

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99162; File No. SR-CboeBZX-2023-105)

December 13, 2023

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend BZX Rule 14.11(e)(4)(C)(i) (Commodity-Based Trust Shares)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 12, 2023, Cboe BZX Exchange, Inc. (“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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 (1) to amend Exchange Rule 14.11(e)(4)(C)(i) (“Commodity-Based Trust Shares”); and (2) amend 14.11(e)(4)(C)(ii) to state that the term “commodity” is defined in Section 1a(9) of the Commodity Exchange Act.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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.

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 Exchange proposes (1) to amend Exchange Rule 14.11(e)(4)(C)(i) (“Commodity-Based Trust Shares”); and (2) to amend 14.11(e)(4)(C)(ii) to state that the term “commodity” is defined in Section 1a(9) of the Commodity Exchange Act. The proposed rules are identical to NYSE Arca, Inc. (“Arca”) Rules 8.201-E(c)(1) and (2), respectively.⁵

Under Exchange Rule 14.11(e)(4), the Exchange may propose to list and/or trade pursuant to UTP “Commodity-Based Trust Shares.”⁶ Rule 14.11(e)(4)(C)(1) currently states that such

⁵ See Securities and Exchange Act Nos. 89310 (July 14, 2020) 85 FR 43932 (July 20, 2020) (SR-NYSEArca-2020-59) (Notice of Filing of Proposed Rule Change To Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and To Permit the Listing and Trading of Shares of the United States Gold and Treasury Investment Trust Under NYSE Arca Rule 8.201-E); 90216 (October 16, 2020) 85 FR 67401 (October 22, 2020) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and To Permit the Listing and Trading of Shares of the Wilshire [w]Shares Enhanced Gold Trust Under Amended NYSE Arca Rule 8.201-E).

⁶ Commodity-Based Trust Shares are securities issued by a trust that represents investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. Rule 14.11(e)(4)(C)(i) defines the term “Commodity-Based Trust Shares” as follows: the term “Commodity-

securities are issued by a trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity, and 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.

The Exchange proposes to amend Rule 14.11(e)(4)(C)(1) to provide: the term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust ("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 quantity of the underlying commodity and/or cash. Given the competitive marketplace for exchange listings, the Exchange is conforming its listing rules to that of another exchange.⁷

The Exchange further proposes to amend Rule 14.11(e)(4)(C)(ii) to state that the term "commodity" is defined in Section 1a(9) of the Commodity Exchange Act (rather than Section 1(a)(4) as currently referenced in Rule 14.11(e)(4)(C)(ii)) to reflect an amendment to the Commodity Exchange Act included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.⁸

Based Trust Shares" means a security (a) that is issued by a trust ("Trust") that holds a specified commodity deposited with the Trust; (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 (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.

⁷ See Arca Rule 8.201-E(c)(1).

⁸ Public Law 111-203, 124 Stat. 1900 (2010).

Last, the Exchange proposes to correct ministerial errors in Rule 14.11(e)(4)(C)(ii) to remove several errant parentheses.

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.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As noted above, the marketplace for exchange listings is highly competitive, and the Exchange's proposal is merely conforming its listing rules to that of another exchange. The Exchange believes the proposed change will facilitate the listing and trading of additional types of exchange-traded derivative securities products that will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange's proposal to amend Rule 14.11(e)(4)(C)(ii) to state that the term

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Id.

“commodity” is defined in Section 1a(9) of the Commodity Exchange Act (rather than Section 1(a)(4) as currently referenced in 14.11(e)(4)(C)(ii)) reflects an amendment to the Commodity Exchange Act included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.¹² Furthermore, the proposed amendment is identical to Arca Rule 8.201-E(c)(2). The Exchange also believes its proposal to correct ministerial errors in Rule 14.11(e)(4)(C)(ii) will provide clarity in the Exchange’s rulebook to the benefit of all investors.

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. The proposed rule change to Rule 14.11(e)(4)(C)(ii) does not address competitive issues, but rather, as discussed above, is merely intended to correct a reference to a modified Commodity Exchange Act rule. The Exchange believes the proposed rule change to Rule 14.11(e)(4)(C)(i) will enhance competition by accommodating Exchange trading of additional exchange-traded products.

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

Pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days

¹² Supra note 6.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹⁵

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed rule change, which modifies the Exchange's rules by conforming the definition of Commodity-Based Trust Shares with the same definition used by another national securities exchange¹⁷ and corrects the citation for the term "commodity," as defined in the Commodity Exchange Act, raises no unique or novel legal or regulatory issues and will lessen any potential confusion among market participants. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

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

¹⁵ 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.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ See supra note 7.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-105 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-2023-105. 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-2023-105 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.¹⁹

Sherry R. Haywood,

Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12), (59).