



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93178; File No. SR-ICEEU-2021-014]

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

September 29, 2021.

I. Introduction

On August 2, 2021, 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 adopt a new Clearing Membership Policy (the “Policy”) and new Clearing Membership Procedures (the “Procedures,” and together with the Policy, the “Documents”). The proposed Documents would consolidate and summarize ICE Clear Europe’s existing clearing membership criteria and document certain existing processes and procedures concerning the membership application process. On August 11, 2021, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.³ Notice of the proposed rule change, as modified by Partial

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ ICE Clear Europe filed Partial Amendment No. 1 to delete from the filed Exhibit 5B, Clearing Membership Procedures, certain statements in sections 2.4.1 and 2.4.2 of such Procedures concerning the termination of clearing membership by a Clearing Member. Specifically, ICE Clear Europe proposes to remove the statements that it will define a minimum notice period and may publish a Circular confirming that a Termination Notice has been issued, because the appropriate minimum notice period and requirements for publishing a Circular are set forth in existing Clearing Rule 209, which is not proposed to be amended. Partial Amendment No. 1 did not otherwise make any changes to the substance of the filing or the text of the proposed rule change.

Amendment No. 1, was published in the Federal Register on August 18, 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 (hereafter referred to as the “proposed rule change”).

II. Description of the Proposed Rule Change

As described in more detail below, ICE Clear Europe proposes to adopt the Documents to consolidate and summarize its existing clearing membership criteria and to document certain existing processes and procedures concerning its membership application and monitoring processes to ensure that Clearing Members meet admission criteria upon initial membership and continue to meet such criteria throughout their membership.⁵

A. Clearing Membership Policy

The proposed new Policy would consolidate and summarize ICE Clear Europe’s existing clearing membership criteria, which are set forth in full detail in the Rules, and its related processes for assessing applicants for membership, variations of permissions concerning membership class, and termination of membership, all of which would be documented in more detail in the proposed Procedures as described below.

The Policy would describe ICE Clear Europe’s membership risks and state the objectives of the Policy to ensure that such risks are properly managed, and that clearing membership admission criteria are non-discriminatory, transparent, and objective to ensure fair and open access, and designed to meet relevant regulatory requirements. The Policy also would describe

⁴ Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Clearing Membership Policy and Clearing Membership Procedures, Exchange Act Release No. 92652 (August 12, 2021), 86 Fed. Reg. 46290 (August 18, 2021) (SR-ICEEU-2021-014) (“Notice”).

⁵ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the “Rules”). The description herein of the proposed rule change is substantially excerpted from the Notice.

how such objectives are met by ICE Clear Europe through setting and monitoring appropriate membership criteria, establishing a due diligence process, and requiring prompt notifications from Clearing Members of any changes to their businesses that may impact a Clearing Member's ability to meet the membership criteria. The core clearing membership criteria, including holding sufficient capital, being a party to a Clearing Membership Agreement, and other financial and operational criteria, would be summarized in the Policy, with the full criteria set out in Rule 201 and the CDS Procedures.

In addition to a summary of the core clearing membership criteria, the Policy would provide that ICE Clear Europe has established processes for clearing membership application, permission variations, and clearing membership termination which are described in further detail in the Procedures. The Policy also would address the ongoing monitoring of membership criteria, including periodic in-depth counterparty reviews, periodic review of financial positions, updates to ICE Clear Europe's counterparty rating system, the maintenance of a watch list, requiring an annual member return from Clearing Members, and other operational monitoring processes such as daily margin calls and CDS end-of-day ("EOD") price submissions.

Proposed section 5 of the Policy would provide document governance arrangements for breach management, ongoing reviews, and exception handling. Consistent with the document governance arrangements for other ICE Clear Europe policies and procedures, proposed section 5 would state that (i) the document owner is responsible for ensuring that documents remain up-to-date and are reviewed in accordance with ICE Clear Europe's governance processes, (ii) the document owner will report material breaches or unapproved deviations from the Policy document to the document owner's Head of Department, the Chief Risk Officer, and the Head of Compliance (or their delegates), who together will determine if further escalation should be made to relevant senior executives, the Board, and/or competent authorities, and (iii) exceptions to the Policy are approved in accordance with ICE Clear Europe's governance process for the approval of changes to the Policy document.

B. Clearing Membership Procedures

The proposed new Procedures would describe in further detail the processes for reviewing and approving applications for clearing membership, variations of membership permissions, ongoing monitoring, and membership termination. The stated objective of the Procedures would be to establish a due diligence process to ensure applicants meet ICE Clear Europe's membership criteria at the time of application and on an ongoing basis, and also provide notifications of any changes to their businesses that could impact their ability to meet the membership criteria.

The Procedures would describe each phase of the Clearing Member application process, starting with the Membership Department providing applicants with all relevant application documentation; the internal due diligence of applications by relevant ICE Clear Europe departments, including Operations, Risk, Treasury, Membership, AML/KYC, Risk Oversight, Compliance, and Legal; the process for approval or rejection of applications by the Executive Risk Committee under authority delegated by the Board, and the right to appeal to the Board; notifications of new applications for clearing membership to the relevant Product Risk Committees after their approval by the Executive Risk Committee; additional membership conditions or criteria that ICE Clear Europe may, in its discretion, require prior to approval; and additional information requests that ICE Clear Europe may make during the application process. The Procedures also would describe the process for a Clearing Member to obtain membership to a different membership class at ICE Clear Europe (i.e., a CDS Clearing Member authorized to clear credit default swap ("CDS") contracts, or an F&O Clearing Member authorized to become party to Energy Contracts or Financials & Softs Contracts, or both). Regarding termination of clearing membership, the Procedures would cross-reference the procedures in existing Rule 209 for a Clearing Member to resign its clearing membership, and for ICE Clear Europe to terminate a Clearing Member's clearing membership.

The Procedures would provide detailed core membership requirements and additional information on core membership criteria, which would include minimum capital requirements as well as a description of additional financial requirements that ICE Clear Europe may impose on Clearing Members to meet the minimum capital requirement. The Procedures would address certain aspects of the calculation of member capital, including the disallowance of certain assets from such calculation as well as the methods that Clearing Members may use to add capital, where necessary, including the use of subordinated debt and controller guarantees if approved by ICE Clear Europe. The Procedures also would reference Guaranty Fund contributions for CDS and F&O clearing services, including the required replenishment of contributions in the event of application of the funds and the need to meet any additional assessment; the margin-to-capital ratio requirement; default management capabilities; and EOD price submissions, which apply only to CDS Clearing Members as required by the CDS EOD Price Discovery Policy.

The Procedures also would summarize ICE Clear Europe's ongoing monitoring of Clearing Members that include the following: (i) periodic review of the financial position and compliance with the relevant membership requirements of each Clearing Member; (ii) quarterly review of Clearing Members' capital situation and financial information, and monthly reviews of the financial information of FCM/BD Clearing Members; (iii) quarterly counterparty rating system report, which aggregates risk factors covering credit, market price, liquidity, and operational risk for each Clearing Member; (iv) the watch list highlighting Clearing Members with special risk situations; (v) annual member returns pursuant to which Clearing Members must provide certain information to ICE Clear Europe on Anti-Money Laundering/Know Your Client ("AML/KYC") requirements, authorized signatories, compliance with the Rules, and key contact information; and (vi) daily monitoring of Clearing Member operational performance in fulfilling financial obligations to cover cash payments, margin collateral, Guaranty Fund contributions, and delivery obligations.

Finally, the Procedures would also set out the same document governance arrangements for breach management, ongoing reviews, and exception handling as those described above with respect to the Policy.

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.⁶ For the reasons given below, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with Section 17A(b)(3)(F) of the Act⁷ and Rules 17Ad-22(e)(2)(i) and (v), and (e)(18) thereunder.⁸

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 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.⁹

As discussed above, the proposed rule change would adopt a new Clearing Membership Policy and new Clearing Membership Procedures. The proposed Documents would consolidate and summarize existing clearing membership criteria and related processes in the Rules that govern clearing membership at ICE Clear Europe. For the reasons discussed below, the Commission believes that the proposed rule change would enable ICE Clear Europe to manage

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 240.17Ad-22(e)(2)(i) and (v), and (e)(18).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

and mitigate the risks posed by Clearing Members, including the risk of membership defaults and the potential loss of mutualized funds resulting from Clearing Member failures to meet clearing membership criteria. The Commission further believes that, in turn, managing effectively such risks would enable ICE Clear Europe to promote the prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.

i. Clearing Membership Policy

As discussed above, the proposed rule change would establish a new Policy that consolidates and summarizes ICE Clear Europe's existing clearing membership criteria and the existing processes that ICE Clear Europe undertakes to assess applicants for membership, monitor Clearing Member adherence to the membership criteria on an ongoing basis, authorize variations of permissions to Clearing Members, and terminate membership, whether initiated by the Clearing Member or by ICE Clear Europe. The Policy would state that it is designed to ensure that membership risks are properly managed, and that clearing membership admission criteria are non-discriminatory, transparent, and objective to ensure fair and open access, and also meet relevant regulatory requirements. The Policy would summarize how ICE Clear Europe achieves such objectives by setting appropriate membership criteria and monitoring ongoing adherence to such criteria; establishing a due diligence process that ensures that applicants meet the membership criteria when admitted and on a continuing basis; and requiring prompt notifications from Clearing Members of any changes to their businesses that may impact a Clearing Member's ability to meet the membership criteria. The Policy also would establish document governance and procedures for breach management and exceptions and changes to the Policy document.

By creating a consolidated summary of existing clearing membership criteria for admitting applicants and the related processes that ICE Clear Europe currently undertakes for monitoring and terminating Clearing Members, the Commission believes that the Policy would

facilitate ICE Clear Europe's ability to implement the membership risk management objectives of the Policy and thereby enhance its overall risk management. In the Commission's view, enhanced management of membership risks is critical to mitigating the risk of Clearing Member defaults that could undermine ICE Clear Europe's ability to maintain prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds at ICE Clear Europe. For example, ICE Clear Europe relies on accurate end-of-day prices to generate margin requirements, which it uses to manage the risks associated with clearing CDS portfolios. Similarly, ICE Clear Europe relies on its default management tools to help manage and reduce the risks associated with a defaulting Clearing Member's portfolio. Such risks, if not properly managed, could cause ICE Clear Europe to realize losses on such portfolios and could disrupt ICE Clear Europe's ability to promptly and accurately clear CDS and other derivative transactions and safeguard securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. For these reasons, the Commission believes that the proposed rule change, in establishing a new Policy that clearly and succinctly documents membership criteria and the related processes for admitting, monitoring, and terminating Clearing Members, would promote the prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. Finally, the Commission believes that, in defining the responsibilities of the document owner in document governance, breach management, and exception handling, the Policy would help to ensure ongoing and consistent compliance with ICE Clear Europe's clearing membership criteria and related processes for admission to membership, monitoring, and termination of membership, as well as establish a process to modify the Policy as needed.

ii. Clearing Membership Procedures

As discussed above, the new Procedures would describe in further detail ICE Clear Europe's existing processes for reviewing applications for clearing membership, variations of

membership permissions, ongoing monitoring, and membership termination. The Procedures would have a stated objective for the membership application process to establish a due diligence process to ensure applicants meet ICE Clear Europe's membership criteria at the time of application and on an ongoing basis after admission, and also provide notifications of any changes to their businesses that could impact their ability to meet the membership criteria. The Procedures would provide the same document governance arrangements for breach management, ongoing reviews, and exception handling as those described above with respect to the Policy.

By creating a consolidated summary that would describe the application of ICE Clear Europe's existing procedures and processes for reviewing applications for clearing membership, variations of membership permissions, ongoing monitoring, and termination of membership, the Commission believes that the Procedures would enhance ICE Clear Europe's ability to implement the complementary objectives of the Documents and thereby enhance its membership risk management policies and procedures that contribute to the effectiveness of its overall risk management. Also, in defining the responsibilities of the document owner in document governance, breach management, and exception handling, the Procedures would help to ensure ongoing and consistent compliance with ICE Clear Europe's general governance and exceptions process for the Procedures document.

iii. Promoting the Prompt and Accurate Clearance and Settlement of Securities Transactions, and Assuring the Safeguarding of Securities and Funds

For the reasons discussed above, the Commission believes that the proposed rule change would help to ensure that ICE Clear Europe effectively manages the potential risks posed by its Clearing Members in the clearance and settlement of CDS and other derivative contracts and transactions cleared at ICE Clear Europe. Moreover, the Commission believes that such membership risks, if not properly managed, could threaten ICE Clear Europe's ability to operate and thereby clear and settle cleared contracts, and also could threaten access to securities and funds in ICE Clear Europe's control. Accordingly, the Commission believes that, in ensuring that ICE Clear Europe has clear and effective processes and procedures for identifying and managing

membership risks by setting appropriate membership criteria; assessing applicants for membership based on such criteria; monitoring Clearing Member adherence to the membership criteria on an ongoing basis; authorizing variations of permissions to Clearing Members; terminating membership; and establishing clear document governance procedures for the Documents, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of securities and funds which are in the custody or control of the ICE Clear Europe or for which it is responsible.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, and assure the safeguarding of securities and funds in ICE Clear Europe's custody or control, consistent with the Section 17A(b)(3)(F) of the Act.¹⁰

B. Consistency with Rule 17Ad-22(e)(2)(i) and (v) under the Act

Rule 17Ad-22(e)(2)(i) and (v) require that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility, respectively.¹¹ As discussed above, each of the Documents would establish the general governance and exceptions process for that document, and this process would be identical between the Documents. The Commission believes that, in doing so, the Documents would establish clear and transparent arrangements for ensuring that ICE Clear Europe personnel adhere to the Documents and for modifying the Documents as needed. The Commission also believes that the Documents would define clearly the roles and responsibilities of the document owner, the Head of Department, the Chief Risk Officer, and the Head of Compliance for document governance, breach management, and exception handling. The Commission believes

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

that these lines of responsibility would be clear and transparent because they would be defined and readily available for review in the Documents.

As discussed above, the Procedures would define the roles and responsibilities of the relevant departments within ICE Clear Europe in the application process prior to submission of applications to the Executive Risk Committee for approval. The Procedures would specify that applications for membership are formally considered, and approved and rejected by, the Executive Risk Committee, and that the relevant Product Risk Committees are notified of approved applications. The Commission believes that these aspects of the proposed rule change would help to ensure that the governance regarding review and approval of applicants is clear and transparent, and also establishes a clear and direct line of responsibility, by clearly specifying that the Executive Risk Committee would approve or disapprove applications under delegated authority from the Board. The Commission believes this would therefore clearly specify the responsibility of ICE Clear Europe management in approving or rejecting applicants.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(2)(i) and (v).¹²

C. Consistency with Rule 17Ad-22(e)(18) under the Act

Rule 17Ad-22(e)(18) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, to 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.¹³

¹² 17 CFR 240.17Ad-22(e)(2)(i) and (v).

¹³ 17 CFR 240.17Ad-22(e)(18).

As discussed above, the Documents would summarize the core membership requirements and additional information on core membership criteria, which would include minimum capital requirements as well as a description of additional financial requirements that ICE Clear Europe may impose on Clearing Members to meet the minimum capital requirement. In particular, the Procedures would address more detailed aspects of the calculation of member capital; Guaranty Fund contributions for both CDS and F&O clearing services; the margin-to-capital ratio requirement; default management capabilities; and EOD price submissions for CDS Clearing Members. The Commission believes that these aspects of the proposed rule change would establish objective, risk-based, and disclosed clearing membership criteria that require applicants for clearing membership to prove that they have sufficient financial resources and robust operational capacity to meet obligations arising from participation in ICE Clear Europe. Moreover, the Commission believes that these criteria represent objective criteria which any applicant for clearing membership could potentially satisfy, thereby permitting fair and open access to membership at ICE Clear Europe.

As discussed above, the Documents also would summarize ICE Clear Europe's ongoing monitoring of Clearing Members that would include: (i) periodic review of the financial position and compliance with the relevant membership requirements of each Clearing Member; (ii) quarterly review of Clearing Members' capital situation and financial information, and monthly reviews of the financial information of FCM/BD Clearing Members; (iii) quarterly counterparty rating system report, which aggregates risk factors covering credit, market price, liquidity, and operational risk for each Clearing Member; (iv) the watch list highlighting Clearing Members with special risk situations; (v) annual member returns pursuant to which Clearing Members must provide certain information to ICE Clear Europe on AML/KYC requirements, authorized signatories, compliance with the Rules, and key contact information; and (vi) daily monitoring of Clearing Member operational performance in fulfilling financial obligations to cover cash payments, margin collateral, Guaranty Fund contributions, and delivery obligations. The

Commission believes that these aspects of the proposed rule change would facilitate ICE Clear Europe's ability to monitor compliance by Clearing Members with its participation requirements on an ongoing basis and thereby mitigate the risks posed by Clearing Members who may no longer meet the requirements for continuing participation in ICE Clear Europe.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(18).¹⁴

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 Act¹⁵ and Rules 17Ad-22(e)(2)(i) and (v), and (e)(18) thereunder.¹⁶

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁷ that the proposed rule change (SR-ICEEU-2021-014), be, and hereby is, approved.¹⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁴ 17 CFR 240.17Ad-22(e)(18).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(2)(i) and (v), and (e)(18).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 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).

¹⁹ 17 CFR 200.30-3(a)(12).