

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95683; File No. SR-ICEEU-2022-010)

September 7, 2022

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Clearing Membership 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 August 30, 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. 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 modify its Clearing Membership Procedures (“Clearing Membership Procedures” or “Procedures”) to make certain clarifications and updates.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Membership Procedures to make certain clarifications and enhancements to remove certain provisions that are duplicative of the Clearing House’s Counterparty Credit Risk Policy and Counterparty Credit Risk Procedures,³ to more clearly document certain practices and to make certain non-substantive changes to improve clarity and readability.

The section describing the purpose of the Procedures would add a defined term referencing the Clearing House’s Clearing Rules. Conforming changes would be made to each reference to the “Clearing Rules” appearing in the remainder of the Procedures.

The section describing the application process would update the names of certain departments responsible for reviewing Clearing Membership applications as follows: such applications (i) would be reviewed by the Credit and Clearing Risk department (this change does not represent a change in departments, rather, it is an inclusion of the relevant department names rather than stating “Risk” generally) and (ii) are subject to the approval of the Executive Risk Committee (rather than simply the “Committee”), which

³ The Counterparty Credit Risk Policy and Procedures are described in Exchange Act Release No. 34-93880, SR ICEEU-2021-15 (Dec. 30, 2021) 87 FR 513 (Jan. 5, 2022).

would also be known as “the Committee or “ERC” in shorthand in the Procedures.

Conforming changes would be made in the remainder of the Procedures.

A paragraph which provided that the Clearing Risk Department would conduct a credit review which may include a credit check and assessments based on the Clearing House’s Counterparty Ratings System would be removed as the credit review is covered by the Counterparty Credit Risk Policy and Procedures.

The proposed amendments would provide that the list of Approved Jurisdiction for applicants (those jurisdictions for which additional legal and regulatory analysis is not required) would be maintained by the legal department, rather than in the Clearing Membership Parameters. This change reflects current practice as the list of Approved Jurisdictions is currently maintained by the legal department. Further, in order to consolidate information and because the legal department is placed to provide guidance on Approved Jurisdictions, the Clearing Membership Procedures would reflect that such list would be maintained by the legal department only.

The subsection discussing termination of Clearing Membership by ICE Clear Europe would be updated to remove a sentence which provided that the Board is required to approve the issuance of a Termination Notice against a Clearing Member. There is no such requirement under the Rules, and accordingly the amendments would bring the Procedures into line with the Rules and the scope of authority currently delegated by the Board and does not represent a change in existing practice or procedures as they relate to Termination Notices. Action by the Clearing House to terminate a member under Rule 209 would be subject to the existing general governance provisions of the Rules, including Rule 114. Rule 114(a) allows the Clearing House to delegate authority to its

Board, Chairman, President or any other Director or employee. Although ICE Clear Europe would expect that a decision to issue a Termination Notice against a Clearing Member would likely be made by the Board, the Clearing House's existing Delegation of Authority to its President implemented pursuant to Rule 114(a) could potentially apply to issuance of a Termination Notice in certain emergency scenarios including situations where time is of the essence for the interests of the Clearing House and its Clearing Members. In such cases and pursuant to the specifications included in the Delegation of Authority, the President may be authorized to issue a Termination Notice. Accordingly, the proposed update will conform the Clearing Membership Procedures to reflect the Clearing House's existing authority under the Rules and Delegation of Authority to issue Termination Notice in respect of Clearing Members.

The subsection discussing the minimum capital requirements that the Clearing House requires of Clearing Members would be updated to remove a reference to data sources used to determine a Clearing Member's Capital. Such matters are addressed in the Counterparty Credit Risk Policy and Procedures and do not need to be addressed in the Clearing Membership Procedures. Additionally, the amendments clarify that certain additional risk-based requirements that may be imposed under the CDS Procedures would apply only to CDS Clearing Members in accordance with the terms of the CDS Procedures. This update does not represent a change to the Clearing Membership Procedures and is intended to reflect that the Clearing Membership Procedures align with the CDS Procedures.

The subsection discussing contributions to the Guaranty Fund for CDS and F&O would be updated to clarify that the Clearing Membership applications would be required

to make Guaranty Fund contributions as specified by the F&O Guaranty Fund Policy and Section 5 of the CDS Risk Policy. The change is intended to update references to the correct F&O and CDS policies and does not represent a change in substantive requirements.

A subsection discussing the Clearing House's margin-to-capital ratio requirement would be removed as unnecessary because such requirement is addressed in greater detail in the Clearing House's Counterparty Credit Risk Policy and Procedures.

In the section discussing on-going monitoring of the Clearing Members by the Clearing House, a sentence which cross-referenced the Counterparty Credit Risk Policy would be removed as unnecessary.

The proposed amendments would provide that the Clearing House's periodic counterparty review includes know-your-customer and anti-money laundering assessments. This amendment is intended to reflect current practice.

A subsection referencing the Clearing House's Quarterly Counterparty Rating System Report would be removed as the topic is discussed in greater detail in the Counterparty Credit Risk Policy and Procedures.

A subsection discussing the information the Clearing House requires that Clearing Members provide through the Annual Member Return (AMR) would be updated to expressly include updated Clearing Member information. AMR is an annual process by which ICE Clear Europe requests Clearing Members to provide and confirm certain information related to their clearing membership; AMR is a means for the Clearing House to ensure that it has up-to-date information about Clearing Members. The proposed change is intended to inform Clearing Members that information requested as

part of AMR will include updated Clearing Member information, which may include, for example, a change of a Clearing Member's registered or operational address, its legal entity name, etc.

Other non-substantive typographical and similar drafting clarifications and updates would be made throughout the Procedures to improve readability and correct grammatical errors.

(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 Act⁴ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁵ 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 Clearing Membership Procedures are intended to update and more clearly document the Clearing House's procedures for reviewing applications for clearing membership, variations of membership permissions and on-going monitoring and termination of membership of ICEU. The amendments remove certain overlapping or duplicative information that is addressed in more detail in the

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

Clearing House’s Counterparty Credit Risk Policy and Procedures. In ICE Clear Europe’s view the amendments would thus facilitate the clearing membership process, and related risk management by the Clearing House. The amendments would therefore facilitate the prompt and accurate clearing of cleared contracts and protect investors and the public interest in the sound operations of the Clearing House, consistent with the requirements of Section 17A(b)(3)(F).⁶ Further, the amendments will not affect the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, within the meaning Section 17A(b)(3)(F).⁷

The amendments to the Procedures are also consistent with relevant provisions of Rule 17Ad-22.⁸ Rule 17Ad-22(e)(18) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] establish objective, risk-based and publicly disclosed criteria for participation, which permit fair and open access by direct . . . participants . . . 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”.⁹ As set forth above, the amendments to the Clearing Membership Procedures are intended to clarify and enhance the Clearing House’s procedures as they relate to Clearing

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 240.17 Ad-22.

⁹ 17 CFR 240.17 Ad-22(e)(18).

Membership application and monitoring processes. The amendments do not substantively change the requirements for membership or the related Rules, but rather update the Procedures to reflect the Clearing House's current practices, avoid duplication of other Clearing House policies (specifically the Counterparty Credit Risk Policy and Procedures) and make other updates to improve clarity and readability. The amendments will facilitate the Clearing House's ability to implement and monitor its participation requirements. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(18).¹⁰

Rule 17Ad-22(e)(2) further provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] provide for governance arrangements that are (i) clear and transparent, (ii) clearly prioritize the safety and efficiency of the covered clearing agency; and (iii) support the public interest requirement in Section 17A of the Act”¹¹ among other requirements. As set forth above, the amendments clarify the governance arrangements around the termination of clearing membership status under Rule 209, to remove a requirement that terminations be approved by the Board. Such a requirement is not provided in the Rules, and accordingly the amendments would make the Procedures consistent with the governance procedures of the Rules, including Rule 114. As such, in

¹⁰ 17 CFR 240.17Ad-22(e)(18).

¹¹ 17 CFR 240.17Ad-22(e)(2).

ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad-22(e)(2).¹²

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

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update and clarify the Clearing Membership Procedures, which relates to the Clearing House's internal processes for implementation and ongoing monitoring of its membership requirements. No substantive changes are being made to the membership requirements themselves or the Rules. Accordingly, ICE Clear Europe does not believe the amendments would affect the costs of clearing, the ability of market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change and adoption.

III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds

¹² 17 CFR 240.17Ad-22(e)(2).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2022-010 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-2022-010. 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-2022-010 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,
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).