



**SECURITIES AND EXCHANGE COMMISSION**  
**[Release No. 34-96270; File No. SR-ICEEU-2022-020]**

**Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Clearing Rules, Collateral and Haircut Procedures, Collateral and Haircut Policy and Finance Procedures**

November 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 31, 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 primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(1) and (f)(4)<sup>4</sup> 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.

**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 amend its Clearing Rules (“Rules”), Collateral and Haircut Procedures (“Collateral and Haircut Procedures”), Collateral and Haircut Policy (“Collateral and Haircut Policy”) and Finance Procedures (“Finance Procedures”) (each of the foregoing a “Document” and together the “Documents”) to provide for the acceptance by the Clearing House of certain

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(1), (f)(4).

emission allowances provided by Clearing Members in respect of original margin requirements for F&O Contracts for which they are the underlier.

## **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 update the Documents as described below to provide for the acceptance by ICE Clear Europe of certain emission allowances provided by Clearing Members as Permitted Cover in respect of original margin requirements for F&O Contracts for which the allowance is the relevant deliverable asset. The amendments make certain other clarifications to accommodate such collateral and similar collateral that ICE Clear Europe may determine to accept in the future. The amendments related to acceptance of emissions allowances are principally set forth in the Finance Procedures, with certain related and conforming changes being made in the Rules and the Collateral and Haircut Policy and Procedures.

#### **Finance Procedures**

The Finance Procedures would include a new paragraph 9 providing for the acceptance of Eligible Emission Allowances as Permitted Cover. Paragraph 9.1 would provide that such paragraph does not apply to FCM/BD Clearing Members (and accordingly such Clearing Members would not be permitted to provide Eligible Emission

Allowances as Permitted Cover). Such paragraph would apply to each Sponsored Principal (or Sponsor appointed to make and receive transfers in respect of Eligible Emission Allowances as Original Margin on an Individually Segregated Sponsored Account) in the same way it would apply to a Clearing Member. Paragraph 9.2 would set out key definitions, specifically “Eligible Emission Allowances” (allowances that ICE Clear Europe has determined to accept in respect of Original Margin) and “Emissions Margin Account” (the Clearing House’s account at a relevant emissions registry for receipt of Eligible Emission Allowances as margin). Eligible Emissions Allowances would not include allowances delivered to the Clearing House to physically settle a Contract.

Paragraph 9.3 would describe the circumstances under which Clearing Members would be permitted to use Eligible Emission Allowances as Original Margin. Specifically, Clearing Members would be able to use Eligible Emission Allowances only to satisfy Original Margin requirements for F&O Contracts in respect of which the Emission Allowances are the Deliverable. The Clearing House would be able to impose limits on the amount or value of Eligible Emission Allowances which would be provided as Original Margin and would communicate such limits to Clearing Members from time to time. Eligible Emission Allowances would be required to conform to eligibility criteria as set out by the Clearing House from time to time. Pursuant to paragraph 9.4, Clearing Members transferring Emission Allowances as Original Margin to the Clearing House would be required to have executed and delivered the Emission Allowances Supplement. The Emission Allowances Supplement is set forth as Exhibit 3. Paragraph 9.5 provides that Eligible Emission Allowances would have to be transferred to ICE Clear Europe’s Emissions Margin Account in order to be accepted as Original Margin and all transfers to and from such account are to be in accordance with the terms, conditions and applicable procedures of the relevant Emissions Registry and Registry Regulations (as

defined in the Clearing House's Delivery Procedures). Under paragraph 9.6, receipt and release of Eligible Emission Allowances as Original Margin would only be available on business days and working days (as applicable) as provided by the relevant Emission Registry, and the Clearing House is unable to receive transfers of or release such allowances on non-Clearing House business days. Eligible Emission Allowances would be valued for margin purposes at an exchange rate to be determined by the Clearing House in its discretion from time to time, pursuant to paragraph 9.7. The Clearing House is also entitled to modify the list of Permitted Cover as related to Eligible Emission Allowances, including by way of addition or removal of any class of Eligible Emission Allowances, not crediting previously transferred Eligible Emission Allowances or varying haircuts on Eligible Emission Allowances at any time, pursuant to paragraph 9.8.

Paragraphs 9.9-9.13 would establish procedures for transferring Eligible Emission Allowances to ICE Clear Europe as Original Margin. Prior to effecting such transfer, the Clearing Member would be required to provide details of an Emissions Registry Account from which it would make the transfer as well as the contact details of the person authorized to instruct the transfer on behalf of such Clearing Member. The Clearing Member would also have to submit a transfer request to the Clearing House via ECS. Transfer of Eligible Emission Allowances would be made through the Emission Registry's electronic system to the Emissions Margin Account. The Clearing House would have the right to not treat such Eligible Emission Allowances as Original Margin under specified circumstances, including if required information has not been provided to the Clearing House; any relevant limits set by the Clearing House are exceeded; or for any other reason that places or risks placing the Clearing House under additional risk or liability. The amendments would also specify the times by which Eligible Emissions Allowances must be received by the Clearing House in order to be credited, and state that

the relevant record in the ECS would be adjusted after the Clearing House's confirmation of completion of the relevant transfer in the Emission Margin Account.

Paragraphs 9.14-9.17 would similarly establish procedures for release and return of Eligible Emission Allowances by the Clearing House. These provisions apply where a Clearing Member has surplus collateral with the Clearing House which it wishes to reduce via a return to it of Eligible Emission Allowances. To affect such return, such Clearing Member would be required to provide a release request to the Clearing House using the form specified by the Clearing House and submit release instructions to the Clearing House via ECS. Release instructions submitted through ECS would be required to be accepted by the Clearing House before the Eligible Emissions Allowances are released to the Clearing Member. The Clearing House would have the right to reject release instructions in specified circumstances, including if: required information has not been provided to the Clearing House; any relevant limits set by the Clearing House are exceeded; the transfer would result or risks resulting in an uncovered liability towards the Clearing House; or for any other reason that places or risks placing the Clearing House under additional risk or liability. The subsection would also specify the timing for update of the Clearing House's records in ECS upon an accepted request for release and for the instruction of the relevant Emissions Registry to release the Eligible Emission Allowances. In paragraph 11 of the Finance Procedures, certain non-substantive updates would be made to distinguish Emission Allowances from other non-cash collateral.

### Rules

The definition of "Clearing Membership Agreement" would be updated to include in such definition Emission Allowances Supplement referenced above. The amendments would also add a definition of the foregoing and provide that "Emission Allowances Supplement" means an addendum to a Clearing Membership Agreement concerning the transfer of Emission Allowances to and from the Clearing House as Permitted Cover. An

unrelated clarifying amendment would also be made to add the term “Gold Addendum”, which would reference the addendum to a Clearing Membership Agreement that is currently used by the Clearing House and Clearing Members concerning the transfer of gold to and from the Clearing House as Permitted Cover in accordance with the existing Finance Procedures, and to add appropriate references to the Gold Addendum in the term Clearing Membership Agreement and other relevant terms.

A clarifying amendment would be made to Rule 502 (Margin) to state that Permitted Cover is required to be transferred in accordance with the Finance Procedures and would only be recognized by the Clearing House at or after the times stated in the Finance Procedures (in order to ensure the Rules are consistent with the Finance Procedures). A conforming amendment would be made to Rule 503(k) (Margin Calls and Return of Surplus Collateral) to provide that each Permitted Cover report would include details of other asset classes (in addition to securities) provided as margin. As amended, the report would thus reflect Emissions Allowances transferred as margin.

The settlement finality provisions in Part 12 of the Rules would be amended to address various matters relating to Emissions Allowances as Permitted Cover. In Rule 1201, definitions of “Emission Allowance Collateral” (defined as Permitted Cover in the form of an Emission Allowance) and a reference to Emission Allowance Collateral Transfer Order would be added. Rule 1202(b) (Transfer Orders Arising) would be updated to add a concept of Emission Allowance Collateral Transfer Order, which would arise from a request accepted by the Clearing House to transfer Emission Allowance Collateral to or from the Clearing House. The amendments also specify in Rule 1202(g) that each Emission Allowance Collateral Transfer Order is to apply and have effect in respect of the Emission Allowance to be transferred to (or to the order of) the Clearing House or Clearing Member, in a manner similar to the treatment of Collateral Transfer Orders for other types of non-cash Permitted Cover.

Rule 1202(m) is similarly being amended to add a new clause (vii) to address the parties as to which an Emissions Allowance Collateral Transfer Order would have effect, including the relevant Clearing Member, the Clearing House, the Emissions Registry and any relevant SFD Custodian. Subsequent clauses of Rule 1202(m) would be renumbered. In Rule 1202(m)(vi)(A), a clarification would be made to state that for a Collateral Transfer Order, the relevant parties would include a Clearing Member that is the transferee of the relevant Non-Cash Collateral. This change does not represent a change in current practice.

Rule 1203(f) (Transfer Orders Becoming Irrevocable) would be updated to clarify that the time at which a Collateral Transfer Order to a Clearing Member becomes irrevocable (which was previously omitted). The change does not represent a change in current practice.

Rule 1203(g) would be amended to state when an Emission Allowance Collateral Transfer Order for transfer to each of the Clearing House and the Clearing Member would become irrevocable. In respect of an Emission Allowance Collateral Transfer Order for transfer to the Clearing House, such order would become irrevocable at the earlier of the time when: (i) the Clearing House accepts in accordance with the Finance Procedures the relevant transfer request submitted by the Clearing Member; (ii) the Clearing House receives the Emission Allowance into its account at the Emissions Registry; (iii) any related order becomes irrevocable within that other designated system or Emissions Registry; or (iv) the record of the Emissions Registry becomes conclusive evidence of the Clearing House's title to the relevant Emission Allowance under applicable law. In respect of an Emission Allowance Collateral Transfer Order for transfer to the Clearing Member, such order would become irrevocable when the Clearing Member receives the Emission Allowance in circumstances in which the record of the

Emissions Registry becomes conclusive evidence of the Clearing Member's title to that Emission Allowance under applicable law.

Amendments to Rule 1203(l) would clarify that Emission Allowance Delivery Orders (which relate to transfer of Emission Allowances for settlement, rather than as Permitted Cover) for transfer to the Clearing House become irrevocable when the record of the Emissions Registry becomes conclusive evidence of the Clearing House's title to the relevant Emission Allowance under applicable law. Emission Allowance Delivery Orders for transfer to the Clearing Member would become irrevocable when the Clearing Member receives the Emission Allowance in circumstances in which the record of the Emissions Registry becomes conclusive evidence of the Clearing Member's title to that Emission Allowance under applicable law.

The amendments would include an update to Rule 1204(i) (Variations to or Cancellation of Transfer Orders) to provide that in addition to Emission Allowance Delivery Orders, Emission Allowance Collateral Transfer Orders would be cancelled immediately and automatically if, prior to become irrevocable, an Emissions Registry that is used by the Clearing House or Clearing Member becomes subject to Insolvency or otherwise permanently ceases operations. Rule 1205(c) (Termination of Transfer Orders) would be amended to provide that Emission Allowance Collateral Transfer Orders made to the Clearing House would be satisfied in the same manner as Collateral Transfer Orders. The amendments would also add a clarification to address satisfaction of Collateral Transfer Orders made to the Clearing Member (which was previously omitted and would not result in a change in practice). The amendments would also provide that Emission Allowance Collateral Transfer Orders to Clearing Members would be satisfied in the same manner. Non-substantive updates would be made to the numbering and section references in the Rules to account for the inclusion of the amendments.

### Collateral and Haircut Policy

Related amendments would be made to the Collateral and Haircut Policy to provide that ICE Clear Europe may accept the underlier of a given futures or options contract as Permitted Cover to cover the margin requirement for positions in that contract. The amendment thus address acceptance of Emission Allowances as cover for margin requirements for related F&O Contracts. Eligibility criteria for the underlier, its haircuts and limits would take into account the credit market and liquidity risk of the underlying asset. Clarifications would be made to headings and section references to distinguish such margin cover from other types of Permitted Cover.

### Collateral and Haircut Procedures

Corresponding changes relating to the use of the underlier as margin cover would be made to the Collateral and Haircut Procedures. The updates in the Collateral and Haircut Procedures would further provide the eligibility criteria that margin cover assets must meet as follows: (i) such assets are sufficiently liquid, (ii) the market for such assets must have sufficient price history to permit the Clearing House to analyze the statistical returns of the assets, (iii) the assets must be capable of daily revaluation, (iv) the Clearing House must be capable of managing the assets operationally, and (v) the assets must be an Eligible Currency (as set out in the Rules).

The amendments would provide that the Clearing House would typically use market pricing convention to determine the margin cover value calculation as follows:  $\text{Cover Value} = \text{Nominal} * \text{Price} * (1 - \text{Haircut})$ . The amendments would also provide that relative limits for the use of margin cover would be established to provide that the Clearing Member has a balance between the margin cover and other acceptable collateral based on a qualitative assessment of the different types of margin cover and collateral.

### (b) Statutory Basis

ICE Clear Europe believes that proposed amendments are consistent with the requirements of Section 17A of the Act<sup>5</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>6</sup> 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 to the Documents are intended to permit the Clearing House to accept Emissions Allowances as Permitted Cover for F&O Contracts for which they are the underlier. The amendments set out the procedures for accepting such Permitted Cover and for the transfer of such assets to and from the Clearing House using the facilities of the relevant Emissions Register. The amendments also establish parameters, eligibility criteria, rules and requirements (as applicable) applicable to the acceptance of such assets by the Clearing House as Permitted Cover. ICE Clear Europe believes Emissions Allowances are an appropriate form of Permitted Cover with respect to meeting the margin obligations for these related F&O Contracts and would thereby facilitate its ability to meet its obligations to Clearing Members in the event of a default by a Clearing Member. In ICE Clear Europe's view, the amendments hereby promote the efficient operation and stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. Such enhanced risk management is also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. (ICE Clear Europe would not expect the adoption of the

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<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

amendments to affect materially the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible.) Accordingly, the amendments to the Documents satisfy the requirements of Section 17A(b)(3)(F).<sup>7</sup>

The proposed amendments to each Document is also consistent with relevant provisions of Rule 17Ad-22.<sup>8</sup> Rule 17Ad-22(e)(3)(i) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [...] identify, measure, monitor and manage the range of risks that arise in or are borne by the covered clearing agency”.<sup>9</sup> For similar reasons, the amendments are intended to enhance the Clearing House's overall risk management through margin requirements for emissions F&O Contracts. ICE Clear Europe believes that acceptance of Emission Allowances as Permitted Cover is appropriate for these specific F&O Contracts for which the Emission Allowance is the underlier, in light of the specific characteristics and risks of these assets. In the context of these contracts, acceptance of the underlying allowances to cover margin would serve to reduce the risk to the Clearing House of a default by a Clearing Member with respect to such contracts. The amendments provide appropriate mechanisms for transfer of such assets to the account of the Clearing House as cover for margin, and provide for appropriate eligibility criteria, parameters and limits to provide further protection to the Clearing House. The amendments will not otherwise change the margin model for the relevant contracts or the amount of initial margin that is required. In ICE Clear Europe's view, as set out above, the amendments would thus facilitate overall risk management

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 17 CFR 240.17 Ad-22.

<sup>9</sup> 17 CFR 240.17 Ad-22(e)(3)(i).

with respect to the expansion of assets eligible to be accepted as Permitted Cover, consistent with the requirements of Rule 17Ad-22(e)(3)(i).<sup>10</sup>

(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 intended to permit the Clearing House to accept Emissions Allowances as Permitted Cover for F&O Contracts for which they are the underlier. The amendments set out the procedures for accepting such Permitted Cover and for the transfer of such assets to and from the Clearing House using the facilities of the relevant Emissions Register, as well as the parameters, eligibility criteria, rules and requirements (as applicable) applicable to the acceptance of such assets by the Clearing House as Permitted Cover. ICE Clear Europe does not believe that proposed amendments would adversely affect competition among Clearing Members, materially affect the costs of clearing, adversely affect the ability of market participants to access clearing or the market for clearing services generally, or otherwise adversely affect competition in clearing services. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is not necessary or appropriate 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 amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

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

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<sup>10</sup> 17 CFR 240.17 Ad-22(e)(3)(i).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4<sup>12</sup> thereunder. 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2022-020 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-2022-020. 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

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-2022-020 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.<sup>13</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

[FR Doc. 2022-24766 Filed: 11/14/2022 8:45 am; Publication Date: 11/15/2022]

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<sup>13</sup> 17 CFR 200.30-3(a)(12).