



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98072; File No. SR-ICEEU-2023-017]

### **Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments Part O of its Delivery Procedures**

August 7, 2023.

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 July 26, 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 primarily 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)(4)(ii) thereunder,<sup>4</sup> 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 Part O of its Delivery Procedures<sup>5</sup> (for Financials and Softs Cocoa Contracts) to provide for use of a new Softs Delivery Platform, make certain changes to the delivery

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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)(4)(ii).

<sup>5</sup> 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.

timetable and delivery documentation, and address certain matters relating to allocation and the conversion of lots.

## **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 amend Part O of its Delivery Procedures to amend certain delivery specifications for ICE Futures Europe Financials and Softs Cocoa Futures Contracts ("Cocoa Contracts") to reflect the implementation of a new Softs Deliveries Platform to be used for deliveries under the Contract. A conforming change would also be made in the introductory section of the Delivery Procedures. Certain other provisions in Part O relating to the delivery timetable and allocation and conversion of lots would also be amended, as described herein, in connection with the implementation of the Softs Delivery Platform.

In the General Provisions section of the Delivery Procedures, in paragraph 21, references to the new Softs Delivery Platform as the electronic system used for making and taking delivery under cocoa contracts would be added (alongside the existing Guardian system, which will continue to be used for deliveries under coffee contracts). The amendments would also remove an incorrect reference to bonds (for which neither Guardian nor the new Softs Delivery Platform is used).

The proposed amendments in Part O of the Delivery Procedures would replace relevant references to the Guardian delivery system throughout Part O with the new Softs Delivery Platform and otherwise remove references to the Guardian delivery system, such that transfers of warrants would be made through the Softs Delivery Platform and applicable delivery notices and other specified delivery documentation relevant to Sellers and Buyers would be provided or made available through the Softs Delivery Platform.

Procedures for allocations of cocoa, including notifications and reports relating to allocations would be reorganized and consolidated into a single provision for simplicity and clarity. As proposed to be revised, reports relating to allocation details would be made available to both Sellers and Buyers through the Clearing House MFT system.

The amendments also update the content of reports made available to Seller and Buyer to remove general references to “delivery details” throughout Part O, as the relevant information is provided in the specific referenced reports provided through the Softs Delivery Platform. The names of certain reports would also be updated throughout Part O, specifically with references to final account sale reports changed to account sale reports and references to final invoice reports changed to Buyers invoice reports.

The timing for certain notifications related to the conversion of lots would be moved from by 16:00 LPT (in the case of certain directions by the Clearing House) and after 16:00 LPT (in the case of the availability of conversion details for Sellers), to after 10:00 LPT in both scenarios. The amendments would also remove an incorrect reference about converting bulk delivery units into large delivery units. The amendments would change the system used to send Sellers and Buyers information relating to LDU Conversion Notices from Guardian to MFT. With respect to certain notices to be provided by Sellers in response to a direction by the Clearing House to convert bulk or large delivery units, references to the use of Guardian (or a successor system) would be removed as unnecessary in light of the introduction of the Softs Delivery Platform. In

the provisions relating to BDU conversion notices, the reference in the left column to “Extension to Conversion” would be deleted, as it is not necessary and does not relate to the 16:00 deadline.

The amendments also update the summary of required delivery documentation. Specifically, amendments would clarify that invoices and account sales statements would be provided through MFT. References to provisional invoices in the case of conversion would be removed as unnecessary in light of other reports made available to Buyer and Sellers. A reference to warrant delivery instructions report would be removed as outdated in light of the manner in which delivery is made under the contract.

(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 Act<sup>6</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>7</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 proposed changes to the Delivery Procedures are designed to revise ICE Clear Europe’s delivery arrangements relating to Cocoa Contracts to reflect the implementation and use of the new Softs Delivery Platform for delivery under such contracts. As part of the implementation of the Softs Delivery Platform, the delivery timetable and provisions relating to allocation and conversion of lots would be amended for clarity, to update the

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<sup>6</sup> 15 U.S.C. 78q-1.

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

systems used for notice and to remove unnecessary provisions. Notably, the amendments would replace references to use of existing Guardian system with references to use of the Softs Delivery Platform or MFT system, as appropriate. In connection with the implementation of the Softs Delivery Platform, the amendments revise and simplify the process for allocations and conversion of lots by the Clearing House and certain related delivery notification and delivery documentation requirements. The contracts will otherwise continue to be cleared by ICE Clear Europe in the same manner as they are currently. In ICE Clear Europe's view, the amendments are thus consistent with the prompt and accurate clearance and settlement of cleared contracts and the protection of investors and the public interest. (ICE Clear Europe would not expect the amendments to affect the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible). Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).<sup>8</sup>

In addition, Rule 17Ad-22(e)(10)<sup>9</sup> requires that each covered clearing agency "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 clarify the delivery specifications for Cocoa Contracts to reference the new Softs Delivery Platform. The amendments would also make consistent with the new Softs Delivery Platform certain obligations of the Clearing House and Buyers and Sellers in the delivery process, including with respect to allocations and conversions and related notifications. The amendments would not otherwise change the manner in which the contracts are cleared

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<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 17 C.F.R. 240.17Ad-22(e)(10).

or in which delivery is made, as supported by ICE Clear Europe's existing financial resources, risk management, systems and operational arrangements. The amendments thus clarify the role and responsibilities of the Clearing House and Clearing Members with respect to delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad-22(e)(10).<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 being adopted to update and clarify the delivery specifications in the Delivery Procedures in connection with Cocoa Contracts, principally with respect to the use of the Softs Delivery Platform. ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise impact competition among Clearing Members or other market participants or limit market participants' choices for selecting clearing services. Accordingly, ICE Clear Europe does not believe the amendments would impose any burden on competition not necessary or 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 amendments 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.

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<sup>10</sup> 17 C.F.R. 240.17Ad-22(e)(10).

### **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 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-2023-017 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-2023-017. 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

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

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

(<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>.

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-2023-017 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.<sup>13</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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