



Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICE Clear Europe Counterparty Credit Risk Policy and Counterparty Credit Risk Procedures

March 20, 2023.

I. Introduction

On January 20, 2023, 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 (the “Act”),¹ and Rule 19b-4,² a proposed rule change to amend its Counterparty Credit Risk Policy (the “CC Risk Policy”) and Counterparty Credit Risk Procedures (the “CC Risk Procedures”). The proposed rule change was published for comment in the Federal Register on February 7, 2023.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

i. Background

ICE Clear Europe is registered with the Commission as a clearing agency for the purpose of clearing security-based swaps. In its role as a clearing agency for clearing security-based swaps, ICE Clear Europe provides services to its Clearing Members and receives banking,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Counterparty Credit Risk Policy and Counterparty Credit Risk Procedures, Exchange Act Release No. 96787 (Feb. 1, 2023); 88 FR 8018 (Feb. 7, 2023) (SR-ICEEU-2023-004) (“Notice”).

investment, custody, and other financial services from its Financial Service Providers (“FSPs”).⁴ In providing services to Clearing Members and receiving services from FSPs, ICE Clear Europe is exposed to counterparty risk. Counterparty risk is the risk that ICE Clear Europe suffers financial losses if a Clearing Member or FSP defaults on its obligations to ICE Clear Europe.

In 2021, ICE Clear Europe adopted the CC Risk Policy and CC Risk Procedures.⁵ The CC Risk Policy and CC Risk Procedures describe how ICE Clear Europe identifies, monitors, and mitigates counterparty risk. In addition to the CC Risk Policy and CC Risk Procedures, ICE Clear Europe has also established a Counterparty Credit Risk Parameters document (the “CC Risk Parameters”).⁶

The proposed rule change would amend the CC Risk Policy and the CC Risk Procedures to make a number of improvements to the versions adopted in 2021. As described more fully below, the proposed rule change would: (i) apply both documents to the risks arising from Links;⁷ (ii) revise credit eligibility criteria; (iii) clarify how frequently ICE Clear Europe reviews counterparties; (iv) add a new defined term for Systemically Important Institution; (v) consider

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in the CC Risk Policy and CC Risk Procedures.

⁵ See Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Adoption of the Counterparty Credit Risk Policy and Counterparty Credit Risk Procedures, Exchange Act Release No. 93880 (Dec. 30, 2021), 87 FR 513 (Jan. 5, 2022) (SR-ICEEU-2021-015) (“2021 Approval Order”).

⁶ ICE Clear Europe included the CC Risk Parameters as a confidential Exhibit 3 to this filing and the 2021 Approval Order. The CC Risk Parameters contain details relevant to the processes set out in the CC Risk Policy and CC Risk Procedures. For example, the CC Risk Parameters contain the credit eligibility criteria that ICE Clear Europe uses to assess prospective counterparties.

⁷ The proposed rule change would adopt the definition of “Link” as found in Rule 17Ad-22(a)(8). Rule 17Ad-22(a)(8) defines a “Link” as “a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding their services to additional instruments or participants, or for any other purposes material to their business.” 17 CFR 240.17Ad-22(a)(8).

the risks arising from cross-exposures and off-boarding; (vi) specify additional mitigating actions ICE Clear Europe may take in certain circumstances; and (vii) revise description of ICE Clear Europe's Counterparty Rating System.⁸

ii. Links

Currently, both the CC Risk Policy and the CC Risk Procedures define counterparty credit risk in relation to Clearing Members and FSPs. Specifically, both documents define counterparty credit risk as (i) the risk that a Clearing Member misses its next payment to ICE Clear Europe, leaving ICE Clear Europe under-collateralized and therefore increasing the risk of using the Guaranty Fund contributions of other Clearing Members and ICE Clear Europe to manage a potential default of that Clearing Member and (ii) the risk that a FSP defaults without returning cash to ICE Clear Europe, leaving ICE Clear Europe with a loss on its investments or expected return of cash. The proposed rule change would expand the definition of counterparty credit risk, in both the CC Risk Policy and the CC Risk Procedures, to include the risk that a Link defaults, leaving ICE Clear Europe to fund material contractual or operational arrangements associated with that Link.

In addition to taking into account the risks arising from Links, the proposed rule change would revise the overall objective of ICE Clear Europe's counterparty credit risk management to include minimizing the risk arising from a Link defaulting. The current CC Risk Policy provides that the objective of ICE Clear Europe's counterparty credit risk management is minimizing the risk of ICE Clear Europe being materially under-collateralized as a result of a CM defaulting, or realizing a material loss due to an FSP defaulting. The proposed change would add Links to this

⁸ The Counterparty Rating System is the system that ICE Clear Europe uses to model and determine a counterparty's risk. ICE Clear Europe uses the Counterparty Rating System to calculate a credit score, and this credit score represents a counterparty's risk, in terms of its overall credit quality.

objective, such that ICE Clear Europe's objective would include minimizing the risk of loss due to a Link defaulting.

While revising the objective of ICE Clear Europe's counterparty credit risk management to include Links, the proposed rule change also would revise how ICE Clear Europe achieves this objective to include Links. Currently, ICE Clear Europe minimizes counterparty credit risk through the following actions: (i) setting and monitoring credit criteria for counterparties; (ii) establishing a credit score for each counterparty that represents each counterparty's credit risk and classifying each counterparty in relation to the risk it poses; (iii) taking mitigating actions to reduce ICE Clear Europe's exposure; (iv) performing reviews of counterparties; and (v) setting and monitoring exposure limits for counterparties. The proposed rule change would add to this list identifying, monitoring, and managing risks from Links. Thus, in addition to taking the actions set forth above to minimize counterparty risk, under the proposed rule change, ICE Clear Europe also would identify, monitor, and manage risks from Links.

Similarly, the proposed rule change would add to ICE Clear Europe's mitigating actions certain actions specific to Links. The CC Risk Policy lists certain mitigating actions that ICE Clear Europe may take to reduce its exposure to a counterparty. These actions include, among other things, requiring a Clearing Member to reduce its positions and changing ICE Clear Europe's usage of a FSP. The proposed rule change would add to this list of mitigating actions changing ICE Clear Europe's usage of a Link, which ICE Clear Europe could undertake to reduce its exposure to a Link.

In addition to revising the definition of counterparty risk, the counterparty risk management objective, and the list of mitigating actions, the proposed rule change also would revise how ICE Clear Europe monitors counterparties to account for Links. As mentioned above, currently ICE Clear Europe uses its Counterparty Rating System to calculate a credit score that represents a counterparty's risk, in terms of the overall credit quality of the counterparty. Under the proposed rule change, ICE Clear Europe would continue to use its Counterparty Rating

System to calculate credit scores. The proposed rule change would add language to the CC Risk Policy and CC Risk Parameters, however, to note that ICE Clear Europe may use its Counterparty Rating System or related credit criteria to represent the credit quality of counterparties. The new reference to related credit criteria captures the fact that ICE Clear Europe may need to consider additional credit criteria to fully consider the risks of Links. This additional credit criteria could include, for example, the nature of a Link's operational arrangement with ICE Clear Europe. Similarly, the proposed rule change would add language to the Counterparty Credit Risk Procedures to note that, in addition to monitoring counterparties through credit scores, ICE Clear Europe may monitor counterparties through public news sources. Public news sources could provide insight into events affecting the financial standing of Links.

iii. Credit Eligibility Criteria

ICE Clear Europe assesses prospective counterparties against certain credit eligibility criteria. The criteria that ICE Clear Europe uses for this assessment are set out in the CC Risk Parameters. Overall, ICE Clear Europe uses this assessment against the credit eligibility criteria to assess the financial stability of Clearing Members and FSPs.⁹

The current CC Risk Procedures note that, as part of this assessment, FSPs must be legal entities in approved jurisdictions and comply with the credit eligibility criteria and Unsecured Credit Limits found in the CC Risk Parameters. The proposed rule change would revise this language to state that in addition to complying with the credit eligibility criteria and Unsecured Credit Limits found in CC Risk Parameters, ICE Clear Europe screens FSPs for Know-Your-Customer ("KYC") and Anti-Money Laundering ("AML") purposes to confirm they are not

⁹ See 2021 Approval Order, 87 FR at 514.

registered in countries subject to monitoring by the Financial Action Task Force¹⁰ and to confirm that they have appropriate KYC processes. ICE Clear Europe is making this change to codify in the CC Risk Procedures its current practice of screening FSPs with respect to KYC and AML requirements.¹¹

Moreover, the proposed rule change would add language to note that agreements with FSPs are subject to review by ICE Clear Europe's legal team, and this review includes consideration of legal risk associated with the governing law of the relevant agreement and the jurisdiction of the FSP. This new language would replace the statement, found in the current CC Risk Procedures, that FSPs must be legal entities in approved jurisdictions. Rather than only requiring FSPs be legal entities in approved jurisdictions, in practice ICE Clear Europe's legal team analyzes each agreement ICE Clear Europe has with its FSPs and considers the legal risk arising from the governing law of the agreement and the jurisdiction of the FSP. Thus, the new language would better describe ICE Clear Europe's current practice and codify this practice in the CC Risk Procedures.¹²

Finally, the proposed rule change would note that all of the credit eligibility criteria, which ICE Clear Europe uses in assessing prospective counterparties, would be reviewed periodically. This change to the CC Risk Procedures would codify a periodic review requirement that is currently set out in the CC Risk Parameters. That document sets out the frequency of reviews of the credit eligibility criteria as well as the ICE Clear Europe personnel responsible for conducting and approving such reviews. Specifically, the CC Risk Parameters contain a list of

¹⁰ The Financial Action Task Force is an intergovernmental organization founded in 1989 on the initiative of the G7. It develops policies and international standards to prevent money laundering and terrorist financing. See <https://www.fatf-gafi.org/en/home.html>.

¹¹ Notice, 88 FR at 8018.

¹² Notice, 88 FR at 8018.

various minimum credit ratings that counterparties should meet, and provide that this criteria will be reviewed annually by ICE Clear Europe's Executive Risk Committee.

iv. Frequency of Reviews

The proposed rule change would remove certain duplicative requirements from the CC Risk Procedures. As part of its monitoring of counterparty risk, ICE Clear Europe reviews prospective and current counterparties. These reviews consist of, among other actions, calculating credit scores for each counterparty and reviewing limits on ICE Clear Europe's financial exposure to a counterparty.¹³

The current CC Risk Procedures contain duplicative requirements concerning credit scores, continuous monitoring, the watch list, and exposure limits. The current CC Risk Procedures provide, in Section 2.3.1, that ICE Clear Europe uses its Counterparty Rating System to calculate credit scores for each counterparty on each day. The current CC Risk Procedures provide, in Section 2.4, that continuous monitoring is conducted daily and the Watch List and exposure limits are reviewed weekly, monthly and quarterly.

With respect to Section 2.3.1, the proposed rule change would delete "on each day" and replace it with "periodically." As amended, Section 2.3.1 would therefore state that ICE Clear Europe uses its Counterparty Rating System to calculate credit scores for each Counterparty periodically as set out in the Parameters. With respect to Section 2.4, the proposed rule change would delete "weekly." As amended, Section 2.4 would state that continuous monitoring is conducted daily and the Watch List and exposure limits are reviewed monthly and quarterly.

With respect to both changes, ICE Clear Europe maintains that it is not decreasing the frequency of its reviews.¹⁴ Rather, ICE Clear Europe is amending Section 2.3.1 to rely instead on the general statement in Section 2.4 that continuous monitoring is conducted daily. Thus, Section

¹³ See 2021 Approval Order, 87 FR at 514.

¹⁴ Notice, 88 FR at 8019.

2.4 would control, and ICE Clear Europe would still calculate credit scores on a daily basis, despite replacing “on each day” with “periodically” in Section 2.3.1. Moreover, ICE Clear Europe maintains that under amended Section 2.4, it would still conduct continuous monitoring and risk reviews on a daily basis.¹⁵ ICE Clear Europe is deleting “weekly” because it maintains that it would conduct the risk reviews daily, rather than weekly.

Finally, the CC Risk Procedures currently state that ICE Clear Europe’s findings and recommendations from its reviews of counterparties are approved based on the CC Risk Parameters. The proposed rule change would amend this statement in the CC Risk Procedures to provide that the review frequency and criteria, in addition to ICE Clear Europe’s findings and recommendations from its reviews of counterparties, are approved based on the CC Risk Parameters. This change would better align the CC Risk Procedures with the CC Risk Parameters. Specifically, the CC Risk Parameters make certain ICE Clear Europe personnel responsible for reviewing and approving findings and recommendations from risk reviews, and sets out the frequency and criteria for the risk reviews.

v. Systemically Important Institution

As part of mitigating its counterparty credit risk, ICE Clear Europe sets and monitors limits on its financial exposures to its counterparties. These exposure limits effectively cap ICE Clear Europe’s risk of loss arising from a particular counterparty and therefore act as an overall mitigation of counterparty risk.¹⁶

As explained in the current CC Risk Procedures, ICE Clear Europe sets an exposure limit for each Clearing Member as a percentage of that Clearing Member’s capital. As further explained in the current CC Risk Procedures, the capital that ICE Clear Europe considers for this purpose can include the balance sheet of a Clearing Member’s parent company. ICE Clear

¹⁵ Notice, 88 FR at 8019.

¹⁶ See 2021 Approval Order, 87 FR at 514.

Europe would consider the balance sheet of a Clearing Member's parent company if: (i) it considers the Clearing Member to be an integral part of a large systemically important institution headquartered in a robust legal jurisdiction; or (ii) it has a formal and enforceable recourse to the Clearing Member's parent company via a guarantee or equivalent undertaking. The proposed rule change would amend the first consideration, so that ICE Clear Europe would consider the balance sheet of a Clearing Member's parent company if it considers the Clearing Member to be an integral part of a large group that is a Systemically Important Institution. The proposed rule change would define a Systemically Important Institution as an institution with assets greater than 200 billion Euros that is treated as a Globally Systemically Important Institution by the European Banking Authority. These changes are aimed at objectively defining when ICE Clear Europe should consider the balance sheet of a parent company in eligible capital for the purposes of the exposure limit.¹⁷

vi. Cross-Exposures and Off-boarding

As discussed above, ICE Clear Europe monitors counterparties daily. This monitoring includes a number of items, such as daily credit scores and reviews of public news.¹⁸ The proposed rule change would expand the CC Risk Procedures to include monitoring for cross-exposures, which are exposures that a counterparty may have to its affiliates that are also ICE Clear Europe counterparties, and the risks that could arise when off-boarding counterparties.

Specifically, the proposed rule change would add language to Section 2.4 to note that ICE Clear Europe's monitoring of counterparty credit risk includes monitoring of cross-exposures among a Clearing Member and its affiliates. The proposed rule change also would add language to Section 3.1.1 of the CC Risk Procedures stating that ICE Clear Europe monitors at least

¹⁷ Notice, 88 FR at 8019.

¹⁸ See 2021 Approval Order, 87 FR at 514.

monthly credit Cross-Exposures among counterparties and their affiliates in all their capacities as counterparties to ICE Clear Europe.

The proposed rule change also would expand the CC Risk Procedures to consider the potential risks to ICE Clear Europe that could arise when it terminates its relationship with a counterparty. These risks could include, for example, open contractual obligations or money owed to ICE Clear Europe. The proposed rule change would add language to Section 2.1 of the CC Risk Procedures stating that ICE Clear Europe ensures all counterparty risks are eliminated prior to off-boarding counterparties.

vii. Mitigating Actions

In addition to assessing and monitoring counterparties, ICE Clear Europe also has the authority to take actions with respect to counterparties to mitigate risks presented by those counterparties.¹⁹ For example, ICE Clear Europe may subject a counterparty to additional monitoring or reduce its usage of an FSP. ICE Clear Europe may also add counterparties to the Watch List, which is a list of counterparties that ICE Clear Europe subjects to enhanced monitoring and mitigating action if necessary. The proposed rule change would amend the CC Risk Procedures to note two additional mitigating actions that ICE Clear Europe could take against counterparties in certain circumstances.

First, the proposed rule change would add a statement to Section 2.3.2 of the CC Risk Procedures that Clearing Members are added automatically to the Watch List if they reach the Watch List Criteria. Specifically, Clearing Members whose credit scores meet certain thresholds indicating financial weakness are automatically added to the Watch List. This criteria is set out in the CC Risk Parameters.

Second, the proposed rule change would add language to Section 2.3.1 to note that submissions of quarterly financial statements by counterparties later than the days mandated by

¹⁹ See 2021 Approval Order, 87 FR at 514.

ICE Clear Europe's Rules will be communicated and escalated as set out in the CC Risk Parameters. The CC Risk Parameters require communication with counterparties and escalation to ICE Clear Europe's Head of Regulation and Compliance of late quarterly financial submissions.

viii. Counterparty Rating System

Finally, the proposed rule change would clarify the description of ICE Clear Europe's Counterparty Rating System found in the CC Risk Procedures. As mentioned above, the Counterparty Rating System is the system that ICE Clear Europe uses to model and determine a counterparty's credit risk. ICE Clear Europe uses the Counterparty Rating System to calculate a credit score, and this credit score represents a counterparty's credit risk.

The proposed rule change would delete a statement in the CC Risk Procedures that ICE Clear Europe's Counterparty Rating System may incorporate exposure information reflecting the risk of the Clearing Member's portfolio held with ICE Clear Europe. The proposed rule change is deleting this statement because ICE Clear Europe is revising its relevant risk model to consider the credit quality of a Clearing Member, rather than the risk associated with a Clearing Member's portfolio. ICE Clear Europe is making this change to better align the credit scores with the credit quality of Clearing Members.²⁰

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.²¹ For the reasons discussed below, the Commission finds that the proposed rule

²⁰ ICE Clear Europe manages the risk associated with a Clearing Member's portfolio through its margin and guaranty fund requirements.

²¹ 15 U.S.C. 78s(b)(2)(C).

change is consistent with Section 17A(b)(3)(F) of the Act,²² and Rules 17Ad-22(e)(3)(i) and (e)(20) thereunder.²³

i. 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.²⁴ Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the CC Risk Policy and CC Risk Procedures are consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions.

The Commission believes the proposed rule change overall would improve ICE Clear Europe's ability to manage counterparty risk using the CC Risk Policy and CC Risk Procedures. One way the proposed rule change would do that is by expanding the risks that ICE Clear Europe considers when it is evaluating counterparties. For example, the proposed rule change would require that ICE Clear Europe consider the risks arising from Links and consider the risks associated with KYC and Anti-Money Laundering requirements when evaluating FSPs. Similarly, the proposed rule change would require that ICE Clear Europe consider the risks arising from its agreements with FSPs, specifically legal risk associated with the governing law of the agreement and the jurisdiction of the FSP, rather than only requiring FSPs be legal entities in approved jurisdictions. Finally, the proposed rule change would require ICE Clear Europe to monitor counterparties' cross exposures and the risks created when off-boarding a counterparty. The Commission believes all of these changes would expand ICE Clear Europe's counterparty

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ 17 CFR 240.17Ad-22(e)(3)(i) and (e)(20).

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

risk monitoring and management to include risks that are not currently considered by ICE Clear Europe.

The Commission believes that the proposed rule change would improve ICE Clear Europe's counterparty risk management by establishing actions ICE Clear Europe would take to monitor and mitigate counterparties that present increased risk, such as requiring that ICE Clear Europe add a counterparty to the Watch List if it meets criteria set out in the CC Risk Parameters. Moreover, the proposed rule change would require ICE Clear Europe to internally escalate a counterparty's late submission of quarterly financial statements for further review and action. The Commission believes requiring these actions would help ensure that ICE Clear Europe takes immediate steps to monitor counterparties that present additional risk, either by meeting the criteria for inclusion on the Watch List or failing to timely file the required quarterly financial statements.

In addition to expanding the risks that ICE Clear Europe considers and establishing actions to take with respect to counterparties that present increased risk, the Commission believes the proposed rule change would improve ICE Clear Europe's counterparty risk management by clarifying the frequency of the various reviews conducted by ICE Clear Europe. Specifically, the proposed rule change would require that ICE Clear Europe review all credit eligibility criteria periodically and that review frequency and criteria be approved based on the CC Risk Parameters. Similarly, the proposed rule change would clarify that ICE Clear Europe calculates credit scores, looks at public news, conducts continuous monitoring, and completes risk reviews daily. The Commission believes these changes would help ensure ICE Clear Europe is using correct and current criteria to evaluate counterparties and reviewing and monitoring counterparties daily.

Finally, the Commission believes that two other changes discussed above would clarify important aspects of ICE Clear Europe's counterparty risk management. First, the Commission believes that adding a definition for Systemically Important Institution and no longer considering

whether a Systemically Important Institution is in a robust legal jurisdiction would define objective criteria for considering the balance sheet of a Clearing Member's parent company in setting the exposure limit for that Clearing Member. Defining objective criteria with regard to the setting of exposure limits, in turn, would improve the consistency with which ICE Clear Europe applies such limits to control the potential loss that could arise out of a Clearing Member default. Second, the proposed rule change would clarify the description of ICE Clear Europe's Counterparty Rating System because it considers the credit quality of a Clearing Member, rather than the risk associated with a Clearing Member's portfolio. The proposed change would better align the measurement (credit ratings) with what it seeks to measure (a member's credit quality).

The Commission believes counterparty risk poses a risk to ICE Clear Europe's financial resources. For example, default by a Clearing Member could leave ICE Clear Europe under-collateralized, and default by an FSP could cause ICE Clear Europe to lose its investments or expected return of cash. Similarly, default by a Link could require ICE Clear Europe to fund material contractual or operational arrangements associated with that Link. The Commission believes that such losses could threaten ICE Clear Europe's ability to operate and clear and settle transactions. Thus, the Commission believes that effective management of ICE Clear Europe's counterparty risk could help ICE Clear Europe mitigate risks to the financial resources needed to continue clearing and settling transactions. The Commission therefore believes that, by improving ICE Clear Europe's ability to manage and mitigate counterparty risk, the proposed rule change would thereby promote the prompt and accurate clearance and settlement of securities transactions.

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.²⁵

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

ii. Consistency with Rule 17Ad-22(e)(3)(i) under the Act

Rule 17Ad-22(e)(3)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICE Clear Europe, which includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by ICE Clear Europe, that are subject to review on a specified periodic basis and approved by the board of directors annually.²⁶ As discussed above, the proposed rule change would make a number of improvements to the CC Risk Policy and the CC Risk Procedures. The Commission believes these improvements would enhance ICE Clear Europe's ability to comprehensively measure and manage the risks posed by counterparties.

With respect to measuring counterparty risks, the Commission believes that requiring ICE Clear Europe to consider KYC and AML requirements when reviewing prospective and existing FSPs would enable ICE Clear Europe to consider the risks arising from compliance with these requirements. The Commission further believes that requiring ICE Clear Europe to consider legal risk associated with the governing law of the agreement and the jurisdiction of the FSP would help ensure that ICE Clear Europe considers this associated risk. Similarly, the Commission believes that taking into consideration counterparties' cross-exposures, and the risks that arise when terminating a relationship with a counterparty, would enable ICE Clear Europe to identify and manage the risks posed by counterparties' affiliates and the risks that could arise when ICE Clear Europe terminates a counterparty.

With respect to managing counterparty risks, the Commission believes that requiring ICE Clear Europe to add counterparties to the Watch List when meeting certain criteria and to

²⁶ 17 CFR 240.17Ad-22(e)(3)(i).

escalate late submission of quarterly financial statements for further review and action would help ICE Clear Europe to identify at-risk counterparties for further monitoring and mitigating action.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(3)(i).²⁷

iii. Consistency with Rule 17Ad-22(e)(20) under the Act

Rule 17Ad-22(e)(20) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link ICE Clear Europe establishes with one or more other clearing agencies, financial market utilities, or trading markets.²⁸ As discussed above, the proposed rule change would amend the CC Risk Policy and the CC Risk Procedures to account for the risks arising from Links. Among other things, ICE Clear Europe would consider as a counterparty credit risk the risk that a Link defaults; take steps to minimize the risk of loss due to a Link defaulting; and identify, monitor, and manage risks arising from Links. The Commission believes these actions are reasonably designed to identify, monitor, and manage risks related to any Link that ICE Clear Europe may establish.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(20).²⁹

²⁷ 17 CFR 240.17Ad-22(e)(3)(i).

²⁸ 17 CFR 240.17Ad-22(e)(20).

²⁹ 17 CFR 240.17Ad-22(e)(20).

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 Act,³⁰ and Rules 17Ad-22(e)(3)(i) and (e)(20) thereunder.³¹

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act³² that the proposed rule change (SR-ICEEU-2023-004), be, and hereby is, approved.³³

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Sherry R. Haywood,
Assistant Secretary.

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³⁰ 15 U.S.C. 78q-1(b)(3)(F).

³¹ 17 CFR 240.17Ad-22(e)(3)(i) and (e)(20).

³² 15 U.S.C. 78s(b)(2).

³³ 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).

³⁴ 17 CFR 200.30-3(a)(12).