

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As discussed herein, this growth investor protection concerns need to be reevaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on 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 Exchange 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-072 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-CboeBZX-2023-072. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2023-072 and should be submitted on or before October 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁷

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98570; File No. SR-ICEEU-2023-019]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the Model Risk Policy

September 27, 2023.

I. Introduction

On August 4, 2023, ICE Clear Europe Limited ("ICE Clear Europe" or "the Clearing House") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4,² a proposed rule change to amend its Model Risk Policy (the "Policy"). The proposed rule change was published for comment in the **Federal Register** on August 21, 2023.³ The Commission did not receive comments regarding 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. Background

ICE Clear Europe is registered with the Commission as a clearing agency for the purpose of clearing security-based swaps. In its role as a clearing agency for security-based swaps, ICE Clear Europe maintains the Policy. The purpose of the Policy is to establish standards and principles for managing and mitigating the impact to ICE Clear Europe's business caused by model error, model failure or inappropriate model use.

The proposed rule change would make updates and amendments to the Policy. ICE Clear Europe is making these changes to implement the results of internal and external reviews of the Policy. The Policy has five sections that

⁷⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the Model Risk Policy, Exchange Act Release No. 98138 (August 15, 2023); 88 FR 56901 (August 21, 2023) (SR-ICEEU-2023-019) ("Notice").

address (1) the Purpose of the Policy, (2) Definitions, (3) Model Risk Governance, (4) Document Governance and Exception Handling, and (5) Version History. ICE Clear Europe proposes amendments to all five sections except for Document Governance and Exception Handling. ICE Clear Europe also proposes to update the Version History section to reflect these changes.

B. Purpose of the Policy

Section 1, “Purpose,” addresses the purpose, scope, and architecture of the Policy. In this section and throughout the Policy, ICE Clear Europe proposes to replace references to “Framework” with “Policy” and to include new language to expand the scope of the Policy to include risk frameworks used to quantify, aggregate, and manage the risks of the Clearing House. The amendments would further add language to clarify that references to “model” in the rest of the document would refer to both models and risk frameworks.

Section 1 also lists certain components that support the Policy. For example, ICE Clear Europe’s model inventory, schedule for model validations, and schedule for remediation of validation findings all support the Policy. The amendments would further add language to include on this list of supporting components guidelines for remediation of validation findings.

C. Definitions

Section 2, “Definitions,” describes in detail certain concepts that are used throughout the Policy, such as the meaning of the terms model and model risk, as well as the materiality of models, and significance of model changes. ICE Clear Europe proposes to amend the discussion of significance of model changes. The Policy currently states that only model changes are categorized into significant and not significant. ICE Clear Europe proposes to modify the Policy so that changes to both models and parameters, not just models, would be categorized as significant and not significant.

With respect to changes in parameters, ICE Clear Europe would further categorize these changes as Business as Usual (“BAU”) or non-BAU. Changes considered BAU would be defined as changes in the parameters resulting from the application of existing methodologies as part of a regular review or calibration exercise. Non-BAU changes would refer to all other changes. The amendments would clarify that the definition of BAU would

be in accordance with existing regulatory guidelines.

Finally, the amendments would also update a footnote to remove a reference to a specific European Securities and Markets Authority opinion as providing the criteria defining model change significance. This footnote would be revised to state more generally that the criteria will be in accordance with prevailing regulatory opinions, guidelines, or requirements.

D. Model Risk Governance

Within Section 3, “Model Risk Governance,” ICE Clear Europe proposes to make amendments to the governance and responsibilities and model risk management subsections. In the governance and responsibilities subsection, the amendments would update the responsibilities of the Board of Directors (“Board”). Currently, the Board has several responsibilities, such as reviewing actions of the Model Oversight Committee and approving new material models and significant model changes for material models. The amendments would add to those responsibilities a new requirement for the Board to approve significant non-BAU changes to risk parameters.

The amendments would also add a footnote explaining the reasoning for the new responsibility. The footnote would state that the Auto Pilot versus Production deviations⁴ beyond BAU thresholds will generally follow a similar governance process to that for changes in parameters, but given that these deviations are usually time-sensitive and driven by stressed market conditions, the ability to act quickly to help ensure market stability is critical. This footnote only applies to specific margin updates for certain futures and options contracts and does not apply to any parameter updates for credit default swaps. Thus, for these situations, the governance process will involve Board notification rather than Board pre-approval, and Risk Oversight Department review rather than full independent pre-validation.

ICE Clear Europe proposes to add new responsibilities for the Model Oversight Committee as well. Under the proposed rule change, the Model Oversight Committee would be responsible for establishing and maintaining a model inventory and assigning a specific owner to each model (a function currently performed by the First Line of Defense).⁵ This function is currently

performed by the First Line. The Model Oversight Committee would also would be responsible for approving non-significant non-BAU changes to risk parameters, reviewing significant non-BAU changes to risk parameters for recommendation to the Board, and approving changes to model documentation. This is a new function currently not performed and is part of ICE Clear Europe’s Policy expansion to distinguish between BAU and non-BAU parameter changes. ICE Clear Europe also proposes to modify the responsibilities of the First and Second Lines of Defense.⁶ The First Line would no longer be responsible for establishing and maintaining a model inventory and assigning a specific owner to each model, as that responsibility would be moved to the Model Oversight Committee. The amendments would include new responsibilities for the First Line, specifically, proposing and seeking approval for non-BAU changes to risk parameters (as it currently does for models, model changes, and model retirements) and proposing significance levels for non-BAU changes to risk parameters. Under the amendments, the Second Line would be responsible for performing independent validation exercises for non-BAU changes to risk parameters (as it currently does for models).

Finally, within the model risk management subsection, a new subsection would be added addressing non-BAU parameter changes. The section would provide that significant non-BAU changes to risk parameters must be validated before they are implemented in production.⁷ Non-significant non-BAU changes must be validated in accordance with the validation pipeline.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁸ For the reasons given below, the Commission finds that the proposed rule change is

models shared with other group entities, as well as risk frameworks used to quantify, aggregate, and manage the risks of the Clearing House.

⁶ The second line includes the Risk Oversight Department.

⁷ As discussed above, in certain situations for certain futures and options contracts, Board notification rather than Board pre-approval is required.

⁸ 15 U.S.C. 78s(b)(2)(C).

⁴ Production deviations are categorized under significant non-BAU changes to risk parameters.

⁵ The business First Line includes models developed internally, third-party models, and

consistent with Section 17A(b)(3)(F) of the Act⁹ and Rules 17Ad–22(e)(2)(i) and (v), and (e)(3) thereunder.¹⁰

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.¹¹

As discussed above, the proposed rule change would modify the Policy. The Policy establishes standards and principles for managing and mitigating model risk for all product categories that ICE Clear Europe clears. The Commission believes that these changes, taken as a whole, would help ICE Clear Europe establish and maintain effective and functioning models. For example, by requiring parameters to be categorized as significant or not significant, the Commission believes that the proposed rule change would help ICE Clear Europe to identify and remediate possible errors in parameter changes before such changes are put into effect by allowing for more scrutiny for parameter changes. Because parameter changes can affect the function of ICE Clear Europe's models, the Commission further believes that doing so may help avoid the potential harm that could result from models that do not function properly, such as margin requirements that are not effective at mitigating risk. Similarly, the Commission believes that the proposed rule change, in making the Second Line responsible for independent validation of non-BAU changes to risk parameters, would help ensure that validations are completed objectively and competently because it brings additional scrutiny to model changes by adding additional levels of review. Biased or ineffective validations could miss potential errors in models and model changes. The Commission believes that this change may also help ICE Clear Europe avoid the potential harm that could result from models that do not function properly.

Given that ICE Clear Europe uses its margin and other models to manage and mitigate ICE Clear Europe's credit exposures to its Clearing Members and the risks associated with clearing security-based swap-related portfolios, the Commission believes that the proposed rule change would enhance

ICE Clear Europe's ability to avoid losses that could result from the mismanagement of such credit exposures and risks. Because such losses could disrupt ICE Clear Europe's ability to promptly and accurately clear security-based swap transactions, the Commission believes that the proposed rule change would enhance ICE Clear Europe's ability to promote the prompt and accurate clearance and settlement of securities transactions.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the Section 17A(b)(3)(F) of the Act.¹²

B. Consistency With Rules 17Ad–22(e)(2)(i) and (v)

Rules 17Ad–22(e)(2)(i) and (v) require that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.¹³

As discussed above, the proposed rule change would add a new requirement for the Board where it would be responsible for the approval of significant non-BAU changes to risk parameters. In doing so, the Commission believes that the Policy would clearly and transparently define who is responsible for this aspect of oversight of the Policy. The proposed rule change would also assign new responsibilities to the First and Second Lines. For example, the Second Line would be responsible for performing independent validation exercises for non-BAU changes to risk parameters, while the First Line would now be responsible for proposing and seeking approval for non-BAU changes to risk parameters.

The Commission believes the proposed rule change would improve the transparency of the governance related to the Policy by improving the relevant responsibilities for the development and validation of models and the review of the overall effectiveness of the Policy. The Commission believes these aspects of the Policy would also clearly define the responsibilities of the First and Second Lines.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rules 17Ad–22(e)(2)(i) and (v).¹⁴

C. Consistency With Rule 17Ad–22(e)(3)

Rule 17Ad–22(e)(3) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed 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 ICE Clear Europe. This includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by ICE Clear Europe, that are subject to review on a specified periodic basis and approved by the board of directors annually.¹⁵

As discussed above, the proposed rule change would add new requirements for the Model Oversight Committee so that it would be responsible for establishing and maintaining a model inventory and assigning a specific owner to each model. Additionally, the proposed rule change would add a requirement for significant non-BAU changes to risk parameters to be validated before they are implemented in production. In this way, the Commission believes the proposed rule change would help reduce model risk at ICE Clear Europe. Moreover, the Commission believes the proposed rule change would help ensure the objectivity and competence of validations by establishing a specific owner for each model. The Commission believes that competent and objective validations would, in turn, help to reduce model risk. Thus, the Commission believes that the proposed rule change would enable ICE Clear Europe to maintain a sound risk management framework for comprehensively managing its model risk.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(3).¹⁶

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act¹⁷ and Rules 17Ad–22(e)(2)(i) and (v), and (e)(3) thereunder.¹⁸

It is therefore ordered pursuant to Section 19(b)(2) of the Act¹⁹ that the

⁹ 15 U.S.C. 78q–1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad–22(e)(2)(i) and (v), and (e)(3).

¹¹ 15 U.S.C. 78q–1(b)(3)(F).

¹² 15 U.S.C. 78q–1(b)(3)(F).

¹³ 17 CFR 240.17Ad–22(e)(2)(i) and (v).

¹⁴ 17 CFR 240.17Ad–22(e)(2)(i) and (v).

¹⁵ 17 CFR 240.17Ad–22(e)(3).

¹⁶ 17 CFR 240.17Ad–22(e)(3).

¹⁷ 15 U.S.C. 78q–1(b)(3)(F).

¹⁸ 17 CFR 240.17Ad–22(e)(2)(i) and (v), and (e)(3).

¹⁹ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-ICEEU-2023-019), be, and hereby is, approved.²⁰

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-21794 Filed 10-2-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98560; File No. SR-FINRA-2023-012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Temporary Supplementary Material .17 (Temporary Relief To Allow Remote Inspections for Calendar Years 2020, 2021, 2022, and 2023) Under FINRA Rule 3110 (Supervision) To Include Calendar Year 2024

September 27, 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 September 22, 2023, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act, ³ which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to extend temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020, 2021, 2022, and 2023) under FINRA Rule 3110 (Supervision) to include calendar year 2024 inspection

obligations through the earlier of the effective date of the remote inspections pilot program proposed in File No. SR-FINRA-2023-007, if approved, or June 30, 2024 within the scope of the supplementary material.⁴ FINRA is proposing to extend Rule 3110.17 to provide member firms continuity related to conducting inspections as part of satisfying the obligations of Rule 3110(c) (Internal Inspections) at offices and locations requiring inspection during the first half of calendar year 2024.⁵ By statute, the Commission has until the end of December 2023 to approve or disapprove the Remote Inspections Pilot Program Proposal.⁶ Given the uncertainty as to whether the Commission will approve or disapprove the Remote Inspections Pilot Program Proposal by the end of calendar year 2023, FINRA believes that the proposed extension is necessary to provide firms the time to prepare for either the resumption of on-site inspections if the Commission disapproves the Remote Inspections Pilot Program Proposal, or alternatively, the implementation of the proposed remote inspections pilot program (“Pilot Program”) if the Commission approves the Remote Inspections Pilot Program Proposal.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are bracketed.

* * * * *

⁴ See Securities Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620 (May 4, 2023) (Notice of Filing of File No. SR-FINRA-2023-007) and Securities Exchange Act Release No. 98046 (August 2, 2023), 88 FR 53569 (August 8, 2023) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove File No. SR-FINRA-2023-007) (“Remote Inspections Pilot Program Proposal”).

⁵ SEC staff and FINRA have stated in guidance that inspections must include a physical, on-site review component. See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011) and *Regulatory Notice* 11-54 (November 2011) (joint SEC and FINRA guidance stating, a “broker-dealer must conduct on-site inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.”) (footnote defining an OSJ omitted). See also SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or “for cause” inspections of those offices).

⁶ 15 U.S.C. 78s(b)(2); see also note 4, *supra*.

3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

3100. SUPERVISORY RESPONSIBILITIES

3110. Supervision

(a) through (f) No Change.

• • • Supplementary Material:

.01 through .16 No Change.

.17 Temporary Relief to Allow Remote Inspections for Calendar Years 2020, 2021, 2022, [and] 2023, *and Through the Earlier of the Effective Date of the Remote Inspections Pilot Program, if Approved, or June 30, 2024.*

(a) Use of Remote Inspections. Each member obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location in the calendar years specified in this supplementary material pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under Rule 3110 may, subject to the requirements of this Rule 3110.17, satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. In accordance with Rule 3110.16, inspections for calendar year 2020 must [be] *have been* completed on or before March 31, 2021. Inspections for calendar year 2021 must [be] *have been* completed on or before December 31, 2021, [and inspections] for calendar year 2022, [must be completed] on or before December 31, 2022, *and for calendar year 2023, on or before December 31, 2023.* With respect to a member’s obligation to conduct an inspection of an office or location in calendar year [2023]2024, a member has the option to conduct those inspections remotely through the earlier of the effective date of the *Remote Inspections* [p]Pilot [p]Program proposed in File No. [SR-FINRA-2022-021]SR-FINRA-2023-007, if approved, or [December 31, 2023]June 30, 2024. Notwithstanding Rule 3110.17, a member shall remain subject to the other requirements of Rule 3110(c).

(b) No Change.

(c) Effective Supervisory System. The requirement to conduct inspections of offices and locations is one part of the member’s overall obligation to have an effective supervisory system and therefore, the member must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the member conducts inspections remotely. A member’s use of a remote inspection of an office or location will be held to the same standards for review as set forth under Rule 3110.12. Where a

²⁰ In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).