

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102514; File No. SR–NYSEARCA–2024–98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Bitwise 10 Crypto Index Fund Under Proposed NYSE Arca Rule 8.800–E (Commodity- and/or Digital Asset-Based Investment Interests)

March 3, 2025.

I. Introduction

On November 14, 2024, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to list and trade shares (“Shares”) of the Bitwise 10 Crypto Index Fund (“Trust”) under proposed NYSE Arca Rule 8.800–E (Commodity- and/or Digital Asset-Based Investment Interests). The proposed rule change was published for comment in the **Federal Register** on December 3, 2024. ³

On January 14, 2025, pursuant to Section 19(b)(2) of the Exchange Act, ⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. ⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act ⁶ to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposal

As described in more detail in the Notice, ⁷ the Exchange proposes to list and trade Shares of the Trust under proposed NYSE Arca Rule 8.800–E (Commodity- and/or Digital Asset-Based Investment Interests). ⁸

According to the Exchange, the investment objective of the Trust is to invest in a portfolio of digital assets (each, a “Portfolio Asset” and, collectively, “Portfolio Assets”) that tracks the Bitwise 10 Large Cap Crypto Index (“Index”). ⁹ The Trust rebalances monthly alongside the rebalance of the Index to stay current with any changes to the Index. ¹⁰ According to the Exchange, as of the date of the filing, the Trust’s Portfolio Assets and weightings were: 75.10% Bitcoin (BTC), 16.5% Ethereum (ETH), 4.3% Solana (SOL), 1.5% XRP (XRP), 0.70% Cardano (ADA), 0.60% Avalanche (AVAX), 0.40% Chainlink (LINK), 0.40% Bitcoin Cash (BCH), 0.30% Polkadot (DOT) and 0.30% Uniswap (UNI). ¹¹ The Trust’s only assets will be the Portfolio Assets and cash. ¹²

The Trust’s net asset value (“NAV”) and NAV per Share will be determined by the administrator once each Exchange trading day as of 4:00 p.m. E.T., or as soon thereafter as practicable. ¹³ To determine the Trust’s NAV, the Sponsor will rely on a third-party valuation vendor, CF Benchmarks Ltd. (“Valuation Vendor”), to calculate and publish the U.S. dollar price for each Portfolio Asset (each, a “Reference Price” and, collectively, “Reference

the listing and trading of Commodity- and/or Digital Asset-Based Investment Interests, which are securities issued by a trust, limited liability company, or other similar entity that holds specified commodities, digital assets, derivative securities products, and/or cash. See Securities Exchange Act Release No. 101470 (Oct. 29, 2024), 89 FR 87681 (Nov. 4, 2024) (Notice of Filing of Proposed Rule Change To Adopt New NYSE Arca Rule 8.800–E To Provide for the Listing and Trading of Commodity- and Digital Asset-Based Investment Interests and To List and Trade Shares of the Grayscale Digital Large Cap Fund LLC) (“Commodity- and Digital Asset Based Investment Interests Listing Standards Proposal”); Notice at 95853.

⁹ See Notice at 95853. The Trust is a Delaware statutory trust and will operate pursuant to a trust agreement between Bitwise Investment Advisers, LLC (“Sponsor”) and Delaware Trust Company, as trustee. Coinbase Custody Trust Company, LLC will maintain custody of the Trust’s assets. The Bank of New York Mellon will be the custodian for the Trust’s cash holdings, as well as the Trust’s administrator and transfer agent. The Index is administered by Bitwise Index Services, LLC, an affiliate of the Sponsor. See *id.*

¹⁰ See *id.* According to the Exchange, the Index is comprised of ten digital assets and is designed to track the performance of the ten largest digital assets that currently trade publicly on eligible digital asset trading platforms, as selected and weighted by free-float market capitalization. The market capitalization of a digital asset is calculated by multiplying its price (based on the Lukka Prime price) times its free-float-adjusted or “circulating” supply. The proportion of each digital asset in the Index is based on this adjusted market capitalization. See *id.* at 95854.

¹¹ See *id.* at 95853.

¹² See *id.*

¹³ See *id.* at 95857.

Prices”) as of 4:00 p.m. E.T. using prices from several different digital asset trading platforms selected by the Valuation Vendor. ¹⁴ The Trust uses the Reference Prices to calculate its NAV. ¹⁵ The administrator will calculate the NAV by multiplying the Portfolio Assets held by the Trust by their respective Reference Prices for such day, adding any additional receivables and subtracting the accrued but unpaid liabilities of the Trust. ¹⁶ The Trust creates and redeems Shares from time to time, but only in one or more “Creation Units,” which will initially consist of at least 10,000 Shares, but may be subject to change. ¹⁷ The Trust conducts creations and redemptions of its Shares for cash. ¹⁸

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEARCA–2024–98 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act ¹⁹ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act, ²⁰ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and

¹⁴ See *id.* at 95853. Each Reference Price aggregates the trade flow of several major digital asset trading platforms during an observation window between 3:00 p.m. and 4:00 p.m. E.T. into the U.S. dollar price of one of each Portfolio Asset at 4:00 p.m. E.T. Digital asset trading platforms considered by the Valuation Vendor currently include Bitstamp, Coinbase, Gemini, itBit, LMAX, and Kraken. See *id.* at 95853 and n.11.

¹⁵ See *id.* at 95857.

¹⁶ See *id.*

¹⁷ See *id.* at 95857.

¹⁸ See *id.* at 95854. Authorized participants will deliver, or cause to be delivered cash in exchange for Shares of the Trust, and the Trust will deliver cash to authorized participants when those authorized participants redeem Shares of the Trust. See *id.*

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 101775 (Nov. 27, 2024), 89 FR 95853 (“Notice”). Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2024-98/srnysearca202498.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 102186, 90 FR 7199 (Jan. 21, 2025) (designating March 3, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See *supra* note 3.

⁸ The Exchange, in a separate filing, proposed to adopt new NYSE Arca Rule 8.800–E to provide for

manipulative acts and practices” and “to protect investors and the public interest.”²¹

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on whether the proposal to list and trade Shares of the Trust, which would hold BTC, ETH, SOL, XRP, ADA, AVAX, LINK, BCH, DOT, UNI and/or potentially other digital assets, is designed to prevent fraudulent and manipulative acts and practices or raises any new or novel concerns not previously contemplated by the Commission.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.²²

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by March 28, 2025. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by April 11, 2025.

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–NYSEARCA–2024–98 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–NYSEARCA–2024–98. 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–NYSEARCA–2024–98 and should be submitted on or before March 28, 2025. Rebuttal comments should be submitted by April 11, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0224]

Proposed Collection; Comment Request; Extension: Rule 17j–1

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

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Conflicts of interest between investment company personnel (such as portfolio managers) and their funds can arise when these persons buy and sell securities for their own accounts (“personal investment activities”). These conflicts arise because fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors. Section 17(j) of the Investment Company Act of 1940 (the “Investment Company Act”) (15 U.S.C. 80a–17(j)) makes it unlawful for persons affiliated with a registered investment company (“fund”) or with the fund’s investment adviser or principal underwriter (each a “17j–1 organization”), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission’s rules and regulations. Section 17(j) also authorizes the Commission to promulgate rules requiring 17j–1 organizations to adopt codes of ethics.

In order to implement section 17(j), rule 17j–1 imposes certain requirements on 17j–1 organizations and “Access Persons”¹ of those organizations. The

¹ Rule 17j–1(a)(1) defines an “access person” as “Any Advisory Person of a Fund or of a Fund’s investment adviser; if an investment adviser’s primary business is advising Funds or other advisory clients, all of the investment adviser’s directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser; All of a Fund’s directors, officers, and general partners are presumed to be Access Persons of the Fund.”; the definition of Access Person also includes “Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund

²¹ 15 U.S.C. 78f(b)(5).

²² Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²³ 17 CFR 200.30–3(a)(57).