17Ad–22(e)(3)(i) under the Exchange Act.[23]

C. Consistency With Rule 17Ad–22(e)(20) Under the Exchange Act

Rule 17Ad–22(e)(20) requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities (''FMUs''), or trading markets.[24] As described above, the proposed TPRMF outlines OCC's approach to identify, measure, monitor, and manage risks arising from relationships with FMUs and Exchanges. Just as with the management of risks from third parties more broadly, the proposed TPRMF defines which teams within OCC are responsible for managing risks posed by FMUs and Exchanges. Further, the proposed TPRMF describes the basis for OCC's evaluation of FMUs and Exchanges with which it has relationships. The proposed TPRMF also states that OCC's Chief Executive Officer and Chief Operating Officer each has authority to approve the onboarding of FMUs. The Commission believes, therefore, that the proposed adoption of the proposed TPRMF is consistent with the requirements of Rule 17Ad–22(e)(20) under the Exchange Act.[25]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[26] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[27] that the Proposed Rule Change (SR–OCC–2020–014) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2020–28895 Filed 12–29–20; 8:45 am]

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[23] 17 CFR 240.17Ad–22(e)(3)(i).

[24] 17 CFR 240.17Ad–22(e)(20).

[25] *Id.*

[26] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90782; File No. SR–ICEEU–2020–017]

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

December 22, 2020.

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 December 14, 2020, 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 and II below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] so that the proposal was immediately effective upon filing with the Commission. On December 21, 2020, ICE Clear Europe filed Amendment No. 1 to the proposed rule change. 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'') submitted the proposed rule change to amend its Clearing Rules (the ''Rules'')[5] to address certain requirements under the European Union General Data Protection Regulation (''GDPR'')[6] in the event that at the end of current transition period (ending December 31, 2020) (the ''Transition Period'') the United Kingdom (''UK'') exits the European Union (''EU'') in circumstances where: (i) No trade agreement has been agreed between the UK and the EU27 which stipulates that EU data protection law, among other laws, shall continue to apply in the UK UK [sic] (a ''trade agreement''); and (ii) the UK's data protection laws have not been found to provide for an adequate level of protection for the personal data of individuals in the EU pursuant to a decision made by the European Commission under Article 45 of the GDPR (an ''adequacy decision''). The proposed rule change is intended to supplement existing Rule provisions to reflect the judgment in a recent EU judicial decision. Amendment No. 1 was intended to (i) restate the description of the proposed rule change to clarify that ICE Clear Europe is now implementing certain amendments previously filed in 2019[7] (the ''2019 Filing'') and (ii) amend Exhibit 5 of the Initial Filing to provide a comparison of the proposed Rule changes (including those previously filed amendments in the 2019 Filing) to the current Rules in effect. The proposed rule changes in the initial filing were otherwise unchanged.

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

The purpose of the proposed changes is to implement the amendments to Rule 106 and the adoption of Exhibit 5, Annex A and Annex B to the Rules that were submitted in the 2019 Filing (but not implemented at that time) and further to add certain supplemental data protection clauses to the Standard Contractual Clauses in Exhibit 5 of the Rules that address certain requirements under the GDPR relating to personal data.

The amendments would be relevant upon the end of the Transition Period, in circumstances where: (i) No trade agreement has been agreed between the UK and the EU27; and (ii) the UK has

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

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

[6] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

[7] Exchange Act Release No. 34–85247 (SR–ICEEU–2019–004) (Mar. 5, 2019), 84 FR 8769 (Mar. 11, 2019). This earlier filing also generally addresses the situation where the UK would be treated as a 'third country' for GDPR purposes.

not been the subject of an adequacy decision, such that the UK thereby becomes a third country under the GDPR.

Amendments previously submitted by the Clearing House in the 2019 Filing, and which are now proposed to be implemented, generally address the situation where the UK would be treated as a 'third country' for GDPR purposes. In that case, in certain circumstances, it may be necessary or advisable to take certain additional steps to avoid a greater risk that transfers of personal data from EU27-based Clearing Members to ICE Clear Europe violate the GDPR, including the use of certain Standard Contractual Clauses, which were endorsed and published in a decision of the European Commission, that will govern transfer of personal data to ICE Clear Europe in order to comply with the GDPR. Because such changes were not needed during the Transition Period, ICE Clear Europe did not implement the changes submitted in the 2019 Filing.[8] At this time, in light of the end of the Transition Period, ICE Clear Europe is proposing to implement the changes in the 2019 Filing to amend Rule 106 and add Exhibit 5, Annex A, and Annex B to the Rules as described in the 2019 Filing in the circumstances described above.

In addition, ICE Clear Europe is proposing additional amendments, beyond those in the 2019 Filing, in the instant filing that are intended to take into account the recent Court of Justice of the European Union decision in the *Schrems II*[9] case. That decision, among other matters, recognized that transfer of personal data outside of the EU may be permissible if governed by the Standard Contractual Clauses, subject to certain additional protections and conditions, including in some cases the use of supplementary measures, to achieve the required level of data protection. In light of this decision, and given the possibility that the Transition Period will end without a trade agreement between the UK and the EU27 and/or an EU adequacy decision with respect to UK data protection requirements, ICE Clear Europe believes that it would be prudent to put in place additional safeguards with respect to transfers of personal data from EU27-based Clearing Members to ICE Clear Europe such that it can be certain that such transfers are subject to appropriate safeguards within the meaning of the GDPR.

In the event that the Transition Period ends without a trade agreement between the UK and the EU27 and/or an EU adequacy decision with respect to UK data protection requirements, the amendments set out in the Initial Filing would be incorporated into the Rules.[10] In addition, the new Appendix to Exhibit 5 of the Rules would set out additional safeguards to the Standard Contractual Clauses that address the conditions that must be met in order to rely upon such clauses as set out in *Schrems II.* Specifically, the Appendix would state that the data importer (in this case, ICE Clear Europe) would have to assess whether the laws applicable to it provide adequate protection under EU data protection law. To the extent that the laws do not, (1) the data importer would adopt supplementary measures to protect the personal data received under Standard Contractual Clauses from the data exporter in accordance with EU data protection laws and (2) in the event that the data importer receives a legally binding request for access to the data by a public authority, the data importer would (i) promptly notify the data exporter of the request, (ii) comply with its internal policies governing disclosure, (iii) not make disproportionate disclosures and (iv) upon request from the data exporter, provide general information on such requests received in the preceding 12 month period.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act[11] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[12] In particular, Section 17A(b)(3)(F) of the Act[13] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The amendments clarify certain rights and obligations of the Clearing House and Clearing Members with respect to personal data obtained in connection with clearing activity in light of legal considerations under the GDPR that may apply to Clearing Members and ICE Clear Europe at the end of the Transition Period if there is no trade agreement and the EU has not issued an adequacy decision. In such circumstances, to the extent EU–27 based Clearing Members must in practice export personal data to ICE Clear Europe in order to clear transactions at ICE Clear Europe, the proposed Rule changes will facilitate the continued transfer of personal data for that purpose in the scenario described above and avoid increased risk of violations of GDPR requirements in connection with such transfers. The changes will thus facilitate continued clearing by EU27 Clearing Members in compliance with applicable law and promote the prompt and accurate clearance and settlement of transactions by such persons. As such, the amendments are consistent with the protection of investors and the public interest. (ICE Clear Europe does not believe the amendments will have any effect on the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible.)

Moreover, the amendments are consistent with Rule 17Ad–22(e)(1),[14] which requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As discussed herein, the amendments are designed to facilitate continued compliance by ICE Clear Europe and its Clearing Members with requirements of GDPR that will apply at the end of the Transition Period if there is no trade agreement and the EU has not issued an adequacy decision, in light of the additional requirements of the *Schrems II* decision. Specifically, the Rule change will facilitate EU-based Clearing Members' continued ability to export personal data as necessary in connection with clearing without violating GDPR should the Transition Period end without a trade agreement and without an adequacy decision. The amendments thereby facilitate continued clearing for EU-based persons in accordance with EU regulations relating to data protection. ICE Clear Europe does not expect that the amendments will adversely impact its ability to comply with the Act or any standards under Rule 17Ad–22.[15]

[8] See ICE Clear Europe Circular C19/053 (March 15, 2019), available at *https://www.theice.com/publicdocs/clear_europe/circulars/C19053.pdf.*

[9] Case C–311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximilian Schrems.

[10] The instant filing would correct a typographical error in the definition of Standard Contractual Clauses in Rule 106(m) and Exhibit 5 of the Rules as set out in the Initial Filing.

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 240.17Ad–22.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(1).

[15] 17 CFR 240.17Ad–22.

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

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments are considered prudent in order for ICE Clear Europe to ensure that there will be no interruption in the receipt of personal data from its EU27-based Clearing Members (or increased risk to such Clearing Members in the provision of such data). ICE Clear Europe does not believe the amendments will in themselves materially affect the cost of, or access to, clearing as they are generally consistent with GDPR requirements with which entities based in the EU must already comply. To the extent the amendments impose certain additional costs on Clearing Members and Sponsored Principals that may differ from current practices, these result from the requirements imposed by the GDPR, and are generally applicable to Clearing Members and Sponsored Principals throughout the European Union. (In addition, Clearing Members and Sponsored Principals are already required under the Rules to ensure that their transmission of data is lawful. As a result, the amendments are therefore not expected to impose significant additional burdens.) As a result, ICE Clear Europe does not believe the proposed rule changes impose any burden on competition that is inappropriate 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 rule changes have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

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

Because the foregoing proposed rule change does not:

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

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)[17] thereunder.

ICE Clear Europe has requested that the Commission waive both the five-day pre-filing requirement and the 30-day delayed operative date under Rule 19b–4(f)(6)(iii)[18] so that the proposed rule changes may become effective and operative upon filing with the Commission. ICE Clear Europe believes that waiver of both would facilitate continued compliance with the GDPR requirements which will apply at the end of the Transition Period, in circumstances where no trade agreement has been agreed and there is no adequacy decision. The Transition Period is currently scheduled to end on December 31, 2020, and it is uncertain whether any trade agreement may be entered into between the EU and UK and/or whether any adequacy determination would be made by the EU by that time. Regardless of the 30-day operative delay, the amendments will not have any effect any sooner than the end of the Transition Period. ICE Clear Europe does not believe that any delay in implementing the amendments will benefit Clearing Members, their customers or any other market participants. Any delay is also likely to be inconsistent with market expectations in light of the date upon which the Transition Period is scheduled to end. As a result, in ICE Clear Europe's view, immediate effectiveness is consistent with the protection of investors and the public interest.

The Commission believes that the delay of the operation of the proposed rule change, through the five-day pre-filing requirement and the 30-day delayed operative date, could impede continued compliance with the GDPR requirements given that the Transition Period could end sooner than the 30-day delayed operative date of the proposed rule change. The Commission therefore believes that waiving the five-day pre-filing requirement and 30-day operative delay would provide certainty to ICE Clear Europe and EU27-based Clearing Members regarding the application of the GDPR and allow EU27-based Clearing Members to continue clearing at ICE Clear Europe after the end of the Transition Period in the circumstances discussed above. Moreover, the Commission believes that the proposed rule change would not impose any significant burden on competition because it results from the requirements imposed by the GDPR that are generally applicable to Clearing Members and Sponsored Principals throughout the European Union. Thus, the Commission believes that the proposed rule change, and waiving the five-day pre-filing requirement and 30-day operative delay, would not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) affect the safeguarding of funds or securities in the custody or control of ICE Clear Europe or for which it is responsible. Therefore, the Commission waives the five-day pre-filing requirement and designates the proposed rule change as operative upon filing.[19]

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2020–017 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–2020–017. 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

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the five-day pre-filing requirement and the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2020–017 and should be submitted on or before January 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2020–28809 Filed 12–29–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90793; File No. SR–NASDAQ–2020–090]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Equity 4, Section 4703

December 23, 2020.

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 December 15, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4, Section 4703, as described below.

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

The Exchange proposes to amend Equity 4, Section 4703(h), which describes Orders with ''Reserve Size,'' [3] to clarify its existing practice relating to replenishments of such Orders. As set forth in Section 4703(h), ''Reserve Size'' is an Order Attribute that permits a Participant to stipulate that an Order Type that is Displayed may have its displayed size replenished from additional non-displayed size.[4]

The Exchange established the Reserve Orders with the intention that it would always act as a provider of liquidity upon replenishment. Indeed, this is what participants have come to expect from the operation of Reserve Orders.

In late 2016, however, a rule filing introduced a rare circumstance where a Reserve Order, upon replenishment of its Displayed Order component, theoretically could become a liquidity remover under the existing Exchange Rules.

An example of the rare theoretical circumstance is as follows. Order 1 is a Price to Comply Order to buy at $10.00 resting on the Nasdaq book with 100 shares displayed and 3,000 shares in reserve (for a total order size of 3,100 shares). Order 2 is an Order to sell 100 shares at $10.00, which executes against the 100 displayed shares from Order 1 upon entry. Order 3 is a Post Only order to sell 1,000 shares at $10.00 that is entered and posts to the Book before Order 1 has been replenished. Following the rules of the Post Only Order Type, Order 3 does not execute against the non-displayed interest resting at $10.00, but instead posts at the locking price. Therefore, upon replenishment, the new 100 shares of Order 1 would lock Order 3 at $10.00. As directed by the rule governing Price to Comply Orders,[5] Order 1 would execute against Order 3 at $10.00 as a liquidity taker.

The Exchange did not account for this scenario when drafting its rules. In fact, the Exchange does not presently handle this scenario as described above. Instead, upon replenishment, the Exchange reprices the new displayed Price to Comply Order such that it does not execute against Order 3 as a liquidity taker.

However, the Exchange now proposes to eliminate any unintended inconsistency as to how it handles this scenario and make clear in its Rules that a Reserve Order is an adder of liquidity after posting on the Nasdaq Book in all circumstances. Specifically, the Exchange proposes to amend the Rule to state that if the new Displayed Order would lock an Order that posted to the Nasdaq Book before replenishment can occur, the Displayed Order will post at the locking price if the resting Order is Non-Display or will be repriced, ranked, and displayed at one minimum price increment lower (higher) than the locking price if the resting order to sell (buy) is Displayed.[6] [7]

[20] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR–NASDAQ–2016–111).

[4] An Order with Reserve Size may be referred to as a ''Reserve Order.''

[5] Pursuant to Equity 4, Section 4702(b)(1)(A), a ''Price to Comply Order'' is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. The Price to Comply Order is also designed to provide potential price improvement. When a Price to Comply Order is entered, the Price to Comply Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Price to Comply Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation.

[6] The Exchange notes that a Reserve Order that does not execute fully upon initial order entry will behavior in the same manner as described in this Proposal if the Displayed portion of the Reserve Order would lock or cross a resting Displayed Order upon entry.

[7] If a Displayed Order posts to the Nasdaq Book and locks a resting Non-Displayed Order with the Trade Now attribute enabled, then consistent with the definition of Trade Now, as set forth in Equity