

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-2024-013 and should be submitted on or before March 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024-02753 Filed 2-9-24; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99479; File No. SR-CboeBZX-2023-087]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Invesco Galaxy Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

February 6, 2024.

On October 20, 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 Invesco Galaxy Ethereum ETF ("Trust") under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on November 8, 2023.<sup>3</sup>

On December 13, 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.<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.

#### I. Summary of the Proposal

As described in more detail in the Notice,<sup>7</sup> the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is for the Shares to reflect the the spot price of ether as measured by using the Lukka Prime Reference Rate ("Benchmark") less the Trust's expenses and other liabilities.<sup>8</sup> The Trust's assets will consist of ether held by the Trust's custodian on behalf of the Trust.<sup>9</sup> The Trust will value its Shares daily based on the reported Benchmark.<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 practicable after 4:00 p.m. ET.<sup>11</sup> In determining the Trust's NAV, the administrator values the ether held by the Trust based on the price set by

the Benchmark 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 large blocks of Shares.<sup>13</sup>

#### II. Proceedings To Determine Whether To Approve or Disapprove SR-CboeBZX-2023-087 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, 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. Given the nature of the underlying assets held by the Trust, has the Exchange properly filed its proposal to list and trade the Shares under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares?<sup>17</sup>

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

<sup>13</sup> See *id.* at 77117.

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

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

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

<sup>17</sup> BZX Rule 14.11(e)(4)(C)(i) defines the term "Commodity-Based Trust Shares" as a security (a) that is issued by a trust that holds (1) a specified commodity deposited with the trust, or (2) a specified commodity and, in addition to such

<sup>22</sup> 17 CFR 200.30-3(a)(12), (59).

<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. 98846 (Nov. 2, 2023), 88 FR 77116 ("Notice"). Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboebzx-2023-087/sr-cboebzx2023087.htm>.

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

<sup>5</sup> See Securities Exchange Act Release No. 99151, 88 FR 87822 (Dec. 19, 2023). The Commission designated February 6, 2024, 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.

<sup>8</sup> See *id.* at 77118. Invesco Capital Management ("Sponsor") is the sponsor of the Trust. See *id.* at 77116.

<sup>9</sup> See *id.* at 77116. 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.* at 77116-17.

<sup>10</sup> See *id.* at 77118.

<sup>11</sup> See *id.* at 77119.

2. The Exchange raises substantially similar arguments to support the listing and trading of the Shares as those made in proposals to list and trade spot bitcoin exchange-traded products (“Bitcoin ETPs”). Do commenters agree that arguments to support the listing of Bitcoin ETPs apply equally to the Shares? Are there particular features related to ether and its ecosystem, including its proof of stake consensus mechanism and concentration of control or influence by a few individuals or entities, that raise unique concerns about ether’s susceptibility to fraud and manipulation?

3. 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 ether markets and the ether markets’ susceptibility to manipulation?

4. Based on data and analysis provided by the Exchange,<sup>18</sup> do commenters agree with the Exchange that the Chicago Mercantile Exchange (“CME”), on which CME ether futures trade, represents a regulated market of significant size related to spot ether?<sup>19</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>20</sup> Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the CME ether futures market?<sup>21</sup>

5. The Exchange states that ether 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 ether.<sup>22</sup> In support, the Exchange states, among other things, that the geographically diverse and continuous nature of ether trading make it difficult and prohibitively costly to manipulate the price of ether, and that

the fragmentation across ether platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ether prices through continuous trading activity challenging.<sup>23</sup> Do commenters agree with the Exchange’s statements regarding the ether market’s resistance to price manipulation?

6. 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 [ether] 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>

7. The Exchange states that the “Sponsor’s research indicates daily correlation between the spot [ether] and the CME [ether] [futures] is 0.998.”<sup>27</sup> The Exchange further states that this “high correlation” indicates that there is a reasonable likelihood that a person attempting to manipulate the Trust would also have to trade on the CME ether futures market.<sup>28</sup> What are commenters’ views on the correlation between the ether spot market and the CME ether futures market? What are commenters’ views on the extent to which a surveillance-sharing agreement with the CME would assist in detecting and deterring fraud and manipulation that impacts an exchange-traded

product (“ETP”) that holds spot ether, and on whether the Sponsor’s daily price correlation analysis provides any evidence to this effect? What are commenters’ views generally on whether an ETP that holds CME ether futures and an ETP that holds spot ether are similar products?

### 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>29</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by March 4, 2024. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by March 18, 2024.

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–2023–087 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–2023–087. This

specified commodity, cash; (b) that is 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) that, 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.

<sup>18</sup> See Notice, 88 FR at 77120–25.

<sup>19</sup> See *id.* at 77120–23.

<sup>20</sup> See *id.* at 77123.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.* at 77122 n.29.

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

<sup>24</sup> See *id.* at 77124.

<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.*

<sup>27</sup> See *id.* at 77121. The Exchange states that this is based on data from September 1, 2022, through September 1, 2023. See *id.*

<sup>28</sup> See *id.* at 77123.

<sup>29</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).

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-2023-087 and should be submitted on or before March 4, 2024. Rebuttal comments should be submitted by March 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

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

[FR Doc. 2024-02752 Filed 2-9-24; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2:00 p.m. on Thursday, February 15, 2024.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries

will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims; and
- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

*Authority:* 5 U.S.C. 552b.

Dated: February 8, 2024.

**Vanessa A. Countryman,**  
Secretary.

[FR Doc. 2024-02932 Filed 2-8-24; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-118, OMB Control No. 3235-0095]

### Proposed Collection; Comment Request; Extension: Rule 236—Exemption of Shares Offered in Connection With Certain Transactions

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information

summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Securities Act Rule 236 (17 CFR 230.236) provides an exemption from registration under the Securities Act for the offering of shares of stock or similar securities to provide funds to be distributed to security holders in lieu of fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction. Issuers wishing to rely upon the exemption are required to furnish specified information to the Commission at least 10 days prior to the offering. The information is needed to provide notice that the issuer is relying on the exemption. Approximately 10 respondents file the information required by Rule 236 at an estimated 1.5 hours per response for a total annual reporting burden of 15 hours (1.5 hours per response × 10 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by April 12, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: February 6, 2024.

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

[FR Doc. 2024-02751 Filed 2-9-24; 8:45 am]

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<sup>30</sup> 17 CFR 200.30-3(a)(57).