

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act³⁰ and Rule 19b-4(f)(2)³¹ thereunder.

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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-MEMX-2023-24 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-MEMX-2023-24. 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-MEMX-2023-24 and should be submitted on or before October 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-21625 Filed 9-29-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98530; File No. SR-CboeBZX-2023-028]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 3, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

September 26, 2023.

On April 25, 2023, Cboe BZX Exchange, Inc. ("BZX" or "Exchange") 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 of the ARK 21Shares Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on May 15, 2023.³

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97461 (May 9, 2023), 88 FR 31045. Comments received on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-cboebzx-2023-028/sr-cboebzx2023028.htm>.

On June 15, 2023, 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 On June 28, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. On June 30, 2023, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. On July 11, 2023, the Exchange filed Amendment No. 3 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 2, in its entirety. On August 11, 2023, the Commission published notice of Amendment No. 3 to the proposed rule change and instituted 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. 3.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on May 15, 2023.⁹ The 180th day after publication of the proposed rule change is November 11, 2023. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 97732, 88 FR 40877 (June 22, 2023). The Commission designated August 13, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 98112, 88 FR 55743 (Aug. 16, 2023).

⁸ 15 U.S.C. 78s(b)(2).

⁹ See *supra* note 3.

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

³¹ 17 CFR 240.19b-4(f)(2).

to consider the proposed rule change, as modified by Amendment No. 3, and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates January 10, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 3 (File No. SR–CboeBZX–2023–028).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21622 Filed 9–29–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98532; File No. SR–CboeBZX–2023–063]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt an Alternative to the Minimum \$4 Price Requirement for Companies Seeking To List Tier II Securities on the Exchange

September 26, 2023.

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 September 19, 2023, 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

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to adopt an alternative to the minimum \$4 price requirement for companies seeking to list Tier II securities on the Exchange.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt an alternative to the minimum \$4 price requirement for companies that seek to list Tier II securities on the Exchange which meet the express exclusion from the definition of a “penny stock” contained in Exchange Act Rule 3a51–1(g) (the “Penny Stock Rules”).³ Such an amendment would allow a Company to list a Tier II security on the Exchange if it satisfies all existing and proposed listing standards except for the \$4 price requirement.⁴ As discussed below, the “net tangible assets and average revenue tests” proposed herein that satisfies the requirements of Exchange Act Rule 3a51–1(g) are substantively identical to the net tangible assets and average revenue tests proposed by Nasdaq Stock Market, LLC (“Nasdaq”) that received Commission approval.⁵

The Exchange is seeking to make this change to enhance competition among exchanges for companies with securities priced between \$2 and \$4. Rule 3a51–1⁶ defines a “penny stock” as any

³ 17 CFR 240.3a51–1(g).

⁴ See Rule 14.9(b)(1)(A).

⁵ See Securities Exchange Act Nos. 66159 (January 13, 2012) 77 FR 3021 (January 20, 2012) (SR–NASDAQ–2012–002) (Notice of Filing of Proposed Rule Change To Adopt an Alternative to the \$4 Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either \$2 or \$3, if Certain Other Listing Requirements Are Met); 66830 (April 18, 2012) 77 FR 24549 (April 24, 2012) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, To Adopt an Alternative to the \$4 Per Share Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either \$2 Closing Price Per Share or \$3 Closing Price Per Share, if Certain Other Listing Requirements are Met).

⁶ 17 CFR 240.3a51–1.

equity security that does not satisfy one of the exceptions enumerated in subparagraphs (a) through (g) under the Rule. If a security is a penny stock, Rules 15g–1 through 15g–9 under the Act⁷ impose certain additional disclosure and other requirements on brokers and dealers when effecting transactions in such securities. Exchange-listed securities are not considered penny stocks because they comply with the requirements of Rule 3a51–1(a)(2) under the Act,⁸ which excepts from the definition of penny stock securities registered on national securities exchanges that have initial listing standards that meet certain requirements, including a \$4 bid price at the time of listing. The Exchange’s listings standards currently include all the requirements to qualify for the penny stock exception under Exchange Act Rule 3a51–1(a)(2) so that today, once a security is initially listed on the Exchange, the Exchange will not be considered a penny stock for so long as it is listed on the Exchange.

The penny stock rules also exclude from the definition of penny stock, under a “grandfather” provision, securities registered on a national securities exchange that has been continually registered as such since April 20, 1992, and has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on the exchange on January 8, 2004.⁹ NYSE American, LLC (“NYSE American”) meets this standard, but the Exchange, which was more recently registered as a national securities exchange, does not. Accordingly, NYSE American’s initial listing price requirements of either \$2 or \$3 are grandfathered under this provision.

In 2012, Nasdaq received Commission approval for a proposed rule change that allowed it to adopt an alternative to the \$4 bid price requirement (the “Nasdaq proposal”).¹⁰ The Exchange is now proposing to similarly adopt an alternative to the minimum \$4 price requirement for companies seeking to list Tier II securities on the Exchange that is substantively identical to the Nasdaq proposal at the time it was adopted.¹¹

⁷ 17 CFR 240.15g–1.

⁸ 17 CFR 240.3a51–1(a)(2).

⁹ See 17 CFR 240.3a51–1(a)(1).

¹⁰ *Supra* note 5.

¹¹ The Exchange notes that since Nasdaq adopted the alternative minimum price requirement in 2012, it has adopted certain other initial listing requirements that differ from the Exchange’s current initial listing requirements. The Exchange is not proposing to amend its initial listing requirements except for the proposed alternative

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30–3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.