

that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85229; File No. 4-546]

### Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add MIAX Emerald, LLC, as a Participant

March 1, 2019.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on February 14, 2019, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an amendment to the Options Order Protection and Locked/Crossed Market Plan ("Plan").<sup>3</sup> The amendment adds MIAX Emerald as a

Participant<sup>4</sup> to the Plan. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

### I. Description and Purpose of the Amendment

The Plan requires the options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The amendment to the Plan adds MIAX Emerald as a Participant. The other Plan Participants are BATS, BOX, BX, C2, CBOE, EDGX, ISE, ISE Gemini, ISE Mercury, MIAX, Nasdaq, Pearl, Phlx, NYSE MKT, and NYSE Arca. MIAX Emerald has submitted an executed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically, Section 3(c) of the Plan provides that an Eligible Exchange<sup>5</sup> may become a Participant in the Plan by: (i) Executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; and (iii) effecting an amendment to the Plan, as specified in Section 4(b) of the Plan.<sup>6</sup>

Section 4(b) of the Plan sets forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) Execute a copy of the Plan with the only change being the addition of the new Participant's name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is

approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

### II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii)<sup>7</sup> because it has been designated by the sponsors as involving solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,<sup>8</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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](mailto:rule-comments@sec.gov). Please include File Number 4-546 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 4-546. This file number should be included on the subject line if email is used. 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

<sup>1</sup> 15 U.S.C. 78k-1(a)(3).

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> On July 30, 2009, the Commission approved the Plan, which was proposed by Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange, LLC ("ISE"), The NASDAQ Stock Market LLC ("Nasdaq"), NASDAQ OMX BX, Inc. ("BX"), NASDAQ OMX PHLX, Inc. ("Phlx"), NYSE Amex, LLC ("NYSE Amex"), and NYSE Arca, Inc. ("NYSE Arca"). See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009). See also Securities Exchange Act Release No. 61546 (February 19, 2010), 75 FR 8762 (February 25, 2010) (adding BATS Exchange, Inc. ("BATS") as a Participant); 63119 (October 15, 2010), 75 FR 65536 (October 25, 2010) (adding C2 Options Exchange, Incorporated ("C2") as a Participant); 66969 (May 12, 2015), 77 FR 29396 (May 17, 2012) (adding BOX Options Exchange LLC ("BOX Options") as a Participant); 70763 (October 28, 2013), 78 FR 65734 (November, 2013) (adding Topaz Exchange, LLC ("Topaz") as a Participant); 70762 (October 28, 2013), 78 FR 65733 (November 1, 2013) (adding MIAX International Securities Exchange, LLC ("MIAX") as a Participant); 76823 (January 5, 2016), 81 FR 1260 (January 11, 2016) (adding EDGX Exchange, Inc. ("EDGX") as a Participant); 77324 (March 8, 2016), 81 FR 13425 (March 14, 2016) (adding ISE MERCURY, LLC ("ISE Mercury") as a Participant); 79896 (January 30, 2017), 82 FR 9264 (February 3, 2017) (adding MIAX Pearl "Pearl") as a Participant).

<sup>4</sup> The term "Participant" is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

<sup>5</sup> Section 2(6) of the Plan defines an "Eligible Exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) Is a "Participant Exchange" in the Options Clearing Corporation ("OCC") (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority ("OPRA") Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become part to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. MIAX Emerald has represented that it has met the requirements for being considered an Eligible Exchange. See letter from Barbara Comly, Executive Vice President, General Counsel, and Corporate Secretary, MIAX Emerald, to Brent J. Fields, Secretary, Commission, dated February 13, 2019 ("Amendment").

<sup>6</sup> MIAX Emerald has represented that it has executed a copy of the current Plan, amended to include MIAX Emerald as a Participant and has sent each current Participant a copy of the executed Plan. See Amendment, *supra* note 5.

<sup>7</sup> 17 CFR 242.608(b)(3)(iii).

<sup>8</sup> 17 CFR 242.608(a)(1).

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 20549-1090 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 4-546 and should be submitted on or before March 28, 2019.

By the Commission.

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85236; File No. SR-ICEEU-2018-010]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICE Clear Europe CDS Risk Policy (the "CDS Risk Policy"), CDS Clearing Back-Testing Policy (the "Back-Testing Policy") and CDS Stress-Testing Policy (the "Stress-Testing Policy") (Collectively, the "CDS Policies")

March 1, 2019.

#### I. Introduction

On November 13, 2018, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify and update certain provisions of its risk policies related to CDS Contracts. The proposed rule change was published for comment in the **Federal Register** on December 4, 2018.<sup>3</sup> On December 26, 2018, the

Commission extended the period to take action on the proposed rule change to March 4, 2019.<sup>4</sup> The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description of the Proposed Rule Change

##### A. CDS Risk Policy

The proposed rule change would incorporate into the CDS Risk Policy a description of ICE Clear Europe's overall Board risk appetite and limit framework.<sup>5</sup> Currently the CDS Risk Policy does not reference the framework, but other ICE Clear Europe policies, including the Stress-Testing Policy, reference the framework. The description of the framework that the proposed rule change would add to the CDS Risk Policy would be consistent with the description of the framework that other ICE Clear Europe policies, including the Stress-Testing Policy, use. As described in the proposed change to the CDS Risk Policy, the framework would use Board-level risk appetite statements, risk appetite metrics, and management risk limits, and would be subject to review at least annually.<sup>6</sup> The proposed rule change would add description of the framework to the CDS Risk Policy to make clear that the CDS Risk Policy is part of ICE Clear Europe's overall risk management.

The proposed rule change would specifically address periodic reviews of margin requirements and the related margin methodology and parameters. Currently, the CDS Risk Policy provides that ICE Clear Europe conducts a statistical analysis of the margin levels and market performance on at least a monthly basis. Similarly, under the proposed revised policy, the clearing risk department would be required to perform such a review at least monthly, consistent with applicable legal requirements.<sup>7</sup>

The proposed rule change would provide additional detail about the use of the results of such reviews by ICE Clear Europe management. Specifically, under the proposed rule change, the head of first line clearing risk would present the results of the monthly review to ICE Clear Europe's Model Oversight Committee ("MOC").<sup>8</sup> The

head of first line clearing risk would report to the President of ICE Clear Europe and would manage ICE Clear Europe's first line clearing risk team including default management, liquidity risk, market risk and counterparty risk. Moreover, the proposed rule change would provide that at the end of each quarter, the Clearing Risk Department would share its monthly reviews from the quarter with the Risk Oversight Department ("ROD"), which would perform a second-line review. The head of second line clearing risk then would present the results of this quarterly review to the MOC. The head of second line clearing risk would be ICE Clear Europe's Chief Risk Officer and would report to the President and the senior independent director of ICE Clear Europe.<sup>9</sup> The CDS Risk Policy currently provides only that the Risk Management Department recommends margin methodology changes to the President and Board of Directors of ICE Clear Europe for their approval. Thus, the proposed rule change would provide more explanation regarding ICE Clear Europe's use of the monthly reviews of margin levels.

The proposed amendments would also clarify that the Clearing Risk Department would recommend proposed margin methodology changes resulting from the review process to the Board for approval. Currently, the CDS Risk Policy provides that the ICE Clear Europe Risk Management Department recommends margin methodology changes to the President and the Board for their approval. Thus, this proposed change would update the name of the responsible ICE Clear Europe department from Risk Management Department to Clearing Risk Department. Moreover, this proposed change would eliminate a redundancy in providing that ICE Clear Europe's Board alone shall approve margin methodology changes. Because ICE Clear Europe's President also serves on the Board, it would not be necessary for both the President and the Board to separately approve margin methodology changes.<sup>10</sup>

The proposed rule change would specify in further detail the timing and extent of backtesting and stress testing.<sup>11</sup> Currently, the CDS Risk Policy provides that ICE Clear Europe conducts backtesting on a daily basis, but the Policy does not specify that ICE Clear Europe uses standard predetermined

<sup>4</sup> Securities Exchange Act Release No. 84957 (Dec. 26, 2018), 84 FR 855 (Jan. 31, 2019) (SR-ICEEU-2018-010).

<sup>5</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the CDS Policies or ICE Clear Europe Rulebook.

<sup>6</sup> Notice, 83 FR at 62638.

<sup>7</sup> See 17 CFR 240.17Ad-22(e)(6)(vi).

<sup>8</sup> Notice, 83 FR at 62638.

<sup>9</sup> *Id.*

<sup>10</sup> See [https://www.theice.com/publicdocs/clear\\_europe/Organisational\\_Structure\\_Objectives\\_Strategy.pdf](https://www.theice.com/publicdocs/clear_europe/Organisational_Structure_Objectives_Strategy.pdf).

<sup>11</sup> Notice, 83 FR at 62638.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 84667 (Nov. 28, 2018), 83 FR 62638 (Dec. 4, 2018) (SR-ICEEU-2018-010) ("Notice").