

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83651; File Nos. SR-ICEEU-2017-016 and SR-ICEEU-2017-017)

July 17, 2018

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Changes Related to the ICE Clear Europe Recovery and Wind-Down Plans

I. Introduction

On December 29, 2017, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule changes related to its Recovery Plan and Wind-Down Plan. The proposed rule changes were published for comment in the Federal Register on January 19, 2018.<sup>3</sup> On February 27, 2018, the Commission designated a longer period for Commission action on the proposed rule changes.<sup>4</sup> On April 17, 2018, the Commission instituted proceedings under Section 19(b)(2)(B)<sup>5</sup> of the Exchange Act to determine whether to approve or disapprove the proposed rule changes.<sup>6</sup> The Commission did not receive

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Exchange Act Release No. 82496 (Jan. 12, 2018), 83 FR 2855 (Jan. 19, 2018) (SR-ICEEU-2017-016) (“Recovery Plan Notice”); Exchange Act Release No. 82497 (Jan. 12, 2018), 83 FR 2847 (Jan. 19, 2018) (SR-ICEEU-2017-017) (“Wind-Down Plan Notice”).

<sup>4</sup> Exchange Act Release No. 82786 (Feb. 27, 2018), 83 FR 9345 (Mar. 5, 2018) (SR-ICEEU-2017-016); Exchange Act Release No. 82782 (Feb. 27, 2018), 83 FR 9351 (Mar. 5, 2018) (SR-ICEEU-2017-017).

<sup>5</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> Exchange Act Release No. 83055 (Apr. 17, 2018), 83 FR 17575 (Apr. 20, 2018) (SR-ICEEU-2017-016 and SR-ICEEU-2017-017).

comments regarding the proposed rule changes. For the reasons discussed below, the Commission is approving the proposed rule changes.

## II. Description of the Proposed Rule Changes

As a “covered clearing agency,”<sup>7</sup> ICE Clear Europe is required to, among other things, “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 the covered clearing agency, which . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.”<sup>8</sup> The Commission has previously clarified that it believes that such recovery and wind-down plans are “rules” within the meaning of Exchange Act Section 19(b) and Rule 19b-4 thereunder because such plans would constitute changes to a stated policy, practice, or interpretation of a covered clearing agency.<sup>9</sup> Accordingly, a covered clearing agency, such as ICE Clear Europe, is required to file its plans for recovery and orderly wind-down with the Commission.

---

<sup>7</sup> The term “covered clearing agency” is defined in Rule 17Ad-22(a)(5), 17 CFR 240.17Ad-22(a)(5).

<sup>8</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>9</sup> Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sep. 28, 2016), 81 FR 70786, 70809 (Oct. 13, 2016) (“CCA Standards Adopting Release”).

A. Recovery Plan (ICEEU-2017-016)<sup>10</sup>

ICE Clear Europe's Recovery Plan, among other things, (a) identifies the critical services that ICE Clear Europe provides, (b) outlines a number of stress scenarios that may result in significant losses, a liquidity shortfall, suspension or failure of its critical services and related functions and systems, and damage to other market infrastructures, and (c) describes the recovery tools, mechanisms, and options that ICE Clear Europe may use to address a stress scenario and continue to provide its critical services.<sup>11</sup> The Recovery Plan also addresses the roles and responsibility of the ICE Clear Europe Board of Directors ("Board"), management, and other personnel, including with respect to development, review and approval, testing and maintenance, and liaison with relevant regulatory authorities. Notably, the Recovery Plan is based on, and intended to be consistent with, ICE Clear Europe's Clearing Rules ("Rules"), Procedures, and existing risk management frameworks, policies, and procedures.<sup>12</sup> The elements of the Recovery Plan are described in further detail below.

*Critical Services and Functions.* ICE Clear Europe determined that its futures and options ("F&O") and credit default swap ("CDS") product category clearing services, as

---

<sup>10</sup> The description of the Recovery Plan is substantially excerpted from the Recovery Plan Notice.

<sup>11</sup> In the Recovery Plan, ICE Clear Europe refers to its recovery tools, mechanisms, and options as "Recovery Options." The Commission has generally referred to these items as "recovery tools." See CCA Standards Adopting Release, 81 FR at 70810. For the purposes of this Order, the term "recovery tools" is used to refer to Recovery Options.

<sup>12</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

well as its related treasury and banking services, are critical services.<sup>13</sup> The Recovery Plan describes the methodology used by ICE Clear Europe to assess the criticality of services for the purpose of recovery planning.

ICE Clear Europe also identified its “front-end business functions” (i.e., those that are essential to the provision of its critical services) and the functions that support these critical services, including information technology services. Specifically, the Recovery Plan identifies the particular information technology systems and services used by ICE Clear Europe in providing its clearing services, including trade management systems, risk systems, and delivery systems. It also identifies the locations from which these services are provided and the party that provides the services, in cases where the services are provided by an affiliate or other third party. The Recovery Plan also identifies other key service providers on which ICE Clear Europe relies, including custodians, Concentration Banks, other approved payment banks, investment managers, and delivery services providers. Notably, the Recovery Plan considers the key services provided by ICE affiliates in support of ICE Clear Europe’s clearing activities, including information technology and risk management services.

*Stress Scenarios.* The Recovery Plan analyzes different stress scenarios that may affect ICE Clear Europe’s ability to continue to provide its critical services. The two categories of stress scenarios in the Recovery Plan are default losses and non-default losses. ICE Clear Europe considers default losses to be losses suffered by ICE Clear Europe as a result of the default of one or more Clearing Members, and it considers non-default losses

---

<sup>13</sup> The Commission’s analysis of the Recovery Plan is limited to the CDS clearing services provided by ICE Clear Europe, as the F&O clearing services are outside the Commission’s jurisdiction.

to be losses suffered by ICE Clear Europe from identified general business and operational risk events, investment losses, system outages, or world-wide or regional political or macroeconomic events. In both categories, ICE Clear Europe considers the effect of such losses on liquidity and the resulting risk of contagion.

ICE Clear Europe uses a risk-based approach to analyzing its scenarios, which consists of different impact categories and severity levels. The Recovery Plan contemplates that the range of responses to a loss scenario, including the potential recovery tools used, will depend on the severity level. A low severity loss event would involve limited or no use of recovery tools, while a severe loss scenario would require use of all available recovery tools.

*Recovery Tools.* The Recovery Plan identifies the likely recovery tools that ICE Clear Europe may implement depending upon the severity of the impact of the scenario at issue. The Recovery Plan is intended to be flexible and provide structure and guidance to management. It is not designed to be prescriptive, recognizing that the actions to be taken by ICE Clear Europe may vary depending on the circumstances which lead to the implementation of the Recovery Plan. The Recovery Plan outlines the situations and sequence in which each of the recovery tools is likely to be used, recognizing that ICE Clear Europe has discretion as to the particular actions to take in any particular loss scenarios. The Recovery Plan specifies the expected bases for using particular recovery tools. In general, ICE Clear Europe expects that the use of recovery tools will be in extreme circumstances where losses exceed its prefunded resources.

The Recovery Plan considers a non-exhaustive list of available recovery tools in terms of a number of factors, including the speed with which each tool can be implemented,

the impact of each tool on ICE Clear Europe, the impact of each tool on Clearing Members and their customers, and the effect of each tool on other market infrastructures. In general, for default losses arising in CDS clearing, the relevant recovery tools include, consistent with the Rules, (i) power of assessment, (ii) Default Auctions, (iii) forced allocation, and (iv) porting of client positions. The power of assessment would permit ICE Clear Europe to charge non-defaulting CDS Clearing Members up to one times the amount of their Guaranty Fund Contributions at the end of the waterfall of financial resources for a CDS Clearing Member Default.<sup>14</sup> A Default Auction would take place in accordance with the CDS Default Auction Procedures to remove a defaulting CDS Clearing Member's positions and with the goal of regaining a matched book.<sup>15</sup> To the extent the CDS Contracts of a defaulting CDS Clearing Member are not terminated, transferred, or closed out, ICE Clear Europe has the discretion to force allocation of those contracts by requiring the entry into new CDS Contracts between ICE Clear Europe and non-defaulting CDS Clearing Members.<sup>16</sup> For a CDS Clearing Member with client-related positions, ICE Clear Europe may transfer or port those positions to a non-defaulting CDS Clearing Member.<sup>17</sup>

For non-default losses, recovery tools include (i) emergency liquidity facilities, (ii) investment loss allocation to Clearing Members, and (iii) service closure. With respect to investment loss allocation, pursuant to its Rules, ICE Clear Europe generally would be responsible for the first \$90 million in investment losses, and any further investment losses

---

<sup>14</sup> See ICE Clear Europe Rules 908(c); 910.

<sup>15</sup> ICE Clear Europe Rules related to clearing member default generally discuss Default Auctions. See generally ICE Clear Europe Rules, Part 9.

<sup>16</sup> See ICE Clear Europe Rule 905(c).

<sup>17</sup> See ICE Clear Europe Rule 904.

would be mutualized among Clearing Members.<sup>18</sup> With respect to service closure, because ICE Clear Europe provides separate clearing services for two product categories, it considers the closure of one service, and continuation of the other, as a possible recovery scenario.<sup>19</sup>

The Recovery Plan specifies the decision-making process for the use of the recovery tools separately for default and non-default loss scenarios. In most cases, under the Rules and Procedures, the ICE Clear Europe President and Managing Director (“President”), pursuant to authority delegated by the Board, is responsible for such decisions. In the case of default events, the decision making would consider the advice of the Default Management Committee. In practice, the President, where appropriate and time permitting, would be expected to consult with the Board or with individual Board members before taking significant actions. The President may also call an emergency Board meeting or make Board members aware of the current position. The President will report decisions to the Board at the next formal Board meeting. If the President is absent, the ICE Clear Europe Chief Operating Officer will act in the President’s place.

The Recovery Plan also identifies early warning indicators and tools intended to notify ICE Clear Europe management that use of recovery tools may be required, and where possible, avoid the need for such actions. Such potential early warning indications of a potential loss scenario include repeated non-compliance by a Clearing Member with membership or other requirements, actions taken by regulators or other governmental

---

<sup>18</sup> See ICE Clear Europe Rule 919; see also Exchange Act Release 72551 (Jul. 8, 2014), 79 FR 40805 (Jul. 14, 2014) (SR-ICEEU-2014-06).

<sup>19</sup> By contrast, as described in the Wind-Down Plan Notice, ICE Clear Europe considers that a wind-down would result in the transfer or termination of both clearing services. See Wind-Down Plan Notice, 83 FR at 2847.

authorities with respect to a Clearing Member, certain quantitative factors, restructuring, and similar events. The Recovery Plan also identifies particular means of monitoring for potential loss scenarios following such indications. The tools to potentially avoid the need for such actions include liquidity forecasting and monitoring, use of a conservative approach to counterparty credit analyses and establishment of margin and Guaranty Fund requirements, use of comprehensive risk metrics to monitor Clearing Member financial performance, back-testing and stress testing, and other assessments.

*Governance.* The President is ultimately responsible for the Recovery Plan. The Recovery Plan was prepared with the active involvement of the management of ICE Clear Europe, and the Board has reviewed and approved the Recovery Plan. The ICE Clear Europe Head of Regulation is responsible for facilitating the overall production, implementation, and maintenance of the Recovery Plan. The ICE Clear Europe Board Audit Committee, Chief Risk Officer, Chief Operating Officer, and Executive Risk Committee also have roles in the implementation of the Recovery Plan.

Relevant business units are responsible for ensuring that the Recovery Plan remains up-to-date and reviewed in accordance with internal review and governance control arrangements. On an annual basis, the ICE Clear Europe Head of Regulation will revise the Recovery Plan. Material changes to the Recovery Plan must be reviewed by ICE Clear Europe management and be subject to appropriate governance. The Recovery Plan is subject to annual review by the Board Audit Committee and the Board. The scenarios and actions that support the Recovery Plan are subject to Board approval annually.

Ad hoc reviews of the Recovery Plan may be commissioned if the business materially changes, such as the introduction of a new service. Material changes to the



Recovery Plan or the scenarios, including those brought about by market events, are subject to Board approval, following their review and discussion by the Board Audit Committee.

Deviations from the Recovery Plan are required to be reported to the Board.

B. Wind-Down Plan (ICEEU-2017-017)<sup>20</sup>

ICE Clear Europe's Wind-Down Plan is intended to address scenarios in which ICE Clear Europe determines to wind-down, in an orderly fashion, its clearing services. The Wind-Down Plan is based on, and intended to be consistent with, the Rules and Procedures, as well as its existing risk management frameworks, policies, and procedures.

The Wind-Down Plan addresses three particular categories of scenarios in which wind-down may occur. First, in a non-insolvency scenario, the Board would voluntarily decide to wind-down the clearing business. For example, the Board may determine that ICE Clear Europe's business model has become unviable. Second, in an insolvency scenario not linked to a Clearing Member default, ICE Clear Europe would be wound down as a result of a severe loss unrelated to Clearing Member default that could not be addressed through the Recovery Plan or other means that permit continued operations. Third, in an insolvency scenario linked to a Clearing Member default, ICE Clear Europe would be wound down as a result of losses from the default of one or more Clearing Members that could not be addressed through the Recovery Plan or other means that permit continued operation, in accordance with relevant default rules.

The Wind-Down Plan identifies a variety of options for wind-down, depending on the scenario involved. In the case of an insolvency of ICE Clear Europe as a result of non-default losses, the Wind-Down Plan contemplates that all open contracts will be terminated

---

<sup>20</sup> The description of the Wind-Down Plan is substantially excerpted from the Wind-Down Plan Notice.

and net sums calculated to be payable to or from each Clearing Member for each account category.

For a voluntary wind-down or a wind-down following a Clearing Member default, the Wind-Down Plan contemplates that, for each product category, ICE Clear Europe will either transfer clearing to another clearing house or terminate clearing.<sup>21</sup> The ability to transfer clearing will depend on whether the relevant market and market participants desire, and are able, to continue trading and clearing of the relevant product through another clearing house, and on whether another clearing house can be found to take the product. Following the transfer and/or termination of clearing, ICE Clear Europe will wind-down the remaining aspects of its business and contractual relationships.

Once there is a possibility of wind-down, or the Board has agreed in principle to a wind-down, a Wind-Down Planning Committee, including senior management, would be established. The committee would be tasked with exploring with Clearing Members, exchanges, alternative clearing houses, and regulators the relevant approaches to wind-down, with a goal of minimizing adverse impact on Clearing Members. The Wind-Down Plan outlines a number of considerations for both termination and transfer options that the committee should consider. The committee would report to the Board. This consultation process is designed to reflect the fact that, in a wind-down situation, the Wind-Down Plan would likely be affected by numerous additional considerations and could require adjustment and modification to match specific circumstances.

---

<sup>21</sup> ICE Clear Europe can take different actions with respect to its two product categories, and in the event of a transfer, F&O clearing need not be transferred to the same clearing house as CDS clearing.

Any decision to wind-down is expected to be considered over a period of months. Such a decision would involve consultation with members, potential alternative clearing houses, exchanges, and regulators, and it would require Board approval. The Wind-Down Plan contemplates that a specific execution plan will be developed for any wind-down, based on the relevant situation.

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange 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 Exchange Act and the rules and regulations thereunder applicable to such organization.<sup>22</sup> For the reasons given below, the Commission finds that the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Exchange Act<sup>23</sup> and Rules 17Ad-22(e)(2), 17Ad-22(e)(3)(ii), and 17Ad-22(e)(15)(i)-(ii) thereunder.<sup>24</sup>

#### A. Consistency with Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange 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, as well as to assure the safeguarding of securities and funds

---

<sup>22</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>23</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>24</sup> 17 CFR 240.17Ad-22(e)(2); (e)(3)(ii); (e)(15)(i)-(ii).

which are in the custody or control of ICE Clear Europe or for which it is responsible, and, in general, to protect investors and the public interest.<sup>25</sup>

As described above, the Recovery Plan would identify the steps that ICE Clear Europe could take in recovery and the governance framework applicable to taking such steps. It would analyze the anticipated impact of the recovery tools, the incentives created by such tools, and the risks associated with using such tools. The Recovery Plan would also explain how the tools used in the plan are transparent, measurable, manageable, and controllable. The Commission believes that by identifying the steps ICE Clear Europe could take and the tools it would use to bring about recovery in the face of losses, the Recovery Plan would increase the likelihood that recovery would be orderly, efficient, and successful. By increasing the likelihood of an orderly, efficient, and successful recovery, the Commission believes that the Recovery Plan would enhance ICE Clear Europe's ability to maintain the continuity of its critical services (including its clearance of CDS transactions) during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting the prompt and accurate settlement of CDS transactions. The Commission also believes that the Recovery Plan would help assure the safeguarding of securities or funds in the custody or control of ICE Clear Europe by reducing the likelihood of a disorderly or unsuccessful recovery that could disrupt access to such securities or funds. For the same reason, the Commission believes the Recovery Plan would be consistent with the protection of investors and the public interest.

Similarly, the Commission believes that the Wind-Down Plan would enhance ICE Clear Europe's ability to promote the prompt and accurate clearance and settlement of

---

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

securities transactions and to safeguard securities and funds in its control by establishing a plan to effectuate an orderly wind-down. Specifically, the Wind-Down Plan's governance process and notice provisions would facilitate the orderly close-out of positions and potential transfer of positions to other clearing houses, which the Commission believes would enhance ICE Clear Europe's ability to maintain and continue the prompt and accurate clearance and settlement of CDS transactions by assuring that such transactions are closed-out and transferred to other clearing houses in an orderly and transparent manner. Moreover, by specifying in advance the steps ICE Clear Europe would take in a wind-down, the Wind-Down Plan would help assure an efficient and orderly wind-down of ICE Clear Europe. The Commission believes that this, in turn, would help assure the safeguarding of securities or funds in the custody or control of ICE Clear Europe by reducing the likelihood of an inefficient or disorderly wind-down, which could disrupt access to such securities or funds.

Therefore, the Commission finds that the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Exchange Act.<sup>26</sup>

B. Consistency with Rule 17Ad-22(e)(2)

Rule 17Ad-22(e)(2) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and support the public interest

---

<sup>26</sup> 15 U.S.C. 78q-1(b)(3)(F).

requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants.<sup>27</sup>

The Recovery Plan would identify clear lines of responsibility for its preparation and final approval. The Recovery Plan would also provide specificity and a sound process for receiving input from various parties at ICE Clear Europe. The Commission believes that these lines of control and the transparency about the implementation and preparation of the Recovery Plan will contribute to establishing, implementing, maintaining, and enforcing clear and transparent governance arrangements that support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants.

The Wind-Down Plan similarly would identify clear lines of responsibility for the invocation, monitoring, and approval of the Wind-Down Plan and, ultimately, a wind-down. It would enhance transparency as well by providing for communication to and consultation with Clearing Members and other users of ICE Clear Europe's services. The Commission believes that this aspect of the Wind-Down Plan would represent clear and transparent governance arrangements.

Therefore, the Commission finds that the proposed rule changes would establish clear and transparent governance arrangements for the Recovery Plan and the Wind-Down Plan, consistent with Rule 17Ad-22(e)(2).<sup>28</sup>

C. Consistency with Rule 17Ad-22(e)(3)(ii)

---

<sup>27</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>28</sup> 17 CFR 240.17Ad-22(e)(2).

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 necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.<sup>29</sup>

The information the Recovery Plan would provide about the steps that ICE Clear Europe would take, and the tools it would use, to effectuate a recovery of ICE Clear Europe would enhance ICE Clear Europe's ability to recover from credit losses, liquidity shortfalls, general business risk losses, or other losses, consistent with Rule 17Ad-22(e)(3)(ii).<sup>30</sup> Specifically, the Recovery Plan information would enable ICE Clear Europe to prepare in advance for and practice the use of such tools, which the Commission believes would enhance ICE Clear Europe's ability to use such tools effectively to carry-out a successful recovery. In addition, by establishing a single source of information about, and steps needed to effectuate, a recovery of ICE Clear Europe, the Recovery Plan would allow ICE Clear Europe personnel to effectuate a recovery in a consistent and coordinated fashion, which could thereby increase the likelihood of a successful recovery. Moreover, the Commission believes that by identifying and assessing available recovery tools, the Recovery Plan would enhance ICE Clear Europe's ability to use such tools effectively to bring about a recovery by identifying in advance

---

<sup>29</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>30</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

which tools may be most effective for different situations or needs, consistent with Rule 17Ad-22(e)(3)(ii).<sup>31</sup>

Similarly, in providing detailed information about the governance requirements related to triggering and implementing the Wind-Down Plan, as noted above, the Wind-Down Plan would enhance ICE Clear Europe's ability to effectuate an orderly wind-down, consistent with Rule 17Ad-22(e)(3)(ii).<sup>32</sup> Specifically, by setting out in advance the steps ICE Clear Europe would take to trigger and effectuate a wind-down, the Wind-Down Plan would enable ICE Clear Europe to prepare in advance for and practice the steps needed to effectuate a wind-down, which the Commission believes would enhance ICE Clear Europe's ability to use the Wind-Down Plan effectively to carry-out an orderly wind-down. In addition, by establishing a single source of information about, and steps needed to effectuate, a wind-down of ICE Clear Europe, the Wind-Down Plan would allow ICE Clear Europe personnel to effectuate a wind-down in a consistent and coordinated fashion, and would thereby increase the likelihood of an orderly wind-down. Finally, the Wind-Down Plan would identify the legal basis for ICE Clear Europe's actions with respect to a potential wind-down, including relevant Rule citations, which the Commission believes would further facilitate a well-reasoned, legal, and orderly wind-down process by providing ICE Clear Europe with a single source of information and steps needed for a wind-down, consistent with Rule 17Ad-22(e)(3)(ii).<sup>33</sup>

---

<sup>31</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>32</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>33</sup> 17 CFR 240.17Ad-22(e)(3)(ii).



Therefore, the Commission finds that the proposed rule changes would be plans for the orderly recovery and wind-down of ICE Clear Europe, consistent with Rule 17Ad-22(e)(3)(ii).<sup>34</sup>

D. Consistency with Rule 17Ad-22(e)(15)(i)-(ii)

Rules 17Ad-22(e)(15)(i)-(ii) require ICE Clear Europe to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that ICE Clear Europe can continue operations and services as a going concern if those losses materialize, including by (i) determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken and (ii) holding liquid net assets funded by equity equal to the greater of either (x) six months of ICE Clear Europe's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services.<sup>35</sup>

The Recovery Plan would include quantitative information to demonstrate how ICE Clear Europe would determine the amount of equity capital that would be at least sufficient to cover the costs of a recovery of its critical clearing services under the Recovery Plan, and ICE Clear Europe stated in the Recovery Plan Notice that it holds

---

<sup>34</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>35</sup> 17 CFR 240.17Ad-22(e)(15)(i)-(ii).

that amount of equity capital.<sup>36</sup> Similarly, the Wind-Down Plan contemplates that any wind-down could be completed within six months and discusses how ICE Clear Europe would be able to meet its liquidity requirements during a wind-down. Further, in the Wind-Down Plan Notice, ICE Clear Europe states that it holds equity capital at least sufficient to cover the costs of a wind-down of its clearing services under the Wind-Down Plan during that six-month period.<sup>37</sup> Based on these determinations and its review of the underlying information and analysis in the plans, the Commission finds that the plans would indicate the potential cost and length of recovery, as well as the ability to effectuate a wind-down within six months of the decision at a lower cost than the amount of its liquid resources, consistent with Rule 17Ad-22(e)(15)(i)-(ii).<sup>38</sup>

Therefore, the Commission finds that the proposed rule changes would determine the length of time required to achieve a recovery or orderly wind-down of ICE Clear Europe and the associated costs and would further ensure that ICE Clear Europe holds liquid net assets greater than these costs, consistent with Rule 17Ad-22(e)(15)(i)-(ii).<sup>39</sup>

---

<sup>36</sup> See Recovery Plan Notice, 83 FR at 2858.

<sup>37</sup> See Wind-Down Plan Notice, 83 FR at 2849.

<sup>38</sup> 17 CFR 240.17Ad-22(e)(15)(i)-(ii).

<sup>39</sup> 17 CFR 240.17Ad-22(e)(15)(i)-(ii).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Exchange Act, and in particular, Section 17A(b)(3)(F) of the Exchange Act<sup>40</sup> and Rules 17Ad-22(e)(2), 17Ad-22(e)(3)(ii), 17Ad-22(e)(15)(i)-(ii) thereunder.<sup>41</sup>

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Exchange Act that the proposed rule change (SR-ICEEU-2017-016) be, and hereby is, approved.<sup>42</sup>

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Exchange Act that the proposed rule change (SR-ICEEU-2017-017) be, and hereby is, approved.<sup>43</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

Eduardo A. Aleman  
Assistant Secretary

---

<sup>40</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>41</sup> 17 CFR 240.17Ad-22(e)(2); (e)(3)(ii); (e)(15)(i)-(ii).

<sup>42</sup> In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>43</sup> In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>44</sup> 17 CFR 200.30-3(a)(12).