



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97766; File No. SR-ICEEU-2023-013]

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

June 20, 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 June 9, 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 primarily prepared by ICE Clear Europe. 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 modify its Collateral and Haircut Procedures (the “Collateral and Haircut Procedures” or “Procedures”)³ to modify the type of gold that may be accepted as collateral.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the Collateral and Haircut Procedures.

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 revise Appendix A to the Collateral and Haircut Procedures to modify the eligibility criteria for accepting gold as collateral. As revised, to be eligible, gold would have to be held on an “allocated” basis⁴ by the relevant custodian in the name of the Clearing House. Specifically, the change would provide that for the purposes of margin, gold transferred by a Clearing Member would first be held in an unallocated account and in the name of the Clearing House. Such gold would only be recognized as Permitted Cover or eligible collateral when it is transferred from the unallocated accounts to an allocated account of the custodian held in the name of the Clearing House and thereupon deemed allocated pure gold bullion of recognized good delivery.

The amendments would remove existing provisions that would permit unallocated gold to serve as Permitted Cover or eligible collateral. The amendment is intended to clarify that only allocated (as opposed to unallocated) pure gold bullion is capable of being accepted as Permitted Cover or eligible collateral, and thereby better align ICE

⁴ Allocated gold held by a custodian is specifically identified for a particular owner. Unallocated gold represents a claim against the relevant custodian for an amount of metal held in bulk.

Clear Europe's rules with applicable requirements under the European Market Infrastructure Regulation (EMIR) which stipulate that gold as collateral must be held in allocated form (only).⁵ While ICE Clear Europe's current rules technically permit the acceptance of gold as collateral, ICE Clear Europe has not in practice accepted gold as collateral, as the level of potential interest on the part of Clearing Members has to date been insufficient to justify the completion on ICE Clear Europe's part of certain operational testing processes that would be required to support the full implementation of the process for accepting gold as Permitted Cover or eligible collateral. As a result, ICE Clear Europe does not believe the amendment would require any Clearing Members to change their current margin postings.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Collateral and Haircut Procedures are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 (the "Act")⁶ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁷ 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.

⁵ Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties, Annex I, Section 3 (the "EMIR RTS").

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

The proposed changes to the Procedures are designed to limit gold that may be accepted as margin to allocated gold, rather than permitting unallocated gold. As noted above, the level of potential interest on the part of Clearing Members in being able to post gold (whether in allocated or unallocated form) as margin has to date been insufficient to justify the completion on ICE Clear Europe's part of certain operational testing processes that would be required to support the full implementation of the process for accepting gold as Permitted Cover or eligible collateral, and ICE Clear Europe therefore does not believe the amendment will result in a change in current activity of Clearing Members. The amendment is intended to ensure that the Collateral and Haircut Procedures are better aligned with the applicable requirements under the EMIR RTS that gold accepted as margin be in allocated rather than unallocated form. As such, the amendments would clarify the operation of the Clearing House's margin framework in accordance with applicable law, and thereby promote the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. Removing the option of unallocated gold will also not adversely affect the safeguarding of property in the custody or control of the Clearing House or for which it is responsible. The amendments are for these reasons also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House.

Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).⁸

The amendments to the Collateral and Haircut Procedures are also consistent with relevant provisions of Rule 17Ad-22. Rule 17Ad-22(e)(5) requires the clearing agency to “establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable . . . [l]imit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts

⁸ 15 U.S.C. 78q-1(b)(3)(F).

and concentration limits if [it] requires collateral to manage its or its participants' credit exposure...."⁹ The amendments would require that any gold posted as margin be in allocated form, rather than unallocated form. Limiting margin to allocated gold (which is generally viewed as being subject to reduced risks from custodian failure) is consistent with the requirement to limit collateral to that with low credit, liquidity, and market risks, and accordingly the amendments would not increase the risk of the Clearing House from such collateral. The amendments would not otherwise change the Clearing House's current application of haircuts or concentration limits for Permitted Cover. As such, the amendments are consistent with the requirements of Rule 17Ad-22(e)(5).¹⁰

Rule 17Ad-22(e)(1) requires the clearing agency to "establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable . . . provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions."¹¹ As noted above, the amendments are intended to better align the Collateral and Haircut Procedures with the requirements of the EMIR RTS, which limits gold accepted as margin to gold held in allocated form. As such, the amendments will support the Clearing House's compliance with applicable law in all relevant jurisdictions, and therefore are consistent with the requirements of Rule 17Ad-22(e)(1).¹²

(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 being adopted to require that any gold

⁹ 17 CFR 240.17Ad-22(e)(5).

¹⁰ 17 CFR 240.17Ad-22(e)(5).

¹¹ 17 CFR 240.17Ad-22(e)(1).

¹² 17 CFR 240.17Ad-22(e)(1).

posted as margin be held in allocated form, consistent with applicable law. As noted above, the level of potential interest on the part of Clearing Members in being able to post gold (whether in allocated or unallocated form) as margin has to date been insufficient to justify the completion of ICE Clear Europe's part of certain operational testing processes that would be required to support the full implementation of the process for accepting gold as Permitted Cover or eligible collateral. As a result, ICE Clear Europe does not believe the amendments will affect current margin practices or affect the current costs of posting margin for Clearing Members. To the extent that Clearing Members in the future may seek to post gold as margin, and to incur additional costs to do so from the requirement that such margin be in allocated form, ICE Clear Europe believes that such costs would be appropriate in light of the requirements of the EMIR RTS. ICE Clear Europe does not believe the amendments would otherwise affect the ability to market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate 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 have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 (<https://www.sec.gov/rules/sro.shtml>) or
- Send an email to rule-comments@sec.gov. Please include file number SR-ICEEU-2023-013 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-2023-013. This file number should be included on the subject line if email 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 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 am and 3

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>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ICEEU-2023-013 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

J. Matthew DeLesDernier,

Deputy Secretary.

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¹³ 17 CFR 200.30-3(a)(12).