

will be excluded from the Marketing Fees in order to avoid potential confusion by market participants and investors. The Exchange also believes that it is reasonable to exclude singly listed options in Options 7, Section 5 from the Marketing Fees because the purpose of this program is to generate more Customer order flow to the Exchange. Because singly listed options are exclusively listed products on Phlx, the Exchange does not believe that applying Marketing Fees is necessary for these products.

Lastly, the Exchange believes that its proposal to memorialize that all options symbols subject to Options 7, Section 5 pricing are excluded from the Marketing Fees program set forth in Options 7, Section 4 is equitable and not unfairly discriminatory because the program will uniformly exclude all market participant orders in these symbols. As noted above, the Exchange's proposal does not alter its existing Marketing Fees program, but instead memorializes current practice.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposal would impose an undue burden on intra-market competition. The proposed changes will memorialize current practice that no Marketing Fees will be assessed on transactions in options symbols subject to Options 7, Section 5 pricing, which will continue to apply uniformly to all market participant orders in such symbols.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-Phlx-2023-44 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-Phlx-2023-44. 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-Phlx-2023-44 and should be submitted on or before October 24, 2023.

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

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-21786 Filed 10-2-23; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-98565; File No. SR-CboeBZX-2023-070]

### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares**

September 27, 2023.

On September 6, 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 of the ARK 21Shares Ethereum ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on September 27, 2023.<sup>3</sup> The Commission has received no comments on the proposal.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<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. 98467 (Sept. 21, 2023), 88 FR 66515.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 11, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates December 26, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CboeBZX-2023-070).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98564; File No. SR-NYSEARCA-2023-58]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Regarding the Hashdex Bitcoin Futures ETF

September 27, 2023.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 22, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the

proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 list and trade shares of the Hashdex Bitcoin Futures ETF under NYSE Arca Rule 8.500-E (“Trust Units”). The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), 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 self-regulatory organization 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 those 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 parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to list and trade shares of the Hashdex Bitcoin Futures ETF (the “Fund”) under NYSE Arca Rule 8.500-E. The Commission previously approved the listing and trading of the Shares pursuant to NYSE Arca Rule 8.200-E, Commentary .02 as shares of the Teucrium Bitcoin Futures Fund.<sup>4</sup> The Fund’s name was

subsequently changed to the Hashdex Bitcoin Futures ETF pursuant to an April 18, 2022 amendment to the Fund’s registration statement.<sup>5</sup> In addition to the proposed changes to the Fund’s investment objective and strategy, as further discussed below, the Exchange proposes to update the name of the Fund to the Hashdex Bitcoin ETF to reflect the same. This new name for the Fund is reflected in the Form S-1 filed by the Tidal Commodities Trust I (the “Trust”) on July 21, 2023.<sup>6</sup>

The Fund is a series of the Trust, a Delaware statutory trust.<sup>7</sup> The Fund is managed and controlled by Toroso Investments LLC (the “Sponsor”).<sup>8</sup> The

<sup>5</sup> On April 18, 2022, Teucrium Commodity Trust filed with the Commission Pre-Effective Amendment No. 2 to the registration statement on Form S-1 under the Securities Act of 1933 (the “Securities Act”) (File No. 333-256339) changing the name of the Fund from Teucrium Bitcoin Futures Fund to Hashdex Bitcoin Futures ETF.

<sup>6</sup> On July 21, 2023, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act (15 U.S.C. 77a) (File No. 333-\_\_\_\_) (the “July 21, 2023 Form S-1”) reflecting the Trust’s assumption of management and control of Fund from Teucrium Commodity Trust. The Shares of the Fund were originally issued by the Teucrium Commodity Trust pursuant to a registration statement on Form S-1 filed with the Commission on May 20, 2021 (File No. 333-256339). The Exchange will submit a separate proposed rule change relating to the transfer of management and control of the Fund from Teucrium Commodity Trust to the Trust.

<sup>7</sup> On August 25, 2023, the Trust confidentially filed a draft registration statement under the Securities Act (the “Registration Statement”). The Jumpstart Our Business Startups Act (the “JOBS Act”), enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently submitted its Registration Statement to the Commission on a confidential basis. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement.

<sup>8</sup> The July 21, 2023 Form S-1 also reflects that Toroso Investments LLC has assumed role of the Sponsor of the Trust from Teucrium Trading, LLC. The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor or sub-adviser is registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or personnel of the broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

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

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 34-94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (SR-NYSEArca-2021-53) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts)) (the “Approval Order”). The representations herein supersede and replace the representations in the Exchange’s prior rule filing relating to the Teucrium Bitcoin Futures Fund and Partial Amendment No. 2 thereto. See Securities Exchange Act Release No. 92573 (August 5, 2021), 86 FR 44062 (August 11, 2021) (SR-NYSEArca-2021-53) (Notice of Filing of a Proposed Rule Change To List and Trade Shares of Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E) and Partial Amendment No. 2, available at: <https://www.sec.gov/comments/sr-nysearca-2021-53/srnysearca202153-20118884-271701.pdf>.