



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-96934; File No. SR-ICEEU-2023-005]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments of the ICE Clear Europe Delivery Procedures

February 15, 2023.

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 2, 2023, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared by primarily 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)(4)(ii) thereunder,⁴ 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 Delivery Procedures (“Delivery Procedures” or “Procedures”) to add a new Part II thereto (“Part II”) to address new ICE Futures Europe Dutch TTF Natural Gas Futures (each a “Contracts” and together the “Contracts”), natural gas futures contracts that will be traded at ICE Futures Europe and cleared by ICE Clear

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)(4)(ii).

Europe. The proposed updates would also make a conforming change elsewhere in the Delivery Procedures.⁵

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

Background

ICE Clear Europe is proposing to add a new Part II to the Delivery Procedures as well as a conforming change elsewhere in the Delivery Procedures. Part II would apply to the Contracts, which are to be traded on ICE Futures Europe and cleared at ICE Clear Europe.⁶ The amended Delivery Procedures would provide the delivery specifications

⁵ Capitalized terms used but not defined herein have the meanings specified in the Delivery Procedures or, if not defined therein, the ICE Clear Europe Clearing Rules.

⁶ ICE Clear Europe also currently clears a similar TTF natural gas futures contract traded on the ICE Endex market. That ICE Endex contract will continue to be cleared separately from, and will not be fungible with, the Contracts and is addressed by a separate existing part of the Delivery Procedures (although the Delivery Procedures for the two contracts are substantially similar).

and processes related to delivery under the Contracts. The proposed Delivery Procedures are intended to become operative on February 20, 2023, subject to regulatory approval.

Delivery under the Contracts would be settled by the transfer of rights to natural gas at the TTF (a notional point within the Dutch natural gas Transmission System at which the balancing of the amounts of natural gas takes place) from a Transferor nominated by the Seller to the Clearing House and from the Clearing House to a Transferee nominated by the Buyer. The amendments would provide that the Clearing Members grant authority to ICE Clear Europe to make Trade Nominations on their behalf in connection with deliveries under Contracts. Clearing Members would not be required, and would not be able, to send Trade Nominations themselves.

The amendments would set out relevant definitions related to delivery under the contract, including those relating to TTF and the Transmission System. The amendments would further specify certain details of the delivery process for the Contracts including denominations of relevant quantity, settlement price, relevant time zones, timing of cessation of trading and certain requirements for exchange of futures for physical and swap transactions under exchange rules.

The amendments would also address the responsibilities of the Clearing House and relevant parties for delivery under Contracts, as well as certain limitations of liability for the Clearing House. Specifically, the Clearing House would not be responsible for the performance or non-performance of GTS (the transmission system operator), including of its obligations under the GTS Rules. Additionally, neither the Buyer, Seller nor their Transferees or Transferors would have any claim against the Clearing House for any loss, cost, damage or expense incurred or suffered as a result of the condition or operation of the Transmission System or any part thereof or the performance or non-performance of GTS except as otherwise expressly provided in the ICE Futures Europe Rules.

The amendments would provide details related to delivery contract security, which is the delivery margin to be provided by Buyer and Seller, and which would take into account the possibility of costs or charges arising from the balancing regime under the TSC. The Clearing House would be permitted to alter the calculation of each of the Buyer's Security and the Seller's Security at any time or make adjustments in respect of a specific Seller or Buyer.

The amendments would include delivery timetables with detailed timeframes and descriptions of the processes for delivery under Contracts, and such timetables would set out, among other processes, the time for cessation of trading, provision of Buyer's and Seller's Security, submission of delivery intentions, confirmation reports, notifications to the nomination agent, payment, top-up of security, invoicing, and other matters. The amendments would also include delivery tables with detailed times and processes relating to failed delivery under Contracts. In respect of invoicing, the amendments would detail how amounts included in invoices prepared by the Clearing House would be calculated for confirmed deliveries and failed deliveries of each Contract, and address the credit notes issued to Buyer's in respect of failed deliveries.

In addition, the amendments would provide a summary of the reports produced by the Clearing House in respect of each Contract and made available to Buyers and Sellers electronically.

The amendments would also update Section 5.1 of the Delivery Procedures to include ICE Futures Europe Dutch TTF Natural Gas Futures Contract in the list of contracts under which, subject to delivery obligations, sellers and buyers can nominate transferors and transferees.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures are consistent with the requirements of Section 17A of the Act⁷ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁸ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes to the Delivery Procedures are designed to establish delivery procedures relating to ICE Futures Europe Dutch TTF Natural Gas Futures Contracts, which will be traded on ICE Futures Europe and cleared at ICE Clear Europe. The amendments would set out the role, responsibilities and liabilities of the Clearing House, Clearing Members and designated transferors and transferees in the physical delivery process, in line with Delivery Procedures for other types of deliverable energy futures contracts. Contracts providing for delivery under Part II will be cleared by the Clearing House in the substantially same manner as other types of deliverable energy futures contracts, and will be supported by ICE Clear Europe's existing F&O financial resources, risk management, systems and operational arrangements. Accordingly, ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such contracts and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, and the protection of investors and the public interest consistent with the requirements of Section

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

17A(b)(3)(F) of the Act.⁹ (In ICE Clear Europe’s view, the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).¹⁰)

In addition, Rule 17Ad-22(e)(10)¹¹ provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [...] establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries.” As discussed above, the amendments would establish a new set of procedures applicable to the delivery and settlement of ICE Futures Europe Dutch TTF Natural Gas Futures Contracts. The procedures would address, among other matters, delivery specifications for such contracts, the obligations and roles of Clearing Members and the Clearing House, certain limitations of liability for the Clearing House, and certain other documentation and timing matters. Clearance of the Contracts would otherwise be supported by ICE Clear Europe’s existing financial resources, risk management, systems and operational arrangements. The amendments thus appropriately clarify the role and responsibilities of the Clearing House and Clearing Members with respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad-22(e)(10).¹²

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

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR. 240.17Ad-22(e)(10).

¹² 17 CFR. 240.17Ad-22(e)(10).

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 proposed amendments to the Delivery Procedures are intended to establish a new set of procedures applicable to the delivery and settlement of ICE Futures Europe Dutch TTF Natural Gas Futures Contracts in connection with the listing of such contracts for trading on the ICE Futures Europe market. ICE Clear Europe believes that such contracts would provide additional opportunities for interested market participants to engage in trading activity in the relevant Dutch natural gas market. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and paragraph (f) of Rule 19b-4¹⁴ thereunder. At any time within 60 days of

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

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, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2023-005 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-2023-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2023-005 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.¹⁵

Sherry R. Haywood,
Assistant Secretary.

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¹⁵ 17 CFR 200.30-3(a)(12).