

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100306; File No. SR-CboeBZX-2024-050)

June 10, 2024

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; 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

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 June 7, 2024, 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 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 Ethereum ETF (the “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 amend the Trust name and reflect that the Trust will no longer have a sub-adviser.

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 of the Trust (the “Shares”) 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 quantity of the underlying commodity and/or cash. The Shares will be issued by the Trust. The Trust was formed as a Delaware statutory trust on September 5, 2023.

³ 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 “Approval Order”).

The Exchange proposes to amend a representation set forth in the Exchange’s previous rule filing to list and trade Shares of the Trust and to reflect a change to the Trust name.⁴ Specifically, Amendment No. 2 represented that ARK Investment Management LLC is the sub-adviser of the Trust and will provide data, research, and as needed, operational support to the Trust including with respect to assistance in the marketing of the Shares. Now, the Exchange proposes to provide that a sub-adviser will no longer serve the Trust.

The Exchange also proposes to change the name of the Trust to the 21Shares Core Ethereum ETF. The proposed name change is consistent with an amended name to the Trust’s charter and the Trust’s registration statement on Form S-1 (as amended and supplemented from time to time, the “Registration Statement”).⁵

Except for the above changes, all other representations in Amendment No. 2 remain unchanged and will continue to constitute continuing listing requirements. In addition, the Trust will continue to comply with the terms of Amendment No. 2 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.⁶ Specifically, the Exchange believes the proposed rule change is

⁴ 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) (“Amendment No. 2”).

⁵ See Amendment No. 3 to the Registration Statement on Form S-1, dated May 31, 2024, submitted to the Commission by the Sponsor, as defined in the Registration Statement, on behalf of the Trust (333-274364).

⁶ 15 U.S.C. 78f(b).

consistent with the Section 6(b)(5)⁷ 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 two representations in Amendment No. 2 regarding the designation of a sub-adviser and the name of the Trust. As described above, the amendment to reflect that a sub-adviser will no longer serve the trust will conform to changes made to the Registration Statement. There is no requirement that a sub-adviser serve the Trust, and at least one other issuer of a spot ether exchange-traded product (“ETP”) has similarly not designated a sub-adviser to its trust.⁸ The proposed named change is also consistent with an amended name to the Trust’s charter and the Trust’s Registration Statement. Further, the proposed name will continue to accurately describe the Trust. Therefore, the proposed changes will promote clarity and transparency with respect to the Trust’s name and service providers, to the benefit of all market participants.

Except for these changes, all other representations made in Amendment No. 2 remain unchanged and will continue to constitute continuing listing requirements for the Trust.

⁷ 15 U.S.C. 78f(b)(5).

⁸ For example, the proposal to list and trade shares of the VanEck Ethereum Trust did not provide for a sub-adviser. See Securities Exchange Act Release No. 100214 (May 22, 2024), 89 FR 46476 [sic] (May 29, 2024) (SR-CboeBZX-2023-069) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to List and Trade Shares of the VanEck Ethereum Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares). See also the Approval Order.

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 a name change to the Trust and to reflect that a sub-adviser will no longer serve the Trust. 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

Because the foregoing 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 for 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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). 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, along with a brief description and text of 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.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

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. Waiver of the 30-day operative delay will allow the Exchange to immediately reflect changes to the Trust name and sub-adviser that are consistent with its Registration Statement and charter. The Commission believes that the proposed rule change presents no novel legal or regulatory issues, and 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.¹²

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
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-050 on the subject line.

¹² For purposes only of waiving the operative delay of this proposal, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2024-050. 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-2024-050 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.¹³

Sherry R. Haywood,

Assistant Secretary.

¹³ 17 CFR 200.30-3(a)(12), (59).