

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 72		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2025 - * 081 Amendment No. (req. for Amendments *) 1	
Filing by Cboe BZX Exchange, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input type="checkbox"/>		Amendment * <input checked="" type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div></div>					
Contact Information Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * Sarah Last Name * Tadtman Title * Assistant General Counsel E-mail * stadtman@cboe.com Telephone * (913) 815-7203 Fax					
Signature Pursuant to the requirements of the Securities Exchange of 1934, Cboe BZX Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 07/07/2025 (Title *) By Matthew Iwamaye VP, Associate General Counsel (Name *) <div>NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</div> <div>Matthew Iwamaye Date: 2025.07.07 15:14:36 -05'00'</div>					

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

Add Remove View

25-081 19b-4 (Canary PENGU ETF) A

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

25-081 Exhibit 1 (Canary PENGU ETF)

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

☐

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Exchange Act” or the “Act”),¹ and Rule 19b-4 thereunder,² 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 Canary PENGU ETF (the “Trust”),³ under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The shares of the Trust are referred to herein as the “Shares.”

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on June 10, 2025.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, (913) 815-7203, Cboe BZX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Trust will be formed as a Delaware statutory trust. The Trust will have no fixed termination date.

This Amendment No. 1 to SR-CboeBZX-2025-081 amends and replaces in its entirety the proposal as originally submitted on June 25, 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 Canary Capital Group LLC is the sponsor of the Trust (the “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 According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,⁷ 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.

Since 2017, the Commission has 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

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 this filing to list a series of Other Securities (collectively, “Continued Listing Representations”) shall constitute continued listing requirements for the Shares listed on the Exchange.

⁶ See the Registration Statement on Form S-1, dated March 20, 2025, submitted by the Sponsor on behalf of the Trust. The descriptions and operation of the Trust and the Shares contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

⁷ 15 U.S.C. 80a-1.

surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held (the “Winklevoss Test”).⁸ The Commission has also consistently recognized that this not the *exclusive* means by which an ETP listing exchange can meet this statutory obligation.⁹ 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.¹⁰

⁸ See Securities Exchange Act Release Nos. 78262 (July 8, 2016), 81 FR 78262 (July 14, 2016) (the “Winklevoss Proposal”). The Winklevoss Proposal was the first exchange rule filing proposing to list and trade shares of an ETP that would hold spot bitcoin (a “Spot Bitcoin ETP”). It was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”); 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”); 100224 (May 23, 2024), 89 FR 46937 (May 30, 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 Shares of Ether-Based Exchange-Traded Products) (the “Spot ETH ETP Approval Order”).

⁹ See Winklevoss Order, 83 FR at 37580; see Spot Bitcoin ETP Approval Order, 89 FR at 3009; see Spot ETH ETP Approval Order 89 FR at 46938.

¹⁰ The Exchange notes that that the Winklevoss Test was first applied in 2017 in the Winklevoss Order, which was the first disapproval order related to an exchange proposal to list and trade a Spot Bitcoin ETP. All prior approval orders issued by the Commission approving the listing and trading of series of Trust Issued Receipts included no specific analysis related to a “regulated market of significant size.” In the Winklevoss Order and the Commission’s prior orders approving the listing and trading of series of Trust Issued Receipts 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 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.

The Commission recently issued orders granting approval for proposals to list bitcoin- and ether-based commodity trust shares and bitcoin-based, ether-based, and a combination of bitcoin- and ether-based trust issued receipts (“Spot Bitcoin ETPs” and “Spot ETH ETPs”). In both the Spot Bitcoin ETP Approval Order and Spot ETH ETP Approval Order, the Commission found that sufficient “other means” of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance-sharing agreement of significant size. Specifically, the Commission found that while the Chicago Mercantile Exchange (“CME”) futures market for both bitcoin and ether were not of “significant size” related to the spot market, the Exchange demonstrated that other means could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals.

The Exchange notes that the Commission has also previously approved the listing and trading of a series of Commodity-Based Trust Shares that, like the Trust, holds multiple commodities,¹¹ and has also approved the listing and trading of securities registered under the Securities Act of 1933, as amended (the “Securities Act”), that are actively managed.¹² As further discussed below, both the Exchange and the Sponsor

¹¹ See Securities Exchange Act Nos. 101998 (December 30, 2024) 89 FR 106707 (December 30, 2024) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF and Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Franklin Crypto Index ETF, a Series of the Franklin Crypto Trust) (SR-CboeBZX-2024-091) (SR-Nasdaq-2024-028); 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR-NYSEArca-2017-131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E).

¹² See Securities Exchange Act No. 87223 (October 10, 2019) 84 FR 54707 (SR-NYSEArca-2019-55) (Order Approving a Proposed Rule Change To Amend NYSE Arca Rule 8.700-E and To List and Trade Shares of the Dynamic Short Short-Term Volatility Futures ETF).

believe that this proposal and the included analysis are sufficient to establish that the proposal is consistent with the Act itself and, additionally, that there are sufficient “other means” of preventing fraud and manipulation that warrant dispensing of the surveillance-sharing agreement with a regulated market of significant size, as was done with both Spot Bitcoin ETPs and Spot ETH ETPs, and that this proposal should be approved.

Background on Portfolio Assets

The Trust will hold PENGU, Pudgy Penguin non-fungible tokens (“Pudgy Penguin NFTs”), SOL, and ETH (the “Portfolio Digital Assets”). The Trust is expected to hold approximately 80-95% of its total assets in PENGU and 5-15% of its total assets in Pudgy Penguin NFTs. The Trust expects that under normal circumstances at least 95% of the Trust’s total assets will be invested in PENGU and Pudgy Penguin NFTs. Because PENGU and Pudgy Penguin NFTs are tokens on the Solana and Ethereum Networks, respectively, it may be necessary from time to time for the Trust to hold SOL or ETH in order to pay the respective network transactions fees. Furthermore, as many Pudgy Penguin NFT marketplaces conduct auction denominated in ETH, it may be necessary for the Trust to convert cash to ETH in order to purchase Pudgy Penguin NFTs. Similarly, when the Trust sells Pudgy Penguin NFTs, the sales proceeds may be in ETH. The Trust intend to hold only as much SOL or ETH as the Sponsor believes is necessary to pay for anticipated transaction expenses or to purchase Pudgy Penguin NFTs.

PENGU is a digital asset created and transmitted through the Solana Network, a peer-to-peer, decentralized computer network operating on cryptographic protocols. Introduced in December 2024 by Pudgy Penguins (the public identity of LSLTT Holdings LLC), PENGU differs from native cryptocurrencies like bitcoin, ETH, and SOL

as it doesn't have its own underlying network or blockchain. Instead, PENGU exists as an SPL token on the Solana Network, utilizing its underlying technology. PENGU can facilitate payments for goods and services or be converted to fiat currencies at rates determined by digital asset trading platforms or through individual barter transactions. Due to its association with Pudgy Penguins, PENGU is often considered a digital collector's item. Classified as a "utility token" PENGU theoretically grants holders access to specific services within its ecosystem, similar to a ticket for particular products or services.

PENGU launched with a total supply of 88,888,888,888 tokens. As a "solana program library ("SPL") token, PENGU depends entirely on the Solana Network, which is maintained by a decentralized user base rather than a single entity. The Solana Network enables value token exchanges recorded on its public blockchain ledger and supports smart contracts - code that executes across the network to manage information and value transfers based on programmed conditions. Through these smart contracts, users can create markets, store registries, represent ownership, transfer funds conditionally, and create digital assets beyond SOL, with operations executed in exchange for SOL payments. Like Eth, SOL represents broader efforts to expand blockchain technology beyond simple peer-to-peer money systems.

Non-fungible tokens, or NFTs, are a type of digital asset that represents ownership or proof of authenticity of a unique item or piece of content, typically stored on a blockchain. Unlike cryptocurrencies such as bitcoin and ether, which are fungible and can be exchanged on a one-to-one basis, NFTs are unique and cannot be exchanged like-for-like. Pudgy Penguin NFTs are a collection of 8,888 NFTs launched in July 2021

by a team of four pseudonymous developers. The collection consists of unique, hand-drawn penguins, each having distinct traits and characteristics, and quickly gained the attention of the NFT community due to its charming and whimsical artwork. These Pudgy Penguin NFTs are ERC-721 tokens that are recorded and transferred through the operation of the peer-to-peer Ethereum Network, which is not owned or operated by any single entity but rather maintained collectively by a distributed user base in a decentralized manner. Ether is not issued by governments, banks or any other centralized authority, and the Ethereum Network allows people to exchange tokens of value, called ether, which are recorded on a public transaction ledger known as the Ethereum Blockchain. Ether, the native cryptocurrency of the Ethereum Network, can be used to pay for goods and services, including computational power on the Ethereum Network, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset exchanges or in individual end-user-to-end-user transactions under a barter system.

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

The Commission has approved numerous series of Trust Issued Receipts,¹³ including Commodity-Based Trust Shares,¹⁴ 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

¹³ See Exchange Rule 14.11(f).

¹⁴ Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

practices;¹⁵ and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that potential policy concerns under the Act are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

More recently, the Commission has applied the Winklevoss Test while also recognizing that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the Act. In the specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement.¹⁶ While there are currently several futures markets for PENGU, in the Spot

¹⁵ Much like bitcoin and ETH, the Exchange believes that the PENGU 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. The geographically diverse and continuous nature of PENGU trading renders it difficult and prohibitively costly to manipulate the price of PENGU. The fragmentation across platforms and the capital necessary to maintain a significant presence on each trading platform make manipulation PENGU prices through continuous trading activity challenging. To the extent that there are trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of PENGU on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between PENGU markets and the presence of arbitrageurs in those markets means that the manipulation of the price of PENGU on any single venue would require manipulation of the global PENGU price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular trading platforms or OTC platform. Further, the speed and relatively inexpensive nature of transactions on the Solana Network allow arbitrageurs to quickly move capital between trading platforms where price dislocations may occur. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

¹⁶ See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a ‘cannot be manipulated’ standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places

Bitcoin ETF Approval Order and Spot ETH ETF Approval Order the Commission determined that the CME bitcoin futures market and CME ETH futures market, respectively, were not of “significant size” related to the spot market. Instead, the Commission found that sufficient “other means” of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance-sharing agreement of significant size. The Exchange and Sponsor believe that this proposal provides for other means of preventing fraud and manipulation justify dispensing with a surveillance-sharing agreement of significant size.

Over the past months years, U.S. investor exposure to PENGU has grown into millions of dollars with a fully diluted market cap of greater than \$563 million. The Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to PENGU in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors.

The policy concerns that the Exchange Act is designed to address are also otherwise mitigated by the fact that the size of the market for the primary underlying reference asset (\$563+ million fully diluted value) and the nature of the PENGU ecosystem reduces its susceptibility to manipulation. The geographically diverse and continuous nature of the PENGU trading makes it difficult and prohibitively costly to manipulate the price of PENGU and, in many instances, PENGU markets can be less susceptible to manipulation than the equity, fixed income, and commodity futures

the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.” Id. at 37582.

markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; manipulation of the price on any single venue would require manipulation of the global PENGU price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; PENGU's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, PENGU is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to certain cryptoassets, including PENGU. Further, the Exchange believes that the fragmentation across the PENGU trading platforms and increased adoption of the PENGU, as displayed through increased user engagement and trading volumes, and the Solana Network make manipulation of PENGU prices through continuous trading activity more difficult. Moreover, the linkage between the PENGU markets and the presence of arbitrageurs in those markets means that the manipulation of the price of the PENGU prices on any single venue would require manipulation of the global PENGU prices in order to be effective. Arbitrageurs must have funds distributed across multiple spot trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular spot trading platform. As a result, the potential for manipulation on a particular spot trading platform would require overcoming the liquidity supply of such arbitrageurs who are

effectively eliminating any cross-market pricing differences. For all of these reasons, PENGU is not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

Canary PENGU ETF

CSC Delaware Trust Company is the trustee (“Trustee”). A third party will be the administrator (“Administrator”) and transfer agent (“Transfer Agent”) and will be responsible for the custody of the Trust’s cash and cash equivalents¹⁷ (the “Cash Custodian”). A third-party custodian (the “Custodian”) will be responsible for custody of the Trust’s Portfolio Digital Assets.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in and ownership of the Trust.

According to the Registration Statement, the Trust will be neither an investment company registered under the Investment Company Act of 1940, as amended,¹⁸ nor a commodity pool for purposes of the 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.

Neither the Trust, nor the Sponsor, nor the Custodian, nor any other person associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust’s Portfolio Digital Assets becomes subject to the proof-of-stake validation or is used to earn additional Portfolio Digital Assets or generate income or other earnings. The Trust will not acquire and will disclaim any incidental right (“IR”) or IR asset

¹⁷ Cash equivalents are short-term instruments with maturities of less than 3 months.

¹⁸ 15 U.S.C. 80a-1.

received, for example as a result of forks or airdrops, and such assets will not be taken into account for purposes of determining the Trust's net asset value ("NAV").

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 10,000 Shares (a "Creation Basket") at the Trust's net asset value ("NAV"). For creations, authorized participants will deliver cash to the Trust's account with the Cash Custodian in exchange for Shares. Upon receipt of an approved creation order, the Sponsor, on behalf of the Trust, will submit an order to buy the amount of Portfolio Digital Assets represented by a Creation Basket. Based off Portfolio Digital Asset executions, the Cash Custodian will request the required cash from the authorized participant; the Transfer Agent will only issue Shares when the authorized participant has made delivery of the cash. Following receipt by the Cash Custodian of the cash from an authorized participant, the Sponsor, on behalf of the Trust, will approve an order with one or more previously onboarded trading partners to purchase the amount of Portfolio Digital Assets represented by the Creation Basket. This purchase of Portfolio Digital Assets will normally be cleared through an affiliate of the Custodian (although the purchase may also occur directly with the trading partner) and the Portfolio Digital Assets will settle directly into the Trust's account at the Custodian.¹⁹ 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

¹⁹ For redemptions, the process will occur in the reverse order. Upon receipt of an approved redemption order, the Sponsor, on behalf of the Trust, will submit an order to sell the amount of PENGU represented by a Creation Basket and the cash proceeds will be remitted to the authorized participant when the 10,000 Shares are received by the Transfer Agent.

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 Trust's investment objective is provide capital appreciation. In seeking to achieve its investment objective, the Trust will hold PENGU, Pudgy Penguin NFTs, SOL, and ETH.

The Trust is expected to hold approximately 80-95% of its total assets in PENGU and 5-15% of its total assets in Pudgy Penguin NFTs. The Trust expects that under normal circumstances at least 95% of the Trust's total assets will be invested in PENGU and Pudgy Penguin NFTs. Because PENGU and Pudgy Penguin NFTs are tokens on the Solana and Ethereum Networks, respectively, it may be necessary from time to time for the Trust to hold SOL or ETH in order to pay the respective network transactions fees. Furthermore, as many Pudgy Penguin NFT marketplaces conduct auction denominated in ETH, it may be necessary for the Trust to convert cash to ETH in order to purchase Pudgy Penguin NFTs. Similarly, when the Trust sells Pudgy Penguin NFTs, the sales proceeds may be in ETH. The Trust intend to hold only as much SOL or ETH as the Sponsor believes is necessary to pay for anticipated transaction expenses or to purchase Pudgy Penguin NFTs.

With respect to the Pudgy Penguin NFTs, the Sponsor will select which NFTs to purchase by considering factors such as price, relative rarity, perceived desirability of a particular NFTs traits and characteristics, and the overall collection value. The Sponsor will periodically rebalance the Trust's portfolio to bring the portfolio within these ranges if it becomes out of compliance due to market changes. Within these ranges, the Sponsor

has discretion to adjust the relative weightings of PENGU and Pudgy Penguin NFTs.

Furthermore, within these ranges the Sponsor has discretion to speculatively buy and sell Pudgy Penguin NFTs based on its own analysis of market for Pudgy Penguin NFTs. The Trust will also hold SOL and ETH as necessary or incidental to the purchase, sale and transfer of the Trust's PENGU and Pudgy Penguins NFTs.

In seeking to achieve its investment objective, the Trust will hold the Portfolio Digital Assets and will value its Shares daily as of 4:00 p.m. ET using the Trust's valuation policy. All of the Trust's Portfolio Digital Assets will be held by the Custodian(s).

The Portfolio Digital Assets

The Trust will value its PENGU, SOL and ETH, based on certain pricing benchmarks. The Trust will value the Pudgy Penguin NFT will be valued by a third-party NFT pricing service. The Trust will determine the price of the Portfolio Digital Assets and value its Shares daily based on the value of each applicable benchmark price and the price of Pudgy Penguins NFT as reflected by the third-party pricing service.

Net Asset Value

NAV means the total assets of the Trust (which includes all Portfolio Digital Assets and cash and cash equivalents) less total liabilities of the Trust. The Administrator determines 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 using the aggregate value of the Trust's assets less its accrued but unpaid liabilities based on the Trust's valuation policy, which as described above is based on the value of each applicable benchmark price and the price of Pudgy Penguins NFT as reflected by the third-party pricing service. 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 Trust will provide information regarding the Trust's Portfolio Digital Assets 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;²⁰ (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 and available on the Sponsor's website at <https://canary.capital>, or any successor thereto. 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). The Trust will also disseminate its holdings on a daily basis on its website.

²⁰ 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.

The Intraday Indicative Value (“IIV”) will be updated during Regular Trading Hours to reflect changes in the value of the Trust’s PENGU, SOL, and ETH holdings (the “Portfolio Cryptocurrencies”) during the trading day. 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 may differ from the NAV because NAV is calculated, using the closing value of the Portfolio Digital Assets, once a day at 4 p.m. ET, whereas the IIV draws prices from the last trade on each constituent platform for each benchmark price in an effort to produce a relevant, real-time price. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange’s Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). 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 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 the Portfolio Cryptocurrencies 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 the Portfolio Cryptocurrencies 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 the Portfolio Cryptocurrencies is available from major market data vendors and from the trading platforms on which the Portfolio Cryptocurrencies are traded. Depth of book

information is also available from the Portfolio Cryptocurrencies trading platforms. The normal trading hours for the Portfolio Cryptocurrencies 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 Custodian

The Custodian's services (i) allow the Portfolio Digital Assets to be deposited from a public blockchain address to the Trust's Portfolio Digital Assets account; and (ii) allow Portfolio Digital Assets to be withdrawn from the Portfolio Digital Assets account to a public blockchain address as instructed by the Trust. The custody agreement requires the Custodian to hold the Trust's Portfolio Digital Assets in cold storage, unless required to facilitate withdrawals as a temporary measure. The Custodian will use segregated cold storage Portfolio Digital Assets addresses for the Trust which are separate from the Portfolio Digital Assets addresses that the Custodian uses for its other customers and which are directly verifiable via the Solana blockchain. The Custodian will safeguard the private keys to the Portfolio Digital Assets associated with the Trust's Portfolio Digital Assets account. The Custodian will at all times record and identify in its books and records that such Portfolio Digital Assets constitutes the property of the Trust. The Custodian will not withdraw the Trust's Portfolio Digital Assets from the Trust's account

with the Custodian, or loan, hypothecate, pledge or otherwise encumber the Trust's Portfolio Digital Assets, without the Trust's instruction. If the custody agreement terminates, the Sponsor may appoint another custodian, and the Trust may enter into a custodian agreement with such custodian.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in 10,000 Share increments (a Creation Basket) that are based on the amount of Portfolio Digital Assets held by the Trust on a per Creation Basket basis. 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 must be placed by 4:00 p.m. ET, 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 Portfolio Digital Assets associated with a Creation Basket for a given day by dividing the number of Portfolio Digital Assets held by the Trust as of the opening of business on that business day, adjusted for the amount of Portfolio Digital Assets 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 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 the Portfolio Digital Assets 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 the Portfolio Digital Assets as part of the creation or redemption process.

The Trust will create Shares by receiving the Portfolio Digital Assets 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 facilitate the delivery of Portfolio Digital Assets. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the Portfolio Digital Assets to the Trust or acting at the direction of the authorized participant with respect to the delivery of the Portfolio Digital Assets to the Trust. When fulfilling a redemption request, the Trust will redeem shares by delivering the Portfolio Digital Assets to a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting such third party to receive the Portfolio Digital Assets. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the Portfolio Digital Assets from the Trust or acting at the direction of the authorized participant with respect to the receipt of the Portfolio Digital Assets from the Trust.

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 will maintain ownership and control of the Portfolio Digital Assets 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 that the NAV and information about 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) four specified commodities²¹-deposited with the trust, or (2) four specified commodities 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 commodities 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 commodities and/or cash.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, CSC 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

²¹ For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act.

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 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 Portfolio Digital Assets or any other derivative of the Portfolio Digital Assets 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, which include any person or entity controlling a Member. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of a Member that does business only in commodities or futures contracts, 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 Portfolio Digital Assets 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 is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV occurs. If the interruption to the dissemination of the IIV 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 or any other derivative of the Portfolio Digital Assets 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 or any other derivative of the Portfolio Digital Assets from such markets and other entities.²² The Exchange may obtain information regarding trading in the Shares or any other derivative of the Portfolio Digital Assets 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, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the

²² For a list of the current members and affiliate members of ISG, see www.isgportal.com.

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 Hours²³ 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 the Portfolio Digital Assets, and that the Commission has no jurisdiction over the trading of the Portfolio Digital Assets as a commodity.

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

²³ Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

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

(b) Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²⁴ in general and Section 6(b)(5) of the Act²⁵ in particular in that it is 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 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 approved numerous series of Trust Issued Receipts,²⁶ including Commodity-Based Trust Shares,²⁷ 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;²⁸ and (ii) the requirement that an exchange proposal be designed, in general, to

²⁴ 15 U.S.C. 78f.

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See Exchange Rule 14.11(f).

²⁷ Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

²⁸ Much like bitcoin and ETH, the Exchange believes that PENGU 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. The geographically diverse and continuous nature of PENGU trading render it difficult and prohibitively costly to manipulate the price of PENGU. The fragmentation across platforms and the capital necessary to maintain a

protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that potential policy concerns under the Act are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

More recently, the Commission has applied the Winklevoss Test while also recognizing that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the Act. In the specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement.²⁹ While there are currently several futures markets for the PENGU, in the Spot Bitcoin ETF Approval Order and Spot ETH ETF Approval Order the Commission determined that the CME bitcoin futures market and CME ETH futures market, respectively, were not of “significant size” related to the spot market. Instead, the

significant presence on each trading platform make manipulation of PENGU prices through continuous trading activity challenging. To the extent that there are trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of PENGU on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between PENGU markets and the presence of arbitrageurs in those markets means that the manipulation of the price of PENGU on any single venue would require manipulation of the global PENGU price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular trading platforms or OTC platform. Further, the speed and relatively inexpensive nature of transactions on the Solana Network allow arbitrageurs to quickly move capital between trading platforms where price dislocations may occur. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

²⁹ See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a ‘cannot be manipulated’ standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.” Id. at 37582.

Commission found that sufficient “other means” of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance-sharing agreement of significant size. The Exchange and Sponsor believe that this proposal provides for other means of preventing fraud and manipulation justify dispensing with a surveillance-sharing agreement of significant size.

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past months years, U.S. investor exposure to PENGU has grown into millions of dollars with a fully diluted market cap of greater than \$563 million. The Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to the Portfolio Digital Assets in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors.

The Exchange believes that the policy concerns are mitigated by the fact that the size of the market for the primary underlying reference asset (\$563+ million fully diluted value) and the nature of the PENGU ecosystem reduces its susceptibility to manipulation. The geographically diverse and continuous nature of the Portfolio Digital Assets trading makes it difficult and prohibitively costly to manipulate the price of the Portfolio Digital Assets and, in many instances, the Portfolio Digital Asset markets can be less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; manipulation of the price on any single venue would require manipulation of the global Portfolio Digital Asset prices in order to be effective; a substantial over-the-counter market provides liquidity and

shock-absorbing capacity; the Portfolio Digital Asset's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, the Portfolio Digital Assets are arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to certain cryptoassets, including the Portfolio Digital Assets. Further, the Exchange believes that the fragmentation across the Portfolio Digital Asset trading platforms and increased adoption of the Portfolio Digital Assets, as displayed through increased user engagement and trading volumes, and the Solana Network make manipulation of the Portfolio Digital Asset prices through continuous trading activity more difficult. Moreover, the linkage between the Portfolio Digital Asset markets and the presence of arbitrageurs in those markets means that the manipulation of the price of the Portfolio Digital Asset prices on any single venue would require manipulation of the global the Portfolio Digital Asset prices in order to be effective. Arbitrageurs must have funds distributed across multiple spot trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular spot trading platform. As a result, the potential for manipulation on a particular spot trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. For all of these reasons, the Portfolio Digital Assets are not

particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

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 issuer 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, 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 or any other derivative of the Portfolio Digital Assets 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.

Availability of Information

The Trust will provide information regarding the Trust's Portfolio Digital Assets 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;³⁰ (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 and available on the Sponsor's website at <https://canary.capital>, or any successor thereto. 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). The Trust will also disseminate its holdings on a daily basis on its website.

The IIV will be updated during Regular Trading Hours to reflect changes in the value of the Trust's Portfolio Cryptocurrencies during the trading day. 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.

³⁰

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.

The IIV may differ from the NAV because NAV is calculated, using the closing value of the Portfolio Digital Assets, once a day at 4 p.m. ET, whereas the IIV draws prices from the last trade on each constituent platform for each benchmark price in an effort to produce a relevant, real-time price. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). 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 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 the Portfolio Cryptocurrencies 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 the Portfolio Cryptocurrencies 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 the Portfolio Cryptocurrencies is available from major market data vendors and from the trading platforms on which the Portfolio Cryptocurrencies are traded. Depth of book information is also available from the Portfolio Cryptocurrencies trading platforms. The normal trading hours for the Portfolio Cryptocurrencies 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.

In sum, the Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act, that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

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.

Item 4. 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 purpose 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.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Securities and Exchange Commission (the “Commission”) action on the proposed rule change specified in Section 19(b)(2) of the Act.³¹

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibits 2-5. Not applicable.

³¹ 15 U.S.C. 78s(b)(2).

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2025-081]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of the Canary PENGU ETF (the “Trust”), Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to list and trade shares of the Canary PENGU ETF (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 will be formed as a Delaware statutory trust. The Trust will have 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

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-2025-081 amends and replaces in its entirety the proposal as originally submitted on June 25, 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 Canary Capital Group LLC is the sponsor of the Trust (the "Sponsor"). The Shares will be

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 this filing to list a series of Other Securities (collectively, "Continued Listing Representations") shall constitute continued listing requirements for the Shares listed on the Exchange.

registered with the Commission by means of the Trust's registration statement on Form S-1 (the "Registration Statement").⁶ According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,⁷ 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.

Since 2017, the Commission has 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 (the "Winklevoss Test").⁸ The Commission has also consistently recognized that this not the *exclusive* means by which an ETP listing exchange can meet this statutory obligation.⁹ A listing exchange could, alternatively,

⁶ See the Registration Statement on Form S-1, dated March 20, 2025, submitted by the Sponsor on behalf of the Trust. The descriptions and operation of the Trust and the Shares contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

⁷ 15 U.S.C. 80a-1.

⁸ See Securities Exchange Act Release Nos. 78262 (July 8, 2016), 81 FR 78262 (July 14, 2016) (the "Winklevoss Proposal"). The Winklevoss Proposal was the first exchange rule filing proposing to list and trade shares of an ETP that would hold spot bitcoin (a "Spot Bitcoin ETP"). It was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the "Winklevoss Order"); 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"); 100224 (May 23, 2024), 89 FR 46937 (May 30, 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 Shares of Ether-Based Exchange-Traded Products) (the "Spot ETH ETP Approval Order").

⁹ See Winklevoss Order, 83 FR at 37580; see Spot Bitcoin ETP Approval Order, 89 FR at 3009; see

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.¹⁰

The Commission recently issued orders granting approval for proposals to list bitcoin- and ether-based commodity trust shares and bitcoin-based, ether-based, and a combination of bitcoin- and ether-based trust issued receipts (“Spot Bitcoin ETPs” and “Spot ETH ETPs”). In both the Spot Bitcoin ETP Approval Order and Spot ETH ETP Approval Order, the Commission found that sufficient “other means” of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance-sharing agreement of significant size. Specifically, the Commission found that while the Chicago Mercantile Exchange (“CME”) futures market for both bitcoin and ether were not of “significant size” related to the spot market, the Exchange demonstrated that other

Spot ETH ETP Approval Order 89 FR at 46938.

¹⁰ The Exchange notes that the Winklevoss Test was first applied in 2017 in the Winklevoss Order, which was the first disapproval order related to an exchange proposal to list and trade a Spot Bitcoin ETP. All prior approval orders issued by the Commission approving the listing and trading of series of Trust Issued Receipts included no specific analysis related to a “regulated market of significant size.” In the Winklevoss Order and the Commission’s prior orders approving the listing and trading of series of Trust Issued Receipts 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 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.

means could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals.

The Exchange notes that the Commission has also previously approved the listing and trading of a series of Commodity-Based Trust Shares that, like the Trust, holds multiple commodities,¹¹ and has also approved the listing and trading of securities registered under the Securities Act of 1933, as amended (the “Securities Act”), that are actively managed.¹² As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the proposal is consistent with the Act itself and, additionally, that there are sufficient “other means” of preventing fraud and manipulation that warrant dispensing of the surveillance-sharing agreement with a regulated market of significant size, as was done with both Spot Bitcoin ETPs and Spot ETH ETPs, and that this proposal should be approved.

Background on Portfolio Assets

The Trust will hold PENGU, Pudgy Penguin non-fungible tokens (“Pudgy Penguin NFTs”), SOL, and ETH (the “Portfolio Digital Assets”). The Trust is expected to hold approximately 80-95% of its total assets in PENGU and 5-15% of its total assets in Pudgy Penguin NFTS. The Trust expects that under normal circumstances at least 95% of

¹¹ See Securities Exchange Act Nos. 101998 (December 30, 2024) 89 FR 106707 (December 30, 2024) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF and Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Franklin Crypto Index ETF, a Series of the Franklin Crypto Trust) (SR-CboeBZX-2024-091) (SR-Nasdaq-2024-028); 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR-NYSEArca-2017-131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E).

¹² See Securities Exchange Act No. 87223 (October 10, 2019) 84 FR 54707 (SR-NYSEArca-2019-55) (Order Approving a Proposed Rule Change To Amend NYSE Arca Rule 8.700-E and To List and Trade Shares of the Dynamic Short Short-Term Volatility Futures ETF).

the Trust's total assets will be invested in PENGU and Pudgy Penguin NFTs. Because PENGU and Pudgy Penguin NFTs are tokens on the Solana and Ethereum Networks, respectively, it may be necessary from time to time for the Trust to hold SOL or ETH in order to pay the respective network transactions fees. Furthermore, as many Pudgy Penguin NFT marketplaces conduct auction denominated in ETH, it may be necessary for the Trust to convert cash to ETH in order to purchase Pudgy Penguin NFTs. Similarly, when the Trust sells Pudgy Penguin NFTs, the sales proceeds may be in ETH. The Trust intend to hold only as much SOL or ETH as the Sponsor believes is necessary to pay for anticipated transaction expenses or to purchase Pudgy Penguin NFTs.

PENGU is a digital asset created and transmitted through the Solana Network, a peer-to-peer, decentralized computer network operating on cryptographic protocols. Introduced in December 2024 by Pudgy Penguins (the public identity of LSLTT Holdings LLC), PENGU differs from native cryptocurrencies like bitcoin, ETH, and SOL as it doesn't have its own underlying network or blockchain. Instead, PENGU exists as an SPL token on the Solana Network, utilizing its underlying technology. PENGU can facilitate payments for goods and services or be converted to fiat currencies at rates determined by digital asset trading platforms or through individual barter transactions. Due to its association with Pudgy Penguins, PENGU is often considered a digital collector's item. Classified as a "utility token" PENGU theoretically grants holders access to specific services within its ecosystem, similar to a ticket for particular products or services.

PENGU launched with a total supply of 88,888,888,888 tokens. As a "solana program library ("SPL") token, PENGU depends entirely on the Solana Network, which

is maintained by a decentralized user base rather than a single entity. The Solana Network enables value token exchanges recorded on its public blockchain ledger and supports smart contracts - code that executes across the network to manage information and value transfers based on programmed conditions. Through these smart contracts, users can create markets, store registries, represent ownership, transfer funds conditionally, and create digital assets beyond SOL, with operations executed in exchange for SOL payments. Like Eth, SOL represents broader efforts to expand blockchain technology beyond simple peer-to-peer money systems.

Non-fungible tokens, or NFTs, are a type of digital asset that represents ownership or proof of authenticity of a unique item or piece of content, typically stored on a blockchain. Unlike cryptocurrencies such as bitcoin and ether, which are fungible and can be exchanged on a one-to-one basis, NFTs are unique and cannot be exchanged like-for-like. Pudgy Penguin NFTs are a collection of 8,888 NFTs launched in July 2021 by a team of four pseudonymous developers. The collection consists of unique, hand-drawn penguins, each having distinct traits and characteristics, and quickly gained the attention of the NFT community due to its charming and whimsical artwork. These Pudgy Penguin NFTs are ERC-721 tokens that are recorded and transferred through the operation of the peer-to-peer Ethereum Network, which is not owned or operated by any single entity but rather maintained collectively by a distributed user base in a decentralized manner. Ether is not issued by governments, banks or any other centralized authority, and the Ethereum Network allows people to exchange tokens of value, called ether, which are recorded on a public transaction ledger known as the Ethereum Blockchain. Ether, the native cryptocurrency of the Ethereum Network, can be used to

pay for goods and services, including computational power on the Ethereum Network, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset exchanges or in individual end-user-to-end-user transactions under a barter system.

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

The Commission has approved numerous series of Trust Issued Receipts,¹³ including Commodity-Based Trust Shares,¹⁴ 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;¹⁵ and (ii) the requirement that an exchange proposal be designed, in general, to

¹³ See Exchange Rule 14.11(f).

¹⁴ Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

¹⁵ Much like bitcoin and ETH, the Exchange believes that the PENGU 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. The geographically diverse and continuous nature of PENGU trading renders it difficult and prohibitively costly to manipulate the price of PENGU. The fragmentation across platforms and the capital necessary to maintain a significant presence on each trading platform make manipulation PENGU prices through continuous trading activity challenging. To the extent that there are trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of PENGU on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between PENGU markets and the presence of arbitrageurs in those markets means that the manipulation of the price of PENGU on any single venue would require manipulation of the global PENGU price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular trading platforms or OTC platform. Further, the speed and relatively inexpensive nature of transactions on the Solana Network allow arbitrageurs to quickly move capital between trading platforms where price dislocations may occur. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that potential policy concerns under the Act are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

More recently, the Commission has applied the Winklevoss Test while also recognizing that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the Act. In the specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement.¹⁶ While there are currently several futures markets for PENGU, in the Spot Bitcoin ETF Approval Order and Spot ETH ETF Approval Order the Commission determined that the CME bitcoin futures market and CME ETH futures market, respectively, were not of “significant size” related to the spot market. Instead, the Commission found that sufficient “other means” of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance-sharing agreement of significant size. The Exchange and Sponsor believe that this proposal provides for other means of preventing fraud and manipulation justify dispensing with a surveillance-sharing agreement of significant size.

¹⁶ See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a ‘cannot be manipulated’ standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.” Id. at 37582.

Over the past months years, U.S. investor exposure to PENGU has grown into millions of dollars with a fully diluted market cap of greater than \$563 million. The Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to PENGU in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors.

The policy concerns that the Exchange Act is designed to address are also otherwise mitigated by the fact that the size of the market for the primary underlying reference asset (\$563+ million fully diluted value) and the nature of the PENGU ecosystem reduces its susceptibility to manipulation. The geographically diverse and continuous nature of the PENGU trading makes it difficult and prohibitively costly to manipulate the price of PENGU and, in many instances, PENGU markets can be less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; manipulation of the price on any single venue would require manipulation of the global PENGU price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; PENGU's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, PENGU is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant

disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to certain cryptoassets, including PENGU. Further, the Exchange believes that the fragmentation across the PENGU trading platforms and increased adoption of the PENGU, as displayed through increased user engagement and trading volumes, and the Solana Network make manipulation of PENGU prices through continuous trading activity more difficult. Moreover, the linkage between the PENGU markets and the presence of arbitrageurs in those markets means that the manipulation of the price of the PENGU prices on any single venue would require manipulation of the global PENGU prices in order to be effective. Arbitrageurs must have funds distributed across multiple spot trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular spot trading platform. As a result, the potential for manipulation on a particular spot trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. For all of these reasons, PENGU is not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

Canary PENGU ETF

CSC Delaware Trust Company is the trustee (“Trustee”). A third party will be the administrator (“Administrator”) and transfer agent (“Transfer Agent”) and will be responsible for the custody of the Trust’s cash and cash equivalents¹⁷ (the “Cash Custodian”). A third-party custodian (the “Custodian”) will be responsible for custody of the Trust’s Portfolio Digital Assets.

¹⁷

Cash equivalents are short-term instruments with maturities of less than 3 months.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in and ownership of the Trust.

According to the Registration Statement, the Trust will be neither an investment company registered under the Investment Company Act of 1940, as amended,¹⁸ nor a commodity pool for purposes of the 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.

Neither the Trust, nor the Sponsor, nor the Custodian, nor any other person associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust's Portfolio Digital Assets becomes subject to the proof-of-stake validation or is used to earn additional Portfolio Digital Assets or generate income or other earnings. 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 the Trust's net asset value ("NAV").

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 10,000 Shares (a "Creation Basket") at the Trust's net asset value ("NAV"). For creations, authorized participants will deliver cash to the Trust's account with the Cash Custodian in exchange for Shares. Upon receipt of an approved creation order, the Sponsor, on behalf of the Trust, will submit an order to buy the amount of Portfolio Digital Assets represented by a Creation Basket. Based off Portfolio Digital Asset executions, the Cash Custodian will request the required cash from the authorized participant; the Transfer Agent will only issue Shares when the authorized participant has

¹⁸

15 U.S.C. 80a-1.

made delivery of the cash. Following receipt by the Cash Custodian of the cash from an authorized participant, the Sponsor, on behalf of the Trust, will approve an order with one or more previously onboarded trading partners to purchase the amount of Portfolio Digital Assets represented by the Creation Basket. This purchase of Portfolio Digital Assets will normally be cleared through an affiliate of the Custodian (although the purchase may also occur directly with the trading partner) and the Portfolio Digital Assets will settle directly into the Trust's account at the Custodian.¹⁹ 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 Trust's investment objective is provide capital appreciation. In seeking to achieve its investment objective, the Trust will hold PENGU, Pudgy Penguin NFTs, SOL, and ETH.

The Trust is expected to hold approximately 80-95% of its total assets in PENGU and 5-15% of its total assets in Pudgy Penguin NFTs. The Trust expects that under normal circumstances at least 95% of the Trust's total assets will be invested in PENGU and Pudgy Penguin NFTs. Because PENGU and Pudgy Penguin NFTs are tokens on the Solana and Ethereum Networks, respectively, it may be necessary from time to time for

¹⁹ For redemptions, the process will occur in the reverse order. Upon receipt of an approved redemption order, the Sponsor, on behalf of the Trust, will submit an order to sell the amount of PENGU represented by a Creation Basket and the cash proceeds will be remitted to the authorized participant when the 10,000 Shares are received by the Transfer Agent.

the Trust to hold SOL or ETH in order to pay the respective network transactions fees. Furthermore, as many Pudgy Penguin NFT marketplaces conduct auction denominated in ETH, it may be necessary for the Trust to convert cash to ETH in order to purchase Pudgy Penguin NFTs. Similarly, when the Trust sells Pudgy Penguin NFTs, the sales proceeds may be in ETH. The Trust intend to hold only as much SOL or ETH as the Sponsor believes is necessary to pay for anticipated transaction expenses or to purchase Pudgy Penguin NFTs.

With respect to the Pudgy Penguin NFTs, the Sponsor will select which NFTs to purchase by considering factors such as price, relative rarity, perceived desirability of a particular NFTs traits and characteristics, and the overall collection value. The Sponsor will periodically rebalance the Trust's portfolio to bring the portfolio within these ranges if it becomes out of compliance due to market changes. Within these ranges, the Sponsor has discretion to adjust the relative weightings of PENGU and Pudgy Penguin NFTs. Furthermore, within these ranges the Sponsor has discretion to speculatively buy and sell Pudgy Penguin NFTs based on its own analysis of market for Pudgy Penguin NFTs. The Trust will also hold SOL and ETH as necessary or incidental to the purchase, sale and transfer of the Trust's PENGU and Pudgy Penguins NFTs.

In seeking to achieve its investment objective, the Trust will hold the Portfolio Digital Assets and will value its Shares daily as of 4:00 p.m. ET using the Trust's valuation policy. All of the Trust's Portfolio Digital Assets will be held by the Custodian(s).

The Portfolio Digital Assets

The Trust will value its PENGU, SOL and ETH, based on certain pricing benchmarks. The Trust will value the Pudgy Penguin NFT will be valued by a third-party NFT pricing service. The Trust will determine the price of the Portfolio Digital Assets and value its Shares daily based on the value of each applicable benchmark price and the price of Pudgy Penguins NFT as reflected by the third-party pricing service.

Net Asset Value

NAV means the total assets of the Trust (which includes all Portfolio Digital Assets and cash and cash equivalents) less total liabilities of the Trust. The Administrator determines 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 using the aggregate value of the Trust's assets less its accrued but unpaid liabilities based on the Trust's valuation policy, which as described above is based on the value of each applicable benchmark price and the price of Pudgy Penguins NFT as reflected by the third-party pricing service. 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 Trust will provide information regarding the Trust's Portfolio Digital Assets 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;²⁰ (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 and available on the Sponsor's website at <https://canary.capital>, or any successor thereto. 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). The Trust will also disseminate its holdings on a daily basis on its website.

The Intraday Indicative Value ("IIV") will be updated during Regular Trading Hours to reflect changes in the value of the Trust's PENGU, SOL, and ETH holdings (the "Portfolio Cryptocurrencies") during the trading day. 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 may differ from the NAV because NAV is calculated, using the closing value of the Portfolio Digital Assets, once a day at 4 p.m. ET, whereas the IIV draws prices from the last trade on each constituent platform for each benchmark price in an effort to produce a relevant, real-time

²⁰ 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.

price. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). 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 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 the Portfolio Cryptocurrencies 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 the Portfolio Cryptocurrencies 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 the Portfolio Cryptocurrencies is available from major market data vendors and from the trading platforms on which the Portfolio Cryptocurrencies are traded. Depth of book information is also available from the Portfolio Cryptocurrencies trading platforms. The normal trading hours for the Portfolio Cryptocurrencies 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 Custodian

The Custodian's services (i) allow the Portfolio Digital Assets to be deposited from a public blockchain address to the Trust's Portfolio Digital Assets account; and (ii) allow Portfolio Digital Assets to be withdrawn from the Portfolio Digital Assets account to a public blockchain address as instructed by the Trust. The custody agreement requires the Custodian to hold the Trust's Portfolio Digital Assets in cold storage, unless required to facilitate withdrawals as a temporary measure. The Custodian will use segregated cold storage Portfolio Digital Assets addresses for the Trust which are separate from the Portfolio Digital Assets addresses that the Custodian uses for its other customers and which are directly verifiable via the Solana blockchain. The Custodian will safeguard the private keys to the Portfolio Digital Assets associated with the Trust's Portfolio Digital Assets account. The Custodian will at all times record and identify in its books and records that such Portfolio Digital Assets constitutes the property of the Trust. The Custodian will not withdraw the Trust's Portfolio Digital Assets from the Trust's account with the Custodian, or loan, hypothecate, pledge or otherwise encumber the Trust's Portfolio Digital Assets, without the Trust's instruction. If the custody agreement terminates, the Sponsor may appoint another custodian, and the Trust may enter into a custodian agreement with such custodian.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in 10,000 Share increments (a Creation Basket) that are based on the amount of Portfolio

Digital Assets held by the Trust on a per Creation Basket basis. 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 must be placed by 4:00 p.m. ET, 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 Portfolio Digital Assets associated with a Creation Basket for a given day by dividing the number of Portfolio Digital Assets held by the Trust as of the opening of business on that business day, adjusted for the amount of Portfolio Digital Assets 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 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 the Portfolio Digital Assets 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 the Portfolio Digital Assets as part of the creation or redemption process.

The Trust will create Shares by receiving the Portfolio Digital Assets 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 facilitate the delivery of Portfolio Digital

Assets. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the Portfolio Digital Assets to the Trust or acting at the direction of the authorized participant with respect to the delivery of the Portfolio Digital Assets to the Trust. When fulfilling a redemption request, the Trust will redeem shares by delivering the Portfolio Digital Assets to a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting such third party to receive the Portfolio Digital Assets. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the Portfolio Digital Assets from the Trust or acting at the direction of the authorized participant with respect to the receipt of the Portfolio Digital Assets from the Trust.

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 will maintain ownership and control of the Portfolio Digital Assets 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 that the NAV and information about 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) four specified commodities²¹-deposited with the trust, or (2) four specified commodities 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 commodities 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 commodities and/or cash.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, CSC 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

²¹ For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act.

malfunction; or any error, omission or delay in the reports of transactions in an underlying 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 Portfolio Digital Assets or any other derivative of the Portfolio Digital Assets 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, which include any person or entity controlling a Member. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of a Member that does business only in commodities or futures contracts, 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 Portfolio Digital Assets 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 is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV occurs. If the interruption to the dissemination of the IIV 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 or any other derivative of the Portfolio Digital Assets 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 or any other derivative of the Portfolio Digital Assets from such markets and other entities.²² The Exchange may obtain information regarding trading in the Shares or any other derivative of the Portfolio Digital Assets 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, 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

²² For a list of the current members and affiliate members of ISG, see www.isgportal.com.

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 Hours²³ 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 the Portfolio Digital Assets, and that the Commission has no jurisdiction over the trading of the Portfolio Digital Assets as a commodity.

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 Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act. [Copy and paste into this area the Purpose section (Item 3(a)) from the 19b-4. Confirm no repeat of definitions of terms defined in introduction and Section I above.]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²⁴ in general and Section 6(b)(5) of the Act²⁵ in particular in that it is designed to prevent

²³ Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

²⁴ 15 U.S.C. 78f.

²⁵ 15 U.S.C. 78f(b)(5).

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 approved numerous series of Trust Issued Receipts,²⁶ including Commodity-Based Trust Shares,²⁷ 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,²⁸ and (ii) the requirement that an exchange proposal be designed, in general, to

²⁶ See Exchange Rule 14.11(f).

²⁷ Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

²⁸ Much like bitcoin and ETH, the Exchange believes that PENGU 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. The geographically diverse and continuous nature of PENGU trading render it difficult and prohibitively costly to manipulate the price of PENGU. The fragmentation across platforms and the capital necessary to maintain a significant presence on each trading platform make manipulation of PENGU prices through continuous trading activity challenging. To the extent that there are trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of PENGU on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between PENGU markets and the presence of arbitrageurs in those markets means that the manipulation of the price of PENGU on any single venue would require manipulation of the global PENGU price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular trading platforms or OTC platform. Further, the speed and relatively inexpensive nature of transactions on the Solana Network allow arbitrageurs to quickly move capital between trading platforms where price dislocations may occur. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that potential policy concerns under the Act are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

More recently, the Commission has applied the Winklevoss Test while also recognizing that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the Act. In the specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement.²⁹ While there are currently several futures markets for the PENGU, in the Spot Bitcoin ETF Approval Order and Spot ETH ETF Approval Order the Commission determined that the CME bitcoin futures market and CME ETH futures market, respectively, were not of “significant size” related to the spot market. Instead, the Commission found that sufficient “other means” of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance-sharing agreement of significant size. The Exchange and Sponsor believe that this proposal provides for other means of preventing fraud and manipulation justify dispensing with a surveillance-sharing agreement of significant size.

²⁹ See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a ‘cannot be manipulated’ standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.” Id. at 37582.

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past months years, U.S. investor exposure to PENGU has grown into millions of dollars with a fully diluted market cap of greater than \$563 million. The Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to the Portfolio Digital Assets in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors.

The Exchange believes that the policy concerns are mitigated by the fact that the size of the market for the primary underlying reference asset (\$563+ million fully diluted value) and the nature of the PENGU ecosystem reduces its susceptibility to manipulation. The geographically diverse and continuous nature of the Portfolio Digital Assets trading makes it difficult and prohibitively costly to manipulate the price of the Portfolio Digital Assets and, in many instances, the Portfolio Digital Asset markets can be less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; manipulation of the price on any single venue would require manipulation of the global Portfolio Digital Asset prices in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; the Portfolio Digital Asset's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, the Portfolio Digital Assets are arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to

the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to certain cryptoassets, including the Portfolio Digital Assets. Further, the Exchange believes that the fragmentation across the Portfolio Digital Asset trading platforms and increased adoption of the Portfolio Digital Assets, as displayed through increased user engagement and trading volumes, and the Solana Network make manipulation of the Portfolio Digital Asset prices through continuous trading activity more difficult. Moreover, the linkage between the Portfolio Digital Asset markets and the presence of arbitrageurs in those markets means that the manipulation of the price of the Portfolio Digital Asset prices on any single venue would require manipulation of the global the Portfolio Digital Asset prices in order to be effective. Arbitrageurs must have funds distributed across multiple spot trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular spot trading platform. As a result, the potential for manipulation on a particular spot trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. For all of these reasons, the Portfolio Digital Assets are not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

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 issuer 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, 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 or any other derivative of the Portfolio Digital Assets 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.

Availability of Information

The Trust will provide information regarding the Trust's Portfolio Digital Assets 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;³⁰ (b) the BZX Official Closing Price in relation to

³⁰ 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.

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 and available on the Sponsor's website at <https://canary.capital>, or any successor thereto. 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). The Trust will also disseminate its holdings on a daily basis on its website.

The IIV will be updated during Regular Trading Hours to reflect changes in the value of the Trust's Portfolio Cryptocurrencies during the trading day. 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 may differ from the NAV because NAV is calculated, using the closing value of the Portfolio Digital Assets, once a day at 4 p.m. ET, whereas the IIV draws prices from the last trade on each constituent platform for each benchmark price in an effort to produce a relevant, real-time price. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). 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 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 the Portfolio Cryptocurrencies 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 the Portfolio Cryptocurrencies 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 the Portfolio Cryptocurrencies is available from major market data vendors and from the trading platforms on which the Portfolio Cryptocurrencies are traded. Depth of book information is also available from the Portfolio Cryptocurrencies trading platforms. The normal trading hours for the Portfolio Cryptocurrencies 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.

In sum, the Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act, that on the whole the manipulation concerns previously

articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

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 purpose 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

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 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-2025-081 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-2025-081. 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-2025-081 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.³¹

Sherry R. Haywood,

Assistant Secretary.

³¹ 17 CFR 200.30-3(a)(12).