

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101998; File Nos. SR-NASDAQ-2024-028; SR-CboeBZX-2024-091)

December 19, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF and Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Franklin Crypto Index ETF, a Series of the Franklin Crypto Trust

I. INTRODUCTION

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² each of The Nasdaq Stock Market LLC (“Nasdaq”) and Cboe BZX Exchange, Inc. (“BZX”, and together with Nasdaq, the “Exchanges”) filed with the Securities and Exchange Commission (“Commission”) proposed rule changes to list and trade shares of the following. Nasdaq proposes to list and trade shares of the Hashdex Nasdaq Crypto Index US ETF³ under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares); and BZX proposes to list and trade shares of the Franklin Crypto Index ETF, a series of the Franklin Crypto Trust,⁴ under BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares). Each filing was subject to notice and comment.⁵

Each of the foregoing proposed rule changes, as modified by their respective amendments, is referred to herein as a “Proposal” and together as the “Proposals.” Each trust (or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101218 (Sept. 30, 2024), 89 FR 80970 (Oct. 4, 2024) (SR-NASDAQ-2024-028) (“Hashdex Filing”).

⁴ See Amendment No. 1 to Proposed Rule Change to List and Trade Shares of the Franklin Crypto Index ETF, a Series of the Franklin Crypto Trust, under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares (SR-CboeBZX-2024-091), filed Dec. 17, 2024, available at: <https://www.sec.gov/comments/sr-cboebzx-2024-091/srcboebzx2024091.htm> (“Franklin Filing”).

⁵ The Commission did not receive any comments on the Franklin Filing. Comments received on the Hashdex Filing are available at: <https://www.sec.gov/comments/sr-nasdaq-2024-028/srnasdaq2024028.htm>.

series of a trust) described in a Proposal is referred to herein as a “Trust” and together as the “Trusts.” As described in more detail in the Proposals’ respective amended filings,⁶ each Proposal seeks to list and trade shares of a Trust that would hold both spot bitcoin⁷ and spot ether,⁸ in whole or in part.⁹ This order approves the Proposals.¹⁰

II. DISCUSSION AND COMMISSION FINDINGS

After careful review, the Commission finds that the Proposals are consistent with the Exchange Act and rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the Exchange Act,¹² which requires, among other things, that the Exchanges’ rules be designed to “prevent fraudulent and manipulative acts and practices” and, “in general, to protect investors and the public interest;” and with Section 11A(a)(1)(C)(iii) of the Exchange Act,¹³ which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

⁶ See supra notes 3-4.

⁷ Bitcoins are digital assets that are issued and transferred via a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the “Bitcoin blockchain.” The Bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions.

⁸ Ether is a digital asset that is native to, and minted and transferred via, a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as “Ethereum.” The Ethereum protocol governs the creation of new ether and the cryptographic system that secures and verifies transactions on Ethereum.

⁹ Each Trust could also hold cash and cash equivalents. See Hashdex Filing at 80970; Franklin Filing at 8.

¹⁰ The Franklin Filing is being approved on an accelerated basis. See infra Section III.

¹¹ In approving the Proposals, the Commission has considered the Proposals’ impacts on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

A. Exchange Act Section 6(b)(5)

The Commission has explained that one way an exchange that lists bitcoin-based or ether-based exchange-traded products (“ETPs”) can meet the obligation under Exchange Act Section 6(b)(5) that its rules be designed to prevent fraudulent and manipulative acts and practices is by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference assets.¹⁴ Such an agreement would assist in detecting and deterring fraud and manipulation related to that underlying asset.

The Commission has also consistently recognized, however, that this is not the *exclusive* means by which an ETP listing exchange can meet this statutory obligation.¹⁵ A listing exchange could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts

¹⁴ See, e.g., Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units, Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072) (“Spot Bitcoin ETP Approval Order”); Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products, Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; SR-CboeBZX-2024-018) (“Spot Ether ETP Approval Order”); Order Granting Approval of Proposed Rule Changes To List and Trade Shares of the Grayscale Ethereum Mini Trust and ProShares Ethereum ETF, Securities Exchange Act Release No. 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024) (SR-NYSEARCA-2024-44; SR-NYSEARCA-2024-53) (“Second Spot Ether ETP Approval Order”); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Bitcoin Mini Trust and Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Pando Asset Spot Bitcoin Trust, Securities Exchange Act Release No. 100610 (July 26, 2024), 89 FR 62821 (Aug. 1, 2024) (SR-NYSEARCA-2024-45; SR-CboeBZX-2023-101) (“Second Spot Bitcoin ETP Approval Order”).

¹⁵ See, e.g., Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579, 37580 (Aug. 1, 2018) (SR-BatsBZX-2016-30) (“Winklevoss Order”); Spot Bitcoin ETP Approval Order at 3009; Spot Ether ETP Approval Order at 46938; Second Spot Bitcoin ETP Approval Order at 62822; Second Spot Ether ETP Approval Order at 59786.

and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.¹⁶

In the Spot Bitcoin ETP Approval Order, the Commission determined that having a comprehensive surveillance-sharing agreement with a U.S.-regulated market that, based on evidence from robust correlation analysis, is consistently highly correlated with the ETPs’ underlying assets (spot bitcoin) constituted “other means” sufficient to satisfy the Exchange Act Section 6(b)(5) standard.¹⁷ Specifically, given the consistently high correlation between the bitcoin futures market of the Chicago Mercantile Exchange (“CME”) and a sample of spot bitcoin markets—confirmed by the Commission through robust¹⁸ correlation analysis using data at hourly, five-minute, and one-minute intervals—the Commission was able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Commission was able to conclude that the comprehensive surveillance-sharing agreement among the listing exchanges and the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the spot bitcoin ETPs considered in the Spot Bitcoin ETP Approval Order.

¹⁶ See, e.g., Spot Bitcoin ETP Approval Order at 3009 (quoting Winklevoss Order at 37580).

¹⁷ See id. at 3009-11. See also Second Spot Bitcoin ETP Approval Order at 62822.

¹⁸ The Commission stated that the “robustness” of its correlation analysis rested on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the Commodity Futures Trading Commission, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period. See Spot Bitcoin ETP Approval Order at 3010 n.38.

The Commission reached similar conclusions in the Spot Ether ETP Approval Order with respect to the spot ether ETPs considered in that order, having confirmed the consistently high correlation between the CME ether futures market and a sample of spot ether markets.¹⁹

The Trusts in the present Proposals will hold both spot bitcoin and spot ether, and the proportion of bitcoin and ether to be held by each Trust will be based on free-float market capitalizations, as described by the Exchanges in their respective amended filings.²⁰ Other than that the Trusts will hold both spot bitcoin and spot ether,²¹ the structure of the Trusts, the terms of their operation and the trading of their shares, and the representations in their respective amended filings are substantially similar to those of the spot bitcoin ETP and spot ether ETP proposals approved in prior Commission orders.²² In addition, the Commission finds that the spot bitcoin market continues to be consistently highly correlated with the CME bitcoin futures market,²³ and that the spot ether market continues to be consistently highly correlated with the

¹⁹ See Spot Ether ETP Approval Order at 46938-41. See also Second Spot Ether ETP Approval Order at 59786-87.

²⁰ See Hashdex Filing at 80972; Franklin Filing at 10.

²¹ The Commission has previously approved the listing and trading of commodity-based trust shares where the underlying trust held more than one commodity. See, e.g., Securities Exchange Act Release Nos. 82448 (Jan. 5, 2018) 83 FR 1428 (Jan. 11, 2018) (SR-NYSEArca-2017-131) (Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E); 62692 (Aug. 11, 2010), 75 FR 50789 (Aug. 17, 2010) (SR-NYSEArca-2010-56) (Order Granting Approval of Proposed Rule Change To List and Trade Shares of the ETFs Precious Metals Basket Trust). See also Franklin Filing at 7 n.16; Letter from Hashdex Asset Management, Ltd., dated Oct. 25, 2024, regarding SR-NASDAQ-2024-028, at 2-3.

²² See Spot Bitcoin ETP Approval Order; Spot Ether ETP Approval Order; Second Spot Bitcoin ETP Approval Order; Second Spot Ether ETP Approval Order. See also *infra* Section II.B.

²³ The Commission examined correlation between the CME bitcoin futures market and the Coinbase and Kraken spot bitcoin trading platforms at hourly, five-minute, and one-minute intervals, using the same data sources and methodology as in the Spot Bitcoin ETP Approval Order (see Spot Bitcoin ETP Approval Order at 3010 n.35), for the period from October 1, 2021, to August 22, 2024. The correlation between the CME bitcoin futures market and this subset of spot bitcoin platforms for the full sample period is no less than 98.9 percent using data at an hourly interval, 93.9 percent using data at a five-minute interval, and 83.1 percent using data at a one-minute interval. The rolling three-month correlation results range between 94.9 and 99.5 percent using data at an hourly interval, 83.8 and 96.1 percent using data at a five-minute interval, and 79.0 and 87.3 percent using data at a one-minute interval.

CME ether futures market.²⁴ As such, based on the record before the Commission, including the Commission's correlation analyses, the Commission is able to conclude that the Exchanges' comprehensive surveillance-sharing agreements with the CME²⁵ can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.

B. Exchange Act Section 11A(a)(1)(C)(iii)

Each Proposal sets forth aspects of its proposed ETP, including the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures, that are consistent with other ETPs that the Commission has approved.²⁶ This includes commitments regarding: the availability of quotation and last-sale information for the shares of each Trust; the availability on the websites of each Trust of certain information related to the Trusts, including net asset values; the dissemination of intra-day indicative values by one or more major market data vendors, updated every 15 seconds throughout the Exchanges' regular trading hours; the Exchanges' surveillance procedures and ability to obtain information regarding trading in the shares of the Trusts; the conditions under which the Exchanges would implement trading halts and suspensions; and the requirements of registered market makers in the shares of each Trust.²⁷

²⁴ The Commission examined correlation between the CME ether futures market and the Coinbase and Kraken spot ether trading platforms at hourly, five-minute, and one-minute intervals, using the same data sources and methodology as in the Spot Ether ETP Approval Order (see Spot Ether ETP Approval Order at 46939-40 n.45), for the period from October 1, 2021, to August 22, 2024. The correlation between the CME ether futures market and this subset of spot ether platforms for the full sample period is no less than 98.9 percent using data at an hourly interval, 92.8 percent using data at a five-minute interval, and 81.6 percent using data at a one-minute interval. The rolling three-month correlation results range between 96.0 and 99.5 percent using data at an hourly interval, 87.9 and 95.8 percent using data at a five-minute interval, and 78.4 and 85.1 percent using data at a one-minute interval.

²⁵ Both Exchanges and the CME are members of the Intermarket Surveillance Group. See Hashdex Filing at 80979; Franklin Filing at 6.

²⁶ See, e.g., Spot Bitcoin ETP Approval Order at 3011; Spot Ether ETP Approval Order at 46941; Second Spot Bitcoin ETP Approval Order at 62822; Second Spot Ether ETP Approval Order at 59787.

²⁷ See Hashdex Filing at 80976-78; Franklin Filing at 15-17, 19-26.

In addition, in each Proposal, the applicable Exchange deems the shares of the applicable Trust to be equity securities, thus rendering trading in such shares subject to that Exchange's existing rules governing the trading of equity securities.²⁸ Further, the applicable listing rules of each Exchange require that all statements and representations made in its filing regarding, among others, the description of the applicable Trust's holdings, limitations on such holdings, and the applicability of that Exchange's listing rules specified in the filing, will constitute continued listing requirements.²⁹ Moreover, each Proposal states that: the applicable Trust will represent to the applicable Exchange that it will advise that Exchange of any failure to comply with the applicable continued listing requirements; pursuant to obligations under Section 19(g)(1) of the Exchange Act, that Exchange will monitor for compliance with the continued listing requirements; and if the applicable Trust is not in compliance with the applicable listing requirements, that Exchange will commence delisting procedures.³⁰

The Commission therefore finds that the Proposals, as with other ETPs that the Commission has approved,³¹ are reasonably designed to promote fair disclosure of information that may be necessary to price the shares of the Trusts appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Trusts' portfolios, and to ensure fair and orderly markets for the shares of the Trusts.

²⁸ See Hashdex Filing at 80977; Franklin Filing at 23.

²⁹ See Nasdaq Rule 5711(d)(iii); BZX Rule 14.11(a).

³⁰ See Hashdex Filing at 80977; Franklin Filing at 25.

³¹ See supra note 26.

III. ACCELERATED APPROVAL OF THE FRANKLIN FILING

The Commission finds good cause to approve the Franklin Filing prior to the 30th day after the date of publication of notice of its Amendment No. 1³² in the Federal Register. The amendment clarified the description of its Trust; further described the terms of the Trust; and conformed various representations in the amended filing to BZX's listing standards and to representations that exchanges have made for other ETPs that the Commission has approved.³³ The amended filing is now substantially similar to filings for other spot bitcoin ETPs and spot ether ETPs that the Commission has approved,³⁴ and as discussed above in Section II.A, both (i) the spot bitcoin market and the CME bitcoin futures market and (ii) the spot ether market and the CME ether futures market remain consistently highly correlated. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,³⁵ to approve the Franklin Filing on an accelerated basis.

IV. CONCLUSION

This approval order is based on all of the Exchanges' representations and descriptions in their respective amended filings, which the Commission has carefully evaluated as discussed above.³⁶ For the reasons set forth above, including the Commission's correlation analyses, the Commission finds, pursuant to Section 19(b)(2) of the Exchange Act,³⁷ that the Proposals are

³² See supra note 4.

³³ See also supra Section II.B.

³⁴ See Spot Bitcoin ETP Approval Order; Spot Ether ETP Approval Order; Second Spot Bitcoin ETP Approval Order; Second Spot Ether ETP Approval Order.

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ In addition, the shares of the Trust in the Hashdex Filing must comply with the requirements of Nasdaq Rule 5711(d) (Commodity-Based Trust Shares) to be listed and traded on Nasdaq on an initial and continuing basis; and the shares of the Trust in the Franklin Filing must comply with the requirements of BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares) to be listed and traded on BZX on an initial and continuing basis.

³⁷ 15 U.S.C. 78s(b)(2).

consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Exchange Act.³⁸

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³⁹ that the Hashdex Filing (SR-NASDAQ-2024-028) be, and hereby is, approved; and that the Franklin Filing (SR-CboeBZX-2024-091) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Vanessa A. Countryman,

Secretary.

³⁸ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k-1(a)(1)(C)(iii).

³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ 17 CFR 200.30-3(a)(12).