

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91114; File No. SR-ICEEU-2021-002]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Price Submission Disciplinary Framework

February 11, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 2, 2021, ICE Clear Europe Limited filed with the Securities and Exchange 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 modify its Price Submission Disciplinary Framework (to be renamed the “Price Submission Disciplinary Procedure”, referred to herein as the “Procedure”) to update the review period for the Clearing House when investigating missed price submissions, permit an annual one-time waiver available to Clearing Members in respect of any instance in which a Clearing Member has failed to timely provide submissions for which they hold cleared open interest with the Clearing House (a “Missed Submission”). ICE Clear Europe is also proposing to modify provisions relating to governance and exception handling to conform to other Clearing House procedures and remove unnecessary appendices and make certain other updates and clarifications as discussed herein.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries,

set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend its Price Submission Disciplinary Procedure to: (i) Remove the description of the End of Day Price Discovery Process as unnecessary since it is set forth in the existing CDS End of Day Price Discovery Policy; (ii) update the process in respect of Missed Submissions to provide that (a) a Clearing Member may be granted one waiver per product class in a calendar year for a Missed Submission, rather than one waiver over the course of the clearing membership, and (b) the Clearing House has an additional five days to review a Clearing Member’s response to an initial Notice of Investigation under Rule 1002(b) before sending the subsequent Letter of Mindedness under Rule 1002(f); (iii) update governance and exception handling provisions; and (iv) make various drafting clarifications and improvements.

General Drafting Clarifications and Improvements

By way of general drafting clarifications and improvements, the document title would be changed from “Price Submission Disciplinary Framework” to “Price Submission Disciplinary Procedure”. Former Section 2.2 (End of Day Price Discovery Process) and Appendix A would be removed as these matters are covered in the existing CDS End Of Day Price Discovery Policy (the “Policy”), and current Section 2.3 would be renumbered 2.2. A cross-reference to the Policy would be added to Section 1.1. To aid with readability, the term “CDS Clearing Member” would be shortened to “CM” throughout the Procedure and several sentences would be shortened or reformulated with [sic] change to their substantive meanings. References to CDX products would be replaced by references to CDX indices, a more precise term. A reference to Markit Group Limited would be updated to its current name IHS Markit.

Price Submission Disciplinary Procedure

The stated purpose of the Procedure would be simplified and clarified to provide that the document outlines the procedure to be used internally by ICE Clear Europe when taking disciplinary

action in relation to price submissions. The statement that spread submissions will be counted as Missed Submissions would be replaced by a statement that submissions not adhering to the format described in Section 2.2.3 of the End of Day Price Discovery Policy, which requires index submissions to follow market convention in terms of providing prices as spreads, and be either midpoint or bid-offer, will be counted as Missed Submissions. The legal basis description would be amended to include a cross reference to Rule 503(g), rather than restate the text of Rule 503(g).

Price Submission Incentives

In this section, a cross-reference to the deleted section 2.2 would be removed. Certain non-substantive drafting clarifications would be made to the discussion of Obvious Errors.

Fixed Cash Assessments for Missed Submissions

The amendments would provide that a CM in receipt of a Notice of Investigation issued in respect of an alleged Missed Submission will have five days to submit written comments. The amendments would provide for an additional five days for the Clearing House to review the Clearing Member’s comments before sending a Letter of Mindedness under Rule 1002(f). Such amendment would improve the process by affording the Clearing Member an opportunity to respond to the initial notice and giving the Clearing House time to assess the Clearing Member’s response before determining whether to take further action under the Rules.

The amendments would also change the process for waiver of Missed Submissions (if a waiver is granted, no assessment would be due for the Missed Submission). Rather than a Clearing Member receiving one waiver over the course of its clearing membership for a Missed Submission, a Clearing Member would be eligible for one waiver per calendar year for Missed Submissions for single-name products and one waiver per calendar year for Missed Submissions for index products. Waivers would be limited to Missed Submissions caused by technical failures. The Clearing Members would be required to provide an adequate written explanation of the technical failure and summary of planned remedial actions. Only the first instance of a Missed Submission for the product category in any calendar year will be eligible for a waiver.

Following the expiry of the ten day period from the Issuance of a Letter of Mindedness with respect to a Missed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Submission, where an assessment amount would be collected, a cash assessment notice would be issued, which would be calculated according to the cash assessment calculation details provided in the procedure.

The amendments would also clarify the procedures by which a Clearing Member may assert that one or more Missed Submissions were due to extraordinary circumstances outside of its control, including to provide that the Head of Regulation and Compliance will determine whether such circumstances apply.

Based on its experience with Missed Submissions, ICE Clear Europe believes the revised approach to waivers strikes a better balance than the current, one-time waiver, between the need for robust submissions under the Policy and the goal of not unnecessarily penalizing Clearing Members for technical failures.

Document Governance and Exception Handling

The amendments would include detail with respect to the governance and exception handling of the Procedure. Specifically, the Procedure would state that the document owner is responsible for ensuring that the Procedure remains up-to-date and is reviewed in accordance with the Clearing House's governance processes. The Procedure would further provide that the document owner is to report material breaches or unapproved deviations from the Procedure to the document owner's Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who together will determine if further escalation is required. Finally, exceptions to the Procedure would be approved in accordance with the Clearing House's governance process for the Procedure. The approach to governance and exception handling is consistent with that of other ICE Clear Europe procedures.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Price Submission Disciplinary Procedure are consistent with the requirements of Section 17A of the Act³ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁴ 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 proposed changes to the Price Submission Disciplinary Procedure are designed to strengthen ICE Clear Europe's arrangements and disciplinary procedures for managing Missed Submissions by Clearing Members and the relevant disciplinary procedures. The amendments provide an opportunity for a Clearing Member that has received a Notice of Investigation to provide comments, and for the Clearing House to review those comments before proceeding with disciplinary procedures. The amendments would also increase the Clearing House's ability to provide a limited number of waivers for Missed Submissions from technical failures, from one waiver over the course of the clearing membership to one waiver per product class in a calendar year. The other proposed clarifications and changes to the Procedure enhance readability and ensure that the Procedure remains clear and up-to-date. In ICE Clear Europe's view, the amendments will thus enhance the overall End of Day Price Submission process and the quality of submissions, which in turn supports the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. The enhanced risk management is therefore also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. (ICE Clear Europe would not expect the amendments to affect 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).⁵

In addition, in ICE Clear Europe's view, the amended Procedure, like the current framework, would provide an appropriately tailored set of cash assessments for Missed Submissions, and waivers thereof, in light of the importance of end-of-day price submissions to the Clearing House's risk management and settlement procedures. The Procedure is thus consistent with the requirements of Section 17A(b)(3)(G) of the Act.⁶ The amendments also enhance the procedures for investing [sic] potential Missed Submissions, and for Clearing Members to submit

comments with respect to investigations. In ICE Clear Europe's view, this aspect of the Procedure is consistent with the requirements of Section 17A(b)(3)(H) of the Act.⁷

In addition, ICE Clear Europe believes the amendments satisfy Rule 17Ad-22(e)(3)(i),⁸ which requires the covered clearing agency to 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 include risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency. The proposed amendments are intended to strengthen the End of Day Price Discovery Process by clarifying disciplinary procedures for Missed Submissions and the process for waivers. The inclusion of an opportunity for a Clearing Member's response to an initial Notice of Investigation, and an opportunity for the Clearing House to review the response will better ensure that the Clearing House has sufficient time and information to assess a Clearing Member's formal response in respect of a Missed Submission before determining whether to take further action under the Rules. ICE Clear Europe believes that the amendments to the Procedure are therefore consistent with the requirements of Rule 17Ad-22(e)(3)(i).⁹

Rule 17Ad-22(e)(2)¹⁰ requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The proposed amendments to the Procedure more clearly define the roles and responsibilities of the document owner, the Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates), consistent with governance arrangements for other ICE Clear Europe policies and procedures. ICE Clear Europe believes that the amendments to the Procedure are therefore consistent with the requirements of Rule 17Ad-22(e)(2).¹¹

³ 15 U.S.C. 78q-1.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ Id.

⁶ 17 CFR 240.17Ad-22(e)(3)(i).

⁷ Id.

⁸ 17 CFR 240.17Ad-22(e)(2).

⁹ Id.

¹⁰ Id.

¹¹ Id.

³ 15 U.S.C. 78q-1.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78q-1(b)(3)(G).

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

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update and clarify the Price Submission Disciplinary Procedure and would apply equally to all CDS Clearing Members. As a result, ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise impact competition among Clearing Members or other market participants or limit market participants' choices for selecting clearing services. Accordingly, ICE Clear Europe does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose 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 the 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, security-based swap submission or advance notice 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-2021-002 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-2021-002. 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/notices/Notices.shtml?regulatoryFilings>.

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-2021-002 and should be submitted on or before March 11, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91116; File No. SR-CBOE-2020-050]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend Rules 5.37 and 5.73 Related to the Solicitation of Market Makers for SPX Initiating Orders in the Automated Improvement Mechanism and FLEX Automated Improvement Mechanism

February 11, 2021.

I. Introduction

On June 3, 2020, Cboe Exchange, Inc. ("Exchange" or "Cboe") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to permit orders for the accounts of market makers with an appointment in S&P 500® Index Options ("SPX") to be solicited for the initiating order submitted for execution against an agency order into an Automated Improvement Mechanism ("AIM") auction or a FLEX AIM auction. The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.³ On July 2, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.⁴ On July 22, 2020, the Exchange submitted

¹² 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. 89062 (June 12, 2020), 85 FR 36907. Comments received on the proposed rule change are available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-050/sr-cboe2020050.htm>.

⁴ In Amendment No. 1, the Exchange: (1) Limited the scope of its original proposal, which would have permitted orders for the accounts of market makers with an appointment in any class to be solicited for the initiating order in an AIM or FLEX AIM auction in that class, to only allow market makers with an appointment in SPX to be solicited for the initiating order in an AIM or FLEX AIM auction in SPX; and (2) provided additional data, justification, and support for its modified proposal. The full text of Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-050/sr-cboe2020050-7382058-218888.pdf>.