



SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-102310; File No. SR-NYSEARCA-2024-104)

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Bitwise Bitcoin and Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)

January 30, 2025

## I. INTRODUCTION

On November 26, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Bitwise Bitcoin and Ethereum ETF (“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 December 16, 2024.<sup>3</sup> On January 21, 2025, the Exchange filed Amendment No. 1 to the proposed rule change,<sup>4</sup> which superseded the original proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1 (“Proposal”), on an accelerated basis.<sup>5</sup>

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<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. 101864 (Dec. 10, 2024), 89 FR 101654. The Commission did not receive any comments on the proposal.

<sup>4</sup> In Amendment No. 1, the Exchange clarified the description of the Trust; further described the terms of the Trust; and conformed various representations in the amended filing to representations that exchanges have made for other exchange-traded products (“ETPs”) that the Commission has approved. The full text of Amendment No. 1 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nysearca-2024-104/srnysearca2024104-559475-1605482.pdf>.

<sup>5</sup> See infra Item V.

## II. DESCRIPTION OF THE PROPOSED RULE CHANGE, AS MODIFIED BY AMENDMENT NO. 1

As described in more detail in Amendment No. 1,<sup>6</sup> the Exchange proposes to list and trade Shares of the Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The Trust will hold both spot bitcoin<sup>7</sup> and spot ether.<sup>8</sup>

According to the Exchange, the investment objective of the Trust is to seek to provide exposure to the value of bitcoin and ether held by the Trust, less the expenses of the Trust's operations and other liabilities.<sup>9</sup> The Trust's allocation of its assets to bitcoin and ether will approximate the relative market capitalization of bitcoin and ether to one another.<sup>10</sup> The Trust's only assets will be bitcoin, ether, and cash.<sup>11</sup> 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.<sup>12</sup> For purposes of calculating the Trust's NAV, the Administrator will determine the price of the Trust's bitcoin and ether by reference to the CME CF Bitcoin – New York Variant for its bitcoin holdings and to the CME CF Ether – Dollar

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<sup>6</sup> See supra note 4.

<sup>7</sup> Bitcoins are digital assets that are issued and transferred via a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the "Bitcoin blockchain." The Bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions.

<sup>8</sup> Ether is a digital asset that is native to, and minted and transferred via, a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as "Ethereum." The Ethereum protocol governs the creation of new ether and the cryptographic system that secures and verifies transactions on Ethereum.

<sup>9</sup> See Amendment No. 1 at 4. 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 bitcoin and ether. Bank of New York Mellon will be the custodian for the Trust's cash holdings, the administrator of the Trust, and the transfer agent for the Trust. See id.

<sup>10</sup> See id. As of the date of the filing, the relative market capitalization of bitcoin and ether were 83% bitcoin and 17% ether. The Exchange states that the Trust will calculate the market capitalization of bitcoin and ether by multiplying the Pricing Benchmarks (as defined herein) by the current circulating supply of bitcoin and ether respectively, as determined by the Sponsor, and will calculate the relative market capitalization by dividing each of bitcoin and ether's market capitalization by the combined market capitalization of both. See id. at 4 n.8.

<sup>11</sup> See id. at 5.

<sup>12</sup> See id. at 7.

Reference Rate – New York Variant for its ether holdings (the “Pricing Benchmarks”).<sup>13</sup> The Trust will create and redeem Shares from time to time, but only in one or more “Creation Units,” which will initially consist of at least 10,000 Shares.<sup>14</sup>

### III. DISCUSSION AND COMMISSION FINDINGS

After careful review, the Commission finds that the Proposal is consistent with the Exchange Act and rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> In particular, the Commission finds that the Proposal is consistent with Section 6(b)(5) of the Exchange Act,<sup>16</sup> which requires, among other things, that the Exchange’s rules be designed to “prevent fraudulent and manipulative acts and practices” and, “in general, to protect investors and the public interest;” and with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>17</sup> which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

#### A. Exchange Act Section 6(b)(5)

The Trust will hold both spot bitcoin and spot ether weighted according to their relative market capitalizations.<sup>18</sup> The structure of the Trust, the terms of its operation and the trading of its Shares, and the representations in the Exchange’s amended filing are substantially similar to those of the spot bitcoin and spot ether ETP proposals approved in prior Commission orders.<sup>19</sup>

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<sup>13</sup> See id. at 4-5, 7. The Pricing Benchmarks are calculated by CF Benchmarks Ltd. based on an aggregation of executed trade flow of major bitcoin and ether trading platforms and are designed to provide a daily, 4:00 p.m. E.T. reference rate of the U.S. dollar price of one bitcoin or one ether. See id. at 5 n.9.

<sup>14</sup> See id. at 8. Authorized participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. See id. at 9.

<sup>15</sup> In approving the Proposal, the Commission has considered the Proposal’s impacts on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>18</sup> See Amendment No. 1 at 4. The Trust could also hold cash. See id. at 5.

<sup>19</sup> See, e.g., 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, Securities Exchange Act Release No. 101998 (Dec. 19,

As such, based on the record before the Commission the Commission is able to conclude that the Proposal is consistent with Section 6(b)(5) of the Exchange Act.

B. Exchange Act Section 11A(a)(1)(C)(iii)

The Proposal sets forth aspects of the proposed ETP, including the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures, that are consistent with other ETPs that the Commission has approved.<sup>20</sup> This includes commitments regarding: the availability of quotation and last-sale information for the Shares; the availability on the Trust's website of certain information related to the Trust, including NAV; the dissemination of an intra-day indicative value by one or more major market data vendors, updated every 15 seconds throughout the Exchange's core trading session; the Exchange's surveillance procedures and ability to obtain information regarding trading in the Shares; the conditions under which the Exchange would implement trading halts and suspensions; and the requirements of registered market makers in the Shares.<sup>21</sup> In addition, 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.<sup>22</sup> Further, the listing rules of the Exchange require that all statements and representations made in its filing regarding, among others, the description of the Trust's holdings, limitations on such holdings, and the applicability of the Exchange's listing rules specified in the filing, will constitute continued listing requirements.<sup>23</sup> Moreover, the Proposal states that: the Trust's Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements; pursuant to obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor for compliance with the continued listing requirements; and if

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2024), 89 FR 106707 (Dec. 30, 2024) (SR-NASDAQ-2024-028; SR-CBOEBZX-2024-091) ("Spot Bitcoin & Ether ETP Approval Order"). See also *infra* Item III.B.

<sup>20</sup> See, e.g., Spot Bitcoin & Ether ETP Approval Order at 106709.

<sup>21</sup> See Amendment No. 1 at 19-22.

<sup>22</sup> See *id.* at 20.

<sup>23</sup> See NYSE Arca Rule 8.201-E(e)(2)(vii).

the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures.<sup>24</sup>

The Commission therefore finds that the Proposal, as with other ETPs that the Commission has approved,<sup>25</sup> is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Trust's portfolio, and to ensure fair and orderly markets for the Shares.

#### **IV. SOLICITATION OF COMMENTS**

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

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-104 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-2024-104. 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

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<sup>24</sup> See Amendment No. 1 at 22.

<sup>25</sup> See Spot Bitcoin and Ether ETP Approval Order.

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-2024-104 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

## **V. ACCELERATED APPROVAL**

The Commission finds good cause to approve the Proposal prior to the 30<sup>th</sup> day after the date of publication of notice of Amendment No. 1<sup>26</sup> in the Federal Register. The amendment clarified the description of the Trust; further described the terms of the Trust; and conformed various representations in the amended filing to representations that exchanges have made for other ETPs that the Commission has approved.<sup>27</sup> The amended filing is now substantially similar to filings for other spot bitcoin and spot ether ETPs that the Commission has approved.<sup>28</sup> Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,<sup>29</sup> to approve the Proposal on an accelerated basis.

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<sup>26</sup> See supra note 4.

<sup>27</sup> See also supra Item III.B.

<sup>28</sup> See Spot Bitcoin and Ether ETP Approval Order.

<sup>29</sup> 15 U.S.C. 78s(b)(2).

## VI. CONCLUSION

This approval order is based on all of the Exchange's representations and descriptions in the Proposal, which the Commission has carefully evaluated as discussed above.<sup>30</sup> For the reasons set forth above, the Commission finds, pursuant to Section 19(b)(2) of the Exchange Act,<sup>31</sup> that the Proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Exchange Act.<sup>32</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>33</sup> that the Proposal (SR-NYSEARCA-2024-104) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>30</sup> In addition, the Shares of the Trust must comply with the requirements of NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) to be listed and traded on the Exchange on an initial and continuing basis.

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).