



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97311; File No. SR-ICEEU-2023-008]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments of ICE Futures Europe (“IFEU”) Oil Futures Contracts

April 14, 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 April 6, 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 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)(2) 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.

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)(2).

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to amend certain clearing fees for ICE Futures Europe (“IFEU”) oil futures contracts.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

ICE Clear Europe is proposing to increase certain clearing fees for specified ICE Futures Europe (“IFEU”) oil futures contracts, specifically the IFEU Brent Crude Oil, Low Sulphur Gasoil, West Texas Intermediate (WTI) Crude Oil, Midland WTI American Gulf Coast, Heating Oil and RBOB Gasoline futures contracts (collectively, the “IFEU Oil Futures”). The proposed fee changes are set forth in the following table:

⁵ Capitalized terms used but not defined herein have the meanings specified in the IFEU Oil Futures Contracts or, if not defined therein, the ICE Clear Europe Clearing Rules.

CONTRACT-- IFEU Oil Futures	EXISTING CLEARING FEE (US\$/CONTRACT)	<u>PROPOSED NEW</u> <u>CLEARING FEE</u> <u>(US\$/CONTRACT)</u>
Futures Contract	0.57	<u>0.60</u>
EFP/EFS/Block	1.20	<u>1.26</u>

The proposed fee changes are intended to become operative on May 1, 2023, subject to regulatory approval.

The current clearing fees for IFEU Oil Futures have not changed since Intercontinental Exchange, Inc. acquired the International Petroleum Exchange (“IPE”) in 2001. The increases are intended to provide additional revenue, which ICE Clear Europe expects to use, among other purposes, to support the significant ongoing investments by ICE Clear Europe in clearing activities. Such investments include increased risk staffing requirements relating to increased market complexity, expansion of technology to improve platform capacity and reduce systems risk, expansion of reporting capabilities in light of regulatory requirements, ongoing development of compliance staff in light of increasing market complexity and size, and ongoing enhancement of IT and other operational resources to support clearing operations.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments for the IFEU Oil Futures are consistent with the requirements of Section 17A of the Act⁶ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(D) of the Act⁷ requires that “[t]he rules of the clearing agency provide for the equitable allocation of

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(D).

reasonable dues, fees, and other charges among its participants.” ICE Clear Europe believes that its clearing fees, as proposed to be amended, would be reasonable and appropriate for the IFEU Oil Futures. ICE Clear Europe’s fees are imposed at the product level on a per transaction basis (as are the applicable exchange fees), and would be generally applicable to market participants trading in the contracts. As set forth above, ICE Clear Europe has determined that the increased clearing fees are appropriate to support continued investments in enhancements to clearing operations, which support the clearing of the IFEU Oil Futures as well as other contracts. ICE Clear Europe has further determined that the increased fees would be commensurate with the size of the contracts and would provide an appropriate balance between the costs of clearing for market participants and the expenses incurred by ICE Clear Europe in offering trading and clearing of the relevant contracts, taking into account the investments ICE Clear Europe has made and will continue to make in clearing such products. As such, in ICE Clear Europe’s view, the amendments are consistent with the equitable allocation of reasonable dues, fees, and other charges among its Clearing Members and other market participants, within the meaning of Section 17A(b)(3)(D) of the Act.⁸

The proposed amendments are also consistent with the requirements of Section 17A(b)(3)(F) of the Act⁹ which requires, among other things, that the “rules of a clearing agency [. . .] are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.” As noted above, the proposed fee changes for the IFEU Oil Futures would apply on a per transaction basis and would apply to Clearing Members and market participants generally. As a result, the

⁸ 15 U.S.C. 78q-1(b)(3)(D).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

amendments would not result in any unfair discrimination among Clearing Members in their use of the Clearing House, within the meaning of Section 17A(b)(3)(F) of the Act.¹⁰

(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. Although ICE Clear Europe is increasing certain clearing fees, as set forth herein, it believes such changes are appropriate to reflect the costs and expenses incurred by the Clearing House and to support continued investment in its infrastructure to support clearing activities. Further, as discussed above, because fees are imposed on a per transaction basis at the product level, the revised fees would be applied equally to all Clearing Members and other market participants who transact in the IFEU Oil Futures. ICE Clear Europe does not believe that the amendments would adversely affect the ability of such Clearing Members or other market participants generally to access clearing services for the Contracts. Further, since the revised fees will apply to market participants generally, ICE Clear Europe believes that the amendments would not otherwise affect competition among Clearing Members, adversely affect the market for clearing services or limit market participants' choices for obtaining 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

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

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 Act¹¹ and paragraph (f) of Rule 19b-4¹² 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, 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 (<https://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2023-008 on the subject line.

Paper Comments:

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

- 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-2023-008. 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice 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, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. 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/notices/Notices.shtml?regulatoryFilings>.

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-2023-008 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Sherry R. Haywood,

Assistant Secretary.

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¹³ 17 CFR 200.30-3(a)(12).