

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)²³ permits the Commission to 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 waiver of the 30-day operative delay will allow the Exchange to include the proposed functionality when it re-introduces the stock-tied functionality on the Exchange. As discussed above, the proposed functionality will allow auction responses, unrelated Limit Complex Orders on the Complex Order Book, and Improvement Orders that include a short sale order to participate in the Complex Facilitation Mechanism, Complex SOM, and Complex PIM auctions, as applicable. Although the potential execution price of the auction response or Limit Complex Order will vary depending on whether the contra order submitted to the auction with the agency order also includes a short sale order, the Exchange states that the alternative would be to exclude responses and unrelated Limit Complex Orders that include a short sale order from the Complex Facilitation Mechanism, Complex SOM, and Complex PIM auctions altogether. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. The Commission believes that the proposal will benefit investors by allowing auction responses, Improvement Orders, and unrelated Limit Complex Orders that include a short sale order to participate in the Complex Facilitation Mechanism, Complex SOM, and Complex PIM auctions, which could increase competition in the auctions and potentially result in better prices for agency orders executed in the auctions. In addition, the proposal will make clear to market participants that submit auction responses that include a short sale order, or that enter Limit Complex Orders that include a short sale order, of the prices that their orders may receive when they execute in a Complex Facilitation Mechanism, Complex SOM, or Complex PIM auction. Therefore, the

and text of 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.

²² *Id.*

²³ 17 CFR 240.19b-4(f)(6)(iii).

Commission waives the 30-day operative delay and designates the proposal operative upon filing.²⁴

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-MRX-2023-18 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-MRX-2023-18. 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

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-MRX-2023-18 and should be submitted on or before October 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98606; File No. SR-NASDAQ-2023-019]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under Nasdaq Rule 5711(d), Commodity-Based Trust Shares

September 28, 2023.

On July 3, 2023, 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 Bitcoin Fund ("Trust") under Nasdaq Rule 5711(d), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on July 21, 2023.³

On August 31, 2023, 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 This order

²⁵ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97922 (July 17, 2023), 88 FR 47214 ("Notice"). Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nasdaq-2023-019/srnasdaq2023019.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 98262, 88 FR 61658 (Sept. 7, 2023). The Commission

institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

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(d), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is for the Shares to reflect the performance of the value of a bitcoin as represented by the CME CF Bitcoin Reference Rate—New York Variant (“Index”), less the Trust’s liabilities and expenses.⁸ The Trust will only hold bitcoin, which will be held by a custodian on behalf of the Trust.⁹ The bitcoin held by the Trust will be valued based on the price set by the Index and the administrator of the Trust will calculate the net asset value of the Trust once each Exchange trading day.¹⁰ The Trust will issue and redeem baskets of Shares on an ongoing basis only in exchange for delivery to the Trust, or the distribution by the Trust, of the number of whole and fractional bitcoins represented by each basket being created or redeemed.¹¹

II. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2023–019 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹² to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to

designated October 19, 2023, as the date by which the Commission shall approve or 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 47214. Valkyrie Digital Assets, LLC (“Sponsor”) is the sponsor of the Trust.

⁹ See *id.*

¹⁰ See *id.* at 47215.

¹¹ See *id.*

¹² 15 U.S.C. 78s(b)(2)(B).

provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”¹⁴

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters’ views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters’ views generally on whether the Exchange’s proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters’ views generally with respect to the liquidity and transparency of the bitcoin markets and the bitcoin markets’ susceptibility to manipulation?

2. Based on data and analysis provided and the academic research cited by the Exchange,¹⁵ do commenters agree with the Exchange that the Chicago Mercantile Exchange (“CME”), on which CME bitcoin futures trade, represents a regulated market of significant size related to spot bitcoin?¹⁶ What are commenters’ views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares?¹⁷ Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the CME bitcoin futures market?¹⁸

3. The Exchange states that bitcoin is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices “exist

to justify dispensing with the requisite surveillance sharing agreement” with a regulated market of significant size related to spot bitcoin.¹⁹ In support, the Exchange states, among other things, that the geographically diverse and continuous nature of bitcoin trading make it difficult and prohibitively costly to manipulate the price of bitcoin, and that the fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging.²⁰ The Exchange also states that offering only in-kind creations and redemptions provides “unique protections against potential attempts to manipulate the Shares” and that the price the Sponsor uses to value the Trust’s bitcoin “is not particularly important.”²¹ Do commenters agree with the Exchange’s statements regarding the bitcoin market’s resistance to price manipulation?

4. The Exchange also states that it will execute a surveillance-sharing agreement with Coinbase, Inc. (“Coinbase”) that is intended to supplement the Exchange’s market surveillance program.²² According to the Exchange, the agreement is “expected to have the hallmarks of a surveillance-sharing agreement between two members of the [Intermarket Surveillance Group], which would give the Exchange supplemental access to data regarding spot [b]itcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares.”²³ Based on the description of the surveillance-sharing agreement as provided by the Exchange, what are commenters’ views of such an agreement if finalized and executed? Do commenters agree with the Exchange that such an agreement with Coinbase would be “helpful in detecting, investigating, and deterring fraud and manipulation in the Commodity-Based Trust Shares”?²⁴

¹⁹ See *id.* at 47223 n.24.

²⁰ See *id.*

²¹ See *id.* at 47224–25.

²² See *id.* at 47224.

²³ See *id.* The Exchange states that “[t]his means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares.” *Id.*

²⁴ See *id.*

¹³ *Id.*

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See Notice, 88 FR at 47222–24.

¹⁶ See *id.* at 47223.

¹⁷ See *id.* at 47223–24.

¹⁸ See *id.* at 47224.

5. Some sponsors of proposed spot bitcoin exchange-traded products have also provided data regarding the correlation between certain bitcoin spot markets and the CME bitcoin futures market.²⁵ What are commenters' views on the correlation between the bitcoin spot market and the CME bitcoin futures market? What are commenters' views on the extent to which that correlation provides evidence that the CME bitcoin futures market is "significant" related to spot bitcoin?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁶

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 25, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 8, 2023.

²⁵ See, e.g. Notice of Filing of Amendment No. 3 to, and Order Instituting Proceedings to Determine Whether to Approve or Disapprove, a Proposed Rule Change to List and Trade Shares of the ARK 21Shares Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 98112 (Aug. 11, 2023), 88 FR 55743 (Aug. 16, 2023) (including data from sponsor 21Shares US LLC that purports to show correlations of returns across the two-year period from January 20, 2021, to February 1, 2023, of no less than 92% among certain spot bitcoin platforms and between the CME bitcoin futures market and such spot bitcoin platforms on an hourly basis, and no less than 78% on a minutely basis).

²⁶ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-NASDAQ-2023-019 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-NASDAQ-2023-019. 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-NASDAQ-2023-019 and should be submitted on or before October 25, 2023. Rebuttal comments should be submitted by November 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Sherry R. Haywood,
Assistant Secretary.

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²⁷ 17 CFR 200.30-3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98621; File No. SR-CBOE-2023-054]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 4.13

September 28, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 28, 2023, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend Rule 4.13. The text of the proposed rule change is provided below. (additions are *italicized*; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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Rule 4.13. Series of Index Options

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(e) Nonstandard Expirations Program.

(1) Weekly Expirations. The Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Tuesday, Wednesday, Thursday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). [In addition, the Exchange may also open for trading Weekly Expirations on S&P 500 Index and Mini-S&P 500 Index options to expire on any Tuesday or Thursday (other than days that coincide with an EOM expiration).] Weekly Expirations shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations shall be P.M.-settled and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.*, a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.