

#### 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2021-39 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-NYSEAMER-2021-39. 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2021-39, and should be submitted on or before October 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93172; File No. SR-Nasdaq-2021-066]

##### **Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g)**

September 29, 2021.

On August 23, 2021, The Nasdaq Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the Valkyrie XBTO Bitcoin Futures Fund under Nasdaq Rule 5711(g). On August 25, 2021, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on September 9, 2021.<sup>3</sup> The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (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 self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 24,

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 92865 (Sept. 2, 2021), 86 FR 50570 (Sept. 9, 2021).

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

2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and any comments. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designates December 8, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1 (File No. SR-Nasdaq-2021-066).

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-21610 Filed 10-4-21; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93192; File No. SR-NYSE-2021-53]

##### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the Shareholder Voting Requirement Set Forth in Section 312.07 of the NYSE Listed Company Manual**

September 29, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 16, 2021, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

##### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to adopt an amendment to the shareholder voting requirement set forth in Section 312.07 of the NYSE Listed Company Manual.

<sup>5</sup> *Id.*

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

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

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

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

The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

#### 1. Purpose

Section 312.07 of the NYSE Listed Company Manual ("Manual") provides that, where shareholder approval is a prerequisite to the listing of any additional or new securities of a listed company, or where any matter requires shareholder approval, the minimum vote which will constitute shareholder approval for such purposes is defined as approval by a majority of votes cast on a proposal in a proxy bearing on the particular matter. Section 312.07 is currently applicable to shareholder approval of stock issuances under Sections 303A.08 (equity compensation) and 312.03 of the Manual.<sup>4</sup>

The text of Section 312.07 does not specifically address the treatment of abstentions. However, the Exchange has historically advised companies that abstentions should be treated as votes cast for purposes of Section 312.07. Under that approach, a proposal is deemed approved under Section 312.07 only if the votes in favor of the proposal exceed the aggregate of the votes cast against the proposal plus abstentions. The Exchange has observed that this approach has caused confusion among listed companies. The corporate laws of many states, including Delaware, allow companies to include in their governing documents that votes cast for purposes of a shareholder vote includes yes and

no votes (but not abstentions), such that a proposal succeeds if the votes in favor exceed the votes cast against. The Exchange understands that, consistent with those state laws, many public companies have bylaws indicating that abstentions are not treated as votes cast.

The Exchange proposes to amend Section 312.07 to provide that a company must calculate the votes cast with respect to a proposal that is subject to Section 312.07 in accordance with its own governing documents and any applicable state law. The Exchange believes that this treatment of abstentions will avoid any complications engendered among issuers and shareholders when different voting standards are applied under the Exchange rule, a company's governing documents, and/or applicable state laws.

The Exchange notes that Nasdaq has a rule requiring that proposals receive a majority of "the votes cast,"<sup>5</sup> but is silent on the question as to whether abstentions should be treated as votes cast. Nasdaq has published an FAQ on its website that clearly states:

Nasdaq does not define the term "votes cast". As such, a company must calculate the "votes cast" in accordance with its governing documents and any applicable state law.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act") generally.<sup>6</sup> Section 6(b)(5)<sup>7</sup> requires, among other things, that exchange rules are 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 the public interest and the interests of investors, promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers or dealers.

The Exchange believes that the proposal is designed to protect the public interest and the interests of investors. The proposed approach to calculations of "votes cast" in Section 312.07 would not prescribe a particular interpretation under Exchange rules. Rather, a listed company would calculate votes cast in accordance with

the company's governing documents and applicable state laws. In doing so, the proposal will reduce confusion among issuers and shareholders. The proposed amendment would also help ensure that shareholders properly understand the implications of choosing to abstain on a proposal subject to approval under Exchange rules.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. There would be no effect on the competition among issuers listed on the NYSE resulting from the proposed amendment, because all issuers would calculate votes cast in accordance with their own governing documents and applicable state laws. The proposed amendment is consistent with the existing interpretation of the comparable rule of the other primary listing exchange, so the proposed amendment would have no effect on the competition for listings among exchanges.

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

No written comments were solicited or received with respect to 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 self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the 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:

<sup>4</sup> Item 21(b) of Schedule 14A requires companies soliciting proxies to disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as the company's charter and bylaw provisions.

<sup>5</sup> See Nasdaq Marketplace Rule 5635(e)(4).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2021-53 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-NYSE-2021-53. 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2021-53, and should be submitted on or before October 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-93171; File No. SR-NYSEArca-2021-67]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the One River Carbon Neutral Bitcoin Trust Under NYSE Arca Rule 8.201-E**

September 29, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 20, 2021, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares of the One River Carbon Neutral Bitcoin Trust under NYSE Arca Rule 8.201-E. The proposed change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

**1. Purpose**

The Exchange proposes to list and trade shares ("Shares") of the One River

Carbon Neutral Bitcoin Trust (the "Trust") pursuant to NYSE Arca Rule 8.201-E which governs the listing and trading of "Commodity-Based Trust Shares."<sup>4</sup>

**Description of the Trust**

The Shares will be issued by the Trust, a Delaware statutory trust.<sup>5</sup> The sponsor of the Trust is One River Digital Asset Management, LLC ("Sponsor"), a Delaware limited liability company. The Sponsor is a wholly-owned subsidiary of One River Asset Management, LLC. The trustee for the Trust is Delaware Trust Company ("Trustee"). The custodian for the Trust is Coinbase Custody Trust Company, LLC ("Custodian"). The Custodian will hold all of the Trust's bitcoin on the Trust's behalf. The marketing agent for the Trust is Foreside Global Services, LLC (the "Marketing Agent"). The Bank of New York Mellon acts as the Trust's transfer agent (in such capacity, the "Transfer Agent") and its administrator (in such capacity, the "Administrator") to perform various administrative, accounting and recordkeeping functions on behalf of the Trust.

**Operation of the Trust<sup>6</sup>**

According to the Registration Statement, the Trust's investment objective is to seek to track the performance of bitcoin, as measured by the performance of the MVIS One River Carbon Neutral Bitcoin Index (the "Index"), adjusted for the Trust's expenses and other liabilities. The Index is designed to reflect the performance of bitcoin in U.S. dollars on a carbon neutral basis. As described below, the Trust intends to offset the carbon footprint associated with bitcoin once a quarter by paying for the instantaneous retirement of carbon credits necessary to account for the daily estimated carbon emissions associated with the bitcoins

<sup>4</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

<sup>5</sup> The Trust is a Delaware statutory trust, formed on April 27, 2021, pursuant to the Delaware Statutory Trust Act. The Trust operates pursuant to the Trust Agreement dated April 26, 2021. On May 24, 2021, the Trust filed a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (the "Securities Act") (File No. 333-256407) (the "Registration Statement on Form S-1" or "Registration Statement"). The Trust intends to adopt an Amended and Restated Trust Agreement as described in the Registration Statement on Form S-1 prior to requesting accelerated effectiveness thereof.

<sup>6</sup> The description of the operation of the Trust, the Shares and the bitcoin market contained herein are based, in part, on the Registration Statement. See note 5, *supra*.

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

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

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

<sup>8</sup> 17 CFR 200.30-3(a)(12).