

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98331; File No. 4-809)

September 8, 2023

Notice of Filing and Request for Comment on ICE Clear Europe Limited's Request to Withdraw from Registration as a Clearing Agency

I. Introduction

Pursuant to Section 19(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ on August 10, 2023, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) a written request (the “Written Request”)² to withdraw from registration as a clearing agency under Section 17A of the Exchange Act.³ The Commission is publishing this notice to solicit comments from interested persons concerning ICE Clear Europe’s Written Request.

II. Description

The statements in this Item II concerning the background of ICE Clear Europe’s request for withdrawal from registration as a clearing agency and its reasons for making the request have been submitted by ICE Clear Europe in its Written Request. ICE Clear Europe is registered with the Commission as a clearing agency under Section 17A of the Exchange Act.⁴ In its Written Request, ICE Clear Europe represents that it intends to terminate its credit default swap clearing business as of October 27, 2023 and, on that basis, seeks to withdraw its registration as a clearing

¹ 15 U.S.C. 78s(a)(3).

² See Letter from Hester Serafini, President, ICEEU, to Vanessa Countryman, Secretary, Securities and Exchange Commission (dated August 10 2023).

³ 15 U.S.C. 78q-1.

⁴ 15 U.S.C. 78q-1.

agency pursuant to Section 19(a)(3) of the Act on that date or as soon thereafter as is practicable.⁵

A. Background

ICE Clear Europe states in the Written Request that it is a clearing agency registered with the Commission that is based in London, United Kingdom (“UK”) and incorporated as a private limited company under English law.⁶ ICE Clear Europe is an indirect wholly owned subsidiary of Intercontinental Exchange, Inc (“ICE”). ICE Clear Europe provides clearing and settlement services for two primary categories of derivative contracts: (1) exchange-traded futures and options contracts traded on the ICE Futures Europe, ICE Futures U.S., ICE Endex, and ICE Futures Abu Dhabi markets (the “F&O Business”); and (2) over-the-counter index and single-name credit default swap (“CDS”) contracts (the “CDS Business”).

In addition to its registration as a clearing agency under the Act, ICE Clear Europe further states in the Written Request that it is: authorized as a recognized clearing house under UK law;⁷ recognized as a third-country central counterparty under the European Market Infrastructure Regulation;⁸ registered as a derivatives clearing organization (“DCO”) under the Commodity Exchange Act;⁹ recognized as a foreign central counterparty under the Swiss

⁵ See 15 U.S.C. 78s(a)(3).

⁶ “Clearing agency” is defined in Section 3(a)(23)(A) of the Act as, in relevant part, “any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.” 15 U.S.C. 78c(a)(23)(A).

⁷ See UK Financial Services and Markets Act of 2000 c. 8, available at <https://www.legislation.gov.uk/ukpga/2000/8/contents>.

⁸ See Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

⁹ See 7 U.S.C. 7a-1.

Financial Market Infrastructure Act;¹⁰ and recognized as a remote clearing house in the Abu Dhabi Global Market.¹¹

In addition, on July 23, 2009, the Commission granted ICE Clear Europe a temporary conditional exemption from the requirement to register as a clearing agency under Section 17A of the Act solely to perform the functions of a clearing agency for “Cleared CDS.”¹²

Section 763(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”)¹³ added Section 17A(l) to the Exchange Act,¹⁴ which provides, in relevant part, that a DCO registered with the CFTC that is required to register under Section 17A is deemed to be registered under Section 17A solely for the purpose of clearing SBS to the extent that, before the date of enactment of Section 17A(l), the DCO cleared swaps pursuant to an exemption from registration as a clearing agency. Pursuant to Section 17A(l) of the Act,¹⁵ ICE Clear Europe was deemed registered as a clearing agency for the purpose of clearing security-based swaps, specifically single-name CDS.¹⁶ Effective July 16, 2011, ICE Clear Europe

¹⁰ See Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 19 June 2015.

¹¹ See Abu Dhabi Global Market Financial Services and Markets Regulations 2015, available at <https://en.adgm.thomsonreuters.com/rulebook/financial-services-and-markets-regulations-2015-0>.

¹² See Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request on Behalf of Ice Clear Europe Limited Related to Central Clearing of Credit Default Swaps, and Request for Comments, Securities Exchange Act Release No. 60372 (July, 23, 2009), 74 FR 37748 (July 29, 2009) (“Original Registration Exemption”). The Original Registration Exemption was extended on November 29, 2010. Order Extending Temporary Conditional Exemptions Under The Securities Exchange Act of 1934 in Connection with Request on Behalf of Ice Clear Europe, Limited Related to Central Clearing of Credit Default Swaps and Request for Comment, Securities Exchange Act Release No. 63389 (Nov. 29, 2010), 75 FR 75520 (Dec. 3, 2010).

¹³ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

¹⁴ 15 U.S.C. 78q-1(1).

¹⁵ Section 17A(l) of the Act was added by Section 763(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

¹⁶ See Amendment to Rule Filing Requirements for Dually-Registered Clearing Agencies, Securities Exchange Act Release No. 69284, 78 FR 21046, 21047 & n.20 (Apr. 9, 2013) (File No. S7-29-11). ICE Clear Europe does not clear security-based swaps other than single-name CDS.

became a registered clearing agency for purposes of clearing single-name CDS.¹⁷ ICE Clear Europe constitutes a “covered clearing agency” for purposes of Commission Rule 17Ad-22.¹⁸

Subsequently, in connection with the proposed merger of ICE Clear Europe’s indirect parent company, Intercontinental Exchange, Inc., and NYSE Euronext, ICE Clear Europe requested from the Commission an exemption from clearing agency registration under Section 17A(b) of the Act and Rule 17Ab2-1 thereunder in connection with ICE Clear Europe’s clearing of certain futures and options contracts on underlying U.S. equity securities, which contracts were traded on the LIFFE Administration and Management Market (and subsequently have been traded on the ICE Futures Europe market), as part of ICE Clear Europe’s F&O Business.¹⁹ By order dated June 27, 2013, the Commission granted ICE Clear Europe’s request (the “Securities Product Exemption”).²⁰ ICE Clear Europe states that activity is unrelated to ICE Clear Europe’s CDS Business.

B. Planned Termination of the CDS Business

As it has publicly announced, ICE Clear Europe has determined to cease acting as a clearing agency for all classes of CDS contracts, thus terminating its CDS Business in its entirety.²¹ ICE Clear Europe Clearing Rules provide a procedure for the termination of clearing services in this product category and set out the rights and obligations of Clearing Members and

¹⁷ *See id.*

¹⁸ *See* Definition of “Covered Clearing Agency,” Securities Exchange Act Release No. 88616, 85 FR 28853, 28855 n.21 (May 14, 2020) (File No. S7-23-16).

¹⁹ *See* Order Pursuant to Section 17A of the Securities Exchange Act of 1934 Granting Exemption from the Clearing Agency Registration Requirement Under Section 17A(b) of the Exchange Act for ICE Clear Europe Limited in Connection with its Proposal to Clear Contracts Traded on the LIFFE Administration and Management Market, Exchange Act Release No. 69872 (June 27, 2013), 78 FR 40220 (July 3, 2013).

²⁰ *Id.*

²¹ Cessation of Clearing of CDS Contracts, Circular C22/076 (June 30, 2022), available at https://www.theice.com/publicdocs/clear_europe/circulars/C22076.pdf.

ICE Clear Europe in connection with the termination, including ICE Clear Europe's obligation to provide advance notice of the termination by Circular.²²

By Circular, ICE Clear Europe has designated October 27, 2023 as the date on which it will terminate all services related to its CDS Business.²³ This date is defined in ICE Clear Europe's Rule 101 as the "Withdrawal Date."²⁴ CDS Clearing Members are required under ICE Clear Europe's Rules to use reasonable endeavors to close out all of their open cleared CDS positions by that date.²⁵ Furthermore, until the Withdrawal Date, CDS Clearing Members are only permitted to submit for clearing new CDS transactions for risk reducing purposes.²⁶ If a CDS Clearing Member has complied with its obligations to close out all of its cleared CDS positions at ICE Clear Europe by the Withdrawal Date, the "Termination Date" for that member's CDS clearing membership under ICE Clear Europe's Rules will occur as soon as practicable thereafter.²⁷ To the extent any CDS Clearing Member has not closed out all of its own cleared CDS positions by the Withdrawal Date, ICE Clear Europe has the authority under

²² See, e.g., ICE Clear Europe Rule 105. Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the "ICE Clear Europe Rules"). In its rules, ICE Clear Europe defines the term "Circular" to mean a publication issued by ICE Clear Europe for the attention of all Clearing Members and posted on ICE Clear Europe's website in accordance with ICE Clear Europe's Rule 109(g).

²³ See ICE Clear Europe, Circular C22/109, Cessations of clearing of CDS Contracts: Postponement of Withdrawal Date (dated Sep. 26, 2022), available at https://www.theice.com/publicdocs/clear_europe/circulars/C22109.pdf.

²⁴ Under ICE Clear Europe Rule 105(c), the Withdrawal Date, or October 27, 2023, will also be the "Termination Close-Out Deadline Date" and the "Termination Date" (i.e., the date on which a CDS Clearing Member's membership as such terminates) as those terms are defined in ICE Clear Europe Rule 101 and used in ICE Clear Europe Rule 918.

²⁵ See ICE Clear Europe Rules 105(c), 209(b), and 918(a)(i). As discussed in Circular C22/076, ICE Clear Europe will, upon request of a CDS Clearing Member, facilitate the termination and reestablishment of positions at another clearing house.

²⁶ See ICE Clear Europe Rules 105(c), 209(b), and 918(a)(iii).

²⁷ The occurrence of the Termination Date for a CDS Clearing Member has a number of consequences under the Rules, including that the CDS Clearing Member is not responsible for replenishment of the CDS Guaranty Fund in respect of Events of Default with respect to other CDS Clearing Members occurring after such date. See ICE Clear Europe Rule 918(d).

ICE Clear Europe's Rules to terminate and cash settle those contracts²⁸ and represents in the Written Request that it would expect to do so at that time. Following termination of all CDS positions, ICE Clear Europe's Rules require ICE Clear Europe to calculate a final settlement amount for each CDS Clearing Member reflecting any net amount due to or from the CDS Clearing Member.

ICE Clear Europe states that, as a result of these provisions, effective as of the Withdrawal Date, it will cease to clear any CDS contracts, no additional CDS contracts will be accepted for clearing, and all outstanding CDS transactions will be terminated. Thus, as of the Withdrawal Date, ICE Clear Europe's CDS Business will be terminated. Both ICE Clear Europe and CDS Clearing Members will be obligated to satisfy any respective final settlement amount arising from such termination, including with respect to any final fees and interest payments (for the October 2023 period). ICE Clear Europe represents in the Written Request that the termination of the CDS Business will have no effect on the F&O Business, and that Clearing Members that are both F&O Clearing Members and CDS Clearing Members will continue in their capacities as F&O Clearing Members after the Withdrawal Date.

C. Request for Withdrawal of Clearing Agency Registration

ICE Clear Europe represents in the Written Request that, upon termination of the CDS Business on the Withdrawal Date as described above, ICE Clear Europe would no longer be engaged in any clearing agency activity relating to security-based swaps. As a result, ICE Clear Europe would no longer be required to be registered as a clearing agency under Section 17A of the Act. Accordingly, ICE Clear Europe requests withdrawal of its registration as of the Withdrawal Date, or as soon as practicable thereafter.

²⁸ See ICE Clear Europe Rule 105(b).

In support of this request, ICE Clear Europe represents as follows:

1. ICE Clear Europe has notified its CDS Clearing Members, by Circular, that under ICE Clear Europe Rule 105 they are obligated to use reasonable endeavors to close out all open positions in CDS Contracts by the Withdrawal Date of October 27, 2023.
2. At end-of-day (18:00 London time) on October 26, 2023, ICE Clear Europe will be permanently closed for CDS trade submission. Accordingly, effective as of the Withdrawal Date, ICE Clear Europe will no longer accept any CDS Contracts for clearing, and all open positions in CDS Contracts will have been closed out by the CDS Clearing Members holding the positions. To the extent any CDS Clearing Member has not completed the closing out of any open CDS positions as of the Withdrawal Date, ICE Clear Europe will be entitled and expects, pursuant to ICE Clear Europe Rule 105(b), to terminate and cash settle such positions. As a result, all liabilities in respect of the close out and/or termination of any open positions in CDS Contracts will be finally determined by end-of-day (18:00 London time) on the Withdrawal Date.²⁹
3. Accordingly, effective as of the Withdrawal Date, ICE Clear Europe will no longer be performing any activities of a clearing agency with respect to security-based swaps that would require registration under the Act.

²⁹ ICE Clear Europe states in its request letter that, if there were to be an Event of Default with respect to a CDS Clearing Member at or prior to the Withdrawal Date, other CDS Clearing Members would remain liable with respect to losses arising therefrom, to the extent provided in ICE Clear Europe's Rules, through application of their CDS Guaranty Fund Contributions and obligations to pay assessments as necessary. Under ICE Clear Europe Rule 105(a), ICE Clear Europe could also elect to further delay the Withdrawal Date until the completion of the CDS default management process. In such case, ICE Clear Europe would similarly expect to delay its withdrawal from clearing agency registration until the completion of the default management process.

4. On the next business day following the Withdrawal Date (i.e., October 30, 2023), any remaining Margin or Permitted Cover held by ICE Clear Europe in respect of CDS Contracts will be available to CDS Clearing Members for withdrawal in accordance with standard ICE Clear Europe procedures, either through “auto-release” under ICE Clear Europe’s banking system or as instructed by the relevant CDS Clearing Member. On that same day (i.e., October 30, 2023), a new Guaranty Fund Period for the CDS Guaranty Fund will start. ICE Clear Europe will set the required CDS Guaranty Fund Contribution to “zero” and notify CDS Clearing Members in accordance with ICE Clear Europe Rule 1102 by end-of-day that same day (i.e., 18:00 London Time on October 30, 2023). The next day, on October 31, 2023, the CDS Guaranty Fund Contributions of CDS Clearing Members will be available for withdrawal in accordance with standard ICE Clear Europe procedures, either through “auto-release” under ICE Clear Europe’s banking system or as instructed by the relevant CDS Clearing Member.
5. On the following Monday, November 6, 2023, ICE Clear Europe will follow its business-as-usual established processes for clearing membership terminations to calculate a final settlement amount reflecting any remaining net amount owed to or by each CDS Clearing Member, including with respect to any final fees and interest payments for the October 2023 period. Any such final amounts will be settled by 09:00 London time on November 7, 2023.
6. ICE Clear Europe, based on the above, believes that all known claims of ICE Clear Europe and CDS Clearing Members relating to the CDS Business will have been determined and settled as of the Withdrawal Date or, if any claims are not

yet settled as of the Withdrawal Date, they will be settled on November 7, 2023 pursuant to its business-as-usual established processes described above. Based on ICE Clear Europe's Rules, ICE Clear Europe expects that claims against it in respect of the CDS clearing business would be limited to those of CDS Clearing Members arising in connection with cleared CDS contracts. Accordingly, once such contracts are terminated and finally settled in accordance with ICE Clear Europe's Rules as described above, and the Margin, Permitted Cover, and CDS Guaranty Fund Contributions of CDS Clearing Members are made available for withdrawal as described above, ICE Clear Europe does not anticipate that there would be any further claims of CDS Clearing Members in respect of the CDS clearing business. ICE Clear Europe further does not believe other persons would have claims against it in respect of cleared CDS contracts³⁰ and that it has no other known or anticipated claims by or against it that are associated with its CDS Business or clearing agency registration. However, to the extent any valid claims relating to the CDS business may nonetheless be brought against it in the five years following withdrawal from registration (or such longer period as may be required by law), ICE Clear Europe—which will remain a going concern—would expect to pay such claims in the ordinary course of its operations. Finally, ICE Clear Europe will maintain records necessary to evaluate and address any contingent or other claims that be brought against it after withdrawal of its registration, for the period and in the manner discussed in point 7 below.

³⁰ See, e.g., ICE Clear Europe Rule 111(f).

7. ICE Clear Europe will retain and maintain all documents, books, and records, including correspondence, memoranda, papers, notices, accounts, and other records made or received by it in the ordinary course of its CDS Business and its activities as a registered clearing agency, in accordance with the requirements of Exchange Act Rule 17a-1(a) and (b),³¹ for a period of at least five years from the effective date of the withdrawal of registration. ICE Clear Europe further will produce such records and furnish such information at the request of any representative of the Commission, in accordance with Exchange Act Rule 17a-1(c).³²
8. Following the effectiveness of its withdrawal from registration hereunder, ICE Clear Europe will not seek to engage in securities clearing activity relating to security-based swaps in reliance on any deemed registered status pursuant to Section 17A(l) of the Act. ICE Clear Europe notes that its affiliate, ICE Clear Credit LLC, will continue to clear security-based swaps as a registered clearing agency. If other affiliates of ICE Clear Europe seek to clear security-based swaps or other securities products in a manner that requires registration with the Commission under the Act, such affiliate would do so after registration with the Commission pursuant to the process set forth in Exchange Act Rule 17Ab2-1.³³

ICE Clear Europe therefore requests that the Commission issue an order, pursuant to Section 19(a)(3) of the Act,³⁴ that its registration as a clearing agency under Section 17A of the

³¹ 17 CFR 240.17a-1(a) and (b).

³² *See also* 17 CFR 240.17a-1(c).

³³ 17 CFR 240.17Ab2-1.

³⁴ 15 U.S.C. 78s(a)(3).

Act³⁵ with respect to security-based swaps be withdrawn as of the Withdrawal Date of October 27, 2023, or as soon as practicable thereafter.

In the Written Request, ICE Clear Europe also requests that, effective as of the withdrawal of its registration hereunder, the Securities Product Exemption be withdrawn. As noted above, ICE Clear Europe requested, and the Commission granted, the Securities Product Exemption in light of the combination of security-based swap clearing activity and securities option clearing activity contemplated by ICE Clear Europe at the time. ICE Clear Europe represents in the Written Request that, upon cessation of security-based swap clearing activity and withdrawal of its clearing agency registration, ICE Clear Europe will fall within the category of foreign clearing agencies for which registration (or an exemption) is not required due to its lack of contact with the U.S.³⁶ Accordingly, in ICE Clear Europe's view, the Securities Product Exemption will not be necessary for ICE Clear Europe's continued operation of the F&O clearing service following withdrawal of its clearing agency registration. As a result, ICE Clear Europe requests that the Commission terminate the Securities Product Exemption at the same time it approves ICE Clear Europe's request to withdraw from registration as a clearing agency.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the requested withdrawal is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments:

³⁵ 15 U.S.C. 78q-1.

³⁶ In the Written Request, ICE Clear Europe represents that it does not currently clear any equity options on U.S. securities or single stock futures on U.S. securities. ICE Clear Europe further represents that ICE Clear Europe Rule 207(g) is intended to comprehensively exclude U.S. person Clearing Members for the purpose of clearing contracts that are futures or options on underlying U.S. securities.

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>), or
- Send an e-mail to rule-comments@sec.gov. Please include File No. 4-809 on the subject line.

Paper Comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549-1090.

All submissions should refer to File Number 4-809. 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>). Comments are also 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 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room.

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 4-809 and should be submitted on or before [insert date 21 days from publication in the *Federal Register*].

By the Commission.

Sherry R. Haywood,

Assistant Secretary.