process. OCC's current rules may provide as little as 90 minutes to process late exercise notices. Processing such notices requires a number of procedural steps, including the notification of Clearing Members affected by the random assignment of late exercises. The Commission believes that successful and timely completion of exercise and assignment processes is important to the prompt and accurate settlement of securities transactions. The Commission further believes that providing an additional 30 minutes to facilitate the processing of late exercises and assignments without delay would promote the prompt and accurate clearance and settlement of securities transactions and is, therefore, consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[24]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act [25] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[26] that the Proposed Rule Change (SR–OCC–2020–001) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04576 Filed 3–5–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88308; File No. SR–ICEEU–2020–003]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to the ICE Clear Europe Rules and Procedures

March 2, 2020.

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 February 18, 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 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, Security-Based Swap Submission, or Advance Notice

ICE Clear Europe Limited proposes to revise its Clearing Rules (the ''Rules''),[3] the Standard Terms contained in the annexes to the Rules, the Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, FX Procedures, Complaint Resolution Procedures, Business Continuity Procedures, Membership Procedures, and General Contract Terms (collectively, the ''Amended Documents'') to make various updates and enhancements.

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

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 submitting proposed amendments to the Amended Documents that are intended to make a variety of improvements and changes, including (1) to enhance the customer documentation framework for Non-FCM/BD Clearing Members to facilitate default management by the Clearing House, (2) to adopt an ''externalised payments mechanism'' to facilitate making certain payments to and from Clearing Members outside of the standard net settlement process, (3) to make certain amendments to the variation and mark-to-market margin settlement process (and related calculations) in order to facilitate treatment of such margin as a settlement payment rather than collateral for purposes of Clearing Member capital calculations, (4) to revise certain provisions relating to option settlement to enhance clarity and reflect operational procedures, (5) to revise certain disciplinary and complaints procedures, (6) to add certain provisions relating to compliance with applicable U.S. tax requirements, (7) to make certain other default management enhancement and clarifications, (8) to update and clarify various aspects of the Delivery Procedures and (9) to make certain other drafting improvements and clarifications, in each case as described in further detail herein.

Specifically, ICE Clear Europe proposes to make amendments to Parts 1, 2, 3, 4, 5, 7, 8, 9, 10 and 12 of the Rules, the Customer-Clearing Member Standard Terms contained in the annexes to the Rules, and the Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Complaint Resolution Procedures, Business Continuity Procedures, Membership Procedures and General Contract Terms. The text of the proposed Rule and Procedure amendments is attached [sic] in Exhibits 5A–5J, with additions underlined and deletions in strikethrough text. The proposed Rule and Procedure amendments are described in detail as follows.

(i) Customer Documentation Framework

Changes have been proposed to strengthen the legal foundations for the Standard Terms, which form part of the ICE Clear Europe customer documentation framework for Non-FCM/BD Clearing Members.[4] The existing Standard Terms promote post-default porting in the case of a Non-FCM/BD Clearing Member default through contractual provisions that bind Customers and Clearing Members. These provisions are designed to limit interference with the porting process and give additional comfort that margin is transferred by Customers to Clearing Members on terms that allow usage and porting of margin and positions. Purported close-out actions by the Customer against a defaulting Clearing Member prior to porting are also restricted, so that all terminations and re-establishments of cleared contracts occur at the same time and at the same

[24] 15 U.S.C. 78q–1(b)(3)(F).

[25] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[4] The Standard Terms do not apply to FCM/BD Clearing Members and their customers.

price, reducing the possibility of valuation disputes or other claims that might prevent or reduce the likelihood of porting.

In order to enhance the Standard Terms framework, and in particular ICE Clear Europe's ability to rely on the Standard Terms so as to carry out default management and use margin without interference from claims by Customers of defaulting Clearing Members, ICE Clear Europe is proposing to make the following amendments:

Under existing Rule 202(b), Non-FCM/BD Clearing Members are required to ensure that the Standard Terms are contractually binding as between themselves and their Customers. As a further protection to support this requirement, Rule 202(b) would be amended to add an additional provision that Customers and Non-FCM/BD Clearing Members will be deemed to be bound by the Standard Terms through acceptance by conduct as a result of their continued use of the Clearing House. The change would provide an additional basis for certainty that the Standard Terms would apply as between the Customer and Non-FCM/BD Clearing Member, notwithstanding that a Non-FCM/BD Clearing Member had otherwise failed to obtain its Customer's agreement to the Standard Terms. ICE Clear Europe believes that this additional protection is a reasonable approach, in light of the Customer's choice to clear its transaction through the Non-FCM/BD Clearing Member at ICE Clear Europe, and given that the provisions in question are published and referred to in ICE Clear Europe's customer disclosures under the European Market Infrastructure Regulation (''EMIR'').[5]

Amendments to Rule 504(c) would extend Clearing Member warranties with respect to Permitted Cover to expressly cover all transfers of Permitted Cover to ICE Clear Europe (rather than merely the usage of Permitted Cover in accordance with the Rules) as not violating applicable law or third party rights or contractual obligations. This change would further enhance ICE Clear Europe's assurance that it can accept Permitted Cover without risk of interference from third party claims.

A change in Rule 102(o) would clarify that the Rules, together with the applicable Clearing Membership Agreement, and other documents listed in Rule 102(f) that are given contractual force pursuant to these Rules (other than the Standard Terms and Settlement and Notices Terms) form a contract between the Clearing House and each Clearing Member. (By contrast, the Standard Terms and Settlement and Notice Terms apply as between the Non-FCM/BD Clearing Member and its Customer.) Pursuant to the Standard Terms themselves, ICE Clear Europe would also benefit from the Standard Terms as a third party beneficiary under the UK Contracts (Rights of Third Parties) Act 1999.

In Rule 401(n), it is proposed that the words ''at the same time as the Contract'' be added after the words ''an opposite Customer-CM F&O Transaction shall arise between such Customer and Non-FCM/BD Clearing Member''. The additional words are intended to clarify that the opposite Customer-CM F&O Transaction arises at the same time as the F&O Contract arises. In ICE Clear Europe's view, this timing is implicit in the current Rule, and so the amendment would not result in an actual change in the timing at which the Customer-CM F&O Transaction arises. ICE Clear Europe believes that the amendment is a non-substantive drafting improvement that would nonetheless improve the clarity of the Rules on this point.

In section 2 of each of the Standard Terms (CDS, F&O and FX), added drafting would make it clear that attempts by Customers or Non-FCM/BD Clearing Members to modify or disapply the Standard Terms are of no effect and that the Standard Terms cannot be overridden. The amendment would also provide that ICE Clear Europe is a third party beneficiary of the Standard Terms and may enforce them. This provision is intended to assist in promoting the consistent implementation of the Standard Terms, without modification, to govern the contractual relationships between Non-FCM/BD Clearing Members and their Customers. A non-standard modification of the Standard Terms could, in theory, interfere with or complicate attempts by the Clearing House to provide post-default porting in accordance with the Rules. The proposed amendments do not reflect any particular problem or scenario experienced by the Clearing House, but are intended as a general default management planning improvement in furtherance of ICE Clear Europe's ability to provide post-default porting.

In Section 3(b) of each of the Standard Terms, the proposed change would remove the reference to transactions arising (as between Non-FCM/BD Clearing Member and Customer) ''at the Acceptance Time'' and replaces this with a reference to CDS transactions arising (as between the Non-FCM/BD Clearing Member and Customer) ''as set out in Part 4 of the Rules''. This change is necessary as a drafting matter, since the term ''Acceptance Time'' is not defined in the Rules. In addition, the cross-reference to Part 4 of the Rules is appropriate because Part 4 contains various provisions dictating how contracts and transactions arise pursuant to the Rules, rather than solely dictating the time at which a contract is deemed to be formed.

In Section 4(b) of each of the Standard Terms, the proposed change is intended to: (a) Clarify the Customer's consent for margin to be used by the Non-FCM/BD Clearing Member consistent with its obligations, representations and warranties under the Rules; (b) provide that the Customer makes substantially equivalent representations, warranties and acknowledgments with respect to collateral posted by the Non-FCM/BD Clearing Member to the Clearing House with respect to the relevant Customer Account; (c) provide further assurance that, if any perfection or other formalities are required for ICE Clear Europe to use the collateral originating with the Customer, as ICE Clear Europe is entitled to do so under the Rules, ICE Clear Europe is able to instruct the Customer to take such additional steps; and (d) limit Customer assertions that such collateral is subject to encumbrances in favor of the Customer. The amendments are collectively designed to provide additional clarity to the Clearing House as to its ability to use collateral ultimately provided by a Customer, including to cover default losses and to provide for porting of the Customer's positions in case of the relevant Non-FCM/BD Clearing Member's default, in each case to the extent permitted by the Rules, and mitigate the risk of any Customer or third party claims with respect to such collateral that may interfere with such uses.

In Section 5(c) of each of the Standard Terms (and related changes at Rule 202(b)(iii)), ICE Clear Europe proposes to clarify its approach to the use of automatic early termination in client clearing documentation of Non-FCM/BD Clearing Members. It has come to ICE Clear Europe's attention that some EU Non-FCM/BD Clearing Members may use automatic early termination provisions in their client clearing documentation even though Rule 202(b)(iii) (as currently in force) generally prohibits this. In that case, such Clearing Member-Customer clearing agreements may not adequately support porting to the extent legally possible. In particular, such provisions

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

expose ICE Clear Europe, the Non-FCM/BD Clearing Member and any Customer to the risk that the Customer-Clearing Member Transaction and cleared Contract may terminate at different times, and accordingly may have different termination values following a post-default close-out. Automatic or early termination clauses also may give rise to legal uncertainties as to whether certain protections from the disapplication of insolvency law for porting in Part VII of the UK's Companies Act 1989 are available, since following an automatic termination there would be no contract left to port or transfer. The Clearing House's position is that such terminated contracts may still be subject to porting but a legal uncertainty is acknowledged. To reduce risks related to such situations, it is proposed that the prohibition on including automatic early termination provisions in Clearing Member-Customer documentation in Rule 202(b)(iii) be removed and a new section 5(c) of the Standard Terms be introduced instead. The new section 5(c)(ii) would disapply automatic termination provisions for contracts cleared at ICE Clear Europe (with an exception for parties incorporated in Switzerland [6] or other jurisdictions designated by the Clearing House) and new section 5(c)(i) would instead provide for the suspension of performance under the Customer-Clearing Member Transaction until the corresponding cleared Contract is terminated or the relevant payment date for the net sum owed between the Customer and Non-FCM/BD Clearing Member following termination has occurred. The suspension of performance provides similar economic protections for Customers as compared to automatic termination (as the Customer would not be obligated to make payments to a defaulting or insolvent Non-FCM/BD Clearing Member) but does not expose ICE Clear Europe to the risks of inconsistent timing or valuation between the Customer-Clearing Member Transaction or expose Customers to the risks of their positions being not portable due to automatic termination of the Customer-Clearing Member Transaction. Section 5(c)(iii) would provide that even if, notwithstanding the other provisions of the Standard Terms, automatic early termination of the Customer-Clearing Member transaction occurred, the provisions of the Standard Terms relating to calculation of termination values and portability would apply with necessary modifications.

(ii) Externalised Payments Mechanism

A number of changes have been proposed to the Rules and Procedures to introduce a new ''Externalised Payments Mechanism'' alternative for certain cash flows. Under the Externalised Payments Mechanisms, mark-to-market or variation margin payment flows or certain other payment flows (including potentially, for example, clearing house and exchange fees), between ICE Clear Europe and the relevant Clearing Member can, at the option of the Clearing Member, not be netted in the same way as they would be under the standard approach (referred to in the amended Rules as the ''Standard Payments Mechanism''). The introduction of a payments mechanism under which such amounts exchangeable between ICE Clear Europe and a Clearing Member are not netted has been requested by CDS Clearing Members, some of which wish to align payment flows more closely with those in the OTC markets or under their Customer documentation. The various changes proposed to implement the Externalised Payments Mechanism are described in more detail as follows:

New defined terms ''Standard Payments Mechanism'' and ''Externalised Payments Mechanism'' are proposed to be added in Rule 101, which would cross-refer to the full definitions of these terms in Rule 302(a). Proposed changes to Rule 302(a) would clarify that the current provisions regarding the calculation of a net amount payable by or to ICE Clear Europe in respect of each Account are part of the Standardised Payments Mechanism. In addition, new language would be added to confirm that the Standard Payments Mechanism would apply unless the Clearing House has agreed that the Externalised Payments Mechanism applies to a particular kind of cash payment, account and Clearing Member. The definition of Externalised Payments Mechanism is proposed to be added at the end of Rule 302(a). This definition would provide that the Externalised Payments Mechanism is an alternative payments mechanism available to Clearing Members who elect to use it, provided that ICE Clear Europe agrees to such usage in relation to particular accounts. The proposed definition also clarifies that the Externalised Payments Mechanism can only be used for certain Margin and other cash payments as specified in the Finance Procedures. The effect of using the Externalised Payments Mechanism in respect of cash payments would be that payments would be settled pursuant to a separate cash flow process at a separate time from that under the Standard Payments Mechanism.

Various conforming changes are proposed throughout the Rules and Procedures to reflect the introduction of the Externalised Payments Mechanism and the different processes applicable where payments are settled under the Externalised Payments Mechanism. In Rule 301(f), amendments clarify which provisions set out under that paragraph are only applicable to (a) payments made under the Standard Payments Mechanism or (b) payments made under the Externalised Payments Mechanism. Other amendments of a similar nature are proposed to Rules 110(g), 303(a) and 1902(h)(i).

A number of changes are also proposed to the Finance Procedures to implement the Externalised Payments Mechanism. Paragraph 6.1(b) would be amended to clarify that cash payments between ICE Clear Europe and a Clearing Member (including Margin) may only be set off and consolidated where the Standard Payments Mechanism is used.

In paragraphs 6.1(i)(i) and (ii), new language is proposed to explain the effect of the Externalised Payments Mechanism on payment flows, namely that ''cash payments will be settled through a separate cash flow and not included in a combined overnight call or return as would apply under the Standard Payments Mechanism''. Paragraph 6.1(b) would provide that Clearing Members are able to elect for upfront fees, Mark-to-Market Margin, FX Mark-to-Market Margin, Variation Margin or other payments to be dealt with using the Externalised Payments Mechanism, subject to the written consent of ICE Clear Europe. It is expected that the process would principally be used for Mark-to-Market Margin. Further, in paragraph 6.1(i)(vii), a drafting change would be made to clarify that other amounts payable by a Clearing Member to ICE Clear Europe (or vice versa) would be included within an end-of-day or ad hoc payment under the Standard Payments Mechanism. Paragraph 6.1(i)(vii) is also expanded to reference certain other types of payments under the Rules and Procedures (including option premiums corporate action payments for delivered investments under certain Financials & Softs Contracts, amounts resulting from reduced gain distributions, product terminations and non-default losses) as includible in end-of-day or ad hoc

[6] The exception for Switzerland reflects the fact that such jurisdiction is the only Clearing Member jurisdiction for which automatic early termination is recommended for derivatives by the International Swaps and Derivatives Association, Inc. (''ISDA'').

payments under the Standard Payments Mechanism.

A new paragraph 6.1(i)(viii) would address the applicability of the Externalised Payments Mechanism in circumstances where certain payments are being made under Part 9 of the Rules (Default Rules), including Margin Adjustment Amounts in connection with reduced gain distribution under Rule 914, Product Termination Amounts in connection with product termination under Rule 916 and Collateral Offset Obligations under Rule 919. Specifically, where the Externalised Payments Mechanism applies to variation or mark-to-market margin payments, the Clearing House can net Margin Adjustment Amounts against payments under the Standard or Externalised Payments Mechanism, at the Clearing House's discretion. Similarly, the Clearing House may choose to net or aggregate Product Termination Amounts with payments under the Standard or Externalised Payment Mechanism, at its discretion. Payments of Collateral Offset Obligations, assessments and Guaranty Fund contributions and replenishments would be made under the Standard Payment Mechanism unless otherwise directed by the Clearing House. In addition, paragraph 6.1(i)(ix) (as renumbered) would be amended to clarify that additional original or initial margin requirements as a result of the payment of variation margin or mark-to-market margin in a different currency from the contractual currency (as a result of a currency holiday) would be collected via the Standard Payments Mechanism, regardless of whether the Externalised Payments Mechanism applies to the relevant variation or mark-to-market margin payment in question.

(iii) Clearing Member Capital Requirements and Settlement to Market Amendments

Certain changes are proposed to the Rules and Procedures to reflect requirements under the EU Capital Requirements Regulation (the ''CRR'').[7] In Rule 101, it is proposed that the defined term ''Capital'' be revised to remove outdated references to the EU Banking Consolidation Directive, which is no longer in force. This directive, which set out the capital requirements framework for EU banks and broker-dealers, was replaced and superseded by the CRR and Capital Requirements Directive (together referred to as the ''CRD IV'' package). Related to this, new definitions of ''Capital Requirements Directive'' and ''Capital Requirements Regulation'' are proposed to be introduced to replace the outdated ''Banking Consolidation Directive'' definition (which is proposed to be deleted). Although, as a technical matter, Rule 102(a) provides already for the update of references to legislation as they are amended or supplemented, as a matter of clarity ICE Clear Europe is proposing this amendment to explicitly and correctly reference current EU law. ICE Clear Europe does not believe the change will have any substantive effect on Clearing Members or the Clearing House.

In addition, ICE Clear Europe proposes to amend the Rules to provide more clearly for the characterization of Clearing Members' exposures for cleared derivatives under Article 274(2)(c) CRR as ''settled to market'' (as opposed to ''collateralized to market''). For the Article 274(2)(c) treatment to be available, Variation Margin or Mark-to-Market margin must be characterized as a cash payment ''to settle outstanding exposure following specific payment dates'',[8] rather than as collateralizing the exposure. The proposed amendments do not change the manner in which Variation Margin or Mark-to-Market Margin is calculated, or other current operational practices. Rather, the amendments consist of revisions to terminology and other drafting changes to clarify the legal characterization that payments of Variation Margin and Mark-to-Market Margin represent settlement payments rather than collateral payments for purposes of the CRR, as requested by Clearing Members.

With respect to settlement to market, changes have been proposed to the defined terms ''Margin'', ''Mark-to-Market Margin'' and ''Variation Margin'' to more accurately and certainly characterize such margin as settlement payments, so that the relevant exposures more clearly benefit from the settlement to market treatment under Article 274(2)(c) CRR. In the defined term ''Margin'', changes are to be made to the language in parentheses to confirm that Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin are all ''provided to or by the Clearing House by outright transfer of cash as a settlement payment''. The defined term ''Mark-to-Market Margin'' currently refers to such margin being provided ''by way of title transfer pursuant to a Clearing Membership Agreement or Sponsored Principal Clearing Agreement or[. . .]by way of a pledge pursuant to a Pledged Collateral Addendum''. This would be replaced with clear language denoting that such margin would be provided ''by way of outright transfer of cash as a settlement payment''. Similarly, the definition of ''Variation Margin'' is proposed to be updated to clarify that the cash required to be provided or actually provided by a Clearing Member is ''by way of outright transfer of cash as a settlement payment''.

The defined term ''Original Margin'' is proposed to be amended to move the words '', but excluding in any case Variation Margin'' to the end of the definition. This is a drafting change to ensure that Variation Margin is excluded from the entirety of this definition, as the definition generally concerns Permitted Cover provided as collateral.

In various places throughout the Rules and Procedures, amendments are proposed to remove all references to the term ''deposit'' in the context of this being a word to describe the transfer of cash variation or mark-to-market margin. This, and similar terms, would be replaced with terms that are more consistent with a settlement payment characterization of margin, such as ''transfer''. The amendments will not reflect a change in actual operational practice. These proposed changes would also more accurately reflect ICE Clear Europe's role in receiving cash payments under title transfer and its regulatory status as a central counterparty (''CCP'') which is not a bank or credit institution.[9] The changes fall into the following types and are proposed in relation to the provisions of the Rules and Procedures noted below:

(a) Removal of the term ''deposit'' (or a derivation thereof) from existing drafting where a suitable alternative term (such as ''transfer'') is already present: Rules 101 (definition of ''Monetary Default''); 110(b); 110(c); 110(e); 204(a)(vi); 208(b)(iii); 919(e) and paragraph 4.2 of the Membership Procedures (section B, row 1 of the table);

(b) Replacing the word ''deposit'' (or a derivation thereof) with the word ''transfer'' (or a derivation thereof): Rule 102(q); 1602(a); 1602(b); 1602(c); 1602(d); 1605(i); 1804(b); 1806(a); paragraphs 3.3(b), 3.7, 3.8, 3.32, 6.1(f), 6.1(g), 10.4, 10.5 and 10.12 of the Finance Procedures (in 3.3(b), 3.7 and 3.32 the words ''[from/to] the Clearing House'' are also added as a drafting improvement); and

[7] Regulation (EU) No 575/2013.

[8] CRR, Article 274(2)(c).

[9] In this regard, ICE Clear Europe does not keep payments it receives on deposit for its customers, nor does it engage in the regulated activity of deposit-taking in the UK, for which a banking license is required.

(c) Similar drafting changes to achieve the same effect are made in Rule 202(a)(xi) (replacing the words ''for the deposit of funds in Eligible Currencies and the deposit of securities required to be transferred to and from the Clearing House'' with the words ''for the purposes of cash transfers to and from the Clearing House in Eligible Currencies''; Rule 1103(b) (replacing the words ''pledged to or deposited with'' with ''transferred to''); Paragraph 3.26 of the Finance Procedures (replacing the words ''on deposit'' with the words ''upon completion of the relevant transfer to the Clearing House''); Paragraph 10.17 of the Finance Procedures (replacing the words ''confirmation of deposit'' with the words ''confirmation of completion of the relevant transfer''); and Paragraph 11.1 of the Finance Procedures (replacing the words ''All transactions to deposit or withdraw'' with the words ''All transactions including each transfer to or withdrawal'').

In Rule 505, changes are proposed to clarify that settlement payments (including payments of Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin) are excluded from constituting financial collateral within the scope of the UK Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral (the ''FCD'')). These proposed changes reflect feedback received by ICE Clear Europe from some Clearing Members and are to ensure consistency with the characterization of such payments as contractual payments settling derivatives liabilities and not as collateral, as described above. In addition, the word ''collateral'' in the last sentence would be replaced with the more general term ''such assets''. This links the clause back to statutory definitions more clearly, since only collateral of certain types (essentially ''cash'' and ''financial instruments'') are covered by the FCD and, for example, gold collateral accepted by ICE Clear Europe is not.

A new concept of ''CDS Price Alignment Amount'' would be added. Pursuant to Rule 1519(e), a daily payment in respect of CDS Price Alignment Amounts would be required on each Business Day. The CDS Price Alignment Amount would be economically equivalent to the price alignment ''interest'' that ICE Clear Europe currently pays or charges a CDS Clearing Member with respect to net Mark-to-Market Margin transferred between the parties. Since the term ''interest'' may be more typically associated with collateral, ICE Clear Europe proposes to refer to such amounts as CDS Price Alignment Amounts to avoid confusion over the characterization of Mark-to-Market Margin as settlement payments. Correspondingly, references to interest on Mark-to-Market Margin would be removed in the CDS Procedures, as discussed below. The definition of CDS Price Alignment Amount would be added in Rule 1501(h), which cross-refers to the definition in the CDS Procedures as proposed to be amended (discussed below).

Although FX clearing has not yet been launched, similar changes would be made to relevant FX clearing provisions to maintain consistency throughout the Rules. The defined term ''FX Mark-to-Market Margin'' is proposed to be amended to clarify that Permitted Cover would be provided ''by way of outright transfer as a settlement payment''. This change is intended to support the characterization of mark-to-market margin as a settlement payment. There is also a small drafting tweak within this definition to clarify that the relevant Procedures are the FX Procedures. The defined term ''FX Mark-to-Market Interest'' would be deleted and replaced with a new defined term of ''FX Price Alignment Amount''. The deleted definition currently refers to ''interest calculated by reference to the FX Mark-to-Market Margin Balance''. The new definition of ''FX Price Alignment Amount'' would instead refer to ''a price alignment amount calculated by reference to the relevant FX Notional Margin Balance'', which avoids any reference to interest (or a similar concept) for the reasons discussed above. Similarly, amendments to the defined term ''FX Mark-to-Market Margin Balance'' are proposed so that references to FX Mark-to-Market Margin being ''delivered'' by a Clearing Member or ICE Clear Europe are replaced with references to such margin being ''transferred'' and it is clear that that FX Mark-to-Market Margin is a settlement payment. It is also intended that the definition be renamed ''FX Notional Margin Balance'', with the word ''notional'' being added within the definition, to ensure that the FX Price Alignment Amounts are regarded as using the mark-to-market margin merely as a notional sum to calculate the relevant amount, rather than such amounts constituting an interest or an interest-like return on deposited assets. The proposed addition of the words ''(notwithstanding that FX Mark-to-Market Margin is a settlement payment)'' within the definition would further support a settlement payment characterization.

Rule 1703 is proposed to be amended to reflect the replacement of the current defined term ''FX Mark-to-Market Interest'' with the new defined term ''FX Price Alignment Amounts'', as discussed above. The heading of the rule would be updated to reflect the new defined term and the words ''an amount in respect of FX Mark-to-Market Interest'' are to be replaced with the term ''FX Price Alignment Amount''. Proposed additional language to be added after this amendment would expressly confirm in the Rules that payment of the FX Price Alignment Amount must be made on each Business Day in accordance with the FX Procedures. In the FX Procedures themselves, amendments are proposed at paragraph 7.2 to reflect the replacement of ''FX Mark-to-Market Interest'' with ''FX Price Alignment Amounts'' and the replacement of ''FX Mark-to-Market Margin Balance'' with ''FX Notional Margin Balance''. These include replacing the old defined term with the new defined term and adding additional language to remove any interpretative doubt that ''FX Mark-to-Market Margin is a settlement payment''. Headings and the table of contents are to be updated accordingly.

In the Finance Procedures, a new paragraph 2.3 is proposed which would confirm explicitly that Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin are transferred to and from ICE Clear Europe by way of outright cash transfer and that no such margin would be subject to any pledge under the Rules or Procedures, or the requirement in Rule 1603(c) for Margin provided by an FCM/BD Clearing Member in respect of a Customer Account to be in the form of Pledged Collateral. As with the various changes set out above, it is proposed that this clarification be added to ensure that Margin provided by way of outright cash transfer is characterized as a settlement payment, so that the settlement to market treatment can be applied.

Changes are also proposed in paragraph 6.1(i)(i) of the Finance Procedures to refer to the ''resulting settlement payments'' from Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin calls, to support the characterization discussed above. Additional language would be added to explain that once settlement payments resulting from daily margin calls have been paid in cleared funds, the valuation of the Contracts would be reset to zero. This is consistent with the requirements of settlement to market

treatment under Article 274(2)(c) CRR, which requires that contracts ''are structured to settle outstanding exposure following specified payment dates and where the terms are reset so that the market value of the contract is zero on those specified dates''. A drafting change is also proposed in this paragraph to clarify that the standard process would be for adjustments to margin requirements to be calculated, and payments to be executed, in the currency of the relevant Contracts, but leave it open for payments to be made in a different currency.

Similarly, it is proposed that paragraph 6.1(i)(iv) of the Finance Procedures be amended so that it addresses the payment of price alignment amounts in relation to variation margin separately from interest payable on initial margin. Language that previously referred to interest being payable on variation margin would be deleted and new language would be inserted confirming that price alignment amounts instead fall payable as further detailed in the relevant Procedures for the Contract in question. The heading to this provision would be updated accordingly.

In the CDS Procedures, new defined terms of ''CDS Price Alignment Amount'' and ''CDS Notional Margin Balance'' are proposed to be added in paragraph 1, which are intended to replace the terms ''Mark-to-Market Interest'' and ''Mark-to-Market Margin Balance'' respectively. ''CDS Price Alignment Amount'' describes amounts paid with reference to Mark-to-Market Margin as price alignment amounts calculated daily ''by applying the applicable overnight rate'' to the CDS Notional Margin Balance. The CDS Notional Margin Balance is defined as a notional sum based on the aggregate amount of transferred Mark-to-Market Margin, to be consistent with the characterization of the Mark-to-Market Margin as a settlement payment.

Further to these changes, it is proposed that paragraph 1 of the CDS Procedures be amended to replace the defined term ''Daily Aggregate MTM Interest Amount'', with a new defined term ''Daily Aggregate CDS Price Alignment Amount''. Instances of usage of the terms ''Mark-to-Market Interest'', ''Mark-to-Market Margin Balance'' and ''Daily Aggregate MTM Interest Amount'' are also proposed to be replaced with the new defined terms ''CDS Price Alignment Amount '', ''CDS Notional Margin Balance'' and ''Daily Aggregate CDS Price Alignment Amount'' respectively. Similar changes would be made in paragraphs 3.1 and 3.3 of the CDS Procedures.

(iv) Enhancement of Settlement for Option and Futures

Various changes are proposed to the Rules and Procedures to clarify certain provisions relating to Options cleared by ICE Clear Europe, including use of terminology and other drafting improvements, and to address more clearly the concept of ''net liquidating value''. As discussed herein, the changes are in the nature of drafting clarifications and improvements following an internal legal and operational review of the relevant provisions. The amendments are also intended to harmonize drafting of similar provisions across certain affiliated ICE futures clearing organizations.

A number of changes are proposed to the definitions in Rule 101 with the aim of clarifying, improving and harmonising the drafting of terms used in the Rules to refer to concepts applicable to both Futures and Options. The definition of ''Deliverable'' is proposed to be updated to reflect the fact that the term is used not only in relation to property deliverable under F&O Contracts, but also in relation to the calculation of settlement amounts. The words ''or with respect to which settlement amounts are calculated'' are to be added at the end of the definition to clarify this point. The term ''Reference Price'' in relation to Options would be removed from the Rules and replaced with ''Exchange Delivery Settlement Price''. The definition of ''Exchange Delivery Settlement Price'' would be updated to clarify that it also applies to Options, through addition of a cross-reference to the option settlement price determination procedure under Rule 802. These changes, and conforming changes throughout the Rules, are intended to simplify and clarify the drafting of the Rules around option settlement (and are not intended to materially change the operational process for such settlement). Other non-substantive drafting clarifications would also be made to the definitions of ''Put'', ''Set'' and ''Short''.

A number of similar drafting clarifications and related changes have been proposed to Part 8 to ensure that provisions set out thereunder clearly and accurately describe relevant settlement processes in relation to Options. Rule 802 would be amended to reflect the replacement of the term ''Reference Price'' with the term ''Exchange Delivery Settlement Price'' to refer to the settlement price of an Option. Changes have also been proposed in Rule 802 to better describe the processes surrounding determination and publication of the Exchange Delivery Settlement Price in relation to Options on the basis of data provided or published by the relevant Market. The preamble to Part 8 is also proposed to be amended to refer to F&O Contracts ''that are Options'', rather than F&O Contracts generally (which would include Futures, which are outside the scope of Part 8).

Moreover, changes are proposed to Rule 809(d) to provide flexibility for the Clearing House, in a scenario where it directs a Clearing Member to make delivery of a Deliverable in settlement of an option directly to another Clearing Member (rather than to the Clearing House) in accordance with that Rule, to also permit payments to be made directly between such parties rather than to and from the Clearing House.

Changes are proposed in Rule 810(d) to reflect the replacement of the term ''Reference Price'' with the term ''Exchange Delivery Settlement Price'' for Options, and to clarify the cash settlement price for an Option would be determined using the Exchange Delivery Settlement Price ''on the day of settlement or exercise''. In addition, the amendment would provide that all outstanding premium payments must have been made in relation to the relevant set of Options (in addition to Margin payments) in order to receive cash settlement. This change is being proposed to more clearly describe relevant Clearing House operational practices and processes (and is not intended to alter those practices and processes).

Similar provisions related to Futures would also be updated for consistency. Rules 701 to 705 would be amended to ensure that the provisions relating to (a) the determination of the Exchange Delivery Settlement Price for Futures, (b) the processes for cash settlement and physical settlement, and (c) the number of Contracts by reference to which settlement and delivery obligations are calculated all reflect operational practice. As with the changes described above in Rule 802, the proposed changes to Rule 701 would more clearly describe the processes surrounding determination and publication of the Exchange Delivery Settlement Price in relation to Futures on the basis of data provided or published by the relevant Market (and are not intended to result in a change in those processes). While the existing Rules currently describe these processes, the amendments are intended as drafting improvements to better ensure that the description is clear. In Rules 702(b) and 705(a), the words ''Without prejudice to any contractual netting under Rule 406 or

the Clearing Procedures'' are proposed to be added. Under Rule 406, contractual netting may be applied to offsetting positions in respect of one of a Clearing Member's Customer accounts even though such positions are ordinarily held gross. The additional language clarifies that while cash settlement and delivery amounts are determined for Customer Accounts based on gross positions under Part 7, this does not preclude contractual netting of positions where provided for under Rule 406 or the Clearing Procedures (including contractual netting within the positions of a particular Customer of a Clearing Member). The change is intended to avoid any potential questions as to whether there might otherwise be a conflict between Part 7 and Rule 406. In Rule 702(c), changes are proposed to clarify the method of determining the amount payable for cash settlement of a Future. The amended language would confirm that the relevant amount is based on the price at which Open Contract Positions were last recorded on ICE Clear Europe's books and the Exchange Delivery Settlement Price (and not necessarily the difference between these two prices), in any case as provided in the applicable Contract Terms. In addition, in Rule 703(a), a clarification would be added that a Market may administer matters or exercise rights on behalf of ICE Clear Europe pursuant to Rule 703 and the Delivery Procedures. This reflects the fact that Markets are typically involved in the delivery process for Futures and may carry out functions otherwise specified to be discharged by ICE Clear Europe pursuant to the Rules or Procedures.

In Rule 703(f), a parallel change for Futures would be made to that described above in Rule 809(d) for options, to provide flexibility for the Clearing House, in a scenario where it directs a Clearing Member to make delivery of a Deliverable in settlement of an option directly to another Clearing Member (rather than to the Clearing House) in accordance with that Rule, to also permit payments to be made directly between such parties rather than to and from the Clearing House. Changes are also proposed to Rule 703(h) to provide that both legs (not just one side) of a Contract in delivery may be subject to mandatory cash settlement directions in the case of Clearing Member default. This will facilitate management of such a default by the Clearing House, and avoid need for the Clearing House itself to make or take delivery of the underlying asset. Finally, a new Rule 703(j) would be added to require Sellers to represent that they convey good title to products (free of encumbrances) when physical settlement takes place. This would be consistent with market expectation around deliveries, consistent with any other deliveries made of such products in the relevant cash markets.

A change is proposed to Rule 906(a) to refer to the ''abandonment'' of an Option in addition to the ''exercise'' of an Option in subparagraph (iii) under the description of ''L'', one of the variables in the net sum calculation. This change is proposed because abandoning an Option could also affect the aggregate amount payable by or to a defaulting Clearing Member in respect of positions recorded in a given account and such impact should be taken into account in addition to the impact of any exercise of an Option.

Various changes have been proposed in the Clearing Procedures to reflect the use of the Exchange Delivery Settlement Price for Options (which replaces the ''Reference Price'') and provide greater detail on the calculation and application of net liquidating value for an Option (''NLV''). Paragraph 4.4(c) would be amended to clarify that NLV would be calculated on each Business Day based on relevant Exchange Delivery Settlement Prices. The new language would also confirm that for long Option holders, a positive NLV amount would be applied against the requirement for Original Margin, and that for short Option holders, negative NLV would contribute to the requirement for Original Margin. This approach reflects current practice for calculating margin requirements, but is not currently not stated explicitly in the Procedures. Moreover, the amendments in paragraph 4.4(c) confirm that where a gross margin model is used for a particular account, NLV would be held on a gross basis without any setting off between different Customers interested in the account. Paragraphs 5.1, 5.5(a) and 5.6 of the Clearing Procedures are also to be amended to reflect the replacement of the Reference Price with the Exchange Delivery Settlement Price for Options.

Several other changes are also proposed in the Clearing Procedures to better reflect the processes and terminology used in relation to Options. Paragraph 5.2(d) would be amended to specify that it only applies in relation to Options ''whose Deliverable is a Future Contract''. This provision specifies that where such Options are exercised a Contract at the Strike Price would arise in accordance with Rule 401, and such Contract would only arise if the Deliverable under the Option Contract is a Future (as opposed to a security). Changes are also proposed to paragraph 5.7(a) to cross-reference the operation of automatic exercise (as applicable), as described in paragraph 5.5 of the Clearing Procedures, as relevant to determining whether elective exercise and/or abandonment of Options on the relevant expiry day is permitted.

In the General Contract Terms, paragraph 3.1(b) would be amended to reflect changes to defined terms and other relevant terms relating to settlement prices for Contracts (including replacement of ''Market Delivery Settlement Price'' and ''Reference Price'', with ''Exchange Delivery Settlement Price'').

(v) Complaints and Disciplinary Processes

Various changes are proposed to Part 10 of the Rules and to the Complaint Resolution Procedures to streamline and improve ICE Clear Europe's complaints and disciplinary processes. Many of the proposed changes are drafting improvements and other enhancements following a detailed internal review at both ICE Futures Europe and ICE Clear Europe, based on lessons learned from the practice of previous complaint and disciplinary processes, especially at the exchange level where such processes occur more regularly.

Changes have been proposed to Rule 1001(d) to ensure that the scope of the Complaint Resolution Procedures extends to complaints against Directors, committees and any individual committee members of ICE Clear Europe. Current Rule 1001(d) currently only expressly applies to officers and employees of ICE Clear Europe. ICE Clear Europe did not intend to exclude directors and committees from the scope of the Complaints Resolution Procedures, and believes it is appropriate and beneficial for Clearing Members and other market participants to include such persons explicitly in the coverage of those procedures.

Drafting improvements are proposed to Rule 1002 to improve the clarity of the provisions governing investigations into breaches of the Rules. These changes involve clearer language in certain places to aid readability and also inserting language in Rule 1002(c) to ensure that ICE Clear Europe's advisers treat not only information obtained in the course of the investigation as confidential, but also information that the advisers have been given access to. Changes have also been proposed to Rule 1002(d)(iv) to require a Clearing Member, as part of their cooperation with an investigation, to provide access to documents and materials in its

possession at the direction of the Clearing House (in addition to the making such documents or materials available for inspection).

Rule 1002(e) is proposed to be amended to clarify that non-compliance with an investigation can lead to additional disciplinary action being brought against a Clearing Member. This provision currently specifies that failure to co-operate with an investigation would constitute a breach of the Rules, but the added language would specify that non-compliance is capable of giving rise to separate and/or additional disciplinary action in accordance with Part 10 of the Rules (including by amendment of the Notice of alleged breaches pursuant to Rule 1003(i)). Certain typographical corrections and clarifications would be made in Rule 1002(f) and (g), and Rule 1002(g) would also be amended to clarify that initial meetings following service of a Letter of Mindedness would be conducted in private.

Proposed changes to Rule 1002(h), in the context of investigations, would clarify that the initial findings to be communicated to the Clearing Member in writing must also be accompanied by an indication of the intended steps to be taken under Rule 1002(i) (for example, discontinuing the investigation or commencing disciplinary proceedings). The Clearing House would also be required to provide certain notices to the Clearing Member of the acts or practice which it has been found to taken, the relevant provisions breached and the proposed sanctions to be taken. Similar changes have also been proposed to Rule 1003 in relation to different stages involved in disciplinary proceedings and to section 1 of the Complaint Resolution Procedures.

Rule 1002(i) would be amended to better clarify certain of the steps that ICE Clear Europe may take following the communication of its initial findings to a Clearing Member, as set out in clauses (i)–(vii). In clause (v), the amendments would specify that the Clearing House may refer a matter for further inquiry by the Clearing House, a Market or Governmental Authority, where the Clearing House considers it necessary that the matter be investigated further. Clause (vii) would be revised to add a reference to written comments that may be received from the Clearing Member following the service of the Letter of Mindedness under Rule 1002(g). Certain typographical corrections would also be made in Rule 1002(i). A new subclause (viii) would also be added to state expressly that ICE Clear Europe may take a combination of the actions listed.

Various amendments proposed to Rule 1003 would enhance and clarify the process for disciplinary proceedings. The changes would, for example, reduce unnecessarily complex drafting, describe the various steps involved in the disciplinary process in more detail (similar to those changes proposed for Rule 1002(h) in the context of investigations) and specify further the timing by which certain actions must be taken. Specifically, in Rule 1003(b), the amendments would require notice to the Clearing Member in writing that disciplinary proceedings are to be commenced and state explicitly that the Clearing House will appoint the chairman and members of a disciplinary panel. Revised Rule 1003(c) would establish that the Clearing Member subject to the proceeding would be notified of the composition of the Disciplinary Panel within seven calendar days and then have ten further calendar days to object in writing to any particular appointment. Other changes include specifying, in further detail in Rule 1003(p), what information the Disciplinary Panel must communicate (to ICE Clear Europe and the relevant Clearing Member) once a decision has been made as to whether a breach of the Rules has been proven (following a hearing). This includes, for example, the rationale for the Disciplinary Panel's decision, details of the breach of the Rules and any sanctions to be imposed. The amendment further clarifies that sanctions will be suspended pending the determination of any appeal, unless the Clearing House determines that any order of suspension of the Clearing Member should be enforced during that period. In addition, Rule 1003(s) would be amended to clarify the Disciplinary Panel's ability to order a party to pay costs of disciplinary proceedings, including specifically the fees and expenses of the members of the Disciplinary Panel. This amendment is meant to clarify current practice, currently governed by a broad discretion by the panel to give awards on costs, and not substantively change the Disciplinary Panel's authority with respect to assessment of costs.

In Rule 1004, various amendments would be made to clarify certain conditions surrounding the use of the Summary Procedure and to improve the drafting of the provisions in this Rule more generally. The Summary Procedure is designed to be used in a scenario where a full disciplinary process would be disproportionate in terms of time or cost. Rule 1004(a) would be revised to clarify the timing for the use of the Summary Procedure, in order to facilitate prompt resolution of matters subject to the Summary Procedure. Rule 1004(b) would be amended to provide ICE Clear Europe with the express ability to refuse the use of the Summary Procedure for matters which are more serious or are ''considered of particular significance or relevance to the market in general or in the public interest''. This changes thus would clarify the circumstances in which ICE Clear Europe may reject the inappropriate use of the Summary Procedure. It is also proposed that Rule 1004(i) be amended to specify the information that the Summary Disciplinary Committee must communicate to the Clearing Member in greater detail (mirroring the changes to similar requirements imposed on the Disciplinary Panel under Rule 1003). Rule 1004(i) would also clarify that in keeping with the summary nature of the proceeding, the range of sanctions available to the Summary Disciplinary Committee would be limited to those set out in the Notice and any additional sanctions arising out of the conduct of the proceeding. Various other non-substantive drafting clarifications would be made in Rule 1004.

Rule 1005, addressing appeals in the context of disciplinary proceedings, would be revised to include a number of drafting clarifications and typographical corrections. Rule 1005(a)(ii) would clarify that the stated grounds in that provision are the only grounds for appeal. Rule 1005(d) would be amended to add a requirement that the lawyer appointed to the Appeal Panel has been in practice for more than ten years and to clarify that an expert assessor may not have a personal or financial interest in or have been involved in the investigation of or proceedings with respect to the matter under consideration.

A new Rule 1006 would be added to address the interaction between ICE Clear Europe's disciplinary procedures under the Rules and any similar procedures under Market Rules. Exchanges that ICE Clear Europe clears are likely to have their own disciplinary procedures, with the result that a single disciplinary issue may give rise to two different disciplinary procedures dealing with the same fundamental issues. For example, ICE Futures Europe has disciplinary procedures set out in Section E of its Regulations. The intention behind new Rule 1006 is to: (a) Ensure that the existence of parallel disciplinary procedures under Market Rules does not preclude ICE Clear Europe's own disciplinary procedures; and (b) confirm that where an exchange is carrying out disciplinary proceedings

at the same time as ICE Clear Europe in relation to an exchange member that is also a Clearing Member, such proceedings may be consolidated with those of ICE Clear Europe to avoid unnecessary duplication of efforts and resources. For example, it may be appropriate for the exchange and the Clearing House to rely on the same pieces of evidence and for combined interviews of witnesses to be conducted on behalf of both the exchange and the Clearing House in the investigative phase of the disciplinary process, to avoid unnecessary duplication of effort. Such coordinated proceedings may be appropriate in a range of circumstances, including alleged breaches of operational systems and controls, AML matters, market abuses and delivery failures.

Various changes have also been proposed to the Complaint Resolution Procedures to ensure that ICE Clear Europe's complaints procedures are consistent with the applicable requirements of UK law and are clear to follow and to improve the processes concerning the investigation and handling of complaints by ICE Clear Europe. Relevant changes would include:

(a) Adding a clarification in paragraph 2.1 of the Complaint Resolution Procedures that Eligible Complaints are only those complaints relating to the manner in which the Clearing House has performed, or failed to perform, its regulatory functions as defined by section 291(3) of the Financial Services and Markets Act 2000 (''FSMA''). FSMA imposes various regulatory functions on markets and clearing houses such as ICE Clear Europe. The Complaint Resolution Procedures are intended specifically, and solely, to address complaints involving the regulatory functions specified in such section of the FSMA, in accordance with the requirements of FSMA.[10] Similar changes to include a reference to section 291(3) of FSMA have also made in paragraphs 4.4 and 7.4 of the Complaint Resolution Procedures. In addition, the scope of Eligible Complaints would be amended in Rule 2.2 to clarify that as with its relationship with employees, the Clearing House's relationship with directors, officers, committees and committee member would not be the subject of an Eligible Complaint (consistent with the clarifications discussed above as to the role of such persons in the context of the disciplinary procedures). The amendments would also clarify the drafting of the exclusion for commercial disputes in paragraph 2.2(b);

(b) adding a time-limited ability for ICE Clear Europe to apply alternative processes instead of an investigation (including mediation) to resolve an Eligible Complaint, under new paragraph 3.6 of the Complaint Resolution Procedures;

(c) revising and clarifying stages of the Eligible Complaints investigation process under paragraph 4 of the Complaint Resolution Procedures—this includes new provisions dealing with the process for appointing of an investigator, procedures for delaying the complaints process where there are contemporaneous court or other proceedings dealing with the same or a related matter, timelines for complaints investigations, and procedures surrounding the referral of complaints to the independent Complaints Commissioner where they are not dealt with expeditiously by an investigation. The revisions also address the matters that the investigator must have regard to when deciding whether a complaint should be upheld, which are a failure to act fairly, a failure to perform the Clearing House's regulatory functions having regard to all of the circumstances, a lack of care or a mistake, or an act of fraud, bad faith or negligence (which factors are consistent with the requirements of FSMA);

(d) in paragraph 5, clarifying the manner in which the investor will provide his conclusions and recommendations for remedial action, if any, to the Clearing House and complainant, and removing an unnecessary reference to referral of a complaint to the Commissioner (which is covered in paragraph 4 and 6);

(e) confirming, in new section 6.3 of the Complaint Resolution Procedures, that the Commissioner's decision, if adopted by the Clearing House, would be in full and final resolution and settlement of a complaint, binding a Clearing Member and preventing the use of any other dispute resolution procedure in relation to the same complaint (for example arbitration). Similar language in existing section 1.4 of the Complaint Resolution Procedures would be removed as duplicative

(f) in paragraph 7, revising the timing for certain actions of the Commissioner upon referral of a complaint and making similar changes as discussed regarding paragraph 4 above to clarify the basis for uphold or rejecting complaint, consistent with the FSMA;

(g) in paragraph 8, clarifying the procedures for the Commissioner to report on the results of the investigation and providing the Clearing House's discretion to make such report, in whole or in part, public; and

(h) throughout the Complaint Resolution Procedures, including paragraphs 1, 9, 10 and 11, making a number of typographical and similar corrections, updates to cross-references, and similar non-substantive drafting corrections.

(vi) U.S. Tax Requirements

The proposed amendments would adopt a new Paragraph 6.1(k) of the Finance Procedures to address the application of Section 871(m) (''Section 871(m)'') of the Internal Revenue Code of 1986, as amended (the ''I.R.C.'') and regulations thereunder to futures and option contracts that reference certain underlying equity securities or equity indexes and are cleared by ICE Clear Europe (''equity contracts''). Section 871(m) imposes a 30% withholding tax on ''dividend equivalent'' payments that are made or deemed to be made to non-U.S. persons with respect to certain derivatives that reference equity of a U.S. issuer. Under the regulations implementing Section 871(m), certain financial transactions entered into by a non-U.S. person are considered ''Section 871(m) Transactions'' and can potentially give rise to dividend equivalents subject to withholding tax. A dividend equivalent is deemed to arise if a dividend is paid on the underlying U.S. equity referenced by such Section 871(m) Transaction. Furthermore, under applicable regulations, ICE Clear Europe itself becomes a ''Withholding Agent'' whenever it enters into a Section 871(m) Transaction with a non-U.S. Clearing Member. Unless the non-U.S. Clearing Member enters into certain agreements with the Internal Revenue Service (''IRS''), ICE Clear Europe would be required to withhold on dividend equivalents with respect to any transactions with the non-U.S. Clearing Member that are Section 871(m) Transactions. However, a potential Withholding Agent, such as ICE Clear Europe, can avoid the burden of reporting, collecting, and remitting the withholding taxes imposed by Section 871(m) on certain payments (including dividend equivalent payments) made or deemed to be made to a non-U.S. Clearing Member if (i) with respect to transactions in which the non-U.S. Clearing Member acts as a principal, such non-U.S. Clearing Member has

[10] As provided in paragraph 1.3 of the Complaint Resolution Procedures, these procedures do not preclude the Clearing House from considering or addressing any other complaint pursuant to such procedures as it may determine, and in accordance with any applicable law. Accordingly, the Clearing House may use such other procedures for purposes of considering or addressing complaints relating to other applicable laws, including the Exchange Act.

entered into a ''qualified intermediary agreement'' with the IRS as a ''qualified derivatives dealer'' whereby the non-U.S. Clearing Member essentially agrees to undertake the withholding responsibilities (a ''QDD'') and (ii) with respect to transactions in which the non-U.S. Clearing Member acts as an intermediary, such non-U.S. Clearing Member has entered into a qualified intermediary agreement with the IRS as a ''qualified intermediary'' and the non-U.S. Clearing Member assumes the primary obligation for withholding under relevant tax provisions (a ''Withholding QI'').

For these reasons, ICE Clear Europe is proposing to adopt a new paragraph 6.1(k) of the Finance Procedures. Subparagraph (i) would require that, as a precondition for a non-U.S. Clearing Member to clear equity contracts with ICE Clear Europe, any such non-U.S. Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes must enter into appropriate agreements with the IRS and meet certain other specified qualifications under procedures of the IRS, such that ICE Clear Europe will not be responsible for withholding on dividend equivalents under Section 871(m). Subparagraph (ii) would require non-U.S. Clearing Members to certify annually to the clearing house that they satisfy these requirements. Subparagraph (iii) would require non-U.S. Clearing Members to provide, on an annual basis, certain information necessary for ICE Clear Europe to make required IRS filings. Subparagraph (iv) would require non-U.S. Clearing Members to notify the clearing house of relevant changes in their circumstances affecting compliance with paragraph 6.1(k). Subparagraph (v) would clarify that a Clearing Member's tax status as an ''intermediary'' or ''dealer'' for this purpose would not affect its status for regulatory or other purposes.

(vii) Other Default Management Changes

The amendments would make a number of other changes related to default management. The definition of ''Bankruptcy'' in Rule 101 would be amended to include a scenario where a person is ''granted suspension of payments''. Insolvency laws may sometimes allow for a suspension of payments, which ICE Clear Europe would treat as a ''Bankruptcy'' under the Rules to ensure that it has the full range of default management powers available to address such a scenario. (The amendment would not affect the existing limitations on exercising default remedies in connection with a Resolution Step.)

The definition of ''Failure to Pay'' in Rule 101 would be amended to clarify the length of the cure period between the service of a failure to pay notice on ICE Clear Europe by a Clearing Member and the point at which a ''Failure To Pay'' occurs, in circumstances where ICE Clear Europe is granted an extension under Rule 110(b) or (c).

The definitions of ''Insolvency'' and ''Insolvency Practitioner'' in Rule 101 would be amended to ensure that all relevant insolvency scenarios and insolvency office-holders are covered by the definitions. The defined term ''Insolvency'' would be widened to also cover a suspension of payments or moratorium being granted, which reflects a similar change made to the ''Bankruptcy'' definition (described above). In addition, the proposed changes would bring the making of an ''instrument or other measure'' by a Governmental Authority pursuant to which a person's property is transferred within the definition, in addition to ''orders'' of a similar nature. These changes have been proposed following a legal review of relevant clearing member jurisdictions.

A change is proposed at Rule 901(a)(viii) to expand the list of approvals and similar statuses, the revocation of which may constitute an Event of Default, to include loss of relevant ''exemptions'' by any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility. The change is being made as the loss of such an exemption is effectively equivalent to the loss of a licence or regulatory authorization, and ICE Clear Europe accordingly believes that loss of an exemption should similarly be treated as an Event of Default under Rule 901(a)(viii).

A new Rule 902(d) is proposed to be added, which would provide that ''Transfer Orders shall be legally enforceable, irrevocable and binding on third parties in accordance with Part 12, even on the occurrence of an Event of Default''. This proposed new provision refers to Part 12 of the Rules within the main default rules in Part 9, which is intended to provide comfort that the protections from the application of insolvency law under EMIR and the UK Companies Act 1989 for the default procedures of a central counterparty are available for Transfer Orders described under Part 12.

In Rule 904(b), changes are proposed to clarify the price at which positions are transferred (''ported'') from a defaulting Clearing Member to a non-defaulting Clearing Member and the relevant time for the determination of such price, which is at the discretion of the Clearing House. The proposed changes would allow ICE Clear Europe to use the time of porting, the time of an Event of Default, Insolvency or Unprotected Resolution Step, or the end of the Business Day prior to porting, Event of Default, Insolvency or Unprotected Resolution Step as the time to determine the porting price. These changes are designed to facilitate ICE Clear Europe's ability to manage defaults efficiently and effectively, taking into account different insolvency regimes in Clearing Member jurisdictions. Similar changes are also proposed to Rule 905(b)(xiv) to provide that ICE Clear Europe would determine the price at which it ports positions to a transferee Clearing Member.

Rule 905(b)(vi), which addresses how ICE Clear Europe would determine the liquidation price for offsetting Contracts that are to be paired and cancelled as part of the default management process, would be revised to refer to a new Rule 905(g). Rule 905(g) would provide that for purposes of liquidations, terminations and close-outs under Rule 905 ICE Clear Europe would have discretion to determine the relevant price of the Contract. ICE Clear Europe would be permitted to do so on the basis of the Exchange Delivery Settlement Price, Mark-to-Market Price, FX Market Price, Reference Price, Market-to-Market Value, current market value or any other price specified by ICE Clear Europe. The changes would also clarify that ICE Clear Europe has discretion to determine the reference time for the purposes of the liquidation price calculation. A further change has been proposed to Rule 905(b)(vi) to insert the words ''buy and sell or'' before ''Long and Short Positions'' to reflect the terminology used throughout the Rules to refer to opposite positions in Futures. (''Long and Short'' are typically used to refer to positions in Options rather than Futures.)

New Rule 905(b)(xix) would be added to clarify that ICE Clear Europe has authority to carry out default auctions and construct auction lots, which may include positions relating to multiple customer accounts of a Non-FCM/BD Clearing Member. (Consistent with US regulatory requirements, an auction lot relating to Contracts of a defaulting FCM/BD Clearing Member may only contain positions relating to a single account.) The new provision would not permit a single auction lot to consist of both proprietary and client positions. Further, the new provision would provide ICE Clear Europe with the explicit power to use a single bid price received for a particular lot of auctioned

positions to calculate liquidation values and net sums by apportioning this bid price across the various accounts in which the contracts in the auction lot are recorded. Although the existing Rules do not necessarily preclude ICE Clear Europe from constructing an auction lot consisting of contracts recorded in different accounts, the proposed amendment would provide an express authority to do so. The amendment would thus enhance transparency.

In Rule 906(a), the definition of the ''GFC'' variable in the net sum calculation, which references guaranty fund contributions of the Defaulter, would be amended to provide that guaranty fund contributions must be applied for this purpose ''in accordance with Rules 906(b) and (c)''. The referenced provisions set out restrictions on the setting off or aggregation of assets attributable to different accounts of a defaulting Clearing Member for the purposes of the net sum calculation and require a separate net sum calculation to be carried out for each account. The reference in the ''GFC'' definition to these provisions is not intended to change current practice, but to clarify that these limitations apply to the use of the guaranty fund contributions in determining the net sum calculations. A similar change is proposed to the final subparagraph of Rule 906(b), to clarify that guaranty fund contributions and other amounts may be used for the purpose of calculating any net sum on any account of the defaulting Clearing Member, subject to the restrictions in Rule 906(c) (the restrictions in Rule 906(b) are already referenced in the current version of this provision).

Rule 906(c) is proposed to be amended to provide that ICE Clear Europe ''shall'' aggregate, set off, or apply surplus assets in relation to a defaulting Clearing Member's Proprietary Account to meet a shortfall on one or more of its Customer Accounts (rather than ''may''). This is not intended to change the Clearing House's default management practices (under which such application of the Proprietary Account would be made), but is intended to clarify the operation of the Rules and avoid potential questions regarding whether or not ICE Clear Europe has legitimately exercised its discretion to set off assets in this way.

A clarification would be made in Rule 912(b)(iv), which addresses liability of the Sponsor and Sponsored Principal on an Individually Segregated Sponsored Account, to add the words ''and severally'' after the word ''jointly''. The change was suggested by counsel to an industry association concerning the sponsored principal model, and is intended to fix a drafting error to ensure that the liabilities and assets on sponsored accounts have mutuality. The revised language is consistent with other provisions in Part 19 addressing joint and several liability for such accounts, and the ''and severally'' language in this provision was inadvertently omitted.

Rule 1202(b)(i) would be amended to include a new paragraph (B) stating an additional circumstance in which a Securities Transfer Order would be deemed to arise under the designated system operated by ICE Clear Europe for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999. In the event of one Clearing Member (or Sponsored Principal) allocating an F&O Contract to another Clearing Member (or Sponsored Principal) under Part 4 of the Rules, a new Securities Transfer Order would be deemed to arise under the Designated System under new Rule 1202(b)(i)(B). The intended result of this change is that such a transfer would be covered by the settlement finality provisions under the Settlement Finality Regulations (implementing the EU Settlement Finality Directive), and subject to section 20 of those Regulations, and benefit from the Regulations' protections against the application of national EU insolvency laws. Changes have also been proposed to Rule 1202(f) to implement this new Transfer Order for allocations by inserting the words ''or allocated'' after ''transferred, assigned or novated''.

In Rule 1202(m)(iv)(A), changes are proposed to refer to rights, liabilities and obligations of Clearing Members being transferred or assigned, in addition to the current reference to these being novated. These proposed changes would ensure consistency with the terminology used elsewhere in the Rules (for example in Part 9) in relation to the transfer of positions from one Clearing Member to another Clearing Member (whether in a default scenario or otherwise) and that the provisions in Part 12 relating to Position Transfer Orders capture the full range of mechanisms through which positions can be transferred from one Clearing Member to another. Rule 1202(m)(vi)(B) is also proposed to be amended to add the words ''or Customer'' after the word ''Affiliate'' to correct an unintentional omission.

Rule 1205(i) would be amended to provide that New Contract Payments Transfer Orders shall also be satisfied if and at the point that the relevant F&O Transaction or Contract ''has become subject to a Position Transfer Order that has itself become satisfied under Rule 1205(b)''. This drafting change has been proposed to clarify that a New Contract Payment Transfer Order would terminate if the relevant transaction or contract to which it relates has become subject to a Position Transfer Order that has been satisfied, which would occur once the relevant contracts have been transferred, assigned or novated to the relevant transferee Clearing Member.

(viii) Delivery Procedures Changes

In the Delivery Procedures, various changes would be made to ensure that the procedures are consistent with the operational practices and systems of ICE Clear Europe and affiliated trading venues, including with respect to the processes set out in the delivery timetables. Paragraph 19 of the General Provisions, which describes the Guardian electronic grading and delivery system used by ICE Clear Europe, would be amended to reflect the fact that other deliverable products may be dealt with in the Guardian system in addition to those financials & softs commodities already specifically listed in that paragraph.

In Parts A and C of the Delivery Procedures, a new paragraph would be added to clarify that all references to timings or times of day in that Part are references to London times. In addition, updates to several Parts of the Delivery Procedures would be made to reflect current operational practices whereby certain submissions (such as delivery intentions) are made electronically through the ECS system, rather than through submission of specified delivery forms, which in many cases are out of date (and accordingly references to such forms have been removed). Other changes to update deadlines and descriptions for particular delivery steps or, in some cases, to delete delivery steps that are no longer carried out would be made. Section 7, which addressed alternative delivery procedure for certain European emissions contracts, would be deleted as it is unnecessary in light of the provisions of Part A of the Delivery Procedures. The various changes have been proposed in the following parts of the Delivery Procedures: Part A, paragraphs 5.1, 5.2 and 5.3 (Delivery Timetables); Part B, paragraph 2 (Delivery Timetable) and paragraph 4 (Delivery Documentation Summary); Part C, paragraph 5 (Delivery Timetable) and paragraph 9 (Delivery Documentation Summary); Part D, paragraphs 5.1 and 5.2 (Delivery Timetables) and paragraphs 8.1 and 8.2

(Delivery Documentation Summaries); Part F, paragraphs 6.1 and 6.2 (Delivery Timetables) and paragraphs 9.1 and 9.2 (Delivery Documentation Summaries); Part G, paragraphs 5.1 (Delivery Timetable) and 8.1 (Delivery Documentation Summary); Part H, paragraphs 5.1 (Delivery Timetable) and 8.1 (Delivery Documentation Summary); Part I, paragraphs 6.1 (Delivery Timetable) and 9.1 (Delivery Documentation Summary); Part K, paragraphs 4 (Delivery Timetable) and 8 (Delivery Documentation Summary); Part L, paragraphs 4 (Delivery Timetable) and 8 (Delivery Documentation Summary); Part N, paragraph 5 (Delivery Timetable); Part Q, paragraph 1 (Delivery Timetable); Part U, paragraphs 1.6 and 1.9 (Delivery Timetables); and Part AA, paragraphs 6.1 (Delivery Timetable) and 9.1 (Delivery Documentation Summary).

(ix) Other Changes

Various other miscellaneous changes and clarifications are proposed to the Rules and Procedures.

Changes have been proposed to expand the definition of ''Board'' in Rule 101 so that it clearly includes, in the context of any power, discretion or authority of the board, other similar bodies and committees established by ICE Clear Europe thereunder. Similarly, in a number of places in the Rules, changes have been proposed to include ''committees'', ''individual committee members'' and similar terms in addition to existing terms referring to persons exercising governance or other functions for ICE Clear Europe or a Clearing Member, such as ''directors'' or ''officers''. These were previously omitted in various places or terms were used inconsistently to describe individuals or governance bodies in different provisions of the Rules. ICE Clear Europe has determined, following an internal review, to make these changes to more accurately describe the persons involved in governance in a consistent way in the Rules. The proposed changes are contained in Rules 102(j)(B), 102(p), 109(c), 111(a), 114(a), 201(a)(xxvi), 905(f), 1001(d) and 1003(q). The definition of ''Representative'' has also been expanded so as to cover any persons who are employed or authorised by, or appointed to act on behalf of, another person and such term would be inserted in the Rules to refer to representatives of Clearing Members in Rule 102(j).

Certain changes have also been proposed to the Rules to improve the provisions concerning intellectual property (''IP'') rights. The definition of ''Intellectual Property'' in Rule 101 would be revised to improve the international coverage of the definition, by expressly confirming that it covers IP rights in any part of the world and all IP rights ''for the entire duration of such rights''. This clarifies the provisions relating to IP under the Rules to ensure that all the standard IP rights are covered. In addition, a new Section 12(d) would be inserted in each of the Standard Terms, which would require Customers to agree to Rule 406(g), which concerns the Clearing House's intellectual property rights. As part of its review of the Standard Terms more generally, as discussed herein, ICE Clear Europe has determined that this change is appropriate to avoid any uncertainty as to the applicability of Rule 406(g) in the context of customer transactions. The representation in question supports the position in relation to IP rights provided for in the Rules. ICE Clear Europe has added this provision to ensure that it has the same contractual representation from Customers as regards IP rights as it does from Clearing Members.

Rule 106 would be amended to expand the provisions relating to confidentiality and the disclosure of information. For drafting clarity, redesignated paragraph (b) would set out the information to be held in confidence by the Clearing House, and redesignated paragraph (c) would specify disclosures of confidential information permitted to be made by the Clearing House. In terms of the scope of confidential information under Rule 106(b), clarifications would be made to provide that any information in relation to a Customer in connection with Margin payments is covered by the confidentiality obligation. Changes proposed to Rule 106(c) would clarify and extend the circumstances in which ICE Clear Europe would be permitted, under the Rules, to disclose confidential information. Specifically, a clarification would be added at Rule 106(c)(i) to allow for confidential information to be disclosed where ''lawful requests'' are received from regulators (rather than only a formal statutory request with legal force or Court order) or if necessary for the making of a complaint or report for offences which may have been committed under Applicable Laws. This amendment follows an internal review of these provisions and is intended to avoid potential questions as to ICE Clear Europe's ability to disclose confidential information when ICE Clear Europe is subjected to regulatory requests for information or where the disclosure is advisable under Applicable Law but not necessarily required by formal exercise of statutory powers or an unequivocal court order or statutory mandate.

Rule 115(b), which addresses the sharing of information with Governmental Authorities or referrals of complaints to Exchanges, Clearing Organisations or Regulatory Authorities, would be amended to provide that such actions are subject to the requirements of Rule 106.

Various corrections and clarifications are proposed at Rule 110(a), Rule 114(d) and paragraph 4.2 of the Business Continuity Procedures relating to ICE Clear Europe's ability to extend or waive requirements of the Rules. In Rule 110(a), a sentence would be added providing that waivers may be publicized at the discretion of ICE Clear Europe. (ICE Clear Europe does not believe that this amendment alters its existing authority, but believes it would be useful to clarify that it may make public information about any such waiver.) A new Rule 114(d) is proposed to provide expressly that ICE Clear Europe may take any measure that it deems reasonably necessary in relation to the organization and operation of the Clearing House. ICE Clear Europe is proposing to add this provision to ensure that it is not prevented from taking action under a range of circumstances that may arise, including, but not limited to a default scenario, merely because there is no specific provision of the Rules explicitly empowering it to do so. This authority is subject to a proviso that ICE Clear Europe may not take any action in breach of any provision of the Rules or Procedures or that would modify the Rules or Procedures, and that any such action must be taken in accordance with the Clearing House's internal governance requirements. ICE Clear Europe does not believe that this amendment would alter its existing ability to take actions in such circumstances, but the amendment would provide greater clarity and legal certainty as to its permitted scope of action. ICE Clear Europe would rely on its internal controls and compliance function to ensure that any such actions are consistent with its Rules and Procedures. A related change at paragraph 4.2 of the Business Continuity Procedures would clarify that ICE Clear Europe's discretionary powers to amend or waive requirements or deadlines in the case of a Business Continuity Event affecting a Clearing Member only apply to the affected Clearing Member(s).

It is proposed that Rule 117(k) be amended to clarify that Clearing Members with the ability to claim

sovereign immunity would be deemed to have ''irrevocably'' waived such immunity for the purposes of dispute resolution processes under Rule 117, to the extent permitted by applicable law. This approach is consistent with typical practice for waivers of sovereign immunity and the documentation thereof in the derivatives markets. ICE Clear Europe is adopting this amendment, following an internal review, for clarity and to avoid any suggestion that a waiver of immunity in this context could be revoked.

Various enhancements to clearing membership requirements for Clearing Members have been proposed in Rule 201(a). For example, the need for representatives of Clearing Members to hold all authorizations, licences, consents and approvals required under applicable laws would be added in Rule 201(a)(vi). Additional detail on operational, managerial, back office, systems, controls, business continuity and banking requirements, among others, for Clearing Members has been proposed in Rules 201(a)(xi), (xiv), (xxv), (xxvi) and (xxvii). Similarly, changes are proposed to Rule 202(a)(xiv), (xxii) and (xxiii) to enhance the ongoing requirements for Clearing Members. These changes include additional detail on system and controls requirements and the addition of two new requirements to ensure that ICE Clear Europe has sufficient access rights in relation to its Clearing Members. Proposed new Rule 202(a)(xxii) would require Clearing Members to be accessible during and for two hours immediately after close of business on every business day. Further, proposed new Rule 202(a)(xxiii) would require Clearing Members to provide such access as ICE Clear Europe requires to their premises, records and personnel for the purposes of, for example, carrying out investigations or audits. Following an internal review of relevant requirements, ICE Clear Europe has proposed some of these proposed changes to address identified commercial and operational risks for ICE Clear Europe and to ensure that Clearing Members meet appropriate and evolving standards concerning their systems and operations based on day-to-day operational experience with Clearing Members. The amendments also generally reflect improvements are further intended to better harmonize Rules and membership requirements across ICE clearinghouses.

In Rule 203(a)(xvi), a change is proposed to clarify that Clearing Members are prohibited from engaging in conduct that would render them unable to satisfy obligations on Clearing Members under Rule 202(a) (just as the current Rule prohibits conduct that would render the Clearing Member unable to satisfy the membership criteria under Rule 201(a)). The amendment is intended to avoid any potential gap in ongoing obligations under the Rule. New Rule 203(a)(xxii) would explicitly limit the ability of Clearing Members or Affiliates to exercise set-off rights against ICE Clear Europe where such Clearing Members (or their Affiliates) have a relationship in another capacity, for example providing banking or custodial services to ICE Clear Europe. This change is intended to reduce the risks that other contractual agreements contain provisions that could interfere with default management or operational processes. The approach aims to provide a level playing field for all Clearing Members, regardless of any other commercial relationships with the ICE group.

Changes are proposed in Rules 204(a)(xii) and 204(b)(i) to enhance certain notification requirements imposed on Clearing Members. The Clearing Members' notification requirement at Rule 204(a)(xii) would be extended to require notification of investigations or allegations of breaches of Applicable Laws by a Clearing Member (if they are non-frivolous and non-vexatious), in addition to actual breaches. ICE Clear Europe believes this is an appropriate extension of the Rule, to facilitate ongoing monitoring by the Clearing House of circumstances that may significantly affect Clearing Members. In Rule 204(b)(i), additional language is proposed to require that a Clearing Member notify the Clearing House of a change of control where that change of control is subject to the approval of the FCA or PRA, in addition to a change of control notifiable to the FCA or PRA (as required under the current version of Rule 204(b)(i)). In ICE Clear Europe's view, the amendment avoids a potential gap in notification requirements based on a distinction between regulatory notice and approval that is not relevant in this context.

It is proposed that Rules 206(a) and (b) be amended to reflect the fact that Clearing Members are required to maintain other financial resources requirements (in addition to Capital) under the relevant CDS, Finance and Membership Procedures. (The amendment thus does not change requirements applicable to Clearing Members but is intended to correctly cross-refer to the existing requirements of various Procedures documents.) The proposed amendments would also require Clearing Members to provide documentation and statements supporting calculations of financial resources requirements, as well as details of the terms and conditions of any documentation relating to financial resources requirements, upon ICE Clear Europe's request.

Rule 301(f) would be revised to allow the Clearing House to grant an exception to the requirement for payments to be made by electronic transfer from an account at an Approved Financial Institution for any type of payment (and not merely application fees, as in the current Rules). This is intended to provide ICE Clear Europe with greater flexibility to allow payments to be made using a different method should this become necessary.

A clarification is proposed to Rule 404(a)(vii) that ICE Clear Europe must have requested additional Margin or Permitted Cover ''at the time of the Transaction'' for a Contract to be voidable under this provision if such additional Margin or Permitted Cover is not provided by a specified time. The amendment is intended to provide greater legal certainty by ensuring that the Clearing House's ability to void the Contract is limited to the specific situation where additional margin is requested at the time of the transaction and is not provided. (A failure to provide margin requested at other times would be addressed by the default rules.)

In Rule 501(a), a change is proposed that Approved Financial Institutions may only act in another capacity if ICE Clear Europe has provided its approval ''in writing''. The amendment is intended to provide greater certainty for the Clearing House and Approved Financial Institutions as to the capacities in which such institutions may be acting.

At the beginning of Part 15 of the Rules and at paragraph 1.86 of the CDS Procedures, changes have been proposed to clarify that references to timings or times of day in connection with CDS Contracts are to Greenwich Mean Time (without taking into account daylight savings time (British Summer Time)). These changes are necessary to reflect applicable timings for the CDS market under standard CDS documentation, and to avoid application of Rule 102(h) (which specifies London time by default, including with daylight savings time adjustments). This change is intended to avoid 'basis risk' between cleared CDS Contracts and uncleared CDS contracts (which also follow standard CDS documentation using Greenwich Mean Time). The changes reflect current operational practices and remove an

unintended inconsistency in the Rules and Procedures.

Various changes have been proposed in paragraphs 2.2, 2.4(c), 2.6–2.7, 6.1(a)(i) and 6.2(g) of the Clearing Procedures to update certain deadlines in order to conform to or reflect relevant Market Rules, conform to certain operational practices and specify the message format requirements for F&O Contracts to be validly accepted by ICE Clear Europe's systems. In paragraph 2.2(c)(ii) a reference to allocation of trades within one hour would be removed, as the timing of allocation may be a matter of the relevant Market Rules. Paragraph 2.6 would make explicit in the Clearing Procedures the Clearing House's position that Clearing Members bear the risk of late or incorrect instructions to the Clearing House. Paragraph 2.7 would provide clarity as to specific reasons for rejection of F&O Contracts and procedures for resubmission.

The Finance Procedures would be amended to clarify references to certain operational practices involved in settling margin payments between ICE Clear Europe and its Clearing Members. Changes have been proposed in paragraphs 2.1 and 2.2 to reflect settlement requirements in relevant currencies, whether in whole or in part. The amendments would also clarify the drafting of the existing provision providing for a ''haircuts'' to be applied to original margin provided in a currency other than the reference currency for a particular contract. Similarly, changes are to be made in paragraphs 5.6 (Table 1) and 6.1(i)(i) of the Finance Procedures to refer to the full range of currencies aside from EUR, USD and GBP that are currently available to be used for settlement. These amendments are intended to update the Finance Procedures to reflect current settlement practice.

Paragraph 6.1(b) of the Finance Procedures would be reorganized and a statement would be added (for clarification and reflecting the current requirements of the Rules) that payment requirements in respect of Margin adjustments would be subject to Part 3 of the Rules. In addition, drafting clarifications in paragraphs 6.1(e) and (f) would confirm that instructions for withdrawals of cash must be received by the deadlines specified in the relevant table for cash to be withdrawn on the same day and to specify the conditions that must be satisfied for ICE Clear Europe to accept cash transfers entered into its systems after the instruction deadlines. The amendments are intended to state more clearly current operational practices of the Clearing House.

Paragraph 6.1(g) would be revised to provide explicitly that ICE Clear Europe has the ability to delay cash withdrawals by a Clearing Member under paragraph 6.1 if there are outstanding amounts payable by that Clearing Member (or any Affiliate of that Clearing Member) to ICE Clear Europe, and that such amounts withheld would be treated as additional required margin of the Clearing Member. This amendment would codify an existing operational practice of the Clearing House and will enhance the Clearing House's ability to manage the credit and liquidity risk of a potential default by a Clearing Member that has not completed its daily settlement obligations.

In paragraphs 6.1(i)(i) and 6.1(i)(ii) of the Finance Procedures, amendments have also been proposed to provide that ICE Clear Europe may publish circulars in relation to certain matters relating to intra-day margin calls affecting a significant number of Clearing Members but is not obligated to do so. The change is intended to provide the Clearing House flexibility to determine the best means of communicating with affected Clearing Members under the particular circumstances, which will not necessarily be a widely distributed circular to the entire market.

In paragraph 6.1(i)(iii) of the Finance Procedures, amendments would provide that adjustments to guaranty fund contributions will be made 5 Business Days after the date of notification by circular for all guaranty fund segments (a change from two Business Days for the CDS and FX Guaranty Funds). ICE Clear Europe believes that it is appropriate to harmonize the guaranty fund contribution requirements across all product categories, and further that the five Business Day timeframe is sufficiently protective of the Clearing House in the case of ordinary course adjustments to the guaranty funds.

In paragraph 6.1(i)(vii), the list of types of payments that may be included in end-of-day or ad hoc net payments would be updated to include Option premiums, corporate action payments, and amounts resulting from reduce gain distributions, product terminations or non-default loss contributions under Part 9 of the Rule. The change is intended to reflect the full range of payments that may be made to and from the Clearing House, consistent with current practice.

Various changes have been proposed in paragraph 7.2 of the Finance Procedures in relation to non-cash assets provided as Permitted Cover. The changes are intended to update and improve the drafting of this provision and more clearly reflect the operational detail of how ICE Clear Europe deals with Permitted Cover, including the use of the ECS system to provide information in relation to non-cash Permitted Cover provided to the Clearing House. The amendments would also reflect in the Rules the Clearing House's existing ability to generate liquidity from non-cash assets transferred to the Clearing House by title transfer pursuant to repurchase transactions, secured lending facilities or similar arrangements, subject to the requirement of the Clearing House to return unused Margin and Guaranty Fund contributions of the same kind as was provided. (The use of such transactions is not currently addressed in the Rules.) In paragraph 8.2, a clarification would be added that a request form to lodge new certificates of deposit is available on ICE Clear Europe's website.

In paragraphs 11.2 and 11.4 of the Finance Procedures, changes are proposed to remove a presumption that instructions relating to securities are for same-day settlement and to reflect that ICE Clear Europe accepts settlement instructions specifying a settlement date up to two business days after the relevant trade date, and to make certain other drafting improvements. This amendment is intended to reflect existing practice for the range of securities accepted by ICE Clear Europe, and the amendments are intended to provide improved clarity.

Various other typographical corrections and similar changes have been proposed elsewhere throughout the Finance Procedures.

A drafting change is proposed to paragraph 3.1(m) of the General Contract Terms to make the general termination provision for all contracts more generic. Following the proposed amendments, paragraph 3.1(m) would simply state that contracts terminate automatically ''only in accordance with and at the times specified in the Rules''. This change would ensure that this provision of the General Contract Terms does not need to be updated when termination provisions in the Rules are amended.

The Membership Procedures would be amended in various places to update the various requirements that Clearing Members must meet to attain and maintain membership (consistent with the amendments to the membership provisions of the Rules discussed above), and ensure that the Membership Procedures use terminology consistent with the Rules. Paragraph 1.1 would be amended to confirm that ICE Clear

Europe would require evidence of authority of Clearing Member signatories to be provided, which is consistent with the Clearing House's current practices. In the table at paragraph 4.2, various updates are proposed to reflect the wording used in the current Rules (as amended by this and previous filings) and to ensure that accurate details of timing and other requirements for submission of notifications and documentation are specified. In parts C.4, D.5, D.7 and D.11 of the table, references to key personnel of a clearing member (or similar references) have been expanded to include the board of directors. Amendments to part C.11 would also clarify that notices relating to changes in Eligible Persons (*i.e.* persons for which Clearing Members clear) include suspension of clearing arrangements for Eligible Persons, and are separate from any requirements under the Clearing Membership Agreement. In part E.2, the timeframe for certain notices relating to complaints has been revised to be consistent with amendments to the Complaint Resolution Procedures.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act [11] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[12] In particular, Section 17A(b)(3)(F) of the Act requires that that rule changes be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICE Clear Europe, tåhe safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible, and the protection of investors and the public interest.[13]

As discussed herein, the proposed rule changes are principally designed to enhance key aspects of the clearing framework, including by improving the customer documentation framework for Non-FCM/BD Clearing Members, adopting an Externalized Payments Mechanism, facilitating treatment of variation and mark-to-market margin as settlement payments for purposes of Clearing Member capital requirements, improving futures and option settlements and related calculations, facilitating compliance with certain U.S. tax requirements and improving overall default management. The amendments also clarify various aspects of the Rules and Procedures to improve drafting and ensure consistency with operational practices and processes as they have evolved. In ICE Clear Europe's view, these changes, as discussed in detail herein, will facilitate the prompt and accurate clearance and settlement of transactions through the Clearing House and are further generally consistent with the protection of investors and the public interest. Furthermore, enhancing the customer documentation framework, and improving the ability of ICE Clear Europe to conduct post-default porting, as well as other improvements to the margin process and the default management processes discussed herein, will enhance the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible. As such, the amendments are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[14]

With respect to proposed paragraph 6.1(k) of the Finance Procedures, the changes are intended to facilitate compliance by ICE Clear Europe and Clearing Members with their obligations under Section 871(m) and related U.S. tax obligations. ICE Clear Europe further believes that the amendments will facilitate the clearance and settlement of securities and derivative transactions by allowing it to avoid having to withhold on payments to non-U.S. Clearing Members relating to dividend equivalents. The imposition of withholding responsibilities on ICE Clear Europe would potentially interfere with the current ICE Clear Europe daily settlement process for equity contracts, and introduce new complications and risks for that process. The proposed rule change would eliminate such potential complications and risks, and permit ICE Clear Europe to continue its current settlement procedures for equity contracts, without need for ICE Clear Europe to withhold on payments made to Clearing Members. Thus, ICE Clear Europe believes the proposed rule change will promote the prompt and accurate clearance and settlement of securities and derivatives transactions and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[15]

Moreover, ICE Clear Europe believes that proposed paragraph 6.1(k) does not unfairly discriminate among participants in the use of the clearing agency, within the meaning of Section 17A(b)(3)(F).[16] Although the proposed rule change would impose additional requirements and/or restrictions on non-U.S. Clearing Members that would not apply to Clearing Members that are U.S. entities for U.S. federal income tax purposes (''U.S. Clearing Members''), ICE Clear Europe believes that this approach reflects the nature of the requirements of Section 871(m) (as the additional withholding requirements under Section 871(m) would not apply with respect to payments by the Clearing House to U.S. Clearing Members). Moreover, ICE Clear Europe believes it is preferable for the clearing system as a whole to place compliance costs with respect to Section 871(m) Transactions on the relevant Clearing Member, rather than on the Clearing House itself, given that withholding can be avoided at the Clearing House level if the relevant Clearing Member has entered into the requisite agreements with the IRS complies with certain other conditions. Therefore, ICE Clear Europe believes that the proposed rule change is not unfairly discriminatory among participants in the use of the clearing agency and is consistent with Section 17A(b)(3)(F) of the Act.[17]

The amendments are additionally consistent with Section 17A(b)(3)(G) of the Act which requires that the rules of a clearing agency provide that its participants be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.[18] The amendments are also similarly consistent with Section 17A(b)(3)(H) of the Act which requires that the rules of a clearing agency in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any persons seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.[19] The various changes proposed to Part 10 of the Rules to streamline and improve ICE Clear Europe's disciplinary processes are consistent with these requirements of the Act. The drafting improvements would clarify the process of investigating rule breaches, clarify that non-compliance with an investigation could lead to additional disciplinary action against a Clearing Member, clarify the conditions surrounding the use of the Summary Procedure, and address the interaction between ICE Clear Europe's disciplinary procedures

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 240.17Ad–22.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 15 U.S.C. 78q–1(b)(3)(G).

[19] 15 U.S.C. 78q–1(b)(3)(H).

under the Rules and any similar procedures under Market Rules to ensure that parallel disciplinary procedures under Market Rules would not preclude disciplinary procedures ICE Clear Europe's own rules. ICE Clear Europe believes that the clarity relating to disciplinary processes will better ensure appropriate disciplinary actions are taken with respect to rule violations, consistent with the requirements of Section 17A(b)(3)(G) of the Act [20] and Section 17A(b)(3)(H) of the Act.[21]

The amendments are also consistent with the relevant specific requirements of Rule 17Ad–22,[22] as set forth in the following discussion:

(i) Legal Framework

Rule 17Ad–22(e)(1) [23] requires that clearing agencies establish policies and procedures that provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. Various amendments have been proposed to strengthen the legal foundations for the customer documentation framework, through the Standard Terms, in particular. Amendments would be made to the Rules to confirm Customers' and non-FCM/BD Clearing Members' acceptance of the Standard Terms, and to limit the effect of conflicting automatic early termination provisions in customer documentation. These changes would reduce legal uncertainties in default management. The definitions of Bankruptcy, Insolvency and Insolvency Practitioner would be amended to better capture all relevant proceedings in relevant jurisdictions. The Rules would also be amended to improve the provisions relating to confidentiality and the disclosure of information by clarifying and extending the circumstances in which ICE Clear Europe would be permitted to disclose confidential information to allow it to facilitate compliance with regulatory requests.

Other changes would enhance legal certainty and settlement finality. Amendments would enhance representations as to transfer of Permitted Cover, including that a ''transfer of Permitted Cover'' is not contrary to or in breach of a requirement of Applicable Law, third party right or other contractual obligation. A further Rule change would enhance the enforceability of Transfer Orders in default scenarios and take advantage of protections from the application of insolvency law under EMIR and the UK Companies Act 1989. Another Rule amendment would include an additional circumstance in which a Securities Transfer Order would be deemed to arise under the designated system operated by ICE Clear Europe for the purposes of settlement finality legislation. (These amendments are also consistent with the settlement finality requirements under SEC Rule 17Ad–22(e)(8).[24])

Finally, certain changes will also facilitate compliance with U.S. tax requirements under Section 871(m), to facilitate the ability of ICE Clear Europe to make payments of dividend equivalents to Clearing Members free of US withholding taxes, in compliance with US tax laws.

The amendments also generally update and clarify the drafting of various provisions of the Rules and Procedures, with the goal of enhancing the clarity of the overall legal and documentation framework. In totality, the amendments largely act so as to align the rules with existing operational practice, to correct errors, to promote legal certainty and to provide transparency.

For the foregoing reasons, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(1).[25]

(ii) Physical Settlement

Pursuant to Rule 17Ad(e)(10),[26] clearing agencies are required to establish and maintain written standards stating their obligations with respect to the delivery of physical instruments and manage the associated risks. Multiple changes have been made to the Amended Documents to clarify and update delivery arrangements and better align them with operational practice. As discussed herein, clarifications have been made to the Rules and Procedures relating to the determination of the Exchange Delivery Settlement Price for Futures, settlement of Futures and Options, representations and warranties as to title and other matters on physical settlement, the role of Markets in the settlement process and various other processes for physical settlement, including the delivery of securities, among others. The Delivery Procedures in particular have also been updated to reflect operational systems and practices, including as to delivery timetables and documentation. Through enhancing and clarifying ICE Clear Europe processes and arrangements with respect to physical deliveries, and better aligning their descriptions in the Amended Documents with operational practice, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad(e)(10).[27]

(iii) Margin

Rules 17Ad–22(b)(2) [28] and (e)(6) [29] require clearing agencies to use margin requirements to limit their credit exposures and have the operational capacity to make intraday margin calls. The amendments enhance ICE Clear Europe's approach to managing margin, particularly with respect to variation

[20] 15 U.S.C. 78q–1(b)(3)(G).

[21] 15 U.S.C. 78q–1(b)(3)(H).

[22] 17 CFR 240.17Ad–22.

[23] 17 CFR 240.17Ad–22(e)(10). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(1) Provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.''

[24] 17 CFR 240.17Ad–22(e)(8). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . . (8) Define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.''

[25] 17 CFR 240.17Ad–22(e)(1).

[26] 17 CFR 240.17Ad–22(e)(10). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . .

(10) 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.''

[27] 17 CFR 240.17Ad–22(e)(10).

[28] 17 CFR 240.17Ad–22(b)(2) The rule states the following: ''A registered clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to: . . .

(2) Use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.''

[29] 17 CFR 240.17Ad–22(e)(6) The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . .

(6) Cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum:

i. Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market;

ii. Marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances;

iii. Calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default;''

margin and mark-to-market margin. The Amended Documents would introduce a new ''Externalised Payments Mechanism'' to permit variation margin cash payments to be settled through separate cash flows, without being netted with other payment obligations, where Clearing Members so elect. The amendments would also clarify margin calculations for Options, taking into account the calculation of NLV. The amendments would facilitate the characterization of variation and mark-to-market margin as settlement payments (and not as collateral) for purposes of settlement to market treatment under Article 274(2)(c) of the CRR.

The Finance Procedures would be amended to clarify certain provisions relating to settlement of margin payments in relevant currencies and haircuts for cross-currency payments.

As the amendments clarify and strengthen ICE Clear Europe's approach to treatment of margin and better align description in the Amended Documents with operational practice, in ICE Clear Europe's view, the amendments meet the requirements of Rules 17Ad–22(b)(2) [30] and (e)(6) [31] to appropriately cover its credit exposures with a risk-based margin system.

(iv) Segregation and Portability

Rule 17Ad–22(e)(14) [32] requires that clearing agencies enable the segregation and portability of positions of a participant's customers and the collateral provided to the clearing agency with respect to those positions. In general, a number of changes proposed to the customer clearing documentation in the Rules and Standard Terms are intended to promote porting. Specifically, as described above, amendments to the Standard Terms are intended to, among other things, prevent possible Customer claims that could interfere with ICE Clear Europe's ability to offer porting, which would enhance the feasibility of relying on the Standard Terms to effect post-default porting. Changes are further being proposed to confirm the parameters around ICE Clear Europe's discretion to determine timing of the price at which positions are ported from a defaulting Clearing Member to a non-defaulting Clearing Member and the reference time for the determination of such price. Further proposed changes address rights, liabilities and obligations of Clearing Members being transferred or assigned to ensure that the provisions in Part 12 relating to Position Transfer Orders capture the full range of mechanisms through which positions can be transferred from one Clearing Member to another. As a result, ICE Clear Europe believes the amendments are in compliance with the segregation and portability requirements of Rule 17Ad–22(e)(14).[33]

(v) Default Management

Rule 17Ad–22(e)(13) [34] requires the covered clearing agency to ensure that it ''has the authority and operational capacity to take timely action to contain losses and liquidity demands'' in the case of default.

As described above, amendments to Rule 905 would clarify ICE Clear Europe's ability to determine Contract liquidation prices in the default management process and provide the Clearing House with additional flexibility in this regard. The amendments would clarify ICE Clear Europe's obligation to apply excess assets on the defaulter's Proprietary Account to meet a shortfall on one or more of its Customer Accounts. The proposed amendments would also clarify concepts relating to guaranty fund contributions adjustments and the application of such contributions to the net sum payable calculation set out in Rule 906. ICE Clear Europe believes that these amendments would strengthen the Clearing House's ability to efficiently and effectively manage extreme default events. As a result, in ICE Clear Europe's view, the amendments would allow it to take timely action to contain losses and liquidity pressures, within the meaning of Rule 17Ad–22(e)(13).[35]

(vi) Governance

Rule 17Ad–22(e)(2) [36] requires that a covered clearing agency provide for governance arrangements that, among other matters, are clear and transparent. The amendments more accurately define terms related to ICE Clear Europe governance in the Rules by expanding the definition of ''Board'' to include other similar bodies and committees and making similar clarifications throughout the Rules. ICE Clear Europe believes that the amendments would thus provide greater clarity relating to governance arrangements, in furtherance of the safety and efficiency of ICE Clear Europe in a default scenario and consistent with the requirements of Rule 17Ad–22(e)(2).[37]

(vii) Business Continuity

Pursuant to Rule 17Ad–22(e)(17)(ii) [38] clearing agencies must establish and maintain a business continuity plan. Proposed amendments to the Business Continuity Procedures would clarify that ICE Clear Europe's discretionary powers to amend or waive requirements or deadlines only apply in the event of a Business Continuity Event affecting a Clearing Member or ICE Clear Europe, and that such amended requirements only apply to the relevant affected Clearing Member(s). ICE Clear Europe believes that providing this clarity would further strengthen its ability to deal with business interruptions while minimizing impact on unaffected Clearing Members, consistent with the requirements of Rule 17Ad–22(e)(17)(ii).[39]

(viii) Membership Criteria

Rule 17Ad–22(e)(18) [40] requires clearing agencies to establish criteria for

[30] 17 CFR 240.17Ad–22(b)(2).

[31] 17 CFR 240.17Ad–22(e)(6).

[32] 17 CFR 240.17Ad–22(e)(14). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(14) Enable, when the covered clearing agency provides central counterparty services for security-based swaps or engages in activities that the Commission has determined to have a more complex risk profile, the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant.''

[33] 17 CFR 240.17Ad–22(e)(14).

[34] 17 CFR 240.17Ad–22(e)(13). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . . (13) Ensure the covered clearing agency has the authority and operational 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 and following material changes thereto.''

[35] 17 CFR 240.17Ad–22(e)(13).

[36] 17 CFR 240.17Ad–22(e)(2). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(2) Provide for governance arrangements that:

(i) Are clear and transparent;''

[37] 17 CFR 240.17Ad–22(e)(2).

[38] 17 CFR 240.17Ad–22(e)(17)(iii). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . .

(17) Manage the covered clearing agency's operational risks by: . . .

(iii) Establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations.''

[39] 17 CFR 240.17Ad–22(e)(17)(iii).

[40] 17 CFR 240.17Ad–22(e)(18). ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . .

(18) Establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant,

participation which ensures participants have sufficient financial resources and robust operational capacity to meet obligations arising from participation and to monitor compliance. The amendments include various enhancements to clearing membership requirements to ensure that Clearing Members meet appropriate initial and ongoing standards concerning their operational, managerial, back office, systems, controls, business continuity and banking arrangements. The amendments would also clarify Clearing Members' obligations to maintain financial resources requirements (in addition to Capital) and provide documentation supporting calculations of financial resources requirements upon ICE Clear Europe's request. By further ensuring that Clearing Members have sufficient financial resources and robust operational capacity, the amendments are consistent with Rule 17Ad–22(e)(18).[41]

(ix) Financial Resources and Guaranty Fund

Pursuant to Rule 17Ad–22(e)(4)(v),[42] clearing agencies must maintain required financial resources, including through a guaranty fund. The amendments to the Finance Procedures clarify ICE Clear Europe's approach to guaranty fund contributions while maintaining compliance with this regulatory requirement. Proposed amendments to the Finance Procedures would apply the effective date for adjustments to guaranty fund contributions for all contract categories to be 5 Business Days after the date of notification by circular. ICE Clear Europe believes this is an appropriate period, and that having a harmonized approach for all guaranty fund segments will facilitate its ongoing maintenance of financial resources and ability to manage risk. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(4)(v).[43]

(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 purpose of the Act. The amendments are intended to enhance clearing operations, including through better customer documentation, default management, updated settlement procedures and general clarifications and updates. The amendments would add a new option for settlement of variation and mark-to-market margin (and certain other payments), the Externalised Payments Mechanism, which Clearing Members could choose to use. The amendments would also facilitate the capital treatment of mark-to-market and variation margin as settlement payments, rather than as collateral, for purposes of the CRR, which generally should enhance Clearing Member capital treatment. Certain changes relating to the customer documentation model would only apply to Non-FCM/BD Clearing Members (as the model only applies to such members). While those changes may impose some additional requirements on Non-FCM/BD Clearing Members, those requirements will facilitate default management and porting by the Clearing House, in furtherance of the overall clearing system and the requirements and goals of applicable law. Certain other changes relating to Section 871(m) would impose certain additional obligations on non-U.S. Clearing Members that clear equity derivatives, but these generally reflect the requirements of Section 871(m) itself, and are intended to facilitate the ability of the Clearing House to make payments to such non-U.S. Clearing Members free of U.S. withholding taxes.

Overall, ICE Clear Europe does not believe the amendments would adversely affect the ability of Clearing Members or other market Clearing Members to continue to clear contracts. ICE Clear Europe also does not believe the amendments would cause Clearing Members to cease clearing activities, limit the availability of clearing for Clearing Members or their customers or otherwise limit market Clearing Members' choices for selecting clearing members. As a result, ICE Clear Europe does not believe that the proposed amendments impose any burden on competition that is not appropriate in furtherance of the purposes of the Act.

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

ICE Clear Europe has conducted a public consultation on amendments to its Rules that included the rule changes set forth herein. ICE Clear Europe received three detailed and written responses to the overall consultation, which included a number of comments relating to the amendments described in this filing. Relevant comments are discussed below, together with a summary of the action taken by ICE Clear Europe to address these comments. In a small number of cases, ICE Clear Europe has decided not to proceed with the change at this time. In some cases, ICE Clear Europe agreed to a drafting change in the Rules to address the concerns of the respondent Clearing Member. In other cases, it discussed aspects of the Rule changes, as were presented in such consultation, with those interested Clearing Members who responded.

Within the definitions in Rule 101, one Clearing Member commented on proposed changes to the definition of ''Margin'', suggesting alternative language to that proposed as part of the draft changes annexed to this submission. It appeared to ICE Clear Europe that the Clearing Member in question was querying the inclusion of variation margin within the definition of ''Margin''. ICE Clear Europe explained to the Clearing Member that the inclusion of variation margin within this definition is necessary to ensure that the settlement-to-market changes discussed earlier in this submission operate as intended. The removal of variation margin from the defined term ''Margin'' would require a major overhaul to the Rules. ICE Clear Europe determined that this explanation was sufficient to address the Clearing Member's comment.

One Clearing Member commented on proposed amendments to Rule 106(b), which set out a list of different types of information received or held by ICE

indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.''

[41] 17 CFR 240.17Ad–22(e)(18).

[42] 17 CFR 240.17Ad–22(e)(4)(v). The rule states the following: ''(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . .

(4) Effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by:

(i) Maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence;

(ii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency providing central counterparty services that is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions; . . .

(v) Maintaining the financial resources required under paragraphs (e)(4)(ii) and (iii) of this section, as applicable, in combined or separately maintained clearing or guaranty funds;''

[43] 17 CFR 240.17Ad–22(e)(4)(v).

Clear Europe that will be treated as confidential. The Clearing Member suggested that any non-public information passed by a Clearing Member to ICE Clear Europe should be subject to confidentiality. ICE Clear Europe discussed this rule change with the Clearing Member in question, and explained that the list contained in Rule 106(b) is very broad and that all relevant information should be covered. ICE Clear Europe subsequently determined that the Clearing Member's comment was adequately addressed by those discussions and that no material changes to the amended Rules were required. No further issues were raised by the Clearing Member following discussion.

One Clearing Member commented on proposed amendments to Rule 106(c)(i), which are intended to ensure that disclosures of confidential information are permitted where the disclosure is ''necessary for the making of a complaint or report under Applicable Laws for an offence alleged or suspected to have been committed under Applicable Laws''. The Clearing Member in question was of the view that the disclosure of confidential information in order to make a report or complaint under Applicable Laws was already covered by the existing drafting. ICE Clear Europe discussed this rule change with the Clearing Member in question, and explained that the additional drafting was introduced to cover reporting under the UK Proceeds of Crime Act 2002, suspicious transaction reporting under the EU Market Abuse Regulation and other regulatory reporting regimes, and is necessary to ensure that such reporting is covered by confidentiality carve-outs under the Rules. ICE Clear Europe subsequently determined that the Clearing Member's comment was adequately addressed by these explanations and discussions and that no material changes to the amended Rules were required.

One respondent provided two comments on proposed changes to Rule 111(a). The Clearing Member stated that, as a result of the proposed changes, Clearing Members would need to indemnify members of committees and that this broadening of scope should be dropped. ICE Clear Europe discussed this comment with the Clearing Member in question and agreed that the proposed language could potentially cover members of committees outside of their committee function. ICE Clear Europe accepted that the proposed change was not intended to cover committee members acting in a proprietary capacity and proposed a drafting change to limit the indemnity to ''any individual committee member, but only in so far as that Person is acting in the capacity of a committee member''. To ICE Clear Europe's knowledge, this drafting change adequately addressed the Clearing Member's concerns. The Clearing Member also commented separately on the definition of ''Director'' in the Rules in the context of its comments on Rule 111(a), arguing that the definition should be limited to persons who are listed as directors on the UK company registry (Companies House). ICE Clear Europe discussed this comment with the Clearing Member in question, explaining that the correct interpretation of the lower case term ''director'' in this context was only to capture actual directors and not staff members that may have the title ''director'' in their job role. On the basis of this explanation and the fact that this comment did not strictly relate to the changes proposed to the Rules, ICE Clear Europe determined it did not need to make any drafting changes in response to the comment.

Two Clearing Members queried the insertion of new Rule 114(d), which would allow ICE Clear Europe to ''take any measure it deems reasonably necessary in relation to the organization and the operation of the Clearing House taking all relevant circumstances into account, whether or not these measures are set out in these Rules''. Both Clearing Members were concerned about the breadth of this power and the potential for ICE Clear Europe to take any action it wishes, whether or not such action is in line with the provisions of the Rules. ICE Clear Europe discussed the proposed provision with the two respondents and explained that it was aimed at ensuring that ICE Clear Europe is not prevented from taking necessary action because there is no provision in the Rules explicitly empowering it to do so. However, ICE Clear Europe agreed that some additional language would be beneficial in the new provision to clarify that it may not take action in contravention of the Rules or to modify the Rules under the new provision. This language would be included in the proposed rule changes annexed to this submission.

One Clearing Member queried the following additional language in the clearing membership criterion in Rule 201(a)(xxvii): ''and satisfy the Clearing House of the adequacy of its contingency banking arrangements in the event of an Insolvency or failure to pay or default of an Approved Financial Institution which affects the operation of a Nominated Bank Account or Accounts or a Clearing House Account''. Specifically, the respondent asked what the additional language means and how ICE Clear Europe would expect Clearing Members to satisfy the requirement. ICE Clear Europe discussed the proposed change with the Clearing Member in question, and explained that the criterion was required in order to meet current back-up arrangements being implemented. These arrangements would essentially require the Clearing Member to have a back-up approved payment bank or to establish means of direct payments via a back-up procedure. ICE Clear Europe subsequently determined that the Clearing Member's comment was adequately addressed by these explanations and discussions.

All three respondents provided comments on proposed changes to the ongoing requirements for Clearing Members in Rule 202(a). Two Clearing Members commented on amendments to Rule 202(a)(xiv)(A), one Clearing Member commented on a proposed new Rule 202(a)(xxii) and all three Clearing Members commented on a proposed new Rule 202(a)(xxiii). With respect to Rule 202(a)(xiv)(A), Clearing Members were unsure of what was required by the new drafting. ICE Clear Europe explained in discussions with the relevant Clearing Members that the proposed language entails compliance by Clearing Members with general conduct of business and threshold condition type business organization rules, and would unlikely go so far as to require Clearing Members to go beyond what is required by applicable law, although that would depend on the legal regime of the Clearing Member. As regards the proposed new Rule 202(a)(xxii), one respondent challenged the provision on the basis that it would require employees to be available for longer hours. ICE Clear Europe discussed this new provision with the Clearing Member concerned and explained the importance of having Clearing Member personnel available to deal with issues that arise after the closing of the markets and that this requirement was effectively already in place as an operational matter. ICE Clear Europe understands that this explanation was sufficient to address the Clearing Member's comment and no rules changes were necessary. The comments on the proposed Rule 202(a)(xxiii) conveyed a general reluctance to accept ICE Clear Europe having a broad power to access Clearing Member premises, records and personnel and copy any required documentation. ICE Clear Europe

discussed this proposed requirement with all three Clearing Members and pointed out that the provision is restricted to action required to ''facilitate discharge of the Clearing House's regulatory obligations under Applicable Laws''. Having explained the limitations to the new requirement, ICE Clear Europe felt that the Clearing Members' concerns were adequately addressed and changes to the proposed rule amendments were made. ICE Clear Europe did not receive further objection to the provision following this discussion.

One Clearing Member asked why ICE Clear Europe had included the words ''(or any non-frivolous or non-vexatious investigation or allegation of a breach by it)'' in Rule 204(a)(xii). ICE Clear Europe discussed this comment with the respondent in question and explained that the test for a ''non-frivolous'' and ''non-vexatious'' investigation is intentionally objective, to ensure that Clearing Members would not need to inform ICE Clear Europe of frivolous or vexatious investigations. ICE Clear Europe determined that the Clearing Member's comment was adequately addressed by this explanation and that changes were necessary.

One Clearing Member suggested a small, uncontroversial drafting amendment to Rule 204(b)(i), which ICE Clear Europe accepted and which is reflected in the rule changes annexed to this submission.

One Clearing Member asked for clarification of the meaning of the term ''settlement payment'' in additional language proposed to be added to Rule 505. ICE Clear Europe reviewed the proposed language as a result of the comment and decided to make some amendments to ensure that the new language read more clearly. The proposed language now refers to ''a payment of Variation Margin, Mark-to-Market Margin, or FX Mark-to-Market Margin or a settlement or delivery payment'', rather than just a ''settlement payment'', to make it clear which sorts of payments are intended to be referred to in that provision. This change is included in the rule amendments annexed to this submission. As a result of this rule change, ICE Clear Europe considered that the Clearing Member's comment was adequately addressed.

One respondent commented that proposed changes to Rule 703(h) appeared to entail an expansion of powers for ICE Clear Europe, in that ICE Clear Europe would be able to replace a delivery obligation under a contract with a non-defaulting Clearing Member with a cash settlement sum. ICE Clear Europe discussed this proposed change with the respondent and agreed that the change would allow a contract between ICE Clear Europe and a non-defaulting Clearing Member to be terminated, allowing ICE Clear Europe to pay a cash settlement sum rather than make physical delivery. However, ICE Clear Europe explained that the existing rules already provide for this power, albeit less explicitly, and that its experience of handling defaults (including the MF Global default) indicated that this is what Clearing Members and their clients prefer in practice as opposed to waiting for ICE Clear Europe to arrange for an alternative means of delivery. ICE Clear Europe determined that the Clearing Member's comment was adequately addressed by this explanation and that changes to the proposed rules were necessary.

One Clearing Member asked why language had been added in a new Rule 902(d) to indicate that Transfer Orders shall be legally enforceable. ICE Clear Europe explained that the wording buttressed the position that Part 12 is a ''default rule'' for purposes of the UK Companies Act 1989, as discussed above. No changes to the proposed rules were made as a result of this comment.

All three Clearing Members commented on proposed changes to the methodology for determining the price of a Contract for porting and close-out purposes in Rule 904(b), 905(b) and 905(g). Clearing Members generally objected to the Clearing House having discretion to set the price of a Contract. ICE Clear Europe discussed the proposed changes with Clearing Members, explaining that the discretion here is important to cover matters like option pricing and time of insolvency versus time of porting issues. It further explained that porting is likely to be problematic from an operational perspective without these changes and that the price of ported contracts may vary depending upon Clearing Member jurisdiction, the existence or absence of mandatory early termination under applicable insolvency laws, the terms of relevant Court orders supporting porting and other factors, such that these changes are important to ensuring the default management process operates smoothly. It was also highlighted that these changes provide additional clarity to Clearing Members and consistency between provisions addressing the issue of default pricing. Having explained this, ICE Clear Europe felt that the Clearing Members' comments were adequately addressed and that changes to the proposed rules were necessary. ICE Clear Europe did not receive any further objection to the changes following this discussion.

One Clearing Member asked why the words ''and severally'' had been added in Rule 912(b)(iv)(A). ICE Clear Europe explained to the respondent that this change was raised by external legal counsel to an industry association concerning the sponsored principal model at ICE Clear Europe. The change fixes a drafting error, to ensure that the liabilities and assets on sponsored accounts have mutuality. It pointed out that the wording is included elsewhere in Part 19 and is unintentionally omitted in Rule 912(b)(iv)(A). No changes to the proposed rules were made as a result of this comment.

Various comments were received on proposed changes to Part 10 of the Rules to improve ICE Clear Europe's disciplinary procedures. In most cases, these comments asked for clarification as to the intent or effect of a rule change. ICE Clear Europe addressed all of the Clearing Members' comments on Part 10 amendments with one exception through oral discussions and explanations with the relevant respondents. The one exception involved a proposed drafting change to replace the word ''days'' with the term ''calendar days'', which ICE Clear Europe accepted as this ensured consistency with other parts of the Rules and greater precision of meaning. This change is included in the rule amendments annexed to this submission. As a result of this rule change, and the various explanations provided in relation to the other Part 10 amendments, ICE Clear Europe considered that the Clearing Members' comments were adequately addressed, and ICE Clear Europe has received no further objections on these provisions.

One Clearing Member objected to proposed amendments to paragraph 2 of the CDS, FX and F&O Standard Terms (in the Exhibits to the Rules), commenting that the amendments would override agreements between Clearing Members and their clients. ICE Clear Europe discussed the proposed amendments with the Clearing Member, explaining that the amendments are intended to override clearing agreements between Clearing Members and Customers (as required by Part 2 of the Rules and ICE Clear Europe Customer documentation Circular C14/055 of 2 May 2014) and that this should already be the case anyway due to the ''Mandatory CCP Provisions'' mechanic in industry standard documentation. This means that proposed changes are in line with market practice. Having explained this to the Clearing Member in question, ICE Clear Europe determined that the Clearing Member's comments were adequately addressed.

Two Clearing Members commented on proposed amendments to paragraph 4(b) of the CDS, F&O and FX Standard Terms. One of these comments was based on a misunderstanding of the intention behind certain drafting amendments concerning notices of Encumbrances and ICE Clear Europe amended the relevant drafting to provide additional clarification that Customers must not ''create or give notice'' of any Encumbrance. The other comment requested clarification as to the intention behind the paragraph 4(b) amendments more generally, which would require Customers to provide certain representations to ICE Clear Europe as regards the provision of Customer collateral. ICE Clear Europe discussed the proposed amendments to paragraph 4(b) with the Clearing Member in question, explaining that ICE Clear Europe requires such representations to be made to provide ICE Clear Europe with comfort that it can handle Customer collateral in accordance with the Rules without risk of legal intervention. Given that ICE Clear Europe has no sight of documentation between Clearing Members and Customers, which may or may not include this or similar wording, it is necessary to include the relevant wording in the Standard Terms. ICE Clear Europe considered that the drafting change referred to above and the explanations provided adequately addressed the two Clearing Members' comments.

Two Clearing Members commented on the proposed new paragraph 5(c) of the CDS, FX and F&O Standard Terms. One of these comments generally queried the rationale for the new provision, which overrides the termination mechanism in clearing agreements between Clearing Members and Customers. ICE Clear Europe explained that this language has been proposed because it has come to ICE Clear Europe's attention that some Clearing Member-Customer clearing agreements may not adequately support porting to the extent legally possible. It would, for example, appear to be the case, based on feedback from some Clearing Members, that some such agreements have been negotiated so as to provide for a contractual right to automatic or early termination upon a default before porting can take place. In particular, EMIR, the Companies Act 1989 and some other legislation, on some interpretations, would appear to require there to actually be a contract in place in order for that contract to be ported following a default. This means that automatic or early termination provisions may frustrate porting or increase the risks of legal claims against clearing houses such as ICE Clear Europe. Although the Rules provide for ICE Clear Europe still to be able to port where the contracts have already terminated, and ICE Clear Europe believes the better view is that such terminated contracts are still portable, the proposed rules changes promote legal certainty by reducing risks associated with porting. ICE Clear Europe further explained that such automatic or early termination provisions are currently in breach of Rule 202 and that this raises enforcement and disciplinary issues for some Clearing Members. The proposed new provision would bring affected Clearing Members back into compliance with the Rules and promote porting by ensuring that automatic or early termination provisions are overridden.

A second comment suggested a small drafting change to the tense of a verb in paragraph 5(c)(i)(B), which ICE Clear Europe accepted (such drafting change being included in the final amendments annexed to this submission). Finally, one Clearing Member queried why there is an exception from paragraph 5(c)(ii) where one of the parties to a Customer-CM Transaction is incorporated in Switzerland. ICE Clear Europe discussed this provision with the Clearing Member in question, clarifying that Switzerland is the only Clearing Member jurisdiction for which automatic or early termination is recommended by the International Swaps and Derivatives Association (''ISDA''). ICE Clear Europe determined that as a result of these explanations, the Clearing Members' comments were adequately addressed and no drafting changes were needed.

Finally, one Clearing Member asked why Customers are required to provide an intellectual property representation to ICE Clear Europe in new paragraph 12(d) of the CDS, FX and F&O Standard Terms. ICE Clear Europe explained that the representation in question supports the position in relation to IP rights provided for in the Rules. ICE Clear Europe has added this provision to ensure that it has the same contractual representation from Customers as regards IP rights as it does from Clearing Members, and the Standard Terms is the appropriate place for this provision to be added. ICE Clear Europe considered that this explanation was sufficient to address the Clearing Member's query and no rules changes were made. No further issues were raised by the Clearing Member following discussion with the Clearing Member.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice 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, 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
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2020–003 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–2020–003. This file number should be included on the subject line if email 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, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice 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 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/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–2020–003 and should be submitted on or before March 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04574 Filed 3–5–20; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. IC–33809; File No. S7–04–20]

RIN 3235–AM72

Request for Comments on Fund Names

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission is seeking public comment on the framework for addressing names of registered investment companies and business development companies that are likely to mislead investors about a fund's investments and risks pursuant to section 35(d) of the Investment Company Act of 1940, rule 35d–1 thereunder, and the antifraud provisions of the Federal securities laws. The Commission is seeking public comment particularly in light of market and other developments since the adoption of rule 35d–1 in 2001.

DATES: Comments should be received by May 5, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form *(https://www.sec.gov/rules/submitcomments.htm)*; or
- Send an email to *rule-comments@sec.gov.* Please include File No. S7–04–20 on the subject line.

Paper Comments

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

All submissions should refer to File Number S7–04–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*http://www.sec.gov*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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 publicly available.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this request for comment. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Sally Samuel, Branch Chief; Michael Kosoff, Senior Special Counsel; Amanda Hollander Wagner, Branch Chief; or Brian McLaughlin Johnson, Assistant Director, at (202) 551–6721, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment from funds, their advisers, investors, and other market participants on the current approach to addressing misleading fund names.

I. Introduction

As part of the Commission's ongoing efforts to improve the investor experience and modernize current regulatory approaches,[1] we are publishing this request for comment on 17 CFR 270.35d–1 (''rule 35d–1'' or the ''Names Rule'') under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act''). The name of a registered investment company or a business development company (a ''fund'') is a tool for communicating with investors. It is often the first piece of fund information investors see and, while investors should look closely at a fund's underlying disclosures, a fund's name can have a significant impact on their investment decision. The Names Rule was adopted by the Commission as an investor protection measure designed to help ensure that investors are not misled or deceived by a fund's name.[2]

Because of the importance of fund names to investors and certain challenges regarding the application of the Names Rule, we are assessing whether the existing rule is effective in prohibiting funds from using names that are materially deceptive or misleading, and whether there are alternatives that the Commission should consider. We welcome engagement from funds, their advisers, investors, and other market participants on these and related issues.

II. Background

The regulation of fund names is intended to address concerns that certain fund names may mislead investors about a fund's investments. Fund names are subject to both the antifraud provisions of the Federal securities laws,[3] and section 35(d) of the Investment Company Act[4] and the Names Rule.[5] Section 35(d) prohibits any fund from adopting as part of its name ''any word or words that the

[1] *See* Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891 (June 11, 2018)], *available at https://www.sec.gov/rules/other/2018/33–10503.pdf.*

[2] The Commission stated in the adopting release for the Names Rule that Congress ''recognized that investor protection would be improved by giving the Commission rulemaking authority to address potentially misleading investment company names.'' *See* Investment Company Act Release No. 24828 (Jan. 17, 2001) [66 FR 8509 (Feb. 1, 2001)] (''Names Rule Adopting Release''), *available at https://www.sec.gov/rules/final/ic-24828.htm.*

[3] *See, e.g.,* section 17(a) of the Securities Act of 1933 [15 U.S.C. 77q(a)], section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and rule 10b–5 [17 CFR 240.10b–5] thereunder, and section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)].

[4] 15 U.S.C. 80a–34(d) (''section 35(d)'').

[5] Section 35(d) and the Names Rule are applicable to registered investment companies and business development companies. Business development companies (which are not registered investment companies) are subject to the requirements of section 35(d) and the Names Rule pursuant to section 59 of the Investment Company Act [15 U.S.C. 80a–58].