

situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating optional DMM rebate and credits that are underutilized and ineffective would no longer be available to any DMM on an equal basis. Further, the proposal does not permit unfair discrimination because elimination of obsolete waivers would apply to all similarly situated member organizations on an equal basis. In addition, the Exchange believes that the proposed elimination of obsolete waivers would remove impediments to and perfect the mechanism of a free and open market by eliminating references to waivers that are no longer offered, thereby improving the clarity of the Exchange's rules and enabling market participants to more easily navigate the Exchange's Price List. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of underutilized and obsolete fees would make the Price List more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>7</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal relates solely to elimination of an underutilized rebate and obsolete waivers and, as such, would not have any impact on intra- or inter-market competition because the proposed change is solely designed to accurately reflect the services that the Exchange currently offers, thereby adding clarity to the Price List.

#### *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**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>10</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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

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

#### *Electronic Comments*

- Use the Commission's internet comment form (<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-2021-41 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-2021-41. 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-2021-41 and should be submitted on or before September 3, 2021.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-17306 Filed 8-12-21; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-92617; File No. SR-FINRA-2021-008]**

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1, Relating to Security-Based Swaps**

August 9, 2021.

#### **I. Introduction**

On April 26, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-FINRA-2021-008 ("Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, to amend FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to clarify the application of FINRA rules to security-based swaps ("SBS") following the SEC's completion of its

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

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

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

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

<sup>7</sup> 15 U.S.C. 78f(b)(8).

rulemaking regarding SBS dealers (“SBSDs”) and major SBS participants (“MSBSPs”) (collectively, “SBS Entities”).<sup>3</sup> The Proposed Rule Change was published for public comment in the **Federal Register** on May 12, 2021.<sup>4</sup> On June 14, 2021, FINRA consented to an extension of the time period in which the Commission must approve the Proposed Rule Change, disapprove the Proposed Rule Change, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change to August 10, 2021.<sup>5</sup> On August 9, 2021, FINRA responded to the comment letters received in response to the Notice and filed an amendment to modify the Proposed Rule Change (“Amendment No. 1”).<sup>6</sup> The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>7</sup> to solicit comments on Amendment No. 1 from interested persons and to institute proceedings to determine whether to approve or disapprove the Proposed Rule Change, as modified by Amendment No. 1.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

FINRA is proposing to amend FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to take into account members’ SBS activities once SBS Entities begin registering with the Commission on October 6, 2021. The proposed amendments to these rules generally fall into three categories. First, the Proposed Rule Change, as modified by Amendment No. 1, would adopt a new FINRA Rule 0180, to replace expiring current FINRA Rule 0180, that would generally apply FINRA rules to members’ activities and positions with respect to SBS, while providing limited exceptions for those activities and positions in circumstances where FINRA believes such exceptions are appropriate. Second, the Proposed Rule Change, as modified by Amendment No. 1, would amend FINRA’s financial responsibility and operational rules for SBSDs and broker-dealers to conform to the SEC’s amendments to its capital,

margin and segregation requirements,<sup>8</sup> and to otherwise take into account members’ SBS activities. Third, the Proposed Rule Change, as modified by Amendment No. 1, would adopt a new margin rule specifically applicable to SBS, which would replace the expiring interim pilot program establishing margin requirements for credit default swaps.

Amendment No. 1 would make the following changes to the Proposed Rule Change: (1) Extend the effective date of the proposed amendments to FINRA Rules 0180, 4120 and 9610 from October 6, 2021 to February 6, 2022; (2) extend the effective date of the proposed amendments to FINRA Rules 4210, 4220 and 4240 from October 6, 2021 to April 6, 2022; and (3) conform the proposed definition of Legacy Swap in proposed FINRA Rule 4240(d)(12) to reflect the new effective date of April 6, 2022.

## III. Proceedings To Determine Whether To Approve or Disapprove File No. SR-FINRA-2021-008 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change, as modified by Amendment No. 1, should be approved or disapproved.<sup>9</sup> Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the Proposed Rule Change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,<sup>10</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the Proposed Rule Change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

## IV. 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 Proposed Rule Change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>11</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change, as modified by Amendment No. 1, should be approved or disapproved by August 30, 2021. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by September 3, 2021.

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 No. SR-FINRA-2021-008 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 No. SR-FINRA-2021-008. 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, as modified by Amendment No. 1, that are filed with the Commission, and all written communications relating

<sup>3</sup> Exchange Act Release No. 91789, (May 7, 2021), 86 FR 26084 (May 12, 2021) (File No. SR-FINRA-2021-008) (“Notice”).

<sup>4</sup> See *id.*

<sup>5</sup> See letter from Robert McNamee, Assistant General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Division of Trading and Markets, Commission, dated June 14, 2021.

<sup>6</sup> See letter from Robert McNamee, Assistant General Counsel, Office of General Counsel, FINRA to Vanessa Countryman, Secretary, Commission, dated August 9, 2021.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175, (Jun. 21, 2019), 84 FR 43872 (Aug. 22, 2019) (File No. S7-08-12).

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>10</sup> *Id.*

<sup>11</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29, 89 Stat. 97 (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, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

to the Proposed Rule Change, as modified by Amendment No. 1, 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 FINRA.

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 No. SR-FINRA-2021-008 and should be submitted on or before August 30, 2021. If comments are received, any rebuttal comments should be submitted on or before September 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

[FR Doc. 2021-17307 Filed 8-12-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92610; File No. SR-NYSEArca-2021-31]

### 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 Valkyrie Bitcoin Fund Under NYSE Arca Rule 8.201-E

August 9, 2021.

On April 23, 2021, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the Valkyrie Bitcoin Fund ("Trust") under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change was published for

comment in the **Federal Register** on May 12, 2021.<sup>3</sup>

On June 22, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

#### I. Summary of the Proposal

As described in more detail in the Notice,<sup>7</sup> the Exchange proposes to list and trade the Shares of the Trust under NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust will be for the Shares to reflect the performance of the value of a bitcoin as represented by the CF Bitcoin US Settlement Price ("Index"), less the Trust's liabilities and expenses.<sup>8</sup> The Fund will use the Index to calculate the Trust's net asset value ("NAV").<sup>9</sup> The Index serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m., E.T. The Index aggregates the trade flow of several bitcoin exchanges, during an observation window between 3:00 p.m. and 4:00 p.m., E.T., into the U.S. dollar price of one bitcoin at 4:00 p.m., E.T. The current constituent bitcoin exchanges of the Index are Bitstamp, Coinbase, Gemini, iBit, and Kraken ("Constituent Bitcoin Exchanges"). In calculating the Index, the methodology creates a joint list of certain trade prices and sizes from the Constituent Bitcoin

Exchanges between 3:00 p.m. and 4:00 p.m., E.T. The methodology then divides this list into 12 equally-sized time intervals of 5 minutes and it calculates the volume-weighted median trade price for each of those time intervals. The Index is the arithmetic mean of these 12 volume-weighted median trade prices.<sup>10</sup>

The Shares of the Trust represent units of fractional undivided beneficial interest in, and ownership of, the Trust. The Trust will only hold bitcoin. The Custodian will establish accounts that hold the bitcoins deposited with the Custodian on behalf of the Trust.<sup>11</sup>

The Administrator will calculate the NAV of the Trust once each Exchange trading day. The Sponsor will publish the NAV and NAV per Share as soon as practicable after their determination and availability, and the NAV will be released after the end of the Core Trading Session (4:00 p.m., E.T.). The NAV of the Trust is not officially struck until later in the day (often by 5:30 p.m., E.T., and usually by 8:00 p.m., E.T.). The Trust's NAV per Share is calculated by taking the current market value of its total assets, less any liabilities of the Trust, and dividing that total by the total number of outstanding Shares. The bitcoin held by the Trust will be valued based on the price set by the Index.<sup>12</sup>

The Trust will provide website disclosure of its bitcoin holdings daily.<sup>13</sup> The Trust will also disseminate an intraday indicative value ("IIV") per Share updated every 15 seconds by one of more major market data vendors during the Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m., E.T.). The IIV will be calculated by a third-party financial data provider using the prior day's closing NAV per Share of the Trust as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the CME CF Bitcoin Real-Time Index ("BRTI"), as reported by CME Group, Inc., Bloomberg, L.P., or another reporting service.<sup>14</sup>

The Trust will issue and redeem Shares to authorized participants on an ongoing basis in one or more "Baskets" of 50,000 Shares. The creation and redemption of a Basket requires the delivery to the Trust, or the distribution by the Trust, of the number of whole and fractional bitcoins represented by

<sup>3</sup> See Securities Exchange Act Release No. 91771 (May 6, 2021), 86 FR 26073 (May 12, 2021) ("Notice"). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nysearca-2021-31/srnysearca202131.htm>.

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

<sup>5</sup> See Securities Exchange Act Release No. 92233 (June 22, 2021), 86 FR 34107 (June 28, 2021). The Commission designated August 10, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Notice, *supra* note 3.

<sup>8</sup> Valkyrie Digital Assets LLC is the sponsor of the Trust ("Sponsor") and Delaware Trust Company is the trustee. Coinbase Custody Trust Company, LLC ("Custodian") will act as custodian for the Trust's bitcoins. U.S. Bancorp Fund Services, LLC ("Administrator") will act as the transfer agent and administrator of the Trust. See Notice, *supra* note 3, 86 FR at 26073.

<sup>9</sup> The Index is not affiliated with the Sponsor and is administered by CF Benchmarks Ltd. ("Benchmark Administrator"). See Notice, *supra* note 3, 86 FR at 26076.

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

<sup>11</sup> See *id.* at 26073.

<sup>12</sup> See *id.* at 26076.

<sup>13</sup> See *id.* at 26081.

<sup>14</sup> The BRTI is calculated in real time based on the universe of the currently unmatched limit orders to buy or sell in the BTC/USD pair of all Constituent Bitcoin Exchanges. See *id.* at 26076.

<sup>12</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).

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

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