

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-BOX-2019-04 and should be submitted on or before March 11, 2019. Rebuttal comments should be submitted by March 18, 2019.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>59</sup> that File Number SR-BOX-2019-04 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>60</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85187; File No. SR-ICEEU-2019-002]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

February 25, 2019.

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> notice is hereby given that on February 15, 2019, 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 by ICE Clear

Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(4)(ii) thereunder,<sup>4</sup> so that the proposal was immediately effective upon filing. 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 to [sic] add delivery terms relating to the ICE Futures Europe ("ICE Futures Europe" or "IFEU") Permian West Texas Intermediate Crude Oil Storage Futures Contracts (the "Contracts").<sup>5</sup>

#### 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 amending its Delivery Procedures to add a new Section 10 and a new Part DD regarding delivery procedures relating to a new Contract that will be traded on ICE Futures Europe and cleared by ICE Clear Europe.

New Part DD sets out the delivery specifications and procedures for deliveries of storage capacity under the Contract. Delivery is effected by Magellan Crude Oil Pipeline Company, L.P. ("Magellan") providing to the buyer a Capacity Allocation Contract ("CAC")<sup>6</sup> for storage of one or more increments of 1,000 barrels of Permian West Texas Intermediate crude oil for a

named calendar month at Magellan's East Houston terminal ("MEH"). The amendments also establish standards for the storage provided, as well as relevant procedures for exchange of futures for physical transactions under exchange rules.

Part DD addresses certain the responsibilities of the Clearing House and relevant parties for delivery under the Contracts, supplementing the existing provisions of the Rules. Specifically, neither the Clearing House nor ICE Futures Europe are responsible for the performance of Magellan or any person operating MEH, nor do they give any undertaking or warranty to any person as to the effect of the Contract Terms and Delivery Procedures as regards title to Permian WTI Storage. Further, neither the Clearing House nor ICE Futures Europe will have any liability for the condition of the Magellan storage system or for the performance by Magellan or any person who operates such system of any responsibilities they may assume towards Clearing Members or other persons pursuant to the Contract Terms, except for liability for fraud or bad faith or liability which cannot lawfully be excluded. Neither the Clearing House nor ICE Futures Europe has any obligation to any person to ensure the accuracy or availability of any information in Magellan's records in relation to storage rights arising from CACs in relation to Permian WTI Storage.

Part DD addresses delivery margin and invoicing with respect to the Contract and specifies certain details of the delivery process. Delivery of Contracts will be based on open contract positions at the close of trading on the last trading day for which physical delivery is specified. The procedures include a detailed timeframe for relevant notices of intent to deliver or receive, nominations of parties to delivery or receive, delivery confirmations, invoicing, release of delivery margin following completion of delivery and other matters.

New Section 10 addresses alternative delivery procedures (ADP) that the parties to a Contract may agree in lieu of the standard delivery arrangements in Part DD and relevant exchange rules. Section 10 addresses procedures for requesting such an alternative arrangement, disclosure of the counterparty (if amenable to an alternative arrangement), and confirmation and settlement of the alternative arrangement.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>5</sup> Capitalized terms used but not defined herein have the meaning specified in the ICE Clear Europe Clearing Rules (the "Rules").

<sup>6</sup> This is a standardized agreement between Magellan and a buyer providing the contractual right to use designated Permian WTI Storage in the delivery month as further detailed in the Permian WTI Storage Contract.

<sup>59</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>60</sup> 17 CFR 200.30-3(a)(12), (57), and (58).

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

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

## (b) Statutory Basis

Section 17A(b)(3)(F) of the Act<sup>7</sup> 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 amendments are designed to facilitate the clearing of a new physically settled crude oil storage futures contract that is being launched for trading by the ICE Futures Europe exchange. The amendments set out the obligations and roles of Clearing Members, the Clearing House and Magellan, the relevant storage facility for purposes of the Contracts. ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such products (and to address physical delivery under such contracts) and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments will be consistent with the prompt and accurate clearance and settlement of the Contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.<sup>8</sup> In ICE Clear Europe's view, the amendments will not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).<sup>9</sup>

In addition, Rule 17Ad-22(e)(10)<sup>10</sup> requires that each covered clearing agency establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries. As discussed above, the amendments to the Delivery Procedures to allow for the delivery and settlement under the Contracts, taken together with the Rules and ICE Futures Europe exchange contract terms, set out the obligations and roles of Clearing Members, the Clearing House and Magellan, the relevant storage facility for purposes of the Contracts. The

amendments also adopt relevant procedures for such deliveries, which will facilitate identifying, monitoring and managing risks associated with delivery.

*(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 purposes of the Act. The changes are being proposed in order to update the Delivery Procedures in connection with the listing of the Contracts for trading on the ICE Futures Europe market. ICE Clear Europe believes that such contracts will provide opportunities for interested market participants to engage in trading activity in the Permian WTI storage market. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in Contracts for Clearing Members or their customers, or otherwise adversely affect competition in 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 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 comments received with respect to the proposed amendments.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4<sup>12</sup> 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.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2019-002 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-2019-002. 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/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-2019-002 and should be submitted on or before March 22, 2019.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 17 CFR 240.17Ad-22(e)(10).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85189; File No. 4-678]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving Proposed Amended Plan for the Allocation of Regulatory Responsibilities Among the Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, MIAx PEARL, LLC, and MIAx Emerald, LLC

February 25, 2019.

On December 20, 2018, Miami International Securities Exchange, LLC (“MIAx”), MIAx PEARL, LLC (“MIAx PEARL”), MIAx Emerald, LLC (“MIAx Emerald”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”) (together, the “Parties”) filed with the Securities and Exchange Commission (“Commission”) a plan for the allocation of regulatory responsibilities, dated December 19, 2018 (“Amended 17d-2 Plan” or the “Amended Plan”). The Amended Plan was published for comment on February 1, 2019.<sup>1</sup> The Commission received no comments on the Amended Plan. This order approves and declares effective the Amended Plan.

#### I. Introduction

Section 19(g)(1) of the Act,<sup>2</sup> among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.<sup>3</sup> Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory

duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act<sup>4</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>5</sup> With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>6</sup> Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.<sup>7</sup> When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.<sup>8</sup> Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the

SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

#### II. Proposed Amended Plan

On November 19, 2014, the Commission declared effective the Plan entered into between FINRA and MIAx for allocating regulatory responsibility pursuant to Rule 17d-2.<sup>9</sup> The Plan is intended to reduce regulatory duplication for firms that are common members of both MIAx and FINRA. The plan reduces regulatory duplication for firms that are members of MIAx and FINRA by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations. Included in the Amended Plan is an exhibit that lists every MIAx rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to MIAx members that are also members of FINRA and the associated persons therewith (“Certification”). On February 6, 2017, the Commission approved a proposed amendment to the Plan to add MIAx PEARL as a Participant to the Plan.<sup>10</sup> On July 24, 2018, the Commission approved a proposed amendment to the Plan to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act, as well as certain provisions of Regulation SHO.<sup>11</sup> On December 20, 2018, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MIAx Emerald as a Participant to the Plan.

#### III. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act<sup>12</sup> and Rule 17d-2(c) thereunder<sup>13</sup> in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and

<sup>4</sup> 15 U.S.C. 78q(d)(1).

<sup>5</sup> See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

<sup>6</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

<sup>7</sup> See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

<sup>8</sup> See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

<sup>9</sup> See Securities Exchange Act Release No. 73641 (November 19, 2014), 79 FR 70230 (November 25, 2014).

<sup>10</sup> See Securities Exchange Act Release No. 79974 (February 6, 2017), 82 FR 10417 (February 10, 2017).

<sup>11</sup> See Securities Exchange Act Release No. 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018).

<sup>12</sup> 15 U.S.C. 78q(d).

<sup>13</sup> 17 CFR 240.17d-2(c).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See Securities Exchange Act Release No. 84997 (January 29, 2019), 84 FR 1252.

<sup>2</sup> 15 U.S.C. 78s(g)(1).

<sup>3</sup> 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.