



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102313; File No. SR-NYSEARCA-2024-87]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt New NYSE Arca Rule 8.800-E to Provide for the Listing and Trading of Commodity- and/or Digital Asset-Based Investment Interests and to List and Trade Shares of the Grayscale Digital Large Cap Fund LLC

January 31, 2025.

I. Introduction

On October 15, 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” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new NYSE Arca Rule 8.800-E to provide for the listing and trading of Commodity- and/or Digital Asset-Based Investment Interests and to list and trade shares of the Grayscale Digital Large Cap Fund LLC under proposed NYSE Arca Rule 8.800-E. The proposed rule change was published for comment in the Federal Register on November 4, 2024.³

On December 17, 2024, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101470 (Oct. 29, 2024), 89 FR 87681 (“Notice”). The Commission has received no comment letters on the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

the proposed rule change.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposal

A. Proposed Listing Standards for Commodity- and/or Digital Asset-Based Investment Interests

As described in more detail in the Notice,⁷ the Exchange proposes to adopt new NYSE Arca Rule 8.800-E to provide for the listing and trading of Commodity- and/or Digital Asset-Based Investment Interests. Proposed NYSE Arca Rule 8.800-E(c)(1) defines “Commodity- and/or Digital Asset-Based Investment Interests” to mean “a security (a) that is issued by a trust, limited liability company, or other similar entity (the ‘Fund’) that holds (1) specified commodities and/or digital assets deposited with the Fund, or (2) specified commodities and/or digital assets and, in addition to such specified commodities and/or digital assets, Derivative Securities Products (as defined in NYSE Arca Rule 1.1) and/or cash; (b) that is issued by such Fund in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity(ies), digital asset(s), Derivative Securities Products, and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such Fund which will deliver to the redeeming holder the quantity of the underlying commodity(ies), digital asset(s), Derivative Securities Products, and/or cash.”⁸

Proposed NYSE Arca Rule 8.800-E(c)(2) states that “commodity,” for purposes of this rule, “includes commodities as defined in Section 1a(9) of the Commodity Exchange Act.”⁹

Proposed NYSE Arca Rule 8.800-E(c)(3) defines the term “digital asset,” for purposes of this

⁵ See Securities Exchange Act Release No. 101939, 89 FR 104581 (Dec. 23, 2024) (designating February 2, 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 See Notice at 87682.

⁹ See *id.*

rule, to mean “any digital representation of value recorded on a cryptographically secured, distributed ledger (i.e., blockchain) or similar technology.”¹⁰

Proposed NYSE Arca Rule 8.800-E sets forth certain listing requirements specific to Commodity- and/or Digital Asset-Based Investment Interests, as described in more detail in the Notice and Exhibit 5 thereto.¹¹ Among other things, proposed NYSE Arca Rule 8.800-E(e)(1)(ii) would provide that there shall be no limitation on the percentage of a Fund’s portfolio that may be invested in commodity and/or digital asset holdings, “except that, in the aggregate, at least 90% of the weight of such holdings shall, on both an initial and continuing basis, consist of commodities and/or digital assets concerning which the Exchange is able to obtain information via the Intermarket Surveillance Group (‘ISG’) from other members of the ISG or via a comprehensive surveillance sharing agreement.”¹²

The Exchange also proposes to amend NYSE Arca Rules 5.3-E (Corporate Governance and Disclosure Policies) and 5.3-E(e) (Shareholder Annual Meetings) to include Commodity- and/or Digital Asset-Based Investment Interests listed pursuant to proposed NYSE Arca Rule 8.800-E among the derivative or special purpose securities to which a limited set of corporate governance and disclosure policies would apply and to which the requirements concerning shareholder/annual meetings would not apply.

The Exchange states that Commodity- and/or Digital Asset-Based Investment Interests listed and traded pursuant to proposed Rule 8.800-E would be “substantially similar to Commodity-Based Trust Shares listed and traded pursuant to NYSE Arca Rule 8.201-E, with two main differences.”¹³ The Exchange states that “whereas Commodity-Based Trust Shares are issued by a trust, Commodity- and/or Digital Asset-Based Investment Interests could be issued,

¹⁰ See *id.*

¹¹ See Notice, *supra* note 3. See also Exhibit 5 to the proposed rule change, which is available at <https://www.sec.gov/files/rules/sro/nysearca/2024/34-101470-ex5.pdf>.

¹² See Notice at 87682.

¹³ See *id.* at 87683

as [] proposed, by a trust, limited liability company, or other similar entity;” and that “whereas Commodity-Based Trust Shares are based on an underlying commodity only, the Exchange proposes that Commodity- and/or Digital Asset-Based Investment Interests could be based on an underlying commodity or commodities, as well as digital assets and Derivative Securities Products.”¹⁴

B. Grayscale Digital Large Cap Fund LLC

As described in more detail in the Notice, the Exchange also proposes to list and trade shares (“Shares”) of the Grayscale Digital Large Cap Fund LLC (“Grayscale Fund”) under proposed NYSE Arca Rule 8.800-E.

According to the Exchange, the investment objective of the Grayscale Fund is for the value of the Shares (based on net asset value (“NAV”) per Share) to reflect the value of the Fund Components (as described below) held by the Grayscale Fund, as determined by reference to their Digital Asset Reference Rates¹⁵ and weightings within the Grayscale Fund, less the Grayscale Fund’s expenses and other liabilities.¹⁶ The Grayscale Fund’s assets consist solely of the Fund Components.¹⁷ The Fund Components consist of the components of the CoinDesk Large Cap Select Index (“Index”), except that the Manager may determine to exclude a particular Index component in its discretion under certain rules-based circumstances (including to comply with the requirements of proposed NYSE Arca Rule 8.800-E).¹⁸ The weightings of the Fund Components are generally expected to be the same as for the weightings of the Index components within the Index, except when the Manager determines to exclude one or more of

¹⁴ See id. at 87683-4.

¹⁵ See infra note 22 and accompanying text.

¹⁶ See Notice at 87685. The Grayscale Fund is a Cayman Islands limited liability company. The manager of the Grayscale Fund is Grayscale Investments, LLC (“Manager”). The custodian is Coinbase Custody Trust Company, LLC. The administrator and transfer agent will be BNY Mellon Asset Servicing, a division of The Bank of New York Mellon. The distribution and marketing agent will be Foreside Fund Services, LLC. See id. at 87684.

¹⁷ See id. at 87684.

¹⁸ See id. at 87691.

the Index components from the Fund Components, in which case the weightings are generally expected to be calculated proportionally to the respective Index weightings for the remaining components of the Index.¹⁹ As of the date of the filing, the Fund Components and their weightings were bitcoin (75.46%), ether (17.90%), Solana (4.13%), XRP (1.86%), and Avalanche (0.65%).²⁰ The Manager will calculate and publish the NAV of the Grayscale Fund at 4:00 p.m., New York time, on each business day or as soon thereafter as practicable.²¹ The Grayscale Fund uses the Digital Asset Reference Rate for each Fund Component to calculate its NAV.²² The Grayscale Fund will issue Shares to and redeem Shares from authorized participants on an ongoing basis, but only in one or more “Baskets” of 10,000 Shares.²³

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEARCA-2024-87 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁴ 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,²⁵ 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,

¹⁹ See id.

²⁰ See id. at 87684. The Exchange states that, as of the date of the filing, the Fund Components that meet the proposed initial and continued listing standard in proposed NYSE Arca Rule 8.800-E(e)(1)(ii) are bitcoin and ether. See id. at 87691 n.27. See also supra note 12 and accompanying text.

²¹ See Notice at 87685.

²² See id. The rules that the Manager will employ to calculate the Digital Asset Reference Rate for each Fund Component are described in the Notice. See id. at 87694-95.

²³ See id. at 87699. Authorized participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. See id.

²⁴ 15 U.S.C. 78s(b)(2)(B).

²⁵ Id.

which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”²⁶

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, with respect to the proposal to allow the listing and trading of Commodity- and/or Digital Asset-Based Investment Interests on the Exchange, the Commission seeks comment on whether the requirements and associated definitions set forth in proposed NYSE Arca Rule 8.800-E are sufficiently clear and are designed to prevent fraudulent and manipulative acts and practices. The Commission also seeks comment on whether the proposal to list and trade Shares of the Grayscale Fund, which would hold bitcoin, ether, Solana, XRP, Avalanche, and potentially other commodities, digital assets, and/or Derivative Securities Products, is designed to prevent fraudulent and manipulative acts and practices. In particular, as the proposal would allow the listing and trading of securities issued by entities, including the Grayscale Fund, that hold “digital assets,”²⁷ the Commission seeks comment on 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

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ See supra note 10 and accompanying text.

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.²⁸

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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-2024-87 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-2024-87. 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

²⁸ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 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).

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-2024-87 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,

Assistant Secretary

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²⁹ 17 CFR 200.30-3(a)(57).