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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91141; File No. SR-ICEEU-2020-018]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change as Modified by Partial Amendment No. 1 Relating to Amendments to the ICE Clear Europe CDS Procedures and CDS Default Management Policy.

February 17, 2021.

I. Introduction

On December 14, 2020, ICE Clear Europe Limited (“ICE Clear Europe”) 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 CDS Procedures and CDS Default Management Policy. The proposed rule change was published for comment in the Federal Register on January 4, 2021.³ On December 31, 2020, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change. Notice of Partial Amendment No. 1 was published in the Federal Register on January 12, 2021.⁴ The Commission did not receive comments on the proposed rule change, as modified by Partial Amendment No. 1. For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, the “proposed rule change”).

II. Description of the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 90806 (December 28, 2020), 86 FR 169 (January 4, 2021) (SR-ICEEU-2020-018) (“Notice”).

⁴ Securities Exchange Act Release No. 90861 (January 6, 2021), 86 FR 2472 (January 12, 2021) (SR-ICEEU-2020-018) (“Partial Amendment No. 1”). ICE Clear Europe filed Partial Amendment No. 1 to amend Item 3(a) of the original filing to add an explanation as to the circumstances pursuant to which ICE Clear Europe may permit a CDS Committee-Eligible Clearing Member to postpone participation in the CDS Default Committee. Partial Amendment No. 1 did not otherwise make changes to the substance of the filing, nor did it raise any novel regulatory issues

As described below, the proposed rule change would amend the CDS Procedures and CDS Default Management Policy primarily related to CDS Default Committee participation. The proposed changes would also clarify certain other provisions to better reflect current practices.⁵

A. CDS Procedures

The proposed rule change would amend the CDS Procedures' definitions to clarify that the term "CDS Committee-Eligible Clearing Members" must be approved in accordance with paragraph 5.2 of the Procedures and continue to meet the criteria of such Paragraph. Paragraph 5.2 would thus be amended to specify the requirements for a Clearing Member to be approved to be a CDS Committee-Eligible Clearing Member. Specifically, the Clearing Member would need to meet the following conditions in order to be eligible: (a) in the event that it has one or more Affiliates that are CDS Clearing Members, it has the longest period of membership of the Clearing House among such Affiliates; (b) it has a London-based CDS trading desk; and (c) it is deemed appropriate to be a CDS Default Committee Member by the Clearing House at its discretion. The amendments to paragraph 5.2 would also be amended to note that the Clearing House would maintain a list of all CDS Committee-Eligible Clearing Members. The procedure for maintaining the CDS Default Committee Participant List (including adding CDS Clearing Members to, removing CDS Clearing Members from or changing the order of Clearing Members on the CDS Default Committee Participant List) would be determined from time to time by the Clearing House at its discretion. (Certain such matters would be addressed in further detail in the Policy, as discussed below.) CDS Clearing Members would be able to provide information of relevance to the Clearing House with respect to their own inclusion or omission or order on the list, but such information would not be binding on the Clearing House. Additionally, the

⁵ Capitalized terms not otherwise defined herein have the meanings assigned to them in the CDS Procedures, CDS Default Management Policy or the ICE Clear Europe Rulebook, as applicable. The description that follows is excerpted from the Notice.

Procedures would state that ICE Clear Europe may also share the CDS Default Committee Participant List with any other clearing house.

Other amendments to section 5 include proposed amendments to paragraph 5.3, which would add that if a CDS Committee-Eligible Clearing Member considers that it is unable to take part in the CDS Default Committee for the Relevant CDS Default Committee Period for which it is due to take part, it may request to postpone its participation for that period. ICE Clear Europe could, at its discretion, approve such request. As described in Partial Amendment No. 1, an acceptable excuse would most likely relate to temporary resource constraints at the Clearing Member. For example, if the committee member were already serving on the default committee of another clearing house during the relevant period or if a committee member otherwise had limited staffing resources to commit to the committee during that period, this may be considered satisfactory. ICE Clear Europe would expect to discuss the particular situation with the Clearing Member in question and would respond to any request for postponement to let the Clearing Member know whether its rationale was satisfactory. Once postponement is approved, the following events would take place: that CDS Committee-Eligible Clearing Member would be identified to take part in the CDS Default Committee for the next Relevant CDS Default Committee Period as one of the three CDS Default Committee Participants; and one of the next three CDS Committee-Eligible Clearing Members on the CDS Default Committee Participant List would be selected by the Clearing House at its discretion to take part in the CDS Default Committee during that Relevant CDS Default Committee Period. The CDS Default Committee Participant List would be amended accordingly.

Paragraph 5.4 would be amended to add that if a CDS Clearing Member becomes a defaulter or is suspended or receives a termination notice with respect to its Clearing Membership, it would be removed from the CDS Default Committee Participant List.

Paragraphs 5.4 and 5.5 would be amended to clarify that the CDS Default Committee Participant List would be amended to take into account any Clearing Member that becomes (or resumes

being) a CDS Committee-Eligible Clearing Member or is removed from being a CDS Default Committee Participant because the Clearing House determines that such Clearing Member has a conflict or lacks impartiality.

The amendments in paragraph 5.6 would provide that the Clearing House would give notice that, since CDS Default Committee Members and CDS Default Committee Participants act as part of the governance of ICE Clear Europe, such CDS Default Committee Members and CDS Default Committee Participants would take the benefit of all exclusions and limitations of liability available to the Clearing House under the Rules or Applicable Laws. The change is intended to make the exclusions and limitations on liability for such persons consistent with those generally applicable to Clearing House governance process.⁶

The amendments in paragraph 5.8 would provide that CDS Clearing Members agree and acknowledge that each CDS Default Committee Member and CDS Default Committee Participant (each a “Covered Party”) would be subject to the provisions of Rule 106 (regarding confidentiality of information received and permitted disclosures) as if that Covered Party were the Clearing House. Furthermore, each CDS Clearing Member would be required to ensure that each such Covered Party nominated by it would not use any Confidential Material for its own benefit or the benefit of any of its Affiliates and, if so requested by the Clearing House, would execute any documentation specified by the Clearing House acknowledging the same. The procedures that would apply in the event that a Covered Party is served with or otherwise subject to legal process have been removed as unnecessary in light of the referenced provisions of Rule 106. Paragraph 5.9 would be amended to clarify that each CDS Clearing Member agrees that each Covered Party would be responsible for its own costs associated with its service in such position.

⁶ Notice, 86 Fed. Reg. at 170.

The proposal would also make several changes to the CDS Procedures not related to CDS Default Committee participation. Specifically, the rule proposal would also amend paragraph 4.4 of the Procedures, which describes the timing requirements for submitting CDS Trade Particulars, to clarify that with respect to CDS Trade Particulars submitted after 6:00 p.m. on a Business Day or on a day that is not a Business Day, unless a revocation right exists and is exercised or unless otherwise stated in circular, among other existing exceptions, such CDS Trade Particulars would be deemed to have been submitted at 8:00 a.m. on the following Business Day. Furthermore, the Procedures would provide that if the Trade Date specified in the CDS Trade Particulars is not a Business Day, then the relevant CDS Trade Particulars would be rejected. According to ICE Clear Europe, this reflects current Clearing House practice.⁷

B. CDS Default Management Policy

ICE Clear Europe is proposing to make amendments to its CDS Default Management Policy related to the Default Committee consistent with the CDS Procedures as well as several general clarification amendments to the Policy. First, under the section CDS Default Committee Activation, consistent with the changes to the CDS Procedures, the proposal would amend the Policy to provide that a Clearing Member would only be defined as Committee-Eligible if such Clearing Member (i) is deemed appropriate by the Clearing House, (ii) is the primary clearing entity of an affiliate group, and (iii) has a London based trading desk. The Policy would also clarify that the Clearing House maintains a list of all CDS Committee-Eligible Clearing Members and that the relevant term for the committee is six calendar months or until the end of any active Default event.

Additionally, the Policy would be amended to provide that in the event that a CDS Default Committee Participant is unable to fulfill its upcoming rotation obligation for any reason including serving in the CDS Default Committee of another clearing house, such CDS Default

⁷ Notice, 86 Fed. Reg. at 169.

Committee Participant would have the option to request to postpone their Relevant CDS Default Committee for a Relevant CDS Default Committee Period. If the Clearing House finds the reason for postponement satisfactory, the CDS Default Committee Participant would be substituted for a CDS Committee-Eligible Clearing Member from the next three members on the CDS Default Committee Participant List. Prior to commencement of a rotation, CDS Default Committee Members would be required to have signed all documentation required by the Clearing House (including but not limited to a Seconded Trader Agreement), and the Clearing House would use reasonable efforts to ensure that such requirement is enforced. The amendments would also clarify that CDS Default Committee Members would be responsible for assisting in executing any CDS transactions (with respect to Rules 902 or 903) on behalf of the Clearing House only if needed. Under the Committee Activation Procedures section, the procedure for use of an alternate CDS Default Committee Member contact would be revised to refer generally to a situation where the designated primary representative cannot be reached in a reasonable amount of time, and to remove specific examples of reasons a member could not be reached.

With respect to the Secondment Facilities section, the proposed amendments would clarify that upon arrival at the ICE Clear Europe offices, each CDS Default Committee Member would be assigned a PC with the ICE Clear Europe risk reports concerning the defaulter's portfolio and a third-party data provider application. References to how the CDS Default Committee Member would be able to login to the PC and view certain information sent to ICE Clear Europe by the non-defaulting Clearing Members would be removed as unnecessary. The amendments would also clarify that CDS Default Committee Members would only execute the hedging and liquidating transactions that the Head of Clearing Risk and the team deem necessary.

The amendments would also remove the requirement that seconded traders sign an additional confidentiality agreement pertaining to their role within a given member default (as

ICE Clear Europe believes the existing single secondment agreement is sufficient).⁸ Instead, the Policy would provide that CDS Default Committee Members would be reminded of ongoing confidentiality obligations by the ICE Clear Europe Compliance department.

The amendments would provide that details of the auction and relevant position data will be made available through the ICE Default Management System, consistent with the ICE Clear Europe auction procedures. The amendments would also clarify that following the close of an auction for sub-portfolio, the Clearing House would publish the new trades to be booked to the winning bidders through the ICE Default Management System. The Clearing House would no longer notify the point of contact for the winning bidders verbally. The change is intended to conform to the ICE Clear Europe auction procedures.⁹

The amendments would provide additional detail with respect to default management testing. Specifically, pursuant to the amendments, the Policy would state that the Clearing House would test and review its default procedures at least quarterly and perform simulation exercises at least annually. The default test would be conducted in coordination with Clearing Members by engaging all the internal and external stakeholders that would be involved in the default management process (for example, the Clearing Risk Department, ICE Clear Europe Senior Management Team, CDS Default Committee Members, regulators, etc.). Each default test would be planned in accordance with the ICE Clear Europe Multi-Years Default Plan, which would list several different default scenarios that would need to be tested by the Clearing House on a regular basis. The ICE Clear Europe Senior Management Team would be responsible for approving the scope of the annual default test by choosing different scenarios outlined in the Plan. The Plan and changes to it would need to be approved by the Executive Risk Committee.

The rule proposal would also amend the Policy with general drafting clarifications and improvements. Specifically, the amendments to the Policy would remove Appendices A and B,

⁸ Notice, 86 Fed. Reg. at 170.

⁹ Notice, 86 Fed. Reg. at 171.

which contain various forms of notice and examples, as well as references thereto. In ICE Clear Europe's view, these appendices do not need to be included in the Policy and, to the extent they remain relevant, forms of notice can be maintained by the Clearing House separately.¹⁰ Certain terminology would be updated throughout the Policy as follows: (i) the term, Employee, would be updated to Eligible Employee; and (ii) the terms, Defaulting Clearing Member or Defaulting Member, would be updated to defaulter in certain instances in order to avoid repetition and aid with readability. Certain provisions relating to the Clearing House ceasing to clear new trades for a Defaulting Clearing Member would be moved and renumbered.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.¹¹ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹² and Rules 17Ad-22(e)(3)(i) and (e)(13) thereunder.¹³

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as

¹⁰ Notice, 86 Fed. Reg. at 170.

¹¹ 15 U.S.C. 78s(b)(2)(C).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17 Ad-22(e)(3)(i), (e)(13).

well as to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.¹⁴

As noted above, ICE Clear Europe utilizes seconded representatives of Clearing Members to serve on ICE Clear Europe's CDS Default Committee to manage the portfolios of defaulting clearing members. The proposed rule changes would update and clarify the requirements for a Clearing Member to be eligible to serve on the CDS Default Committee as well as clarify the procedures to be used by the CDS Default Committee if such Clearing Member is unable to fulfill its upcoming rotation obligation. The proposed rule changes also describe the process ICE Clear Europe follows when a CDS Committee-Eligible Clearing Member is unable to take part in the CDS Default Committee. The proposed changes also make various changes to the procedures clarifying the fact that CDS Default Committee Members and participants are subject to confidentiality requirements and that these participants have the benefit of all exclusions and limitations of liability available to ICE Clear Europe. Further, the CDS Policy changes clarify the detailed resources available to CDS Default Committee Members necessary for carrying out their functions.

Taken together, the Commission believes that these changes and clarifications with respect to CDS Default Committee participation and the process for when a CDS Committee-Eligible Clearing Member cannot participate in the CDS Default Committee should allow ICE Clear Europe to better ensure that the committee is comprised of participants who possess the requisite knowledge and experience to assist in a default management process. The Commission, in turn, believes that this should help ICE Clear Europe more effectively manage defaults, ensuring ICEEU's ability to continue functioning, thereby promoting the prompt and accurate clearance and settlement of transactions.

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Section 17A(b)(3)(F) of the Act.¹⁵

B. Consistency with Rule 17Ad-22(e)(13)

Rule 17Ad-22(e)(13) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed, as applicable, to ensure ICE Clear Europe has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its Clearing Members and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.¹⁶

As noted above, the proposed changes to the CDS Procedures would define the requirements for Clearing Members to become eligible to participate in the CDS Default Committee as well as the process for addressing situations when parties postpone their participation will ensure that the committee is staffed with appropriate representatives. The Commission believes that these changes should help to ensure ICE Clear Europe has the operational capacity to take timely action to contain losses.

In addition, as noted above, the proposed rule change would revise the CDS Default Management Policy to specify that it will engage in testing and review of its default procedures at least quarterly and perform simulation exercises at least annually, which is conducted in coordination with its clearing members as well as internal stakeholders such as the Clearing Risk Department, senior clearing house management, and the CDS Default Committee. Further, the Policy would be amended to state that these default tests would be planned to take into account various scenarios that are tested and approved by the stakeholders, including senior management.

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 15 U.S.C. 17Ad-22(e)(13).

The Commission believes that this additional detail regarding the testing of ICE Clear Europe's default procedures would support ICE Clear Europe's ability to meet its obligations through regular testing and review of its default procedures with the requisite stakeholders.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(13).¹⁷

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act¹⁸ and Rules 17Ad-22(e)(3)(i) and (e)(13).¹⁹

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²⁰ that the proposed rule change, as modified by Partial Amendment No. 1 (SR-ICEEU-2020-018), be, and hereby is, approved.²¹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

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¹⁷ 15 U.S.C. 17Ad-22(e)(13).

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(3)(i) and (e)(13).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²² 17 CFR 200.30-3(a)(12).