

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93095; File No. SR-ICEEU-2021-017)

September 21, 2021

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

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 September 15, 2021, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4)(ii)⁴ thereunder, such that the proposed rule was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The principal purpose of the proposed amendments is for ICE Clear Europe to amend its Delivery Procedures (the “Delivery Procedures”) relating to German natural gas futures contracts traded on the ICE Endex market in connection with the merger of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(a).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

two existing natural gas market areas in Germany, operated by NetConnect Germany GmbH & Co. and NetConnect Germany Management GmbH (together “NCG”) and GASPOOL Balancing Services GmbH (“GASPOOL”), with the resulting combined market area to be called the ‘Trading Hub Europe’ (“THE”). The German market area merger is currently planned to take effect on October 1, 2021 (at which time the amendments discussed herein would take effect).

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

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

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In connection with the merger of the market areas of the German gas transmission system operators with GASPOOL and NCG, ICE Clear Europe is proposing certain amendments to its Delivery Procedures relating to German natural gas futures contracts traded on ICE Endex, in order to be consistent with related changes made by the exchange

and to give effect to the German market merger. As has been announced by ICE Endex,⁵ the existing German GASPOOL Natural Gas Futures Contract will cease to be listed with the September 2021 contract month, and the existing German NCG Natural Gas Futures Contract will continue to trade on ICE Endex and will be renamed the German THE Natural Gas Futures Contract. Accordingly, ICE Clear Europe is proposing to delete the content of Part G of the Delivery Procedures (relating to the ICE Endex GASPOOL Natural Gas Futures Contracts) and replace it with “[NOT USED]”. The amendments would also remove the reference to ICE Endex GASPOOL Natural Gas Futures Contracts in section 5.1. ICE Clear Europe is also proposing to amend Part H of its Delivery Procedures to reflect the change of the contract name to ICE Endex German THE Natural Gas Futures instead of ICE Endex NCG Natural Gas Futures Contracts and make certain other amendments related to the merger of market areas as discussed herein. All references to ICE Endex NCG Natural Gas Futures Contracts in the Delivery Procedures would be replaced with references to ICE Endex German THE Natural Gas Futures Contracts and references to NCG Rules would be replaced with references to THE Rules.

In connection with the above, multiple additional conforming amendments would be made throughout Part H to reference relevant THE terms, documents and systems reflecting the combined German gas market operation. Specifically, references to the term “NCG” would be deleted and replaced with the term “THE”, which would be defined specifically to be Trading Hub Europe GmbH domiciled in Ratingen and Berlin, the operator of the market

⁵ See ICE Endex Circulars [E21/026](#), [E20/039](#) and [E21/014](#), available at <https://www.theice.com/endex/circulars>.

area cooperation between all gas network owners in Germany known as “THE” or any successor thereto.

References to the term, “NCG’s Communication Facilities” would be replaced with references to “THE’s Communication Facilities”. This term would reference THE’s electronic facility, which includes any electronic facility which enables the submission of a Trade Nomination to THE through the portal, any web-based communication channel including the related functionality and connected systems provided by THE, “Communications Systems” within the meaning of the THE Rules, and access to information concerning the submitted Trade Nominations, and any successor system thereto.

The term, “THE Balancing Group Contract”, which means the THE’s Balancing Group Contract Terms and Conditions, would be added.

The term, “THE Rules”, would replace the term “NetConnect Germany (NCG) Rules”, and would mean the Electricity and Gas Supply Act, the Gas Network Access rules and THE Balancing Group Contract, and any manuals, procedures, practices and directions of THE supporting its operation.

A new Section 3.2 would be added to state explicitly that the Transmission System, THE and THE’s Communication Facilities constitute “Delivery Facilities” for the purposes of Rule 101 of the Rules. The limitations on liability would also be expanded and clarified to provide that neither the Buyer nor the Seller nor their Transferees or Transferors would have any claim against the Clearing House for losses resulting from (a) actions taken by the Clearing House pursuant to the THE Rules or (b) technical issues, the condition or operation of or the performance of the Transmission System, THE or THE’s Communication Facilities

except as otherwise expressly provided in the ICE Endex Rules (expanding upon more limited references in the current procedure to the Transmission System or NCG).

The Delivery Timetable for routine deliveries set out in section 5 would be updated such that the submission of delivery intentions for the ICE Endex German THE Natural Gas Futures and the nomination of the Transferor/Transferee must be made by 11:30 CET instead of 13:00 CET.

A note would also be added stating that the delivery timetables for routine and failed deliveries could be altered without notice at the discretion of the Clearing House, consistent with other existing provisions of Parts G and H, and clarifying that such modifications could be made in the event of technical issues or other conditions relating to THE, among other reasons.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁶ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments are intended to update the Delivery Procedures to reflect changes in the trading of natural gas futures contracts on ICE Endex in light of the merger of the market areas of the German gas transmission system operators with GASPOOL and NCG. The resulting ICE Endex German THE Natural

⁶ 15 U.S.C. 78q-1(b)(3)(F).

Gas Futures Contract will continue to be cleared by the Clearing House in the substantially same manner as the current NCG contract, with modifications to reflect the merger of the underlying gas market, and will be supported by ICE Clear Europe's existing financial resources, risk management, systems and operational arrangements. Accordingly, ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such contracts and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁷ (In ICE Clear Europe's view, the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).⁸)

In addition, Rule 17Ad-22(e)(10)⁹ requires that each covered clearing agency establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries. As discussed above, the amendments would incorporate into the Delivery Procedures the amendments necessary to address the merger of the market areas of the German gas

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 C.F.R. 240.17Ad-22(e)(10).

transmission system operators with GASPOOL and NCG into THE. The resulting ICE Endex German THE Futures Contract will continue to be cleared in substantially the same manner as the current NCG contract, supported by ICE Clear Europe's existing financial resources, risk management, systems and operational arrangements. The amendments would also remove Part G and related references related to the GASPOOL contracts that will no longer be traded on ICE Endex as a result of the underlying market merger. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad-22(e)(10).¹⁰

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

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to update the Delivery Procedures in connection with the merger of the market areas of the German gas transmission system operators with GASPOOL and NCG. The terms of clearing are not otherwise changing. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in the new contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

¹⁰ 17 C.F.R. 240.17Ad-22(e)(10).

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2021-017 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ICEEU-2021-017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

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-2021-017 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.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).