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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2021–06122 Filed 3–24–21; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91376; File No. SR–ICEEU–2021–002]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICE Clear Europe Price Submission Disciplinary Framework

March 19, 2021.

#### I. Introduction

On February 2, 2021, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to modify certain provisions of its Price Submission Disciplinary Framework and to rename it as the “Price Submission Disciplinary Procedure” (hereinafter referred to as the “Procedure”).<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on February 18, 2021.<sup>4</sup> The Commission did not receive comments regarding 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 proposes to make specific amendments to the current

Procedure for investigating and disciplining Clearing Members for missed price submissions when a Clearing Member holds cleared open interest in a single-name or index credit default swap (“CDS”) product.<sup>5</sup> The proposed amendments are summarized below.<sup>6</sup>

#### *Cash Assessments for Missed Submissions and Waivers*

The proposed amendments in renumbered Section 2.2.3 (Fixed Cash Assessments for Missed Submissions) would state that a Clearing Member in receipt of a Notice of Investigation issued in respect of an alleged Missed Submission will have five days to submit written comments. The proposed amendments would also provide an additional five days for ICE Clear Europe to review the relevant Clearing Member’s comments before sending a Letter of Mindedness to the Clearing Member under Rule 1002(f) at the conclusion of the investigation. ICE Clear Europe represents that these proposed amendments would improve the current process by affording the Clearing Member an opportunity to respond to the initial notice and giving ICE Clear Europe time to assess the Clearing Member’s response before determining whether to take further action under the Rules.<sup>7</sup>

The proposed rule change would also clarify when ICE Clear Europe would issue a cash assessment notice to a Clearing Member, regardless of whether ICE Clear Europe receives written comments from the Clearing Member during the ten-day period from the date of a Letter of Mindedness. Specifically, the proposed rule change would provide that ICE Clear Europe will issue a cash assessment notice following the expiry of such ten-day period where it determines that an assessment amount is required to be collected. The proposed rule change would make a drafting clarification to specify that the cash assessment notice would be calculated according to the cash assessment calculation details outlined in the Procedure.

In addition, the proposed rule change would remove the current investigation procedures for one or more Missed Submissions in a month for the type of instrument (index or single-name) involved. Instead, the proposed amendments would update and clarify

the procedures by which a Clearing Member may assert that one or more Missed Submissions were due to extraordinary circumstances outside of its control. In such circumstances, the proposed rule change would designate the Head of Regulation and Compliance to determine whether such circumstances apply, rather than the currently designated Head of Clearing Compliance.

ICE Clear Europe also proposes changes in renumbered Section 2.2.3 (Fixed Cash Assessments for Missed Submissions) to the process for granting waivers of the applicable cash assessment amount for Missed Submissions based on the CDS product type. The proposed rule change would clarify that if a waiver is granted, no cash assessment amount would be due for the Missed Submission. Further, the proposed rule change would change the current eligibility provisions for such waivers. ICE Clear Europe represents that, under the current waiver process, a Clearing Member receives only one waiver over the course of its clearing membership for a Missed Submission.<sup>8</sup> The proposed rule change would change that process by providing that a Clearing Member is eligible for one waiver per calendar year for Missed Submissions for single-name products and one waiver per calendar year for Missed Submissions for index products.

The proposed rule change would also expressly limit such waivers to Missed Submissions caused by technical failures. In addition, the proposed rule change would require that Clearing Members must provide an adequate written explanation of the technical failure and a summary of planned remedial actions. The proposed rule change would also specify that only the first instance of a Missed Submission in any calendar year for both single-name and index products will be eligible for a waiver. ICE Clear Europe represents that it believes the proposed approach to waivers strikes a better balance than the current approach between the need for robust submissions under the Policy and the goal of not unnecessarily penalizing Clearing Members for technical failures.<sup>9</sup>

#### *Changes Regarding Missed Submissions*

In the definition of the term “Missed Submissions” in Section 2.1.2, ICE Clear Europe would change the type of submissions that count as Missed Submissions. Specifically, ICE Clear Europe would remove the statement that spread submissions will be counted as

<sup>19</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Price Submission Disciplinary Framework, Exchange Act Release No. 91114 (February 11, 2021), 86 FR 10152 (February 18, 2021) (SR–ICEEU–2021–002) (“Notice”).

<sup>4</sup> See Notice, *supra* note 3, 86 FR 10152.

<sup>5</sup> Capitalized terms used not defined herein have the meanings specified in the Procedure or the ICE Clear Europe Clearing Rules (the “Rules”), as applicable.

<sup>6</sup> The following description is substantially excerpted from the Notice.

<sup>7</sup> See Notice, 86 FR at 10152.

<sup>8</sup> *Id.*

<sup>9</sup> See Notice, 86 FR at 10153.

Missed Submissions, and replace it with a statement that submissions not adhering to the format described in Section 2.2.3 of the Policy will be counted as Missed Submissions. ICE Clear Europe represents that such format requires index submissions to follow market convention in terms of providing prices as spreads, and be either midpoint or bid-offer.<sup>10</sup>

ICE Clear Europe also would make certain non-substantive drafting clarifications to the provisions in this section on Obvious Error submissions where the bid is higher than the high threshold, or the offer is lower than the low threshold. Specifically, ICE Clear Europe would clarify that references to “Missed Submissions” shall be deemed to include Obvious Errors on CDX Indices submissions, as applicable.

#### *Document Governance and Exception Handling*

The proposed amendments would add new provisions with respect to the governance of the Procedure document and the handling of exception approvals to this document. Specifically, the proposed amendments would state that the document owner is responsible for ensuring that the Procedure remains up-to-date and is reviewed in accordance with ICE Clear Europe’s governance processes. The proposed amendments would further provide that the document owner will report material breaches or unapproved deviations from the Procedure to the document owner’s Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who together will determine if further escalation is required. Lastly, the proposed amendments would state that exceptions to the Procedure can be approved in accordance with ICE Clear Europe’s governance process for the Procedure. ICE Clear Europe represents that the proposed approach to governance and exception handling is consistent with that of other ICE Clear Europe procedures.<sup>11</sup>

#### *General Drafting Clarifications and Improvements*

ICE Clear Europe would amend the current document title from “Price Submission Disciplinary Framework” to “Price Submission Disciplinary Procedure,” and make a conforming word change in Section 2.1.1 (Purpose) from “framework” to “procedure.” ICE Clear Europe would remove Section 2.2 (End of Day Price Discovery Process) and the related Appendix A: End of Day

Price Discovery Process, because these matters are covered in the existing CDS End of Day Price Discovery Policy (the “Policy”). As a result of this proposed amendment and deletion of this section, ICE Clear Europe would renumber current Section 2.3 (Price Submission Incentives) as 2.2, add a cross-reference to the Policy in Section 1.1 (Overview), and remove a parenthetical cross-reference to such section in the renumbered Price Submission Incentives section.

To aid with readability, ICE Clear Europe would shorten the term “CDS Clearing Member” to “CM” throughout the Procedure, and also shorten or rephrase certain sentences without changing their substantive meanings. ICE Clear Europe would also replace references to CDX products with references to CDX Indices as a more precise term. In Section 1.1, ICE Clear Europe would update a reference to Markit Group Limited to its current name, IHS Markit.

In Section 2.1.1 (Purpose), ICE Clear Europe proposes to simplify and clarify the stated purpose of the Procedure to provide that the document outlines the procedure to be used internally by ICE Clear Europe when taking disciplinary action in relation to price submissions. In Section 2.1.3 (Legal Basis), ICE Clear Europe would also include a cross-reference to Rule 503(g), rather than restate the relevant text of Rule 503(g).

### **III. Discussion and 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 such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>12</sup> For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, Section 17A(b)(3)(G) of the Act, Section 17A(b)(3)(H) of the Act,<sup>13</sup> Rule 17Ad-22(e)(2), and Rule 17Ad-22(e)(6)(iv) thereunder.<sup>14</sup>

#### *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, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.<sup>15</sup> As discussed above, the proposed rule change would make a number of updates and enhancements to the Procedure.

First, the proposed rule change would amend the current processes for investigating Missed Submissions for disciplinary action in the form of cash assessment amounts, including by specifying the time periods applicable to different aspects of the process, and for granting waivers of cash assessment amounts for Missed Submissions. During an investigation, the proposed rule change would update and clarify the procedures by which a Clearing Member may assert that a Missed Submission was caused by extraordinary circumstances outside of its control, as determined by ICE Clear Europe’s Head of Regulation and Compliance. At the conclusion of an investigation, the proposed rule change would clarify that ICE Clear Europe will issue a cash assessment notice following the expiry of the ten-day period from the date of a Letter of Mindedness issued to a Clearing Member under Rule 1002(f), regardless of whether ICE Clear Europe receives written comments from the Clearing Member during such period, where it determines that a cash assessment is required to be collected. The proposed rule change would also make a drafting clarification to specify how the cash assessment amount will be calculated.

With respect to the waiver process, the proposed rule change would introduce new requirements that limit waivers to Missed Submissions caused by technical failures, and would require the Clearing Member to provide an adequate written explanation of the technical failure and a remedial plan to ICE Clear Europe. The proposed rule change would also specify that only the first instance of a Missed Submission in any calendar year for both single-name and index products will be eligible for a waiver.

The Commission believes such proposed amendments to the current processes for investigating Missed Submissions for disciplinary action in the form of cash assessment amounts and for granting waivers of cash assessment amounts for Missed Submissions should further incentivize Clearing Members to avoid repeated Missed Submissions. These improved

<sup>12</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F), 15 U.S.C. 78q-1(b)(3)(G), and 15 U.S.C. 78q-1(b)(3)(H).

<sup>14</sup> 17 CFR 240.17Ad-22(e)(2) and 17 CFR 240.17Ad-22(e)(6)(iv).

<sup>15</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> See Notice, 86 FR at 10152.

<sup>11</sup> *Id.*

processes should, in turn, enhance ICE Clear Europe's overall end-of-day price submission process by helping to ensure that Clearing Members perform their daily price submission obligations that, in turn, inform the calculation and collection of margin requirements for CDS products as part of ICE Clear Europe's overall risk-based margin system and risk management processes. Consequently, the Commission believes that the proposed changes would enhance ICE Clear Europe's ability to manage the risks associated with clearing both single-name and index CDS products, including the calculation of Mark-to-Market Prices under Rule 503(g), and should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle CDS transactions.

Second, the proposed rule change would update and clarify which submissions will count as Missed Submissions. Specifically, the proposed rule change would remove spread submissions as Missed Submissions and instead, would count submissions that do not adhere to the designated format in the Policy as Missed Submissions. The proposed rule change would also clarify that Obvious Errors on CDX Indices submissions count as Missed Submissions. The Commission finds that these proposed changes would update and clarify the scope of Missed Submissions for Clearing Members and avoid any possible disputes or discrepancies over which submissions will count as Missed Submissions, which could hinder ICE Clear Europe's ability to conduct its end-of-day price discovery process and, in turn, to promptly and accurately calculate and collect margin requirements for CDS products and, in turn, to promptly and accurately clear and settle CDS transactions. Consequently, the Commission believes that these proposed changes should also help promote the prompt and accurate clearance and settlement of CDS transactions by ICE Clear Europe.

Third, the proposed rule change would assign clear and direct responsibilities to the document owner at ICE Clear Europe to review and update the Procedure in accordance with ICE Clear Europe's governance processes, report material breaches to designated officers at ICE Clear Europe, and obtain approvals of any exceptions to the Procedure by following ICE Clear Europe's governance process. The Commission believes that the proposed governance and exception handling changes should help ensure clarity regarding the persons at ICE Clear Europe involved in the governance

processes for the Procedure document. The Commission believes that a lack of clarity could lead to potential confusion regarding the proper persons to take action on behalf of ICE Clear Europe, thereby potentially hindering ICE Clear Europe's ability to efficiently administer and manage the Procedure and its end-of-day price discovery process, and, in turn, to promptly and accurately clear and settle CDS transactions.

Fourth, the proposed rule change would remove redundant provisions in the Procedure that are contained in the Policy or in the Rules, and replace them with clear cross-references. The proposed rule change would also shorten or rephrase certain sentences and defined terms, and update certain terms and references. The Commission finds that these proposed drafting clarifications and improvements would enhance the clarity, transparency, and readability of the Procedure for ICE Clear Europe management, employees, and Clearing Members that, in turn, should help them understand their respective authorities, rights, and obligations regarding ICE Clear Europe's clearance and settlement of CDS transactions.

The Commission further believes that the proposed amendments, taken as a whole, would enhance ICE Clear Europe's ability to obtain complete and reliable end-of-day prices that inform its calculation and collection of margin requirements for such CDS products, and help to manage its operational risks. Moreover, the Commission believes these risks, if mismanaged, could threaten ICE Clear Europe's ability to operate and therefore its ability to clear and settle transactions and safeguard funds. As a result, the Commission believes that the proposed changes should promote ICE Clear Europe's ability to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.

Therefore, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>16</sup>

#### *B. Consistency With Section 17A(b)(3)(G) of the Act*

Section 17A(b)(3)(G) of the Act requires, among other things, that ICE Clear Europe's rules provide that Clearing Members shall be appropriately disciplined for violation of any provision of ICE Clear Europe's rules by fine or other fitting sanction.<sup>17</sup> As noted above, the proposed rule change would

amend the current Procedure for investigating Missed Submissions for disciplinary action in the form of cash assessment amounts, including by specifying the time periods applicable to different aspects of the investigation process. The proposed rule change would also clarify that ICE Clear Europe will issue a cash assessment notice following the expiry of the ten-day period from the date of a Letter of Mindedness issued to a Clearing Member under Rule 1002(f), regardless of whether ICE Clear Europe receives written comments from the Clearing Member during such period, where it determines that a cash assessment is required to be collected. In addition, the proposed rule change would update and clarify the procedures by which a Clearing Member may assert that a Missed Submission was caused by extraordinary circumstances outside of its control. The proposed rule change would also make a drafting clarification to specify how the cash assessment amount will be calculated and would update and clarify which submissions will count as Missed Submissions. The Commission believes these proposed improvements and drafting clarifications, taken together, would help ICE Clear Europe conduct more informed investigations of the facts and circumstances surrounding an alleged Missed Submission before deciding to impose cash assessments as appropriate and fitting sanctions for violations of the Policy.

The proposed changes would also add waiver eligibility requirements for Missed Submissions. Specifically, the proposed rule change would limit waivers to Missed Submissions caused by technical failures, and would require the Clearing Member to provide an adequate written explanation of the technical failure and a remedial plan to ICE Clear Europe. The Commission believes that these aspects of the proposed rule change should help ICE Clear Europe decide whether to grant waivers where individual circumstances warrant, or impose cash assessment amounts as an appropriate and fitting sanction against Clearing Members that violate the Policy by committing Missed Submissions for any reason other than technical failures that meet the waiver eligibility requirements.

Therefore, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(G) of the Act.<sup>18</sup>

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(G).

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(G).

### *C. Consistency With Section 17A(b)(3)(H) of the Act*

Section 17A(b)(3)(H) of the Act<sup>19</sup> requires, among other things, that ICE Clear Europe's rules, in general, provide a fair procedure with respect to the disciplining of participants. As discussed above, the proposed rule change would amend the current process for investigating alleged Missed Submissions for disciplinary action in the form of cash assessment amounts, including by specifying the time periods applicable to different aspects of the process. The proposed amendments would also update and clarify the investigative process for Clearing Members to assert that one or more Missed Submissions were due to extraordinary circumstances outside of its control and how ICE Clear Europe's Head of Regulation & Compliance would assess and weigh such circumstances in reaching a determination. The Commission believes these proposed investigative process changes would promote the overall fairness of the Procedure by formalizing the general time frames and procedural steps that precede ICE Clear Europe's final determination of whether to impose a disciplinary cash assessment amount.

The Commission believes that the proposed addition of waiver eligibility requirements would also enhance the fairness of the Procedure for either granting waivers or imposing cash assessment amounts, depending on the particular facts and circumstances of the Missed Submission. The Commission believes that these aspects of the proposed rule change would formalize the process of granting waivers for Missed Submissions caused by technical failures, and facilitate ICE Clear Europe's ability to administer a fair procedure for disciplining Clearing Members for any Missed Submission resulting from a non-technical reason that would warrant a cash assessment amount as calculated under the Procedure.

As noted above, the proposed rule change would also make a number of general drafting improvements to shorten and clarify certain sentences and defined terms and to update references. In particular, the proposed rule change would update and clarify the types of submissions that count as Missed Submissions, including submissions that do not adhere to the designated format in the Policy as Missed Submissions and Obvious Errors on CDX Indices submissions, which the

Commission believes would further enhance the fairness of the Procedure by increasing its clarity and readability for Clearing Members.

For these reasons, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(H) of the Act.<sup>20</sup>

### *D. Consistency With Rule 17Ad-22(e)(2) Under the Act*

Rule 17Ad-22(e)(2)<sup>21</sup> requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. As noted above, the proposed amendments to renumbered Section 2.2.3 (Fixed Cash Assessments for Missed Submissions) would assign clear and direct responsibility to ICE Clear Europe's Head of Regulation & Compliance during investigations of Missed Submissions to determine whether a Clearing Member's circumstances are extraordinary and outside of the Clearing Member's control. In addition, the proposed provisions on document governance and exception handling would assign clear and direct responsibility to the document owner at ICE Clear Europe to ensure that the Procedure remains up-to-date and is reviewed in accordance with ICE Clear Europe's governance processes. The proposed amendments would also clarify the document owner's responsibility to report material breaches or unapproved deviations from the Procedure to the document owner's Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who together will determine if such matters require further escalation to ICE Clear Europe's senior executives. Further, the proposed amendments would clarify how to handle approvals of any exceptions to the Procedure by following ICE Clear Europe's governance process for the Procedure document.

The Commission believes these aspects of the proposed rule change would improve the clarity and transparency of the Procedure document and its governance processes by specifying relevant roles and lines of responsibility within ICE Clear Europe. The Commission believes that the proposed rule change is therefore consistent with Rule 17Ad-22(e)(2).<sup>22</sup>

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>21</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>22</sup> 17 CFR 240.17Ad-22(e)(2).

### *E. Consistency With Rule 17Ad-22(e)(6)(iv) Under the Act*

Rule 17Ad-22(e)(6)(iv)<sup>23</sup> requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. The Commission believes the proposed rule change is reasonably designed to deter the occurrence of Missed Submissions for CDS instruments that would undermine ICE Clear Europe's ability to maintain the integrity and effectiveness of its end-of-day price discovery process for the provision of reliable prices, which could, in turn, be used to enhance ICE Clear Europe's ability to establish and maintain risk-based margin requirements which rely, in part, on the end-of-day price submissions of Clearing Members.

For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(6)(iv).<sup>24</sup>

## **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 Act, Section 17A(b)(3)(G) of the Act, Section 17A(b)(3)(H) of the Act<sup>25</sup> and Rules 17Ad-22(e)(2) and 17Ad-22(e)(6)(iv) thereunder.<sup>26</sup>

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>27</sup> that the proposed rule change (SR-ICEEU-2021-002), be, and hereby is, approved.<sup>28</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2021-06119 Filed 3-24-21; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>23</sup> 17 CFR 240.17Ad-22(e)(6)(iv).

<sup>24</sup> 17 CFR 240.17Ad-22(e)(6)(iv).

<sup>25</sup> 15 U.S.C. 78q-1(b)(3)(F), 15 U.S.C. 78q-1(b)(3)(G) and 15 U.S.C. 78q-1(b)(3)(H).

<sup>26</sup> 17 CFR 240.17Ad-22(e)(2) and 17 CFR 240.17Ad-22(e)(6)(iv).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 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).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(H).