

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-98337; File No. SR-ICEEU-2023-020)

September 8, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to Recovery Plan

I. Introduction

On July 10, 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”),<sup>1</sup> and Rule 19b-4,<sup>2</sup> a proposed rule change to amend its Recovery Plan (the “Plan”). The proposed rule change was published for comment in the Federal Register on July 26, 2023.<sup>3</sup> 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

A. 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 security-based swaps, ICE Clear Europe maintains the Plan.<sup>4</sup> The Plan provides the relevant information, the steps to take, and the options available to restore ICE Clear Europe to normal operation and recover in the

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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> Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to Recovery Plan, Exchange Act Release No. 97955 (July 20, 2023); 88 FR 48273 (July 26, 2023) (SR-ICEEU-2023-020) (“Notice”).

<sup>4</sup> Capitalized terms not otherwise defined herein have the meanings assigned to them in the Plan or the ICE Clear Europe Clearing Rules.

event of severe financial stress and losses. The Plan describes, among other things, the following information: (i) ICE Clear Europe’s critical services, service providers, and interdependencies; (ii) scenarios in which ICE Clear Europe may need to use the Plan, triggers for invoking the Plan in those scenarios, and early indicators of those scenarios; (iii) options for recovering from severe financial stress and losses; and (iv) decision-making, governance, and communications processes relevant to ICE Clear Europe’s recovery.

The proposed rule change would make various updates and amendments to the Plan. ICE Clear Europe is making these changes to implement the results of internal and external reviews of the Plan. These changes are described below according to the section of the Plan in which they appear.

A. Section 1, Executive Summary

Section 1 summarizes the Plan. Among other things, Section 1 gives an overview of (i) ICE Clear Europe’s options for recovery as well as (ii) how it governs, tests, and reviews the Plan.

*Options for Recovery*

ICE Clear Europe’s options for recovery include tools that it could use to recover losses, such as powers of assessment,<sup>5</sup> reduced gains distribution,<sup>6</sup> and partial tear-ups.<sup>7</sup> Currently, the Plan also lists as a recovery option ICE Clear Europe’s Capital Replenishment Framework. The

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<sup>5</sup> Following the default of a Clearing Member, and if certain other conditions are satisfied, ICE Clear Europe Rule 909 allows ICE Clear Europe to assess Clearing Members for additional amounts as needed to resolve any shortfall resulting from the default.

<sup>6</sup> Following the default of a Clearing Member, and if certain other conditions are satisfied, ICE Clear Europe Rule 914 allows ICE Clear Europe to reduce variation margin payments, as needed to retain cash and resolve any shortfall resulting from the default.

<sup>7</sup> Following the default of a Clearing Member, and if certain other conditions are satisfied, ICE Clear Europe Rule 915 allows ICE Clear Europe to terminate open contracts that offset the defaulting Clearing Member’s open contracts.

proposed rule change would keep the reference to capital replenishment, but would rename it as the Capital Replenishment Plan, instead of Framework. ICE Clear Europe is making this particular change because it changed the name of the Capital Replenishment Framework to the Capital Replenishment Plan.<sup>8</sup>

Section 1 of the Plan also describes the coverage of ICE Clear Europe’s recovery options. Section 1 explains why ICE Clear Europe would be able to fully cover default losses, liquidity shortfalls, and investment losses, should it need to do so. With respect to default losses in particular, the Plan currently explains that with the use of partial tear-ups, ICE Clear Europe can eliminate variation margin obligations by, in effect, cancelling any remaining positions, and therefore default losses can be fully covered. The proposed rule change would keep this explanation, but it would delete the statement, “Therefore default losses can be fully covered.” ICE Clear Europe is deleting this statement because it believes the statement is redundant considering the overall explanation that ICE Clear Europe would be able to fully cover default losses.<sup>9</sup>

Similar to the description of partial tear-ups, Section 1 of the Plan also describes the coverage of ICE Clear Europe’s powers of assessment. The Plan currently explains that under powers of assessment for its Futures and Options clearing service, ICE Clear Europe would have sufficient capital to cover all Clearing Members defaulting simultaneously under extreme but plausible market scenarios, meaning the maximum exposures from all Clearing Members with same directional positions defaulting simultaneously. Moreover, for its Credit Default Swap

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<sup>8</sup> See Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the Capital Replenishment Plan, Exchange Act Release No. 97018 (Mar. 2, 2023); 88 FR 14412 (Mar. 8, 2023) (SR-ICEEU-2022-027).

<sup>9</sup> Notice, 88 FR at 48273.

clearing service, the Plan currently describes the scenario in which ICE Clear Europe would exhaust its prefunded resources and powers of assessment.

The proposed rule change would delete this description of ICE Clear Europe’s powers of assessment and replace it with a more concise explanation. The revised description would state that, under ICE Clear Europe’s powers of assessment, it can immediately recover losses that exceed the pre-funded resources to cover the default of the largest Clearing Members under extreme but plausible stress scenarios because ICE Clear Europe has the authority to collect resources from non-defaulting Clearing Members intraday and in cash. The revised description also would explain that ICE Clear Europe can confirm the capacity of its powers of assessment using reverse stress testing. Although the proposed rule change would not amend ICE Clear Europe’s powers of assessment, ICE Clear Europe does not believe it is necessary to specify the expected coverage of assessment powers in the Plan.<sup>10</sup>

*Governance, Testing, and Review*

As mentioned above, Section 1 also provides an overview of how ICE Clear Europe governs, tests, and reviews the Plan. With respect to governance under the existing Plan, ICE Clear Europe’s President must attempt to convene the ICE Clear Europe Board for approval in advance of making each material decision under the Plan. If the Board cannot be convened in advance of making the decision, however, it must be convened afterwards. The proposed rule change would clarify that the Board must be convened afterwards “as soon as reasonably possible” and updated on steps taken.

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<sup>10</sup> Notice, 88 FR at 48273.

Section 1 currently explains that in exercising its options under the Plan, ICE Clear Europe does not need the approval of Clearing Members or any other external stakeholders. The proposed rule change would maintain this statement but would add a further caveat to explain that ICE Clear Europe would seek to communicate its plans and/or intentions to relevant external stakeholders where possible, and as soon as reasonably practicable, to ensure appropriate transparency.

Section 1 also explains how ICE Clear Europe conducts testing of the Plan. Currently, Section 1 states that the Plan is tested annually through a tabletop exercise. The proposed rule change would amend this description to provide that the Plan is tested at least annually. Moreover, the proposed rule change would delete the phrase “tabletop exercise” and replace it with a more detailed description of how ICE Clear Europe would test the Plan. Specifically, ICE Clear Europe would test at least one default and one non-default scenario each year, with all recovery options tested over a three-year cycle. ICE Clear Europe’s Executive Risk Committee would approve the testing schedule and review the results of the testing. ICE Clear Europe’s testing strategy would use tabletop exercises, including simulated tabletop exercises where possible.

Moreover, Section 1 currently provides that where appropriate, elements of the Plan are included in ICE Clear Europe’s annual default fire drills. The proposed rule change would retain this statement but would add further description of the elements that ICE Clear Europe could test in the fire drills. Specifically, ICE Clear Europe could test default-related recovery scenarios, including coordination with other covered clearing agencies.

Section 1 currently provides that a key focus of the annual test of the Plan is to work through specific scenarios as they might develop and to consider, among other things, how ICE

Clear Europe would implement recovery options and which communication pathways it would use. The proposed rule change would retain this description but would revise it slightly. Under the proposed rule change, ICE Clear Europe would consider which communication and governance pathways to use, instead of just communication pathways. Moreover, the proposed rule change would add another consideration: whether all services can continue to be provided, including those provided to affiliates.

Finally, Section 1 currently includes a statement that ICE Clear Europe will review the Plan after each test. The proposed rule change would retain this statement but would further add that any proposed changes would follow the relevant governance schedule for the Plan.

**B. Section 2, Critical Services, Service Providers, and Interdependencies**

Section 2 of the Plan describes (i) ICE Clear Europe's Critical Services; (ii) entities that rely on ICE Clear Europe's Critical Services; (iii) providers of services to ICE Clear Europe; (iv) how ICE Clear Europe mitigates its dependencies on these service providers; (v) ICE Clear Europe's technology infrastructure that supports its Critical Services; (vi) and interdependencies between ICE Clear Europe and other entities in the financial markets.

*Critical Services*

The Plan currently identifies three services as ICE Clear Europe's Critical Services: (i) futures and options clearing; (ii) credit-default swap clearing; and (iii) treasury and banking services. The proposed rule change would not alter this description, but it would add further explanation of the meaning of the term "Critical Services." Specifically, the proposed rule change would add a footnote to explain that "Critical Services" are defined at the highest level for the purposes of the Plan and should not be confused with "Important Business Services," which form part of the Operational Resilience framework and are defined within the Operational Risk and Resilience Policy.

Moreover, the proposed rule change would revise a description of the products that ICE Clear Europe clears. Currently, Section 2 provides that ICE Clear Europe clears certain financial instruments including CDS instruments, futures contracts, and options on futures contracts. The proposed rule change would revise the description of the last category, from options on futures contracts to just options contracts.

Finally, Section 2 currently contains a table that identifies the markets and exchanges for each of ICE Clear Europe's Critical Services. For example, futures and options clearing applies to contracts on soft commodities and covers exchanges such as ICE Futures Europe and ICE Futures US. The proposed rule change would update the names of the exchanges in this table, changing ICE Futures US to ICE Futures US (Energy Division). The proposed rule change also would add ICE Futures Abu Dhabi to the list of exchanges.

#### *Entities that Rely on Critical Services*

Section 2 describes in further detail how market participants and exchanges depend on ICE Clear Europe's Critical Services. For example, if ICE Clear Europe were unable to provide its Critical Services, market participants would be unable to manage their positions with ICE Clear Europe. Moreover, the Plan notes that in stressed market conditions, when Clearing Members themselves may already be under additional financial stress, actions that ICE Clear Europe takes to recover from losses may increase the stresses on Clearing Members' capital and liquidity resources. Given that, the Plan currently states that capital and liquidity impacts on market participants (including Clearing Members and their clients) would be taken into account when assessing which recovery options to use. The proposed rule change would maintain this provision but would add a caveat that impacts on market participants would be taken into account as far as reasonably possible when assessing which recovery options to use.

### *Service Providers*

Section 2 further describes the entities upon which ICE Clear Europe relies when providing its Critical Services. ICE Clear Europe relies on both affiliates and third parties when providing its Critical Services. For example, ICE Clear Europe relies on third-party banks in providing its treasury and banking services, and it relies on affiliates, such as other ICE Clearing Houses and Exchanges, for settlement prices and intraday margin collection. With respect to services provided by ICE affiliates, the Plan currently states that these services are contractually governed by master outsourcing agreements. The proposed rule change would revise the name of these agreements to inter-company service agreements.

Section 2 currently contains a table that lists categories of service providers, identifies the Critical Services they support, and describes the services that they provide. This table currently identifies investment agents as supporting treasury and banking services. The proposed rule change would expand this category to include both investment agents and repo counterparties. The proposed rule change also would add another category to the table to cover default brokers. Default brokers support all three of ICE Clear Europe's Critical Services. Default brokers do so by hedging the positions of a defaulting Clearing Member and liquidating the defaulter's non-cash collateral.

### *Mitigation*

Section 2 next describes how ICE Clear Europe mitigates its dependencies on these service providers. ICE Clear Europe mitigates its dependencies with three mechanisms: (i) using multiple service providers, so it is not overly dependent on one provider alone; (ii) engaging with service providers who place high levels of importance on continuity of operations through multiple levels of resilience; and (iii) ensuring its contracts with providers do not have provisions



that allow the providers to alter or terminate the contracts when ICE Clear Europe is under financial stress. With respect to the first point, the proposed rule change would maintain the current provision found in the Plan but would add further explanation as to how ICE Clear Europe confirms it is using multiple service providers. ICE Clear Europe would regularly test its assumptions regarding multiple providers as part of its operational resilience framework.

On the second point, resilience within providers, the proposed rule change would add a similar explanation. ICE Clear Europe would conduct regular testing of its assumptions regarding resilience within services providers as part of its operational resilience framework.

With respect to the third point, contractual provisions, the proposed rule change would amend the description of this mechanism. Currently, the Plan provides that ICE Clear Europe ensures that its contracts with services providers have appropriate termination periods and do not include covenants, material adverse change clauses, or other provisions that would permit service providers to alter or terminate the contracts if it were under financial stress. The proposed rule change would revise this slightly to state that ICE Clear Europe ensures that its contracts do not include covenants, material adverse change clauses, or other provisions that would permit service providers to unduly alter or terminate the contracts. Moreover, the Plan currently provides that ICE Clear Europe has analyzed its contracts in the context of the Plan and has not found any issues that would impact the Critical Services in recovery. The proposed rule change would revise this slightly to state that ICE Clear Europe periodically analyzes the relevant contracts in the context of the Plan (and any other relevant factors).

Section 2 also describes ICE Clear Europe's dependencies on particular service providers. Specifically, the Plan describes ICE Clear Europe's particular dependencies with

respect to custodians, physical delivery agents, ICE's exchanges, ICE's other clearing houses, and ICE's technology and operations groups.

In the description of dependencies on custodians, the proposed rule change would revise a reference to the Business Continuity and Disaster Recovery plans to be a general reference to ICE Clear Europe's operational resilience plans.

In the description of ICE Clear Europe's dependencies on physical delivery agents, the Plan currently provides that if there were a significant issue with a Physical Delivery Agent that could not be resolved then ICE Clear Europe could fall back to financial settlement, and therefore it does not ultimately have a dependency on physical delivery agents. The proposed rule change would retain the statement that ICE Clear Europe could fallback to financial settlement but would delete the statement that ICE Clear Europe does not ultimately have a dependency on physical delivery agents. Instead, the proposed rule change would add a statement that ICE Clear Europe for certain markets at this time, regularly tests its ability to perform the functions usually performed by those delivery agents itself under certain disruption scenarios. ICE Clear Europe is making this change to recognize that despite the mitigation of financial settlement, its relationship with physical delivery agents could still be considered a dependency.

With respect to dependencies on ICE's Exchanges, the Plan currently provides that ICE Clear Europe's dependency on ICE's Exchanges for the provision of settlement prices is mitigated through its ability under to generate its own settlement prices if needed, and therefore ICE Clear Europe does not ultimately have a dependency on ICE's Exchanges. The proposed rule change would delete the statement that ICE Clear Europe does not ultimately have a dependency on ICE's Exchanges. Instead, the proposed rule change would add that ICE Clear

Europe's dependencies are mitigated via the ICE Exchanges' own resilience testing. Like the dependency on physical delivery agents, ICE Clear Europe is making this change to recognize that despite the mitigation of generating its own settlement prices, its relationship with ICE's Exchanges could still be considered a dependency.

With respect to dependencies on ICE's Clearing Houses, the Plan currently provides that ICE Clear Europe's dependency on ICE's Clearing Houses for operational or risk processes is mitigated through ICE Clear Europe's ability to run the processes itself, if needed, and therefore ICE Clear Europe does not ultimately have a dependency on ICE's Clearing Houses. The proposed rule change would delete the statement that ICE Clear Europe does not ultimately have a dependency on ICE's Clearing Houses. Instead, the proposed rule change would explain that the processes in question are generally the processes that ICE Clear Europe does already perform during business as usual London hours (such as intraday margin calls), which therefore validates the assumption that ICE Clear Europe can run the processes itself, if needed.

With respect to dependencies on ICE's technology and operations groups, the Plan notes that ICE Clear Europe relies on these groups for certain operational processes and for technology infrastructure. Moreover, the Plan provides that ICE Clear Europe's dependency is mitigated through its ability to run the processes itself, if needed. The proposed rule change would add language to note that ICE Clear Europe periodically tests its ability to run the processes itself as part of its operational resilience framework.

Finally, the Plan identifies certain service providers that ICE Clear Europe does not depend on. Section currently provides the following types of service providers are not considered as dependencies for ICE Clear Europe: Investment Agents, APS Banks, Central Banks, Data Providers. Section 2 provides that these service providers are not dependencies because ICE

Clear Europe would be able to substitute the providers as needed. The proposed rule change would delete this provision. ICE Clear Europe is making this particular change to recognize that despite being able to substitute these providers, its relationship with these providers could still be considered a dependency.<sup>11</sup>

### *Technology Infrastructure*

Section 2 also contains a table that describes ICE Clear Europe's technology systems that support its Critical Services. The table identifies and describes each system, identifies which Critical Service it supports, and the entity that provides the system. The proposed rule change would maintain this table largely as it is currently written in the Plan. In certain entries, the proposed rule change would clarify that a specific system relates to either credit-default swap trades or futures and options trades.

After the table, Section 2 describes how ICE Clear Europe mitigates the risks associated with its dependency on these technology systems. For example, the Plan states that ICE Clear Europe ensures that systems are run with multiple live redundancies and there are in place effective business continuity and disaster recovery arrangements. The proposed rule change would revise the description of these mitigation techniques. For example, in addition to ensuring that systems are run with multiple live redundancies, ICE Clear Europe would test these redundancies periodically. Further, the proposed rule change would, going forward, refer to business continuity and disaster recovery arrangements as operational resilience arrangements. Finally, the proposed rule change would note that, given these technology systems are provided

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<sup>11</sup> Notice, 88 FR at 48274.

by ICE Inc. or ICE Clear Credit, ICE Clear Europe is a direct participant in defining and ensuring operational and regulatory requirements are met when new capabilities are developed.

### *Interdependencies*

Finally, Section 2 describes the interdependencies between ICE Clear Europe and other financial market infrastructures. For example, the Plan states that some of ICE Clear Europe's Clearing Members are participants in other central counterparties. While ICE Clear Europe does not provide interoperability with other central counterparties, default of a Clearing Member at ICE Clear Europe may cause the Clearing Member to default at another central counterparty, and vice versa. The proposed rule change would maintain this description but would add explanation regarding ICE Clear Europe's interdependencies with other ICE, Inc. affiliates. Specifically, ICE Clear Europe provides certain intercompany services to certain affiliates within the ICE group and operates on the assumption that those services will continue to be provided during execution of the Plan. Because the services in question are typically operational or almost fully automated, ICE Clear Europe anticipates having relevant resources available outside of those required for recovery activities to continue the intercompany services. For those services that are not automated, and therefore do require ICE Clear Europe resources even under business-as-usual circumstances, ICE Clear Europe has, and periodically tests, backup arrangements.

### C. Section 3, Recovery Scenarios, Triggers, and Early Warning Indicators

Section 3 of the Plan describes the scenarios where ICE Clear Europe is likely to invoke the Plan and triggers for when ICE Clear Europe would invoke the Plan in those scenarios, as well as early warning indicators of when those scenarios might occur.

### *Recovery Scenarios and Triggers*

Currently the Plan describes two scenarios that could lead to recovery (each a "Recovery Scenario"): (i) losses caused by a defaulting Clearing Member and (ii) all other non-default

losses caused by investments, operational incidents, or other business activities. The trigger for the default loss scenario is when ICE Clear Europe's Guaranty Fund is or is likely to be exhausted and there are still losses to cover. The trigger for the non-default loss scenario is when ICE Clear Europe's Base Capital is or is likely to be breached.

The proposed rule change would retain this description but would add explanation with respect to the trigger for the second scenario. The Plan would be triggered in the non-default loss scenario when ICE Clear Europe's Base Capital is or is likely to be breached by holding insufficient EMIR eligible capital.

Section 3 also explains the distinction between business-as-usual risk management and recovery under the Plan. Business-as-usual risk management options, such as the default waterfall, are designed to incentivize effective risk management and participation from Clearing Members and ICE Clear Europe, to maximize the likelihood that losses are managed through business-as-usual processes.

ICE Clear Europe invokes the Plan when it has been unable to cover its losses using business-as-usual risk management. In an appendix to the Plan, ICE Clear Europe describes certain scenarios that would stress its financial and operational resources and analyzes how these stress scenarios could become Recovery Scenarios (in other words, when such stress scenarios could lead ICE Clear Europe to invoke the Plan). The proposed rule change would add a statement to explain that with respect to these scenarios analyzed in Appendix A, each scenario is mapped to key risks contained within ICE Clear Europe's risk appetite statements, ensuring that each key risk type is covered within those scenarios. Also in this section, the proposed rule change would add a footnote to clarify that ICE Clear Europe's Guaranty Fund contribution is otherwise known as "Skin in the Game."

Finally, Section 3 explains the distinction between ICE Clear Europe's management of operational risks and recovery under the Plan. ICE Clear Europe has established Business Continuity and Disaster Recovery Plans, which it uses to manage service issues caused by operational or technology problems. Such an operational or technological scenario could still trigger the Plan if it causes ICE Clear Europe to hit the non-default loss trigger. As discussed above, the Plan is triggered in the non-default loss scenario when ICE Clear Europe's Base Capital is or is likely to be breached by holding insufficient EMIR eligible capital.

The proposed rule change would update this description. For example, it would add references to ICE Clear Europe's operational resilience framework. The proposed rule change also would add references to ICE Clear Europe's incident management processes, which are part of its operational resilience framework.

#### *Early Warning Indicators*

Section 3 also describes certain early warning indicators. These are qualitative and quantitative metrics that ICE Clear Europe monitors to determine if it might hit the recovery triggers. These indicators are categorized according to whether they relate to the default loss or non-default loss scenarios discussed above.

For the default loss trigger, the early warning indicators are the default management information which is produced if a counterparty is potentially going to be called into default. For example, ICE Clear Europe would consider the size of a Clearing Member's positions, its collateral, and market volatility. The proposed rule change would revise this description slightly to state that the early warning is default management information that is produced if a counterparty is potentially going to fail to meet an obligation and may therefore be called into default.

For the non-default loss trigger, ICE Clear Europe monitors its eligible capital against certain target thresholds each day, as an early warning indicator. The proposed rule change would revise this description slightly. The revised language would explain that, in that in order to identify warning indicators for non-default loss scenarios as early as possible, ICE Clear Europe monitors its eligible capital against target thresholds and the continued suitability of the target thresholds each day.

#### D. Section 4, Recovery Options

Section 4 of the Plan describes and analyzes the tools that ICE Clear Europe could use to recover from losses. The Plan refers to these tools as ICE Clear Europe's Recovery Options. ICE Clear Europe's Recovery Options include, among others, powers of assessment, reduced gains distribution, and allocation of investment losses.

Section 4 of the Plan currently describes these tools in detail, and the proposed rule change would make minor updates to this description. For example, the Plan currently states that ICE Clear Europe can call any amount of assessments up to the maximums and can call assessments multiple times. The proposed rule change would maintain this description but would add a phrase to clarify that if ICE Clear Europe were to call assessments multiple times, it would do so in accordance with the Rules. The proposed rule change also would correct a reference to the Capital Replenishment Framework, changing the name of that document to the Capital Replenishment Plan. In Section 4, the proposed rule change also would delete language that references Appendix A to the Plan. Appendix A to the Plan is a chart showing ICE Clear Europe's committee structure. As discussed further below, the proposed rule change would delete this Appendix A. Accordingly, the proposed rule change would remove a reference to Appendix A that is currently found in Section 4. Finally, the proposed rule change would delete a reference stating that ICE Clear Europe is responsible for the first \$90 million of investment



losses. This figure is no longer correct, and the amount is subject to change, so ICE Clear Europe believes it should not be set out in the Plan.<sup>12</sup>

Section 4 of the Plan also describes how ICE Clear Europe's Recovery Options are comprehensive and effective. For example, Section 4 currently states that using partial tear-ups, ICE Clear Europe can eliminate any remaining Variation Margin and mark-to-market payment obligations by cancelling any remaining positions. The proposed rule change would delete this description from Section 4 because this language is identical to, and therefore duplicative of, language found in Section 1.

Finally, Section 4 contains a table that lays out all of ICE Clear Europe's Recovery Options, the scope of those Recovery Options, and some decision-making considerations associated with them. In the portion of the table describing the scope of powers of assessment, the proposed rule change would delete a statement that powers of assessment are potentially able to cover all Clearing Members defaulting simultaneously. As discussed above, ICE Clear Europe is making this change because it does not think the Plan should specify the expected coverage of assessment.<sup>13</sup> Finally, in the portion of the table discussing capital replenishment, the proposed rule change would add, as a decision-making consideration, timing and ability of future profits to replenish capital.

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<sup>12</sup> Notice, 88 FR at 48273. ICE Clear Europe recently adopted a new framework for allocating non-default losses generally and modified its liability with respect to investment losses. For more information, see Self-Regulatory Organizations; ICE Clear Europe Limited; Order Granted Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 and Amendment No. 2, to the ICE Clear Europe Clearing Rules Relating to Non-Default Losses, Exchange Act Release No. 98071 (Aug. 7, 2023); 88 FR 54690 (Aug. 11, 2023) (SR-ICEEU-2023-010).

<sup>13</sup> Notice, 88 FR at 48273.

E. Section 5, Decision-making, Governance, and Communications

Section 5 describes the decision-making, governance, and communications process related to the Plan. Generally, when taking actions related to the Plan, ICE Clear Europe's President will attempt to convene the Board for approval in advance of making each material decision provided the Board can be convened in a timely manner. If the Board cannot be convened in advance, then it will be convened afterwards. The proposed rule change would maintain this provision but would explain that if the Board cannot be convened in advance, then it will be convened afterwards as soon as reasonably possible and updated on steps taken.

Moreover, Section 5 currently states that exercising options under the Plan does not require the approval of Clearing Members, Exchanges, or any other external stakeholders. The proposed rule change would maintain this provision largely as is but would change the word "exercising" to "implementing." Similarly, the proposed rule change would change the word "exercising" to "implementing" in another part of Section 5 concerning communication with regulators.

Section 5 also describes how ICE Clear Europe will communicate and coordinate with external stakeholders when taking actions under the Plan. Currently, the Plan provides that ICE Clear Europe's overall communication and coordination objectives in recovery are to (i) provide Clearing Members, regulators, and the wider market with timely and accurate information and (ii) ensure effective coordination and escalation across affiliated ICE exchanges, clearing houses, and other financial market intermediaries. The Plan further provides that ICE Clear Europe manages this communication and coordination by using its Crisis Communication and Management Plan and Major Incident Response Plan. The proposed rule change would maintain these provisions but would change the Crisis Communication and Management Plan to the Communications Plan (or CP) and the Major Incident Response Plan to the Crisis Management

Plan (or CMP). In other parts of Section 5, the proposed rule change similarly would update the name of each plan to the Communications Plan / CP and the Crisis Management Plan / CMP, respectively. Finally, the proposed rule change would add language that notes that the CP and CMP should be consulted when using the Plan.

Section 5 contains a table that describes certain personnel at ICE Clear Europe and their responsibilities with respect to communicating with stakeholders. For example, ICE Clear Europe's Head of Regulation and Compliance and President both serve as a regulatory liaison, responsible for communicating with, and giving status updates to, ICE Clear Europe's regulators. The proposed rule change would update the responsibilities associated with certain personnel at ICE Clear Europe. For example, ICE Clear Europe's Communications Department, along with the Board of Directors, is currently responsible for discussion and approval of decisions. The proposed rule change would replace Communications Department here with ICE Clear Europe's President. The proposed rule change also would remove the Communications Department from the list of ICE Clear Europe departments that are responsible for operational coordination during recovery. The proposed rule change would add ICE Clear Europe's President and Head of Corporate Development to the list of ICE Clear Europe departments that are responsible for giving status updates to ICE Group. In the list of ICE Clear Europe departments that are responsible for communicating with Clearing Members and Customers, the proposed rule change would replace ICE Clear Europe's Exchange Heads of Sales with its President.

Finally, throughout Section 5, the proposed rule change would replace references to "bridge calls" with references to "conference calls."

#### F. Section 6, Recovery Playbook

Section 6 of the Plan is a recovery playbook. Section 6 describes how ICE Clear Europe might use the Plan, including how ICE Clear Europe might incur losses and the steps it would

take in response to those losses. Section 6 provides this information for both the default loss and non-default loss Recovery Scenarios.

In this section the proposed rule change would make updates and amendments like those discussed above. Specifically, the proposed rule change would update the name of the Capital Replenishment Framework to the Capital Replenishment Plan or CRP. The proposed rule change also would update the name of the Crisis Communications and Management Plan to the Communications Plan / CP and the Major Incident Response Plan to the Crisis Management Plan / CMP, in accordance with the changes discuss above.

The proposed rule change also would revise certain responsibilities of ICE Clear Europe's President. Section 6 describes a number of responsibilities and actions required of ICE Clear Europe's President under the Plan. For example, Section 6 notes that the President, together with the Default Management Committee, must assess whether default losses are, or are likely to, exhaust ICE Clear Europe's Guaranty Fund. Similarly, the President must consult with the Board for their approval of the decision to trigger the Plan, provided they can be convened on a timely basis. Given these responsibilities assigned to the President, the proposed rule change would add a general caveat at the beginning of Section 6 that would apply where the President is unavailable or incapacitated. In that situation, ICE Clear Europe would refer to its Delegation of Authority Framework to determine if another person at ICE Clear Europe could substitute for the President.

The proposed rule change also would clarify when the President would take certain steps under the Plan. For example, the Plan currently provides that if the Board cannot be convened on a timely basis, then the President will decide on whether to trigger the Plan and will convene the Board afterwards. The proposed rule change would maintain this requirement but would add a

note to the effect that the President will convene the Board as soon as reasonably possible and update the Board on steps taken. The proposed rule change would add this same explanation to the requirement that if the Board cannot be convened on a timely basis, then the President will decide on which Recovery Options to use and convene the Board afterwards.

The proposed rule change would make similar amendments to certain responsibilities of ICE Clear Europe generally, rather than the President in particular. Section 6 of the Plan currently requires that ICE Clear Europe inform its regulators as to its intention to trigger the Plan and the reasons for triggering, provided that the regulators can be contacted on a timely basis. If its regulators cannot be contacted on a timely basis, then the President will proceed with triggering the Plan. The proposed rule change would maintain this requirement but would add a note that notification to regulators will take place as soon as reasonably possibly thereafter. The proposed rule change would add this same explanation to the requirement that ICE Clear Europe inform its regulators as to its intended use of Recovery Options. In that case, if ICE Clear Europe cannot contact its regulators on a timely basis, then the President will proceed with the chosen Recovery Options, and notification to regulators will take place as soon as reasonably possibly thereafter.

Finally, the proposed rule change would update the description of the non-default loss scenario that is currently found in Section 6. Currently Section 6 describes a non-default loss scenario as significant financial loss that has occurred, or is about to occur, that does not involve the default of any Clearing Members. The proposed rule change would update this description to a significant financial losses that has occurred, or is about to occur, that is not caused by the default of any Clearing Members. Moreover, the Plan currently provides that if a non-default loss event has occurred, then the President, together with the Executive Risk Committee, will assess

whether there are, or are likely to be losses that breach ICE Clear Europe's Base Capital, and this assessment will be based on ICE Clear Europe's Regulatory Capital metrics. The proposed rule change would update this slightly. Under the proposed rule change, the President, together with the Executive Risk Committee, will assess whether there are, or are likely to be losses that breach ICE Clear Europe's Base Capital by holding insufficient EMIR eligible capital. In addition, this assessment will be based on relevant management information generally, rather than ICE Clear Europe's Regulatory Capital metrics specifically.

#### G. Section 7

Section 7 of the Plan describes certain key limitations and assumptions associated with the Plan. In Section 7 the proposed rule change would make a minor typographical change and would change a reference to the Capital Replenishment Framework to the Capital Replenishment Plan, or CRP.

#### H. New Section 8, Document Governance and Exception Handling

The proposed rule change would add Section 8 to the Plan. Section 8 would be titled Document Governance and Exception Handling. Under this section, the owner of the Plan would be responsible for ensuring that the Plan remains up-to-date and is reviewed in accordance with ICE Clear Europe's governance processes. Such reviews would encompass, at a minimum, regulatory compliance; documentation and purpose; implementation; use; and open items from previous validations or reviews (where appropriate). The results of the review, including any findings, would be reported to ICE Clear Europe's Executive Risk Committee along with the priority of findings, proposed remediations and target due date to remediate the findings.

The document owner also would be responsible for reporting material breaches or unapproved deviations from the Plan to their Head of Department, the Chief Risk Officer, and the Head of Regulation and Compliance (or, as applicable, their respective delegates). Those

individuals together would determine if further escalation should be made to relevant senior executives, the Board, and/or competent authorities.

Finally, under Section 8, exceptions to the Plan would be approved in accordance with ICE Clear Europe's governance process for the approval of changes, and changes to the Plan would have to be approved in accordance with ICE Clear Europe's governance process. Such changes only would take effect after completion of all necessary internal and regulatory approvals.

#### I. Appendices

The Plan currently has two appendices. Appendix A is a depiction of ICE Clear Europe's governance structure. The Board of Directors is at the top, followed by Board-level governance committees, and then executive-level governance committees. The proposed rule change would delete Appendix A. ICE Clear Europe believes the committee structure is fully defined in other documentation and does not need to be included in the Plan.<sup>14</sup>

Appendix B is a table that describes certain scenarios that could lead ICE Clear Europe to invoking the Plan. Appendix B describes these scenarios as "stress scenarios." The table contains entries for eleven different stress scenarios, with three related to losses stemming from a Clearing Member's default and eight related to non-default losses. For each scenario, the table summarizes the circumstances leading to losses at ICE Clear Europe, analyzes how such a scenario could trigger the Plan and thus become a Recovery Scenario, and explains how ICE Clear Europe would use the Plan to respond to the scenario. The proposed rule change would maintain the substance of this table while making minor updates to the language. For example,

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<sup>14</sup> Notice, 88 FR at 48274.

the proposed rule change would change the title of the first column to “Scenario Category (Key Risk).” The proposed rule change also would change the title of the last column to “Scenario Analysis” from just “Analysis.”

With respect to each of the scenarios, the proposed rule change would specify which key risk the scenario relates to. For example, the proposed rule change would specify that each of the default loss scenarios relates to financial risk, while the non-default loss scenarios relate to legal, regulatory, operational, information security, and business risk, respectively. ICE Clear Europe is making this change to identify each scenario with the key risks contained within its risk appetite statements, thus ensuring that each key risk type is covered within those scenarios. This is consistent with the change to Section 3 described above.

Finally, the proposed rule change would make a minor typographical correction in one part of the table, by deleting certain duplicative words.

### 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.<sup>15</sup> For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,<sup>16</sup> Rule 17Ad-22(e)(2)(i) and (v), and Rule 17Ad-22(e)(3)(ii) thereunder.<sup>17</sup>

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<sup>15</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>17</sup> 17 CFR 240.17Ad-22(e)(2)(i), (v), and (3)(ii).



A. 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.<sup>18</sup> As discussed above, the proposed rule change would amend various sections of the Plan, as well as adding a new Section 8 to the Plan. The Commission believes the proposed rule change would help to improve the governance and communication of actions taken under the Plan; improve testing of the Plan; ensure that information found in the Plan is accurate and current; and make the Plan more concise. Based on its review of the record, and for the reasons discussed below, the Commission therefore believes the proposed rule change would be consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions.

With respect to the governance and communication of actions taken under the Plan, among other things, the proposed rule change would clarify that where the President cannot convene the Board in advance of making a material decision, the Board will be convened afterwards. The proposed rule change also would specify that where the Board cannot be convened on a timely basis prior to deciding which Recovery Options to use, the President will decide on which Recovery Options to use and convene the Board afterwards. With respect to communications, the proposed rule change would, among other things, explain that ICE Clear Europe would seek to communicate its plans and/or intentions to relevant external stakeholders where possible, and as soon as reasonably practicable, to ensure appropriate transparency. The proposed rule change also would require that ICE Clear Europe notify its regulators as soon as

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<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

reasonably possibly after triggering the Plan and using Recovery Options. The Commission believes that the proposed rule change therefore would help to ensure that ICE Clear Europe's Board is fully apprised of actions taken under the Plan and further that ICE Clear Europe communicates its actions to regulators and other external stakeholders.

The proposed rule change also would amend ICE Clear Europe's testing of the plan, as found in Section 1. Under the proposed rule change, ICE Clear Europe could test default-related recovery scenarios, including coordination with other covered clearing agencies, as part of its annual default fire drill. The proposed rule change also would require that ICE Clear Europe specifically test at least one default and one non-default scenario each year, with all recovery options tested over a three-year cycle. Moreover, the proposed rule change would add, as a key focus for testing, whether all services can continue to be provided, including those provided to affiliates. The Commission believes the proposed rule change therefore would improve testing of the plan and help ensure that ICE Clear Europe tests the plan in its entirety over a three-year cycle. The Commission further believes that testing of the plan can reveal potential errors and other issues, and therefore can help ICE Clear Europe to resolve potential problems prior to entering a Recovery Scenario or engaging its recovery options.

The Commission believes that other changes discussed above would help ensure that information found in the Plan is accurate and current. Among other things, the proposed rule change would correct typographical errors, thereby improving the accuracy of the information found in the Plan. The proposed rule change also would delete internal references to Appendix A because ICE Clear Europe is deleting that appendix. The proposed rule change would remove references to the amount of ICE Clear Europe's liability for investment losses, given that ICE Clear Europe recently changed that amount and the amount is subject to further change. The

proposed rule change would update the name of the Capital Replenishment Framework to the Capital Replenishment Plan, the Crisis Communication and Management Plan to the Communications Plan, the Major Incident Response Plan to the Crisis Management Plan, and references to business continuity and disaster recovery to operational resilience. The proposed rule change also would update the description of ICE Clear Europe's critical service providers, ICE Clear Europe's dependencies on these providers, and its mitigation of these dependencies. Finally, the proposed rule change would update the description of Recovery Scenarios, the early warning indicators of those scenarios, and note that each scenario is mapped to key risks contained within ICE Clear Europe's risk appetite statements. The Commission believes that these proposed changes would help ensuring those utilizing the Plan have information necessary to carry out recovery. The Commission therefore believes that the proposed rule change would strengthen the Plan by ensuring those utilizing it have information necessary to carry out recovery, which in turn should help ICE Clear Europe to continue promptly and accurately clearing and settling transactions during recovery.

The Commission believes that the proposed rule change also would help make the Plan more concise. For example, the proposed rule change would delete from Section 4 a description of how ICE Clear Europe's Recovery Options are comprehensive and effective because this description duplicates language already found in Section 1. The proposed rule change similarly would remove discussion of the expected coverage of partial tear-ups and powers of assessment. The proposed rule change also would remove Appendix A, given that ICE Clear Europe's committee structure is defined in other documentation and does not need to be included in the Plan. The Commission therefore believes that the proposed rule change, by making the Plan more concise, should improve the usability and readability of the Plan.

Thus, the Commission believes the proposed rule change would strengthen the Plan. Improving governance and communication of actions should help ensure that internal and external stakeholders are fully apprised of actions ICE Clear Europe takes during recovery, therefore enabling these stakeholders to assist in carrying out the actions or otherwise prepare for them. Requiring ICE Clear Europe to test on a three-year cycle should help reveal any potential deficiencies in the Plan ahead of when ICE Clear Europe would need to use it. Updating information should help ensure those utilizing the Plan have current information necessary to carry out recovery. Finally, making the plan more concise should make it easier and more efficient to use, by removing unnecessary or repetitive information. Overall, the Commission believes that the proposed rule change would strengthen the Plan and that in doing so, the proposed rule change should help ICE Clear Europe to continue promptly and accurately clearing and settling transactions during recovery.

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>19</sup>

B. Consistency with Rule 17Ad-22(e)(2)(i) and (v) under the Act

Rule 17Ad-22(e)(2)(i) and (v) require that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide governance arrangements that, among other things, are clear and transparent and specify clear and direct lines of responsibility.<sup>20</sup>

As discussed above, the proposed rule change would add a new Section 8 regarding document governance. Among other things, Section 8 would make the document owner

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<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>20</sup> 17 CFR 240.17Ad-22(e)(2)(i) and (v).

responsible for ensuring that the Plan remains up-to-date and is reviewed in accordance with ICE Clear Europe's governance processes. The document owner also would be responsible for reporting material breaches or unapproved deviations from the Plan to their Head of Department, the Chief Risk Officer, and the Head of Regulation and Compliance (or, as applicable, their respective delegates). The Commission believes these changes would establish clear and direct responsibilities for the document owner of the Plan consistent with Rule 17Ad-22(e)(2)(v).<sup>21</sup>

The proposed rule change also would add language to clarify what would happen where the ICE Clear Europe President is unavailable or incapacitated. In that situation, ICE Clear Europe would refer to its Delegation of Authority Framework to determine if another person at ICE Clear Europe could substitute for the President. This is an important clarification because, as discussed above, the President is responsible for significant actions under the Plan, such as making material decisions and triggering the Plan. The Commission believes that specifying what ICE Clear Europe would do when the President is incapacitated would therefore help clarify how ICE Clear Europe would use the Plan in such a situation, consistent with Rule 17Ad-22(e)(2)(i).<sup>22</sup>

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

Rule 17Ad-22(e)(3)(ii) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to 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 plans for the recovery and orderly wind-down of ICE Clear Europe

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<sup>21</sup> 17 CFR 240.17Ad-22(e)(2)(v).

<sup>22</sup> 17 CFR 240.17Ad-22(e)(2)(i).

necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.<sup>23</sup>

The Commission believes the proposed change rule, as described above, would strengthen the Plan by adding details regarding the governance and communication processes associated with the Plan. The proposed rule change also would establish a three-year cycle for testing the Plan, update information in the Plan, and otherwise make the Plan more concise. The Commission believes that the proposed rule change, in strengthening the Plan, overall would help ICE Clear Europe to maintain a plan for recovery, consistent with Rule 17Ad-22(e)(3)(ii).<sup>24</sup>

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<sup>23</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>24</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

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,<sup>25</sup> Rule 17Ad-22(e)(2)(i) and (v), and Rule 17Ad-22(e)(3)(ii).<sup>26</sup>

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>27</sup> that the proposed rule change (SR-ICEEU-2023-020), be, and hereby is, approved.<sup>28</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

*Sherry R. Haywood,*

**Assistant Secretary.**

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<sup>25</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>26</sup> 17 CFR 240.17Ad-22(e)(2)(i), (v), and (3)(ii).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 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).

<sup>29</sup> 17 CFR 200.30-3(a)(12).