

response to prepare and is filed by approximately 63 companies annually. We estimate that 25% of the 260.56 hours per response (65.14 hours) is prepared by the company for an annual reporting burden of 4,104 hours (65.14 hours per response × 63 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by December 4, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: September 28, 2023.

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98614; File No. SR-CboeBZX-2023-040]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

September 28, 2023.

On June 30, 2023, Cboe BZX Exchange, Inc. ("BZX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares ("Shares") of the VanEck Bitcoin Trust ("Trust") under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. On July 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 19, 2023.<sup>3</sup>

On August 31, 2023, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.<sup>5</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

#### I. Summary of the Proposal, as Modified by Amendment No. 1

As described in more detail in the Notice,<sup>7</sup> the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is for the Shares to reflect the performance of the MarketVector™ Bitcoin Benchmark Rate (f/k/a MVIS® CryptoCompare Bitcoin Benchmark Rate) ("Benchmark") less the expenses of the Trust's operations.<sup>8</sup> The Trust's assets will consist of bitcoin held by the Trust's custodian on behalf of the Trust.<sup>9</sup> The administrator of the Trust will determine the net asset value

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

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

<sup>3</sup> See Securities Exchange Act Release No. 97903 (July 13, 2023), 88 FR 46320 ("Notice"). Comments on the proposed rule change, as modified by Amendment No. 1, are available at: <https://www.sec.gov/comments/sr-cboebzx-2023-040/srcboebzx2023040.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 98265, 88 FR 61641 (Sept. 7, 2023). The Commission designated October 17, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Notice, *supra* note 3.

<sup>8</sup> See *id.* at 46329. VanEck Digital Assets, LLC ("Sponsor") is the sponsor of the Trust.

<sup>9</sup> See *id.* The Trust generally does not intend to hold cash or cash equivalents; however, there may be situations where the Trust will unexpectedly hold cash on a temporary basis. See *id.*

("NAV") of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET.<sup>10</sup> In determining the Trust's NAV, the administrator will value the bitcoin held by the Trust based on the price set by the Benchmark as of 4:00 p.m. ET.<sup>11</sup> When the Trust sells or redeems its Shares, it will do so in "in-kind" transactions with authorized participants in blocks of 50,000 Shares.<sup>12</sup>

#### II. Proceedings To Determine Whether To Approve or Disapprove SR-CboeBZX-2023-040 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>13</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>14</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices" and "to protect investors and the public interest."<sup>15</sup>

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on whether the proposed Trust and Shares

<sup>10</sup> See *id.* at 46331.

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

<sup>12</sup> See *id.* at 46329.

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> *Id.*

<sup>15</sup> 15 U.S.C. 78f(b)(5).

would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin markets and the bitcoin markets' susceptibility to manipulation?

2. Based on data and analysis provided and the academic research cited by the Exchange,<sup>16</sup> do commenters agree with the Exchange that the Chicago Mercantile Exchange ("CME"), on which CME bitcoin futures trade, represents a regulated market of significant size related to spot bitcoin? <sup>17</sup> What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares? <sup>18</sup> Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the CME bitcoin futures market? <sup>19</sup>

3. The Exchange states that bitcoin is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices "exist to justify dispensing with the requisite surveillance sharing agreement" with a regulated market of significant size related to spot bitcoin.<sup>20</sup> In support, the Exchange states, among other things, that the geographically diverse and continuous nature of bitcoin trading make it difficult and prohibitively costly to manipulate the price of bitcoin, and that the fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging.<sup>21</sup> The Exchange also states that offering only in-kind creations and redemptions provides "unique protections against potential attempts to manipulate the price of the Shares" and that the price the Sponsor uses to value the Trust's bitcoin "is not particularly important."<sup>22</sup> Do commenters agree with the Exchange's statements regarding the bitcoin market's resistance to price manipulation?

4. The Exchange also states that it will execute a surveillance-sharing agreement with Coinbase, Inc. ("Coinbase") that is intended to

supplement the Exchange's market surveillance program.<sup>23</sup> According to the Exchange, the agreement is "expected to have the hallmarks of a surveillance-sharing agreement between two members of the [Intermarket Surveillance Group], which would give the Exchange supplemental access to data regarding spot [b]itcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares."<sup>24</sup> Based on the description of the surveillance-sharing agreement as provided by the Exchange, what are commenters' views of such an agreement if finalized and executed? Do commenters agree with the Exchange that such an agreement with Coinbase would be "helpful in detecting, investigating, and deterring fraud and manipulation in the Commodity-Based Trust Shares"? <sup>25</sup>

5. Some sponsors of proposed spot bitcoin exchange-traded products have also provided data regarding the correlation between certain bitcoin spot markets and the CME bitcoin futures market.<sup>26</sup> What are commenters' views on the correlation between the bitcoin spot market and the CME bitcoin futures market? What are commenters' views on the extent to which that correlation provides evidence that the CME bitcoin futures market is "significant" related to spot bitcoin?

### III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section

<sup>23</sup> See *id.* at 46328.

<sup>24</sup> See *id.* at 46328–39. The Exchange states that "[t]his means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares." *Id.* at 46329.

<sup>25</sup> See *id.* at 46328.

<sup>26</sup> See, e.g. Notice of Filing of Amendment No. 3 to, and Order Instituting Proceedings to Determine Whether to Approve or Disapprove, 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, Securities Exchange Act Release No. 98112 (Aug. 11, 2023), 88 FR 55743 (Aug. 16, 2023) (including data from sponsor 21Shares US LLC that purports to show correlations of returns across the two-year period from January 20, 2021, to February 1, 2023, of no less than 92% among certain spot bitcoin platforms and between the CME bitcoin futures market and such spot bitcoin platforms on an hourly basis, and no less than 78% on a minutely basis).

6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.<sup>27</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 25, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 8, 2023.

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](mailto:rule-comments@sec.gov). Please include file number SR–CboeBZX–2023–040 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–2023–040. 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

<sup>27</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>16</sup> See Notice, 88 FR at 46326–28.

<sup>17</sup> See *id.* at 46328.

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* at 46328 n.54.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.* at 46329.

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-2023-040 and should be submitted on or before October 25, 2023. Rebuttal comments should be submitted by November 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98650; File No. SR-CboeBZX-2023-068]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend Its Fee Schedule Related to Physical Port Fees

September 29, 2023.

#### I. Introduction

On September 1, 2023, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change (File Number SR-CboeBZX-2023-068) to amend its fee schedule to increase the monthly fee for 10 gigabit (“Gb”) physical ports. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed

rule change was published for comment in the **Federal Register** on September 20, 2023.<sup>4</sup> Pursuant to Section 19(b)(3)(C) of the Act,<sup>5</sup> the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

#### II. Background and Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule for its equity options platform (“BZX Options”) relating to physical connectivity fees. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange currently assesses the following physical connectivity fees for Members<sup>6</sup> and non-Members on a monthly basis: \$2,500 per physical port for a 1 Gb circuit and \$7,500 per physical port for a 10 Gb circuit.<sup>7</sup> According to the Exchange, the physical ports may also be used to access the systems for the following affiliate exchanges and only one monthly fee currently (and will continue) to apply per port: the Exchange’s equities platform (BZX Equities), Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc.

#### III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,<sup>8</sup> at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>9</sup> the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (“SRO”) 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. The Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change’s

consistency with the Act and the rules thereunder.

In support of the proposal, the Exchange states its belief that the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports.<sup>10</sup> The Exchange states that the current 10 Gb physical port fee has remained unchanged since June 2018.<sup>11</sup> The Exchange states that during this 5-year span there has been an average inflation rate of 3.9%, producing a cumulative price increase of approximately 21.1% inflation since the fee for the 10 Gb physical port was last modified.<sup>12</sup> In support of its claim of reasonableness, the Exchange compares its proposed rate increase from the rates adopted five years ago of approximately 13% to the cumulative inflation rate of 21.1%.<sup>13</sup>

In further support of the proposal, the Exchange states that the proposed fee is reasonable, fair, and equitable, and not unfairly discriminatory.<sup>14</sup> The Exchange believes that the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.<sup>15</sup> The Exchange also states its belief that the fee is not unfairly discriminatory, because the fee would be assessed uniformly across all market participants that purchase the physical ports.<sup>16</sup> The Exchange states that the fee is equitable because increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port as the 1 Gb physical port is  $\frac{1}{10}$  the size of the 10 Gb physical port and does not offer access to many of the products and services offered by the Exchange.<sup>17</sup> The Exchange also states its belief the proposed fee is reasonable and appropriately allocated because, the Exchange states, market participants that purchase 10 Gb physical ports use the most bandwidth and therefore consume the most resources from the network.<sup>18</sup>

In further support of its proposed fee, the Exchange states that Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, or connect directly to, the

<sup>4</sup> See Securities Exchange Act Release No. 98389 (September 14, 2023), 88 FR 64957 (“Notice”).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> The term “Member” means any registered broker or dealer that has been admitted to membership in the Exchange. See Exchange Rule 1.5(n).

<sup>7</sup> A physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange’s servers are located.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>9</sup> 15 U.S.C. 78s(b)(1).

<sup>10</sup> See Notice, *supra* note 4, at 64958.

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

<sup>12</sup> See *id.*

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>28</sup> 17 CFR 200.30-3(a)(57).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).