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–NASDAQ–2021–094 and should be submitted on or December 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25992 Filed 11–29–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93668; File No. SR–ICEEU–2021–015]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the Counterparty Credit Risk Policy and Counterparty Credit Risk Procedures

November 24, 2021.

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 November 15, 2021, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to adopt a new Counterparty Credit Risk Policy (the ''CC Risk Policy'') and a new Counterparty Credit Risk Procedures (the ''CC Risk Procedures'').

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 adopt the CC Risk Policy that would consolidate the Clearing House's overall policies for monitoring counterparty credit risk. ICE Clear Europe is also proposing to adopt the CC Risk Procedures that would consolidate and provide further detail as to the application of the Clearinghouse's policies for monitoring counterparty credit risk, in accordance with the requirements of the ICE Clear Europe Rules. Certain components of the CC Risk Policy and the CC Risk Procedures would replace components of ICE Clear Europe's current Unsecured Credit Limits Procedures and Capital to Margin Policy (as applicable, explained further below), which would both be retired. References to the Unsecured Credit Limits Procedures in other ICE Clear Europe documents would be revised in due course to reference the CC Risk Policy or the CC Risk Procedures, as applicable. The adoption of the CC Risk Policy and CC Risk Procedures is intended to generally reflect and document on a consolidated basis the Clearing House's existing policies and practices relating to counterparty credit risk management, as well as provide certain updates to current Clearing House practices, which are not intended to be material. Further explanations are provided below.

I. Counterparty Credit Risk Policy

The CC Risk Policy would define Counterparty Credit Risk and set out the Clearing House's objectives of minimizing the risk of being materially undercollateralized as a result of a Clearing Member (''CM'') default or realizing a material loss due to a Financial Service Provider (''FSP'') default.

Under the policy, the Clearing House classifies prospective CM's according to risk and sets credit eligibility criteria for prospective CMs and FSPs in order to check financial stability. Prospective CMs and FSPs are assessed against such criteria during onboarding. Existing CMs and FSPs are reviewed against such criteria at least annually.

The CC Risk Policy would describe ICE Clear Europe's counterparty rating system, which calculates a credit score that represents a counterparty's credit quality, and together with the exposure is used to identify the combination of the likeliness of default and heightened risk in a counterparty's portfolio of risk with ICE Clear Europe. Credit scores would be calculated by the model or, for FSPs (as provided in the CC Risk Procedures), a combination of Minimum External Rating requirements and exposure limits. See Section II below for more information. Depending on the risk classification, Counterparties may be subject to additional monitoring and potentially mitigating actions by the Clearing House.

The CC Risk Policy also would describe ICE Clear Europe's counterparty risk monitoring processes, which are based on a combination of continuous monitoring and additional counterparty risk reviews, tailored to the relationships and obligations of each type of counterparty. The new policy (and related procedures) provide further detail as to the content and frequency of such reviews, as well as distinguish how such reviews would be performed with respect to high risk counterparties. Specifically, the amendments would provide that all counterparties are monitored continuously through counterparty rating system scores, the Clearing House watch list and exposure limits. The Clearing House also performs Counterparty Risk Reviews on higher risk counterparties. Triggers for reviews are (i) a counterparty being added to the watch list, and (ii) there being concerns about the stability of a counterparty. Periodically, lower risk counterparties are subject to Counterparty Risk Reviews, such that all counterparties are subject to a risk review at least once every five years. (As explained further in Section II below, the CC Risk Procedures would require the Clearing House to perform a Counterparty Risk Review on CMs more frequently, at least once every four years.) These aspects of the Policy are generally consistent with, and will replace, the Unsecured Credit Limits Procedures.

[36] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

The CC Risk Policy also would address exposure limits and monitoring. As described in the policy, the Clearing House monitors its uncollateralized exposure to each CM (assuming the CM were to default) at least daily against exposure limits. The Clearing House also monitors a CM's initial margin relative to its capital at least daily against threshold limits. If an exposure limit or threshold limit is breached, then the Clearing House would take mitigating actions to lower the exposure (such as requiring additional margin or requiring the CM to reduce its positions under the Rules). This aspect of the policy would replace existing provisions in the Capital to Margin Policy. Consistent with current practice, monitoring of the capital to margin ratio will apply to both CDS CMs [3] and F&O CMs. With respect to F&O CMs, the capital-to-margin approach is being revised to eliminate the use of two separate ratios based on house and customer margin, respectively, and will continue using a single combined margin ratio, which ICE Clear Europe believes is more representative of the overall risk. Certain aspects of the Capital to Margin Policy relating to shortfall margin, while not included in the CC Risk Policy and CC Risk Procedures, are already covered by the Clearing House's F&O Risk Procedures. As such, those provisions of the Capital to Margin Policy are not necessary and can be retired. A copy of the F&O Risk Procedures is set forth in Exhibit 3.

The CC Risk Policy would also describe the Clearing House's monitoring of limits with respect to FSPs. ICE Clear Europe monitors its overnight unsecured cash exposure to FSPs at least daily against exposure limits. If an exposure limit is breached, then the Clearing House would take mitigating actions to reduce its exposure (such as moving cash to different FSPs or investing cash in securities). These provisions generally would replace provisions of the Clearing House's Unsecured Credit Limits Procedures.

Finally, the policy would address the Clearing House's document governance and exception handling processes, which are similar to those of other ICE Clear Europe policies. Specifically, the document owner would be responsible for maintaining up-to-date documents and reviewing documents in accordance with the Clearing House's governance processes. The document owner would be required to report material breaches or unapproved deviations to the Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who would together determine if further escalation should be made to relevant senior executives, the Board, or competent authorities. Exceptions to the CC Risk Policy would be approved in accordance with ICE Clear Europe's governance process for approval of changes to the CC Risk Policy.

II. CC Risk Procedures

The CC Risk Procedures supplement the CC Risk Policy with further detail about procedures for monitoring of counterparty credit risk. The CC Risk Procedures also would support certain aspects of the existing Clearing House Liquidity and Investment Management Policy and Investment Procedures. The criteria and principles set out in the CC Risk Procedures as well as in the CC Risk Policy are implemented in further operational detail in the Counterparty Risk Parameters and Reviews. The Counterparty Risk Parameters and Reviews are set forth in Exhibit 3.

The CC Risk Procedures would address the credit eligibility criteria for assessing the financial stability of prospective counterparties during the onboarding process and existing counterparties on at least an annual basis. Under the CC Risk Procedures, the Clearing House would produce a credit recommendation based on financial and qualitative information concerning prospective CMs and may propose approaches to mitigating credit risk (including increased buffer margin or increased capital, among other steps).

The CC Risk Procedures would set out in further detail the credit scoring process known as Counterparty Rating System (''CRS''), including the elements considered in producing such scoring, which include financial information specific to the counterparty and qualitative operational and conduct information concerning the counterparty. The CRS score is updated at least quarterly based on the latest financial statements. Material changes in the CRS score for a counterparty would be reviewed by the Clearing House.

ICE Clear Europe ranks CMs by their CRS score in order to identify those with lower relative credit quality that may require further examination to determine whether additional actions are necessary to mitigate credit risk. CMs with the weakest classifications, as well as all other CMs linked to such CMs by a common owner with a controlling stake in the entities, may be added to the watch list. The CC Risk Procedures would outline watch list monitoring as well as procedures for removing CMs from the watch list. The CC Risk Procedures would also outline the actions the Clearing House may take to reduce exposure to counterparties on the watch list under the Rules, including requiring additional or different forms of margin, additional capital or reduction of positions.

The CC Risk Procedures would also describe in further detail the ongoing continuous counterparty monitoring and trigger-based counterparty risk review processes under the CC Risk Policy, as discussed above. The CC Risk Procedures would provide for trigger-based reviews to be conducted on higher risk counterparties and additional periodic reviews on lower risk counterparties and prospective new CMs. Reviews are tailored to the relationship and obligation of the counterparty, and covers such matters as capital metrics, credit scores, financials, business description, ownership structure and risks to the Clearing House.

The CC Risk Procedures would also describe the Clearing House's procedures for setting exposures and limits for CMs and FSPs. For CMs, exposure is monitored daily against exposure limits for each CM using the uncollateralised stress loss (''USL'') as a proxy for the exposures. The procedures would address the Clearing House's processes for managing breaches of CM exposure limits. Where exposure to a CM exceeds the limit, the mitigating actions under the Rules that the Clearing House could take include (i) requiring CMs to post additional collateral to meet a ''buffer'' margin, (ii) requiring CMs to reduce their positions, thereby reducing their initial margin requirements, and (iii) requiring the CM to increase its capital or to implement a parental guarantee or subordinated debt to increase the exposure limit.

The procedures also address the monitoring of the margin to capital ratio for each CM. The Clearing House, for each CM and on each business day, monitors whether the size of a CM's positions are large relative to the CM by monitoring the ratio of their total margin to their capital (known as the margin to capital ratio). When a CM's margin to capital ratio is above a certain threshold, the Clearing House would investigate the breach in order to understand its cause. If the margin to capital ratio over a period of time is above the threshold, then ICE Clear Europe would take mitigating actions including (i) enhanced monitoring of the CM to assess whether the increased ratio is temporary, (ii) requiring CMs to reduce

[3] Application of the current capital-to-margin ratio for CDS Clearing Members is not addressed in the Capital to Margin Policy but in existing CDS risk documentation.

positions leading to a reduction in their initial margin, and (iii) requiring the CM to increase its capital or to implement a parental guarantee or subordinated debt to increase the exposure limit. This aspect of the CC Risk Procedures replaces (but does not change the substance of) the provisions of the Capital to Margin Policy, which would be retired.

The procedures also address monitoring of ''tiering'' concentration with respect to CM clients, which is intended to identify the risk from clients of a CM that could cause the default of the CM. The Clearing House periodically identifies clients of a CM whose initial margin constitutes more than a defined threshold of all client initial margin at that CM. The Clearing House may request additional information from the CM with respect to its risk management for such clients or take other risk mitigation actions as the Clearing House determines appropriate.

The procedures also address limits set for issuers of collateral. With respect to issuers of collateral, the Clearing House will set an overall limit with sub-limits for CM collateral, Treasury (reverse repo and other collateral) and Finance (investment of the Clearing House's own capital and Skin-in-the-Game). The overall limit will equal the sum of the sub-limits and can be borrowed between departments. This provision represents an enhancement to the Clearing House's existing policies and practices relating to exposure limits to address risk across different departments. If a limit is breached, ICEU may reach out to CMs for the replacement of collateral or reduce exposures to FSPs as the case may be.

The CC Risk Procedures would also address the Clearing House's procedures for setting exposures and limits for FSPs, including the roles and responsibilities of the Clearing House's credit team and its treasury team. This aspect of the CC Risk Procedures replaces (but does not change the substance of) the provisions of the Clearing House's Unsecured Credit Procedures, which would be retired. Detail would be provided regarding the allocation and monitoring of unsecured credit limits with respect to FSPs, including the minimum requirements for such FSPs and how the Clearing House allocates such limits based on the capital of the FSP and other exposures of the Clearing House to the FSP. The section would also outline ICE Clear Europe's mitigating responses where exposure to an FSP breaches the unsecured cash limit, including the allocating of unsecured cash to different FSPs, securing the cash exposure, and escalating material breaches as described in the Parameters.

Finally, the CC Risk Procedures would detail ICE Clear Europe's document governance and exception handling procedures, which would be the same as for the CC Risk Policy, described in Part I hereof. The Clearing House's Documentation Governance Schedule is attached [sic] in Exhibit 3.

As discussed above, since the CC Risk Policy and CC Risk Procedures cover the same substance as the Unsecured Credit Limits Procedures and Capital to Margin Policy, those documents would be retired.

(b) Statutory Basis

ICE Clear Europe believes that the CC Risk Policy and the CC Risk Procedures are consistent with the requirements of Section 17A of the Act[4] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The CC Risk Procedures and CC Risk Policy are designed to more clearly document and consolidate certain of the Clearing House's practices with respect to the management of counterparty credit risk, including both the risk of losses resulting from defaulting Clearing Members' and losses resulting from the default of other Financial Service Providers to the Clearing House. They would clearly describe the processes, controls and escalations with respect to the ongoing testing, monitoring and reviewing of counterparty credit risk, and the mitigation steps the Clearing House can take where risk in excess of limits is identified. The proposed documents thus enhance the overall risk management of the Clearing House and promote the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. The new CC Risk Policy and CC Risk Procedures are thus also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. The aspects of the CC Risk Policy and CC Risk Procedures that relate to counterparty credit risk for FSPs will also help manage the risk of the cash held by the Clearing House from CMs and their customers, and thus enhance the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).[6]

The CC Risk Policy and the Risk Procedures are also consistent with relevant provisions of Rule 17Ad–22. Rule 17Ad–22(e)(3)(i)[7] 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'' among other matters identifies, measures, monitors and manages the range of risks that it faces. The CC Risk Policy and the CC Risk Procedures are intended to document the Clearing House's policies and practices for monitoring and reviewing counterparty credit risk and related exposures, through clear descriptions of such policies and processes, as well as delineation of responsibilities and potential response to exposures exceeding limits. The documents would thus strengthen the management of potential counterparty risks, and risk management more generally. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(3)(i).[8]

Rule 17Ad–22(e)(6)(i)[9] provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] cover [. . .] its credit exposures to its participants by establishing a risk-based margin system that, at a minimum,[. . .] considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.'' The proposed CC Risk Procedures provide descriptions of mitigating actions the Clearing House would take with respect higher-risk counterparties for which credit exposure may breach ICE Clear Europe's exposure limits or exceed the relevant margin to capital ratio, including requiring a CM to post additional margin and requiring a CM to reduce positions leading to a reduction in their initial margin. The documents thus enhance of ICE Clear Europe's overall margin framework and documentation

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(e)(3)(i).

[8] 17 CFR 240.17Ad–22(e)(3)(i).

[9] 17 CFR 240.17Ad–22(e)(6)(i).

and facilitate compliance with the requirements of Rule 17Ad–22(e)(6)(i).[10]

Rule 17Ad–22(b)(1)[11] requires a clearing agency to maintain policies and procedures to ''[m]easure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.'' The practices described in the CC Risk Policy and CC Risk Procedures are consistent with this requirement. The CRS described in the CC Risk Procedures would calculate credit scores for each CP on each day to determine their creditworthiness. CPs with the weakest classifications would then be added to the watch list, monitored more closely and potentially subject to mitigating actions such as being required to post additional or different collateral. For each CM and on each business day, ICE Clear Europe would also measure a CMs margin to capital ratio. ICE Clear Europe would also measure CM exposure limits. CMs that exceed ICE Clear Europe's exposure limit or exceed the relevant margin to capital ratio could also be subject to mitigating actions, including requiring a CM to post additional margin and requiring a CM to reduce positions leading to a reduction in their initial margin. By facilitating the Clearing House's ability to measure its credit exposures and limit potential losses, the amendments would therefore be consistent with the requirements of Rule 17Ad–22(b)(1).[12]

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 [. . .] 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.''[13] As discussed above, the CC Risk Policy and CC Risk Procedures are intended to document Clearing House practices with respect to the management of credit risk with respect to FSPs with which assets of the Clearing House and CMs may be maintained. The policy and procedures address the monitoring of FSP counterparty credit risk and the steps the Clearing House may take to mitigate such risk where it exceeds exposure limits. As such, the policy and procedure will continue to enable the Clearing House to safeguard such assets and minimize the risk of loss from FSP default, consistent with the requirements of Rule 17Ad–22(e)(16).[14]

Rule 17Ad–22(e)(2)[15] provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] provide for governance arrangements'' that ''are clear and transparent''[16] and ''specify clear and direct lines of responsibility''.[17] Consistent with existing policies, the proposed CC Risk Policy and the CC Risk Procedures would continue to provide for review by the document owner to ensure that each remains up-to-date and is reviewed in accordance with the Clearing House's governance processes. They would also describe the role of the Chief Risk Officer and the Head of Compliance (or their delegates) in managing material breaches of the documents. In ICE Clear Europe's view, the documents are therefore consistent with the aforementioned requirements of Rule 17Ad–22(e)(2).[18]

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

ICE Clear Europe does not believe the proposed documents would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The CC Risk Policy and the CC Risk Procedures are intended to document existing practices with respect to counterparty credit risk, for both CMs and FSPs, and are not intended to impose new requirements on CMs. The proposed documents clarify ICE Clear Europe risk management procedures and ensure that ICE Clear Europe continues to appropriately monitors and limit risks relating to Clearing Members' creditworthiness, capital to margin ratio and uncovered stress losses. The policy and procedures would apply to all Clearing Members. The proposed documents are not expected to materially change margin requirements or costs for Clearing Members and any such change which may occur would be tailored to the counterparty credit risk presented by a particular CM. ICE Clear Europe does not believe that the new CC Risk Policy and the CC Risk Procedures will otherwise 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

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any 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–2021–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2021–015. This file number should be included on the subject line if email is used. To help the Commission process and review your

[10] 17 CFR 240.17Ad–22(e)(6)(i).
[11] 17 CFR 240.17Ad–22(b)(1).
[12] 17 CFR 240.17Ad–22(b)(1).
[13] 17 CFR 240.17Ad–22(e)(16).
[14] 17 CFR 240.17Ad–22(e)(16).
[15] 17 CFR 240.17Ad–22(e)(2).
[16] 17 CFR 240.17Ad–22(e)(2)(i).
[17] 17 CFR 240.17Ad–22(e)(2)(v).
[18] 17 CFR 240.17Ad–22(e)(2).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2021–015 and should be submitted on or before December 21, 2021.

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

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26068 Filed 11–29–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93658; File No. SR–ISE–2021–25]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Position Limits for Options on Certain Exchange-Traded Funds

November 23, 2021.

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 November 19, 2021, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 the Substance of the Proposed Rule Change

The Exchange proposes to increase position limits for options on certain exchange-traded funds (''ETFs'').

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* 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 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

ISE proposes to increase certain position and exercise limits within Options 9, Section 13 and 15, respectively, similar to the Cboe Options Exchange, Inc. (''Cboe'').[3]

Position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

The Exchange has observed an ongoing increase in demand, for both trading and hedging purposes, in options on the following exchange-traded funds (''ETFs''): (1) iShares iBoxx $ Investment Grade Corporate Bond ETF (''LQD''); and (2) VanEck Vectors Gold Miners ETF (''GDX''), (collectively ''Underlying ETFs''). Though the demand for these options appears to have increased, position limits for options on the Underlying ETFs have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (*e.g.,* buy-write or put-write), and the ability of Market Makers to make liquid markets with tighter spreads in these options resulting in the transfer of volume to over-the-counter (''OTC'') markets. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets. Therefore, the Exchange believes that the proposed increases in position limits for options on the Underlying ETFs may enable liquidity providers to provide additional liquidity to the Exchange and other market participants to transfer their liquidity demands from OTC markets to the Exchange. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of the Underlying ETFs, ETF components, as well as the highly liquid markets for each, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on the Underlying ETFs for legitimate economic purposes compels an increase in position limits.

Proposed Position Limits for Options on the Underlying ETFs

Proposed Position Limits for options on ETFs are determined pursuant to Options 9, Section 13 and vary according to the number of outstanding shares and the trading volumes of the underlying equity security (which includes ETFs) over the past six months. Pursuant to Options 9, Section 13, the

[19] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93525 (November 4, 2021), 86 FR 62584 (November 10, 2021) (SR–Cboe–2021–029) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To Increase Position Limits for Options on Two Exchange-Traded Funds).