

SECURITIES AND EXCHANGE COMMISSION
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October 3, 2022

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Operational Risk and Resilience Policy

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 September 22, 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

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to rename and modify its Operational Risk Management Policy, which will now be known as the Operational Risk and Resilience Policy (the “Operational Risk and Resilience Policy” or “Policy”). The amendments would make certain other clarifications and updates. A copy of the proposed amendments is set forth in Exhibit 5 [sic].³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the Operational Risk and Resilience Policy.

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 rename its existing Operational Risk Management Policy to be the Operational Risk and Resilience Policy, and to make certain amendments thereto to address operational resilience in addition to operational risk. The amendments would, as set forth herein, expand the description of the framework under which the Clearing House manages operational risk and operational resilience, describe the existing lines of defense maintained by the Clearing House against such risks and the roles and responsibilities of Clearing House committees, personnel and the Board in respect of the framework. The proposed amendments are designed to update the documentation of ICE Clear Europe’s practices in this regard to be consistent with requirements of the Bank of England (“BoE”) for central counterparties to establish an operational resilience framework by March 31, 2022 that identifies and prioritises “important business services,” sets out impact tolerances in respect of such services, identifies and maps dependencies for such important business services and establishes a

scenario testing program with respect to such recovery of such services following disruption.⁴ Other non-substantive drafting and similar improvements would also be made to the Policy.

The amendments would provide that the purpose of the document is to set out the Operational Risk and Resilience management framework, including identify and managing relevant risks. (The amendments remove certain unnecessary references to “operational” risk throughout the Policy as the entire Policy addresses operational risk.) The Policy would apply to all of the Clearing House’s departments and functions.

The amendments would add a new subsection which would describe the Clearing House’s existing three lines of defense model for managing risks; the first line of defense (or risk owner) (First Line) is responsible for managing risks to within the defined Board risk appetite and for ensuring adherence to the requirements of the Policy. The First Line would include business departments except for the Risk Oversight Department and Internal Audit. The Risk Oversight Department (ROD) and Enterprise Risk Management (ERM) is the second line of defense (Second Line) and is responsible for challenging the first line and monitoring adherence to the requirement of the Policy. The third line of defense (Third Line) would be the Internal Audit function and would provide independent

⁴ The BoE requires central counterparties to establish an operational resilience framework which shall, among other requirements, identify important business services and set impact tolerances for such services. See Bank of England, Supervisory Statement: Operational Resilience—Central Counterparties” (March 2021), available at: Operational Resilience: Central Counterparties Supervisory Statement March 2021 (bankofengland.co.uk) (the “Supervisory Statement”). See also Bank of England Prudential Regulation Authority, Statement of Policy: Operational Resilience (March 2021), available at SoP 'Operational resilience' (bankofengland.co.uk).

and objective assurance to the Board. The three lines of defense model is currently used within the Clearing House's risk management framework, and the proposed amendments are intended to more formally document that model, with its existing roles and responsibilities, in the Policy.

The amendments would specifically include Operational Resilience policies as part of the architecture of the documentation which supports the Policy. The amendments would define "operational resilience" as the ability to prevent, respond to, recover and learn from operational service disruption events.

In a new subsection describing in more detail the Clearing House's operational risk and resilience framework, the Clearing House would describe the purpose of the framework as to reduce the likelihood of an operational disruption event within acceptable tolerance and mitigate and quickly recover from operational disruption events. The framework would be comprised of the following set of existing complementary policies (certain of which are ICE Clear Europe policies and others are ICE group-wide policies): (i) the Policy, which is intended to ensure that the risk of operational failure of important processes is minimized, (ii) Incident Management Policy, which is intended to provide a cohesive framework for the communication, resolution and recording of incidents and to ensure that incidents are resolved in a planned and controlled manner in order to resolve any interruptions quickly and restore service, (iii) Business Continuity & Disaster Recovery Policy, which is intended to ensure that appropriate plans are in place to recover from a business continuity or disaster recover incident, (iv) Information Security and Cyber Security Strategy, which outlines the responsibilities of users and the steps they must take to protect ICE information and information systems, (v) Outsourcing

Policy, which governs outsourcing arrangements to ensure that the Clearing House's minimum operational resilience are met by outsourced service providers, and (vi) Vendor Management Policy, which ensures that requisite due diligence is performed and ensures that vendors have the capacity, resiliency and capability to fully support the Clearing House. (Other than the Policy, the listed policies are not being amended hereby.)

The amendments would also add a new subsection describing the Clearing House's important business services. A business service would be considered important if a prolonged disruption of such service would significantly disrupt the orderly functioning of a market which the Clearing House serves, thereby impacting financial stability. Important business services would be required to be identified and documented, and such identification would help prioritization of these services from an operational resilience viewpoint. For each important business service, dependencies relating to people, processes, technology, facilities, and underlying information would be identified. Identified business services would be required to be reviewed at least annually by the First Line, overseen by the Second Line and approved by an appropriate Board-level Committee. These amendments do not reflect a substantive change in the Clearing House's existing risk management approach but rather formally address relevant services already identified by the Clearing House as being critical in light of the requirement described above under the Supervisory Statement that a central counterparty document its framework for identifying and documenting "important business services".

The amendments would include a new subsection which would describe the Clearing House's impact tolerances, which would be defined as the maximum tolerable level of disruption for an important business service, whereby further disruption would

pose a significant impact to the market(s) serve by the Clearing House. For each important business service an appropriate impact tolerance would be established, considering the duration of any outage and additional relevant metrics, such as the magnitude of the impact. Additionally, the Clearing House would be required to ensure that appropriate controls and recovery procedures are in place for important business services in order to aid with recovery in the case of service disruption. Monitoring of impact tolerances would need to be in place, with any breach escalated to the Clearing House's Executive Risk Committee and Board. Breaches to impact tolerances would be reviewed by the First Line and a remediation plan established for any identified weakness. Such review outcome and remediation plan would need to be agreed with the Second Line before presentation to the Board. Impact tolerances must be reviewed at least annually by the First Line, overseen by the Second Line and approved by appropriate Board-level Committee. Such amendments are intended to implement the requirement under the Supervisory Statement that the Clearing House identify impact tolerances in consideration of business services identified as "important business services. Although this requirement is new, the Clearing House's implementation builds on its existing risk management framework which already covers incident management based on levels of severity linked to financial, reputational, operational and regulatory impacts.

Also further to the requirement under the Supervisory Statement, the amendments would add a new subsection addressing scenario analysis and testing to identify any operational resilience weakness. Such analysis or testing must be conducted on important business services to determine if the Clearing House can remain within the impact tolerances under a range of extreme but plausible disruption scenarios and must include

scenarios which disrupt more than one important business service simultaneously and take into account dependencies. The First Line and Second Line would have to agree on any remediation line for weaknesses identified related to extreme but plausible scenarios. Scenario analysis and testing results would be reported to the ERC and the Board. Such amendments do not represent a substantive change from the Clearing House's existing risk management practices and are intended to document those practices in light of the Supervisory Statement, reflecting existing roles and responsibilities.

The section formerly titled "The Policy for Operational Risk Management" would be renamed "Risk and Control Assessments" in order to more clearly reflect the information contained in the subsection. Other stylistic changes would be made in the Policy to improve clarity and readability. Certain non-substantive fixes would also be made, including providing that risk assessments (and not "risks") are documented in the Enterprise Risk Register, reflecting that the correct name of Appendix A to the Policy is "Enterprise Risk Register", and correcting internal section references.

In respect of risk monitoring, the amendments would provide that the ERM would coordinate with the First and Third Lines to develop control monitoring plans for Key Controls. This change is to reflect the Clearing House's current practice.

In line with other Clearing House policies, the amendments would provide that the Policy is subject to at least annual review (rather than biennial review) or earlier in the event of a material change.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Operational Risk and Resilience Policy 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 Policy are designed to strengthen ICE Clear Europe's tools to manage the risk of losses resulting from operational errors or failures. The amendments would formally extend the Policy to cover operational resilience as well as operational risk. The amendments would more clearly tie together existing policies and procedures relevant to operational risk and resilience, as required by the Supervisory Statement as described herein. The amendments would also address important business services, and the procedures to be used by the Clearing House to identify such services and address related risks and dependencies and implement adequate controls. The Policy would also address impact tolerances and scenario analyses and testing. Taken together, the Policy is designed to augment the Clearing House's ability to manage operational risk and enhance its operational resilience. The proposed amendments would thus promote

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts and the safeguarding of securities and funds in ICE Clear Europe’s custody or control or for which it is responsible. The enhanced risk management is therefore also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).⁷

The amendments to the Policy are also consistent with relevant provisions of Rule 17Ad-22.⁸ Rule 17Ad-22(e)(3) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] maintain a sound risk management framework for comprehensively managing . . . operational . . . and other risks that arise in or are borne by the covered clearing agency”.⁹ As set forth above, the amendments are intended to clarify and enhance the Clearing House’s risk management framework as it relates to operational risks, including through the extension of the Policy to formally address resilience. The amendments would thus strengthen the management of operational risks and risk management more generally. In ICE Clear Europe’s view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(3).¹⁰

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)(3).

¹⁰ 17 CFR 240.17 Ad-22(e)(3).

Rule 17Ad-22(e)(2) 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 clear and transparent”¹¹ and “[s]pecify clear and direct lines of responsibility”¹². The amendments to the Policy would clarify and describe the responsibilities of the Clearing House’s lines of defense and committees, management and the Board in relation the Clearing House’s resilience framework and the Policy. In ICE Clear Europe’s view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(2).¹³

The proposed amendments are also consistent with Rule 17Ad-22(e)(17)(i), which provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] manage the clearing agency’s operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls”.¹⁴ The amendments to the Policy facilitate ongoing identification of operational risks, enhancement of resilience in the face of such risks and mitigation of the impact of such risks through improved procedures and controls. As noted above, these enhancements include the expansion of the Policy to address resilience, the identification of important business services, the

¹¹ 17 CFR 240.17 Ad-22(e)(2)(i).

¹² 17 CFR 240.17 Ad-22(e)(2)(v).

¹³ 17 CFR 240.17 Ad-22(e)(2).

¹⁴ 17 CFR 240.17 Ad-22(e)(17)(i).

establishment of impact tolerances and scenario analysis, together with related controls.

In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(17)(i).¹⁵

(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 enhance the Clearing House's Operational Risk and Resilience Policy which relates to the Clearing House's internal processes for operational risk management. The amendments would not change the Rules or Procedures, or the rights or obligations of Clearing Members or the Clearing House. ICE Clear Europe does not believe the amendments and adoption 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.

¹⁵ 17 CFR 240.17 Ad-22(e)(17)(i).

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

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 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-2022-015 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-2022-015. 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-2022-015 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.¹⁶

J. Matthew DeLesDernier,
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).