

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-102632; File No. SR-CboeBZX-2025-036)

March 12, 2025

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend the Rule Governing the Listing and Trading of Shares of the Franklin Ethereum ETF to Permit Staking

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 March 10, 2025, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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

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 Franklin Ethereum ETF (the “Fund”), a series of the Franklin Ethereum Trust (the “Trust”), shares (the “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 permit staking of the ether held by the Fund.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved the Exchange’s proposal to list and trade shares (the “Shares”) of the Fund on the Exchange pursuant to Exchange Rule 14.11(e)(4), Commodity-Based Trust Shares, on May 23, 2024.³ 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 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

³ See Securities Exchange Act Release Nos. 100218 (May 22, 2024) 89 FR 46499 (May 29, 2024) (SR-CboeBZX-2024-018) (Notice of Filing of Amendment No. 1 to a Proposed Rule Change Relating To List and Trade Shares of the Franklin Ethereum ETF, a Series of the Franklin Ethereum Trust, Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (“Eth ETP Amendment No. 1”); 100224 (May 23, 2024) 89 FR 46937 (May 30, 2024) (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) (the “Approval Order”).

quantity of the underlying commodity and/or cash. The Shares are issued by the Fund, which is a series of the Trust. The Trust was formed as a Delaware statutory trust on February 8, 2024.

Based on discussions with the Sponsor, the Exchange proposes to amend several portions of the Eth ETP Amendment No. 1 in order to allow the staking of the ether held by the Fund. First, the Exchange proposes to delete the following representation in the Eth ETP Amendment No. 1 that provides that the Fund will not engage in staking:⁴

Neither the Trust or the Fund, nor the Sponsor, nor the Custodian, nor any other person associated with the Trust or Fund will, directly or indirectly, engage in action where any portion of the Fund's ETH becomes subject to the Ethereum proof-of-stake validation or is used to earn additional ETH or generate income or other earnings.

The Exchange also proposes to add the following "Staking" section following the "The Custodian" section⁵ of the Eth ETP Amendment No. 1:

Staking

The Sponsor may, from time to time, stake a portion of the Fund's ether on behalf of the Fund through one or more trusted staking providers, which may include the Custodian, an affiliate of the Custodian or an affiliate of the Sponsor ("Staking Providers"). In consideration for any staking activity in which the Fund may engage, the Fund would receive certain staking rewards of ether tokens, which may be treated as income to the Fund.

The Staking Process

In the second half of 2020, the Ethereum network began the first of several stages of an upgrade culminating in a transition referred to as the "Merge." The Merge amended the Ethereum network's consensus mechanism to a process known as proof-of-stake. Proof-of-stake was intended to address the perceived shortcomings of the proof-of-work consensus mechanism in terms of labor intensity and duplicative computational effort expended by validators (known under proof-of-work as "miners"). In a proof-of-work consensus mechanism, miners effectively compete to be the first in time to solve the cryptographic puzzle that would allow them to be the only validator permitted to validate the block and thus be the only ones to receive the resulting block reward. Miners who are not first in time (and thus are not permitted to be validators) will have effectively expended significant labor and computing power for no gain. In a proof-of-stake

⁴ See Eth ETP Amendment No. 1 at 46505.

⁵ See Eth ETP Amendment No. 1 at 46506-46507.

mechanism, by contrast, a single validator is randomly selected to solve the cryptographic puzzle needed to validate a block, which it proposes to a committee of other validators, who vote for whether to include the block (or not). This proof-of-stake system reduces the computational work performed - and energy expended - to validate each block compared to proof-of-work.

Unlike proof-of-work, in which miners expend computational resources to compete to validate transactions and are rewarded coins in proportion to the amount of computational resources expended, in proof-of-stake, validators risk or “stake” coins to compete to be randomly selected to validate transactions and are rewarded coins in proportion to the amount of coins staked. Any malicious activity, such as mining multiple blocks, disagreeing with the eventual consensus or otherwise violating protocol rules, results in the forfeiture or “slashing” of a portion of the staked coins. Proof-of-stake is viewed as more energy efficient and scalable than proof-of-work.

New ether is created as a result of the staking of ether by validators. Validators are required to stake ether in order to be selected to perform validation activities and then once selected, as a reward, they earn newly created ether. Validation activities include verifying transactions, storing data, and adding to the Ethereum blockchain.

To operate a node on the Ethereum blockchain, a validator must acquire and lock 32 ether by sending a special transaction to the staking contract. This transaction associates the staked ether with a withdrawal address (to unlock the ether and receive any staking rewards) and a validator address (to designate the validator node performing transaction verification).

Staking by the Sponsor on Behalf of the Fund

The Sponsor may, from time to time, stake a portion of the Fund’s ether on behalf of the Fund through one or more Staking Providers. The Sponsor expects to maintain sufficient liquidity in the Fund to satisfy redemptions. The ether staked by the Sponsor on behalf of the Fund will consist exclusively of ether owned by the Fund. The Sponsor’s staking activities on behalf of the Fund will not constitute “delegated staking” and will not form part of a “staking as a service” offering.

As further discussed below, the Sponsor believes its activities in relation to staking the ether held by the Fund on behalf of the Fund are materially different from the delegated staking and “staking as a service” activities that the SEC has alleged to involve securities offerings in violation of Section 5 of the Securities Act of 1933 (the “Securities Act”).⁶

⁶ See SEC v. Payward Ventures, Inc. and Payward Trading, Ltd., (Complaint filed February 9, 2023) available at <https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-25.pdf>. (In February 2023, the SEC charged and entered into a settlement order with Payward Ventures, Inc. and Payward Trading Ltd., both commonly known as Kraken, regarding Kraken’s alleged failure to register the offer and sale of their crypto asset staking-as-a-service program, whereby investors transfer crypto assets to Kraken for staking in exchange for advertised annual investment returns of as much as 21 percent. According to the SEC’s complaint, since 2019, Kraken has offered and sold its crypto asset “staking services” to the general public, whereby Kraken pools certain crypto assets transferred by investors and stakes them on behalf of

First, the Sponsor will only stake the ether held by the Fund. The Sponsor will not seek to pool the ether held by the Fund with ether held by other entities (although such pooling may occur at the level of a Staking Provider). Second, the Sponsor will not advertise itself as providing any staking services generally, or promise any specific level of return from staking, or solicit delegated stakes from entities other than the Fund. Third, the Sponsor has stated that it is staking the Fund’s ether solely in order to maximize the Fund’s revenue generation opportunities, and to generate returns for the Fund’s shareholders. Fourth, the Sponsor will not bear or subsidize the risk of slashing on behalf of the Fund.

Staking by the Sponsor will not result in the ether held by the Fund moving out of the custody of the Custodian. In order to stake the Fund’s ether, Sponsor will engage in what is known as “point-and-click staking.” Point-and-click staking involves an interface through which an entity can simply initiate staking by pointing and clicking on the ether assets to be staked. This process does not involve the staked ether leaving the wallet in which it is held and accordingly reduces the risk of loss of ether through theft at the node while the asset is staked (although this process will not reduce the risk of loss of the ether through slashing).

Except for the above changes, all other representations in Eth ETP Amendment No. 1 remain unchanged and will continue to constitute continuing listing requirements. In addition,

those investors. According to the SEC, investors would lock up – or “stake” – their crypto tokens with Kraken with the goal of being rewarded with new tokens when their staked crypto tokens become part of the process for validating data for the blockchain. The complaint alleged that Kraken touted that its staking investment program offered an easy-to-use platform and benefits that derived from Kraken’s efforts on behalf of investors, including Kraken’s strategies to obtain regular investment returns and payouts.) See also SEC v. Binance Holdings Limited, et al., (Complaint filed June 5, 2023) available at <https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-101.pdf>. (On June 5, 2023, the SEC filed a complaint charging Binance Holdings Ltd. and certain of its affiliates with a variety of securities law violations, including operating a “staking-as-a-service” program. The SEC’s complaint alleges, among other things, that BAM Trading violated Sections 5(a) and 5(c) of the Securities Act by offering and selling its staking program without a registration statement, and that BAM Trading’s Staking Program was promoted “as a superior and much easier way to obtain staking rewards by, among other things, pooling the crypto assets of a large number of investors.”) See also SEC v. Coinbase, Inc. and Coinbase Global (Complaint filed June 6, 2023) available at <https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-102.pdf>. (On June 6, 2023, the SEC filed a complaint against Coinbase, Inc. and Coinbase Global in federal district court in the Southern District of New York, alleging, *inter alia* that Coinbase Inc. violated the Securities Act by failing to register with the SEC the offer and sale of its staking program. The SEC’s complaint alleges that through the Coinbase staking program, investors’ crypto assets are transferred to and pooled by Coinbase (segregated by asset), and subsequently “staked” (or committed) by Coinbase in exchange for rewards, which Coinbase distributes pro rata to investors after paying itself a 25-35% commission. The SEC also alleges that investors understand that Coinbase will expend efforts and leverage its experience and expertise to generate returns.)

the Fund will continue to comply with the terms of Eth ETP Amendment No. 1 and 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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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 allow the Fund to stake its ether on behalf of its investors. The Ethereum network allows for staking of its native asset, ether tokens, and permits validators who successfully stake ether to receive rewards in the form of more ether tokens. The net beneficiaries are not only validators, or those on behalf of whom they stake ether, but also the Ethereum blockchain itself which grows and is progressively made more secure through the validation of transactions. Staking permits validators to contribute to the network by staking their tokens to secure the blockchain, facilitating the creation of blocks, and helping process

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

transactions. Validators are compensated for fulfilling this important role through transaction fees and consensus rewards paid by the blockchain itself.

Staking through mechanisms such as “point-and-click” staking can also permit the earning of rewards without certain additional risks to the tokens held by the Custodian on behalf of the Fund. As such, not staking the Fund’s ether would amount to waiving the Fund’s right to free additional ether, an act analogous to an equity ETP refusing dividends from the companies it holds. Allowing the Fund to stake its ether would benefit investors and help the Fund to better track the returns associated with holding ether. This would improve the creation and redemption process for both authorized participants and the Fund, increase efficiency, and ultimately benefit the end investors in the Fund.

Except for the addition of staking of the Fund’s ether and the changes discussed herein, all other representations made in Eth ETP Amendment No. 1 remain unchanged and will continue to constitute continuing listing requirements for the Fund.

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 benefit investors and allow the Fund to better track the returns associated with holding ether. The Exchange believes these changes will not impose any burden on competition.

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

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 Exchange 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2025-036 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-2025-036. 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-2025-036 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.⁹

Sherry R. Haywood,

Assistant Secretary.

⁹ 17 CFR 200.30-3(a)(12).