

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104070; File No. SR-CboeBZX-2025-081]

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. 2, to List and Trade Shares of the Canary PENGU ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

September 25, 2025.

I. Introduction

On June 25, 2025, Cboe BZX Exchange, Inc. (“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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Canary PENGU ETF (“Trust”) under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. On July 7, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety. On July 8, 2025, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1, in its entirety. The proposed rule change, as modified by Amendment No. 2, was published for comment in the Federal Register on July 14, 2025.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103408 (July 9, 2025), 90 FR 31542 (“Notice”). The Commission has received no comment letters on the proposed rule change.

On August 25, 2025, pursuant to Section 19(b)(2) of the Act,⁴ 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.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

II. Summary of the Proposal, as Modified by Amendment No. 2

As described in more detail in the Notice,⁷ 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 to provide capital appreciation.⁸ In seeking to achieve its investment objective, the Trust will hold PENGU,⁹ Pudgy Penguin non-fungible tokens (“Pudgy Penguin NFTs”),¹⁰ SOL, and ETH (collectively, the “Portfolio Digital

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 103773, 90 FR 42051 (Aug. 28, 2025). The Commission designated Oct. 12, 2025, as the date by which the Commission shall approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 2.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Notice, supra note 3.

⁸ See id. at 31545. Canary Capital Group LLC (“Sponsor”) is the sponsor of the Trust, CSC Delaware Trust Company is the trustee, and a third-party custodian will be responsible for custody of the Trust’s Portfolio Digital Assets (as defined herein). See id. at 31542-43, 31545.

⁹ The Exchange states that PENGU is a digital asset created and transmitted through the Solana Network, a peer-to-peer, decentralized computer network operating on cryptographic protocols. According to the Exchange, PENGU exists as a token on the Solana Network, and is often considered a digital collector’s item. See id. at 31544.

¹⁰ The Exchange states that Pudgy Penguin NFTs are a collection of 8,888 non-fungible tokens launched in July 2021, consisting of unique, hand-drawn penguins. According to the Exchange, Pudgy Penguin NFTs are tokens that are recorded and transferred through the operation of the peer-to-peer Ethereum Network. See id.

Assets”).¹¹ The Trust expects that, under normal circumstances, at least 95% of the Trust’s total assets will be invested in PENGU and Pudgy Penguin NFTs, with approximately 80-95% of its total assets in PENGU and 5-15% of its total assets in Pudgy Penguin NFTs.¹² The Trust will also hold SOL and ETH as necessary or incidental to the purchase, sale, and transfer of the Trust’s PENGU and Pudgy Penguins NFTs.¹³ The Trust will value its Shares daily as of 4:00 p.m. ET.¹⁴ The Trust’s holdings in PENGU, SOL, and ETH will be valued using certain pricing benchmarks and the Trust’s Pudgy Penguin NFT holdings will be valued using a third-party non-fungible token pricing service.¹⁵ When the Trust sells or redeems its Shares, it will do so in cash transactions with authorized participants in blocks of 10,000 Shares.¹⁶

III. Proceedings to Determine Whether to Approve or Disapprove SR-CboeBZX-2025-081 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁷ to determine whether the proposed rule change, as modified by Amendment No. 2, 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. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues

¹¹ See id. at 31545.

¹² See id. The Sponsor will select which Pudgy Penguin NFTs to purchase by considering factors such as price, relative rarity, perceived desirability of a particular NFTs traits and characteristics, and the overall collection value. See id. at 31546.

¹³ See id. at 31546. According to the Exchange, the Trust intends to hold only as much SOL or ETH as the Sponsor believes is necessary to pay for anticipated transaction expenses or to purchase Pudgy Penguin NFTs. See id. at 31545-46.

¹⁴ See id. at 31546.

¹⁵ See id.

¹⁶ See id. at 31545.

¹⁷ 15 U.S.C. 78s(b)(2)(B).

involved. Rather, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 2.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁸ 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.”¹⁹

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 whether the proposal to list and trade Shares of the Trust, which would hold PENGU, Pudgy Penguin NFTs, SOL, and ETH, is designed to prevent fraudulent and manipulative acts and practices or raises any new or novel concerns not previously contemplated by the Commission.

IV. 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, as modified by Amendment No. 2, is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations

¹⁸ Id.

¹⁹ 15 U.S.C. 78f(b)(5).

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.²⁰

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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-2025-081 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.

²⁰ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 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).

All submissions should refer to file number SR-CboeBZX-2025-081. 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 filing 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-2025-081 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(57).