

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>23</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change, which would apply equally to all market data subscribers, would establish a clear process for billing disputes, and is substantially similar to rules adopted by the Cboe Exchanges and rules adopted by other equities and options markets as well as by the Exchange's affiliates for transaction fees. The Exchange does not believe the proposed rule change would impair the ability of market data subscribers or competing venues that also sell market data products to maintain their competitive standing in the financial markets. Moreover, because the Exchange does not propose to alter or modify specific fees or credits applicable to market data subscribers, the proposal does not impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>24</sup> and Rule 19b-4(f)(6) thereunder.<sup>25</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>26</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-19 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-NYSEArca-2021-19. 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 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-NYSEArca-2021-19 and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91372; No. SR-NYSEArca-2021-18]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule**

March 19, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 10, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to modify the NYSE Arca Options Fee Schedule ("Fee Schedule") to extend the waiver of certain Floor-based fixed fees. The Exchange proposes to implement the fee change effective April 1, 2021. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 self-regulatory organization included statements concerning the purpose of,

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>23</sup> 15 U.S.C. 78f(b)(8).

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

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

##### 1. Purpose

The purpose of this filing is to modify the Fee Schedule to extend the waiver of certain Floor-based fixed fees for market participants that have been unable to resume their Floor operations to a certain capacity level, as discussed below. The Exchange proposes to implement the fee change effective April 1, 2021.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID-19. Following the temporary closure of the Trading Floor, the Exchange waived certain Floor-based fixed fees for April and May 2020.<sup>4</sup> Although the Trading Floor partially reopened on May 4, 2020 and Floor-based open outcry activity is supported, certain participants have been unable to resume pre-Floor closure levels of operations. As a result, the Exchange extended the fee waiver through March 2021, but only for Floor Broker firms that were unable to operate at more than 50% of their March 2020 on-Floor staffing levels and for Market Maker firms that have vacant or "unmanned" Podia for the entire month due to COVID-19 related considerations (the "Qualifying Firms").<sup>5</sup> Because the Trading Floor will continue to operate with reduced capacity, the Exchange proposes to extend the fee waiver for Qualifying Firms through the earlier of the first full month of a full reopening

<sup>4</sup> See Securities Exchange Act Release Nos. 88596 (April 8, 2020), 85 FR 20796 (April 14, 2020) (SR-NYSEArca-2020-29); 88812 (May 5, 2020), 85 FR 27787 (May 11, 2020) (SR-NYSEArca-2020-38).

<sup>5</sup> See Securities Exchange Act Release Nos. 89038 (June 10, 2020), 85 FR 36447 (June 16, 2020) (SR-NYSEArca-2020-52); 89242 (June 7, 2020), 85 FR 42037 (July 13, 2020) (SR-NYSEArca-2020-60); 89480 (August 5, 2020), 85 FR 48591 (August 11, 2020) (SR-NYSEArca-2020-69); 89694 (August 27, 2020), 85 FR 54608 (September 2, 2020) (SR-NYSEArca-2020-76); 90191 (October 15, 2020), 85 FR 67032 (October 21, 2020) (SR-NYSEArca-2020-90); 90838 (December 31, 2020), 86 FR 657 (January 6, 2021) (SR-NYSEArca-2020-115). See also Fee Schedule, NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO-LOCATION FEES.

of the Trading Floor facilities to Floor personnel or June 2021.<sup>6</sup>

Specifically, as with the prior fee waivers, the proposed fee waiver covers the following fixed fees for Qualifying Firms, which relate directly to Floor operations, are charged only to Floor participants and do not apply to participants that conduct business off-Floor:

- Floor Booths;
- Market Maker Podia;
- Options Floor Access;
- Wire Services; and
- ISP Connection.<sup>7</sup>

The proposed fee change is designed to reduce monthly costs for all Qualifying Firms whose operations continue to be disrupted even though the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor and recoup losses as a result of the partial reopening. The Exchange believes that all Qualifying Firms would benefit from this proposed fee change.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>10</sup>

<sup>6</sup> See proposed Fee Schedule, NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO-LOCATION FEES.

<sup>7</sup> See *id.*

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>11</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity and ETF options trades.<sup>12</sup>

This proposed fee change is reasonable, equitable, and not unfairly discriminatory because it would reduce monthly costs for all Qualifying Firms whose operations have been disrupted despite the fact that the Trading Floor has partially reopened because of the social distancing requirements and/or other health concerns related to resuming operation on the Floor. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor and recoup losses as a result of the partial reopening of the Floor. The Exchange believes that all Qualifying Firms would benefit from this proposed fee change.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits as it merely continues the previous fee waiver for Qualifying Firms, which affects fees charged only to Floor participants and does not apply to participants that conduct business off-Floor. The Exchange believes it is an equitable allocation of fees and credits to extend the fee waiver for Qualifying Firms because such firms have either no more than half of their Floor staff (as measured by either the March 2020 or Exchange-approved) levels or have vacant podia—and this reduction in staffing levels on the Floor impacts the speed, volume and efficiency with which these firms can operate, which is to their financial detriment.

<sup>11</sup> The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

<sup>12</sup> Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see *id.*, the Exchange's market share in multiply-listed equity and ETF options increased from 10.23% for the month of February 2020 to 10.74% for the month of February 2021.

The Exchange believes that the proposal is not unfairly discriminatory because the proposed continuation of the fee waiver would affect all similarly-situated market participants on an equal and non-discriminatory basis.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would encourage the continued participation of Qualifying Firms, thereby promoting market depth, price discovery and transparency and would enhance order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>13</sup>

*Intramarket Competition.* The proposed change, which continues the fee waiver for all Qualifying Firms, is designed to reduce monthly costs for those Floor participants whose operations continue to be impacted even though the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their previously on-Floor operations to off-Floor. The Exchange believes that the proposed waiver of fees for Qualifying Firms would not impose a disparate burden on competition among market participants on the Exchange because off-Floor market participants are not subject to these Floor-based fixed fees. In addition, Floor-based firms that are not subject to the extent of staffing shortfalls as are Qualifying Firms, *i.e.*, such firms have more than 50% of their March 2020—or Exchange-approved—staffing levels on the Floor and/or have no vacant Podia during the month, do not face the same operational disruption and potential financial impact during the partial reopening of the Floor.

<sup>13</sup> See Reg NMS Adopting Release, *supra* note 10, at 37499.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>14</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2021, the Exchange had slightly over 10% market share of executed volume of multiply-listed equity and ETF options trades.<sup>15</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it waives fees for Qualifying Firms and is designed to reduce monthly costs for Floor participants whose operations continue to be disrupted even though the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow affected participants to reallocate funds to assist with the cost of shifting and maintaining their prior fully staffed on-Floor operations to off-Floor.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>16</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>17</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the

<sup>14</sup> See *supra* note 11.

<sup>15</sup> Based on OCC data, *supra* note 12, the Exchange's market share in multiply-listed equity and ETF options increased from 10.23% for the month of February 2020 to 10.74% for the month of February 2021.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(2).

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>18</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### **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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-18 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-NYSEArca-2021-18. 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 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.

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

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–NYSEArca–2021–18, and should be submitted on or before April 15, 2021.

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

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## 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.