

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90806; File No. SR-ICEEU-2020-018)

December 28, 2020

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe CDS Procedures and CDS Default Management Policy.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 14, 2020, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to modify its CDS Procedures (the “CDS Procedures” or the “Procedures”) to update the requirements for a Clearing Member to be approved to be a CDS Committee-Eligible Clearing Member for purposes of the CDS Default Committee, as well as certain other updates and clarifications, and to modify its CDS Default Management Policy (the “CDS Default Management Policy” or “Policy”) to make corresponding updates to the requirements for a Clearing Member to be eligible to serve on the CDS Default Committee, as well as to provide more detail with respect to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

review and testing of its default procedures, remove appendices and make certain other updates and clarifications to be consistent with other ICE Clear Europe policies.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

ICE Clear Europe is proposing to amend its CDS Procedures as to the following: (i) the requirements for a Clearing Member to be approved to be a CDS Committee-Eligible Clearing Member, (ii) the courses of action for the Clearing House if a CDS Committee-Eligible Clearing Member is unable to take part in the CDS Default Committee for the Relevant CDS Default Committee Period for which it is due to take part, (iii) the confidentiality obligations of CDS Default Committee Members and CDS Default Committee Participants and the limitations on liability applicable to such persons, (iv) timing requirements with respect to the submission of CDS Trade Particulars and (v) various drafting clarifications and improvements. ICE Clear Europe is also proposing to update the CDS Default Management Policy which would provide further detail with respect to the requirements for a Clearing Member to be Committee-Eligible for purposes of serving on the CDS Default Committee, and to make various drafting clarifications and improvements, as consistent with the proposed updates to the Procedures.

I. CDS Procedures

General Drafting Clarifications and Improvements

The amendments to the Procedures would clarify that the term “CDS Committee-Eligible Clearing Members” must be approved in accordance with paragraph 5.2 of the Procedures and continue to meet the criteria of such Paragraph. As described below, paragraph 5.2, as proposed to be amended, would specify in detail the requirements for a Clearing Member to be approved to be a CDS Committee-Eligible Clearing Member.

Submission and Acceptance of CDS Contracts

The amendments would revise paragraph 4.4 of the Procedures, which describes the timing requirements for submitting CDS Trade Particulars, to clarify that with respect to CDS Trade Particulars submitted after 6:00 p.m. on a Business Day or on a day that is not a Business Day, unless a revocation right exists and is exercised or unless otherwise stated in circular, among other existing exceptions, such CDS Trade Particulars would be deemed to have been submitted at 8:00 a.m. on the following Business Day. Furthermore, the Procedures would provide that if the Trade Date specified in the CDS Trade Particulars is not a Business Day, then the relevant CDS Trade Particulars would be rejected. This reflects current Clearing House practice.

CDS Default Committee

The amendments to the Procedures in paragraph 5 would update the requirements for a Clearing Member to be approved to be a CDS Committee-Eligible Clearing Member. Pursuant to paragraph 5.2, as proposed to be amended, the Clearing Member would need to meet the following conditions in order to be eligible: (a) in the event that it has one or more Affiliates that are CDS Clearing Members, it has the longest period of membership of the Clearing House among such Affiliates; (b) it has a London-based CDS trading desk; and (c) it is deemed

appropriate to be a CDS Default Committee Member by the Clearing House at its discretion. The Clearing House would maintain a list of all CDS Committee-Eligible Clearing Members. The procedure for maintaining the CDS Default Committee Participant List (including adding CDS Clearing Members to, removing CDS Clearing Members from or changing the order of Clearing Members on the CDS Default Committee Participant List) would be determined from time to time by the Clearing House at its discretion. (Certain such matters would be addressed in further detail in the Policy, as discussed below.) CDS Clearing Members would be able to provide information of relevance to the Clearing House with respect to their own inclusion or omission or order on the list, but such information would not be binding on the Clearing House. Additionally, the Procedures would state that ICE Clear Europe may also share the CDS Default Committee Participant List with any other clearing organization.

Amendments to paragraph 5.3 would add that if a CDS Committee-Eligible Clearing Member considers that it is unable to take part in the CDS Default Committee for the Relevant CDS Default Committee Period for which it is due to take part, it may request to postpone its participation for that period. ICE Clear Europe could, at its discretion, approve such request and, if so, the following events would take place: (a) that CDS Committee-Eligible Clearing Member would be listed so as to take part in the CDS Default Committee for the next Relevant CDS Default Committee Period as one of the three CDS Default Committee Participants; and (b) one of the next three CDS Committee-Eligible Clearing Members on the CDS Default Committee Participant List would be selected by the Clearing House at its discretion to take part in the CDS Default Committee during that Relevant CDS Default Committee Period. The CDS Default Committee Participant List would be amended accordingly. Certain other drafting clarifications are made to paragraph 5.3.

Paragraph 5.4 would be amended to add that if a CDS Clearing Member becomes a defaulter or is suspended or receives a termination notice with respect to its Clearing Membership, it would be removed from the CDS Default Committee Participant List. Paragraphs 5.4 and 5.5 would be amended to clarify that the CDS Default Committee Participant List would be amended to take into account any Clearing Member that becomes (or resumes being) a CDS Committee-Eligible Clearing Member or is removed from being a CDS Default Committee Participant because the Clearing House determines that such Clearing Member has a conflict or lacks impartiality.

The amendments in paragraph 5.6 would also provide that the Clearing House would give notice that, since CDS Default Committee Members and CDS Default Committee Participants act as part of the governance of ICE Clear Europe, such CDS Default Committee Members and CDS Default Committee Participants would take the benefit of all exclusions and limitations of liability available to the Clearing House under the Rules or Applicable Laws. The change is intended to make the exclusions and limitations on liability for such persons consistent with those generally applicable to Clearing House governance process.

The amendments in paragraph 5.8 would provide that CDS Clearing Members agree and acknowledge that each CDS Default Committee Members and CDS Default Committee Participant (each a “Covered Party”) would be subject to the provisions of Rule 106 (regarding confidentiality of information received and permitted disclosures) as if it were the Clearing House. Furthermore, each CDS Clearing Member would be required to ensure that each such Covered Party nominated by it would not use any Confidential Material for its own benefit or the benefit of any of its Affiliates and, if so requested by the Clearing House, would execute any documentation specified by the Clearing House acknowledging the same. The procedures that

would apply in the event a Covered Party is served with or otherwise subject to legal process have been removed as unnecessary in light of the referenced provisions of Rule 106. Paragraph 5.9 would be amended to clarify that each CDS Clearing Member agrees that each Covered Party would be responsible for its own costs associated with its service in such position.

II. CDS Default Management Policy

General Drafting Clarifications and Improvements

By way of general drafting clarifications and improvements, the amendments to the Policy would remove Appendices A and B, which contain various forms of notice and examples, as well as references thereto. In ICE Clear Europe's view, these appendices do not need to be included in the Policy and, to the extent they remain relevant, forms of notice can be maintained by the Clearing House separately. Certain terminology would be updated throughout the Policy as follows: (i) the term, Employee, would be updated to Eligible Employee; and (ii) the terms, Defaulting Clearing Member or Defaulting Member, would be updated to defaulter in certain instances in order to avoid repetition and aid with readability. Certain provisions relating to the Clearing House ceasing to clear new trades for a Defaulting Clearing Member would be moved and reorganized.

CDS Default Committee Activation

Consistent with the changes described above to the CDS Procedures, the Policy would be amended to provide that a Clearing Member would only be defined as Committee-Eligible, hereby permitting such Clearing Member to be a CDS Default Committee Participant, if such Clearing Member (i) is deemed appropriate by the Clearing House, (ii) is the primary clearing entity of an affiliate group, and (iii) has a London based trading desk. The Policy would also clarify that the Clearing House maintains a list of all CDS Committee-Eligible Clearing

Members and that the relevant term for the committee (“Relevant CDS Default Committee Period”) is six calendar months or until the end of any active Default event.

In addition, the Policy would provide that in the event that a CDS Default Committee Participant is unable to fulfill its upcoming rotation obligation for any reason including serving in the CDS Default Committee of another clearing house, such CDS Default Committee Participant would have the option to request to postpone their Relevant CDS Default Committee for a Relevant CDS Default Committee Period. If the Clearing House finds the reason for postponement satisfactory, the CDS Default Committee Participant would be substituted for a CDS Committee-Eligible Clearing Member from the next three members on the CDS Default Committee Participant List. Prior to commencement of a rotation, CDS Default Committee Members would be required to have signed all documentation required by the Clearing House (including but not limited to a Seconded Trader Agreement), and the Clearing House would use reasonable efforts to ensure that such requirement is enforced.

The amendments would also clarify that CDS Default Committee Members would be responsible for assisting in executing any CDS transactions (with respect to Rules 902 or 903 in CDS only) on behalf of the Clearing House only if needed. Under the Committee Activation Procedures section, the procedure for use of an alternate CDS Default Committee Member contact would be revised to refer generally to a situation where the designated primary representative cannot be reached in a reasonable amount of time, and remove specific examples of reasons a member could not be reached.

Secondment Facilities

The amendments would clarify that upon arrival at the ICE Clear Europe offices, each CDS Default Committee Member would be assigned a PC with the ICE Clear Europe risk reports

concerning the defaulter's portfolio and a third-party data provider application. References to how the CDS Default Committee Member would be able to login to the PC and view certain information sent to ICE Clear Europe by the non-defaulting Clearing Members would be removed as unnecessary. The amendments would also clarify that CDS Default Committee Members would only execute the hedging and liquidating transactions that the Head of Clearing Risk and the team deem necessary.

Confidentiality

The amendments would remove the requirement that seconded traders sign an additional confidentiality agreement pertaining to their role within a given member default (as ICE Clear Europe believes the existing single secondment agreement is sufficient). Instead, the Policy would provide that CDS Default Committee Members would be reminded of ongoing confidentiality obligations by the ICE Clear Europe Compliance department.

Auction Process and Results

The amendments would provide that details of the auction and relevant position data will be made available through the ICE Default Management System, consistent with the ICE Clear Europe auction procedures. The amendments would also clarify that following the close of an auction for sub-portfolio, the Clearing House would publish the new trades to be booked to the winning bidders through the ICE Default Management System. The Clearing House would no longer notify the point of contact for the winning bidders verbally. The change is intended to conform to the ICE Clear Europe auction procedures.

Default Management Testing

The amendments would provide additional detail with respect to default management testing. Specifically, pursuant to the amendments, the Policy would state that the Clearing House would

test and review its default procedures at least quarterly and perform simulation exercises at least annually. The default test would be conducted in coordination with Clearing Members by engaging all the internal and external stakeholders that would be involved in the default management process (for example, the Clearing Risk Department, ICE Clear Europe Senior Management Team, CDS Default Committee Members, regulators, etc.). Each default test would be planned in accordance with the ICE Clear Europe Multi-Years Default Plan, which would list several different default scenarios that would need to be tested by the Clearing House on a regular basis. The ICE Clear Europe Senior Management Team would be responsible for approving the scope of the annual default test by choosing different scenarios outlined in the Plan. The Plan and changes to it would need to be approved by the Executive Risk Committee.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the CDS Default Management Policy and the CDS Procedures are consistent with the requirements of Section 17A of the Act³ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁴ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

³ 15 U.S.C. 78q-1.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

The proposed changes to the CDS Procedures and CDS Default Management Policy are designed to strengthen ICE Clear Europe’s tools to manage Clearing Member defaults with respect to CDS contracts. The CDS Default Committee, which relies on seconded representatives of Clearing Members, is a key aspect of the Clearing House’s procedures for addressing Clearing Member defaults, including by facilitating the ability of the Clearing House to hedge or liquidate positions of the defaulter. The amendments would update and clarify the requirements for a Clearing Member to be eligible to serve on the CDS Default Committee as well as clarify the procedures to be used by the CDS Default Committee if such Clearing Member is unable to fulfill its upcoming rotation obligation. The clarifications and other changes to the Policy and Procedures enhance readability and ensure that the Policy and Procedures remain clear and up-to-date. Through better managing risks in default scenarios and promoting market stability, the proposed amendments promote the stability of the clearing house and the prompt and accurate clearance and settlement of cleared contracts. The enhanced risk management is therefore also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. (ICE Clear Europe would not expect the amendments to affect the safeguarding of securities and funds in ICE Clear Europe’s custody or control or for which it is responsible.) Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).⁵

In addition, ICE Clear Europe believes the amendments satisfy Rule 17Ad-22(e)(13)⁶, which requires the covered clearing agency to ensure that it “has the authority and operational

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 17 C.F.R. § 240.17Ad-22(e)(13).

capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually.” As discussed above, the proposed amendments would enhance ICE Clear Europe’s default management capabilities. Specifically, ICE Clear Europe believes that the updated, and more clearly defined requirements for Clearing Members to become eligible to participate in the CDS Default Committee will better ensure that the committee is staffed with appropriate representatives. The other amendments better ensure that such members have appropriate resources for their role on the committee working and that there is a process in place should a member need to delay the start of its tenure on the committee for permissible reasons. Amendments to the Policy would also ensure that the Clearing House review its default procedures at least quarterly and perform simulation exercises at least annually and that such tests would be conducted in coordination with Clearing Members as well as the internal and external stakeholders involved in the default management process. The amendments overall strengthen ICE Clear Europe’s ability to contain losses in a manner consistent with the requirements of Rule 17Ad-22(e)(13).⁷

Rule 17Ad-22(e)(3)(i)⁸ requires clearing agencies to maintain a sound risk management framework that identifies, measures, monitors and manages the range of risks that it faces. The amendments to the CDS Default Management Policy and the CDS Procedures are intended to update and state more clearly the criteria for representation on the CDS Default Committee and

⁷ 17 C.F.R. § 240.17Ad-22(e)(13).

⁸ 17 CFR 240.17 Ad-22(e)(3)(i).

provide for enhanced review and testing of the default management processes. The amendments will thus strengthen the management of default risks, and risk management more generally. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(3)(i).⁹

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update and clarify the ICE Clear Europe CDS Default Management Policy and ICE Clear Europe CDS Procedures and will apply to all CDS Clearing Members. ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise impact competition among CDS Clearing Members or other market participants or limit market participants' choices for selecting clearing services. Accordingly, ICE Clear Europe does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

⁹ 17 CFR 240.17 Ad-22(e)(3)(i).

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

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

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

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

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2020-018 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-ICEEU-2020-018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2020-018 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).