public interest. Here, even if it were true that, compared to trading in unregulated spot bitcoin markets or OTC bitcoin funds, trading a spot bitcoin-based ETP on a national securities exchange could provide some additional protection to investors, or that the Shares would provide more efficient exposure to bitcoin than other products on the market such as CMÉ bitcoin futures ETPs/ETPs, the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.\(^{218}\)

Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices—and it must disapprove the filing if it does not make such a finding.\(^{219}\) Thus, even if a proposed rule change purports to protect investors from a particular type of investment risk—such as experiencing a potentially high premium/discount by investing in OTC bitcoin funds or roll costs by investing in bitcoin futures ETPs/ETPs—or purports to provide benefits to investors and the public interest—such as enhancing competition—the proposed rule change may still fail to meet the requirements under the Exchange Act.\(^{220}\)

For the reasons discussed above, BZX has not met its burden of demonstrating that the proposal is consistent with Exchange Act Section 6(b)(5),\(^{221}\) and, accordingly, the Commission must disapprove the proposal.\(^{222}\)

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR-CboeBZX-2022-031 be, and it hereby is, disapproved.

By the Commission.

Sherry R. Haywood,
Assistant Secretary.
[FR Doc. 2023-01983 Filed 1-30-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Set Forth in SR–FINRA–2020–027 and the Temporary Amendments to FINRA Rule 9341(d) in SR–FINRA–2020–015


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 January 18, 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 and II 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 the expiration date of the temporary amendments set forth in SR–FINRA–2020–027 and the temporary amendments to FINRA Rule 9341(d) in SR–FINRA–2020–015 from January 31, 2023, to April 30, 2023.\(^{4}\)

The proposed rule change would not make any changes to the text of FINRA rules.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, FINRA filed proposed rule changes, SR–FINRA–2020–015 and SR–FINRA–2020–027, which respectively provide temporary relief from some timing, method of service and other procedural requirements in FINRA rules and allow FINRA’s Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. In October 2022, FINRA filed a proposed rule change, SR–FINRA–2022–029, to extend the expiration date of the temporary amendments in both SR–FINRA–2020–015 and SR–FINRA–2020–027 from October 31, 2022, to January 31, 2023.\(^{5}\) Due to the continued presence and uncertainty of COVID–19, FINRA proposes to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 and the temporary amendments to FINRA Rule 9341(d) in SR–FINRA–2020–015 from January 31, 2023, to April 30, 2023.\(^{4}\)

\(^{218}\) See supra note 208.


\(^{220}\) See SoldEX Order, 82 FR at 16259; Van-Eck Order, 86 FR at 54550–51; WisdomTree Order, 86 FR at 69344; Kryptoin Order, 86 FR at 74179; Valkyne Order, 86 FR at 74163; SkyBridge Order, 87 FR at 1881; Wise Origin Order, 87 FR at 5538.


\(^{222}\) In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).


\(^{4}\) If FINRA seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond April 30, 2023, FINRA will submit a separate rule filing to further extend the temporary extension of time. The amended FINRA rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

Due to the upward trend in the number of COVID-19 cases since FNIRA filed SR–FINRA–2022–029 in October 2022, FNIRA believes there is a continued need for temporary relief beyond January 31, 2023. In this regard, FNIRA notes that COVID–19 remains a public health concern. For example, according to the Centers for Disease Control and Prevention (“CDC”), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC’s most recent calculations. The data indicates that new hospital admissions is also on the rise. Much uncertainty also remains given the emergence of new Omicron variants that the CDC currently is tracking and the dissimilar vaccination rates (completed primary series and updated booster dose) throughout the United States. In addition, as set forth in the previous filings, FNIRA relies on the guidance of its health and safety consultant, in conjunction with COVID–19 data and guidance issued by public health authorities, to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference. 

FNIRA strives to hold in-person hearings when it is safe to do so, but because FNIRA conducts hearings at locations throughout the United States, FNIRA believes that it may be difficult to conduct in-person hearings at certain locations based on that data and guidance.

As a result, FNIRA believes there will be a continued need for temporary relief beyond January 31, 2023. Accordingly, FNIRA proposes to extend the expiration date of the temporary amendments originally set forth in SR–FINRA–2020–027 and the temporary amendments to FINRA Rule 9341(d) in SR–FINRA–2020–015 from January 31, 2023, to April 30, 2023. As previously noted, FNIRA strives to hold in-person hearings when it is safe to do so and the extension of temporary relief therefore does not mean a video conference hearing will be ordered in every case. Given the uncertainty regarding COVID–19, however, the extension of these temporary amendments allowing for specified OHO and NAC hearings to proceed by video conference will ensure that FNIRA’s critical adjudicatory functions continue to operate effectively in these circumstances—enabling FNIRA to fulfill its statutory obligations to protect investors and maintain fair and orderly markets—while also protecting the health and safety of hearing participants.
FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is also consistent with Section 15A(b)(8) of the Act, which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members.

The proposed rule change, which extends the temporary amendments of the temporary amendments to FINRA rules set forth in SR–FINRA–2020–027 and the temporary amendments to FINRA Rule 9341(d) in SR–FINRA–2020–015, will continue to aid FINRA’s efforts to timely conduct hearings in connection with its core adjudicatory functions. Given that COVID–19 remains a public health concern and the spike in cases of the disease, without this relief allowing OHO and NAC hearings to proceed by video conference, FINRA might be required to postpone some or almost all hearings for a significant period of time. FINRA must be able to perform its critical adjudicatory functions to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to FINRA’s ability to fulfill its statutory obligations and allows hearing participants to avoid the COVID–19 related health and safety risks associated with in-person hearings.

Among other things, this relief will allow OHO to conduct temporary cease and desist proceedings by video conference so that FINRA can take immediate action to stop ongoing customer harm and will allow the NAC to timely provide members, disqualified in individuals and other applicants an approval or denial of their applications. As set forth in detail in the original filings, this temporary relief allowing OHO and NAC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID–19 related health and safety risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act’s purpose.

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

FINRA does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR–FINRA–2020–027 and, with respect to FINRA Rule 9341(d), in SR–FINRA–2020–015, the proposed rule change is intended solely to extend temporary relief necessitated by the continued presence of COVID–19 and the related health and safety risks of conducting in-person activities. FINRA believes that the proposed rule change will prevent unnecessary impediments to FINRA’s critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on January 31, 2023.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(5)(B) of the Act and Rule 19b–4(0)(6) thereunder.

A proposed rule change filed under Rule 19b–4(0)(6) normally does not become operative for 30 days after the date of filing. However, under Rule 19b–4(0)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As FINRA requested in connection with SR–FINRA–2020–015 and related extensions, FINRA has also asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing.

FINRA has indicated that extending the relief provided originally in SR–FINRA–2020–015 and SR–FINRA–2020–027 will continue to provide FINRA the ability to safely conduct hearings in connection with its core functions during the COVID–19 outbreak. Importantly, extending the relief provided in those prior rule change immediately upon filing and without a 30-day operative delay will allow FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees. The Commission also notes that this proposal, like SR–FINRA–2020–015 and SR–FINRA–2020–027, provides only temporary relief during the period in which FINRA’s operations are impacted by COVID–19. As proposed, the changes would be in place through April 30, 2023 and FINRA also noted in both SR–FINRA–2020–015 and SR–FINRA–2020–027 that the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension

24 See supra Item II.A.1; see also SR–FINRA–2020–015, 85 FR at 31833.
25 As noted above, see supra note 4, FINRA stated that if it requires temporary relief from the rule requirements identified in this proposal beyond April 30, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.
thereof. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.

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 the furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapprove.

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. Please include File Number SR–FINRA–2023–001 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–FINRA–2023–001. 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 filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2023–001 and should be submitted on or before February 21, 2023.

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

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


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


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 January 12, 2023, 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 primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act3 and Rule 19b–4(f)(4) thereunder,4 such that the proposed rule change was immediately effective upon filing with the Commission. 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

ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") proposes to amend its Delivery Procedures ("Delivery Procedures") to make certain clarifications and updates.

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

The amendments to Part A, which applies to ICE Endex Deliverable EU Emissions Contracts, would reflect that, as provided in ICE Endex’s Circular E22/012.3 ICE Endex will delist Aviation Emissions Allowance or “EUA” Futures Contracts following the expiry of the December 2022 contract month and, commencing with the January 2023 contract month, EUAs would become eligible for delivery under the existing ICE Endex Carbon Emissions Allowance or "EUA" daily and monthly Contracts.4 Conforming changes would be made in Part A, including to remove references to “ICE Endex EUA Futures Contracts” and to reflect that EUAs may be delivered under the delivery specifications applicable to the EUA daily and monthly contracts (through an amendment to the term Carbon Emission Allowance Contract and related changes in the delivery timetable). Certain related drafting amendments would be made in Part A to reflect such updates including the removal of related definitions and other terms (for example, the removal of the

2 For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(d).
8 ICE Endex Circular E22/012 is available at the following website: https://www.theice.com/public/docs/endex/circulars/E22012.pdf.
9 Accordingly, the amendments to Part A will become operative following expiry of the December 2022 contract month.
