

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101080; File No. SR-CboeBZX-2024-084)

September 18, 2024

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the ARK 21Shares Bitcoin ETF and the 21Shares Core Ethereum ETF to Add Two New Custodians to Each Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 12, 2024, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to amend the ARK 21Shares Bitcoin ETF (the “Bitcoin Trust”) and the 21Shares Core Ethereum ETF (the “Eth Trust”), shares of which have been approved by the Commission to list and trade on the Exchange pursuant to BZX Rule 14.11(e)(4), to add two new custodians to each trust.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange 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. The Exchange 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

The Commission approved the listing and trading of shares (the “Bitcoin ETP Shares”) of the ARK 21Shares Bitcoin ETF (the “Bitcoin Trust”) on the Exchange pursuant to Exchange Rule 14.11(e)(4), Commodity-Based Trust Shares, on January 10, 2024.³ The Commission also approved the listing and trading of shares (the “Eth ETP Shares”) of the 21Shares Core Ethereum ETF (the “Eth Trust”) on the Exchange pursuant to Exchange Rule 14.11(e)(4), Commodity-Based Trust Shares, on May 23, 2024.⁴ Exchange Rule 14.11(e)(4) governs the listing and trading of Commodity-Based Trust Shares, which means a security (a) that is issued by a trust that holds (1) a specified commodity deposited with the trust, or (2) a specified commodity and, in addition to such

³ See Securities Exchange Act Release No. 99306 (January 10, 2024) 89 FR 3008 (January 17, 2024) (SR-CboeBZX-2023-028) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Bitcoin ETP Approval Order”).

⁴ See Securities Exchange Act Release No. 100224 (May 23, 2024) 89 FR 46937 (May 30, 2024) (SR-CboeBZX-2023-070) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (the “Eth ETP Approval Order”). The Eth Trust was originally named the ARK 21Shares Ethereum ETF, as reflected in the Eth ETP Approval Order. However, the Exchange later submitted an amendment, in part, to rename the Eth Trust to the 21Shares Core Ethereum ETF. See Securities Exchange Act Release No. 100306 (June 10, 2024) 89 FR 50656 (June 14, 2024) (SR-CboeBZX-2024-050) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the ARK 21Shares Ethereum ETF To Amend the Trust Name and Reflect That the Trust Will No Longer Have a Sub-Adviser).

specified commodity, cash; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash. The Bitcoin ETP Shares are issued by the Bitcoin Trust and the Eth ETP Shares are issued by the Eth Trust. The Bitcoin Trust was formed as a Delaware statutory trust on June 22, 2021 and the Eth Trust was formed as a Delaware statutory trust on September 5, 2023.

The Exchange proposes to amend a representation set forth in the Exchange's previous rule filing to list and trade Bitcoin ETP Shares to reflect the addition of two new custodians that will provide bitcoin custody services to the Bitcoin Trust in addition to the existing custodian. Specifically, the Bitcoin ETP Amendment No. 5⁵ represented that Coinbase Trust Company, LLC is the custodian (the "Current Custodian") and will be responsible for custody of the Bitcoin Trust's bitcoin. Now, the Exchange proposes to provide that Anchorage Digital Bank N.A. ("Anchorage") and BitGo New York Trust Company, LLC ("BitGo" and together with Anchorage, the "New Custodians" and collectively, with Coinbase Trust Company, LLC, the "Custodians") will also provide bitcoin custody services to the Bitcoin Trust in addition to the Current Custodian.

The Exchange similarly proposes to amend a representation set forth in the Exchange's previous rule filings to list and trade the Eth ETP Shares to reflect that the two New Custodians will provide ether custody services to the Eth Trust in addition to the Current Custodian.⁶ Specifically,

⁵ See Securities Exchange Act Release No. 99288 (January 8, 2024) 89 FR 2387 (January 12, 2024) (SR-CboeBZX-2023-028) (Notice of Filing of Amendment No. 5 to a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) ("Bitcoin ETP Amendment No. 5").

⁶ The Exchange notes that the Current Custodian to the Eth Trust is also Coinbase Trust Company, LLC.

the Eth ETP Amendment No. 2,⁷ as amended,⁸ represented that the Current Custodian will be responsible for custody of the Eth Trust’s ether. Now, the Exchange proposes to provide that Anchorage and BitGo will provide ether custody services to the Eth Trust in addition to the Current Custodian.

BitGo is a New York chartered trust companies overseen by the New York Department of Financial Services (“NYDFS”). Anchorage is a South Dakota chartered trust company and a National Bank Trust chartered by the Office of the Comptroller of the Currency. The New Custodians are qualified custodians under Rule 206-4 of the Investment Adviser Act. The New Custodians will each custody the Bitcoin Trust’s bitcoin pursuant to a custody agreement. The new Custodians will each custody the Eth Trust’s ether pursuant to a custody agreement. Such custody agreements with the Bitcoin Trust requires the New Custodians to maintain the Bitcoin Trust’s bitcoin in segregated accounts that clearly identify the Bitcoin Trust as owner of the respective accounts and assets held on those accounts; the segregation will be both from the proprietary property of the New Custodians and the assets of any other customer. Such custody agreements with the Eth Trust requires the New Custodians to maintain the Eth Trust’s ether in segregated accounts that clearly identify the Eth Trust as owner of the respective accounts and assets held on those accounts; the segregation will be both from the proprietary property of the New Custodians and the assets of any other customer. Such an arrangement is generally deemed to be “bankruptcy remote,” that is, in the event of an insolvency of either New Custodian, assets held in such segregated accounts would not become property of the New Custodian’s estate and would not be

⁷ See Securities Exchange Act Release No. 100216 (May 22, 2024) 89 FR 46514 (May 29, 2024) (SR-CboeBZX-2023-070) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to List and Trade Shares of the ARK 21Shares Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (“Eth ETP Amendment No. 2”).

⁸ Supra note 4.

available to satisfy claims of creditors of the New Custodian. In addition, the New Custodians carry fidelity insurance, which covers assets held by the New Custodians in custody from risks such as theft of funds.

Bitcoin owned by the Bitcoin Trust will at all times be held by, and in the control of, the Custodians, and transfer of such bitcoin to or from the Custodians will occur only in connection with creation and redemptions of Bitcoin ETP Shares or allocations among the Custodians. The New Custodians will be bound by all representations made in the Bitcoin ETP Amendment No. 5 applicable to the Current Custodian.

Ether owned by the Eth Trust will at all times be held by, and in the control of, the Custodians, and transfer of such ether to or from the Custodians will occur only in connection with creation and redemptions of Eth ETP Shares or allocations among the Custodians. Like the Current Custodian, the New Custodians will not, directly or indirectly, engage in action where any portion of the Eth Trust's ether becomes subject to the ethereum proof-of-stake validation or is used to earn additional ether or generate income or other earnings. The New Custodians will be bound by all representations made in Eth ETP Amendment No. 2, as amended,⁹ applicable to the Current Custodian.

Except for the above changes, all other representations in the Bitcoin ETP Amendment No. 5 and Eth ETP Amendment No. 2, as amended,¹⁰ remain unchanged and will continue to constitute continuing listing requirements. In addition, the Bitcoin Trust will continue to comply with the terms of Bitcoin ETP Amendment No. 5 and the Eth Trust will continue to comply with

⁹ Supra note 4.

¹⁰ Supra note 4.

the terms of Eth ETP Amendment No. 2, as amended,¹¹ and both the Bitcoin Trust and Eth Trust will continue to comply with the requirements of Rule 14.11(e)(4).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would update a representation in Bitcoin ETP Amendment No. 5 regarding the custodian responsible for the custody of the Bitcoin Trust's bitcoin to provide for the two New Custodians, in addition to the Current Custodian. Similarly, the proposed rule change would update a representation in the Eth ETP Amendment No. 2, as amended,¹⁴ regarding the custodian responsible for the custody of the Eth Trust's ether to provide for the two New Custodians, in addition to the Current Custodian. The Exchange believes the addition of

¹¹ Supra note 4.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ Supra note 4.

two New Custodians for both the Bitcoin Trust and Eth Trust would mitigate and diversify potential third-party service provider risk in the event that the Current Custodian was unable to provide custody services.

Except for the addition of the two New Custodians for the Bitcoin Trust all other representations made in the Bitcoin ETP Amendment No. 5 remain unchanged and will continue to constitute continuing listing requirements for the Bitcoin Trust. The New Custodians will be bound by all representations made in the Bitcoin ETP Amendment No. 5 applicable to the Current Custodian. Similarly, except for the addition of the two New Custodians for the Eth Trust all other representations made in the Eth ETP Amendment No. 2, as amended,¹⁵ remain unchanged and will continue to constitute continuing listing requirements for the Eth Trust. The New Custodians will be bound by all representations made in the Eth ETP Amendment No. 2, as amended,¹⁶ applicable to the Current Custodian.

Accordingly, the Exchange believes that this proposed rule change raises no novel regulatory issues.

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 purposes of the Act. As noted above, the proposed amendment is intended to reflect that the two New Custodians will have the ability to custody the Bitcoin Trust's bitcoin. Those two New Custodians will also have the ability to custody the Eth Trust's ether. The Exchange believes these changes will not impose any burden on competition.

¹⁵ Supra note 4.

¹⁶ Supra note 4.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ Because the 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 prior to 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)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed under Rule 19b-4(f)(6)²⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change would reflect the addition of the two New Custodians for each of the Bitcoin Trust and the Eth Trust. The New Custodians will be bound by all representations made in the Bitcoin ETP Amendment No. 5 and the Eth ETP Amendment

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

No. 2, as amended,²² applicable to the Current Custodian. The Bitcoin Trust and Eth Trust will continue to comply with the requirements of Rule 14.11(e) and, except for the addition of the two New Custodians, all other representations made in the Bitcoin ETP Amendment No. 5 and the Eth ETP Amendment No. 2, as amended,²³ remain unchanged and will continue to constitute continuing listing requirements for the Bitcoin Trust and the Eth Trust, as applicable. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel regulatory issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁴

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

(<https://www.sec.gov/rules/sro.shtml>); or

²² See *supra* note 4.

²³ *Id.*

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-084 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-2024-084. 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-2024-084 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Vanessa A. Countryman,

Secretary

²⁵ 17 CFR 200.30-3(a)(12), (59).