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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-86359; File No. SR-ICEEU-2019-010]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change to Clearing Membership Policy

July 11, 2019

I. Introduction

On May 13, 2019, ICE Clear Europe Limited (“ICE Clear Europe” or “Clearing House”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Clearing Membership Policy. The proposed rule change was published for comment in the Federal Register on May 28, 2019.³ The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICE Clear Europe’s proposed rule change would make three amendments to its Clearing Membership Policy.⁴

First, the proposed rule change would specify that applications for membership are formally considered and, as appropriate, approved and rejected by, the Executive Risk

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 85908 (May 21, 2019), 84 FR 24573 (May 28, 2019) (SR-ICEEU-2019-010) (“Notice”).

⁴ Notice, 84 FR at 24574. Capitalized terms not otherwise defined herein have the meanings given to them in the ICE Clear Europe Rules or the Clearing Membership Policy.

Committee, through a delegation of authority from the ICE Clear Europe Board of Directors, rather than the F&O and CDS Product Risk Committees (collectively, the “Product Risk Committees”). The proposed rule change would also specify that the Product Risk Committees would be notified of approved applications. The Executive Risk Committee is made up of ICE Clear Europe management and advises management on all key aspects of risk management and produces proposals for review by the Board Risk Committee, Product Risk Committees, and ICE Clear Europe Board, as appropriate.⁵ The Product Risk Committees are made up of appointees nominated by ICE Clear Europe’s Clearing Members.⁶

Second, the proposed rule change would add a requirement that a person applying to become a CDS Clearing Member (an “Applicant”) prove its ability to determine and submit end-of-day prices for CDS instruments to fulfill the pricing capabilities requirements set out in ICE Clear Europe’s CDS End-Of-Day Price Discovery Policy. The proposed rule change would further specify how ICE Clear Europe’s Clearing Risk Department would review and determine Applicants’ pricing capabilities. Thus, the proposed rule change would provide the Executive Risk Committee, as the delegated committee responsible for approving or rejecting an Applicant, with authority to reject an Applicant that cannot demonstrate such pricing capabilities.

⁵ See ICE Clear Europe Disclosure Framework, available at https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Disclosure_Framework.pdf (“The role of the ERC is to advise the management team on all key aspects of risk management and produce proposals for review by the Board Risk Committee, the Product Risk Committees, the Client Risk Committee, the Audit Committee and the Board as appropriate.”).

⁶ See ICE Clear Europe Disclosure Framework, available at https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Disclosure_Framework.pdf (“The CDS PRC is comprised of appointees nominated by CDS Clearing Members, Independent Non-Executives and representatives of ICEU.”).

Finally, the proposed rule change would add an explicit requirement that, in evaluating applications for membership, the Clearing Risk Department consider the performance of Applicants in a Default Management Test and review Applicants' internal policies and procedures to assess the efficacy of their default management process. Thus, the proposed rule change would provide the Executive Risk Committee, as the delegated committee responsible for approving or rejecting an Applicant, with authority to reject an Applicant that cannot demonstrate the efficacy of its default management process.

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization presenting it.⁷ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁸ and Rules 17Ad-22(e)(2) and (e)(18) thereunder.⁹

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear

⁷ 15 U.S.C. 78s(b)(2)(C).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22(e)(2) and (e)(18).

Europe or for which it is responsible, and, in general, to protect investors and the public interest.¹⁰

As discussed above, the proposed rule change would specify that applications for membership are formally considered, and approved and rejected by, the Executive Risk Committee, rather than the Product Risk Committees. The proposed change would also specify the procedure by which ICE Clear Europe would test and screen Applicants for their ability to satisfy end-of-day pricing and default management requirements. The Commission believes that ICE Clear Europe's end-of-day pricing and robust and effective default management protocols both are critical to its ability to contribute to the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. For example, ICE Clear Europe relies on accurate end-of-day prices to generate margin requirements, which it uses to manage the risks associated with clearing security-based swap portfolios. Similarly, ICE Clear Europe relies on its default management tools to help manage and reduce the risks associated with a defaulting Clearing Member's portfolio. Such risks, if not properly managed, could cause ICC to realize losses on such portfolios and could disrupt ICE Clear Europe's ability to promptly and accurately clear security based swaps transactions and safeguard securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. For these reasons, the Commission believes that the proposed rule change, in establishing a procedure by which ICE Clear Europe would test and screen Applicants for their ability to satisfy end-of-day pricing and default management requirements, and providing the Executive Risk Committee authority to reject Applicants that do not meet such requirements, would promote the prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

securities and funds which are in the custody or control of the ICE Clear Europe or for which it is responsible. For the same reasons, the Commission also believes the proposed rule change would, in general, protect investors and the public interest.

Section 17A(b)(3)(F) of the Act further requires that the rules of ICE Clear Europe are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.¹¹ The Commission believes that the proposed changes discussed above would establish procedures by which ICE Clear Europe would test and screen Applicants for their ability to satisfy end-of-day pricing and default management requirements on an objective basis, without discriminating in the admission of Applicants.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, in general, protect investors and the public interest, and not be designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, consistent with the Section 17A(b)(3)(F) of the Act.¹²

B. Consistency with Rule 17Ad-22(e)(2)

Rule 17Ad-22(e)(2) requires, among other things, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.¹³

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(e)(2).

The proposed rule change would specify that applications for membership are formally considered, and approved and rejected by, the Executive Risk Committee, rather than the Product Risk Committees and that the Product Risk Committees are notified of approved applications. The Commission believes that the proposed rule change would help to ensure that the governance regarding approval of Applicants is clear and transparent, and establishes a clear and direct line of responsibility, by clearly specifying that the Executive Risk Committee would approve or disapprove applications. Moreover, in establishing that the Executive Risk Committee, through a delegation of authority from the ICE Clear Europe Board of Directors, is responsible for approving or rejecting Applicants, rather than the Product Risk Committees, the Commission believes the proposed rule change would consolidate, within ICE Clear Europe management, decisions regarding admission of applicants for membership at ICE Clear Europe. The Commission believes this would therefore clearly specify the responsibility of ICE Clear Europe management in approving or rejecting Applicants. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(2).¹⁴

C. Consistency with Rule 17Ad-22(e)(18)

Rule 17Ad-22(e)(18) requires, among other things, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities.¹⁵

¹⁴ 17 CFR 240.17Ad-22(e)(2).

¹⁵ 17 CFR 240.17Ad-22(e)(18).

As discussed above, the proposed rule change would specify the procedure by which ICE Clear Europe would test and screen Applicants for their ability to satisfy end-of-day pricing and default management requirements. The proposed rule change also would specifically require that Applicants prove the ability to fulfill the pricing capabilities requirements set out in ICE Clear Europe's CDS End-Of-Day Price Discovery Policy and perform acceptably in a Default Management Test. The Commission believes that, in doing so, the proposed rule change would establish objective and disclosed procedures for approving Applicants based on the risk of Applicants not being able to comply with ICE Clear Europe's end-of-day pricing and default management requirements. Moreover, the Commission believes that these procedures represent objective criteria which any Applicant could potentially satisfy, thereby permitting fair and open access to membership at ICE Clear Europe. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(18).¹⁶

¹⁶ 17 CFR 240.17Ad-22(e)(18).

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(b)(3)(F) of the Act¹⁷ and Rules 17Ad-22(e)(2) and (e)(18) thereunder.¹⁸

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁹ that the proposed rule change (SR-ICEEU-2019-010) be, and hereby is, approved.²⁰

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Eduardo A. Aleman
Deputy Secretary

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ 17 CFR 240.17Ad-22(e)(2) and (e)(18).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ 17 CFR 200.30-3(a)(12).

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