

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-PEARL-2023-51. 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-PEARL-2023-51 and should be submitted on or before October 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>121</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98623; File No. SR-CboeBZX-2023-042]

### 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. 1, To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

September 28, 2023.

On June 30, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the WisdomTree Bitcoin Trust ("Trust") under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. On July 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 19, 2023.<sup>3</sup>

On August 31, 2023, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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, as modified by Amendment No. 1.<sup>5</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

### I. Summary of the Proposal, as Modified by Amendment No. 1

As described in more detail in the Notice,<sup>7</sup> the Exchange proposes to list

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 97904 (July 13, 2023), 88 FR 46207 ("Notice"). Comments on the proposed rule change, as modified by Amendment No. 1, are available at: <https://www.sec.gov/comments/sr-cboebzx-2023-042/sr-cboebzx2023042.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 98264, 88 FR 61657 (Sept. 7, 2023). The Commission designated October 17, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Notice, *supra* note 3.

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 gain exposure to the price of bitcoin, less expenses and liabilities of the Trust's operations.<sup>8</sup> The Trust's assets will consist of bitcoin held by the Trust's custodian on behalf of the Trust.<sup>9</sup> The Trust will value its Shares daily based on the value of bitcoin as reflected by the CF Bitcoin US Settlement Price ("Reference Rate").<sup>10</sup> The administrator of the Trust will determine the net asset value ("NAV") of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET.<sup>11</sup> In determining the Trust's NAV, the administrator will value the bitcoin held by the Trust based on the price set by the Reference Rate as of 4:00 p.m. ET.<sup>12</sup> When the Trust sells or redeems its Shares, it will do so in "in-kind" transactions with authorized participants in blocks of Shares.<sup>13</sup>

### II. Proceedings To Determine Whether To Approve or Disapprove SR-CboeBZX-2023-042 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>14</sup> to determine whether the proposed rule change 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, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>15</sup> 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,

<sup>8</sup> See *id.* at 46215. WisdomTree Digital Commodity Services, LLC ("Sponsor") is the sponsor of the Trust.

<sup>9</sup> See *id.* The Trust generally does not intend to hold cash or cash equivalents; however, there may be situations where the Trust would unexpectedly hold cash on a temporary basis. See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See *id.* at 46216.

<sup>12</sup> See *id.*

<sup>13</sup> See *id.* at 46215.

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>15</sup> *Id.*

<sup>121</sup> 17 CFR 200.30-3(a)(12).

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.”<sup>16</sup>

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 the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters’ views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters’ views generally on whether the Exchange’s proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters’ views generally with respect to the liquidity and transparency of the bitcoin markets and the bitcoin markets’ susceptibility to manipulation?

2. Based on data and analysis provided and the academic research cited by the Exchange,<sup>17</sup> do commenters agree with the Exchange that the Chicago Mercantile Exchange (“CME”), on which CME bitcoin futures trade, represents a regulated market of significant size related to spot bitcoin?<sup>18</sup> What are commenters’ views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares?<sup>19</sup> Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the CME bitcoin futures market?<sup>20</sup>

3. The Exchange states that bitcoin is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices “exist to justify dispensing with the requisite surveillance sharing agreement” with a regulated market of significant size related to spot bitcoin.<sup>21</sup> In support, the Exchange states, among other things, that the geographically diverse and continuous nature of bitcoin trading make it difficult and prohibitively costly to manipulate the price of bitcoin, and that the fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary

to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging.<sup>22</sup> The Exchange also states that offering only in-kind creations and redemptions provides “unique protections against potential attempts to manipulate the price of the Shares” and that the price the Sponsor uses to value the Trust’s bitcoin “is not particularly important.”<sup>23</sup> Do commenters agree with the Exchange’s statements regarding the bitcoin market’s resistance to price manipulation?

4. The Exchange also states that it will execute a surveillance-sharing agreement with Coinbase, Inc. (“Coinbase”) that is intended to supplement the Exchange’s market surveillance program.<sup>24</sup> According to the Exchange, the agreement is “expected to have the hallmarks of a surveillance-sharing agreement between two members of the [Intermarket Surveillance Group], which would give the Exchange supplemental access to data regarding spot [b]itcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares.”<sup>25</sup> Based on the description of the surveillance-sharing agreement as provided by the Exchange, what are commenters’ views of such an agreement if finalized and executed? Do commenters agree with the Exchange that such an agreement with Coinbase would be “helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares”?<sup>26</sup>

5. Some sponsors of proposed spot bitcoin exchange-traded products have also provided data regarding the correlation between certain bitcoin spot markets and the CME bitcoin futures market.<sup>27</sup> What are commenters’ views

on the correlation between the bitcoin spot market and the CME bitcoin futures market? What are commenters’ views on the extent to which that correlation provides evidence that the CME bitcoin futures market is “significant” related to spot bitcoin?

### III. 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 is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations 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.<sup>28</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 25, 2023. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by November 8, 2023.

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](mailto:rule-comments@sec.gov). Please include file number SR–CboeBZX–2023–042 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.

market and such spot bitcoin platforms on an hourly basis, and no less than 78% on a minutely basis).

<sup>28</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 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).

<sup>22</sup> See *id.*

<sup>23</sup> See *id.* at 46219.

<sup>24</sup> See *id.* at 46214.

<sup>25</sup> See *id.* The Exchange states that “[t]his means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares.” *Id.*

<sup>26</sup> See *id.* at 46214.

<sup>27</sup> See, e.g., Notice of Filing of Amendment No. 3 to, and Order Instituting Proceedings to Determine Whether to Approve or Disapprove, 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, Securities Exchange Act Release No. 98112 (Aug. 11, 2023), 88 FR 55743 (Aug. 16, 2023) (including data from sponsor 21Shares US LLC that purports to show correlations of returns across the two-year period from January 20, 2021, to February 1, 2023, of no less than 92% among certain spot bitcoin platforms and between the CME bitcoin futures

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See Notice, 88 FR at 46212–15.

<sup>18</sup> See *id.* at 46213.

<sup>19</sup> See *id.* at 46213–14.

<sup>20</sup> See *id.* at 46214.

<sup>21</sup> See *id.* at 46213 n.49.

All submissions should refer to file number SR-CboeBZX-2023-042. 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-2023-042 and should be submitted on or before October 25, 2023. Rebuttal comments should be submitted by November 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98582; File No. SR-NASDAQ-2023-038]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Equity 7, Section 115

September 28, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 22, 2023, The Nasdaq Stock Market LLC (the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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

The Exchange proposes to clarify the migration timeline and billing related to the Exchange's enhanced connectivity, surveillance and risk management services under Equity 7, Section 115 (Ports and Services).

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, 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

Nasdaq is filing this proposal to clarify the migration timeline and billing related to the Exchange's enhanced connectivity, surveillance and risk management services. In April 2021, Nasdaq launched three re-platformed products: (i) WorkX, (ii) Real-Time Stats and (iii) Post-Trade Risk Management.<sup>3</sup> These changes were filed by Nasdaq on April 20, 2021 and

published in the **Federal Register** on May 7, 2021.<sup>4</sup> The Exchange noted in the Proposal that as it rolls out the enhanced products, the fees for the re-platformed products would be the same as the fees for the corresponding legacy products. Additionally, the Exchange noted that after the first month of service on each of the re-platformed products, a customer will be expected to fully migrate to the enhanced product and will be charged for any fees incurred for using the new products thereafter. On January 31, 2022, the Exchange increased the fees for the enhanced products and continued to offer the waiver for the first month of service.<sup>5</sup>

Although the Exchange expected to fully migrate customers within one month from initiating migration, the process has taken longer due to the Exchange having to make additional system updates that were needed to support the enhanced products. As a result, the Exchange continues to assist its customers in migrating to the enhanced products. To date, customers continue to utilize the legacy products and have not fully migrated over to the enhanced products.<sup>6</sup> To date, the Exchange has only charged customers for their use of the legacy products even if the customer has access to both the legacy and enhanced products. Due to the Exchange's delay in facilitating the full migration, customers will not be charged for utilizing the enhanced products until the full migration process is completed. The Exchange is now at a point where it can facilitate customer migration to the enhanced products.

Customers will be expected to complete the migration process for all enhanced products by November 30, 2023. For customers using both the legacy and re-platformed products, fees for the re-platformed product will be waived for December 2023. The Exchange will announce the migration deadline of November 30, 2023 in an Equity Trader Alert at least 30 days in advance of the deadline. Any customer who continue to utilize the legacy products after the migration deadline (*i.e.*, December 1, 2023 or thereafter) will be charged for both the legacy and enhanced products until the Exchange retires the legacy products. If a customer

<sup>4</sup> See Securities Exchange Act Release No. 91744 (May 3, 2021), 86 FR 24685 (May 7, 2021) (NASDAQ-2021-025) (“Proposal”).

<sup>5</sup> See Securities Exchange Act Release No. 91744 (Jan. 31, 2022), 87 FR 9096 (Feb. 17, 2022) (NASDAQ-2022-012).

<sup>6</sup> Most customers have begun migrating to Nasdaq WorkX and Real-Time Stats, and the Exchange intends to start migrating customers to Post-Trade Risk Management in the upcoming weeks.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The corresponding non-re-platformed products are (1) ACT Workstation; (2) Nasdaq InterACT; and (3) Nasdaq Risk Management, respectively (collectively, “legacy products”).

<sup>29</sup> 17 CFR 200.30-3(a)(57).