

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95120; File No. SR-ICEEU-2022-011)

June 16, 2022

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amendments to the ICE Clear Europe Rules.

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 June 10, 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

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to modify its Clearing Rules (“Clearing Rules” or “Rules”) to provide greater certainty and additional detail with respect to: (i) the correction of settlement prices in the case of certain external events and (ii) the cash settlement of transactions in lieu of delivery where a Clearing

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).

Member is in default or there are grounds for declaring a default in respect of a Clearing Member, each of the foregoing in respect of F&O Contracts. A copy of the proposed amendments is set forth in Exhibit 5.

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 Clearing Rules to provide greater certainty and additional detail in relation to (i) the scenarios where there is an external or other change in a relevant price or event which results in a need for the Clearing House to correct settlement prices; and (ii) the cash settlement of transactions in lieu of delivery where a Clearing Member is in default or there are grounds for declaring a default in respect of a Clearing Member.

Determination of Settlement Price

Futures Contracts

Although the Exchange Delivery Settlement Price (“EDSP”) for a futures contract is generally determined based on data provided by the relevant Market, Rule 701(c) provides that in a number of scenarios the Clearing House may itself determine the Exchange Delivery Settlement Price. The amendments would add the cases of Force Majeure Event, Illegality or

Impossibility as circumstances in which the Clearing House could take such action. Although the existing general language of Rule 701(c) would generally permit the determination by the Clearing House of the EDSP in those cases, ICE Clear Europe believes it is appropriate, as a matter of clarity and transparency, to provide so explicitly. The amendments would also remove a redundant reference to the Clearing House acting in its discretion. Rule 701(c) would also be updated to provide that any EDSP determined under such Rule would be communicated only to affected Clearing Members (as communication to unaffected Clearing Members should be unnecessary).

A new subsection (d) would be added to Rule 701 and would provide that the Clearing House would be entitled to amend any previously communicated EDSP, including in respect of futures contracts already settled or delivered, in the following two scenarios: (i) a Market or other external pricing source has made an error in or amends the EDSP or the basis for, or any element or input data in respect of the EDSP, or (ii) there has been an error by the Clearing House. In such scenarios, the Clearing House would be able to order revised payments to reflect the amended EDSP, including in respect of settled or delivered Contracts. Any amended EDSP determined by the Clearing House under each new such subsection would be communicated to affected Clearing Members, and any revised payments ordered by the Clearing House in connection therewith would be promptly processed by the Clearing House as part of its usual operational processes. The amendments are intended to provide greater certainty under the Rules as to the situations in which a change of price might take place and the consequences of such change, including the rights and obligations of the Clearing House in the event of a change in a settlement price, or an input in the settlement price, and the rights and obligations of the Clearing House and F&O Clearing Members to make appropriate payments in the event of a resulting

change in an EDSP, including following settlement of a Contract. Such a change could occur, for example, where an input for the EDSP is based by the relevant Market on a price reporting service or prices in a spot or cash market for an underlying commodity, or where an input price is subject to or affected by action of relevant governmental or other authorities with jurisdiction over those markets. Although the Clearing House has other existing general authority, including under Rule 701(c) and Rule 109, that it might potentially use to address such situations, the Clearing House believes it is appropriate for the Clearing House to have explicit, specific rules addressing the possibility of such a change in a relevant price, in light of experiences with errors involving underlying prices and other cases in which underlying or related markets have considered such changes that could potentially have affected the EDSP. The amendments would also provide increased certainty for Clearing Members and other market participants as to the likely consequences of such changes occurring. ICE Clear Europe does not expect that Rule 701(d) would be commonly used in the ordinary course of business.

The amendments would also redesignate the ultimate paragraph in Rule 705 as subsection (b). This non-substantive update is intended to improve the organization and readability of the Rules, and to align with the parallel provision in Rule 805. A further conforming change would be made to the same paragraph provide that the discharge of the rights and obligations of Clearing Members upon settlement would be made expressly subject to Rule 701(d) (as discussed above), a change which reflects the Clearing House's present interpretation of how these two provisions interrelate.

Parallel changes would be made for Options Contracts in Rules 802(c) and (d). Rule 802(c) would be amended to add Force Majeure Event, Illegality or Impossibility to the list of scenarios that entitle the Clearing House to determine the EDSP at its discretion. The

amendments would also remove a redundant reference to the Clearing House acting in its discretion. Rule 802(c) would be updated to provide that any EDSP determined under such Rule would be communicated to affected Clearing Members, for the reasons discussed for Rule 701(c) above.

A new subsection (d) would also be added to Rule 802 and would provide that the Clearing House would be entitled at its discretion to amend any previously communicated EDSP for option contracts, including in respect of contracts already settled or delivered, in the following two scenarios: (i) a Market or other external pricing source has made an error in or amends the EDSP or the basis for, or any element or input data in respect of the EDSP, or (ii) there has been an error by the Clearing House. In such scenarios, the Clearing House would be able to order revised payments, including in respect of settled or delivered Contracts. Any amended EDSP determined by the Clearing House under each new such subsection would be communicated to affected Clearing Members, and any revised payments ordered by the Clearing House in connection therewith would be promptly processed by the Clearing House as part of its usual operational processes. The purpose and rationale for these amendments is substantially the same as for the amendments to Rule 701(d), as discussed above.

Similar to the changes to Rule 705 discussed above, a conforming change would be made to Rule 807 to provide that the discharge of Clearing Members on settlement would be subject to Rule 802(d) (as discussed above). Likewise, a change would be made to Rule 808(b) to provide that the termination of rights and obligations upon abandonment of an option would be subject to Rule 802(d), for similar reasons.

Cash Settlement on Default

The Clearing House proposes to amend Rule 703(h) to provide greater certainty as to the treatment of delivery obligations under F&O Contracts in the event of a default by a Clearing Member or when there are grounds for declaring a default in respect of a Clearing Member. Depending upon the kind of F&O Contract, pursuant to existing Rule 703(f) and the Delivery Procedures, selling Clearing Members may be matched with buying Clearing Members to effect delivery between them, in satisfaction of the selling Clearing Member's delivery obligation to the Clearing House and the Clearing House's delivery obligation to the buying Clearing Member. In the case of other F&O Contracts, there is no such matching and delivery is made by Sellers to the Clearing House and then by the Clearing House to Buyers, pursuant to Rules 703(b) to (e) and the Delivery Procedures.

The proposed amendments to Rule 703(h) would provide further detail, consistent with existing Clearing House practices and interpretations, as to what happens when a Clearing Member which has been matched for purposes of delivery fails to perform its delivery obligations. Rule 703(h) applies to a Clearing Member that has been declared a Defaulter or is subject to grounds for declaring an Event of Default or Force Majeure Event. In such a case, the Clearing House already has under Rule 703(h) the ability to direct that delivery obligations be substituted for cash, including as against non-defaulting Clearing Members. This enables it to ensure that the number of Contracts under delivery remain matched and that the Clearing House does not need to source deliverable commodities in the physical marketplace. Amended Rule 703(h) would provide explicitly that a relevant Contract of the defaulter may be substituted for cash settlement obligations at a price determined by ICE Clear Europe at its discretion. The rights, liabilities, and obligations of any Clearing Member with an Account having an opposite

delivery position in Contracts in the same Set could then, at the discretion of the Clearing House, also be substituted for cash settlement obligations at the same price. These amendments are intended to build on the Clearing House's existing authority to substitute cash settlement for delivery obligations in the case of default, in furtherance of its default management, and more clearly reflect how the existing authority would operate in practice.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Clearing Membership 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 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 Rules are intended to provide greater certainty and additional detail as to (i) the rights and obligations of the Clearing House and F&O Clearing Members in scenarios where there is an external or other change of price which results in a need to change or correct the EDSP, including after settlement occurs; and (ii) the way in which the Clearing House could effect cash settlement in lieu of delivery in the case of an F&O Clearing Member default or where a Clearing Member is subject to ground for declaring a default. The

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

amendments relating to changes in EDSP are intended to provide greater certainty as to the actions the Clearing House may take in circumstances where there is a potential change in a settlement price, including where settlement has already occurred and additional payments would be required. The Clearing House believes it is important to have clear provisions in the Rules for this scenario given the potential impact on market participants. The amendments with respect to cash settlement of delivery obligations in case of default are not intended to materially change the substance of the rights or obligations of the Clearing House and Clearing Members but would provide greater clarity as to the applicable process. The amendments also remove certain overlapping or duplicative information in order to improve organization and readability. In ICE Clear Europe's view the amendments would thus facilitate the clearing and settlement process, as well as default management, by the Clearing House. The proposed amendments would therefore facilitate the prompt and accurate clearing of cleared Contracts, the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, and the protection of investors and the public interest in the sound operations of the Clearing House, consistent with the requirements of Section 17A(b)(3)(F).⁷

For similar reasons, the amendments to the Rules are also consistent with relevant provisions of Rule 17Ad-22.⁸ Rule 17Ad-22(e)(1) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] provide for a well-founded, clear, transparent and

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 240.17 Ad-22.

enforceable legal basis for each aspect of its activities in all relevant jurisdictions”.⁹ As discussed above, the amendments will provide greater certainty for market participants as to the rights and obligations of the Clearing House and F&O Clearing Members in cases where there is a subsequent change in a settlement price or inputs in the settlement price. The amendments also elucidate the rights and obligations relating to delivery in a default scenario. As such, the amendments are consistent with establishing a well-founded, clear and transparent basis for the activities of the Clearing House, within the meaning of Rule 17Ad-22(e)(1).¹⁰

Rule 17Ad-22(e)(8) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due...”¹¹. As described above, the amendments address a change in EDSP in limited circumstances where there has been an error or other change in a relevant underlying price. Where necessary, the amendments would also provide for additional payments to or from Clearing Members to reflect the amended price. ICE Clear Europe does not believe that correction of an error or similar circumstance, even though it may require additional payments, would be inconsistent with finality of settlement within the meaning of Rule 17Ad-22(e)(8). Specifically, in ICE Clear Europe’s view, the proposed amendments should not be viewed as affecting the finality of settlement payments previously made (which were final and irrevocable when made in accordance with the settlement finality provisions of the ICE Clear

⁹ 17 CFR 240.17 Ad-22(e)(1).

¹⁰ 17 CFR 240.17 Ad-22(e)(1).

¹¹ 17 CFR 240.17 Ad-22(e)(8).

Europe Rules and applicable settlement finality regulations) but rather as establishing an independent new payment obligation, with a new payment date, to reflect the change in EDSP. Such new payment obligation would itself give rise to or be subsumed in a new payment transfer order which would be subject to the settlement finality provisions of Part 12 of the ICE Clear Rules. As such, the amendments are not inconsistent with the finality requirements of Rule 17Ad-22(e)(8).¹²

Rule 17Ad-22(e)(10) 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.”¹³ As set forth above, the amendments would clarify the rights and obligations of the Clearing House and Clearing Members with respect to physical delivery in the case of a failure to perform by a Clearing Member, by setting forth the ability of the Clearing House to provide for cash settlement in lieu of physical delivery in that scenario. In addition, this authority will facilitate the Clearing House’s ability to manage its risk associated with a failed physical delivery in the context of a Clearing Member default. The amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(10).¹⁴

(B) Clearing Agency’s Statement on Burden on Competition

¹² 17 CFR 240.17 Ad-22(e)(8).

¹³ 17 CFR 240.17 Ad-22(e)(10).

¹⁴ 17 CFR 240.17 Ad-22(e)(10).

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 provide greater legal certainty under the Rules to address scenarios in which the Clearing House may need to amend an EDSP, including as a result of a change in a relevant input. Other amendments would elucidate the rights and obligations of Clearing Members with respect to physical delivery in the case of a Clearing Member default. The amendments would apply to all F&O Clearing Members. Although the amendments address scenarios where a market participant may be obligated to make a payment as a result of a change in an EDSP, which could impose costs on such market participant, that result would depend on the market participant's own positions and reflect a change in the underlying relevant price or input to correctly reflect the value of the relevant Contract. Similarly, the amendments address the ability of the Clearing House to impose cash settlement in lieu of physical settlement, including on non-defaulters, which could impose a cost on such market participant. However, that result would depend on the Clearing Member's own positions and reflects a cost and risk to which the Clearing Members are already exposed and which arise commonly in clearing systems. ICE Clear Europe does not believe the amendments would otherwise 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

ICE Clear Europe consulted with a number of market participants, including a relevant futures industry group, in connection with the development of the proposed rule changes, and considered feedback from such participants in preparing the specific rule changes that are now proposed to be adopted. In particular, market participants raised questions concerning (i) the circumstances in which settlement prices might be changed, and (ii) the appropriate timeframe in which a change to EDSP may be made. In developing the current proposal, ICE Clear Europe notes that the amendments are generally intended to deal with changes from external pricing sources, which may be permitted to make such changes in a variety of circumstances, and with a variety of characterizations, that are outside the control of ICE Clear Europe and may be difficult to define more specifically in advance. ICE Clear Europe also notes that it has not defined a specific timeframe in which a change to EDSP may be made, in light of the fact that different Markets cleared by ICE Clear Europe and different external pricing sources may have their own time period in which changes to relevant prices may be made. ICE Clear Europe has thus sought to maintain appropriate flexibility to deal with the range of potential changes to relevant prices as they may arise.

ICE Clear Europe has also conducted a formal public consultation with respect to the proposed rule changes.¹⁵ No written comments were received as a result of the public consultation. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

¹⁵ ICE Clear Europe Circular C22/056 (25 April 2022), available at https://www.theice.com/publicdocs/clear_europe/circulars/C22056.pdf.

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 Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ 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-2022-011 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-2022-011. 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

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

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, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. 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/notices/Notices.shtml?regulatoryFilings>.

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-2022-011 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).