



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103996; File No. SR-NYSEARCA-2024-87]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.500-E (Trust Units) and to List and Trade Shares of the Grayscale Digital Large Cap Fund LLC under Amended NYSE Arca Rule 8.500-E (Trust Units)**

September 17, 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 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt certain listing rules and to list and trade shares of the Grayscale Digital Large Cap Fund LLC.<sup>3</sup>

On July 1, 2025, the Commission, acting through authority delegated to the Division of Trading and Markets (“Division”),<sup>4</sup> approved the proposed rule change, as modified by

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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> The proposed rule change was published for comment in the Federal Register on November 4, 2024. See Securities Exchange Act Release No. 101470 (Oct. 29, 2024), 89 FR 87681 (Nov. 4, 2024). On December 17, 2024, the Commission extended the time period for Commission action on the proposed rule change. See Securities Exchange Act Release No. 101939 (Dec. 17, 2024), 89 FR 104581 (Dec. 23, 2024). On January 31, 2025, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether to approve or disapprove the proposed rule change. See Securities Exchange Act Release No. 102313 (Jan. 31, 2025), 90 FR 9092 (Feb. 6, 2025). On April 29, 2025, the Commission extended the time period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change. See Securities Exchange Act Release No. 102941 (Apr. 29, 2025), 90 FR 19037 (May 5, 2025). On June 26, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on July 2, 2025. See Securities Exchange Act Release No. 103345 (June 27, 2025), 90 FR 29057 (July 2, 2025) (“Amendment No. 1”).

<sup>4</sup> 17 CFR 200.30-3(a)(12).

Amendment No. 1, on an accelerated basis.<sup>5</sup> On July 1, 2025, the Deputy Secretary of the Commission notified NYSE Arca that, pursuant to Commission Rule of Practice 431,<sup>6</sup> the Commission would review the Division’s action pursuant to delegated authority and that the Division’s action pursuant to delegated authority was stayed until the Commission ordered otherwise.<sup>7</sup> On July 29, 2025, the Commission issued a scheduling order, pursuant to Commission Rule of Practice 431, providing until August 22, 2025, for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.<sup>8</sup>

The Commission has conducted a *de novo* review of NYSE Arca’s proposal, giving careful consideration to the entire record, including all comments and statements submitted, to determine whether the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities exchange. Under Section 19(b)(2)(C) of the Exchange Act, the Commission must approve the proposed rule change of a self-regulatory organization if the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the applicable rules and regulations thereunder; if it does not make such a finding, the Commission must disapprove the proposed rule change.<sup>9</sup> Additionally, under Rule 700(b)(3) of the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder ... is on the self-regulatory organization that proposed the rule change.”<sup>10</sup> The description of a proposed rule change, its purpose and operation, its

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<sup>5</sup> See Securities Exchange Act Release No. 103364 (July 1, 2025), 90 FR 29923 (July 7, 2025) (“Approval Order”).

<sup>6</sup> 17 CFR 201.431.

<sup>7</sup> See Letter from J. Matthew DeLesDernier, Deputy Secretary, Commission, to Le-Anh Bui, Senior Counsel, NYSE Group, Inc., dated July 1, 2025, available at <https://www.sec.gov/files/rules/sro/nysearca/2025/sr-nysearca-2024-87-rule-431-letter-2025-07-01.pdf>.

<sup>8</sup> See Securities Exchange Act Release No. 103562 (July 29, 2025), 90 FR 36231 (Aug. 1, 2025). Comments on the proposed rule change, including statements concerning the Approval Order, are available at: <https://www.sec.gov/comments/sr-nysearca-2024-87/srnysearca202487.htm>.

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

<sup>10</sup> 17 CFR 201.700(b)(3).

effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.<sup>11</sup> Any failure of a self-regulatory organization to provide the information required by Rule 19b-4 and elicited on Form 19b-4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder that are applicable to the self-regulatory organization.<sup>12</sup>

For the reasons discussed further herein, NYSE Arca has met its burden to show that the proposed rule change is consistent with the Exchange Act, and this order sets aside the Approval Order and approves NYSE Arca's proposed rule change, as modified by Amendment No. 1. In particular, the Commission concludes that the record before the Commission demonstrates that NYSE Arca's proposal is consistent with Section 6(b)(5) of the Exchange Act,<sup>13</sup> which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

## **II. SUMMARY OF THE PROPOSAL**

### **A. Amendments to NYSE Arca Rules 8.500-E and 5.3-E**

As described in more detail in the Amendment No. 1,<sup>14</sup> the Exchange proposes to amend NYSE Arca Rule 8.500-E (Trust Units). First, the Exchange proposes to revise the definition of "Trust Units." Currently, the rule provides that Trust Units are securities "issued by a trust or similar entity that is constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward

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

<sup>12</sup> See *id.* See also 17 CFR 240.19b-4.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See *supra* note 3.

contracts, swap contracts, commodities and/or securities.”<sup>15</sup> The Exchange proposes to amend this definition to specify that (i) Trust Units may also be issued by a limited liability company; and (ii) Trust Units may be commodity pools, “if applicable.”<sup>16</sup>

Second, the Exchange proposes to amend NYSE Arca Rule 8.500-E to specify that the Exchange may list and trade Trust Units with investments that are represented by an index or portfolio.<sup>17</sup> Currently, the rule only provides that the Exchange may list and trade Trust Units based on an underlying asset, commodity, security, or portfolio.<sup>18</sup> As revised, Trust Units may be based on an underlying asset, commodity, security, and/or portfolio, “which may be represented by an index or portfolio of any of the foregoing.”<sup>19</sup>

Third, the Exchange proposes certain conforming changes to the rule, consistent with the proposed changes described above.<sup>20</sup>

Fourth, the Exchange proposes to amend NYSE Arca Rules 5.3-E (Corporate Governance and Disclosure Policies) and 5.3-E(e) (Shareholder Annual Meetings) to include Trust Units listed pursuant to NYSE Arca Rule 8.500-E among the derivative and 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 be required.<sup>21</sup>

## **B. The Fund**

The Exchange proposes to list and trade shares (“Shares”) of the Grayscale Digital Large Cap Fund LLC (“Fund”) under amended NYSE Arca Rule 8.500-E, as described above. The

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<sup>15</sup> See NYSE Arca Rule 8.500-E(b)(2).

<sup>16</sup> See Amendment No. 1 at 29058.

<sup>17</sup> See *id.*

<sup>18</sup> See NYSE Arca Rule 8.500-E(c).

<sup>19</sup> See Amendment No. 1 at 29058.

<sup>20</sup> See *id.* for additional details. The Exchange also proposes to amend NYSE Arca Rule 8.500-E(b)(1), which defines the term “commodity,” to update the reference to Section 1(a)(4) of the Commodity Exchange Act (“CEA”) with a reference to Section 1a(9) of the CEA. See *id.*

<sup>21</sup> See *id.*

investment objective of the Fund is for the value of the Shares to reflect the value of the digital assets held by the Fund (“Fund Components”), as determined by reference to their respective Index Prices<sup>22</sup> and weightings within the Fund, less the Fund’s expenses and other liabilities.<sup>23</sup> The Fund’s assets consist solely of the Fund Components.<sup>24</sup> The Fund Components, as well as their weightings, will consist of the digital assets that make up the CoinDesk 5 Index (“CD5”), as rebalanced from time to time, subject to the Manager’s discretion to exclude and/or rebalance the weighting of individual digital assets in certain rules-based circumstances.<sup>25</sup> The Manager will ensure that, on an initial and continuing basis, as of 4:00 p.m. E.T. on every trading day, at least 85% of the Fund Components will consist of commodities that are the primary investment underlying exchange-traded products (“ETPs”) that have been approved by the Commission to list and trade on a national securities exchange (“Approved Components”)<sup>26</sup> and that no more

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<sup>22</sup> The “Index Price” of each Fund Component is the U.S. dollar value derived from the Digital Asset Trading Platforms that are reflected in each Fund Component’s CoinDesk CCIXber Reference Rate, calculated at 4:00 p.m., New York time, on each business day. See id. at 29059, n.20. A “Digital Asset Trading Platform” is an electronic marketplace where participants may trade, buy, and sell digital assets based on bid-ask trading. See id. at 29061, n.29.

<sup>23</sup> See id. at 29059. The Fund is a Cayman Islands limited liability company. The manager of the Fund is Grayscale Investments Sponsors, LLC (“Manager”). The custodian is Coinbase Custody Trust Company, LLC. See id.

<sup>24</sup> See id.

<sup>25</sup> See id. CD5 represents the five largest and the most liquid digital assets in the digital asset market. The respective weightings of CD5 components are determined by market capitalization and rebalanced quarterly. See id. at 29059, n.18; 29066-67.

<sup>26</sup> As of the filing of Amendment No. 1, more than 85% of the Fund Components were bitcoin (80.20%) and ether (11.39%). See id. at 29059. The Commission approved both spot bitcoin and spot ether to underlie ETPs as primary investments. See Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units, Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072) (“Spot Bitcoin ETP Approval Order”); Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products, Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; SR-CboeBZX-2024-018) (“Spot Ether ETP Approval Order”); 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, 2024), 89 FR 106707 (Dec. 30, 2024) (SR-NASDAQ-2024-028; SR-CBOEBZX-2024-091) (“Spot Bitcoin & Ether ETP Approval Order”). The Spot Bitcoin ETP Approval Order, Spot Ether ETP Approval Order;

than 15% of the Fund Components will be non-Approved Components.<sup>27</sup> As of the date of the Amendment No. 1, the Fund Components and their weightings were bitcoin (80.20%), ether (11.39%), Solana (2.78%), XRP (4.82%), and Cardano (0.81%).<sup>28</sup>

The Fund will use the Index Price for each Fund Component to calculate its net asset value (“NAV”), which will occur at 4:00 p.m., New York time, on each business day or as soon thereafter as practicable.<sup>29</sup> The Fund will issue Shares to, and redeem Shares from, authorized participants on an ongoing basis for cash, but only in one or more “Baskets” of 10,000 Shares.<sup>30</sup>

### III. DISCUSSION AND COMMISSION FINDINGS

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>31</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Exchange Act,<sup>32</sup> which requires, among other

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and Spot Bitcoin & Ether ETP Approval Order each approved the listing and trading of Commodity-Based Trust Shares holding 100% of their assets in spot bitcoin and/or spot ether. Today, the Commission is also approving proposals to adopt generic listing standards for Commodity-Based Trust Shares that hold spot commodities (or certain derivatives thereon). See Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to Adopt Generic Listing Standards for Commodity-Based Trust Shares, Securities Exchange Act Release No. 103995 (Sept. 17, 2025) (SR-NASDAQ-2025-056; SR-CboeBZX-2025-104; SR-NYSEARCA-2025-54) (“Commodity-Based Trust Shares Generics Approval Order”). Approved Components would include commodities that would qualify to underlie Commodity-Based Trust Shares that list and trade pursuant to such generic listing standards.

<sup>27</sup> See Amendment No. 1 at 29059. The Exchange states that, to the extent the Fund’s composition is, or is anticipated to be, less than 85% Approved Components as of 4:00 p.m. E.T. on a given trading day, the Manager will promptly notify the Exchange. As soon as practicable and in any event by no later than the beginning of the NYSE Arca Core Trading Session on the following trading day, the Manager will rebalance the Fund’s portfolio according to the methodology described in the Fund’s prospectus such that at least 85% of the weightings of the Fund Components will consist of Approved Components. If it is anticipated that, as of 4:00 p.m. E.T. on a given trading day, the Fund’s portfolio will not consist of at least 85% Approved Components by the start of the next NYSE Arca Core Trading Session, the Manager will notify the Exchange as soon as practicable (and, in any event, no later than 9:15 a.m. E.T.), and the Exchange will halt trading in the Shares until at least 85% of the weightings of the Fund Components consist of Approved Components. See id. at 29067.

<sup>28</sup> See id. at 29059.

<sup>29</sup> See id. at 29060-61. The rules that the Manager will employ to calculate the Index Prices for each Fund Component are described in Amendment No. 1. See id. at 29070-71.

<sup>30</sup> See id. at 29075-76.

<sup>31</sup> In approving this proposed rule change, the Commission has considered the proposed rule change’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>32</sup> 15 U.S.C. 78f(b)(5).

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>33</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. The Commission therefore approves the proposed rule change, as modified by Amendment No. 1.

**A. Amendments to NYSE Arca Rule 8.500-E and 5.3-E**

The Commission finds that the proposed changes to NYSE Arca Rule 8.500-E are consistent with the Exchange Act. The proposed change to the definition of Trust Units as described above simply specifies that an entity structured as a limited liability company can issue Trust Units. Moreover, by amending the rule so that Trust Units may be commodity pools “if applicable,” the proposal no longer requires Trust Units to be commodity pools.<sup>34</sup> Although the proposal no longer requires the entity issuing Trust Units to be a commodity pool, it does not change Trust Units’ permissible investments, which remain “any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities.”<sup>35</sup> Accordingly, the proposal provides flexibility on Trust Units structure without changes to permissible investments. Similarly, the proposal’s provision that Trust Units’ underlying investments may be represented by an index or portfolio of permissible investments merely adds specificity that is consistent with the current rule text. All Trust Units listed and traded on the Exchange will continue to be subject to the initial and continued listing standards set forth in NYSE Arca Rule 8.500-E and will continue to be subject to the full panoply of the Exchange’s rules and procedures that currently govern the trading of equity securities on the

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<sup>33</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>34</sup> See Section 1a(10) of the CEA for the definition of “commodity pool.”

<sup>35</sup> NYSE Arca Rule 8.500-E(b)(2).

Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to members, customer suitability requirements, and market maker obligations.

The Commission finds that it is consistent with Section 6(b)(5) of the Exchange Act<sup>36</sup> for the Exchange to include Trust Units among the types of 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 be required. Like other types of securities listed in NYSE Arca Rules 5.3-E and 5.3-E(e), Trust Units are investment vehicles where unit holders, unlike other equity holders, do not directly participate or vote in the annual election of directors or generally on the operations or policies of the listed company.<sup>37</sup> Thus, the Exchange's rules, as amended, would continue to ensure that the appropriate listed companies are required to comply with corporate governance and disclosure policies and hold annual shareholder meetings, for the benefit of investors and the public interest.

## **B. The Fund**

### **1. Exchange Act Section 6(b)(5)**

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<sup>36</sup> 15 U.S.C. 78f(b)(5).

<sup>37</sup> See Order Granting Approval of a Proposed Rule Change Amending Section 302 of the Listed Company Manual To Provide Exemptions for the Issuers of Certain Categories of Securities From the Obligation To Hold Annual Shareholders' Meetings, Securities Exchange Act Release No. 86406 (July 18, 2019), 84 FR 35431 (July 23, 2019) (SR-NYSE-2019-20) ("The Commission believes the right of shareholders to vote at an annual meeting is an essential and important one. The Commission, however, believes that the requirement to hold an annual shareholder meeting may not be necessary for certain issuers of specific types of securities because the holders of such securities do not directly participate as equity holders and vote in the annual election of directors or generally on the operations or policies of the listed company."); Order Granting Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto Relating to Rule 4350(e) To Amend the Annual Shareholder Meeting Requirement, Securities Exchange Act Release No. 53578 (Mar. 30, 2006); 71 FR 17532 (Apr. 4, 2006) (SR- NASD-2005-073). The Exchange is reverting the previous deletion of Trust Units from NYSE Arca Rules 5.3-E and 5.3-E(e). See Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 5.3-E To Exclude Certain Categories of Issuers From the Exchange's Annual Meeting Requirement, Securities Exchange Act Release No. 83324 (May 24, 2018), 83 FR 25076 (May 31, 2018) (SR-NYSEARCA-2018-31) (stating that the Exchange is removing Trust Units from those derivative and special purpose securities that are excluded from certain corporate governance requirements because "the Exchange does not presently list any security under the . . . Trust Units standards" and that "[s]hould the Exchange list securities under the . . . Trust Units standards in the future, it may consider whether to amend its rules at that time to allow for certain corporate governance exclusions applicable to such classes of securities."). See *id.* at 25077-78 and n.10.

The Commission finds that the listing and trading of the Fund is consistent with the Exchange Act. The structure of the Fund, the terms of its operation and the trading of its Shares, and the representations in the proposal are substantially similar to those of other proposals approved in prior Commission orders. On an initial basis, and on a continuing basis reflecting subsequent ETP approvals, at least 85% of the Fund's holdings will consist of commodities that the Commission has approved to underlie an ETP as primary investments, with no more than 15% of the Fund's investments in other assets, which could include other types of commodities as well as securities.<sup>38</sup> The Commission has previously found that the risks associated with fraud and manipulation are sufficiently mitigated if an ETP holds at least 80% of the investments in assets that do not raise concerns relating to fraud and manipulation.<sup>39</sup> In approving an ETP with a

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<sup>38</sup> See Amendment No. 1 at 29067. See also *supra* notes 26-27 and accompanying text.

<sup>39</sup> See, e.g., Notice of Filing of Amendment No. 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF of the SSgA Active Trust, Securities Exchange Act Release No. 77499 (Apr. 1, 2016), 81 FR 20428 (Apr. 7, 2016) (SR-BATS-2016-04) (approving the listing and trading of a series of Managed Fund Shares that would hold up to at least 80% of its net assets in a diversified portfolio of fixed income securities, with 20% limitations on certain holdings such as junior bank loans); Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Allow the JPMorgan Core Plus Bond ETF of the J.P. Morgan Exchange-Traded Fund Trust To Hold Certain Instruments in a Manner That May Not Comply With Rule 14.11(i), Managed Fund Shares, Securities Exchange Act Release No. 85701 (Apr. 22, 2019), 84 FR 17902 (Apr. 26, 2019) (SR-CboeBZX-2019-016) (approving the listing and trading of a series of Managed Fund Shares that could hold up to 20% of the weight of the fixed income portion of its portfolio in asset backed securities and mortgage backed securities issued by private issuers); Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 2 Thereto Relating to the Use of Derivative Instruments by PIMCO Total Return Exchange Traded Fund, Securities Exchange Act Release No. 72666 (July 3, 2014), 79 FR 44224 (July 30, 2014) (SR-NYSEARCA-2013-122) (approving the listing and trading of a series of Managed Fund Shares that would invest under normal market circumstances at least 65% of its total assets in a diversified portfolio of fixed income derivatives, including over-the-counter derivatives); Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares, Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEARCA-2015-110) (approving generic listing standards for managed fund shares allowing for up to 10% of the equity weight of the portfolio to consist of non-exchange-traded ADRs; up to 20% of the weight of the fixed income portion of the portfolio to consist of non-agency, non-government-sponsored entity, and privately-issued mortgage-related and other asset-backed securities components; up to 10% of the weight of holdings invested in futures, exchange-traded options, and listed swaps to consist of futures, options, and swaps which trade on markets that are not members of ISG or with which the Exchange does not have in place a comprehensive surveillance sharing agreement; and up to 20% of the assets in the portfolio to be invested in OTC derivatives) ("Managed Fund Shares Order"). In the Managed Fund Shares Order, the Commission found that the 20% limitation on OTC derivatives "is sufficient to mitigate the risks associated with price manipulation because at least 80% of a Managed Fund Shares portfolio would consist of: Cash and cash equivalents; listed derivatives, of which 90% by portfolio weight would be traded on a principal market that is a member of ISG; and equity securities or fixed income instruments subject to numerous restrictions designed to prevent manipulation and ensure pricing transparency." See Managed Fund Shares Order at 49326.

commodity as a primary investment, the Commission must find under Section 6(b)(5) that there are sufficient means to prevent fraud and manipulation.<sup>40</sup> Accordingly, the Commission finds that the requirement that the Fund will hold at least 85% of its investments in assets approved by the Commission to underlie an ETP as primary investments will enable adequate surveillance of the Shares on the Exchange.

Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act.<sup>41</sup> As such, based on the record before the Commission, the Commission finds that the proposal is consistent with the requirements of the Exchange Act, including the requirement in Section 6(b)(5)<sup>42</sup> that the Exchange's rules be designed to "prevent fraudulent and manipulative acts and practices."

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

The proposal sets forth aspects of the Fund, 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>43</sup> This includes commitments regarding: the availability of quotation and last-sale information for the Shares; the availability on the Fund's website of certain information related to the Fund, 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

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<sup>40</sup> For example, as of the filing of the Amendment No. 1, 85% of the Fund's holdings would be in bitcoin and ether. In approving the ETPs with primary investments in bitcoin and ether, the Commission found that there were sufficient means to prevent fraud and manipulation of bitcoin and ether ETPs under Section 6(b)(5) of the Exchange Act. Similarly, in the Commodity-Based Trust Shares Generics Approval Order, the Commission found that the proposed eligibility requirements for commodities that may underlie Commodity-Based Trust Shares are reasonably designed to help prevent fraudulent and manipulative acts and practices. See *supra* note 26.

<sup>41</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>42</sup> 15 U.S.C. 78f(b)(5).

<sup>43</sup> See, e.g., Spot Bitcoin & Ether ETP Approval Order at 106709.

conditions under which the Exchange would implement trading halts and suspensions; and the requirements of registered market makers in the Shares.<sup>44</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>45</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 Fund'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>46</sup> Moreover, the proposal states that: the Fund's Manager has represented to the Exchange that it will advise the Exchange of any failure by the Fund 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 the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures.<sup>47</sup>

The Commission therefore finds that the proposal, as with other ETPs that the Commission has approved,<sup>48</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 Fund's portfolio, and to ensure fair and orderly markets for the Shares.

### **C. Comments**

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<sup>44</sup> See Amendment No. 1 at 29078-80.

<sup>45</sup> See *id.* at 29079.

<sup>46</sup> See NYSE Arca Rule 8.500-E, Commentary .03.

<sup>47</sup> See Amendment No. 1 at 29079.

<sup>48</sup> See Spot Bitcoin ETP Approval Order, Spot Ether ETP Approval Order, and Spot Bitcoin & Ether ETP Approval Order.

The Commission received three comment letters supporting the proposal.<sup>49</sup> Two of these commenters state that approving the proposal would provide benefits to investors.<sup>50</sup> The other commenter agrees with the Division’s conclusion that the proposal is consistent with the Exchange Act and does not raise novel regulatory issues.<sup>51</sup>

One commenter opposing the proposal contends that the proposal should be disapproved because the Fund would hold XRP and Solana and details a number of arguments in favor of disapproval, including, among other things: neither XRP nor Solana has an established futures market; each of XRP and Solana has been allegedly classified as an unregistered security by the Commission; neither XRP nor Solana is truly decentralized; and reliable on-chain analytics are not widely available for either XRP or Solana.<sup>52</sup> As discussed above, the Fund will limit the amount of assets that are not the primary investment underlying ETPs approved by the Commission to 15% of the weight of the Fund’s portfolio, and this limitation is consistent with similar limitations approved by the Commission with respect to ETP investments.<sup>53</sup> In addition, although this commenter states that neither XRP nor Solana has an established futures market, the Chicago Mercantile Exchange currently lists and trades both XRP and Solana futures contracts.<sup>54</sup>

Another commenter opposing the proposal states that recent events, such as the hack of crypto exchange Bybit, have exposed the risk that investors will suffer losses due to crypto hacks as well as to crypto assets’ extreme volatility, and believes that approving the proposal would

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<sup>49</sup> See Letter from Gregory E. Xethalis, General Counsel, Daniel A. Leonardo, Chief Compliance Officer & Deputy General Counsel, and Jay B. Stolkin, Deputy General Counsel, Multicoín Capital Management, LLC, dated Apr. 29, 2025 (“Multicoín Letter”); Letter from Samir Kerbage, Chief Investment Officer, Hashdex Asset Management Ltd., dated Aug. 12, 2025 (“Hashdex Letter”); and Letter from Robert Citrone, Founder, Discovery Capital Management, LLC, dated Aug. 20, 2025 (“Discovery Letter”).

<sup>50</sup> See Multicoín Letter; Discovery Letter.

<sup>51</sup> See Hashdex Letter.

<sup>52</sup> See Letter from Anonymous, dated Feb. 10, 2025.

<sup>53</sup> See *supra* notes 38 and 39.

<sup>54</sup> See <https://www.cmegroup.com/markets/cryptocurrencies/xrp/xrp.html>. See also <https://www.cmegroup.com/markets/cryptocurrencies/solana.html>. See also Commodity-Based Trust Shares Generics Approval Order, *supra* note 26.

endanger investors.<sup>55</sup> While the Commission acknowledges concerns relating to hacking and volatility, pursuant to Section 19(b)(2) of the Exchange Act, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act.<sup>56</sup> The Commission does not apply a “cannot be manipulated” standard; rather, the Commission examines whether a proposal meets the requirements of the Exchange Act.<sup>57</sup> The Commission does not understand the Exchange Act to require that a particular product or market be immune from manipulation. Rather, the inquiry into whether the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest, has long focused on the mechanisms in place for the detection and deterrence of fraud and manipulation. For the reasons described above, the Commission finds that the proposal satisfies the requirements of the Exchange Act, including the requirement in Section 6(b)(5) that the Exchange’s rules be designed to “prevent fraudulent and manipulative acts and practices.”

#### **D. Procedural Considerations**

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<sup>55</sup> See Letter from Benjamin L. Schiffrin, Director of Securities Policy, Better Markets, Inc., dated Feb. 27, 2025.

<sup>56</sup> See Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

<sup>57</sup> See, e.g., Spot Bitcoin ETP Approval Order at 3013 n.61.

The Sponsor<sup>58</sup> asserts that the proposed rule change has been deemed approved pursuant to Section 19(b)(2)(D)(ii) of the Exchange Act.<sup>59</sup> The Sponsor asserts that the Commission has no power to impose a stay pursuant to Commission Rule of Practice 431(e) after the 240<sup>th</sup> day.<sup>60</sup>

The Commission disagrees with the Sponsor's assertions that: (1) because the Approval Order is stayed, the proposal has been deemed approved;<sup>61</sup> and (2) the Commission has no power to stay the Approval Order after the 240<sup>th</sup> day.<sup>62</sup> The Commission complied with the requirements of the statute. Section 19(b)(2)(D) of the Exchange Act requires that the Commission "issue an order" approving or disapproving the proposed rule change within 240 days. The Approval Order was issued within that period. Although orders issued by delegated authority are issued by Commission staff, they are issued with the full authority of the Commission and are signed by the Secretary's office on behalf of the Commission. Section 4A of the Exchange Act authorizes the Commission to delegate certain functions—including approval or disapproval of proposed rule changes under Section 19—to a "division of the Commission."<sup>63</sup> And the Commission's Rules of Practice make clear that "an action made pursuant to delegated authority shall have immediate

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<sup>58</sup> See Letter from Joseph A. Hall and Zachary J. Zweihorn, Davis Polk & Wardwell LLP, on behalf of Grayscale Investments, dated July 8, 2025 ("Grayscale Letter"). Two additional commenters request that the Commission lift the stay and approve the delegated action in short order. See Letter from Jaime Klima, General Counsel, New York Stock Exchange, dated July 21, 2025, and Hashdex Letter. This order by the Commission addresses those comments. In addition, one commenter also requests that the Commission approve the proposals to list and trade similar funds, simultaneously and with immediate effect. See Hashdex Letter at 2 (citing to File Nos. SR-NASDAQ-2025-016 and SR-NYSEARCA-2024-98). The proposal under consideration by the Commission in this order relates only to the Fund, along with changes to NYSE Arca Rules 8.500-E and 5.3-E. Accordingly, proposals to list and trade similar but different funds are beyond the scope of this order.

<sup>59</sup> Section 19(b) of the Exchange Act requires the Commission to "issue an order" approving or disapproving a proposed rule change within, at most, 240 days of the proposed rule change's filing. See 15 U.S.C. 78s(b)(2)(B)(ii). If the Commission fails to issue an order within that period, the proposed rule change is deemed to have been approved. See 15 U.S.C. 78s(b)(2)(D).

<sup>60</sup> See 17 CFR 201.431(e). Rule 431(e) provides that upon filing with the Commission of a notice of intention to petition for review, or upon notice to the Secretary of the vote of a Commissioner that a matter be reviewed, an action made pursuant to delegated authority shall be stayed until the Commission orders otherwise. Rule 431(a) also provides that the Commission may decide to "affirm, reverse, modify, set aside or remand [the delegated action] for further proceedings." See 17 CFR 201.431(a).

<sup>61</sup> See Grayscale Letter at 3. The Sponsor asserts that the proposal is deemed approved if the Commission fails to meet the statutory approval deadline under Section 19(b)(2)(D), regardless of reason.

<sup>62</sup> See *id.* at 2-3.

<sup>63</sup> 15 U.S.C. 78d-1(a).

effect and be deemed the action of the Commission.”<sup>64</sup> Moreover, as the Commission has previously explained, Congress was aware of the Commission’s ability to delegate authority to approve self-regulatory organization rule filings when the time restrictions in Section 19(b)(2)(D) of the Exchange Act were enacted.<sup>65</sup> In asserting that the Commission has no power to stay the Approval Order after 240 days, the Sponsor effectively construes Section 19(b)(2) of the Exchange Act to require the Commission’s review of an order by delegated authority to be completed within those 240 days. Such construction, however, “would undermine both the specific deadlines set forth in the statute and the Commission’s ability to delegate functions.”<sup>66</sup> Nor is such a construction necessary to fulfill Congress’s purpose in enacting the deadlines to “streamline” the rule filing process.<sup>67</sup>

#### **IV. Conclusion**

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Rule 431 of the Commission’s Rules of Practice, that the earlier action taken by delegated authority, Securities Exchange Act Release No. 103364 (July 1, 2025), 90 FR 29923 (July 7, 2025), is set aside and, pursuant to Section 19(b)(2)

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<sup>64</sup> Commission Rule of Practice 431(e), 17 CFR 201.431(e). *See also, e.g.*, Rule of Practice 430(c), 17 CFR 201.430(c) (referring to “a final order entered pursuant to [delegated authority]”); Rule of Practice 431(f), 17 CFR 201.431(f) (giving an order by delegated authority operative effect, even when review has been sought, until a person receives actual notice that it was been stayed, modified, or reversed on review).

<sup>65</sup> *See* Order Affirming Action by Delegated Authority and Disapproving Proposed Rule Changes Related to Connectivity and Port Fee In the Matter of the BOX Exchange LLC, Securities Exchange Act Release No. 88493 (Mar. 27, 2020), 85 FR 18617 (Apr. 2, 2020) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04), at 18626.

<sup>66</sup> *See* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, Regarding the Acquisition of CHX Holdings, Inc. by North America Casin Holdings, Inc., Securities Exchange Act Release No. 82727 (Feb. 15, 2018), 83 FR 7793 (Feb. 22, 2018) (SR-CHX-2016-20), at 7799.

<sup>67</sup> *See id.* With rare exception, rule filings are decided, by delegated authority or otherwise, within 240 days. *See id.*

of the Exchange Act, the proposed rule change (SR-NYSEARCA-2024-87), as modified by Amendment No. 1, hereby is approved.

By the Commission.

**Stephanie J. Fouse,**

*Assistant Secretary.*

[FR Doc. 2025-18257 Filed: 9/19/2025 8:45 am; Publication Date: 9/22/2025]