

June 12, 2019

**Via Electronic Submission**

Securities and Exchange Commission  
100 F Street, NE  
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**

Dear Commission:

The purpose of this letter is to respond to the request for written comments by the Securities and Exchange Commission (the “Commission” or the “SEC”), as communicated in Release No. 34-85854I; File No. SR-NYSEArca-2019-01, dated May 14, 2019, with respect to a proposed rule change to list and trade shares of the Bitwise Bitcoin ETF Trust (“Bitwise ETF”) under NYSE Arca Rule 8.201-E (the “Rule Change”).

**Background of Cole-Frieman & Mallon LLP**

Cole-Frieman & Mallon LLP is a boutique law firm focused on the investment management industry. Our firm’s clients are geographically diverse and include both start-up investment managers and multi-billion-dollar firms which employ a broad range of traditional and non-traditional investment strategies. We have been involved in the digital asset/ bitcoin space since September of 2014 and have developed one of largest investment management law practices devoted to digital asset managers. For our clients who are in this space, we have provided general securities advice and help with the development of proper infrastructure complete with administration, audit, custody and regulatory compliance controls. It is with this background that we submit our comments.

**Comments on Bitwise ETF and Rule Change**

The following are items we believe deserve special consideration by the SEC during the Rule Change review process:

- Bitcoin and Digital Asset Investment Market Generally – in our firm’s experience the bitcoin markets have been continually expanding and attracting assets. We believe that the Bitwise ETF will help usher in new investment from both existing and new investors. Our belief is based on our first-hand experience with managers and the evolution of interest and investment over time. In addition to the activity we saw when we first entered the space in 2014, we saw a number of early bitcoin adopters (many with a strong technological background) develop private fund products in late 2016. This trend continued into early

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2017. By mid-2017 we saw investment managers from the traditional equities space create products to bring institutional practices to private digital asset funds. During this time we also saw significant investments from VC firms. By late 2017 and into early 2018 we saw a movement toward digital asset funds making VC-type investments into operating companies in the digital asset ecosystem. From that point forward, and notwithstanding the so-called “crypto winter,” we have continued to see managers launch products and investment dollars go into the digital asset space. We believe the Bitwise ETF will help to continue the expansion of the digital asset industry and the related ecosystems. We also believe that it will open the door to more traditional investment managers who will be able to access the digital asset markets (as they do other markets) through a regulated securities product.

- Bitwise Presentation – considerable weight should be given to the Bitwise Asset Management Presentation to the Commission on March 19, 2019 (the “Presentation”).<sup>1</sup> The Presentation provides a comprehensive overview and response to the Commission’s questions regarding the bitcoin markets, the regulatory status of the exchanges and their market surveillance tools,<sup>2</sup> and perhaps most importantly, the significance of the regulated bitcoin futures market and how that market helps prevent fraudulent and manipulative acts and practices which ultimately protects investors and the public interest.<sup>3</sup>

### Conclusion

We believe it is in the best interest of the bitcoin market that the Bitwise ETF and Rule Change be approved by the SEC. We hope these observations are of assistance. If the Commission has any questions in relation to our response, we are available and happy to assist by providing additional thoughts and background to our comments.

Very truly yours,



Bart Mallon  
Co-Managing Partner  
Cole-Frieman & Mallon LLP

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

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<sup>1</sup> <https://www.sec.gov/comments/sr-nysearca-2019-01/srnysearca201901-5164833-183434.pdf>

<sup>2</sup> Id. at pp 81-82.

<sup>3</sup> Id. at pp 121-126.