

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97851; File No. SR–ICEEU–2023–010]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 2 to Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Rules

July 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on April 21, 2023, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the ICE Clear Europe Clearing Rules regarding the treatment of non-default losses. On May 2, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Notice of the proposed rule change, as modified by Amendment No. 1, was published for comment in the *Federal Register* on May 10, 2023.<sup>4</sup> On June 21, 2023, the Commission designated a longer period for Commission action on the proposed rule change until August 8, 2023.<sup>5</sup> On June 30, 2023, ICE Clear Europe filed Amendment No. 2 to the proposed rule change.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 and No. 2 (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 (“ICE Clear Europe” or the “Clearing House”)

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Amendment No. 1 amended and restated in its entirety the Form 19b–4 and Exhibit 1A in order to correct the narrative description of the proposed rule change.

<sup>4</sup> Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Rules; Exchange Act Release No. 97429 (May 4, 2023); 88 FR 30187 (May 10, 2023) (SR–ICEEU–2023–010).

<sup>5</sup> Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Rules; Exchange Act Release No. 97780 (June 21, 2023); 88 FR 41711 (June 27, 2023) (File No. SR–ICEEU–2023–010).

<sup>6</sup> In Amendment No. 2, ICE Clear Europe provided additional clarifications as to funds available to the Clearing House to be applied in accordance with the Rules as proposed to be amended.

submits this partial amendment (“Amendment No. 2”) to its previously submitted proposed rule amendments, as amended by Amendment No. 1 thereto (as so amended, the “Prior Filing”) to its Clearing Rules (the “Rules”)<sup>7</sup> to address more consistently the treatment of certain losses that do not result from Clearing Member default, including certain investment losses and custodial losses. Amendment No. 2 sets forth certain additional clarifications as to funds available to the Clearing House to be applied in accordance with the Rules as proposed to be amended.

#### 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 is proposing to make certain additional changes to the proposed amendments to the Rules as described in the Prior Filing. In general, these changes would clarify that certain obligations of the Clearing House to use funds would only apply to the extent that the relevant assets are available to the Clearing House “in cleared funds.”

The proposed amendments to Rule 919(b) would be further revised to state that the obligations in the subsection only apply to the extent the relevant Loss Assets remain available to the Clearing House “in cleared funds” and have not themselves been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss.

Rule 919(h) (as described in the Prior Filing), which addresses the allocation by the Clearing House of recoveries in respect of Investment Losses, would be further modified to state that the Clearing House’s obligation to reimburse for recoveries only applies to the extent the relevant assets remain available “in cleared funds” to the Clearing House. Similarly, Rule 919(j), which provides

for return of excess Collateral Offset Obligations, would be further revised to clarify that the obligation to return only applies to the extent the relevant amounts remain available to the Clearing House “in cleared funds.”

In Rule 919(p), a reference to “Non-Default Loss” would be removed as the limitation on liability under Rule 919(p) does not apply to Non-Default Losses.

In various other locations in the Rules, further clarifications would be made that obligations of the Clearing House to return or provide certain funds or property to Clearing Members apply only to the extent such assets are received by and remain available to the Clearing House in cleared funds and are not themselves subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss, reflecting the consequences of Rule 919. This includes Rules 301(f), 908(b)(iii), 908(c)(iii), 908(d)(iii), 908(g)(iii), 913(a)(iv), 914(j) and 916(n). The changes in this Amendment No. 2 correct certain inconsistent drafting across these provisions. In Rules 908(c)(iii), (d)(iii) and (g)(iii), a further drafting clarification would be made that the relevant claims under any default insurance policies (and not the received funds) arise as a result of the Event of Default.

The proposed amendments to Rule 1103(e), which address the potential situation where amounts received in respect of default insurance may themselves be subject to losses similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss, would be further revised to provide that application of such amounts could only be made to the extent that such amounts remain available to the Clearing House in cleared funds and such amounts are not subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss.

The purpose of the proposed rule changes as set out in Item 3(a) of the Prior Filing is otherwise unchanged.

###### (b) Statutory Basis

The description of the statutory basis for the amendments set forth in the Prior Filing is unchanged.

##### (B) Clearing Agency’s Statement on Burden on Competition

The statement on burden on competition in the Prior Filing is unchanged.

<sup>7</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

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

The statement on comments on the proposed rule change in the Prior Filing is unchanged.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be 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 (<https://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-ICEEU-2023-010 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-2023-010. 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 (<https://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 a.m. and 3 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 <https://www.theice.com/clear-europe/regulation>. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ICEEU-2023-010 and should be submitted on or before August 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Sherry R. Haywood,

Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-97842; File No. SR-CboeBYX-2023-009]

**Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule**

July 6, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 22, 2023, Cboe BYX Exchange, Inc. ("Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") 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. (the "Exchange" or "BYX") proposes to amend its Fee Schedule. 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/](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 Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("BYX Equities") by amending the definition of the Russell Reconstitution Day. The Exchange proposes to implement these changes effective June 22, 2023.

The "definitions" section of the Exchange's Fee Schedule defines various terms used throughout the Fee Schedule. As explained under the definitions of ADAV, ADV, and TCV,<sup>3</sup> the Exchange currently excludes the Russell Reconstitution Day from the calculation of ADAV, ADV, and TCV, each of which are calculated on a monthly basis.<sup>4</sup> The Russell Reconstitution Day is defined in the Fee

<sup>3</sup> "ADAV" means average daily added volume calculated as the number of shares added per day and "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. "TCV" means total consolidated volume as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

<sup>4</sup> The Russell Reconstitution Day is generally characterized by high trading volumes, much of which are derived from market participants who are not generally as active entering the market to rebalance their holdings in-line with the annual rebalancing of the Russell indices. The Exchange, along with other competing exchanges, excludes the Russell Reconstitution Day from certain volume calculations as the high trading volumes can significantly impact trading and quoting calculations.

<sup>8</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.