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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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–CBOE–2019–049, and should be submitted on or before September 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–18626 Filed 8–28–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86753; File No. SR–ICEEU–2019–015]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ICE Clear Europe Clearing Rules and Procedures

August 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 21, 2019, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] so that the proposal was immediately effective upon filing with the Commission. 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 proposes to amend its Clearing Rules (the ''Rules'')[5] and Procedures (including the Clearing Procedures, CDS Procedures and Finance Procedures) to update relevant references to, and facilitate compliance with, applicable European Union (''EU''), United Kingdom (''UK'') laws, including the European Market Infrastructure Regulation (''EMIR''), the revised Markets in Financial Instruments package (collectively, ''MiFID II'') as implemented in the UK and elsewhere in the European Union, and certain other laws and regulations as discussed below.

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 proposes to amend its Rules and Procedures to update relevant references to, and facilitate ongoing compliance with, applicable EU and UK law, including the EMIR, MiFID II and certain other laws, statutes and regulations discussed below.

Specifically, ICE Clear Europe proposes to make amendments to Parts 1, 2, 5, 9, 11, 15 and 16 of the Rules and to the Clearing Procedures, Finance Procedures and CDS Procedures. The text of the proposed Rules and Procedures amendments is attached [sic] in Exhibit 5, with additions underlined and deletions in strikethrough text.[6] The proposed Rules and Procedures amendments are described in detail, by subject matter, as follows:

1. MiFID II Provisions

The amendments include changes to the Rules and Procedures that would more clearly take into account certain provisions and requirements of MiFID II. The amendments include changes to the definitions to reflect national implementing laws, adjustments to the way in which particular accounts of Non-FCM/BD Clearing Members are described to ensure compliance with MiFID II rules on indirect clearing and amendments to address the final legislative texts concerning ''straight-through-processing'' (''STP'') requirements under MiFID II in relation to the clearing of OTC derivatives.

In Rule 101, changes are proposed to the defined term ''MiFID II'' so that the definition would expressly include ''national implementing measures in any member state.'' As an EU directive, Directive 2014/65/EU must generally be implemented within a Member State's national law to have direct legal effect in that jurisdiction. In practice, it is these ''national implementing measures'' which contain the legal substance of the directive and which would impose legal obligations on ICE Clear Europe and its Clearing Members.

Revisions to the definition of ''Segregated Gross Indirect Account'' are proposed to clarify that this type of indirect clearing account will, in accordance with MiFID II, distinguish the assets and positions of one indirect client recorded in the account from those of another indirect client recorded in the account (in addition to distinguishing assets and positions of indirect clients generally from those of the relevant direct client of the Clearing Member). The amendments are intended to reflect legal obligations on ICE Clear Europe under the regulatory technical standards made under MiFID II, which obliges it to offer accounts that facilitate clearing by indirect clients of a direct client of a Clearing Member.[7] This

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the ''Rules'').

[6] The Commission notes that exhibits referenced herein are included in the filing submitted by ICE Clear Europe to the Commission, but are not included in this Notice.

[7] In this regard, Article 3(1) of Commission Delegated Regulation (EU) 2017/2154 (the ''MiFIR Indirect Clearing RTS'') requires CCPs to open

revised definition would be consistent with existing ICE Clear Europe practice, and is intended to more clearly state the obligations on ICE Clear Europe under the Rules.

Rule 108(a) would be amended to add a reference to the record-keeping requirements under MiFID II rules, in addition to the requirements under FCA and PRA rules that are referenced in the current rule. MiFID II sets out a number of record-keeping requirements such as the requirement to keep a record of all services, activities and transactions undertaken by a firm (including recordings of telephone conversations or electronic communications relating to transactions it concludes (either on a proprietary basis or on behalf of clients)), and these requirements will be applicable to EU Clearing Members which are not based in the UK. Compliance with these MiFID II requirements would be regarded as sufficient to satisfy the record-keeping obligation in Rule 108(a). The amendment thus reflects existing obligations on EU Clearing Members under MiFID II, and is not intended to change current practice for EU Clearing Members.

In the CDS Procedures, at paragraph 4.3, additional language has been proposed to specify that CDS Trade Particulars submitted for clearing must ''be provided in an electronic format using the relevant interface designated for such purposes when presenting the trade to the Clearing House or the transaction submission system of the relevant CDS Trade Execution/Processing Platform (or such other format as is used by the Clearing House or a CDS Trade Execution/Processing Platform for such purposes from time to time as is notified to CDS Clearing Members)''. The insertion of this language has been proposed to ensure that ICE Clear Europe is compliant with the MiFID II rules on STP.[8] This amendment is not expected to change current practice for submission of CDS Trade Particulars, but would reference the relevant MiFID II requirements more explicitly.

Proposed amendments to paragraph 4.4(a) of the CDS Procedures would also facilitate compliance with MiFID II STP requirements. Additional language would be added to confirm that, if it decides not to accept CDS Trade Particulars for clearing, ICE Clear Europe is required to ''give notice the sooner of (i) on a real-time basis or (ii) as soon as reasonably practicable (in any report identified for this purpose) specifying that the Clearing House has not accepted such CDS Trade Particulars for Clearing''. In the following sentence, a conforming change would be made to provide that CDS Trade Particulars ''shall not be deemed to be formally submitted, received, accepted or rejected'' until completion of the pre-submission review. The amendment incorporates the requirement of Article 4(5) of the MiFIR STP RTS, which requires a central counterparty (''CCP'') that does not accept a derivative transaction concluded on a bilateral basis for clearing to ''inform the clearing member of the non-acceptance on a real-time basis'', together with the existing ''as soon as reasonably practicable'' standards in the CDS Procedures, which implements other regulatory requirements. This amendment is not expected to materially change existing Clearing House practice, but will more clearly reference the relevant MiFID II requirements in the Procedures.

2. References to Authorized Central Counterparty Status

The amendments would make certain changes, updates and clarifications to the Rules and Procedures that reflect ICE Clear Europe's authorized central counterparty status under EMIR and cater for changes in the application of the Companies Act 1989 and Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (the ''Recognition Requirements Regulations''). These changes are necessary due to the impact of the re-authorization of ICE Clear Europe in the UK under the EMIR regime (instead of its recognition under the pre-EMIR UK national regime). In addition, certain other amendments are introduced to more accurately reflect certain requirements of EMIR and the scope of its related instrument REMIT,[9] which applies to spot contracts and applies a different regime, as regards the reporting of derivative trades by counterparties thereto to a trade repository. These amendments are designed to reflect, and more explicitly reference in the Rules and Procedures, relevant EU and UK legal requirements and ICE Clear Europe's regulatory status, but are not expected to change Clearing House operations or the rights or obligations of Clearing Members.

Changes to Rule 102(r)(i) have been proposed to refer to ICE Clear Europe being an ''authorized central counterparty under EMIR'' in addition to its status as a recognized clearing house under the Financial Services and Markets Act 2000 (''FSMA''). Various other provisions of the Rules would refer to the status of ICE Clear Europe as reflected in Rule 102(r)(i) as proposed to be amended. In this regard, changes have been proposed to Rule 109(b)(v) to refer to the multiple regulatory statuses held by ICE Clear Europe (by way of a cross-reference to Rule 102(r)) rather than just its status under the FSMA. As modified, Rule 109(b)(v) would permit ICE Clear Europe to make rule changes without following the normal public consultation process under UK laws where this is required to ensure compliance by ICE Clear Europe, Clearing Members or Customers with applicable laws or requirements imposed by regulators, or is necessary or desirable to maintain such regulatory status (and not merely where this is necessary to maintain its status under FSMA). This change is intended to facilitate compliance with applicable laws, and therefore is not expected to be a significant burden to competition for the Clearing House or its Clearing Members and/or adversely affect the protection of investors or the public interest.

Similar changes are proposed to Rule 115(a), namely replacing an existing reference to ICE Clear Europe's recognition as a clearing house with a cross-reference to ''its statuses referred to in Rule 102(r).'' Rule 115(a) provides for certain permitted interactions with regulators and other authorities for the

certain indirect clearing accounts at the request of clearing members (who are also subject to a related requirement to offer certain accounts if they provide indirect clearing services). The ''Segregated Gross Indirect Account'' is intended to be one such account, namely ''a segregated account for the exclusive purpose of holding the assets and positions of indirect clients of each client'' of a Clearing Member (Article 4(4)(b) of the MiFIR Indirect Clearing RTS). This account must in turn allow the Clearing Member providing indirect clearing services to a client to comply with the MiFID II requirement to offer an account in which ''the positions of an indirect client do not offset the positions of another indirect client'' and ''the assets of an indirect client cannot be used to cover the positions of another indirect client'' (Article 4(2)(b) of the MiFIR Indirect Clearing RTS). For this to be the case, the account offered by the CCP must ''distinguish the collateral and positions of different indirect clients'' (Recital 7 of the MiFIR Indirect Clearing RTS).

[8] These requirements are principally contained in Commission Delegated Regulation (EU) 2017/582 (the ''MiFIR STP RTS''). Article 1(2) of the MiFIR STP RTS provides: ''A CCP shall detail in its rules the information it needs from counterparties to a cleared derivative transaction and from trading venues in order to clear that transaction, and the format in which that information shall be provided.''

[9] Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency

purposes of maintaining ICE Clear Europe's status as a recognized clearing house. The proposed amendment ensures that ICE Clear Europe is also able to make arrangements with such authorities with a view to maintaining its other regulatory statuses, rather than merely its status under FSMA. Similarly, these changes are intended to facilitate compliance with applicable laws, and therefore are not expected to be a significant burden to competition for the Clearing House or its Clearing Members and/or adversely affect the protection of investors or the public interest.

Rule 201(a)(vii) would be amended to reflect the fact that reporting to a trade repository is not required for all Contracts. This provision currently provides that a Clearing Member, as a criterion for attaining and maintaining membership, must ''be a user of or otherwise have access to at least one Repository (if any) for the Contracts it proposes to clear.'' Reporting to a trade repository is required for derivative contracts falling within scope of EMIR but potentially not for other contracts falling under REMIT (such as spot contracts). As such, additional language is to be added to clarify that this membership criterion only applies ''where such Contract is required to be reported to a repository under Applicable Law.'' The change is intended to remove an unnecessary burden on certain Clearing Members under the existing Rules, while more precisely taking account of the requirements under applicable law and furthering the public interest embodied in such requirements.

Changes in Rule 207(d) would state explicitly that set-off is not permitted under the Rules in circumstances which would breach section 182A of the Companies Act 1989. This was a new provision introduced into this UK primary legislation as part of the UK's implementation of EMIR and replaced other provisions concerning the set off of accounts at UK recognized clearing houses, for authorized central counterparties under EMIR. The relevant Rules changes reflect the wording of this provision and result in each Clearing Member that clears client positions agreeing with ICE Clear Europe that there would be no setting off of positions and assets recorded in any of the Clearing Member's accounts against positions and assets recorded in other accounts where this would be in contravention of section 182A of the Companies Act 1989. Section 182A of the Companies Act 1989 provides protection to authorized central counterparties from normal insolvency law set-off processes that might otherwise apply to result in a combination across different accounts for assets recorded in the separate customer accounts or proprietary accounts of authorized central counterparties (such as ICE Clear Europe). The amendments also replace references to Section 187 of the Companies Act 1989, which previously addressed such set off issues and is no longer applicable to ICE Clear Europe as a result of it now being an authorized CCP under EMIR. Related changes are proposed to Rule 906(b). A new paragraph is proposed to be added, which would require Clearing Members to confirm via a representation that the determination of net sums under Rule 906 would not involve the setting off of positions and assets in a manner that would contravene section 182A of the Companies Act 1989. This proposed change reflects the fact that Clearing Members are ultimately responsible for recording assets and contracts in the correct accounts and is intended to reduce the risk for ICE Clear Europe that when it determines a post-default ''net sum'' for a particular customer account or proprietary account that it might inadvertently breach section 182A's restrictions on the setting off of positions and assets in Customer Accounts against those in Proprietary Accounts or those in other Customer Accounts, for example as a result of an error caused by the Clearing Member. While these changes involve new representation and agreements by Clearing Members, in ICE Clear Europe's view, the changes are in fact consistent with existing practice and expectations of Clearing Members (who would be expected not to setoff across different accounts in violation of applicable law). To the extent the amendments may affect the rights or obligations of Clearing Members, they would only do so to the extent required under applicable laws. The amendments are therefore not expected to be a significant burden to competition and/or significantly affect the protection of investors or the public interest.

Changes have been proposed to the requirement in Rule 406(b) and (c) for ICE Clear Europe and Clearing Members to reflect aggregation and netting of positions in the records of a trade repository designated by ICE Clear Europe. These changes reflect the fact that ICE Clear Europe and Clearing Members may use different trade repositories for the purposes of complying with reporting obligations under applicable law (in particular EMIR), and the fact that the repository will not necessarily be designated by ICE Clear Europe if the Clearing Member chooses otherwise. This amendment is consistent with existing practice. It is not expected to be a significant burden on Clearing Members or otherwise affect competition, and it is not expected to significantly affect the protection of investors or the public interest.

Changes to the recital to part 9 of the Rules have been proposed to update references to relevant legislation and terminology applicable to ICE Clear Europe as an authorized central counterparty. This includes replacing the term ''default proceedings'' with the term ''default procedures'', which is the term used in Article 48 of EMIR. Additional language is proposed to be added to clarify that the provisions of part 9 are further intended to constitute ''default arrangements'' for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the ''Settlement Finality Regulations''). The Settlement Finality Regulations implement Directive 98/26/EC (the ''Settlement Finality Directive'') and provide settlement finality and insolvency law protections for instructions to transfer cash or securities (referred to in the legislation as ''transfer orders'') that take place within the ''designated system'' operated by ICE Clear Europe, as well as for ''the default arrangements of a designated system.'' Clarifying that the rules contained in part 9 are intended to constitute ''default arrangements'' provides greater clarity and certainty that the operation of these rules would be enforceable in a default scenario, notwithstanding any otherwise applicable national insolvency law. It does not, however, change the substantive rights or obligations of the Clearing House or Clearing Members under the Rules. In addition, amendments would update references to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001, to reflect a change in the name of this legislation. A change is also proposed to refer to compliance with the provisions of the Recognition Requirements Regulations more generally, rather than just those provisions ''relevant to default rules.'' This is to reflect paragraph 29 of the Schedule to the Recognition Requirements Regulations, which requires compliance with EMIR generally (including its requirements with respect to ''default procedures''). The overarching intention of the amendments to the recital is to confirm and give notice that the provisions of

part 9 are intended to be ''default rules'' (or the equivalent concepts under relevant applicable laws) under the package of legislation now applicable to ICE Clear Europe and so to give notice that such rules are intended to benefit from the special insolvency law protections which are afforded to clearing houses and their default rules under such legislation. A related change is proposed at Rule 907(j). This involves adding references to ''similar concepts'' to a ''default rule'' and adds a reference to ''any of the Applicable Laws referred to in the opening paragraph of this part 9'' in addition to merely those under the Companies Act 1989. These amendments would thus provide additional clarity to all Clearing Members, Sponsored Principals and Customers as to the background legal framework, without changing rights or remedies.

It is proposed that Rule 906(a) be amended to update references to the relevant applicable legislation. New language would be added to link the net sum calculation in Rule 906(a) to various requirements applying to the default rules of CCPs under applicable law, such as the Recognition Requirements Regulations and EMIR. Changes are also proposed to clause (i) of the definition of ''*L*'', an element of the net sum calculation in Rule 906, to refer to termination, liquidation or close out generally, instead of using the prescribed wording that was previously (but is no longer) applicable to ICE Clear Europe under the Schedule to the Recognition Requirements Regulations. The Schedule to the Recognition Requirements Regulations has been partially repealed and replaced for EMIR-authorized CCPs, following the coming into force of EMIR. In addition, a reference to part 12 of the Rules has been added to reflect the fact that this Part contains the rules determining when a Transfer Order arises and becomes irrevocable within ICE Clear Europe's designated system for settlement finality purposes. These amendments would not materially change the rights or obligations of the Clearing House or its Clearing Members, Sponsored Principals or Customers, but would more clearly reference the relevant background legal provisions.

Proposed changes to Rule 907(m) aim to provide further legal support for actions taken by ICE Clear Europe following a default of a Customer of a Clearing Member being regarded as actions falling under the protections of part VII of the Companies Act 1989. The amendments are intended to clarify that where a Clearing Member requests ICE Clear Europe to transfer positions and collateral of a defaulting Customer held in a Customer Account to a Proprietary Account of that Clearing Member (or a different Customer Account of the same Clearing Member in which the Customer is interested) in connection with the management of the default; ICE Clear Europe is allowed, as a result of such request, to assume that the Customer is, or is likely to be, in default in respect of its positions (referred to as ''market contracts'' under the Companies Act 1989) and act upon the Clearing Member's request (if permitted under applicable laws and following confirmation of the default by the relevant Clearing Member). Similar provisions have also been proposed to deal with the default of an indirect client (*i.e.,* a client of a Customer of a Clearing Member). The changes proposed are aimed to promote ICE Clear Europe's default management actions being considered within scope of relevant statutory protections under the Companies Act 1989. The new provisions would ''apply equally to a request by a Sponsor following an Event of Default (whether or not declared) in respect of a Sponsored Principal'' to ensure that all customer clearing models are covered by these new provisions. Finally, new proposed language at the end of Rule 907(m) would confirm that nothing in the Rule would limit the right of ICE Clear Europe to declare a Sponsored Principal to be a Defaulter or to exercise any of its other rights under part 9. The amendments generally would provide greater clarity as to the Clearing House's rights and obligations, as well as those of Clearing Members and Sponsored Principals. ICE Clear Europe does not expect that they would significantly change existing default management practices. Accordingly, the amendments are not expected to be a significant burden to competition and/or significantly affect the protection of investors or the public interest.

A new recital is proposed to be added to part 12 of the Rules, which addresses settlement finality, to fulfill a similar purpose to the changes to the recital to part 9 as discussed above. The new recital to part 12 would clarify that this section of the Rules is intended to constitute part of the default rules of ICE Clear Europe. As with the recital to part 9, this helps to identify the sections of ICE Clear Europe's rulebook which should have the benefit of special protections that are available for the default rules of a CCP under applicable carve-outs from insolvency laws. The new recital would clarify that the provisions of part 12 are intended to constitute ''default rules'' for the purposes of the Companies Act 1989, ''default procedures'' for the purposes of Article 48 of EMIR, ''default rules and procedures'' for the purposes of section 5b(c)(2)(G) of the Commodity Exchange Act, ''rules on the moment of entry and irrevocability'' of a system for the purposes of the Settlement Finality Directive, ''default arrangements'' for the purposes of the Settlement Finality Regulations and ''default procedures'' for the purposes of Commission Rule 17Ad–22. Given that Part 12 sets out rules specifically designed to comply with the Settlement Finality Regulations, a confirmation to this effect is also contained in the proposed changes. Moreover, language is proposed at the end of the new recital to provide and give notice that ICE Clear Europe also relies on legal rights under applicable laws (including those referenced above) in addition to its rights under the Rules. These amendments would provide greater clarity as to the application of the settlement finality framework, without changing any substantive rights or obligations of to the Clearing House, Clearing Members, Sponsored Principals and Customers under the Rules.

Changes are proposed to paragraph 7.2 of the Finance Procedures to reflect that non-cash assets provided as Permitted Cover must be held at certain prescribed institutions in accordance with requirements under EMIR and regulatory technical standards under EMIR. The changes would confirm that ''Non-cash Permitted Cover would be held in accounts of the Clearing House at a Custodian, central securities depository (''CSD'') or international central securities depository (''ICSD''), which accounts are in the name of the Clearing House, as permitted under regulatory technical standards under EMIR.'' This reflects the provisions of EMIR and Commission Delegated Regulation (EU) No 153/2013, which require CCPs to deposit financial instruments posted as margin ''with the operator of a securities settlement system that ensures the full protection of those instruments''. This effectively requires such instruments to be deposited in a CSD. Where this is not possible, financial instruments may be deposited with certain other institutions provided that this is on an insolvency-remote basis. The proposed changes would be consistent with ICE Clear Europe's long-standing practice for holding such Permitted Cover, in light of the requirements of EMIR. A related change has been proposed in the Finance Procedures at paragraph

6.1(i)(v) to reflect the fact that income on non-cash assets posted by Clearing Members may be received by a custodian of ICE Clear Europe rather than directly by ICE Clear Europe itself, as a result of the holding of such assets at CSDs. This change also reflects current practice, and is intended to clarify the operation of the Rules in light of existing practices.

Proposed changes at paragraph 7.3(a)(vii)–(viii) of the Clearing Procedures remove references (in parentheses) to complaints processes having been established pursuant to the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 and Part 10 of the Rules, since these provisions are no longer in force for EMIR-authorized CCPs. These amendments are not intended to result in changes in any existing practices.

3. Other Amendments

Various other changes throughout the Rules and Procedures have been proposed to update references to applicable law and otherwise reflect or promote compliance with applicable law. In Rule 101, a change in the definition of ''Applicable Law'' has been proposed to include any memoranda of understanding between ICE Clear Europe and regulators. Memoranda of understanding between ICE Clear Europe and regulators or between regulators may have implications on the relationship between ICE Clear Europe and its Clearing Members, especially if disclosures are required under such documents. Disclosures pursuant to such memoranda of understanding may not currently be in scope of confidentiality carve-outs under the Rules without such an amendment. Including a reference to memoranda of understanding (or equivalent) between ICE Clear Europe and ''one or more Governmental Authorities or between Governmental Authorities'' facilitates disclosure of confidential information to regulators as necessary in accordance with such documents under the provisions of Rule 106. These amendments are consistent with existing Clearing House practice in dealing with regulatory authorities, in compliance with applicable law, and are intended to refer to such arrangements more explicitly in the Rules and Procedures.

Proposed changes to the defined term ''Regulatory Authority'' reflect additional regulatory and self-regulatory authorities which may be of relevance to ICE Clear Europe and its Clearing Members, namely the European Central Bank and the Financial Industry Regulatory Authority (FINRA). This defined term is currently used throughout the Rules in the context of obligations imposed by a regulator or governmental authority on ICE Clear Europe, Clearing Members or Customers.

The definition of ''Resolution Step'' (which is relevant to ICE Clear Europe's ability to exercise default remedies under the Rules in the event of a resolution proceeding involving a Clearing Member) is proposed to be amended to expressly cover similar EEA measures to resolution powers and resolution tools under the EU Bank Recovery and Resolution Directive (Directive 2014/59/EU, ''BRRD''), but which do not derive from the BRRD. The need to refer to similar EEA measures to the BRRD resolution powers and resolution tools within the ''Resolution Step'' definition reflects the fact that in some EEA jurisdictions (for example, in Germany) non-BRRD national law measures exist that often predate BRRD and which can also be applied to failing banks, but which would not be captured by the current defined term. Specific references to (non-EEA) Swiss and Australian resolution laws have also been added because ICE Clear Europe has Swiss and Australian Clearing Members who may be affected by such measures. This amendment would clarify the impact of relevant resolution regimes on default remedies under the Rules, and to the extent they would change any rights or obligations of the Clearing House or particular Clearing Members or Sponsored Principals, would reflect the requirements of those regimes and further the public interest embodied in those regimes.

A new ''Settlement Finality Directive'' defined term in Rule 101 would be added because this term is currently used in the recital to Part 9 and in the proposed new recital to Part 12 mentioned above.

The clearing membership criterion at Rule 201(a)(xxii) is proposed to be deleted because the EU Savings Directive (Council Directive 2003/48/EC on the taxation of savings income in the form of interest payments) is no longer in force.

Changes to Rule 205(b) are proposed to clarify that ICE Clear Europe would only be able to obtain copies of financial filings, returns and reports in relation to a Clearing Member directly from such Clearing Member's regulator (FCA or PRA) with the consent of the relevant Regulatory Authority. The amendment reflects the fact that a regulator's consent may be required before ICE Clear Europe may obtain a Clearing Member's financial reports from a particular regulator and the fact that these and other regulators may not in practice be willing or able to share such reports with ICE Clear Europe. This amendment would appropriately reflect regulatory limitations on ICE Clear Europe's ability to obtain certain reports, and accordingly should not burden Clearing Members.

It is proposed that Rule 501(a) be amended to remove an erroneous reference to Approved Financial Institutions being permitted to issue and confirm letters of credit for Clearing Members. ICE Clear Europe no longer accepts uncollateralized letters of credit as collateral, due to restrictions under EMIR and technical standards thereunder.[10] Although the Finance Procedures and ICE Clear Europe's permitted cover circulars were updated to remove references to letters of credit as collateral some time ago, there remains a legacy reference to such instruments in this Rules provision which requires deletion.

A new Rule 1203(m) has been proposed to clarify that the time at which Transfer Orders become irrevocable (and binding) under the terms of the ''system'' operated by ICE Clear Europe in accordance with the Rules (*i.e.,* the clearing and settlement procedures operated by ICE Clear Europe for cleared contracts) is governed by part 12 thereof. As noted above, special protections are provided by the Settlement Finality Directive (as implemented in UK law by the Settlement Finality Regulations) for transfer orders of money or securities in a ''designated system'' (such as the settlement system operated by ICE Clear Europe), but only from the point that such transfer orders become irrevocable under the rules of the relevant system. Moreover, paragraph 5 of the Schedule to the Settlement Finality Regulations requires the rules of a designated system to ''specify the point after which a transfer order may not be revoked by a participant or any other party''. Part 12 sets out when different Transfer Orders prescribed under the Rules are deemed to become irrevocable under the ICE Clear Europe designated system. This amendment would add clarity to the Rules, but is not expected to substantively change the rights or obligations of the Clearing House, Clearing Members or others under the Rules.

[10] See Exchange Act Release No. 34–73344, SR–ICEEU–2014–016 (October 14, 2014), 79 FR 62694 (Oct. 20, 2014).

In Rule 1501(a), the definition of ''2010 PD Amending Directive'' is proposed to be updated to include a reference to national laws implementing Directive 2010/73/EU, which amends the EU Prospectus Directive (Directive 2003/71/EC). This change has been made to clarify that the reference to Directive 2010/73/EU in the Rules also includes national Member State laws implementing the directive. This amendment would clarify the reference in the Rules, but is not expected to change substantively the rights or obligations of the Clearing House or Clearing Members.

Rule 1603(i) currently clarifies that nothing in the Rules prevents an FCM/BD Clearing Member from providing FCM/BD Customer-provided collateral to ICE Clear Europe in respect of which the FCM/BD Clearing Member benefits from a security interest (to secure the FCM/BD Customer's obligations), subject to the rights of the Clearing House. A change is proposed to also clarify that nothing in the Rules prevents an FCM/BD Clearing Member from having a security interest in the FCM/BD Customer's rights in respect of any contracts cleared through the FCM/BD Clearing Member, subject to the rights of the Clearing House. This change has been proposed in response to feedback from Clearing Members that such a security interest is provided as a matter of typical practice, and that this should be expressly permitted under the Rules. This amendment would update the Rules to reflect existing (and expected) market practice by FCM/BD Clearing Members. It is not expected to be a significant burden to competition and/or significantly affect the protection of investors or the public interest.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act [11] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[12] In particular, Section 17A(b)(3)(F) of the Act [13] 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 amendments are intended principally to update and clarify certain references in the ICE Clear Europe Rules and Procedures to relevant UK and EU legislation, including MiFID II, EMIR, REMIT and the Settlement Finality Directive, and thereby enhance the enforceability of relevant provisions of the Rules and Procedures and facilitate compliance by ICE Clear Europe and its Clearing Members and their Customers with such laws. The amendments would in particular clarify the application of certain indirect clearing accounts, providing greater certainty for indirect clients as to the segregation as to their positions and assets. The amendments would also provide greater certainty and clarity as to the treatment of certain ICE Clear Europe default rules and procedures in light of relevant insolvency protections under applicable law, which in turn would enhance the functioning of the clearing system in the case of default. The amendments would clarify and enhance certain procedures relating to trade submission and STP, in light of the final texts of relevant requirements under MiFID II. In ICE Clear Europe's view, these changes will generally promote the prompt and accurate clearance and settlement of cleared transactions. Certain of the amendments will also ensure that the Rules and Procedures are aligned with operational procedures and legal requirements concerning the holding of securities, enhancing the safeguarding of securities and funds in the custody or control of the Clearing House or which it is responsible. Such amendments include those related to indirect clearing, as discussed above, as well as the general enhancements to default rules, which will reduce the risk of situations that may interfere with the ability of the Clearing House to access such securities and funds in the event of a default. Similarly, the amendments more accurately describe the manner in which non-cash assets provided by Clearing Members must generally be held with CSDs, which will eliminate differences between legal documentation and operational processes and thus enhance the safeguarding of such assets. Overall, in ICE Clear Europe's view, the amendments are for the foregoing reasons also consistent with the protection of investors and the public interest.

The proposed Rule changes are also consistent with the relevant requirements of Rule 17Ad–22. In particular, Rule 17Ad–22(e)(1) [14] requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As discussed herein, the amendments are designed to accurately reflect, and facilitate continued compliance with, applicable EU and UK law, including EMIR, REMIT, the Companies Act 1989, the Settlement Finality Directive and MiFID II. In this regard, the amendments would make various changes to the definitions and terminology used throughout the Rules and Procedures to ensure consistency with applicable UK and EU laws (including, as applicable, national implementing legislation in the EU). In particular, various amendments to the Rules and Procedures would more accurately reflect ICE Clear Europe's authorized CCP status under EMIR, as well as other regulated statuses of the Clearing House. The amendments would also clarify application of set-off restrictions that are now applicable to it under the UK Companies Act 1989. Other changes more clearly reflect the requirements of MiFID II, including as to indirect clearing and STP. Taken together, these amendments will enhance the enforceability and clarity of the legal framework provided by the Rules and Procedures under which the Clearing House operates, and are therefore consistent with Rule 17Ad–22(e)(1).[15]

Rule 17Ad–22(e)(13) [16] requires a clearing agency to ensure that it ''has the authority and operational capacity to take timely action to contain losses and liquidity demands'' in the case of default. The amendments would make a range of clarifications and updates designed to enhance the Clearing House's default Rules and Procedures. As discussed herein, the proposed amendments to update terminology in Part 9 of the Rules, and to clarify that the provisions of Part 9 are intended to constitute ''default arrangements'' under the Settlement Finality Directive, would provide greater certainty that the Part 9 Rules would be enforceable in a default scenario notwithstanding otherwise applicable national insolvency law in the EU. Other amendments will similarly clarify that the provisions of Part 9 and Part 12 are intended to be ''default rules'' or the equivalent concepts under relevant applicable laws

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 240.17Ad–22.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(1).

[15] 17 CFR 240.17Ad–22(e)(1).

[16] 17 CFR 240.17Ad–22(e)(13).

and therefore should benefit from any special protections applicable to a CCP's default rules from applicable insolvency regimes. Additional amendments to Part 12 would clarify the irrevocability and finality of Transfer Orders under the terms of the ''system'' operated by ICE Clear Europe in accordance with the Rules, which would better ensure that these Rules receive protections under the Settlement Finality Directive. The amendments will also facilitate the ability of Clearing Members to transfer positions and collateral of a defaulting Customer held in a Customer Account to a Proprietary Account of that Clearing Member (or a different Customer Account) to facilitate management of the Customer default. Taken together, these amendments strengthen the enforceability of ICE Clear Europe's default rules and procedures and better enable it to take timely actions to contain losses, in a manner consistent with Rule 17Ad–22(e)(13).

Rule 17Ad–22(e)(14) [17] requires that a registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant. The amendments will, as discussed above, adjust the account descriptions for the Segregated Gross Indirect Account to clarify that such account will separately account for the positions and assets of each indirect client carried through the account. The amendments will also clarify the rights of the Clearing House and Clearing Members in the case of a default or a customer or indirect customer, which will facilitate management of such a default and may enhance protection of positions and collateral of non-defaulting customers and indirect customers. As a result, the amendments are consistent with Rule 17Ad–22(e)(14).[18] The changes related to set-off and the Companies Act 1989 also promote porting by ensuring that relevant accounts do not require combination after a default, an outcome which would potentially conflict with the porting process.

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

IICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments are principally being adopted to update various references to relevant EU and UK legislation, and generally to facilitate ongoing compliance with such laws. ICE Clear Europe does not believe such amendments will result in material changes in its current operations or practices (and any changes that arise will reflect the requirements of relevant EU and UK legislation). Such amendments will apply to all Clearing Members. ICE Clear Europe does not believe such amendments would in themselves materially affect the cost of, or access to, clearing as they are generally consistent with EU and UK requirements with which entities based in the UK and EU must already comply. As a result, ICE Clear Europe does not believe such amendments would adversely affect competition among Clearing Members or the market for clearing services generally.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICE Clear Europe has conducted a public consultation on amendments to its Rules that included the proposed Rule changes set forth herein. It should be noted that this consultation included the changes discussed herein, but also a number of other changes which ICE Clear Europe intends to address in future filings. ICE Clear Europe received three detailed and written responses to the overall consultation. It has discussed aspects of the proposed Rule changes, as were presented in such consultation, with those interested Clearing Members who responded. Based on feedback received by ICE Clear Europe, those Clearing Members who responded supported all the changes proposed herein. Clearing Members' comments were generally concentrated on other matters arising in the consultation which will be addressed in future rule filings (it being important to stress that all Clearing Member comments on the set as a whole have been addressed to consultation respondents' satisfaction). Among other matters and addressed in the amendments that are subject to this filing, one Clearing Member in each case asked certain questions concerning the rationale and basis for, and contain suggestions as to the drafting of, proposed amendments to the definition of ''Resolution Step'', Rule 907(m) and Rule 1203, the rationale for each of which is presented above. This was clarified in a call with the relevant Clearing Member. Certain minor drafting clarifications were made in response to other comments that were received prior to the annexed rules and procedures set being finalized. ICE Clear Europe determined that the questions and suggestions were adequately addressed by oral explanations and discussions with Clearing Members, together with minor drafting changes to some of the proposed Rule changes, and that no material changes to the proposed Rules were required. ICE Clear Europe will notify the Commission of any further written comments with respect to the proposed rules received by ICE Clear Europe.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2019–015 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–2019–015. This file number should be included on the subject line if email is used. To help the

[17] 17 CFR 240.17Ad–22(e)(14).

[18] 17 CFR 240.17Ad–22(e)(14).

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 Europe and on ICE Clear Europe's website at: *// www.theice.com/notices/Notices.shtml?regulatoryFilings.*

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–ICEEU–2019–015 and should be submitted on or before September 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–18625 Filed 8–28–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86742; File No. SR–CboeBYX–2019–014]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Make Permanent Rule 11.24, Which Sets Forth the Exchange's Pilot Retail Price Improvement Program

August 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2019, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') 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

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to make permanent Rule 11.24, which sets forth the Exchange's pilot Retail Price Improvement Program. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

1. Purpose

The purpose of the proposed rule change is to amend Rule 11.24 to make permanent the Retail Price Improvement Program (the ''Program''), which is currently offered on a pilot basis. The Exchange has operated the pilot for a six year period and believes that it has been successful in its stated goal of providing price improvement opportunities to retail investors. The analysis conducted by the Exchange shows that retail investors have been provided a total of $4.5 million of price improvement during the 2.5 year period reviewed from January 2016 through June 2018. In addition, the Exchange's analysis shows that the Program has provided these benefits to retail investors without having an adverse impact on the broader market. The proposal provides an analysis of the economic benefits to retail investors and the marketplace flowing from operation of the Program, which the Exchange believes supports making the Program permanent.

Background

In November 2012, the Commission approved the Program on a pilot basis.[3] The Program is designed to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share.[4] Under the Program, a class of market participant called a Retail Member Organization (''RMO'') is eligible to submit certain retail order flow (''Retail Orders'') to the Exchange. Users[5] are permitted to provide potential price improvement for Retail Orders[6] in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (''Protected NBB'') or the national best offer that is a Protected Quotation (''Protected NBO'', and together with the Protected NBB, the ''Protected NBBO'').[7] The Program was approved by the Commission on a pilot basis running

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BYX–2012–019).

[4] The Exchange will periodically notify the membership regarding the securities included in the Program through an information circular.

[5] A ''User'' is defined in Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[6] A ''Retail Order'' is defined in Rule 11.24(a)(2) as an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology. *See* Rule 11.24(a)(2).

[7] The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (''NBB'') and national best offer (''NBO'', together with the NBB, the ''NBBO'') will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.