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 (http://www.sec.gov/rules/sro.shtml);
- Send an email to rule-comments@sec.gov. Please include File Number SR–ICC–2021–017 on the subject line.

Paper Comments
Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2021–017. 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 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 10:00 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 Credit and on ICE Clear Credit’s website at https://www.theice.com/clear-credit/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–ICC–2021–017 and should be submitted on or before August 20, 2021.

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

J. Matthew DeLesDernier, Assistant Secretary.

[FR Doc. 2021–16233 Filed 7–29–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the ICE Clear Europe Articles of Association

July 26, 2021.

I. Introduction

On May 25, 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”), and Rule 19b–4,1 a proposed rule change to amend its Articles of Association (the “Articles”). The proposed rule change was published for comment in the Federal Register on June 11, 2021.3 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

As discussed further below, the proposed rule change would amend the Articles to: (i) Update definitions related to the ICE Clear Europe Board of Directors (the “Board”) and references to Board committees; (ii) modify the composition and structure of the Board and Board committees; (iii) revise the provisions regarding Super-Quorum Matters; (iv) add an article regarding presence at a Board meeting and amend an article related to expenses for directors; and (v) adopt gender-neutral language and make non-substantive typographical edits throughout the Articles.4

4 The description that follows is excerpted from the Notice, 86 FR at 31346. Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICE Clear Europe Clearing Rules or the Articles, as applicable.
5 References herein to the numbering of particular articles will be to the articles as amended.
6 Notice, 86 FR at 31348.
7 Notice, 86 FR at 31348.

The proposed rule change would make certain revisions to the composition of the Board and Board committees. Currently, the Articles provide that the number of directors shall be not less than six and not more

B. Composition and Structure of the Board and Board Committees

The proposed rule change would make certain revisions to the composition of the Board and Board committees. Currently, the Articles provide that the number of directors shall be not less than six and not more

A. Definitions Related to the Board and Board Committees

Beginning in the definitions found in Article 3, the proposed rule change would change the name of the Risk Committee to Product Risk Committee and update references to this committee throughout the Articles accordingly. This change would reflect the correct current name and function of this committee (and distinguish the Product Risk Committee from other existing risk committees). Further, the proposed rule change would delete from the definition of Product Risk Committee the statement that it is composed of the directors, to reflect that the committee is comprised of directors as well as representatives of Clearing Members.

The proposed rule change would also delete definitions of, and references to, Board committees other than the Product Risk Committee. The proposed rule change would delete from article 3 the definitions of Audit Committee, Board Risk Committee, Compensation Committee, and Nomination Committee. In addition, the proposed rule change would also amend the defined term Committees. Currently that term is defined to mean certain committees of the Board (Audit Committee, Board Risk Committee, etc.). The proposed rule change would revise this definition to mean any committee constituted by the Board under the Articles. Although ICE Clear Europe is not proposing to change its current committee structure at this time, it does not believe the committees need to be defined in the Articles. Given that the Board is authorized to create, modify, or dissolve committees as it determines to be appropriate, the amendments would facilitate future changes to the committee structure by the Board without need to amend the Articles.8 The proposed rule change would retain the definition of, and references to, the Product Risk Committee, however, because that Committee plays a specific role relating to the CDS Director, as discussed

than twelve, with at least two and not more than four Independent Directors. The proposed rule change would not alter the size of Board; it would retain the not less than six and not more than twelve numerical requirement. The proposed rule change would provide, however, that at least one third of directors should be Independent Directors, replacing the current requirement of at least two and not more than four. Under a minimum Board size of six, this would result in two Independent Directors, and under a maximum Board size of twelve, this would result in four Independent Directors. Thus, this proposed change would in effect keep the number of independent directors the same, while providing flexibility and clarifying the language.

Relatedly, the proposed rule change would update the definition of Independent Director. Independent Director is currently defined as a person who is independent of the Company and of the Clearing House and who is appointed as a non-executive director of the Company. The proposed rule change would modify this definition to mean a person who meets the independence criteria for a director, as defined under relevant applicable legislation and who is appointed as a non-executive director.

Similarly, the proposed rule change would clarify the definition of CDS Director. A CDS Director is defined as a person, reasonably acceptable to the Board and approved by the Bank of England with appropriate experience of credit derivatives and the credit default swaps marketplace, and further experience including, but not limited to, corporate governance, management oversight, and financial markets, who is appointed by the Board as a non-executive director of the Company and who has been nominated by the Product Risk Committee with responsibility for CDS. The proposed rule change would retain this definition but would add a sentence to clarify that the CDS Director may also meet the criteria required of an Independent Director but, for the avoidance of doubt, would continue to be classified only as a CDS Director. Thus, even if the CDS Director meets the criteria required of an Independent Director, they will be classified only as a CDS Director and not as an Independent Director.

The proposed rule change would also modify the Board composition requirement with respect to CDS Directors. Currently, the Articles require that two CDS Directors be appointed to serve on the Board. The proposed rule change would modify this provision to require only that one CDS Director serve on the Board. The proposed rule change also would amend the provisions relating to the appointment and retirement of CDS Directors to reflect this change. ICE Clear Europe represented that the proposed reduction to the required number of CDS Directors follows the retirement of one of the previous CDS Directors and that it was unnecessary to have two CDS Directors because Clearing Members would continue to be represented through the remaining CDS Director and the CDS Product Risk Committee.

C. Super-Quorum Matters

Super-Quorum Matters are certain matters before the Board that are subject to additional requirements regarding the presence of a CDS Director at the meeting where those matters are considered. Article 3 currently defines Super-Quorum Matters as matters regarding those aspects of the Rules that relate to: CDS Clearing Members; CDS contracts; the structure, size, or application of the CDS guaranty fund; the methodology for calculating a CDS Clearing Member’s CDS guaranty fund contribution or the components thereof; permitted cover for CDS guaranty fund contributions; powers of assessment in respect of CDS Clearing Members; the time period for, or means by which, CDS margin is returned to a CDS Clearing Member; the methodology for determining the rate of return on the CDS guaranty fund; the use, re-hypothecation or investment of the CDS guaranty fund; the terms of reference for the CDS Risk Committee; and, the subject and content of the Board Resolution relating to those matters. The proposed rule change would retain this definition, with some additional clarifications. Specifically, the proposed rule change would clarify that the definition includes those aspects of the Rules that relate to “criteria for CDS Clearing Membership” instead of just “CDS Clearing Members.” Because seemingly any aspect of the Rules could relate to CDS Clearing Members, including those aspects of the rules that are already specifically covered in the definition of Super-Quorum Matters, this specific change would narrow and clarify this aspect of the definition. Moreover, clarifying that the definition covers those aspects of the Rules that relate to criteria for CDS Clearing Membership would ensure that those provisions of the Rules are also covered by the definition. Finally, the remaining portions of the definition of the Super-Quorum Matters would continue to broadly cover other aspects of the Rule that could relate to CDS Clearing Members, including any aspects of the rules relating to CDS contracts.

In addition, the proposed rule change would update a reference to the terms of reference for the CDS Risk Committee to the terms of reference for the Product Risk Committee, in furtherance of the change discussed above. The proposed rule change would also resolve a drafting ambiguity by removing “the subject and content of the Board Resolution” as a Super-Quorum Matter as, by current practice, not all Board resolutions are Super-Quorum Matters. The proposed rule change next would amend the Articles to clarify the operation of the super-quorum requirement for Super-Quorum Matters, and to reflect the requirement to have one CDS Director present. The Articles currently require that, in relation to Super-Quorum Matters, a super-quorum is needed for the transaction of business, which means a majority of the directors serving on the Board at that time including at least one CDS Director. The proposed rule change would modify this provision to make the term “Super-Quorum” a defined term, meaning a majority of the directors serving on the Board at that time and, for as long as a CDS Director has been nominated by the Product Risk Committee with responsibility for CDS and appointed by the Board, the Super-Quorum must include a CDS Director who must be present at the meeting. Because under the Articles as revised there will only be one CDS Director, the proposed rule change would add this language to clarify that where a CDS Director has retired or resigned and a new CDS Director has not yet been nominated by the Product Risk Committee and appointed by the Board, the Board could still act on a Super-Quorum Matter. Thus, as in the current Articles, under the proposed rule change a Super-Quorum would include a CDS Director.

The proposed rule change would further clarify that while the CDS Director must be present at a meeting requiring a Super-Quorum, the CDS Director need not vote in favor of the resolution. The Articles do not currently require that the CDS Director vote in favor of the Board resolution relating to
the Super-Quorum Matter, so this provision would clarify this point.

Moreover, the Articles currently provide that in relation to Super-
Quorum Matters that need to be resolved in an emergency the quorum
necessary shall be the number equal to a majority of the directors serving on the
Board at that time. Thus, under the
current Articles, the Board could resolve a Super-Quorum Matter at an emergency
meeting without a CDS Director present.

The proposed rule change would retain this provision, but would clarify that the
ICE Clear Europe President or their
delegate would deem whether there is
an emergency. The proposed rule
change would also add language to
would clarify that, for the avoidance of
doubt, the presence of a CDS Director is
not necessary at the emergency meeting,
as under the current Articles.

Finally, the Articles currently provide
that where no CDS Directors are present
at a meeting requiring a Super-Quorum,
consideration of the business relating to relevant Super-Quorum Matters shall be
adjourned to a re-convened meeting to
be called subject to a minimum of two
Business Days’ notice to the Board, at
which transaction of business in
relation to the relevant Super-Quorum
Matters shall not require a Super-
Quorum and may be transacted by a
quorum equal to a majority of the
directors serving on the Board at that
time. The proposed rule change would
retain this provision but would clarify
that at the subsequent meeting, a CDS
Director need not be present.

D. Presence and Directors’ Expenses

The proposed rule change, through a
new article, would provide that a
member shall be deemed present at a
general meeting if participating by
telephone or other electronic means and
all participating members can hear each
other. Relatedly, the proposed rule
change would amend the Articles to
state explicitly that for a quorum to be
met for non-Super-Quorum Matters, the
required majority of directors must be
present at the meeting (under the new
definition).

The proposed rule change also would
amend the Articles regarding directors’
expenses. The Articles provide that
directors may, subject to the approval of the
Board, be paid all travelling, hotel
and other expenses properly incurred by
them in connection with their
attendance at meetings of directors or
committees of directors or general
meetings or separate meetings of the
Company or otherwise in connection
with the discharge of their duties. The
proposed rule change would modify this
provision by adding the word

“reasonable” immediately before
“travelling,” thus in effect requiring the expenses to be reasonable. The
proposed rule change also would
remove the requirement that the expenses be subject to Board approval.
ICE Clear Europe represented that,
instead, the ICE Clear Europe President
would approve such expenses.10

E. Gender Neutral Language and
Typographical Errors

Throughout the Articles, the proposed rule change would amend various
provisions to use gender-neutral
language. The proposed rule change also
would correct certain non-substantive
typographical errors and update
numbering due to the changes discussed
above.

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.11 For
the reasons discussed below, the
Commission finds that the proposed
rule change is consistent with
Section 17A(b)(3)(C) of the Act,12 Section
17A(b)(3)(F) of the Act,13 and Rule
17A–22(e)(2)(ii).14

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

Section 17A(b)(3)(C) of the Act
requires, among other things, that the
rules of ICE Clear Europe assure a fair
representation of its shareholders (or
members) and participants in the
selection of its directors and
administration of its affairs.15 The
Commission believes that the proposed
rule change, in general, would be
consistent with assuring a fair
representation of ICE Clear Europe’s
shareholders, members, and participants in the
selection of its directors and
administration of its affairs. Although,
as discussed in Part II.B above, one
aspect of the proposed rule change
would reduce the minimum
representation of CDS Directors on the
Board of Directors from two to one, the
proposed rule change would not reduce
any of the authority or responsibility of the
remaining CDS Director. Currently
under the Articles the presence of at
least one CDS Director is required at
Board meetings relating to Super-
Quorum Matters, and no provision
explicitly requires that a CDS Director
vote in favor of Board resolutions
relating to Super-Quorum Matters.

Similarly under the proposed rule
change, the presence of the CDS
Director is required at Board meetings
relating to Super-Quorum Matters, but
the CDS Director need not vote in favor
of a Board resolution relating to a Super-
Quorum Matter for the resolution to
pass. Moreover, the current provisions
relating to the conduct of emergency
meetings and re-convened meetings
relating to Super-Quorum matters
without a CDS Director present are
largely the same under the Articles as
proposed to be amended, with some
additional clarifications. Finally, the
Commission notes ICE Clear Europe’s
representation that Clearing Members
would continue to be represented
through the CDS Product Risk
Committee, which, other than the Chair,
is composed entirely of representatives of Clearing Members.16

Taking these factors together, the
Commission finds that the proposed
rule change is consistent with
17A(b)(3)(C) of the Act.17

B. 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.18 As discussed in more
detail below, the Commission generally
believes that the changes discussed
above should facilitate the efficient
operation of the clearing house and a
clear and transparent governance
structure, which would promote the
prompt and accurate clearance and
settlement of transactions and assure the
safeguarding of securities and funds.
Therefore, the Commission believes that
the proposed rule change is consistent
with Section 17A(b)(3)(F) of the Act.19

The Commission believes the changes
discussed in Part II.A above would
ensure that the Articles are consistent with the current operations of ICE Clear
Europe by correcting the name of the

10 Notice, 86 FR at 31349.
16 Notice, 86 FR at 31349.
Risk Committee to the Product Risk Committee and amending the definition of that committee to reflect its current composition. Moreover, revising the defined term “Committees” and removing references to other Board committees would make those Articles more flexible by allowing for the addition, modification, or elimination of Board committees without the need to amend the Articles. The Commission believes that these changes would improve ICE Clear Europe’s ability to adapt its Board to evolving circumstances and unforeseen areas of priority.

Similarly, the Commission believes that the changes discussed in Part II.B above would clarify the Articles with respect to the composition of the Board. Specifically, changing the minimum number of Independent Directors from one to two could range from six to twelve directors. This change would clarify and simplify the language of this requirement, however. Similarly, the Commission believes that revising the definition of an Independent Director to refer to independence criteria as defined under applicable legislation would allow this definition to change in response to changes to relevant legislation, thus furthering the clarity and flexibility of this definition. The Commission also believes that clarifying the definition of CDS Director by adding language that a CDS Director can also meet the criteria for an Independent Director, will clarify the Articles by absolving a potential ambiguity of director classification. Finally, the Commission believes that changing the required Board representation of CDS Directors from two to one and revising other provisions to reflect this change would clarify the number of CDS Directors on the Board without substantially reducing the representation of Clearing Members. The Commission also believes that amending the Articles pertaining to Super-Quorum Matters as discussed in Part II.C above would clarify the requirements applicable to Super-Quorum Matters. Specifically, the Commission believes clarifying the definition of Super-Quorum Matters would make it easier to determine what matters fall within the category of Super-Quorum Matters. Similarly, the Commission believes that by making the term “Super-Quorum” a defined term and including, as in the current Articles, a requirement that a CDS Director be present at a meeting to achieve a Super-Quorum, the proposed rule change would clarify these provisions. Finally, the Commission believes the other changes discussed in Part II.C above would clarify points currently implied in the Articles: That a CDS Director need not vote in favor of a resolution during a Super-Quorum Matter; that the President or their delegate would determine the existence of an emergency as needed for an emergency meeting; and that a CDS Director need not be present at an emergency or reconvened Board meeting involving a Super-Quorum Matter.

Similarly, the Commission believes that the changes to the Articles concerning the acceptable criteria constituting presence at a Board meeting, as discussed in Part II.D above, would clarify when a director is present at a Board meeting, especially when participating by telephone. Revising the provision regarding directors’ expenses discussed in Part II.D above should clarify this provision given that the ICE Clear Europe President, and not the Board, approves such expenses. Finally, the Commission believes that the changes to the Articles to reflect gender-neutral language, correct typographical errors, and renumber the Articles in accord with the changes to the Articles would clarify the Articles and eliminate drafting mistakes.

The Commission believes that by clarifying and revising the Articles, the proposed rule change would reduce the possibility for error in interpreting and applying the Articles, thus improving the operation of ICE Clear Europe’s governance in general and the Board in particular. The Commission further believes that improved governance and Board oversight may facilitate the efficient and effective operations of ICE Clear Europe, including its clearance and settlement of securities transactions and safeguarding of securities and funds. Therefore, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe’s custody and control, consistent with the Section 17A(b)(3)(F) of the Act. 20

C. Consistency With Rule 17Ad–22(e)(2)(i)

Rule 17Ad–22(e)(2)(i) requires 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. 21 As discussed above, the Commission believes that the proposed rule change would clarify the Articles and the operation of the Board pursuant to the Articles. For example, by establishing when a director is present at a Board meeting, including when participating by telephone, the Commission believes the proposed rule change would clarify when a director is present and counted for purposes of establishing a quorum or Super-Quorum. Moreover, a number of changes discussed in Part II.C above would clarify points currently implied in the Articles: That the CDS Director need not vote in favor of the Board resolution relating to the Super-Quorum Matter; that the President would determine the existence of an emergency as needed for an emergency meeting; and that a CDS Director need not be present at an emergency or reconvened Board meeting. Thus, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(2)(i). 22

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)(C) of the Act, 23 17A(b)(3)(F) of the Act, 24 and Rule 17Ad–22(e)(2)(i). 25

It is therefore ordered pursuant to Section 19(b)(2) of the Act 26 that the proposed rule change (SR–ICEEU–2021–013), be, and hereby is, approved. 27

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. 28

J. Matthew DeLesDernier,
Assistant Secretary.

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27 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).