

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99164; File No. SR-NYSEARCA-2023-84)

December 13, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Changes to Certain Representations Relating to the Hashdex Bitcoin Futures Fund

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 1, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to make changes to certain representations made in the proposed rule change previously filed with the Securities and Exchange Commission (the “Commission” or “SEC”) pursuant to Rule 19b-4 relating to the Hashdex Bitcoin Futures Fund, shares of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.200-E. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 IV 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 Commission has approved the listing and trading on the Exchange of shares (“Shares”) of the Hashdex Bitcoin Futures Fund (the “Target ETF”),⁴ under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts.⁵ Shares of the Target ETF are currently listed and traded on the Exchange under NYSE Arca Rule 8.200-E, Commentary .02. According to the Releases, the Target ETF is a series of Teucrium Commodity Trust (the “Teucrium Trust”), a Delaware statutory trust. The Exchange represented in the Releases that the Target ETF is managed and controlled by Teucrium Trading, LLC

⁴ See Securities Exchange Act Release Nos. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022)) (SR-NYSEARCA-2021-53) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts) (“Approval Order”); and 92573 (August 5, 2021), 86 FR 44062 (August 11, 2021) (Notice of Filing of a Proposed Rule Change To List and Trade Shares of Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E) (“Notice”). (The Approval Order and the Notice are referred to collectively herein as the “Releases”). The Fund was renamed as the Hashdex Bitcoin Futures Fund after approval of the proposed rule change but prior to its initial listing and trading on the Exchange.

⁵ Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

("Sponsor") and that the Sponsor is registered as a commodity pool operator ("CPO") and a commodity trading adviser ("CTA") with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association ("NFA").

The Tidal Commodities Trust I ("Tidal Trust") has filed a combined prospectus and information statement (the "Information Statement") with the Commission describing an Agreement and Plan of Partnership Merger and Liquidation ("Plan of Merger") between the Teucrium Trust and the Tidal Trust pursuant to which the assets of the Target ETF will be reorganized into the Hashdex Bitcoin Futures ETF (the "Acquiring ETF"), a series of the Tidal Trust.⁶ According to the Information Statement, the Target ETF has the same investment objective and investment strategies and substantially identical investment risks as the Acquiring ETF. Upon the closing of the reorganization contemplated by the Plan of Merger ("Reorganization"), the Target ETF will transfer all of its assets and liabilities to the Acquiring ETF. Simultaneously, the Acquiring ETF will distribute its shares (the "Merger Shares") to the shareholders of the Target ETF. The Merger Shares will have a net asset value ("NAV") per share equal to the NAV per share of the Target ETF determined immediately before the closing of the Reorganization resulting in a distribution of one share of Merger Shares for each outstanding share of the Target ETF. Closing of the Reorganization will result in the termination of all outstanding Target ETF shares and the liquidation of the Target ETF. Shareholders of the Target ETF will thus effectively be converted into shareholders of the Acquiring ETF and will hold shares of the Acquiring ETF with the same NAV as shares of the Target ETF that they held prior to the Reorganization. According to the Information Statement, following the

⁶ On July 21, 2023, the Tidal Commodities Trust I submitted to the Commission its registration statement on Form S-1 under the Securities Act of 1933 (the "Registration Statement"). The Registration Statement is not yet effective.

Reorganization, the Shares will be issued by the Tidal Trust and the sponsor of the Acquiring ETF will be Toroso Investments LLC (“New Sponsor”).

The purpose of this proposed rule change is to change certain representations made in the proposed rule change previously filed with the Commission pursuant to Rule 19b-4 relating to the Target ETF, as described above, which changes would be implemented as a result of the Reorganization. Following the Reorganization, the Acquiring ETF will continue to comply with all initial and continued listing requirements under NYSE Arca Rule 8.200-E, Commentary .02. In addition, the Acquiring ETF’s portfolio meets and will continue to meet the representations regarding the Target ETF’s investments as described in the Releases.⁷ Except for the changes noted above, all other representations made in the Releases remain unchanged.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁸ that an exchange have rules that are designed 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest.

⁷ According to the Notice, the investment objective of the Target ETF is to have the daily changes in the NAV of the Target ETF’s Shares reflect the daily changes in the price of a specified benchmark (the “Benchmark”). The Benchmark is the average of the closing settlement prices for the first to expire and second to expire BTC Contracts listed on the Chicago Mercantile Exchange, Inc. The first to expire and second to expire BTC Contracts and MBT Contracts are referred to as the Bitcoin Futures Contracts. According to the Notice, under normal market conditions, the Target ETF will invest in Bitcoin Futures Contracts and in cash and cash equivalents.

⁸ 15 U.S.C. 78f(b)(5).

Tidal Trust has filed the Information Statement describing the Reorganization pursuant to which the assets of the Target ETF will be reorganized into the Acquiring ETF. This filing proposes to reflect organizational and administrative changes that would be implemented as a result of the Reorganization, including changes to the trust entity issuing shares of the Target ETF and the sponsor to the Target ETF. According to the Information Statement, the investment objective of the Acquiring ETF will be the same as that of the Target ETF following the Reorganization. The Exchange believes these changes will not adversely impact investors or Exchange trading. In addition, the Acquiring ETF's portfolio meets and will continue to meet the representations regarding the Target ETF's investments as described in the Releases. Except for the changes noted above, all other representations made in the Releases remain unchanged. As stated above and in the Releases, shares of the Acquiring ETF shall also conform to the initial and continued listing criteria under Rule 8.200-E.

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. The Exchange believes the proposed rule change will not impose a burden on competition and will benefit investors and the marketplace by permitting continued listing and trading of Shares of the Acquiring ETF following implementation of the changes described above, which changes would not impact the investment objective of the Acquiring ETF.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed changes reflect organizational and administrative changes that would be implemented as a result of the Reorganization. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁴

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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-2023-84 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-2023-84. 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-2023-84 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.¹⁵

Sherry R. Haywood,

Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12), (59).