



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91204; File No. SR-ICEEU-2021-004]

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 Clearing Rules

February 24, 2021.

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 February 17, 2021, 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 and II below, which Items have been prepared 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)(6)⁴ thereunder, 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.

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)(6).

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 make certain amendments to its Clearing Rules (the "Rules")⁵ relating to settlement of Euro payments through the European Union's TARGET2 payment system.

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 12 of the Rules to implement certain account and settlement finality arrangements applicable to the settlement of Euro-denominated payments by the Clearing House through the European Union ("EU") TARGET2 payment system.⁶ Effective as of January 1, 2021, upon the exit of the United Kingdom from the EU, ICE Clear Europe has been recognized as a "tier 2" third-country

⁵ Capitalized terms used but not defined herein have the meanings specified in the Rules.

⁶ TARGET2 is the real-time gross settlement system for Euro payments owned and operated by the Eurosystem (which consists of the European Central Bank and the national central banks of those countries that have adopted the Euro).

central counterparty (“TC-CCP”)⁷ for purposes of the European Market Infrastructure Regulation (“EMIR”).⁸ Pursuant to Article 25(2b) of EMIR, a tier 2 TC-CCP is required, as a condition to such recognition, to open an overnight deposit account with the central bank of issue of the relevant currency. ICE Clear Europe currently has accounts with the Dutch component of TARGET2 (“TARGET2-NL”) operated by De Nederlandsche Bank (“DNB”), but will not be eligible to maintain such accounts after March 31, 2021. ICE Clear Europe therefore plans to establish an account with the European Central Bank (“ECB”) component of the TARGET2 system (“TARGET2-ECB”), which both ICE Clear Europe and the ECB wish to do in compliance with, and furtherance of, EMIR. The proposed changes to Part 12 of the Rules would facilitate the establishment and use of accounts with TARGET2 (including TARGET2-ECB)⁹ and address settlement finality with respect to payments made through such accounts in accordance with TARGET2 terms and conditions of operation.

Specifically, in Rule 1201, several new definitions would be added. In addition to a definition for “TARGET2” (referencing the real-time gross settlement system owned and operated by the Eurosystem), new definitions would be added for “TARGET2 Component System” (referencing the real-time gross settlement system of any central

⁷ See European Securities and Markets Authority (ESMA) Public Statement of 28 September 2020, available at <https://www.esma.europa.eu/press-news/esma-news/esma-recognise-three-uk-ccps-1-january-2021>.

⁸ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; Commission Delegated Regulation (EU) 2020/1301 of 14 July 2020 Supplementing Regulation (EU) No 648/2012 of the European Parliament and of the council with respect to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States.

⁹ For such time as the TARGET2-NL accounts remain in operation, the proposed changes to Part 12 would apply to such accounts as well.

bank that is part of the TARGET2 system where the operator of such system is a Concentration Bank under the Rules), “TARGET2 Concentration Bank” (referencing a Concentration Bank under the Rules that is the operator of a TARGET2 Component System), “TARGET2 PM Account” (referencing a cash account of the Clearing House in TARGET2), and “TARGET2 Terms and Conditions” (referencing the terms and conditions that apply to participation in the relevant TARGET2 Component System). The definition of “Payment Transfer Order” would be amended to add TARGET2 Payment Transfer Orders, as discussed below. Subsequent provisions of Rule 1201 would be renumbered accordingly. It is contemplated that ICE Clear Europe’s account with TARGET2-ECB would constitute a TARGET2 PM Account and that the ECB would constitute a TARGET2 Concentration Bank for purposes of these Rules as proposed to be amended.¹⁰ ICE Clear Europe intends to designate the ECB as a Concentration Bank under the Rules for these purposes.

In Rule 1202(a), a new clause (v) would be added to provide that a Payment Transfer Order will arise and enter ICE Clear Europe's designated system at the moment ICE Clear Europe’s TARGET2 PM Account is debited or credited with funds, pursuant to the Clearing House sending a SWIFT instruction to the TARGET2 Concentration Bank. Such a Payment Transfer Order would be defined as a “TARGET2 Payment Transfer Order.” Rule 1202(a)(iv), which addresses Payment Transfer Orders involving Clearing House bank accounts, would be amended to exclude TARGET2 Concentration Banks (which would be covered instead by the new clause (v)). Rule 1202(e)(ii), which addresses the amounts subject to a Payment Transfer Order, would be amended to cover

¹⁰ Similarly, while they remain operational, ICE Clear Europe’s existing accounts with TARGET2-NL will constitute a TARGET2 PM Accounts and DNB will constitute a TARGET2 Concentration Bank. It is expected that after the TARGET2-ECB account has been opened, the TARGET2-NL account of ICE Clear Europe would be closed and DNB would cease to be a Concentration Bank.

TARGET2 Payment Transfer Orders. Rule 1202(m), which specifies the parties subject to a Payment Transfer Order, would be amended to add a new clause (iv) specifying that a TARGET2 Payment Transfer Order would have effect between the relevant TARGET2 Concentration Bank and the Clearing House. Subsequent provisions of Rule 1202(m) would be renumbered accordingly.

In Rule 1203, a new paragraph (c) would be added to provide that a TARGET2 Payment Transfer Order will become irrevocable at the earlier of (i) the moment the TARGET2 Payment Account is credited or debited or (ii) when or during the period in which any relevant payment settlement algorithm used in TARGET2 commences or is running. The approach is intended to be consistent with the point at which payment order becomes irrevocable under the TARGET2 Terms and Conditions. Subsequent provisions of Rule 1203 would be renumbered accordingly.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Clearing Rules are consistent with the requirements of Section 17A of the Act¹¹ and the regulations thereunder applicable to it including the standards under Rule 17Ad-22.¹² In particular, Section 17A(b)(3)(F) of the Act¹³ 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 amendments are intended to accommodate the Clearing House's use

¹¹ 15 U.S.C. 78q-1.

¹² 17 C.F.R. 240.17Ad-22.

¹³ 15 U.S.C. 78q-1(b)(3)(F).

of TARGET2-ECB accounts (and would also apply to the Clearing House's use of TARGET2-NL accounts whilst they remain operational) for purposes of settling Euro payments through the TARGET2 system in central bank funds, consistent with the conditions of recognition for a tier 2 TC-CCP under EMIR. As such, the amendments will facilitate settlement by the Clearing House of Euro payments and provide for settlement finality of such payments in accordance with the TARGET2 Terms and Conditions. In ICE Clear Europe's view, the amendments will thus promote the prompt and accurate clearance and settlement of transactions and the protections of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act. (ICE Clear Europe does not believe the amendments would affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, within the meaning of that section.)

Moreover, the amendments are consistent with Rule 17Ad-22(e)(9)¹⁴, which requires that each covered clearing agency "conduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency". The amendments will facilitate ICE Clear Europe's opening accounts in TARGET2, and thereby permit it to conduct money settlements in Euro in central bank funds and to reduce the potential for conflicts between the rules governing ICE Clear Europe's settlement system and those governing the TARGET2 System where ICE Clear Europe holds and uses accounts in the TARGET2 System. As a result, the amendments would be consistent with the requirements of Rule 17Ad-22(e)(9).

Rule 17Ad-22(e)(8)¹⁵ requires the covered clearing agency to "define the point at which settlement is final to be no later than the end of the day on which the payment or

¹⁴ 17 C.F.R. 240.17Ad-22(e)(9).

¹⁵ 17 C.F.R. 270.17Ad-22(e)(8).

obligation is due and, where necessary or appropriate, intraday or in real time.” The amendments to Part 12 of the Rules will establish the time at which Payment Transfer Orders are effective and irrevocable for Euro payments made through the TARGET2 System. In accordance with the TARGET2 Terms and Conditions, such payments will be effected, and become final, on a real-time basis. The amendments are thus consistent with the requirements of Rule 17Ad-22(e)(8).

Rule 17Ad-22(e)(1) requires that the covered clearing agency “provide for a well-founded, clear, transparent and enforceable legal basis for each aspects of its activities in all relevant jurisdictions.” As discussed above, the amendments are being made to permit ICE Clear Europe to have a central bank account for Euro payments in accordance with Article 25(2b) of EMIR, as applicable to ICE Clear Europe as a tier 2 TC-CCP. The amendments are, therefore, necessary and desirable to maintain ICE Clear Europe's status as a recognized TC-CCP under EMIR. The amendments also reduce the potential for conflicts between the settlement finality rules governing ICE Clear Europe's settlement system and those governing relevant TARGET2 components. The amendments will therefore further compliance with article 5(4) of EU Regulation 153/2013, as on-shored in the United Kingdom and as applicable in the EU, which requires a CCP to *"identify and analyse potential conflicts of law issues and develop rules and procedures to mitigate legal risk resulting from such issues"*. As a result, the amendments enhance the legal framework of the Clearing House in the UK and EU, and as such are consistent with the requirements of Rule 17Ad-22(e)(1).

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

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments will not affect the rights or obligations of Clearing Members or the terms of cleared Contracts. The amendments are designed to

facilitate establishment and use by the Clearing House of a TARGET2-ECB payment account to permit real-time settlement of Euro-based payments as between the Clearing House's own accounts, and would not affect significantly the rights of Clearing Members. As a result, ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise limit market participants' choices for selecting clearing services. As a result, ICE Clear Europe does not believe the proposed rule changes impose 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 rule changes 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.

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)¹⁷ thereunder.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

ICE Clear Europe has requested that the Commission waive both the five-day pre-filing requirement and the 30-day delayed operative date under Rule 19b-4(f)(6)(iii)¹⁸ so that the proposed rule change may become effective and operative upon filing with the Commission. ICE Clear Europe has satisfied the five-day pre-filing requirement already, so the Commission only considers whether to waive the 30-day delayed operative date.

ICE Clear Europe believes that waiver of the 30-day delayed operative date is warranted because the proposed rule change would not (i) significantly affect the protection of investors or the public interest and (ii) impose any significant burden on competition.

With respect to (i), ICE Clear Europe maintains that the proposed rule change would in practice affect transfers between different bank accounts of ICE Clear Europe (including TARGET2 PM Accounts), which are not transfers involving payments to or from Clearing Members. Accordingly, ICE Clear Europe states that the proposed rule change would have no effect on the safeguarding of funds or securities in the custody or control of ICE Clear Europe, nor significantly affect any other rights or obligations of ICE Clear Europe, Clearing Members, Sponsored Principals or other persons using the clearing service. ICE Clear Europe further maintains that the proposed rule change would not affect the terms of contracts it clears or ICE Clear Europe's financial resources or risk models. As a result, ICE Clear Europe does not believe the proposed rule change would significantly affect the protection of investors or the public interest.

With respect to (ii), ICE Clear Europe maintains that the proposed rule change would not impose any new obligations on Clearing Members, affect significantly the rights of Clearing Members, or affect the cost of clearing or access to clearing for market

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

participants. As a result, in ICE Clear Europe's view, the proposed rule change would not impose any significant burden on competition.

The Commission believes that the proposed rule change would only affect transfers between different bank accounts of ICE Clear Europe (including TARGET2 PM Accounts), not transfers involving payments to or from Clearing Members. As a result, the Commission does not believe the proposed rule change would have any effect on the safeguarding of funds or securities in the custody or control of ICE Clear Europe or any other rights or obligations of ICE Clear Europe, Clearing Members, Sponsored Principals or other persons using the clearing service. Accordingly, the Commission believes the proposed rule change would not significantly affect the protection of investors or the public interest.

Moreover, the Commission believes the proposed rule change would not impose any new obligations on Clearing Members, affect significantly the rights of Clearing Members, or affect the cost of clearing or access to clearing for market participants. Accordingly, the Commission believes the proposed rule change would not impose any significant burden on competition.

Because the Commission believes the proposed rule change would not (i) significantly affect the protection of investors or the public interest and (ii) impose any significant burden on competition, the Commission believes that waiver of the 30-day operative delay would not itself significantly affect the protection of investors or the public interest and impose any significant burden on competition. Moreover, the Commission believes that the delay of the operation of the proposed rule change through the 30-day operative delay could impede ICE Clear Europe's compliance with its requirements under EMIR. As ICE Clear Europe notes, the proposed rule change would allow ICE Clear Europe to establish a TARGET2-ECB account, which is necessary in order to further compliance by ICE Clear Europe with the policy underlying Article

25(2b) of EMIR applicable to a tier 2 TC-CCP in light of the United Kingdom's exit from the European Union. ICE Clear Europe seeks to establish such an account to replace its existing TARGET2-NL account by the end of March 2021. Any delay in implementing the amendments, and establishing the TARGET2-ECB account, could affect ICE Clear Europe's ability to comply with applicable EU requirements and maintain recognition. Thus, the Commission believes that waiving the 30-day operative delay would allow ICE Clear Europe to comply with applicable EU requirements and maintain recognition, thus providing certainty to ICE Clear Europe and its Clearing Members, while not significantly affecting the protection of investors or the public interest and imposing any significant burden on competition. Therefore, the Commission designates the proposed rule change as operative upon filing.¹⁹

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

¹⁹ As noted, ICE Clear Europe satisfied the five-day pre-filing requirement. For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2021-004 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-2021-004. 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, 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-2021-004 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.²⁰

J. Matthew DeLesDernier,

Assistant Secretary.

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²⁰ 17 CFR 200.30-3(a)(12).