

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103407; File No. SR-NYSEARCA-2025-38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 to Proposed Rule Change to Amend the Bitwise Bitcoin ETF Trust and the Bitwise Ethereum ETF in Order to Permit In-Kind Creations and Redemptions

July 9, 2025.

On May 21, 2025, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to amend the Bitwise Bitcoin ETF Trust and the Bitwise Ethereum ETF to permit in-kind creations and redemptions. On June 4, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety. The proposed rule change, as modified by Amendment No. 1 was published in the Federal Register on June 11, 2025.⁴

On June 30, 2025, the Exchange filed Amendment No. 2 to the proposed rule change, which is described in Items I and II below, which Items have been prepared by the self-regulatory organization. Amendment No. 2 replaces and supersedes the original filing, as amended by Amendment No. 1, in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 103198 (June 5, 2025), 90 FR 24683.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Bitwise Bitcoin ETF Trust and the Bitwise Ethereum ETF, shares of which have been approved by the Commission to list and trade on the Exchange pursuant to Rule 8.201-E (Commodity-Based Trust Shares), to permit in-kind creations and redemptions. This Amendment No. 2 to SR-NYSEARCA-2025-38 replaces SR-NYSEARCA-2025-38 and Amendment No. 1 thereto as originally filed and supersedes such filings in their entirety. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Bitwise Bitcoin ETF Trust (the "Bitcoin Trust") and the Bitwise Ethereum ETF (the "ETH Trust" and, together with the Bitcoin Trust, the "Trusts"), shares of which have been approved by the Commission to list and trade on the Exchange pursuant to Rule 8.201-E (Commodity-Based Trust Shares), to permit in-kind creations and redemptions.

Background

The Commission approved the listing and trading of shares (“Bitcoin Trust Shares”) of the Bitcoin Trust on the Exchange under Rule 8.201-E (Commodity-Based Trust Shares) on January 10, 2024.⁵ The Commission also approved the listing and trading of shares of the ETH Trust (“ETH Trust Shares”) under Rule 8.201-E (Commodity-Based Trust Shares) on May 23, 2024.⁶ The Bitcoin Approval Order and Ether Approval Order provided only for cash creations and redemptions of bitcoin and ether, respectively.

Rule 8.201-E governs the listing and trading of Commodity-Based Trust Shares. Commodity-Based Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust. The Bitcoin Trust Shares are issued by the Bitcoin Trust, a Delaware statutory trust, and the ETH Trust Shares are issued by the ETH Trust, also a Delaware statutory trust.

Proposed Rule Change - Bitcoin Trust

The Exchange proposes to amend representations regarding the Bitcoin Trust’s creation and redemption process as set forth in its previous rule filing to list and trade Bitcoin Trust Shares to provide that the Bitcoin Trust may process creations and redemptions in either cash or bitcoin and to describe the process by which the Bitcoin Trust would conduct in-kind transfers of its bitcoin.⁷ The proposed in-kind transfer process will be an alternative to the Bitcoin Trust’s

⁵ See Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (SR-NYSEArca-2023-44) (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) (the “Bitcoin Approval Order”).

⁶ See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEArca-2024-31) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange Traded Products) (the “Ether Approval Order”).

⁷ See Securities Exchange Act Release No. 99294 (Jan. 8, 2024), 89 FR 2297 (Jan. 12, 2024) (SR-

current cash only creation and redemption process, which remains unchanged and will continue to operate as provided in Amendment No. 2 to the Bitcoin Trust Shares filing.

Except for the changes described below, all other representations in Amendment No. 2 remain unchanged and will continue to constitute continued listing requirements. In addition, the Bitcoin Trust will continue to comply with the terms of Amendment No. 2 and the requirements of Rule 8.201-E.

In connection with in-kind creations, the Authorized Participant must submit a purchase order by an order cutoff time (the “In-Kind Order Cutoff Time”) to create Baskets of Bitcoin Trust Shares in exchange for bitcoin. The In-Kind Order Cutoff Time will initially be 3:59 pm ET on the date a purchase order is received by the Transfer Agent and approved by the Marketing Agent (the “Purchase Order Date”).

On the settlement date for an in-kind creation, the Bitcoin Trust delivers Bitcoin Trust Shares to the Authorized Participant in exchange for bitcoin received from the Authorized Participant or its designated agent or client. The Authorized Participant or its designated agent or client will deposit such bitcoin with Coinbase Custody Trust Company, LLC (the “Bitcoin Custodian”). In the event the Authorized Participant has not deposited the bitcoin with the Bitcoin Custodian by the applicable time on the settlement date of the in-kind purchase order, the Authorized Participant will be given the option to (1) cancel the in-kind purchase order, (2) delay settlement of the purchase order to enable delivery of

NYSEArca-2023-44) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change To List and Trade Shares of the Bitwise Bitcoin ETF Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (“Amendment No. 2”).

bitcoin at a later date, or (3) accept that the Bitcoin Trust will execute a bitcoin transaction required for the creation and the Authorized Participant and the Authorized Participant will deliver the U.S. dollars required for the purchase order.

In connection with in-kind redemptions, the Authorized Participant must submit an order by the In-Kind Order Cutoff Time to redeem Baskets of Bitcoin Trust Shares in exchange for bitcoin. On the settlement date for an in-kind redemption, the Bitcoin Trust delivers bitcoin to the Authorized Participant in exchange for Bitcoin Trust Shares received from the Authorized Participant or its designated agent or client. The Authorized Participant or its designated agent or client will deposit such Bitcoin Trust Shares to the Bitcoin Trust's DTC account.

In the event the Authorized Participant has not deposited the Bitcoin Trust Shares to the Bitcoin Trust's DTC account by the applicable time on the settlement date of the in-kind redemption order, the Authorized Participant will be given the option to (1) cancel the in-kind redemption order, (2) delay settlement of the redemption order to enable delivery of Bitcoin Trust Shares at a later date, or (3) accept that the Bitcoin Trust will execute a bitcoin transaction required for the redemption order and the Authorized Participant will be delivered the U.S. dollars required as calculated during the cash redemption process.

Proposed Rule Change - ETH Trust

Similarly, the Exchange proposes to amend representations regarding the ETH Trust's creation and redemption process as set forth in its previous rule filing to list and trade ETH Trust

Shares to allow for in-kind transfers of the ETH Trust's ether.⁸ The proposed in-kind transfer process will be an alternative to the ETH Trust's current cash creation and redemption process, which remains unchanged and will continue to operate as provided in Amendment No. 1 to the ETH Trust Shares filing.

Except for the changes described below, all other representations in Amendment No. 1 remain unchanged and will continue to constitute continued listing requirements. In addition, the ETH Trust will continue to comply with the terms of Amendment No. 1 and the requirements in Rule 8.201-E.

In connection with in-kind creations, the Authorized Participant must submit a purchase order by the In-Kind Order Cutoff Time to create Baskets of ETH Trust Shares in exchange for ether. The In-Kind Order Cutoff Time will initially be 3:59 pm ET on the Purchase Order Date.

On the settlement date for an in-kind creation, the ETH Trust delivers ETH Trust Shares to the Authorized Participant in exchange for ether received from the Authorized Participant or its designated agent or client. The Authorized Participant or its designated agent or client will deposit such ether with Coinbase Custody Trust Company, LLC (the "Ether Custodian"). In the event the Authorized Participant has not deposited the ether with the Ether Custodian by the applicable time on the settlement date of the in-kind purchase order, the Authorized Participant will be given the option to (1) cancel the in-kind purchase order, (2) delay settlement of the purchase order to enable delivery of ether at a

⁸ See Securities Exchange Act Release No. 100213 (May 22, 2024), 89 FR 46533 (May 29, 2024) (SR-NYSEArca-2024-31) (Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Bitwise Ethereum ETF) ("Amendment No. 1").

later date, or (3) accept that the ETH Trust will execute a ether transaction required for the creation and the Authorized Participant and the Authorized Participant will deliver the U.S. dollars required for the purchase order.

In connection with in-kind redemptions, the Authorized Participant must submit an order by the In-Kind Order Cutoff Time to redeem Baskets of ETH Trust Shares in exchange for ether. On the settlement date for an in-kind redemption, the ETH Trust delivers ether to the Authorized Participant in exchange for ETH Trust Shares received from the Authorized Participant or its designated agent or client. The Authorized Participant or its designated agent or client will deposit such ETH Trust Shares to the ETH Trust's DTC account.

In the event the Authorized Participant has not deposited the ETH Trust Shares to the ETH Trust's DTC account by the applicable time on the settlement date of the in-kind redemption order, the Authorized Participant will be given the option to (1) cancel the in-kind redemption order, (2) delay settlement of the redemption order to enable delivery of ETH Trust Shares at a later date, or (3) accept that the ETH Trust will execute a ether transaction required for the redemption order and the Authorized Participant will be delivered the U.S. dollars required as calculated during the cash redemption process.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b)⁹ of the Act. Specifically, the Exchange believes the proposed rule change is

⁹ 15 U.S.C. 78f(b)(5).

consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would update representations in both Amendment No. 2 to the Bitcoin Trust Shares filing and Amendment No. 1 to the ETH Trust Shares filing such that the respective Trusts would both be able to engage in in-kind transactions with Authorized Participants, as described above. This ability would make the Trusts (and the market more generally) operate more efficiently because Authorized Participants would be able to source bitcoin or ether, as applicable, rather than provide cash to the applicable Trust and/or to receive bitcoin or ether, as applicable, directly from the Trusts. In-kind creations and redemptions would allow Authorized Participants to be responsible for buying and selling the applicable crypto asset rather than the Trusts, which would potentially lessen the impact on the market of the Trusts on both sides of the transaction by allowing the Authorized Participants to decide how and where to source the underlying crypto asset for creations and deciding how, where, and whether to sell the underlying crypto asset for redemptions. This would improve the creation and redemption process for both Authorized Participants and the Trusts, increase efficiency, and ultimately benefit the end investors in the Trusts.

¹⁰ 15 U.S.C. 78f(b)(5).

As noted above, except for the addition of in-kind creation and redemption for the Bitcoin Trust, all other representations made in Amendment No. 2 to the Bitcoin Trust Shares filing remain unchanged and will continue to constitute continuing listing requirements for the Bitcoin Trust. Similarly, except for the addition of in-kind creation and redemption for the ETH Trust, all other representations made in Amendment No. 1 to the ETH Trust Shares filing remain unchanged and will continue to constitute continuing listing requirements for the ETH Trust.

Accordingly, the Exchange believes that this proposed rule change raises no novel regulatory issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. As discussed above, the proposed amendments are intended to reflect changes to the Trusts' creation and redemption processes, specifically to allow for in-kind transfers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the 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. Please include file number

SR-NYSEARCA-2025-38 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-2025-38. 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 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-2025-38 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,

Assistant Secretary.

¹¹ 17 CFR 200.30-3(a)(12).