

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94762; File No. SR-ICEEU-2022-009)

April 20, 2022

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery 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 April 12, 2022, 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. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4)(ii) thereunder,⁴ such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to amend Part N of its Delivery Procedures (“Delivery Procedures” or “Procedures”) to include delivery specifications applicable to a new ICE Futures Europe futures contract,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

the ICE Deliverable Carbon Credit Contract, and to make certain conforming changes elsewhere in the Delivery Procedures. Such contracts would be settled by delivery of qualifying carbon credits through a Registry approved by the Clearing House and in the same manner as delivery under ICE Deliverable US Emissions Contracts.

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 Part N of its Delivery Procedures to include delivery procedures applicable to settlement of a new ICE Futures Europe futures contract, the ICE Futures Europe Carbon Credit Contract, which will be cleared by ICE Clear Europe. The amendments to Part N would detail settlement procedures applicable to ICE Futures Europe Carbon Credit Contracts (i) for which physical delivery is specified as being “Applicable” in the relevant Contract Terms, and (ii) which go to physical delivery on the expiry date (such contracts “ICE Deliverable Carbon Credit Contracts”). The amendments would make certain other clarifications to Part N, which also addresses ICE Deliverable US Emissions Contracts, as well as conforming changes

elsewhere in the Delivery Procedures. As a result of the amendments, settlement under ICE Deliverable Carbon Credit Contracts would generally be made under the same delivery procedures as settlement under ICE Deliverable US Emissions Contracts, except as noted in the amended procedures.

The amendments to Part N would clarify that the definition of “Allowance” means any and all transferrable or assignable interests (in property, equity, contract or otherwise) in an instrument, certificate, permit, asset, security, right, contract or allowance that is designed as a deliverable instrument for an ICE Deliverable US Emissions Contract in the relevant Contract Terms.

A parallel definition of “Carbon Credit” would be added for the ICE Deliverable Carbon Credit Contract, which would provide that such any and all transferrable or assignable interests (in property, equity, contract or otherwise) in an instrument, certificate, permit, asset, security, right, contract or allowance that is designed as a deliverable instrument for an ICE Deliverable Carbon Contract in the relevant Contract Terms.

The definition of “Registry” and the details about the procedures relating to bilateral delivery (i.e., delivery directly between a seller and buyer, rather than through a Clearing House account) through a Registry approved by the Clearing House would be updated to apply to the physical delivery of Carbon Credits under ICE Deliverable Carbon Credit Contracts (as applicable) in addition to the physical delivery of Allowances under US Emissions Contracts (as applicable).

The discussion about the Clearing House’s processes with respect to Exchange for Physicals (EFPs) and Exchange for Swaps (EFSs) would be updated to apply to EFPs and

EFSs made in accordance with ICE Futures Europe Rules and Procedures (to address the ICE Deliverable Carbon Credit Contracts) in addition to ICE Futures US Rules and procedures (as applicable).

The amendments would add a new paragraph 2.6 to the Delivery Specifications section which specifies that, for the avoidance of doubt, (i) the Registry would be a Delivery Facility; and (ii) Allowances and Carbon Credits shall be Deliverables (both changes tie the delivery specifications to relevant defined terms used in the Rules).

The amendments would update the discussion of limitations of liability for the Clearing House and ICE Futures US to also apply to ICE Futures Europe (as the exchange for the ICE Deliverable Carbon Credit Contracts).

Finally, the section describing and providing a Delivery Timetable detailing processes and timing related to the delivery of Allowances under ICE Deliverable US Emissions Contracts would be updated to apply to delivery of Carbon Credits under the ICE Deliverable Carbon Credit Contracts as well (as applicable).

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures are consistent with the requirements of Section 17A of the Act⁵ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁶ 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

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

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 Delivery Procedures are designed to establish delivery procedures relating to new ICE Delivery Carbon Credit Contracts to be traded on ICE Futures Europe and cleared at ICE Clear Europe, under which physical delivery will be made through the Registry approved by the Clearing House. The amendments would also set out the role, responsibilities and liabilities of the Clearing House, Clearing Members and designated transferors and transferees in the physical delivery process, in line with Delivery Procedures for other types of ICE Futures US Emissions Contracts, particularly the ICE Deliverable US Emissions Contracts. ICE Deliverable Carbon Credit Contracts will be supported by ICE Clear Europe's existing F&O financial resources, risk management, systems and operational arrangements. Accordingly, ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such contracts and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁷ (In ICE Clear Europe's view, the amendments would not affect

⁷ 15 U.S.C. 78q-1(b)(3)(F).

the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).⁸)

In addition, Rule 17Ad-22(e)(10)⁹ provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries.” As discussed above, the amendments would include in Part N procedures applicable to the settlement of ICE Deliverable Carbon Credit Contracts that are to be settled by delivery through a Registry approved by the Clearing House. The procedures would address, among other matters and in line with the procedures applicable to ICE Deliverable US Emissions Contracts, bilateral delivery specifications for ICE Deliverable Carbon Credit Contracts, limitation of liability for the Clearing House and ICE Futures Europe in respect of the delivery of such contracts, and certain other documentation and timing matters, consistent with the requirements of the Clearing House. Clearance of the ICE Deliverable Carbon Credit Contracts would be supported by ICE Clear Europe’s existing financial resources, risk management, systems and operational arrangements. The amendments thus appropriately clarify the role and responsibilities of the Clearing House and Clearing Members with respect to physical

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22(e)(10).

delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad-22(e)(10).¹⁰

(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 proposed amendments to the Delivery Procedures are intended to establish delivery procedures for a new contract to be traded on ICE Futures Europe and cleared at ICE Clear Europe, the ICE Deliverable Carbon Credit Contracts. Delivery of ICE Deliverable Carbon Credit Contracts will be made through a Registry approved by the Clearing House. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in the new contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose 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 comments received with respect to the proposed rule change.

¹⁰ 17 C.F.R. 240.17Ad-22(e)(10).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2022-009 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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-ICEEU-2022-009. This file number should be included on the subject line if e-mail 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 (<http://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 10:00 am and 3:00 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>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2022-009 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).