



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102736; File No. SR-CboeBZX-2025-045]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Osprey Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

March 27, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on March 14, 2025, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change to list and trade shares of the Osprey Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. On March 25, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety. The proposed rule change, as modified by Amendment No. 1, is 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, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change, as Modified by Amendment No. 1

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to list and trade shares of the Osprey Bitcoin Trust (the “Trust”),³ under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Trust was formed as a Delaware statutory trust on January 3, 2019, and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

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, as Modified by Amendment No. 1

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

This Amendment No. 1 to SR-CboeBZX-2025-045 amends and replaces in its entirety the proposal as originally submitted on March 17, 2025. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),⁴ which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.⁵ Osprey Funds LLC is the Sponsor (“Sponsor”). The Shares will be registered with the Commission by means of the Trust’s registration statement on Form S-1 (the “Registration Statement”).⁶ Coinbase Custody Trust Company, LLC (the “Bitcoin Custodian”), which is a third-party U.S.-

⁴ The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

⁵ Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in any filing to list a series of Other Securities (collectively, “Continued Listing Representations”) shall constitute continued listing requirements for the securities listed on the Exchange.

⁶ The Sponsor confidentially submitted a Draft Registration Statement to the SEC on Form S-1 on February 14, 2025. The Shares will not trade on the Exchange until such time that the Registration Statement is effective.

based trust company and qualified custodian, will be responsible for custody of the Trust's bitcoin holdings and a third-party U.S.-based custodian will be the custodian for the Trust's cash holdings, if any (the "Cash Custodian" and together with the Bitcoin Custodian, the "Custodians").

The Trust has approximately \$161 million in assets under management⁷ and its Shares trade millions of dollars in daily volume and are held by over 5,000 American investor accounts seeking exposure to Bitcoin without the cost and complexity of purchasing the asset directly. However, because the Trust is not currently listed as an exchange-traded product ("ETP"), the value of the Shares has not been able to closely track the value of the Trust's underlying bitcoin. The Sponsor thus believes that allowing Shares of the Trust to list and trade on the Exchange as an ETP (i.e., converting the Trust to a spot bitcoin ETP) would unlock over \$10,352,000 of value⁸ for the Trust's shareholders and provide other investors with a safe and secure way to invest in bitcoin on a regulated national securities exchange.

Section 6(b)(5) and the Applicable Standard

The Commission has approved numerous series of Trust Issued Receipts,⁹ including Commodity-Based Trust Shares,¹⁰ to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest.

⁷ As of February 27, 2025.

⁸ Based on a discount of 6.43% as of February 26, 2025.

⁹ See Exchange Rule 14.11(f).

¹⁰ Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.¹¹ 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.¹² A listing exchange could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.

Both the Exchange and Chicago Mercantile Exchange (“CME”) are members of the Intermarket Surveillance Group (“ISG”).¹³ With this in mind, the CME bitcoin futures (“CME Bitcoin Futures”) market is the proper market to consider in determining whether there is a related regulated market of significant size. Recently, the Commission issued orders granting approval for proposals to list bitcoin-based (“Spot Bitcoin ETPs”)¹⁴ commodity trust and trust

¹¹ See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the “CFTC”) regulated futures market. Further to this point, the Commission’s prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP “was based on an assumption that the currency market and the spot gold market were largely unregulated.” See Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission’s oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act.

¹² See Winklevoss Order, 83 FR 37580.

¹³ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

¹⁴ See Exchange Act Release Nos. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; 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) (the “Spot Bitcoin ETP Approval Order”); 100610 (July 26, 2024) 89 FR 62821 (August 1, 2024) (Order Granting Approval of a

issued receipts (these funds are nearly identical to the Trust). In the Spot Bitcoin ETP Approval Order, the Commission stated:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record...the Commission is 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 Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of “significant size” related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.¹⁵

As such, the listing exchanges demonstrated “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with the “regulated market of significant size” test. Given this and the above, the Exchange believes the Shares satisfy the requirements of Exchange Rule BZX Rule 14.11(e)(4) and thereby qualify for listing and trading on the Exchange.

Osprey Bitcoin Trust

CSC Delaware Trust Company, a subsidiary of the Corporation Service Company, is the trustee (“Trustee”). As noted above, Coinbase Custody Trust Company, LLC, will be responsible for the safekeeping of the Trust’s bitcoin, and a third-party U.S.-based custodian will be the custodian for the Trust’s cash holdings. A qualified third-party will also serve as the Trust’s administrator and transfer agent (the “Administrator” or “Transfer Agent”).

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust’s net assets. The Trust’s assets will only consist of bitcoin, cash, and cash equivalents. The “Index” refers to the Coin Metrics Coin Metrics’ Bletchley Indexes (“CMBI”) Bitcoin Index.

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).

¹⁵ See the Spot Bitcoin ETP Approval Order at 3011-3012.

According to the Registration Statement, the Trust is neither an investment company registered under the 1940 Act, as amended,¹⁶ nor a commodity pool for purposes of the Commodity Exchange Act (“CEA”), and neither the Trust, nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares. The Trust will not acquire and will disclaim any incidental right (“IR”) or IR asset received, for example as a result of forks or airdrops, and such assets will not be taken into account for purposes of determining net asset value (“NAV”).

When the Trust sells or redeems its Shares, it will do so in cash transactions in large blocks of 50,000 Shares (a “Creation Basket”) at the Trust’s NAV. Registered broker-dealers that become authorized participants by entering into a contract with the Sponsor and the Trustee (“Authorized Participants”) will deliver, or facilitate the delivery of, cash to the Trust’s account with the Cash Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Cash Custodian, will deliver cash to such Authorized Participants when they redeem Shares. Authorized Participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust’s assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is for the Shares to reflect the performance of bitcoin as measured by reference to the Index, before payment of the Trust’s expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold only bitcoin, cash, and cash equivalents. The value of the bitcoin held by the Trust is determined based on the estimated fair market value

¹⁶ 15 U.S.C. 80a-1.

price for bitcoin, reflecting the execution price of bitcoin on its principal market as determined by Lukka Inc., an independent third-party digital asset data company (“Lukka”). If the Sponsor determines in good faith that the principal market does not reflect an accurate bitcoin price, then the Sponsor will instruct the Administrator to employ an alternative method to determine the fair value of the Trust’s assets. There are no predefined criteria to make a good faith assessment as to which of the rules the Sponsor will apply and the Sponsor may make this determination in its sole discretion.¹⁷

The Index

The Index is a U.S. dollar-denominated composite reference rate for the price of bitcoin. The Index is designed to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity from impacting the bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of bitcoin and (iii) appropriately handle and adjust for non-market related events.

The Index Price is determined by Coin Metrics, Inc. (the “Index Provider”), and is calculated using transacted crypto asset prices from the Index Provider’s vetted markets. The Index Price is calculated by applying weighted-median techniques to such trade data where weights are based on the trading volume on each constituent market and inverse price variance, where a constituent market with high price variance as a result of outliers or market anomalies compared to other constituent markets is assigned a smaller weight.

The method by which the Index Provider selects constituent markets for its indexes is contained in Section 3.1 Constituent Market Eligibility Criteria in the Index Provider’s CMBI Single Asset Series Methodology.¹⁸ The constituent markets for CMBI indexes are derived from the constituent markets for the Coin Metrics’ Reference Rates,¹⁹ which in turn evaluates markets

¹⁷ Any alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b-4.

¹⁸ See <https://cmbi-indexes.coinmetrics.io/cmbibtc>.

¹⁹ See <https://coinmetrics.io/wp-content/uploads/2021/05/reference-rates-methodology.pdf>.

traded on digital asset exchanges as potential input data sources using CMBI's market selection framework. The framework consists of a fully systematized process for evaluating markets. In this framework, a market refers to a specific traded asset pair on a specific exchange.

The market selection framework consists of 36 features which represent individual measurable properties that provide an indication of the suitability for a market to serve as an input data source, which are combined to form a market rating. For each asset, the Index Provider selects the highest quality markets using a rating algorithm and a selection algorithm.²⁰

The value of the Index is calculated and disseminated on a 24-hour basis and will be available on a continuous basis at <https://indexes.coinmetrics.io/cmbibtc>.

Lukka

As described in the Registration Statement, the Trust determines the current value of bitcoin by reference to the market price of bitcoin as determined once a day in accordance with the Financial Accounting Standards Board Accounting Standards Codification Topic 820, "Fair Value Measurements and Disclosures" ("ASC 820") on each day the Exchange is open for trading (the "Bitcoin Market Price"). The Bitcoin Market Price is determined based on the estimated fair market value price for bitcoin, reflecting the execution price of bitcoin on its principal market as determined by Lukka. Lukka's pricing methodology is designed in accordance with ASC 820-10, and its proprietary software dynamically designates principal market and derives fair value prices for financial reporting using this designation.

Lukka is designed to provide an estimated fair market value for bitcoin, in a manner that aligns with U.S. GAAP and IFRS accounting guidelines regarding fair market value measurements. In this regard, Lukka seeks to identify a "principal market" for bitcoin, by evaluating eligible bitcoin exchanges across a variety of different criteria, including the

²⁰ See <https://coinmetrics.io/wp-content/uploads/2021/04/reference-rates-market-selection-framework.pdf>.

exchanges' oversight and governance frameworks, microstructure efficiency, trading volume, data transparency and data integrity.

Net Asset Value

NAV means the total assets of the Trust (which includes bitcoin, cash and cash equivalents) less total liabilities of the Trust. The Administrator will determine the 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. The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include accrued but unpaid fees and expenses), both estimated and finally determined), based on the Bitcoin Market Price. In determining the Trust's NAV, the Administrator values the bitcoin held by the Trust based on the Bitcoin Market Price as of 4:00 p.m. ET. The Administrator also determines the NAV per Share.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.

Availability of Information

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV per Share and the reported BZX Official Closing Price;²¹ (b) the BZX Official Closing Price in relation to the NAV per Share as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV per Share; (c) data in chart form displaying the frequency distribution of discounts and premiums of the BZX Official Closing Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business

²¹ As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

available on the Trust's website at <https://ospreyfund.io/products/obtc/>, or any successor thereto. The Trust will also disseminate its holdings on a daily basis on its website.

The Intraday Indicative Value ("IIV") will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day, using Lukka. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's BZX Official Closing Price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

The Bitcoin Custodian

The Bitcoin Custodian has been engaged to keep the digital assets in safe custody. The Bitcoin Custodian processes deposits and withdrawals only according to instructions received from the Sponsor. The Bitcoin Custodian requires up to twenty-four (24) hours between any request to withdraw Digital Assets from the Custodial Account and submission of such withdrawal to the applicable Digital Asset network. The Bitcoin Custodian stores all Digital Asset private keys in offline storage, and it may be necessary to retrieve certain information from offline storage in order to facilitate a withdrawal in accordance with the Sponsor's instructions, which may delay the initiation or crediting of such withdrawal.

While the Bitcoin Custodian will make reasonable efforts to process Sponsor initiated deposits in a timely manner, the Bitcoin Custodian does not guarantee the amount of time needed to complete processing as such processing is dependent upon many factors outside of the Bitcoin Custodian's control.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 50,000 Shares that are based on the quantity of bitcoin attributable to each Share of the Trust (e.g., a Creation Basket) at the NAV. The Authorized Participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, Authorized Participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving bitcoin as part of the creation or redemption process. The Trust will create Shares by receiving bitcoin from a third party that is not the Authorized Participant and the Trust—not the Authorized Participant—is responsible for selecting the third party to deliver the bitcoin. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the bitcoin to the Trust. The Trust will

redeem shares by delivering bitcoin to a third party that is not the Authorized Participant and the Trust—not the Authorized Participant—is responsible for selecting the third party to receive the bitcoin. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the bitcoin from the Trust.

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders for cash transaction Creation Baskets must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of cash required is based on the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 p.m. ET on the date the order to purchase is properly received. The Administrator determines the quantity of bitcoin associated with a Creation Basket for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the number of Shares in a Creation Basket.

The procedures by which an Authorized Participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

The Sponsor (including its delegates) will maintain ownership and control of the Trust's bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

Rule 14.11(e)(4) – Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A-3 under the

Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and information about the NAV and the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity²² deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) 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) 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.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying

²² For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the CEA. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in Section 1a(9) of the CEA. See Coinflip.

commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (“Market Maker”) in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its members, and their associated persons. The Exchange also has regulatory jurisdiction over any person or entity controlling a member, as well as a subsidiary or affiliate of a member that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain

information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

If the IIV or the value of the Index is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the Index occurs. If the interruption to the dissemination of the IIV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities

traded on the Exchange is \$0.01 where the price is greater than \$1.00 per share or \$0.0001 where the price is less than \$1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, CME Bitcoin Futures, or any other bitcoin derivative with other markets and other entities that are members of the ISG, and the Exchange, or FINRA on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, CME Bitcoin Futures, or any other bitcoin derivative from such markets and other entities.²³ The Exchange may obtain information regarding trading in the Shares, CME Bitcoin Futures, or any other bitcoin derivative via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and,

²³ See supra note 13.

pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Creation Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours²⁴ when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of CME Bitcoin Futures contracts and options on CME Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information

²⁴ Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern time.

Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

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.²⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁶ 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 Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.²⁷ 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.²⁸ A listing exchange could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ See supra note 12.

²⁸ See Winklevoss Order, 83 FR at 37580.

Both the Exchange and CME are members of the ISG.²⁹ With this in mind, the CME Bitcoin Futures market is the proper market to consider in determining whether there is a related regulated market of significant size. Recently, the Commission issued orders granting approval for Spot Bitcoin ETPs and commodity trust and trust issued receipts (these funds are nearly identical to the Trust). In the Spot Bitcoin ETP Approval Order, the Commission stated:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record...the Commission is 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 Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of "significant size" related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.³⁰

As such, the listing exchanges demonstrated "other means to prevent fraudulent and manipulative acts and practices will be sufficient" to justify dispensing with the "regulated market of significant size" test. Given this, the Exchange believes the Shares satisfy the requirements of Exchange Rule BZX Rule 14.11(e)(4) and thereby qualify for listing and trading on the Exchange.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The Sponsor has represented to the Exchange that it will advise the Exchange of

²⁹ See supra note 13.

³⁰ See the Spot Bitcoin ETP Approval Order at 3011-3012.

any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust bitcoin holdings as well as additional data regarding the Trust.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV per Share and the reported BZX Official Closing Price;³¹ (b) the BZX Official Closing Price in relation to the NAV per Share as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV per Share; (c) data in chart form displaying the frequency distribution of discounts and premiums of the BZX Official Closing Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Trust's website at <https://ospreyfund.io/products/obtc/>, or any successor thereto. The Trust will also disseminate its holdings on a daily basis on its website.

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's

³¹ See *supra* note 22.

bitcoin holdings during the trading day, using Lukka. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated daily and aggregates the notional value of bitcoin trading activity across high quality bitcoin spot trading platforms. Index data, the Index value, and the description of the Index are based on information made publicly available by the Index Provider on its website at <https://indexes.coinmetrics.io/cmbibtc>.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's BZX Official Closing Price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

The proposed rule change is designed to perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a surveillance sharing agreement. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, CME Bitcoin Futures, or any other bitcoin derivative with other markets and other entities that are members of the ISG, and the Exchange, or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, CME Bitcoin Futures, or any other bitcoin derivative from such markets and other entities.³² The Exchange may obtain information regarding trading in the Shares, CM CME Bitcoin Futures, or any other bitcoin derivative via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

³² See supra note 13.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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, as modified by Amendment No. 1, 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-2025-045 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-CboeBZX-2025-045. 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-2025-045 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.³³

Sherry R. Haywood,

Assistant Secretary.

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