SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83836; File No. SR–NYSE–2018–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Require Certain Member Organizations To Participate in Scheduled Market-Wide Circuit Breaker Testing

August 13, 2018.

I. Introduction

On June 26, 2018, New York Stock Exchange LLC (''Exchange'' or ''NYSE'') 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 require certain member organizations to participate in scheduled market-wide circuit breaker testing. On July 5, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which supersedes the original filing in its entirety.[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on July 11, 2018.[4] The Commission has received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 49 to require certain member organizations to participate in scheduled Market-Wide Circuit Breaker (''MWCB'') testing.[5]

The Securities Information Processors (''SIPs'') for the U.S. equity markets have established a quarterly MWCB testing schedule.[6] On the scheduled dates, the Consolidated Tape Association Plan (''CTA Plan'') and the Consolidated Quotation Plan (''CQ'' Plan'') (collectively ''the CTA/CQ Plans''),[7] along with the Nasdaq/UTP Plan,[8] conduct MWCB testing that allows market participants across the securities industry to test their ability to receive messages associated with MWCBs, including decline status, halt, and resume messages. Market participants are also able to participate in testing of re-opening auctions following market-wide circuit breaker halts.

The Exchange states that quarterly MWCB testing is critical to ensure that securities markets halt trading and subsequently re-open in a manner consistent with the MWCB rules.[9] To that end, the Exchange states that certain member organizations should be required to participate in scheduled MWCB tests. The proposed rule would provide the Exchange with authority to require participation by certain member organizations in industry-wide tests to validate that their processing in the event of MWCB is as expected within their systems.

The Exchange also proposes new Rule 49(c)(1), which would provide that each member organization notified of its obligation to participate in mandatory testing pursuant to standards established under paragraphs (b)(1) and (3) of Rule 49 [10] would also be required to participate in scheduled MWCB testing in the manner and frequency specified by the Exchange. The Exchange proposes that future SCI Notices would also include notification to member organizations of their obligation to participate in a scheduled MWCB test.[11]

Finally, proposed Rule 49(c)(2) would provide that member organizations not required to participate in a scheduled MWCB test pursuant to standards established in paragraphs (b)(1) and (3) of Rule 49 would be permitted to participate in a scheduled MWCB test.

The Exchange proposes to implement the proposed rule change at the same time that the Exchange notifies member organizations of required participation in the 2019 Regulation SCI industry test.[12] The 2019 SCI Notice would identify the member organizations that would be required to participate in scheduled MWCB testing. Member organizations notified in the 2019 SCI Notice of their obligation to participate in a scheduled MWCB test would be required to participate in that test on at least one of the testing dates established by the SIPs.[13]

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed to improve the clarity of the proposal and elaborate on the Exchange's statement on burden on competition. *See* Letter from Martha Redding, Associate General Counsel, NYSE, to Brent J. Fields, Secretary, Commission (Jul. 9, 2018), *available at https://www.sec.gov/comments/sr-nyse-2018-31/nyse201831-4016966-167312.pdf.*

[4] *See* Securities Exchange Act Release No. 83601 (Jul. 6, 2018), 83 FR 32172 (Jul. 11, 2018) (''Notice'').

[5] The securities and futures exchanges have procedures for coordinated cross-market trading halts if a severe market price decline reaches levels that may exhaust market liquidity. These procedures, known as market-wide circuit breakers, may halt trading temporarily or, under extreme circumstances, close the markets before the normal close of the trading session. Market-wide circuit breakers provide for cross-market trading halts during a severe market decline as measured by a single-day decrease in the S&P 500 Index. A cross-market trading halt can be triggered at three circuit-breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). These triggers are set by the markets at levels that are calculated daily based on the prior day's closing price of the S&P 500 Index.

[6] *See, e.g., https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTS_CQS%202018_Failover%20Testing_Q1.pdf; https://www.nasdaqtrader.com/TraderNews.aspx?id=utp2017-15.*

[7] The CTA/CQ Plans govern the collection, consolidation, processing, and dissemination of last sale and quotation information for Network A and Network B securities. Network A refers to securities listed on NYSE and Network B refers to securities listed on exchanges other than the Nasdaq Stock Market LLC (''Nasdaq'').

[8] The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan'') governs the collection, consolidation, processing, and dissemination of last sale and quotation information for Network C securities. Network C refers to securities listed on Nasdaq.

[9] Pursuant to NYSE Rule 80B (Trading Halts Due to Extraordinary Market Volatility), a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit-breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 circuit breaker after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 circuit breaker, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

[10] In 2015, the Exchange adopted rules to require certain member organizations to participate in testing of the operation of the Exchange's business continuity and disaster recovery plans in connection with Regulation Systems Compliance and Integrity (''Regulation SCI''). Paragraph (b)(1) of Rule 49 establishes standards for the designation by the Exchange of member organizations that are necessary to participate in business continuity and disaster recovery plans testing pursuant to Regulation SCI. *See* Securities Exchange Act Release No. 76346 (Nov. 4, 2015), 80 FR 69765 (Nov. 10, 2015). The Exchange believes that, because member organizations required to participate in Regulation SCI testing have already been identified as essential for the maintenance of a fair and orderly market, these same member organizations should also be required to participate in scheduled MWCB testing. *See* Notice, *supra* note 4, 83 FR at 32173.

[11] The Exchange states that the annual Regulation SCI test is currently conducted in October of each calendar year and that it provides at least (3) months advance notice to member organizations that are required to participate in such SCI testing (''SCI Notice'').

[12] The Exchange states that member organizations were notified in April 2018 of their required participation in the Regulation SCI testing scheduled for October 13, 2018. The Exchange notes that, while it encourages all member organizations to participate in MWCB testing voluntarily, implementing the new rule in 2019 would provide member organizations with sufficient time to prepare for a scheduled MWCB test. *See* Notice, *supra* note 4, 83 FR at 32173 n. 8.

[13] *See supra,* note 6 and accompanying text.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and that the rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(8) of the Act,[16] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, the Commission has received no comment letters addressing the proposed rule change.

The Commission believes that amending NYSE Rule 49 to require certain member organizations to participate in scheduled MWCB testing would enable the Exchange, participating member organizations, and others to assess the readiness of participating member organizations to respond in the event of unanticipated market volatility. Member organizations required to participate in MWCB testing pursuant to the proposal would be designated as such using the same standards used by the Exchange in determining which member organizations are subject to mandatory Regulation SCI testing. Because these member organizations have been designated by the Exchange as essential to the maintenance of a fair and orderly market, their demonstrated ability to halt and subsequently re-open trading in a manner consistent with the MWCB rules should contribute to the fairness and orderliness of the market for the benefit of all market participants. The Commission therefore believes that the proposal, as modified by Amendment No. 1, is designed to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and to protect investors and the public interest.

Accordingly, for the reasons discussed above, the Commission believes that the Exchange's proposal, as modified by Amendment No. 1, is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–2018–31), as modified by Amendment No.1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17743 Filed 8–16–18; 8:45 am]

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[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83832; File No. SR–ICC–2018–006]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating To Amending the ICC Clearing Rules Regarding Mark-to-Market Margin

August 13, 2018.

I. Introduction

On June 13, 2018, ICE Clear Credit LLC (''ICC'') 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 amend the ICC Clearing Rules (the ''ICC Rules'') [3] to more clearly characterize Mark-to-Market Margin payments as settled-to-market rather than collateralized-to-market. The proposed rule change was published in the **Federal Register** on June 29, 2018.[4] The Commission has not received any comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

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

[2] 17 CFR 240.19b–4.

[3] *Available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf.* Capitalized terms used herein but not otherwise defined have the meaning set forth in the ICC Rules.

II. Description of the Proposed Rule Change

The proposed rule change would revise Chapters 4, 8, and 20 of the ICC Rules to more clearly characterize Mark-to-Market Margin payments as settlement payments (''settled-to-market'') rather than collateral (''collateralized-to-market'').[5] The proposed rule change would not change the manner in which Mark-to-Market Margin is calculated, or other current ICC operational practices.[6] Rather, the proposed rule change would revise terminology to further clarify the legal characterization that payments of Mark-to-Market Margin represent settlement rather than collateral payments.[7] ICC states that these clarifying changes are the result of ICC's analysis of the legal characterization of Mark-to-Market Margin payments, at the request of its Clearing Participants (''CPs'').[8]

The proposed rule change would revise Rule 401 to reference Mark-to-Market Margin Balance, a new term that is defined in Rule 404 to mean the aggregate amount of Mark-to-Market Margin paid or received.[9] The new definition would be used in several calculations to describe specifics pertaining to the Mark-to-Market Margin calculation.[10] For example, the proposed rule change would amend Rule 401(a), which governs House Margin, to state that ICC calculates a net amount of Mark-to-Market Margin by subtracting a CP's Mark-to-Market Margin Balance from a CP's Mark-to-Market Margin Requirement.[11] The proposed rule change would make corresponding changes to reference

[4] Securities Exchange Act Release No. 34–83513 (June 25, 2018), 83 FR 30802 (June 29, 2018) (SR–ICC–2018–006) (''Notice'').

[5] Under the settled-to-market model, the transfer of Mark-to-Market Margin constitutes a settlement of the contract's outstanding exposure, with the receiving party taking outright title to the Mark-to-Market Margin and the transferring party retaining no rights to such margin. Under the collateralized-to-market model, the transfer of Mark-to-Market Margin constitutes a pledge of collateral, such that the transferring party has a right to reclaim the collateral and the receiving party has an obligation to return the collateral. For further explanation of the settled-to-market model and collateralized-to-market model, *see* Notice, 83 FR at 30803.

[6] Notice, 83 FR at 30803.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Notice, 83 FR at 30803.