

Accordingly, the Proposed Rule Change should help NSCC to continue providing prompt and accurate clearance and settlement of securities transactions, consistent with section 17A(b)(3)(F) of the Act.⁴⁶

Moreover, because the Proposed Rule Change would continue to ensure that NSCC collects sufficient margin from members, it should also help minimize the likelihood that NSCC would have to access the Clearing Fund, thereby limiting non-defaulting members' exposure to mutualized losses. By helping to limit the exposure of NSCC's non-defaulting members to mutualized losses, the Proposed Rule Change should help NSCC assure the safeguarding of securities and funds which are in its custody or control, consistent with section 17A(b)(3)(F) of the Act.⁴⁷

Finally, the proposed clarifying changes should help to ensure that NSCC's Rules are clear to members. When members better understand their rights and obligations regarding the Rules, members are more likely to act in accordance with the Rules, which should promote the prompt and accurate clearance and settlement of securities transactions. As such, the proposed clarifying changes are consistent with section 17A(b)(3)(F) of the Act.⁴⁸

B. Consistency With Rule 17Ad-22(e)(5)

Rule 17Ad-22(e)(5) under the Act⁴⁹ requires, in part, a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure. As described in Part II *supra*, the proposed changes to move the collateral haircuts and concentration limits from NSCC's Rules should provide NSCC with more flexibility to respond to changing market conditions because adjustments to the haircuts and concentration limits would no longer require a rule change. By being able to make appropriate and timely adjustments to the haircuts and concentration limits, NSCC would have the flexibility to respond to changing market conditions more promptly. Specifically, NSCC would have the ability to promptly set and enforce conservative collateral haircuts and concentration limits that are reflective

of the current market conditions. In this way, the proposed changes to move the collateral haircuts and concentration limits from the Rules to the website should help NSCC set and enforce appropriately conservative collateral haircuts and concentration limits, consistent with the requirements of Rule 17Ad-22(e)(5) under the Act.⁵⁰

C. Consistency With Rule 17Ad-22(e)(23)

Rule 17Ad-22(e)(23)(i) and (ii)⁵¹ under the Act requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, publicly disclose all relevant rules and material procedures; and provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. Based on its review of the record, and for the reasons described below, the Commission finds that the proposed changes, taken together, are consistent with the requirements of Rule 17Ad-22(e)(23)(i) and (ii).⁵²

By adopting rules that require NSCC to provide prior notice through public disclosures on its website relating to information on collateral haircuts and concentration limits, NSCC's Rules would support the communication of information that its members may use to identify and evaluate the haircuts and concentration limits resulting from NSCC's processes. As such, the Proposed Rule Change is consistent with publicly disclosing all relevant rules and material procedures; and providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs incurred with participation in the covered clearing agency. The Commission finds, therefore, that the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(23)(i) and (ii) under the Act.⁵³

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act⁵⁴ and the rules

and regulations promulgated thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁵⁵ that proposed rule change SR-NSCC-2023-009, be, and hereby is, *approved*.⁵⁶

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98902; File No. 4-809]

Order Granting ICE Clear Europe Limited's Request To Withdraw From Registration as a Clearing Agency

November 9, 2023.

I. Introduction

On August 10, 2023, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission") a written request (the "Written Request")¹ to withdraw from registration as a clearing agency under section 17A of the Securities Exchange Act of 1934 (the "Exchange Act").² ICE Clear Europe also requested the withdrawal of an exemption related to the clearance and settlement of certain futures and options contracts.³ The Commission published notice of ICE Clear Europe's request in the **Federal Register** on September 14, 2023, to solicit comments from interested persons.⁴ The Commission received no comments regarding the request. For the reasons discussed below, the Commission is granting ICE Clear Europe's requests and requiring ICE Clear Europe to retain and produce upon request certain records.

II. Discussion and Commission Findings

ICE Clear Europe is registered with the Commission as a clearing agency under section 17A of the Exchange Act solely for the purpose of clearing

⁵⁵ 15 U.S.C. 78s(b)(2).

⁵⁶ In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵⁷ 17 CFR 200.30-3(a)(12).

¹ See Letter from Hester Serafini, President, ICE Clear Europe, to Vanessa Countryman, Secretary, Commission, dated Aug. 10, 2023.

² 15 U.S.C. 78q-1.

³ See Notice of Withdrawal Request, *infra* at note 4, 88 FR at 63176.

⁴ Securities Exchange Act Release No. 98339 (Sept. 8, 2023), 88 FR 63173 (Sept. 14, 2023) (File No. 4-809) ("Notice of Withdrawal Request").

⁵⁰ *Id.*

⁵¹ 17 CFR 240.17Ad-22(e)(23)(i) and (ii).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ 15 U.S.C. 78q-1.

⁴⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 17 CFR 240.17Ad-22(e)(5).

security-based swaps (“SBS”).⁵ ICE Clear Europe also is authorized as a recognized clearing house under United Kingdom (“UK”) law;⁶ recognized as a third-country central counterparty under the European Market Infrastructure Regulation;⁷ registered as a derivatives clearing organization under the Commodity Exchange Act;⁸ recognized as a foreign central counterparty under the Swiss Financial Market Infrastructure Act;⁹ and recognized as a remote clearing house in the Abu Dhabi Global Market.¹⁰ ICE Clear Europe provides clearing and settlement services for two primary categories of derivative contracts: (1) exchange-traded futures and options contracts traded on the ICE Futures Europe, ICE Futures U.S., ICE Index and ICE Futures Abu Dhabi markets (the “F&O Business”); and (2) over-the-counter index and single-name credit default swap (“CDS”) contracts (the “CDS Business”).

In June 2022, by circular published on its website, ICE Clear Europe publicly announced its intention to terminate its CDS Business in 2023, including its clearing of SBS.¹¹ In the Written Request subsequently filed with the Commission, ICE Clear Europe

represented that it would no longer accept CDS contracts for clearing after close of business on October 26, 2023, and would subsequently terminate and settle any open CDS positions.¹² ICE Clear Europe represented further that it would settle all final amounts owed to or by each Clearing Member by November 7, 2023, and that it will not seek to engage in securities clearing activity relating to security-based swaps in reliance on any deemed registered status pursuant to section 17A(l) of the Exchange Act.¹³ ICE Clear Europe therefore submitted its request for withdrawal of its clearing agency registration pursuant to section 19(a)(3) of the Exchange Act, which states that a self-regulatory organization may “withdraw from registration by filing a written notice of withdrawal with the Commission,” upon such terms and conditions as the Commission, by rule, deems necessary or appropriate in the public interest or for the protection of investors.¹⁴

ICE Clear Europe also requested the withdrawal of an exemption it was previously granted related to the clearance and settlement of certain futures and options contracts.¹⁵ In 2013, the Commission exempted ICE Clear Europe from clearing agency registration under section 17A(b) of the Exchange Act and Rule 17Ab2–1¹⁶ thereunder in connection with ICE Clear Europe’s clearing of certain futures and options contracts on underlying U.S. equity securities (the “Securities Product Exemption”).¹⁷ ICE Clear Europe represents that it does not currently clear any equity options or single stock futures on U.S. securities,¹⁸ and that its rules are designed to prohibit ICE Clear Europe from clearing futures or options

on underlying U.S. securities for U.S. persons.¹⁹ ICE Clear Europe believes that the Securities Product Exemption will not be necessary for ICE Clear Europe’s continued operation of the F&O Business, and therefore has requested that the Commission terminate the exemption.²⁰

On November 7, 2023, ICE Clear Europe confirmed to the Commission that it stopped accepting CDS contracts as of close-of-business on October 26, 2023, closed-out all CDS positions on October 27, 2023, returned collateral related to CDS positions, and completed final settlement of amounts owed to or from members related to ICE Clear Europe’s CDS Business on November 7, 2023.²¹ It also re-confirmed the representations in the Written Request regarding record-keeping, record-production, the settlement of existing claims, and the lack of potential for future claims against it resulting from its CDS Business.²²

Based upon the representations made by ICE Clear Europe to the Commission, the Commission has determined that granting ICE Clear Europe’s requests to (i) withdraw its clearing agency registration and (ii) terminate the Securities Product Exemption are appropriate. ICE Clear Europe represents it is no longer performing actions that require registration as a clearing agency under section 17A of the Exchange Act and will not seek to engage in securities clearing activity in reliance on any “deemed registered” status pursuant to section 17A(l) of the Exchange Act.²³ In addition, ICE Clear Europe has provided specific assurances regarding record-keeping, record-production, and both the settlement of existing, and lack of potential for future, claims against it resulting from its CDS Business. Specifically, ICE Clear Europe confirmed that all known claims against it in connection with the CDS Business were settled by November 7, 2023, and that ICE Clear Europe is not aware of any potential future claims against it in connection with the CDS Business.²⁴ ICE Clear Europe also confirmed that, for a period of five years following its withdrawal from registration as a clearing agency, it will retain and maintain all documents, books, and

⁵ See 15 U.S.C. 78q–1. Pursuant to section 17A(l) of the Exchange Act, ICE Clear Europe became “deemed registered” as a clearing agency as part of its CDS Business. See Amendment to Rule Filing Requirements for Dually-Registered Clearing Agencies, Securities Exchange Act Release No. 69284 (Apr. 3, 2013), 78 FR 21046, 21047 & n.20 (Apr. 9, 2013) (File No. S7–29–11). “Clearing agency” is defined in section 3(a)(23)(A) of the Exchange Act as, in relevant part, “any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.” 15 U.S.C. 78c(a)(23)(A).

⁶ See UK Financial Services and Markets Act of 2000 c. 8, available at <https://www.legislation.gov.uk/ukpga/2000/8/contents>.

⁷ See 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.

⁸ See 7 U.S.C. 7a–1.

⁹ See Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 19 June 2015.

¹⁰ See Abu Dhabi Global Market Financial Services and Markets Regulations 2015, available at <https://en.adgm.thomsonreuters.com/rulebook/financial-services-and-markets-regulations-2015-0>.

¹¹ See Cessation of Clearing of CDS Contracts, Circular C22/076 (June 30, 2022), available at https://www.theice.com/publicdocs/clear_europe/circulars/C22076.pdf (setting Mar. 31, 2023 as the Withdrawal Date); Cessation of Clearing of CDS Contracts: Postponement of Withdrawal Date, Circular C22/109 (Sept. 26, 2022), available at https://www.theice.com/publicdocs/clear_europe/circulars/C22109.pdf (postponing Withdrawal Date to Oct. 27, 2023 in light of suggestions from CDS market participants).

¹² See Notice of Withdrawal Request, 88 FR at 63175.

¹³ See Notice of Withdrawal Request, 88 FR at 63175–76. See also 15 U.S.C. 78q–1(l). ICE Clear Europe further represents that if an affiliate of ICE Clear Europe seeks to clear SBS or another securities product, such affiliate would do so after registering with the Commission pursuant to the process set forth in Commission Rule 17Ab2–1. See Notice of Withdrawal Request, 88 FR at 63176. See also 17 CFR 240.17Ab2–1.

¹⁴ See Notice of Withdrawal Request, 88 FR at 63176; see also 15 U.S.C. 78s(a)(3).

¹⁵ See Notice of Withdrawal Request, 88 FR at 63176.

¹⁶ 15 U.S.C. 78q–1(b) and 17 CFR 240.17Ab2–1.

¹⁷ See Order Pursuant to section 17A of the Securities Exchange Act of 1934 Granting Exemption from the Clearing Agency Registration Requirement Under section 17A(b) of the Exchange Act for ICE Clear Europe Limited in Connection with its Proposal to Clear Contracts Traded on the LIFFE Administration and Management Market, Exchange Act Release No. 69872 (June 27, 2013), 78 FR 40220 (July 3, 2013).

¹⁸ See Notice of Withdrawal Request, 88 FR at 63176 n.36.

¹⁹ See *id.*; ICE Clear Europe Rule 207(g).

²⁰ See Notice of Withdrawal Request, 88 FR at 63176.

²¹ See Letter from Hester Serafini, President, ICE Clear Europe, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated Nov. 7, 2023 (“Confirmation Letter”).

²² See Confirmation Letter at 2.

²³ See Confirmation Letter at 2; 15 U.S.C. 78q–1(l).

²⁴ See Confirmation Letter at 2.

records in accordance with Rules 17a–1(a) and (b) under the Exchange Act and will furnish such information upon request in accordance with Rule 17a–1(c) under the Exchange Act.²⁵ As noted above, no comments were received in response to the published notice of ICE Clear Europe’s Written Request to withdraw from registration as a clearing agency, which included ICE Clear Europe’s representations regarding maintenance of records and record production, as well as ICE Clear Europe’s representations regarding any potential for claims associated with its clearing agency registration. As further noted above, ICE Clear Europe reconfirmed, in writing, the representations made in its Written Request.

III. Conclusion

It is therefore ordered, pursuant to section 19(a)(3) of the Exchange Act,²⁶ that:

(1) Effective as of the date of this Order, ICE Clear Europe’s registration as a clearing agency under section 17A of the Exchange Act is withdrawn;

(2) Effective as of the date of this Order, the exemption under section 17A(b) of the Exchange Act in connection with ICE Clear Europe’s proposal to clear contracts traded on the LIFFE Administration and Management Market is terminated;²⁷ and

(3) For a period of five years from the effective date of withdrawal of registration as a clearing agency, ICE Clear Europe will maintain all the records required to be maintained pursuant to Rule 17A–1(a) and (b) which are in ICE Clear Europe’s possession and will produce such records upon the request of any representative of the Commission, in accordance with Commission Rule 17a–1(c).²⁸

By the Commission.

Sherry Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98888; File No. SR–MEMX–2023–29]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange’s Fee Schedule To Adopt Connectivity and Application Session Fees for MEMX Options

November 8, 2023.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on October 24, 2023, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange’s fee schedule applicable to Members⁴ and non-Members (the “Fee Schedule”) pursuant to Exchange Rules 15.1(a) and (c) to (i) apply the Exchange’s current Connectivity and Application Session fees to MEMX Options Users, (ii) implement a waiver of Connectivity and Application Session fees solely related to participation on MEMX Options until January 1, 2024, and (iii) make an organizational change to its existing fee schedule for the Exchange’s pre-existing equities market (“MEMX Equities”), in order to create a separate fee schedule for Connectivity Fees (for both MEMX Equities and MEMX Options). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange is filing a proposal to amend the Fee Schedule to: (i) apply the Exchange’s current Connectivity and Application Session fees to MEMX Options Users, (ii) implement a waiver of Connectivity and Application Session fees solely related to participation on MEMX Options until January 1, 2024, and (iii) make an organizational change to its existing fee schedule for the Exchange’s pre-existing equities market (“MEMX Equities”), in order to create a separate fee schedule for Connectivity Fees (for both MEMX Equities and MEMX Options). The Exchange believes that these changes will provide greater transparency to Members about how the Exchange assesses fees, as well as allowing Members to more easily validate their bills on a monthly basis. The Exchange notes that none of these changes amend any existing fee applicable to MEMX Equities. The Exchange is proposing to implement the proposal immediately.

As set forth below, the Exchange believes that its proposal provides a great deal of transparency regarding the cost of providing connectivity services and anticipated revenue and that the proposal is consistent with the Act and associated guidance.

(i) Fees for Connectivity to MEMX Options

As noted above, the Exchange is proposing to apply the current fees it charges to Members and non-Members⁵ for physical connectivity to the Exchange and for application sessions (otherwise known as “logical ports”) that a Member utilizes in connection with their participation on the Exchange (together with physical connectivity,

⁵ Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services to Members, and thus, may access application sessions on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

²⁵ See Confirmation Letter at 2.

²⁶ 15 U.S.C. 78s(a)(3).

²⁷ 15 U.S.C. 78q–1(b).

²⁸ 17 CFR 240.17a–1(a), (b), and (c).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ See Exchange Rule 1.5(p).