19b–4(f)(2) [117] 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 shall institute proceedings to determine whether the proposed rule 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–EMERALD–2023–01 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–EMERALD–2023–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2023–01 and should be submitted on or before February 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[118]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00659 Filed 1–13–23; 8:45 am]

BILLING CODE 8011–01–P

[117] 17 CFR 240.19b–4(f)(2).

[118] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96634; File No. SR–ICEEU–2022–027]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the Capital Replenishment Plan

January 11, 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 December 29, 2022, 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

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') proposes to adopt a new Capital Replenishment Plan to document certain tools, procedures and arrangements to replenish its financial resources in the event of Clearing Member default and in the event of losses not caused by Clearing Member default.[3]

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

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Capital Replenishment Plan or, if not defined therein, the ICE Clear Europe Clearing Rules.

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 a new Capital Replenishment Plan (the ''Plan'') to document certain tools, procedures and arrangements that the Clearing House may use to replenish its capital, when necessary. The Plan [4] would address replenishment of both ICE Clear Europe's own resources contribution to its guaranty funds and capital required under applicable law, including the capital requirement under EMIR as incorporated into UK law following the Brexit transition (the ''EMIR capital requirement'').[5] The Plan would recognize that a need to replenish capital may arise because of a Clearing Member default, the occurrence of sudden extraordinary one-off losses, net losses resulting from custody or investment risks, or from recurring losses which may arise from general business risks.[6]

The Plan would set out the overall purposes of the Plan and the Clearing House's overall approach to capital management and maintaining capital resources. The Plan is intended, among other purposes, to set out for senior management, the audit committee and the Board actions they may consider to replenish capital and to identify stakeholders and their respective responsibilities with respect to ICE Clear Europe's continued compliance with relevant laws and regulations

[4] The Plan would consolidate and replace a pre-existing capital requirement framework and related practices.

[5] Commission Delegated Regulation (EU) No. 152/2013 of 19 December 2012 supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on capital requirements for central counterparties, as on-shored into UK law following the end of the Brexit transition period.

[6] The Plan would also serve as a recovery tool and would be part of ICE Clear Europe's overall Recovery Plan.

covering regulatory capital. This Plan takes into account both the minimum legal capital requirements, including under the EMIR capital requirement, as well as a higher target capital requirement (which includes a voluntary capital contribution as well as a notification buffer). The replenishment tools and actions under the Plan have been developed so as to prioritize replenishing the legal capital requirement first. Replenishment of additional capital to the target amount can be addressed once the legal requirement has been restored, (or at the same time at the discretion of the Board, resources permitting).

The Plan outlines the general steps the Clearing House would expect to take to replenish capital, including (1) first assessing and using available accumulated financial resources, (2) then looking to use reasonably calculated forecasts as to future profits, (3) if those resources are insufficient to restore capital to the legal requirement, by seeking resources from its parent company in the ICE group, and (4) thereafter, with the approval of its parent and subject to the rights of existing shareholders, by seeking additional capital from third parties. ICE Clear Europe may also bypass the first two steps outlined above and immediately request capital from its parent company.

The Plan also states that overall accountability for the plan lies with the Finance Director, President, and the Board. The Plan would be subject to annual review, and capital replenishment would be included in the annual default management test schedule. The Plan would identify specific internal control and governance responsibilities for the Finance Director, President, the Board and Board Risk Committee relating to monitoring capital compliance and replenishment. The Finance Director would be responsible for monitoring ICE Clear Europe's compliance with the applicable regulatory capital requirements, reporting capital adequacy internally and to regulators, escalating matters relating to capital adequacy to the President where appropriate, and contributing to the development of plans to increase and/or replenish Eligible Capital as required for ICE Clear Europe to continue to meet its regulatory capital requirements. The President would be responsible for ensuring ICE Clear Europe meets its capital adequacy obligations under relevant laws and regulations. The Board Risk Committee would be responsible for reviewing and recommending to the Board the principles underlying the capital planning process, as well as the Plan, itself, and the Board itself would be responsible for approving the principles and the Plan. The Board would also be responsible for holding the President accountable for demonstrating adherence to ICE Clear Europe's capital policies and for reviewing and approving any capital transactions.

The Plan would also address the determination of the target capital amount in excess of the legal minimum capital requirement. ICE Clear Europe seeks to maintain excess capital above the threshold at which notification would be required to the Bank of England (which is generally 10% above the required capital level). In addition, ICE Clear Europe endeavors to maintain additional capital, on a voluntary basis, approximately equal to an additional 10% of the required capital level plus the 10% buffer referenced above.

The Plan would also provide further detail as to the use of the capital replenishment tools referenced above in different default loss and non-default loss scenarios and related actions to be taken for each tool, including as to the key individuals and departments involved and approvals required, the estimated timing for various actions, relevant documentation requirements, the procedure for determination of the relevant amount of additional resources to be sought or applied from the relevant sources, and the process for consultation with Clearing Members and regulators, among other matters. Annexes to the Plan also set out relevant templates for documentation.

(b) Statutory Basis

ICE Clear Europe believes that the proposed adoption of the Capital Replenishment Plan is consistent with the requirements of section 17A of the Act[7] and the regulations thereunder applicable to it. In particular, section 17A(b)(3)(F) of the Act[8] 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 Capital Replenishment Plan is intended to document procedures for replenishing capital, for both the own resources contribution to the guaranty funds and the EMIR capital requirements for the Clearing House. As a part of the broader Recovery Plan, the proposed Capital Replenishment Plan will facilitate the continued operation of the Clearing House following a significant loss from one or more Clearing Member defaults or a non-default loss (including investment or custodial losses and losses from general business risk) by replenishing needed financial resources. The Plan would address replenishment to both the minimum legal capital requirement and the higher target level intended to provide additional resources as an operating buffer. The amendments thus are consistent with the continued prompt and accurate clearance and settlement of securities transactions and derivatives transactions and the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, following a significant default or non-default loss. The amendments thus also enhance the protection of investors and the public interest in the continued sound operation of the Clearing House, consistent with the requirements of section 17A(b)(3)(F) of the Act.[9]

The Capital Replenishment Plan is also consistent with relevant provisions of Rule 17Ad–22. Rule 17Ad–22(e)(3)(ii)[10] 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 for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody and other risks that arise in or are borne by the covered clearing agency, which . . . includes plans for the recovery or orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.'' As discussed above, the Plan serves as a part of the broader Recovery Plan and is intended to document tools, arrangements and procedures for replenishing capital when needed as a result of default losses or non-default losses, including losses from general business risk. The Plan further sets out the roles and functions of the Board, ICE Clear Europe management and other internal personnel and committees in taking such steps to replenish financial resources. In ICE Clear Europe's view, the implementation of the Capital Replenishment Plan is therefore

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(3)(ii).

consistent with the requirements of Rule 17Ad–22(e)(3)(ii).[11]

Rule 17Ad–22(e)(2)[12] 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''[13] and ''specify clear and direct lines of responsibility''.[14] The Plan identifies responsibilities of key ICE Clear Europe personnel, the Board and other stakeholders with respect to ongoing compliance with capital requirements and for capital replenishment when necessary. The Plan also provides for annual review by ICE Clear Europe's President, Finance Director, and Board to ensure that it remains up-to-date and is reviewed in accordance with the Clearing House's internal governance processes. In ICE Clear Europe's view, the documents are therefore consistent with the requirements of Rule 17Ad–22(e)(2).[15]

In addition, the Plan is consistent with the requirements of Rule 17Ad–22(e)(15),[16] which states that a clearing agency shall ''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 . . .'' by ''[m]aintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of this section.''[17] As stated above, the Plan has been approved by the ICE Clear Europe Board of Directors, would be reviewed and updated annually, and would outline the tools available to restore additional capital if needed. Specifically, the Plan serves as a part of the broader Recovery Plan and is intended to document tools, arrangements and procedures for replenishing capital when needed, including as a result of losses from general business risk. The capital restoration levels detailed in the Plan are based on the Clearing House's legal capital requirements and its own target capital level. These are designed to exceed the amount required under Rule 17Ad–22(e)(15)(ii).[18] As a result, it is ICE Clear Europe's view that the Plan is consistent with Rule 17Ad–22(e)(15).[19]

(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 proposed Capital Replenishment Plan is intended to facilitate replenishment of capital when necessary as a result of a clearing member default, the occurrence of sudden extraordinary one-off losses, any net losses incurred resulting from custody or investment risks, or from recurring losses which may arise from general business risks. The Plan will not affect the rights or obligations of Clearing Members, and is designed to facilitate continued operation of the Clearing House following a loss. ICE Clear Europe does not believe that the proposal would adversely affect the ability of Clearing Members or other market participants generally to access clearing services. Further, ICE Clear Europe believes that the Plan would not otherwise affect competition among Clearing Members, adversely affect the market for clearing services, or limit market participants' choices for obtaining clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change

Written comments relating to the proposed amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any 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–2022–027 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–2022–027. 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 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–2022–027

[11] 17 CFR 240.17Ad–22(e)(3)(ii).
[12] 17 CFR 240.17Ad–22(e)(2).
[13] 17 CFR 240.17Ad–22(e)(2)(i).
[14] 17 CFR 240.17Ad–22(e)(2)(v).
[15] 17 CFR 240.17Ad–22(e)(2).
[16] 17 CFR 240.17Ad–22(e)(15).
[17] 17 CFR 240.17Ad–22(e)(15)(iii).
[18] 17 CFR 240.17Ad–22(e)(15)(ii).
[19] 17 CFR 240.17Ad–22(e)(15).

and should be submitted on or before February 7, 2023.

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

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00774 Filed 1–13–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96631; File No. SR–PEARL–2022–61]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule To Modify Certain Connectivity and Port Fees

January 10, 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 December 30, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

The Exchange is filing a proposal to amend the fee schedule (the ''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility of the Exchange, to amend certain connectivity and port fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, 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 the Fee Schedule to amend fees for: (1) the 1 gigabit (''Gb'') and 10Gb ultra-low latency (''ULL'') fiber connections for Equity Members [3] and non-Members; (2) the Financial Information Exchange (''FIX'') Ports,[4] and the MIAX Express Orders Interface (''MEO'') Ports.[5] The Exchange adopted connectivity and port fees in September 2020,[6] and has not changed those fees since they were adopted. Since that time, the Exchange experienced ongoing increases in expenses, particularly internal expenses. As discussed more fully below, the Exchange recently calculated increased annual aggregate costs of $18,331,650 for providing 1Gb and 10Gb ULL connectivity combined and $3,951,993 for providing FIX and MEO Ports.

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity and port services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision* [7] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[8] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[9] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[10] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [11] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[12] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [13] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

[20] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The term ''Equity Member'' means a Member authorized by the Exchange to transact business on MIAX PEARL Equities. *See* Exchange Rule 1901.

[4] ''FIX Order Interface'' or ''FOI'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 2614. *See* the Definitions section of the Fee Schedule.

[5] Each MEO interface will have one Full Service Port (''FSP'') and one Purge Port. ''Full Service Port'' or ''FSP'' means an MEO port that supports all MEO order input message types. *See* the Definitions section of the Fee Schedule.

[6] *See* Securities Exchange Act Release No. 90651 (December 11, 2020), 85 FR 81971 (December 17, 2020) (SR–PEARL–2020–33).

[7] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[8] *Id.*

[9] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[10] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[11] *Id.* at page 2.

[12] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[13] Order Denying Reconsideration, 2019 WL 2022819, at *13.