

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100610; File Nos. SR-NYSEARCA-2024-45; SR-CboeBZX-2023-101)

July 26, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Grayscale Bitcoin Mini Trust and Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Pando Asset Spot Bitcoin Trust

I. INTRODUCTION

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² each of NYSE Arca, Inc. (“NYSE Arca”) and Cboe BZX Exchange, Inc. (“BZX”, and together with NYSE Arca, the “Exchanges”) filed with the Securities and Exchange Commission (“Commission”) proposed rule changes to list and trade shares of the following. NYSE Arca proposes to list and trade shares of the Grayscale Bitcoin Mini Trust³ under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares); and BZX proposes to list and trade shares of the Pando Asset Spot Bitcoin Trust⁴ under BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares). Each filing was subject to notice and comment.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Bitcoin Mini Trust Under NYSE Arca Rule 8.201-E, Commodity-Based Trust Shares, Securities Exchange Act Release No. 100290 (June 6, 2024), 89 FR 49931 (June 12, 2024) (SR-NYSEARCA-2024-45) (“Grayscale Filing”).

⁴ See Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Pando Asset Spot Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 100420 (June 25, 2024), 89 FR 54555 (July 1, 2024) (SR-CboeBZX-2023-101) (“Pando Filing”).

⁵ The Commission did not receive any comments on SR-NYSEARCA-2024-45. Comments received on SR-CboeBZX-2023-101 are available at <https://www.sec.gov/comments/sr-cboebzx-2023-101/srcboebzx2023101.htm>.

Each of the foregoing proposed rule changes, as modified by their respective amendments, is referred to herein as a “Proposal” and together as the “Proposals.” Each trust described in a Proposal is referred to herein as a “Trust” and together as the “Trusts.” As described in more detail in the Proposals’ respective amended filings,⁶ each Proposal seeks to list and trade shares of a Trust that would hold spot bitcoin,⁷ in whole or in part.⁸ This order approves the Proposals.⁹

II. DISCUSSION AND COMMISSION FINDINGS

After careful review, the Commission finds that the Proposals are consistent with the Exchange Act and rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the Exchange Act,¹¹ which requires, among other things, that the Exchanges’ rules be designed to “prevent fraudulent and manipulative acts and practices” and, “in general, to protect investors and the public interest;” and with Section 11A(a)(1)(C)(iii) of the Exchange Act,¹² which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

⁶ See supra notes 3-4.

⁷ Bitcoins are digital assets that are issued and transferred via a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the “Bitcoin blockchain.” The Bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions.

⁸ Each Trust proposes to hold spot bitcoin. The Pando Asset Spot Bitcoin Trust also proposes to hold cash and cash equivalents. See Pando Filing at 54563.

⁹ The Pando Filing is being approved on an accelerated basis. See infra Section III.

¹⁰ In approving the Proposals, the Commission has considered the Proposals’ impacts on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78k-1(a)(1)(C)(iii).

A. Exchange Act Section 6(b)(5)

The Commission has explained that one way an exchange that lists bitcoin-based exchange-traded products (“ETPs”) can meet the obligation under Exchange Act Section 6(b)(5) that its rules be designed to prevent fraudulent and manipulative acts and practices is by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference assets.¹³ Such an agreement would assist in detecting and deterring fraud and manipulation related to that underlying asset.

The Commission has also consistently recognized, however, that this is not the *exclusive* means by which an ETP listing exchange can meet this statutory obligation.¹⁴ A listing exchange could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.¹⁵ In the Spot Bitcoin ETP Approval Order, the Commission determined that having a comprehensive surveillance-sharing agreement with a

¹³ See, e.g., 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, Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072) (“Spot Bitcoin ETP Approval Order”); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts), Securities Exchange Act Release No. 94620 (Apr. 6, 2022), 87 FR 21676 (Apr. 12, 2022) (SR-NYSEARCA-2021-53). The Commission has provided an illustrative definition for “market of significant size” to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market. See Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579, 37594 (Aug. 1, 2018) (SR-BatsBZX-2016-30) (“Winklevoss Order”).

¹⁴ See, e.g., Winklevoss Order at 37580; Spot Bitcoin ETP Approval Order at 3009.

¹⁵ See Spot Bitcoin ETP Approval Order at 3009 (quoting Winklevoss Order at 37580).

U.S.-regulated market that, based on evidence from robust correlation analysis, is consistently highly correlated with the ETPs’ underlying assets (spot bitcoin) constituted “other means” sufficient to satisfy the Exchange Act Section 6(b)(5) standard.¹⁶ Specifically, given the consistently high correlation between the bitcoin futures market of the Chicago Mercantile Exchange (“CME”) and a sample of spot bitcoin markets—confirmed by the Commission through robust¹⁷ correlation analysis using data at hourly, five-minute, and one-minute intervals—the Commission was able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Commission was able to conclude that the comprehensive surveillance-sharing agreement among the listing exchanges and the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals considered in the Spot Bitcoin ETP Approval Order.

With respect to the present Proposals, the structure of the Trusts, the terms of their operation and the trading of their shares, and the representations in their respective amended filings are substantially similar to those of the proposals considered in the Spot Bitcoin ETP Approval Order.¹⁸ In addition, the Commission finds that the spot bitcoin market continues to be

¹⁶ See id. at 3009-11.

¹⁷ The Commission stated that the “robustness” of its correlation analysis rested on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the Commodity Futures Trading Commission, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period. See id. at 3010 n.38.

¹⁸ See also infra Section II.B.

consistently highly correlated with the CME bitcoin futures market.¹⁹ As such, based on the record before the Commission, including the Commission's correlation analysis, the Commission is able to conclude that the Exchanges' comprehensive surveillance-sharing agreement with the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.

B. Exchange Act Section 11A(a)(1)(C)(iii)

Each Proposal sets forth aspects of its proposed ETP, including the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures, that are consistent with other ETPs that the Commission has approved.²⁰ This includes commitments regarding: the availability via the Consolidated Tape Association of quotation and last-sale information for the shares of each Trust; the availability on the websites of each Trust of certain information related to the Trusts, including net asset values; the dissemination of intra-day indicative values by one or more major market data vendors, updated every 15 seconds

¹⁹ The Commission examined correlation between the CME bitcoin futures market and the Coinbase and Kraken spot bitcoin trading platforms at hourly, five-minute, and one-minute intervals, using the same data sources and methodology as in the Spot Bitcoin ETP Approval Order (see Spot Bitcoin ETP Approval Order at 3010 n.35), for the period from March 1, 2021, to March 29, 2024. The correlation between the CME bitcoin futures market and this subset of spot bitcoin platforms for the full sample period is no less than 98.3 percent using data at an hourly interval, 89.7 percent using data at a five-minute interval, and 73.9 percent using data at a one-minute interval. The rolling three-month correlation results range between 91.9 and 99.3 percent using data at an hourly interval, 76.6 and 94.9 percent using data at a five-minute interval, and 62.7 and 83.3 percent using data at a one-minute interval.

²⁰ See, e.g., Spot Bitcoin ETP Approval Order at 3011; Securities Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895 (Dec. 29, 2009) (SR-NYSEARCA-2009-94) (Order Granting Approval of Proposed Rule Change Relating To Listing and Trading Shares of the ETFs Palladium Trust); Securities Exchange Act Release No. 94518 (Mar. 25, 2022), 87 FR 18837 (Mar. 31, 2022) (SR-NYSEARCA-2021-65) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares); Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; SR-CboeBZX-2024-018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

throughout the Exchanges' regular trading hours; the Exchanges' surveillance procedures and ability to obtain information regarding trading in the shares of the Trusts; the conditions under which the Exchanges would implement trading halts and suspensions; and the requirements of registered market makers in the shares of each Trust.²¹ In addition, in each Proposal, the applicable Exchange deems the shares of the applicable Trust to be equity securities, thus rendering trading in such shares subject to that Exchange's existing rules governing the trading of equity securities.²² Further, the applicable listing rules of each Exchange require that all statements and representations made in its filing regarding, among others, the description of the applicable Trust's holdings, limitations on such holdings, and the applicability of that Exchange's listing rules specified in the filing, will constitute continued listing requirements.²³ Moreover, each Proposal states that: its sponsor has represented to the applicable Exchange that it will advise that Exchange of any failure to comply with the applicable continued listing requirements; pursuant to obligations under Section 19(g)(1) of the Exchange Act, that Exchange will monitor for compliance with the continued listing requirements; and if the applicable Trust is not in compliance with the applicable listing requirements, that Exchange will commence delisting procedures.²⁴

The Commission therefore finds that the Proposals, as with other ETPs that the Commission has approved,²⁵ are reasonably designed to promote fair disclosure of information that may be necessary to price the shares of the Trusts appropriately, to prevent trading when a

²¹ See Grayscale Filing at 49941-43; Pando Filing at 54564-67.

²² See Grayscale Filing at 49942; Pando Filing at 54566.

²³ See NYSE Arca Rule 8.201-E(e)(2)(vii); BZX Rule 14.11(a).

²⁴ See Grayscale Filing at 49943; Pando Filing at 54567.

²⁵ See supra note 20.

reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Trusts' portfolios, and to ensure fair and orderly markets for the shares of the Trusts.

C. Comments

Some commenters state that bitcoin is a volatile asset and approval of spot bitcoin ETPs could amplify that volatility,²⁶ making spot bitcoin ETPs unsuitable for some retail investors.²⁷ The Commission finds that the Proposals are consistent with the Section 6(b)(5) requirement that the Exchanges' rules be designed to protect investors and the public interest because, in addition to the factors discussed in Section II.A and II.B above, existing rules and standards of conduct would apply to recommending and advising investments in the shares of the Trusts. For example, when broker-dealers recommend ETPs to retail customers, Regulation Best Interest ("Reg BI") would apply.²⁸ Reg BI requires broker-dealers to, among other things, exercise reasonable diligence, care, and skill when making a recommendation to a retail customer to: (1) understand potential risks, rewards, and costs associated with the recommendation and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers; and (2) have a reasonable basis to believe the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile.²⁹ In addition,

²⁶ See, e.g., Letter from Gaurav Mehra, dated Dec. 22, 2023, regarding SR-CboeBZX-2023-101 ("Mehra Letter").

²⁷ See, e.g., Letter from Shweta Gulati, dated Jan. 3, 2024, regarding SR-CboeBZX-2023-101 ("Gulati Letter").

²⁸ Exchange Act rule 15l-1(a).

²⁹ Exchange Act rules 15l-1(a)(2)(ii)(A) and (B). Separately, under Reg BI's Conflict of Interest Obligation, broker-dealers must establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, identify and disclose or eliminate all conflicts of interest associated with a recommendation and mitigate conflicts of interest at the associated person level. See Exchange Act rules 15l-1(a)(2)(iii)(A) and (B). To the extent that broker-dealers recommend ETPs to customers who are not retail customers covered by Reg BI, FINRA Rule 2111 requires, in part, that a member broker-dealer or

investment advisers have a fiduciary duty under the Investment Advisers Act of 1940 comprised of a duty of care and a duty of loyalty. These obligations require the adviser to act in the best interest of its client and not subordinate its client’s interest to its own.³⁰

Commenters also raised concerns with bitcoin’s susceptibility to fraud and manipulation,³¹ including wash trading,³² and with custody arrangements and susceptibility of the Trusts’ bitcoin to hacks and theft.³³ The Commission acknowledges commenters’ concerns. Pursuant to Section 19(b)(2) of the Exchange Act, however, 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 applicable requirements of the Exchange Act.³⁴ For the reasons described above, the Commission finds that the Proposals satisfy the requirements of the

associated person “have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the [broker-dealer] or associated person to ascertain the customer’s investment profile.”

³⁰ See Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019), 84 FR 33669 (July 12, 2019), at 33671; Investment Company Act Release No. 34084 (Nov. 2, 2020), 85 FR 83162 (Dec. 21, 2020), at 83217 (discussing the best interest standard of conduct for broker-dealers and the fiduciary obligations of investment advisers in the context of all ETPs).

³¹ See, e.g., Gulati Letter; Letter from Prashant Saksena, dated Jan. 1, 2024, regarding SR-CboeBZX-2023-101 (“Prashant Letter”); Letter from Swatantra G., dated Dec. 28, 2023, regarding SR-CboeBZX-2023-101; Letter from Harish Reddy, dated Jan. 4, 2024, regarding SR-CboeBZX-2023-101; Letter from Snigdha Guha, dated Jan. 6, 2024, regarding SR-CboeBZX-2023-101.

³² See, e.g., Mehra Letter.

³³ See, e.g., Prashant Letter; Letter from Melissa Hayes, dated Dec. 26, 2023, regarding SR-CboeBZX-2023-101.

³⁴ See Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C). The Commission does not apply a “cannot be manipulated” standard; rather, the Commission examines whether a proposal meets the requirements of the Exchange Act. See, e.g., Winklevoss Order at 37582. The Commission does not understand the Exchange Act to require that a particular product or market be immune from manipulation. Rather, the inquiry into whether the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest, has long focused on the mechanisms in place for the detection and deterrence of fraud and manipulation.

Exchange Act, including the requirement in Section 6(b)(5)³⁵ that the Exchanges’ rules be designed to “prevent fraudulent and manipulative acts and practices.”³⁶

Commenters also address, among other things: the use of bitcoin for illicit activities,³⁷ such as sanctions evasion,³⁸ money-laundering,³⁹ and terrorist finance;⁴⁰ the environmental impacts of bitcoin mining;⁴¹ the potential impacts of spot bitcoin ETP approvals on lower-income countries’ financial development;⁴² on democracy, human rights, and civil liberties;⁴³ and on inflation;⁴⁴ and the benefits of blockchain technology.⁴⁵ Ultimately, however, for the reasons described above, the Commission is approving the Proposals because it finds that the Proposals satisfy the requirements of the Exchange Act, including the requirement in Section 6(b)(5)⁴⁶ that the Exchanges’ rules be designed to “prevent fraudulent and manipulative acts and practices.”

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ See also Spot Bitcoin ETP Approval Order at 3013 (discussing custody concerns raised by commenters).

³⁷ See, e.g., Letter from Arun Gogia, dated Dec. 30, 2023, regarding SR-CboeBZX-2023-101 (“Gogia Letter”); Letter from Dhiraj Kafle, dated Jan. 2, 2024, regarding SR-CboeBZX-2023-101; Letter from Bhrigu Wadhwa, dated Jan. 2, 2024, regarding SR-CboeBZX-2023-101; Letter from Vir Vijay Singh, dated Jan. 4, 2024, regarding SR-CboeBZX-2023-101.

³⁸ See, e.g., Letter from Borislava Pupaza, dated Dec. 29, 2023, regarding SR-CboeBZX-2023-101 (“Pupaza Letter”); Letter from Amit Budhiraja, dated Jan. 2, 2024, regarding SR-CboeBZX-2023-101 (“Budhiraja Letter”); Letter from Anurag Saxena, dated Jan. 2, 2024, regarding SR-CboeBZX-2023-101 (“Anurag Letter”).

³⁹ See, e.g., Letter from Vipin Agarwal, dated Jan. 2, 2024, regarding SR-CboeBZX-2023-101.

⁴⁰ See, e.g., Letter from Sameer Tiwari, dated Jan. 5, 2024, regarding SR-CboeBZX-2023-101.

⁴¹ See, e.g., Gogia Letter.

⁴² See, e.g., Letter from Mohit Gupta, dated Dec. 29, 2023, regarding SR-CboeBZX-2023-101.

⁴³ See, e.g., Pupaza Letter; Budhiraja Letter; Anurag Letter.

⁴⁴ See, e.g., Gulati Letter.

⁴⁵ See, e.g., Letter from Miguel A. Suro Carrasco, dated Jan. 3, 2024, regarding SR-CboeBZX-2023-101.

⁴⁶ 15 U.S.C. 78f(b)(5).

III. ACCELERATED APPROVAL OF THE PANDO FILING

The Commission finds good cause to approve the Pando Filing prior to the 30th day after the date of publication of notice of its Amendment No. 1⁴⁷ in the Federal Register. The amendment clarified the description of its Trust; further described the terms of the Trust; and conformed various representations in the amended filing to BZX’s listing standards and to representations that exchanges have made for other ETPs that the Commission has approved.⁴⁸ The amended filing is now substantially similar to other spot bitcoin ETPs that the Commission has approved,⁴⁹ and as discussed above in Section II.A, the spot bitcoin market and the CME bitcoin futures market remain consistently highly correlated. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,⁵⁰ to approve the Pando Filing on an accelerated basis.

IV. CONCLUSION

This approval order is based on all of the Exchanges’ representations and descriptions in their respective amended filings, which the Commission has carefully evaluated as discussed above.⁵¹ For the reasons set forth above, including the Commission’s correlation analysis, the Commission finds, pursuant to Section 19(b)(2) of the Exchange Act,⁵² that the Proposals are consistent with the requirements of the Exchange Act and the rules and regulations thereunder

⁴⁷ See supra note 4.

⁴⁸ See also supra Section II.B.

⁴⁹ See Spot Bitcoin ETP Approval Order.

⁵⁰ 15 U.S.C. 78s(b)(2).

⁵¹ See supra notes 3-4. In addition, the shares of the Trust in SR-NYSEARCA-2024-45 must comply with the requirements of NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) to be listed and traded on NYSE Arca on an initial and continuing basis; and the shares of the Trust in SR-CboeBZX-2023-101 must comply with the requirements of BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares) to be listed and traded on BZX on an initial and continuing basis.

⁵² 15 U.S.C. 78s(b)(2).

applicable to a national securities exchange, and in particular, with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Exchange Act.⁵³

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,⁵⁴ that the Grayscale Filing (SR-NYSEARCA-2024-45) be, and hereby is, approved; and that the Pando Filing (SR-CboeBZX-2023-101) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

Sherry R. Haywood,

Assistant Secretary.

⁵³ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁵⁴ 15 U.S.C. 78s(b)(2).

⁵⁵ 17 CFR 200.30-3(a)(12).