that the Plan remains up-to-date and is reviewed in accordance with ICE Clear Europe’s governance processes. The document owner also would be responsible for reporting material breaches or unapproved deviations from the Plan to their Head of Department, the Chief Risk Officer, and the Head of Regulation and Compliance (or, as applicable, their respective delegates). These changes would establish clear and direct responsibilities for the document owner of the plan consistent with Rule 17Ad-22(e)(2)(i) and (v).³⁴

The Proposed Rule Change would also add a section to the Plan’s Introduction titled “Execution of the Plan.” As noted above, this section adds to the Plan a discussion of the establishment, responsibilities, and composition of the Wind Down Planning Committee. In

³² 15 U.S.C. 78q-1(b)(3)(F).

³³ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

³⁴ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

doing so, it notes that the Wind Down Planning Committee reports to the Board and liaises with all stakeholders. This change would also establish clear and direct responsibilities for the document owner of the plan consistent with Rule 17Ad-22(e)(2)(i) and (v).³⁵

Therefore, the Proposed Rule Change is consistent with the requirements of Rules 17Ad-22(e)(2)(i) and (v).³⁶

C. Consistency with Rule 17Ad-22(e)(3)(ii)

Rule 17Ad-22(e)(3)(ii) requires ICEEU to “establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.”³⁷ Based on its review of the record, and for the reasons discussed below, ICEEU’s Proposed Rule Change is consistent with Rule 17Ad-22(e)(3)(ii).

The Proposed Rule Change would edit the planning options in the Plan. In doing so, it would alter the approach to assumptions underlying, activities related to, and the timeline for the Plan. For example, the timeline for transfer of one of ICEEU’s business lines would be now approximately six months as opposed to no more than six months. By making information like this available in the Plan, the Proposed Rule Change enables ICEEU to prepare in advance for and practice the steps needed to effectuate a wind-down. The added timeline flexibility would enhance ICEEU’s ability to use the Plan effectively to carry-out an orderly wind-down.

³⁵ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

³⁶ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

³⁷ 17 CFR 240.17Ad-22(e)(18).

Additionally, the Proposed Rule Change would edit a section of the Plan discussing how ICEEU will meet its liquidity requirements during wind-down. For example, the Proposed Rule Change would make clear that collateral held as cash from Clearing Members should be immediately accessible or available at short notice and that the vast majority, instead of approximately 99 percent, of funds should be invested in high-quality, short-term instruments. The Proposed Rule Change would make these edits to make this portion of the Plan consistent with the Liquidity and Investment Management Policy.³⁸ By making the Plan consistent with the Liquidity and Investment Management Policy the Proposed Rule Change decreases the potential for confusion which allows ICEEU personnel to correctly interpret the liquidity provisions in the Plan and effectuate a wind-down in a consistent and coordinated fashion. This increases the likelihood of an orderly wind-down.

Therefore, the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(3)(ii).³⁹

³⁸ Notice, 88 FR at 60002.

³⁹ 17 CFR 240.17Ad-22(e)(3)(ii).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act⁴⁰ and Rules 17Ad-22(e)(2)(i), (e)(2)(v),⁴¹ and (e)(3)(ii) thereunder.⁴²

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the proposed rule change, as modified by Amendment No. 1 (SR-ICEEU-2023-011) be, and hereby is, approved.⁴³

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

J. Matthew DeLesDernier,

Deputy Secretary.

⁴⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁴¹ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

⁴² 17 CFR 240.17Ad-22(e)(3)(ii).

⁴³ 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).

⁴⁴ 17 CFR 200.30-3(a)(12).