SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97955; File No. SR–ICEEU–2023–020]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to Recovery Plan

July 20, 2023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2023, ICE Clear Europe Limited filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') proposes to amend its Recovery Plan (''Plan'')[3] to update certain aspects of recovery planning and operations and testing procedures and make certain other clarifications.

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

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

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

(a) Purpose

ICE Clear Europe is proposing to amend its Recovery Plan to make various enhancements, updates and clarifications. In the discussion of the scale of coverage of the Clearing House's recovery options, the amendments would revise the description of the Significant Coverage from Powers of Assessment (''PoA'') to remove references to the specific expected coverage of defaults by PoA for the F&O and CDS clearing service. ICE Clear Europe is not proposing to change through these amendments the amount of the relevant guaranty funds and related PoA under the Rules and related policies, but does not believe it is necessary to specify expected coverage in this way in the Recovery Plan. As revised, the discussion of coverage from PoA would reflect that losses from defaults of the largest clearing members under extreme but plausible stress scenarios can be immediately covered through PoA, as resources can be collected from non-defaulting Clearing Members intraday and in cash under the existing Rules and Procedures. The amendments would also state that the assessment of the PoA's capacity to offset losses can be performed by reverse stress testing.

In the discussion of the Clearing House's ability to fully cover default losses using partial tear-ups, a statement that default losses can be fully covered would be removed as unnecessary and repetitive. In terms of the discussion of the Clearing House's ability to fully cover investment losses, the amendments would remove a reference to the specific amount to be covered by Clearing House contributions (as such amount is set under the Rules and is subject to change from time to time under the Rules). Certain non-substantive drafting clarifications would also be made in this section.

The amendments would also update the discussion of certain decision-making requirements. In circumstances where the Board cannot be convened in advance of making a material decision under the Plan, the amendments would clarify that the Board would be convened afterwards as soon as reasonably possible and updated on the steps taken. Additionally, the amendments would clarify that although exercising recovery options would not need the approval of Clearing Members, exchanges or other external stakeholders, ICE Clear Europe would seek to communicate its plans and intentions to such stakeholders where possible, and as soon as reasonably practicable.

The procedures for testing of the Plan would be revised to provide that testing would be conducted at least annually (rather than only annually). The amendments would further specify that given the number of recovery options available, one default and one non-default scenario would be tested each year, and all the recovery options would be tested over a three year cycle. The testing schedule (and changes to it) would be approved by, and the results of testing would be reported to, ICEU's Executive Risk Committee. The proposed changes would also more fully describe the testing strategy, which includes both physical elements (such as processing of operational aspects of the Plan in a non-production environment and governance aspects such as Board engagement) and simulated tabletop exercises. Testing of default-related recovery scenarios may also be included in default fire drills, including coordination with other relevant clearing agencies. Additionally, the Recovery Plan test would add to the list of issues examined as part of testing whether all services continue to be provided, including those to affiliates, and what governance pathways would be used. The amendment would clarify that any changes resulting from the review of the Plan after each test would be addressed as part of the defined governance process included in the Plan.

The proposed amendments would make certain clarifications relating to the critical services provided by the Clearing House. Certain updates and corrections are made to the products currently cleared, including to reference option contracts generally instead of only options on futures and to reference the IFAD exchange for which clearing services are provided in the F&O product category. The amendments also would add an explanatory footnote to distinguish critical services from certain similar concepts use in the Clearing House's other policies and frameworks. In the discussion of impacts of recovery options of market participants, a clarification would be added that capital and liquidity impacts on market participants would be taken into account as far as reasonably possible (to reflect certain practical limitations on the Clearing House's ability to address such matters).

The service providers supporting the critical services would now include repo counterparties in addition to investment agents, to reflect the Clearing House's use of repurchase transactions with such counterparties. The amendments would also add to the list of such service providers default brokers, which may be used to execute market transaction in order to hedge a defaulter's book and/or liquidate non-cash collateral. Amendments would also reflect that inter-affiliate arrangements may be documented under intercompany service agreements rather than outsourcing agreements.

[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 Recovery Plan or, if not defined therein, the ICE Clear Europe Clearing Rules.

The amendments would make certain enhancements to the discussion of how the Clearing House mitigates dependencies on service providers. In the context of situations where ICE Clear Europe relies on the existence of multiple, substitutable providers, the amendments would reflect that ICE Clear Europe regularly tests its assumptions that this is an effective strategy, as part of its operational resilience framework. Similarly, where the Clearing House relies on resilience and redundancy with respect to a provider, it would regularly test these assumptions under the operational resilience framework. In terms of contractual protections under arrangements with service providers, the amendments would state that the Clearing House ensures contracts do not permit service providers to unduly alter or terminate the contracts (as opposed to the more limited analysis under the current Plan of whether alteration or termination would be permitted if ICE Clear Europe were under financial stress). The updates would also provide for periodic ongoing analyses of these contracts in the context of the Plan. The amendments would remove a specific determination that investment agents, APS banks, central banks and data providers are excluded from being dependencies on the basis of substitutability; under the revised Plan such service providers may be subject to the mitigation arrangements discussed, as appropriate.

The proposed changes would remove certain statements that the Clearing House does not have a dependency on physical delivery agents, other ICE exchange or ICE Clearing Houses. Although there are applicable mitigants in many cases, such relationships may nonetheless be regarded as dependencies. The amendments would add a provision that ICE Clear Europe for certain markets regularly tests its ability to perform the functions of delivery agents under certain disruption scenarios. The amendments would also clarify certain other testing practices, including as part of the operational resilience framework, applicable to relationships with ICE Exchanges and ICE Technology and Operations Group. For dependencies on other ICE clearing houses, the revised Plan would note that the relevant processes that ICE Clear Europe could use in the event of a failure by the other clearing house are generally already performed by ICE Clear Europe.

In the discussion of technology infrastructure, clarifying references to CDS and F&O are added to the descriptions of the various systems to reflect the specific systems currently used for those businesses. Additionally, the proposed rules would update the list of certain ways in which risks are mitigated to address periodic testing, operational resilience, the role of ICE Clear Europe as a participant in defining requirements in the development of new capabilities, notice periods under service agreements (not merely outsourcing arrangements), and other nonsubstantive changes. The revised Plan would also address certain services that ICE Clear Europe provides to other ICE affiliates, noting that ICE Clear Europe assumes that such services will continue to be provided during the execution of the Plan. ICE Clear Europe believes that in the event of a Plan execution, there will be relevant resources in place that will allow those services to continue, particularly for those that are operational in nature or almost fully automated. Those not fully automated would have backup arrangements that are periodically tested.

For recovery scenarios and triggers, the amendments would clarify the trigger for the non-default losses scenario involving the Clearing House's base capital by defining a breach based on referring to insufficient EMIR eligible capital. The amendments would clarify that each stress scenario listed in the appendix would be mapped to key risks contained in the Clearing House's risk appetite statements, to ensure that each key risk is covered.

The amendments would reference the Clearing House's existing operational resilience framework, which encompasses (and supersedes previous) business continuity and disaster recovery plans and includes incident management processes. Various references throughout the Plan to business continuity, disaster recovery or similar matters have been replaced by references to the operational resilience framework and related incident management processes.

Additional explanatory language with regards to early warnings for default and non-default loss scenarios to make consistent with the Rules. Throughout the Plan, the language has changed to reflect the name update of the Capital Replenishment Plan to be consistent.

The amendments would also remove from the explanations of the Plan's design and development certain duplicative information about coverage of various types of losses that is addressed in other parts of the Plan. Additionally, the Clearing House would clarify certain references to the Crisis Communications and Management Plan (which would be renamed the Communications Plan). Members of each communications group would be updated to reference relevant personnel, including adding the President to most communication groups and adjusting certain other referenced personnel to reflect current Clearing House operations. In addition, the Plan would address a contingency in a recovery situation where the President is not available. Similarly, the references to the Major Incident Response Plan would be updated to reflect that the plan has been renamed the Crisis Management Plan. Regarding the scenario steps in a default and non-default loss, the proposed changes will also make certain minor changes to timing and notification processes.

The proposed changes would add a new Document Governance and Exception Handling section that is consistent with other Clearing House policies. This section would describe the responsibilities for the document owners in accordance with ICEU's governance processes, as well as breach management, exception handling, and document governance.

The description of the ICE Clear Europe committee structure in Appendix A would be removed. ICE Clear Europe believes the structure is fully defined in other documentation and does not need to be included in the Plan.

In addition, amendments throughout the Plan would make other minor non-substantive drafting and conforming changes and typographical corrections.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Plan are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934[4] (''Act'') and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes to the Plan are intended to make various updates, enhancements and clarifications to the Plan, including with regard to the critical service providers and other dependencies of the Clearing

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

House, as well as mitigants for such dependencies. The amendments would also enhance procedures around testing of the Plan and related default and non-default scenarios that could lead to the need to implement the Plan. Other amendments are intended to conform to changes in other ICE Clear Europe policies and procedures. The amendments would also clarify certain aspects of the recovery scenarios and procedures as well as potentially triggering or warning events for losses. Overall, the amendments would help the Clearing House facilitate an orderly recovery of its clearing businesses in the event of a severe financial stress or loss. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[6]

Rule 17Ad–22(e)(2) provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] provide for governance arrangements that are clear and transparent'' [7] and ''[s]pecify clear and direct lines of responsibility.'' [8] The amendments to the Plan would enhance various aspects of the governance surrounding the implementation, testing and modification of the Plan. Amendments would more clearly state the procedures for communications with relevant groups of stakeholders in connection with the Plan, and take into account the Clearing House's broader Communications Plan and Crisis Management Plan. They would also clarify certain aspects of the role of the President and key personnel. In addition, the amendments would address document governance, breach management and exception handling, in a manner generally consistent with other ICE Clear Europe policies. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(2).[9]

The proposed amendments are also consistent with Rule 17Ad–22(e)(3)(ii), which provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which [. . .] includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses . . . .'' [10] As discussed above, the amendments to the Plan would update and clarify various aspects of the Recovery Plan, including to enhance the assessment of critical services and dependencies in the context of a recovery situation. The amendments would also clarify various aspects of the triggers for potential implementation of recovery and recovery options to be used under the Plan. The amendments would also clarify testing procedures. The amendments are thus intended to enhance the effectiveness of the Plan as a means of preparing for the potential of losses, whether from Clearing Member default or failure or for various other causes, that could otherwise threaten the continued operation of the Clearing House. As such, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(3)(ii).[11]

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

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments are being adopted to update and clarify the Plan, all of which relate to the Clearing House's processes for the recovery of the Clearing House in the unlikely occurrence of significant loss events that may negatively harm the Clearing House. The amendments do not involve a change in the Clearing House's Rules or Procedures and will not affect the rights or obligations of Clearing Members, but instead address the means in which the Clearing House may use the tools set forth in its Rules and Procedures in a recovery scenario. ICE Clear Europe does not believe the amendments would affect in the ordinary course of business the costs of clearing, the ability of market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate 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

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

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

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

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ICEEU–2023–020 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–2023–020. 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

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17 Ad–22(e)(2)(i).

[8] 17 CFR 240.17 Ad–22(e)(2)(v).

[9] 17 CFR 240.17Ad–22(e)(2).

[10] 17 CFR 270.17Ad–22(e)(3)(ii).

[11] 17 CFR 240.17Ad–22(e)(3)(ii).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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.*

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ICEEU–2023–020 and should be submitted on or before August 16, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–636, OMB Control No. 3235–0679]

Proposed Collection; Comment Request; Extension: Form PF and Rule and Rule 204(b)–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 204(b)–1 (17 CFR 275.204(b)–1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) implements sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') by requiring private fund advisers that have at least $150 million in private fund assets under management to report certain information regarding the private funds they advise on Form PF. These advisers are the respondents to the collection of information. Form PF is designed to facilitate the Financial Stability Oversight Council's (''FSOC'') monitoring of systemic risk in the private fund industry and to assist FSOC in determining whether and how to deploy its regulatory tools with respect to nonbank financial companies. The Commission and the Commodity Futures Trading Commission may also use information collected on Form PF in their regulatory programs, including examinations, investigations and investor protection efforts relating to private fund advisers.

Form PF divides respondents into two broad groups, Large Private Fund Advisers and smaller private fund advisers. ''Large Private Fund Advisers'' are advisers with at least $1.5 billion in assets under management attributable to hedge funds (''large hedge fund advisers''), advisers that manage ''liquidity funds'' and have at least $1 billion in combined assets under management attributable to liquidity funds and registered money market funds (''large liquidity fund advisers''), and advisers with at least $2 billion in assets under management attributable to private equity funds (''large private equity fund advisers''). All other respondents are considered smaller private fund advisers. The Commission estimates that most filers of Form PF have already made their first filing, and so the burden hours applicable to those filers will reflect only ongoing burdens, and not start-up burdens. Accordingly, the Commission estimates the total annual reporting and recordkeeping burden of the collection of information for each respondent is as follows: (a) For smaller private fund advisers making their first Form PF filing, an estimated amortized average annual burden of 13 hours for each of the first three years; (b) for smaller private fund advisers that already make Form PF filings, an estimated amortized average annual burden of 15 hours for each of the next three years; (c) for smaller private funds, an estimated average annual burden of 5 hours for event reporting for smaller private equity fund advisers for each of the next three years; (d) for large hedge fund advisers making their first Form PF filing, an estimated amortized average annual burden of 108 hours for each of the first three years; (e) for large hedge fund advisers that already make Form PF filings, an estimated amortized average annual burden of 600 hours for each of the next three years; (f) for large hedge fund advisers, an estimated average annual burden of 10 hours for current reporting for each of the next three years; (g) for large liquidity fund advisers making their first Form PF filing, an estimated amortized average annual burden of 67 hours for each of the first three years; (h) for large liquidity fund advisers that already make Form PF filings, an estimated amortized average annual burden of 280 hours for each of the next three years; (i) for large private equity fund advisers making their first Form PF filing, an estimated amortized average annual burden of 84 hours for each of the first three years; (j) for large private equity fund advisers that already make Form PF filings, an estimated amortized average annual burden of 128 hours for each of the next three years; and (k) for large private equity fund advisers, an estimated average annual burden of 5 hours for event reporting for each of the next three years.

With respect to annual internal costs, the Commission estimates the collection of information will result in 122.86 burden hours per year on average for each respondent. With respect to external cost burdens, the Commission estimates a range from $0 to $50,000 per adviser.

Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The changes in burden hours are due to the staff's estimates of the time costs and external costs that result from the adopted amendments, the use of updated data, and the use of different methodologies to calculate certain estimates. Compliance with the collection of information requirements of Form PF is mandatory for advisers that satisfy the criteria described in Instruction 1 to the Form. Responses to the collection of information will be kept confidential to the extent permitted by law. The Commission does not intend to make public information reported on Form PF that is identifiable to any particular adviser or private fund, although the Commission may use Form PF information in an enforcement action. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

[12] 17 CFR 200.30–3(a)(12).