

approved pursuant to Exchange Act Section 19(b)(2)(D)(ii).<sup>70</sup> The Commission disagrees with the Sponsor's assertions that: (1) Because the Approval Order is stayed, "the Commission did not effectively approve or disapprove [the Proposal] by the 240th day" and therefore the proposal has been deemed approved;<sup>71</sup> and (2) the Commission's discretionary review of the order by delegated authority conflicts with the purpose and language of the statute.<sup>72</sup>

The Commission complied with the requirements of the statute. Section 19(b)(2)(D) requires only that the Commission "issue an order" approving or disapproving the proposed rule change within 240 days. The Approval Order was issued within that period.

Although orders issued by delegated authority are issued by Commission staff, they are issued with the full authority of the Commission and are signed by the Secretary's office on behalf of the Commission. Section 4A of the Exchange Act authorizes the Commission to delegate certain functions—including approval or disapproval of proposed rule changes under Section 19—to a "division of the Commission."<sup>73</sup> And the Commission's Rules of Practice make clear that "an action made pursuant to delegated authority shall have immediate effect and be deemed the action of the Commission."<sup>74</sup>

<sup>70</sup> See Volatility Shares 1 at 4. Section 19(b) of the Exchange Act requires the Commission to "issue an order" approving or disapproving a proposed rule change within, at most, 240 days of the proposed rule change's filing. See 15 U.S.C. 78s(b)(2)(B)(ii). If the Commission fails to issue an order within that period, the proposed rule change is deemed to have been approved. See 15 U.S.C. 78s(b)(2)(D).

<sup>71</sup> See Volatility Shares 1 at 4. The Sponsor cites this proposal as having been deemed approved since the relevant period had not yet elapsed for CboeBZX-2020-070 when it made its argument. It states that CboeBZX-2020-070 would also be deemed approved unless the Commission acted by May 21, 2021.

<sup>72</sup> See Volatility Shares 1 at 2.

<sup>73</sup> 15 U.S.C. 78d-1(a).

<sup>74</sup> Commission Rule of Practice 431(e), 17 CFR 201.431(e). See also, e.g., Rule of Practice 430(c), 17 CFR 201.430(c) (referring to "a final order entered pursuant to [delegated authority]"); Rule of Practice 431(f), 17 CFR 201.431(f) (giving an order by delegated authority operative effect, even when review has been sought, until a person receives actual notice that it was been stayed, modified, or reversed on review). Moreover, as the Commission has previously explained, Congress was aware of the Commission's ability to delegate authority to approve SRO rule filings when the time restrictions in Exchange Act Section 19(b)(2)(D) were enacted. And to construe Section 19(b)(2), as the Sponsor does, to require Commission review of an order by delegated authority to be completed within 240 days "would undermine both the specific deadlines set forth in the statute and the Commission's ability to delegate functions. Nor is such a construction necessary to fulfill Congress's purpose in enacting the deadlines to "streamline" the rule filing

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered*, pursuant to Rule 431 of the Commission's Rules of Practice, that the earlier action taken by delegated authority, Securities Exchange Act Release No. 91265 (March 5, 2021), 86 FR 13922 (March 11, 2021), is set aside and, pursuant to Section 19(b)(2) of the Act, the proposed rule change (SR-CboeBZX-2020-053), as modified by Amendment Nos. 2 and 4, hereby is approved.

By the Commission.

**J. Matthew DeLesDernier**,  
Assistant Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93236; File No. SR-ICEEU-2021-018]

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

October 1, 2021.

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 September 20, 2021, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

process. With rare exception, rule filings are decided, by delegated authority or otherwise, within 240 days. See Securities Exchange Act Release Nos. 88493 (Mar. 27, 2020), 85 FR 18617 (Apr. 2, 2020) (Order Affirming Action by Delegated Authority and Disapproving Proposed Rule Changes Related to Connectivity and Port Fee in the Matter BOX Exchange LLC) at 18626; and 82727 (Feb. 15, 2018), 83 FR 7793 (Feb. 22, 2017) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding the Acquisition of CHX Holdings, Inc. by North America Casin Holdings, Inc.) at 7799.

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

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

#### 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 modify its Collateral and Haircut Procedures (the "Collateral and Haircut Procedures" or "Procedures") to (i) include explicitly the formula used for calculating Permitted Cover value, and (ii) provide further details on the Clearing House's procedures for monitoring data related to collateral valuations, including the responsibilities of its different teams.

#### 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 proposing to revise the Collateral and Haircut Procedures to state explicitly the formula used by the Clearing House for calculating the value of Permitted Cover provided by Clearing Members in respect of margin and guaranty fund requirements. The formula would provide that cover value is equal to  $\text{Nominal} * \text{Price} / 100 * (1 - \text{Haircut}) + \text{Nominal} * \text{Accrued}$ , where price is clean and accrued is expressed in %. Further to this description of the Permitted Cover value calculation, the changes would also state that as a matter of standard practice at the Clearing House, Treasuries would be given no cover value 2 business days prior to maturity and a cash call would be issued if a Member's account is in deficit. Additionally, the amendments would state that accrued interest would lose value one day prior to the coupon pay date. These changes reflect existing practice at ICE Clear Europe with respect to the valuation of Permitted Cover and are intended only to document that practice more clearly.

The amendments would also update the Clearing House's processes for monitoring data related to collateral pricing and would describe the roles of

various teams tasked with such monitoring. Specifically, the amendments would reflect that the System Operations team checks end of day collateral pricing. The amendments would state that the Credit team has the controls to monitor End of Day market data that the System Operations team uses to value collateral against thresholds to ensure that the data is not “stale”. Additionally, the amendment would provide that the Treasury team reconciles and confirms the daily bilateral collateral positions (nominal amounts). These amendments would not reflect a change in current practice, but are intended to clarify relevant documentation.

Finally, the description of the scope of the Collateral and Haircut Procedures would be revised to remove an incorrect statement that the Procedures do not address intraday and end of day valuation of collateral.

#### (b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Collateral and Haircut Procedures are consistent with the requirements of Section 17A of the Act<sup>3</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>4</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 changes to the Procedures are designed to clarify the documentation of certain existing practices of the Clearing House around valuation of Permitted Cover. Specifically, the amendments would update and clarify the processes, controls and escalations with respect to collateral valuation data monitoring as well as outline the responsibilities of the Clearing House’s teams in relation to such monitoring. They would also state the formula used by the Clearing House for calculating Permitted Cover value. The amendments would thus facilitate the operation of the Clearing House’s margin framework and overall risk management procedures, and thereby promote the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. The amendments are for these

reasons also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. (ICE Clear Europe would not expect the amendments to affect the safeguarding of securities and funds in ICE Clear Europe’s custody or control or for which it is responsible.) Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).<sup>5</sup>

The amendments to the Collateral and Haircut Procedures are also consistent with relevant provisions of Rule 17Ad–22. Rule 17Ad–22(e)(5) requires the clearing agency to “set and enforce appropriately conservative haircuts and concentration limits if [it] requires collateral to manage its or its participants’ credit exposure.”<sup>6</sup> Rule 17Ad–22(e)(6)(iv)<sup>7</sup> requires clearing agencies to maintain a risk-based margin model that, among other things, “uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.” The amendments would clarify the documentation of the Clearing House’s procedures for valuing collateral and monitoring relevant valuation and pricing data. As such, the amendments are consistent with the requirements of Rule 17Ad–22.

Rule 17Ad–22(e)(2)<sup>8</sup> requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The amendments to the Collateral and Haircut Procedures would clarify the responsibilities of the Clearing House’s teams in relation to collateral valuation data monitoring. In ICE Clear Europe’s view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(2).<sup>9</sup>

#### (B) Clearing Agency’s Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update the Clearing House’s Collateral and Haircut Procedures, which describe the Clearing House’s internal processes for collateral and haircut risk management as

presented in the ICE Clear Europe’s Collateral and Haircut Policy. The amendments are intended to more clearly document certain valuation practices and are not intended to change Clearing House practices. ICE Clear Europe does not believe the amendments would affect the costs of clearing, the ability to market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes 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 written comments received with respect to the proposed rule change and adoption.

### 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 self-regulatory organization 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 (<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–2021–018 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.

<sup>3</sup> 15 U.S.C. 78q–1.

<sup>4</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>5</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>6</sup> 17 CFR 240.17Ad–22(e)(5).

<sup>7</sup> 17 CFR 240.17Ad–22(e)(6)(iv).

<sup>8</sup> 17 CFR 240.17Ad–22(e)(2).

<sup>9</sup> 17 CFR 240.17Ad–22(e)(2).

All submissions should refer to File Number SR-ICEEU-2021-018. 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-2021-018 and should be submitted on or before October 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93230; File No. SR-CboeBZX-2020-070]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3, To List and Trade Shares of the -1x Short VIX Futures ETF Under BZX Rule 14.11(f)(4) (Trust Issued Receipts)

October 1, 2021.

#### I. Introduction

On September 4, 2020, Cboe BZX Exchange, Inc. ("BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the -1x Short VIX Futures ETF ("Fund"), a series of VS Trust ("Trust"), under BZX Rule 14.11(f)(4).<sup>3</sup>

On March 5, 2021, the Commission, acting through authority delegated to the Division of Trading and Markets ("Division"),<sup>4</sup> noticed the filing of Amendment Nos. 1 and 3 and approved the proposed rule change, as modified by Amendment Nos. 1 and 3, on an accelerated basis.<sup>5</sup> On March 5, 2021, the Assistant Secretary of the Commission notified BZX that, pursuant to Commission Rule of Practice 431,<sup>6</sup> the Commission would review the Division's action pursuant to delegated authority and that the Division's action pursuant to delegated authority was

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

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

<sup>3</sup> The proposed rule change was published for comment in the *Federal Register* on September 23, 2020. See Securities Exchange Act Release No. 89901 (Sept. 17, 2020), 85 FR 59836 ("Notice"). On October 30, 2020, the Commission extended the time period for Commission action on the proposed rule change. See Securities Exchange Act Release No. 90292, 85 FR 70678 (Nov. 5, 2020). On December 14, 2020, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change. See Securities Exchange Act Release No. 90659, 85 FR 82536 (Dec. 18, 2020) ("OIP"). On January 28, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On February 16, 2021, the Exchange submitted Amendment No. 2 to the proposed rule change and, on February 19, 2021, the Exchange withdrew Amendment No. 2. On February 19, 2021, the Exchange filed partial Amendment No. 3 to the proposed rule change.

<sup>4</sup> 17 CFR 200.30-3(a)(12).

<sup>5</sup> See Securities Exchange Act Release No. 91264 (Mar. 5, 2021), 86 FR 13939 (Mar. 11, 2021) ("Approval Order").

<sup>6</sup> 17 CFR 201.431.

stayed until the Commission ordered otherwise.<sup>7</sup> On April 7, 2021, the Commission issued a scheduling order, pursuant to Commission Rule of Practice 431, providing until May 7, 2021 for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.<sup>8</sup>

The Commission has conducted a *de novo* review of BZX's proposal, giving careful consideration to the entire record, including all comments and statements submitted, to determine whether the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. Under Section 19(b)(2)(C) of the Act, the Commission must approve the proposed rule change of a self-regulatory organization ("SRO") if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the applicable rules and regulations thereunder; if it does not make such a finding, the Commission must disapprove the proposed rule change.<sup>9</sup> Additionally, under Rule 700(b)(3) of the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."<sup>10</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.<sup>11</sup> Any failure of a self-regulatory organization to provide the information required by Rule 19b-4 and elicited on Form 19b-4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the rules and regulations thereunder that are applicable to the self-regulatory organization.<sup>12</sup>

For the reasons discussed further herein, BZX has met its burden to show

<sup>7</sup> See letter from J. Matthew DeLesDernier, Assistant Secretary, Commission, to Kyle Murray, Vice President and Associate General Counsel, Cboe Global Markets, dated March 5, 2021, available at <https://www.sec.gov/rules/sro/cboebzx/2018/34-91264-letter-from-assistant-secretary.pdf>.

<sup>8</sup> See Securities Exchange Act Release No. 91502, 86 FR 19298 (Apr. 13, 2021). Comments on the proposed rule change, including statements concerning the Approval Order are available at: <https://www.sec.gov/comments/sr-cboebzx-2020-070/srcboebzx2020070.htm>.

<sup>9</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>10</sup> 17 CFR 201.700(b)(3).

<sup>11</sup> See *id.*

<sup>12</sup> See *id.* See also 17 CFR 240.19b-4.

<sup>10</sup> 17 CFR 200.30-3(a)(12).