

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2021-71, and should be submitted on or before January 3, 2022.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93734; File Nos. SR-MIAX-2021-43, SR-EMERALD-2021-31]

Self-Regulatory Organizations; Miami International Securities Exchange LLC, MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Changes To Amend the Fee Schedules To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX and MIAX Emerald Express Interface Ports

December 7, 2021.

On September 28, 2021, Miami International Securities Exchange LLC, LLC (“MIAX”) and MIAX Emerald, LLC (“MIAX Emerald”) (collectively, the “Exchanges”) each filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change (File Numbers SR-MIAX-2021-43 and SR-EMERALD-2021-31) to adopt a tiered-pricing structure for additional limited service express interface ports.

The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed

rule changes were published for comment in the **Federal Register** on October 5, 2021.⁴ On November 22, 2021, the Commission temporarily suspended the proposed rule changes and instituted proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposed rule changes.⁶ On December 1, 2021, the Exchanges withdrew the proposed rule changes (SR-MIAX-2021-43 and SR-EMERALD-2021-31).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93731; File No. SR-NASDAQ-2021-066]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g)

December 7, 2021.

On August 23, 2021, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Valkyrie XBTO Bitcoin Futures Fund (“Trust”) under Nasdaq Rule 5711(g). On August 25, 2021, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was

⁴ See Securities Exchange Act Release Nos. 93185 (September 29, 2021), 86 FR 55093 (SR-MIAX-2021-43); 93188 (September 29, 2021), 86 FR 55052 (SR-EMERALD-2021-31). Comments received on the proposed rule changes are available on the Commission’s website at: <https://www.sec.gov/comments/sr-miax-2021-43/srmiac202143.htm> (SR-MIAX-2021-43); <https://www.sec.gov/comments/sr-emerald-2021-31/sremerald202131.htm> (SR-EMERALD-2021-31).

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Securities Exchange Act Release No. 93640, 86 FR 67745 (November 29, 2021).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

published for comment in the **Federal Register** on September 9, 2021.³

On September 29, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Summary of the Proposal

As described in more detail in the Notice,⁷ the Exchange proposes to list and trade the Shares of the Trust under Nasdaq Rule 5711(g), which governs the listing and trading of Commodity Futures Trust Shares on the Exchange.

The investment objective of the Trust is for the Shares to reflect the performance of bitcoin as represented by the CME CF Bitcoin Reference Rate (“CME CF BRR”), less the Trust’s liabilities and expenses.⁸ The CME CF BRR aggregates the trade flow of major bitcoin spot platforms during a specific calculation window into a one-a-day reference rate of the U.S. dollar price of bitcoin.⁹ The Trust pursues its investment objective primarily by investing in bitcoin futures (“Bitcoin Futures”) that are cash-settled and traded on commodity exchanges registered with the Commodity Futures Trading Commission (“CFTC”).¹⁰ At

³ See Securities Exchange Act Release No. 92865 (Sept. 2, 2021), 86 FR 50570 (Sept. 9, 2021) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 93172, 86 FR 55071 (Oct. 5, 2021). The Commission designated December 8, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Notice, *supra* note 3.

⁸ See *id.* at 50574. Valkyrie Funds LLC (“Sponsor”) serves as the Trust’s sponsor and commodity pool operator; Vident Investment Advisory, LLC (“Sub-Advisor”) serves as the Trust’s sub-advisor and commodity trading advisor; and XBTO Trading, LLC is the research provider for the Sponsor and the Sub-Advisor. Delaware Trust Company serves as the trustee for the Trust. The Sponsor is currently considering third-party service providers for the roles of administrator, transfer agent, custodian, and marketing agent. See *id.* at 50571.

⁹ See *id.* at 50573 n.8. According to the Exchange, calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, iBit, and Kraken. See *id.*

¹⁰ See *id.* at 50574. The Exchange also represents that it will pursue its investment objective solely by

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).