



May 16, 2019

Via Electronic Submission (<http://www.sec.gov/rules/sro.shtml>)

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F St, N.E.
Washington, DC 20549-1090

Re: File No. SR-NYSEArca-2019-01: Proposal to List and Trade Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E

Omniex Holdings, Inc. (“Omniex”) submits this letter in response to the request for public comment by the Securities and Exchange Commission (“Commission”) regarding a proposal by NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”). The Exchange proposes to list and trade shares of the Bitwise Bitcoin ETF Trust (“Trust”) under NYSE Arca Rule 8.201-E (“Proposal”). We support the Proposal and appreciate the opportunity to provide our views on this important issue.

About Omniex. Omniex is a purpose-built technology company designed from square one to handle the unique market challenges faced by institutional investors seeking direct exposure to bitcoin and other crypto-assets. Our software platform provides institutions with an end-to-end technology solution for portfolio and risk management, trade execution, investment operations and regulatory compliance. As previous senior executives at some of the largest financial institutions in the world and founders of successful Silicon Valley startups, the Omniex team has the nimbleness to match pace with crypto-asset innovation, as well as the deep experiences and connections required to create a true institutional-grade technology solution for crypto-asset portfolio management and trading.

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A. The Proposal Encourages Institutionalization and Enhances Protections for all Investors

Bitcoin and certain other cryptocurrencies have collectively developed into a separate and distinct asset class to which investors increasingly seek exposure. Currently, the primary means of gaining exposure is via direct investment on bitcoin spot exchanges, however, many institutional investors find this approach infeasible. Three fundamental issues prevent wider participation by institutional investors, including: (1) excessive market fragmentation; (2) retail-

focused infrastructure; and (3) lack of institutional-grade solutions to concerns around bitcoin custody, security¹ and control. As a result, institutions have largely remained on the sidelines and the bitcoin market has been left primarily to retail investors. From our viewpoint, this dynamic is unfortunate as the overall market would greatly benefit from the discipline and rigor institutions devote to the asset classes in which they invest.

While Omniex, along with its partners, continues to innovate and further develop mission critical solutions to support institutions when directly investing in bitcoin and certain other crypto-assets, Commission approval of NYSE Arca's Proposal would enable an alternative and complimentary means for institutions and other investors to diversify their portfolios with exposure to bitcoin. We believe establishment of the Bitwise Bitcoin ETF Trust would benefit all investors in several respects.

- **Freedom of Choice.** Investors would be empowered to choose between direct investment in bitcoin via spot exchanges or investment via purchasing Trust Shares listed and traded on NYSE Arca.
- **Exchange-Listing.** It would provide investors with a familiar, easily accessible, and secure financial product listed and traded on a national securities exchange and thus subject to disclosure requirements and a more substantive regulatory regime than imposed by spot exchanges.
- **Competition.** Investor choice would pressure bitcoin spot exchanges to improve their services to better compete with a new Commission-regulated entrant offering bitcoin exposure via an exchange-traded product.
- **Risk Mitigation.** It would eliminate complications and reduce inherent risks all investors currently contend with when directly transacting in bitcoin via spot exchanges (cryptographic key maintenance, potential hacking attacks, computer errors). It would also reduce retail-specific risks as Trust Shares would be purchased via brokerage accounts with attendant client risk tolerance and suitability obligations.
- **Investor Discipline.** It would enhance protections for all investors by encouraging disciplined and sophisticated institutional participants to join retail investors in the bitcoin market.

B. The Unique Nature of the Bitwise Bitcoin ETF Trust

The Trust provides indirect exposure to bitcoin priced off the equivalent of a crypto consolidated tape. In valuing the price of bitcoin, the Index Provider² will draw on prices from a universe of approximately ten pre-screened spot exchanges classified as "Verified Exchanges" representing

¹ See CCN Article, "Over Half of All Crypto Exchanges Have Security Vulnerabilities" (October 20, 2018). Available at <https://www.ccn.com/over-half-of-all-crypto-exchanges-have-security-vulnerabilities-report/>.

² Bitwise Index Services, LLC, developed the Bitwise Bitcoin Total Return Index ("Index") and will serve as the Index Provider. The Index is designed to measure the total return of an investment in bitcoin utilizing bitcoin price transactions from 10 exchanges that offer trading of bitcoin and account for the majority of the total global volume of bitcoin traded on exchanges. The Index Provider will also consider executed prices and volume from listed futures contracts on certain regulated futures exchanges.

substantially all of the actual total global trading volume of bitcoin.³ As noted by the Exchange in its filing and the Bitwise Study, the benefit of this multi-exchange approach is that it minimizes the potential adverse impact of any single exchange going off-line due to technical problems or other concerns (*i.e.*, hacking, legal, regulatory, or financial issues) and it mutes the impact of potentially manipulated prices or volume stemming from a single exchange.⁴ We agree with this assessment.

C. The Proposal Satisfies the Conditions of Exchange Act Section 6(b)(5)

The Commission must determine whether NYSE Arca has met its burden of demonstrating its proposed rule change is consistent with the requirements of Section 6(b)(5) of the Exchange Act, in particular that its rules are designed to prevent fraudulent and manipulative acts and practices as well as protect investors and the public interest.⁵ In our view, the Proposal satisfies both conditions.

The Rules of the Exchange Are Designed to Prevent Fraudulent and Manipulative Acts and Practices. As explained in the proposed rule filing, the Shares would be subject to NYSE Arca rules governing equity securities aimed at preventing fraud and manipulation. This ruleset includes regulations addressing initial and continued listing standards, restrictions on market maker accounts, trading halt procedures, and trading surveillance.

The Shares would be listed and traded on NYSE Arca pursuant to both initial listing criteria as well as continued listing standards contained in Exchange Rule 8.201-E. Rule 8.201-E(g) also imposes certain restrictions on Equity Trading Permit Holders acting as registered Market Makers in the Shares that facilitate surveillance and requires them to provide the Exchange with relevant trading information upon request. With respect to trading halts, the NYSE Arca may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust. The Exchange may halt trading if applicable circuit breaker parameters of NYSE Arca Rule 7.12-E⁶ are hit or for other reasons, such as unusual market conditions or due to an inadvisable trading environment. Also, trading in the Shares would be subject to NYSE Arca's existing trading rules governing equity securities, such as rules regarding trading sessions and minimum price variation.

As noted in the Proposal, trading in the Shares will be subject to the existing trading surveillances administered by the NYSE Arca, as well as cross-market trading surveillances administered by FINRA on the Exchange's behalf. Beyond that, the Exchange or FINRA can communicate as needed with ISG members and may obtain information regarding trading in the Shares and the underlying bitcoin from ETP Holders registered as market makers. Finally, NYSE Arca has the

³ See March 19, 2019 presentation by Bitwise Asset Management to Commission Staff from Division of Trading and Markets ("Bitwise Study"), pp 60-61.

⁴ See Exchange Act Release No. 34-85093.

⁵ See 15 U.S.C. 78f(b)(5).

⁶ See NYSE Arca Rule 7.12-E.

ability to obtain trading surveillance from a regulated bitcoin futures market of significant size, which the Commission previously indicated to be a significant consideration.⁷

The Proposed Rule Change Protects Investors and the Public Interest. By facilitating the listing and trading of a new type of exchange-traded product tied to the price of bitcoin in the underlying market, the Proposal is designed to protect investors and the public interest. It provides market participants desiring exposure to bitcoin with a fully-regulated national securities exchange on which to trade and avails them with the option to avoid the inherent risks associated with sourcing bitcoin directly via spot exchanges. Enabling investor choice for indirect exposure to bitcoin will enhance competition and improve services offered by bitcoin spot exchanges, which will ultimately benefit both institutional and retail investors as well as the entire marketplace.

D. The Proposal Responds to Commission Concerns

In considering similar prior proposals, the Commission cited two key issues and noted that addressing either would satisfy Section 6(b)(5)'s prerequisites. The Proposal satisfies both of these conditions in that it demonstrates (1) the structure of the underlying bitcoin market is inherently resistant to manipulation, and (2) a regulated bitcoin market of significant size exists from which the Exchange could obtain relevant trade surveillance information.⁸

The Underlying Bitcoin Market is Inherently Resistant to Market Manipulation. As detailed in the Bitwise Study, the digital nature of the bitcoin market makes it unique compared to other commodities due to a combination of three factors - exchange-tradability, fungibility, and transportability. The fact that bitcoin is exchange-tradeable means there is an open market pricing mechanism that makes it more resistant to manipulation than commodities that solely trade over-the-counter and thus lack transparent pricing mechanisms. Also, bitcoin's fungible and transportable characteristics combine to create arbitrage opportunities between different trading venues that do not exist for other commodities. Likewise, the Trust's NAV process is uniquely resistant to market manipulation as a bad actor would need to manipulate multiple exchanges over an extended time period in order to impact NAV.⁹

The Bitwise Study further demonstrates that a focus on the 10 Verified Exchanges representing most of the "real" volume reveals the actual market for bitcoin is far more orderly and efficient than commonly perceived and exhibits robust price discovery and effective arbitrage exists between and among the exchanges with real volume.

A Significant and Surveilled Bitcoin Futures Market Exists Alongside the Underlying Market. The Bitwise Study illustrates that the CME's bitcoin futures market represents a large, surveilled and regulated market when compared with the real bitcoin market represented by the Verified

⁷ See Bitwise Study pp. 84-89.

⁸ See Exchange Act Release No. 34-83723 ("Winklevoss Bitcoin Trust Order"). In the Winklevoss Bitcoin Trust Order, the Commission cited two ways for an ETP to overcome concerns. Either the ETP must show the underlying market for bitcoin is uniquely resistant to manipulation or that a surveilled derivatives market of significant size exists.

⁹ See Bitwise Study p. 96.

Exchanges. Indeed, the CME futures market itself is larger than all but one of the Verified Exchanges and almost as large as the largest. In addition, there is a close relationship in pricing between the bitcoin futures market and the spot market. Further, NYSE Arca has the ability itself to obtain information regarding trading in the Shares and to obtain information regarding futures trading from the CME as a member of the Intermarket Trading Group.

E. The Proposal Should be Approved

Despite continued interest from institutional investors in diversifying their portfolios with exposure to bitcoin, several practical issues - immature infrastructure, clearing and custody difficulties, and operational risks - conspire to prevent greater participation in the market, which leaves retail investors largely alone as bitcoin market participants. We support approval of the Proposal because it will allow institutions to join retail investors in the bitcoin market and provide all investors with an alternative means to diversify their portfolios with exposure to bitcoin in a manner not otherwise available to them via direct investment.

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Omniex greatly appreciates this opportunity to submit our views in response to the Commission’s request for comment and would be pleased to discuss these comments in greater detail. Please contact Hu Liang [redacted] or Tom Eidt [redacted] if you have any questions regarding the comments in this submission.

Sincerely,



Hu Liang
CEO



Thomas Eidt
General Counsel

Cc:

- Jay Clayton, Chairman
- Robert J. Jackson, Jr., Commissioner
- Hester M. Peirce, Commissioner
- Elad L. Roisman, Commissioner
- Brett Redfearn, Director, Division of Trading and Markets
- Dalia Blass, Director, Division of Investment Management