Based on publicly available information, no single equities exchange has more than 16% of the market share.[16] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.'' [17] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[18] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 [20] 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. If the Commission takes such action, the Commission will institute proceedings 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.* Please include File Number SR–CboeEDGA–2023–007 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–CboeEDGA–2023–007. 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. 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–CboeEDGA–2023–007, and should be submitted on or before May 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09905 Filed 5–9–23; 8:45 am]

BILLING CODE 8011–01–P

[16] *Supra* note 3.

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97429; File No. SR–ICEEU–2023–010]

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

May 4, 2023.

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 April 21, 2023, 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 primarily prepared by ICE Clear Europe. On May 2, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make certain changes to the Form 19b–4 and Exhibit 1A.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 (hereafter, ''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'')

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, amends and restates in its entirety the Form 19b–4 and Exhibit 1A in order to correct the narrative description of the proposed rule change.

proposes to amend its Clearing Rules (the ''Rules'') [4] to address more consistently the treatment of certain losses that do not result from Clearing Member default, including certain investment losses and custodial losses.

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 amend its Rules to address more consistently the treatment of certain losses that do not arise from the default of a Clearing Member, generally referred to as non-default losses, including certain investment losses and custodial losses, as discussed in more detail herein.

I. Summary of Proposed Amendments [5]

As amended, the Rules would, among other matters:

- Define several exclusive categories of relevant losses: (1) Investment Losses, (2) Custodial Losses, (3) Pledged Collateral Losses, (4) Title Transfer Collateral Losses and (5) Non-Default Losses.
- Specify the resources of the Clearing House, if applicable, that will be applied to cover such categories of losses.
- Specify the responsibility of Clearing Members, in defined circumstances, to make contributions with respect to Investment Losses and Custodial Losses.
- Specify the responsibility of Clearing Members for Pledged Collateral Losses and Title Transfer Collateral Losses.
- Address the treatment of recoveries by the Clearing House with respect to such categories of losses.

II. Definitions of Relevant Loss Categories

In Rule 101, new definitions would be added for ''Custodial Losses,'' ''Pledged Collateral Losses,'' ''Title Transfer Collateral Loss'' (and related terms) and the definitions of ''Investment Losses'' and ''Non-Default Losses'' (and related terms) would be revised, as follows.

Custodial Losses

Custodial Losses would be defined as losses suffered by the Clearing House with respect to Custodial Assets, including from declines in the value thereof, arising as a result of or in connection with (1) a default, insolvency, system failure, force majeure event or similar event with respect to a Custodian or Delivery Facility, a breach of agreement by the Custodian or Delivery Facility or pursuant to any loss allocation or contribution provisions of the Custodian or Delivery Facility, or (2) any theft, cyber attack or similar event with respect to Custodial Assets by any person (other than the Clearing House and its directors, officers or employees). Custodial Losses are defined to exclude both Pledged Collateral Losses or Title Transfer Collateral Losses. Custodial Losses would also exclude any losses subject to a power of assessment for default losses under Rule 909 or any mechanism that has the effective of reducing such losses pursuant to reduced gains distributions under Rule 914, partial tear-up under Rule 915 or contract termination under Rule 916. The existing definition of Custodian would be revised to specifically reference approved financial institutions, concentration banks, intermediary financial institutions, investment agent banks, system banks and TARGET2 Concentration Banks, as defined in the Rules (in additional to the more general categories of financial institution currently included). The changes reflect the currently understood scope of the Custodian definition in its existing form but would provide greater clarity in light of the amendments discussed herein. Custodial Assets would be defined as any asset or property of the Clearing House (or any person acting on its behalf or holding assets for it) representing original or initial margin, variation margin, guaranty fund contributions or permitted cover, deliverables or settlement amounts. As discussed below, Custodial Losses would be allocated through the use of Custodial Loss Assets of the Clearing House and thereafter contributions of Clearing Members under Rule 919.

Pledged Collateral Losses

The amendments would define Pledged Collateral Losses as those losses arising out of or relating to the holding of Pledged Collateral [6] or the assets in any Pledged Collateral Account. Such losses with respect to Pledged Collateral are addressed in the existing Rules, and the amendments would not change the treatments of such losses. (Under the existing Rules, and as discussed below for the Rules as proposed to be amended, such losses would be solely the responsibility of the relevant Clearing Member under the Rules.) For clarity and consistency, a defined term for Pledged Collateral Losses would be added in Rule 101 (based on the existing defined term for ''Custodial Losses'' in Rule 502(j), which would be deleted). Relevant existing provisions addressing such losses would be moved to Rule 919, as discussed below, so that all non-default losses are addressed in the same section of the Rules.

Title Transfer Collateral Losses

Title Transfer Collateral Losses would be defined as losses resulting from a reduction in value or change of exchange rates of initial or original margin, guaranty fund contributions or permitted cover, which have been transferred to the Clearing House (other than as Pledged Collateral) [7] and which are not invested or reinvested by the Clearing House but are held with a Custodian. Such losses are not currently subject to an express loss-sharing mechanism under the Rules. Accordingly, ICE Clear Europe is proposing to formally define this category of loss, and as discussed below, such losses would be solely the responsibility of the relevant Clearing Member under the Rules. In this respect, the resulting treatment would be

[4] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[5] The amendments are intended to comprehensively and consistently address non-default losses in a manner consistent with relevant UK law applicable to the Clearing House and relevant internationally accepted principles for clearing organizations. See Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001/995, Schedule, Pt. 5, para. 29A, which requires the central counterparty to maintain effective arrangements for ensuring that losses that arise otherwise than as a result of clearing member default and threaten the solvency of the central counterparty are allocated with a view to ensuring that the central counterparty can continue to operate. See also CPMI–IOSCO, Principles for Financial Market Infrastructures (Principles 15 and 16); CPMI–IOSCO, Discussion Paper on Central Counterparty Practices to Address Non-Default Loss (Aug. 2022).

[6] Pledged Collateral and Pledged Collateral Accounts are currently only used in connection with the Customer Accounts of FCM/BD Clearing Members.

[7] Currently, most collateral received by the Clearing House is pursuant to a title transfer collateral arrangement.

generally consistent with that applicable to Pledged Collateral Losses under the current and revised Rules.

Investment Losses

Conforming changes would be made to the definition of Investment Losses, an existing category of loss identified in the Rules, to expressly exclude Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses. A sentence excluding losses from the default of a Custodian would be deleted as such losses would be expressly covered by the Custodial Loss definition (which in turn would be excluded from the Investment Loss definition as noted above). For consistency with the other new definitions, the definition would also explicitly reference losses from assets representing variation margin and settlement amounts in addition to the other listed categories.

Non-Default Losses

Conforming changes to the definition of Non-Default Losses would be made to exclude Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses. The definition would also expressly exclude losses incorporated in the calculation of the ICE Deposit Rate under the Finance Procedures (such as arising from negative interest rates). The amendments would eliminate a requirement that the Non-Default Losses threaten the Clearing House's solvency in order to qualify as such. ICE Clear Europe does not believe the limitation to losses that threaten solvency is needed (as all such Non-Default Losses should be addressed by the Rules).

Loss Assets and Other Definitions

The amendments would add new defined terms for Investment Loss Assets and Custodial Loss Assets, which are assets of the Clearing House available to be applied to Investment Losses or Custodial Losses, respectively, and Non-Default Losses. The existing term Loss Assets would be revised accordingly to refer to Investment Loss Assets and Custodial Loss Assets. New defined terms for Investment Loss Amount and Custodial Loss Amount would also be added, reflecting the amount of Investment Losses or Custodial Losses, as applicable, as determined under Rule 919 after application of applicable Loss Assets.

III. Treatment of Losses in Various Categories

The proposed amendments to Rule 919 would incorporate the concepts of Custodial Loss, Pledged Collateral Loss and Title Transfer Collateral Loss.

Rule 919(b) would be amended to provide that Non-Default Losses will be met first by Investment Loss Assets and Custodial Loss Assets available to the Clearing House. The amendments would clarify that the first portion of any Investment Loss will be met by the Clearing House applying Investment Loss Assets available to it at the time of the relevant event giving rise to the loss. Similarly, a new provision would be added that the first portion of any Custodial Loss would be met by the Clearing House applying Custodial Loss Assets available to it at the time of the relevant event. Rule 919(b) would also provide that the obligations in the subsection only apply to the extent the relevant Loss Assets remain available to the Clearing House 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(c) would be amended to address Custodial Losses in addition to Investment Losses, such that if there are Investment Losses or Custodial Losses exceeding the available amount of Investment Loss Assets or Custodial Loss Assets, respectively, Clearing Members would be required to pay Collateral Offset Obligations to the Clearing House. The relevant formula for calculating Collateral Offset Obligations under Rule 919(d) would be amended to reflect Custodial Losses as well as Investment Losses, as applicable. In addition, the relevant fraction for purposes of determining a particular Clearing Member's obligation in respect of Collateral Offsets Obligations would be revised to take into account amounts recorded as variation margin, deliverables and settlement amounts. In addition, a clarification would be made that, in the case of a Defaulter, the calculation would include the Defaulter's Guaranty Fund Contributions only to the extent not used to offset default losses, an approach which is consistent with the treatment of other specified assets of the Defaulter. Similarly, under Rule 919(e), the maximum Collateral Offset Obligation would be amended to include the variation margin, deliverables and settlement amounts transferred (or due to be transferred) to the Clearing House. Rule 919(f) would be amended to provide that Collateral Offset Obligations may be offset or netted against obligations to pay or return variation margin, deliverables or settlement amounts in addition to other margin payments and guaranty fund contributions.

Rule 919(g) would provide that Collateral Offset Obligations resulting from an Investment Loss could be applied solely to Investment Losses, and Collateral Offset Obligations resulting from a Custodial Loss could be applied solely to Custodial Losses. Rule 919(h), which addresses the allocation by the Clearing House of recoveries in respect of Investment Losses, would be expanded to cover recoveries from Custodial Losses as well. Certain additional clarifications in this subsection would be made to contemplate recovery and allocation of assets other than cash and to state that the Clearing House's obligation to reimburse for recoveries only applies to the extent the relevant assets remain available to the Clearing House. Rule 919(i), which provides, among other things, that Clearing Members remain liable to make margin and guaranty fund contributions notwithstanding Collateral Offset Obligations, would be revised to reference payment of variation margin, payment of settlement amounts and delivery of deliverables as well. A drafting clarification would also be made regarding Clearing Members' obligations to make and receive timely delivery to improve readability of the provision. Rule 919(j), which provides for return of excess Collateral Offset Obligations, would be revised to account for Collateral Offset Obligations in respect of Custodial Losses and to clarify that the obligation to return only applies to the extent the relevant amounts remain available to the Clearing House. Rule 919(k) would clarify that Collateral Offset Obligations are independent of obligations in respect of Assessment Contributions, Cash Loser Adjustments or Cash Gainer Adjustments, Partial Tear-Up Prices or Product Termination Amounts. A clarifying cross-reference to Rule 209 would be added to an existing statement that caps on Assessment Contributions under relevant rules do not limit liability for Collateral Offset Obligations. A statement that the conditions for contract termination under Rule 916(a)(ii)(B)(2) will not be met solely because of a Non-Default Loss or Investment Loss would be removed as unnecessary in light of the other amendments to Rule 919(k). A conforming change would be made in Rule 919(n), which provides that Rule 919 does not require the Clearing House is not required to pursue any litigation against any Person, to specifically reference Delivery Facilities.

Pursuant to revised Rule 919(p), the Clearing House would be obligated to

notify Clearing Members by Circular of the amount of Investment Loss Assets and Custodial Loss Assets as determined by ICE Clear Europe from time to time. ICE Clear Europe has removed a specific reference to the total amount of Loss Assets from the Rule. ICE Clear Europe believes that it is appropriate for the Clearing House to have the flexibility to update the amount of Investment Loss Assets and Custodial Loss Assets from time to time in light of its ongoing business and other relevant factors, without the need to amend the Rules. Such updates may, for example, reflect changes in relevant components of its capital requirements, in particular the capital requirements for credit, counterparty and market risks and operational and legal risks, that ICE Clear Europe considers in determining the appropriate level of such loss assets. Market participants would be notified of any change through published Circular. ICE Clear Europe intends that with the adoption of the amendments, the amount of Investment Loss Assets would be increased to USD 195 million and the initial amount of Custodial Loss Assets would be set at USD 80 million, as would be confirmed by Circular. Such amounts will remain in effect until a subsequent Circular, and the Clearing House's liability under Rule 919(b) would be limited to the notified amount of such assets.

Rule 919(q) would be amended to provide for notification of the amount of Loss Assets applied in connection with Non-Default Losses, Investment Losses or Custodial Losses, as applicable. The amendments would further clarify that replenishment of regulatory capital may be made using the resources of third parties (in addition to the Clearing House and its Affiliates). The Clearing House would be obligated to issue a new Circular pursuant to Rule 919(p) following any such replenishment. In the case of replenishment, the replenished or new Loss Assets or capital would not be applied to any pre-existing Non-Default Loss, Custodial Loss or Investment Loss. Various conforming and clarifying changes would be made to Rule 919(r), including to refer to Delivery Facilities and to remove an unnecessary reference to Approved Financial Institutions.

Under Rule 919(s), the Clearing House would not be liable to any Clearing Member, Customer or other Person for any Pledged Collateral Losses. Accordingly, the Clearing Member (or its Customer) would bear the risks of Pledged Collateral Losses, except to the extent directly resulting from fraud, bad faith, gross negligence or willful misconduct by the Clearing House or its directors, officers, employees or committees. While a new provision, Rule 919(s) would essentially be equivalent in substance to the relevant part of current Rule 502(j). The corresponding portions of current Rule 502(j) would be deleted as unnecessary in light of Rule 919(s). Under Rule 919(t), if the Clearing House recovers any amount in respect of Pledged Collateral Losses (less expenses), it would be obligated to pay such amounts to the Clearing Members that bore such losses on a pro rata basis, after application of any amounts applied by the Clearing House or other Person to meet such losses.

For Title Transfer Collateral Losses, Rule 919(u) would provide that the Clearing House would not be liable to any Clearing Member, Customer or other Person for such losses. The provision would expressly be without limitation of the Clearing House's ability to charge a negative ICE Deposit Rate under the Finance Procedures. Rule 919(u) would further provide that where title transfer collateral is provided, the Clearing Member is entitled to the redelivery of an equivalent asset, without any compensation for Title Transfer Collateral Losses or other losses, and accordingly the Clearing Member (or its Customer, if applicable) would bear the risk of Title Transfer Collateral Losses.

Rule 919(v) would clarify that a negative yield or interest rate on assets provided as initial or original margin, guaranty fund contributions, permitted cover or a deliverable will not constitute an Investment Loss or Non-Default Loss and will be for the account of the Clearing Member (or its Customer, if applicable). Under Rule 919(w), ICE Clear Europe would have no liability for any loss relating to any investment decision by any Clearing Member, Customer or other person, including any choice as between different kinds of Permitted Cover, or for the results of any such choices or investments.

IV. Additional Amendments

In various locations in the Rules, 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, 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). In the case of Rule 301(f), 914(j) and 916(n), the amendments would further provide that the relevant funds or assets must not have been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss. Similarly, Rule 1102(k) would provide that the obligation of the Clearing House to apply amounts received from the Defaulter to repay guaranty fund contributions used in the default, retain assets in respect of Clearing House Contributions or reimburse insurers for default insurance proceeds, as applicable, would be subject to the Clearing House not having suffered a loss equivalent to an Investment Loss, Custodial Loss, Pledged Collateral Loss or Title Transfer Collateral Loss in respect of such amounts. Rule 1103(e) would be amended to 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. Accordingly, application of such amounts could only be made to the extent that such amounts remain available to the Clearing House, reflecting the consequences of Rule 919.

A number of other non-substantive drafting and formatting updates would also be made.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Rules are consistent with the requirements of Section 17A of the Act[8] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[9] 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.

As discussed herein, the proposed rule changes are designed to address the risks posed to ICE Clear Europe by a significant loss event not resulting from a default by one or more Clearing Members. These events may include investment, custodial and collateral losses with respect to margin, guaranty fund contributions, deliverables and settlement amounts as well as other losses resulting from general business risk, operational risk or other non-default scenarios. ICE Clear Europe, like all clearing organizations, faces the risk that such a loss event could affect its

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78q–1(b)(3)(F).

ability to continue orderly clearing operations or otherwise affect its viability as a going concern. The amendments are thus intended to enhance the ability of ICE Clear Europe to manage those risks by providing for a comprehensive framework to address such losses. The amendments enhance and clarify the existing procedures for handling Investment Losses and adopt parallel procedures to address Custodial Losses. As amended, the Rules would provide a mechanism for fully allocating Investment Losses and Custodial Losses, first to Loss Assets provided by the Clearing House and thereafter to Clearing Members by way of Collateral Offset Obligations. The amendments would distinguish such losses from Pledged Collateral Losses and Title Transfer Collateral Losses, which would remain the responsibility of the Clearing Member that provided such assets (or its customer), consistent with the existing Rules for Pledged Collateral. The amendments would also clarify the responsibility of ICE Clear Europe for Non-Default Losses. The amendments thus enhance ICE Clear Europe's ability to address general business risk and other risks that may otherwise threaten the viability of the clearing house as a going concern. The amendments also enhance the ability of ICE Clear Europe to manage custody and investment risk (and similar risks from delivery facilities, settlement systems and the like) in the remote circumstances where its ordinary course procedures are insufficient and a custodian, investment counterparty, settlement bank, delivery facility or similar system fails. Overall, the amendments will strengthen the ability of the Clearing House to manage the risks of, and withstand and/or recover from, significant non-default loss events.

The amendments also more clearly allocate certain losses as among ICE Clear Europe and Clearing Members, which will provide greater clarity, consistency and legal certainty. ICE Clear Europe believes that the amendments reflect the legitimate interests of Clearing Members and their customers. As proposed to be amended, the Rules would be designed to plan for remote and unprecedented, but potentially extreme, types of loss event, including Investment Losses, Custodial Losses, Pledged Collateral Losses, Title Transfer Collateral Losses and Non-Default Losses. In particular, Investment Losses and Custodial Losses, to the extent they exceed Loss Assets dedicated by the Clearing House for such purposes, will necessarily and adversely affect some or all Clearing Members, customers or other stakeholders. ICE Clear Europe believes that the amendments take a balanced approach that distributes potential Investment Losses and Custodial Losses to both ICE Clear Europe and Clearing Members. With respect to Pledged Collateral Losses, by contrast, and consistent with the existing Rules, ICE Clear Europe believes it is appropriate for Clearing Members (or their customers, if applicable) to continue to bear such losses. The treatment of Pledged Collateral Losses reflects the position that the providing Clearing Member (or its customer) remains the beneficial owner of such assets notwithstanding that they are pledged to ICE Clear Europe. ICE Clear Europe believes that such persons, rather than ICE Clear Europe, should bear such losses. ICE Clear Europe believes that Title Transfer Collateral Losses should be treated similarly. Title Transfer Collateral Losses reflect a potential diminution of value of particular non-cash assets provided as collateral; the allocation of the loss to Clearing Members reflects the fact that the Clearing Member is entitled only to the return of an equivalent asset, even if it has declined in value.

ICE Clear Europe also believes that the amendments further the interests of Clearing Members and their customers in having greater certainty as to the consequences of such losses, their potential liability for them and the resources that would be available to support clearing operations, to allow stakeholders to evaluate more fully the risks and benefits of clearing.

For the foregoing reasons, ICE Clear Europe believes that the amendments provide an appropriate and equitable method to allocate the loss from an extreme non-default loss scenario. ICE Clear Europe further believes that the approach taken will facilitate the ability of the Clearing House to allocate such losses so that it can continue clearing operations. The amendments therefore further the prompt and accurate clearance and settlement of cleared transactions. In so doing, in light of the importance of clearing houses to the financial markets they serve, the policy in favor of clearing of financial transactions as set out in the Act, and the potential consequences of a clearing house failure, the amendments will support the stability of the broader financial system and the public interest. Accordingly, in ICE Clear Europe's view, the amendments are consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[10]

The amendments are also consistent with relevant requirements of Rule 17Ad–22,[11] as set forth in the following discussion.

Rule 17Ad–22(b)(3) [12] provides that a clearing agency ''that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . maintain sufficient financial resources to withstand, at a minimum . . . a default by the two participant families to which it has the largest exposure in extreme but plausible market conditions.'' ICE Clear Europe does not propose in these amendments to change the amount or composition of financial resources required of Clearing Members as margin or guaranty fund contributions. ICE Clear Europe is also not proposing to change its own resources that it contributes to default resources. The amendments are designed, however, to address and mitigate the risk to the Clearing House that its financial resources available to cover Clearing Member defaults could be lost or reduced in value as a result of Custodial Losses, Investment Losses or other types of non-default loss.

Specifically, under the amendments, with respect to Custodial Losses, ICE Clear Europe would be responsible for losses up to the amount of Custodial Loss Assets, which is to be determined by ICE Clear Europe from time to time. ICE Clear Europe has determined the initial level of Custodial Loss Assets taking into account components of its capital requirements applicable to central counterparties, in particular the capital requirements for credit, counterparty and market risks.

The amendments would provide for allocation of Custodial Losses in excess of Custodial Loss Assets to Clearing Members, who would be obligated to pay Collateral Offset Obligations to the extent of such excess. ICE Clear Europe's existing policies are intended to mitigate the risk of Custodian failure and Custodial Loss through appropriate selection and ongoing monitoring of Custodians. These procedures are designed to permit the Clearing House to hold assets in a manner that minimizes the risk of loss or delay in the access of ICE Clear Europe to such

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22.

[12] 17 CFR 240.17Ad–22(b)(3).

assets. Nonetheless, a Custodial Loss from a custodial failure is ultimately outside the control of the Clearing House. ICE Clear Europe is not itself a depository but is rather an intermediary. It is ultimately not in a position to backstop or guarantee performance by third-party Custodians. If ICE Clear Europe were responsible for all Custodial Losses in excess of the defined resources, a custodial failure could lead to a clearing house failure or other interference with clearing operations. As a result, ICE Clear Europe believes it is appropriate for Clearing Members to share in Custodial Losses that exceed Custodial Loss Assets as set out in the proposed Rules. Further, as set forth above, ICE Clear Europe believes that Title Transfer Collateral Losses and Pledged Collateral Losses, given the particular nature of such losses, are outside the control of the Clearing House, since they result from the choice of asset provided by the Clearing Member, and are appropriately borne by Clearing Members.

Under the amendments, Custodial Losses in excess of the amount of Custodial Loss Assets would be shared among Clearing Members proportionally based on their respective aggregate margin, guaranty fund contributions, deliverables and settlement amounts recorded across all account categories. This approach is largely consistent with the allocation of Investment Losses under the current Rules, with certain clarifications intended to capture variation margin, deliverable and settlement amounts in the calculation. The approach mutualizes both Investment Losses and Custodial Losses across all Clearing Members, in these remote loss scenarios where such losses exceed applicable Clearing House resources allocated to such losses. While Clearing Members may be required to make Collateral Offset Obligations that are independent of the particular mix of cash and securities provided by the Clearing Member as margin or guaranty fund contributions, ICE Clear Europe believes that the approach is appropriate in light of the remote nature of the potential losses, the fact that margin and guaranty fund assets are invested and custodied collectively in accordance with investment policies that are reviewed by the applicable risk committee and are transparent to Clearing Members, and the practical and operational considerations that would be required for an approach that attempted to allocate losses based on a Clearing Member's particular assets and elections. All Clearing Member assets are held and invested on an aggregate basis (such that investments cannot be allocated to particular Clearing Member), and all Clearing Members receive a blended rate of return on cash assets based on aggregate clearing house investment activity. As a result, ICE Clear Europe does not believe it would be operationally feasible, or beneficial to Clearing Members, to attempt to allocate Investment Losses or Custodial Losses based on the particular mix of assets provided by individual Clearing Members. Instead, ICE Clear Europe believes it is more appropriate, in light of these operational and other considerations, to allocate Investment Losses and Custodial Losses, if any, to Clearing Members based on their respective aggregate amount of margin and guaranty fund contributions and deliverables and settlement amounts recorded in its accounts at the Clearing House.

As a result, the amendments clarify the resources available to address Investment Losses, Custodial Losses and other losses not resulting from Clearing Member default. The provisions relating to Investment and Custodial Losses, in effect, provide protection against the loss of the financial resources provided by Clearing Members to support the default waterfall. The amendments thus enhance the ability of ICE Clear Europe to manage the risk of certain losses that do not arise from Clearing Member default or defaults, thereby ensuring that ICE Clear Europe continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[13]

Rule 17Ad–22(e)(3)(ii) provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable . . . maintain a sound risk management framework that . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses. . . .'' [14] Specifically, the amendments are intended to address, and to fully cover, Investment Losses, Custodial Losses, Pledged Collateral Losses, Title Transfer Collateral Losses and Non-Default Losses. The amendments will thus facilitate recovery from such potential losses, even if extreme, and permit the continued operation of the Clearing House. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(3)(ii).[15]

Rule 17Ad–22(e)(9) provides that a ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.'' [16] The new provisions relating to Custodial Losses would, among other matters, protect against the risk of losses relating to a failure of a settlement bank, and provide a means for allocating such losses to the Clearing House, to the extent of Custodial Loss Assets, and thereafter to Clearing Members through Collateral Offset Obligations. As such, the amendments will help the Clearing House manage and mitigate the risks of settlement bank failure, consistent with the requirements of Rule 17Ad–22(e)(9).[17]

Rule 17Ad–22(e)(15) requires that a ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] identify, monitor and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize. . . .'' [18] Under the amended Rules, Loss Assets (including both Investment Loss Assets and Custodial Loss Assets) will be available to cover Non-Default Losses, which include losses from general business risk. Such losses will thereafter be covered by the Clearing House's capital and other assets. ICE Clear Europe does not propose to change the level of its own equity capital, which supports its operations and covers general business losses. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(15).[19]

Rule 17A–22(e)(16) provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable

[13] 17 CFR 240.17Ad–22(b)(3).

[14] 17 CFR 240.17Ad–22(e)(3)(ii).

[15] 17 CFR 240.17Ad–22(e)(3)(ii).

[16] 17 CFR 240.17Ad–22(e)(9).

[17] 17 CFR 240.17Ad–22(e)(9).

[18] 17 CFR 240.17Ad–22(e)(15).

[19] 17 CFR 240.17Ad–22(e)(15).

[. . .] safeguard [its] own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.'' [20] ICE Clear Europe's existing investment policies and procedures provide for the investment of cash provided by Clearing Members as margin or guaranty fund contributions in investments with minimal credit, market and liquidity risks. Similarly, the policies provide for the use by ICE Clear Europe of Custodians to hold cash and securities in a manner designed to minimize the risk of loss or delay in access to such assets. ICE Clear Europe is not proposing to change such policies and procedures in connection with these amendments. Rather, the amendments address the remote scenario where, despite the protections under such procedures, there is a failure by an investment issuer or counterparty or custodian resulting in an Investment Loss or Custodial Loss. Such a circumstance would be remote in ICE Clear Europe's view, and in any event, outside its control. In such circumstances, the amendments would allocate the loss as between ICE Clear Europe and Clearing Members, with ICE Clear Europe being responsible for a first loss position up to the amount of defined Loss Assets and with Clearing Members being responsible for the remaining loss, in proportion to their margin, guaranty fund and other relevant deposits to the Clearing House. The amendments would thus enhance the protection of funds and assets provided to ICE Clear Europe as margin or guaranty fund contributions and are therefore consistent with the requirements of Rule 17Ad–22(e)(16).[21]

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

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are designed to allocate Investment Losses and Custodial Losses between ICE Clear Europe and Clearing Members, to allocate Pledged Collateral Losses and Title Transfer Collateral Losses to Clearing Members, and to allocate Non-Default Losses to the Clearing House. Although the amendments may thus impose certain potential losses and costs upon Clearing Members, ICE Clear Europe believes that such result is appropriate in the case of significant investment, custodial and other non-default loss events in order to permit the continued operation of the Clearing House. The amendments to the Rules will apply uniformly across Clearing Members. ICE Clear Europe does not believe that the proposed amendments will impact competition among Clearing Members or other market participants or affect the ability of market participants to access clearing generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate or unnecessary in furtherance of the purposes of the Act.

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

ICE Clear Europe conducted a public consultation with respect to the proposed amendments.[22] ICE Clear Europe did not receive any written responses to the public consultation. In addition, prior to the consultation, ICE Clear Europe engaged in a number of discussions concerning the proposed amendments with an industry group representing numerous market participants. Through this process, market participants raised a number of questions concerning the amount of resources being allocated as Investment Loss Assets and Custodial Loss Assets and the basis for the determination of such amounts. Market participants also raised questions about the scope of Custodial Losses subject to allocation under the proposed Rules and the overall approach to the treatment of Custodial Losses in light of the manner in which ICE Clear Europe holds assets. As discussed with market participants, ICE Clear Europe believes that the approach taken is appropriate in light of the fact that assets are generally held either with relevant central banks or central securities depositories. The Clearing House also believes that the definition of Custodial Losses is appropriate to cover the appropriate range of risks of custodian failure, which are inherently fact- and situation-specific and may be difficult to predict in advance. ICE Clear Europe further explained in these discussions the basis for determination of relevant amounts, in light of the applicable capital requirements for credit, counterparty and market risks and operational and legal risks under relevant UK and EU law. ICE Clear Europe did not ultimately change the approach to Custodial Losses or the amount specified as Loss Assets in connection with these discussions. ICE Clear Europe will notify the Commission of any additional written comments received with respect to the proposed rule change.

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 (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *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 (*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

[20] 17 CFR 240.17Ad–22(e)(16).

[21] 17 CFR 240.17Ad–22(e)(16).

[22] See ICE Clear Europe Circular No. C22143 (Dec. 15, 2022).

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 *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 May 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09903 Filed 5–9–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97431; File No. SR–CboeEDGA–2023–006]

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

May 4, 2023.

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 April 21, 2023, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') 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 EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'' or ''EDGA Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change 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/edga/*), 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 to adopt monthly fees assessed to Users [3] that elect to subscribe to the US Equity Short Volume & Trades Report, effective, April 21, 2023.

The Exchange recently adopted a new data product known as the US Equity Short Volume & Trades Report (the, ''Report'').[4] The Report, which will be available on April 21, 2023, contains (i) an end-of-day report that provides certain equity trading activity on the Exchange, and includes trade date, total volume, sell short volume, and sell short exempt volume, by symbol; [5] and (ii) an end-of-month report that provides a record of all short sale transactions for the month, and includes trade date and time, trade size, trade price, and type of short sale execution, by symbol and exchange.[6] In addition to a monthly or annual subscription, a Member [7] or non-Member may purchase the Report on a historical monthly basis, which provides the end-of-day reports for each day and the corresponding end-of-month report for a given calendar month.

The Exchange proposes to adopt fees applicable to Users that subscribe to the Report. As proposed, the Exchange would assess a monthly [8] fee of $750 per month to an Internal Distributor [9] of the Report, and a fee of $1,250 per month to an External Distributor [10] of the Report. These fees may be paid on a monthly basis or on an annual basis.[11] External Distributors, unlike Internal Distributors, are typically compensated for the distribution of short sale data through subscription fees or other mechanisms. Some External Distributors incorporate short sale data into their own proprietary products, which they sell to downstream users. These distributors may not charge separately for data included in the Report, but nevertheless gain value from the data by incorporating it into their product. The higher price for External Distributors reflects the additional value these distributors gain from the product.

The Exchange also proposes to adopt fees for the Report provided on a historical basis. The Report will be available for each calendar month dating back to January 2015, and Users of such data will be assessed a fee of $500 per historical monthly Report for which they subscribe.[12] Data provided

[23] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] A ''User'' of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. *See* the EDGA Equities Exchange Fee Schedule at *https://www.cboe.com/us/equities/membership/fee_schedule/EDGA/.*

[4] *See* Securities and Exchange Act No. 97301 (April 13, 2023) (SR–CboeEDGA–2023–005).

[5] The end-of-day report was originally titled ''Short Volume Report'' and was displayed as an individual product on the Exchange's Fee Schedule. The end-of-day report is now being incorporated into the Report and as such, the Exchange seeks to amend its Fee Schedule to display the applicable fees for the Report, which will contain both the end-of-day report and an end-of-month report.

[6] *See* Exchange Rule 13.8(h).

[7] *See* Exchange Rule 1.5(n).

[8] The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on April 24, 2023, the monthly fee will cover the period of April 24, 2023, through May 23, 2023. If the User cancels its subscription prior to May 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

[9] An ''Internal Distributor'' of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *Supra* note 3.

[10] An ''External Distributor'' of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. *Supra* note 3.

[11] Users who subscribe to the US Equity Short Volume & Trades Report during the middle of a month will receive the end-of-day report for each day beginning on the date of subscription.

[12] Users who purchase the US Equity Short Volume & Trades report on an annual basis will receive 12 months of historical data free of charge,