

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85099; File No. SR-CboeBZX-2019-001]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Under Rule 14.11(c)(3) Shares of the Global X Russell 2000 Covered Call ETF of Global X Funds

February 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 28, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) 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

The Exchange submits this proposal to list and trade under Rule 14.11(c)(3) shares of the Global X Russell 2000 Covered Call ETF (the “Fund”) of Global X Funds (the “Trust”).

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, 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 Exchange 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 these 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 aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the Fund under BZX Rule 14.11(c)(3),<sup>3</sup> which governs the listing and trading of index fund shares based on an index composed of U.S. Component Stocks.<sup>4</sup> The Exchange notes that the Commission has previously approved a fund that employs a very similar strategy.<sup>5</sup>

The Shares are offered by Global X Funds, which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.<sup>6</sup> The investment adviser and administrator to the Fund is Global X Management Company LLC (the “Adviser” or “Administrator”).<sup>7</sup>

SEI Investments Distribution Co. (the “Distributor”) is the principal underwriter and distributor of the Shares. Brown Brothers Harriman & Co. (the “Custodian” or “Transfer Agent”) will serve as custodian and transfer agent for the Fund.

<sup>3</sup> The Commission approved BZX Rule 14.11(c) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>4</sup> Rule 14.11(c)(1)(D) provides that the term “U.S. Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act.

<sup>5</sup> See Securities Exchange Act Release No. 68708 (January 23, 2013), 78 FR 6161 (January 29, 2013) (SR-NYSEArca-2012-131) (order granting approval of proposed rule change relating to listing and trading of shares of the Horizons S&P 500 Covered Call ETF).

<sup>6</sup> The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On December 20, 2018, the Trust filed with the Commission an amendment to its Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333-151713 and 811-22209) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29852 (October 28, 2011) (File No. 812-13830).

<sup>7</sup> The Adviser is not registered as a broker-dealer, but is affiliated with broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the portfolio holdings of the Fund. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to such broker-dealer regarding access to information concerning the portfolio holdings of the Fund, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding said portfolio.

As described below, the Fund will seek investment results that, before fees and expenses, generally correspond to the performance of the Cboe Russell 2000 BuyWrite V2 Index (the “Underlying Index”) provided by FTSE Russell (the “Index Provider”).<sup>8</sup> The Underlying Index measures the performance of a theoretical portfolio that holds a portfolio of the stocks included in the Russell 2000 Index<sup>9</sup> (the “Reference Index”), and “writes” (or sells) a succession of one-month at-the-money covered call options on the Reference Index. The written covered call options on the Reference Index are held until expiration. The Reference Index is an equity benchmark which measures the performance of the small-capitalization sector of the U.S. equity market, as defined by FTSE Russell.<sup>10</sup>

The Exchange is submitting this proposed rule change because the Underlying Index for the Fund does not meet all of the “generic” listing requirements of Rule 14.11(c)(3)(A)(i) applicable to the listing of Index Fund Shares based upon an index of U.S. Component Stocks. Specifically, Rule 14.11(c)(3)(A)(i) sets forth the requirements to be met by components of an index or portfolio of U.S.

<sup>8</sup> The Underlying Index is provided by the Index Provider, which is unaffiliated with the Fund or the Adviser. The Index Provider maintains, calculates and publishes information regarding the Underlying Index. The Index Provider is not a broker-dealer and has implemented and will maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Index.

<sup>9</sup> The Exchange notes that the Russell 2000 Index has been previously approved by the Commission under Section 19(b)(2) of the Act in connection with the listing and trading of FLEX Options and Quarterly Index Options, as well as other securities. See, e.g., Securities Exchange Act Release Nos. 32694 (July 29, 1993), 58 FR 41814 (July 5, 1993) (approving the listing and trading of FLEX Options based on the Russell 2000 Index); 32693 (July 29, 1993), 58 FR 41817 (August 5, 1993) (approving the listing and trading of Quarterly Index Option based on the Russell 2000 Index). Rule 14.11(c)(3)(A)(i)(e) provides that all securities in the applicable index or portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act. Each component stock of the Russell 2000 Index is a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock. The Fund and the Index [sic] meet all of the requirements of the listing standards for Index Fund Shares in Rule 14.11(c)(3), except the requirements in Rule 14.11(c)(3)(A)(i)(a)–(e), as the Index [sic] consists of options on U.S. Component Stocks. The Russell 2000 Index consists of U.S. Component Stocks and satisfies the requirements of Rule 14.11(c)(3)(A)(i)(a)–(e).

<sup>10</sup> The Underlying Index methodology is available at <http://www.cboe.com/products/strategy-benchmark-indexes/buywrite-indexes/cboe-russell-2000-buywrite-index-bxr>. The Index Provider may amend the methodology from time to time. In such case, the methodology would be updated accordingly on the website.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Component Stocks. As further described below, the Underlying Index consists of the constituent securities of the Russell 2000 Index and options on the Russell 2000 Index. The Underlying Index meets all the requirements of Rule 14.11(c)(3)(A)(i) except that the Underlying Index includes call options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS. As described below, the Underlying Index is comprised solely of Russell 2000 companies and includes an exposure to call options on the Reference Index. All securities in the Reference Index are listed and traded on a U.S. national securities exchange. The options on the Reference Index are traded on Cboe Exchange, Inc. ("Cboe Options"). Notwithstanding that the Underlying Index does not meet all of the generic listing requirements of Rule 14.11(c)(3)(A)(i), the Exchange believes that the Underlying Index is sufficiently broad-based enough to deter potential manipulation in that the Reference Index stocks are among the most actively traded, highly capitalized stocks traded in the U.S.

#### The Underlying Index

According to the Registration Statement, the Global X Russell 2000 Covered Call ETF will seek investment results that, before fees and expenses, generally correspond to the performance of the Fund's Underlying Index, which is the Cboe Russell 2000 BuyWrite V2 Index. The Underlying Index measures the performance of a theoretical portfolio that holds a portfolio of the stocks included in the Reference Index, and "writes" (or sells) a succession of one-month at-the-money covered call options on the Reference Index. The written covered call options on the Reference Index are held until the applicable expiration date. The Reference Index is an equity benchmark which measures the performance of the small-capitalization sector of the U.S. equity market, as defined by FTSE Russell. The Underlying Index is comprised of all the equity securities in the Reference Index and a succession of short (written) one-month at-the-money covered call options on the Reference Index. The written covered call options on the Reference Index are held until the expiration date.

#### The Fund

According to the Registration Statement, in seeking to track the Underlying Index, the Fund follows a "buy-write" (also called a covered call) investment strategy on the Reference Index in which the Fund purchases the component securities of the Reference

Index or purchases other investments (including other ETFs)<sup>11</sup> that have economic characteristics that are substantially identical to the economic characteristics of such component securities, and also writes (or sells) call options that correspond to the Reference Index. The Fund uses this strategy in an attempt to enhance its portfolio's risk-adjusted returns, reduce its volatility, and generate monthly income from the premiums received from writing the call options. According to the Registration Statement, the Fund will invest at least 80% of its total assets in securities that comprise its Underlying Index or in investments that have economic characteristics that are substantially identical to the economic characteristics of such component securities, either individually or in the aggregate.

According to the Registration Statement, the Fund will be an index fund that employs a "passive management" investment strategy in seeking to achieve its objective. According to the Registration Statement, the Adviser's strategy will consist of holding an equity portfolio (including ETFs) indexed to the Reference Index and writing (selling) covered call options on the Reference Index.<sup>12</sup> The Underlying Index provides a benchmark measure of the total return of this hypothetical portfolio.

According to the Registration Statement, the Fund will generally use a representative sampling methodology, meaning it will invest in a representative sample of securities that collectively has an investment profile similar to the Underlying Index in terms

<sup>11</sup> For purposes of this filing, ETFs include index fund shares (as described in BZX Rule 14.11(c)); Portfolio Depositary Receipts (as described in BZX Rule 14.11(b)); and Managed Fund Shares (as described in BZX Rule 14.11(i)). The ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

<sup>12</sup> A covered call strategy is generally considered to be an investment strategy in which an investor buys a security, and sells a call option that corresponds to the security. In return for a premium, the Fund will give the purchaser of the option written by the Fund either the right to buy the security from the Fund at an exercise price or the right to receive a cash payment equal to the difference between the value of the security and the exercise (or "strike") price, if the value is above the exercise price on or before the expiration date of the option. In addition, the covered call options hedge against a decline in the price of the securities on which they are written to the extent of the premium the Fund receives. A covered call strategy is generally used in a neutral-to-bullish market environment, where a slow and steady rise in market prices is anticipated.

of key risk factors, performance attributes and other characteristics.

According to the Registration Statement, the Fund will concentrate its investments (*i.e.*, hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the Underlying Index is so concentrated. The Fund will be diversified under the 1940 Act.

#### Investment Guidelines

According to the Registration Statement, the Fund will write (sell) call options on the Reference Index to the same extent as such short call options are included in its Underlying Index.

The Trust, on behalf of the Fund, has filed a notice of eligibility for exclusion from the definition of the term "commodity pool operator" in accordance with Rule 4.5 so that the Fund is not subject to registration or regulation as a commodity pool operator under the Commodity Exchange Act ("CEA").

#### Other Investments

The Fund may also hold up to 20% of its net assets in cash and Cash Equivalents,<sup>13</sup> shares of non-exchange traded registered open-end investment companies, subject to applicable limitations under Section 12(d)(1) of the 1940 Act ("Mutual Funds"),<sup>14</sup> futures, listed options, and U.S. listed equities that are not included in the underlying [sic] index, but which the Adviser believes will help the Fund track the Underlying Index.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment).<sup>15</sup> The Fund will monitor

<sup>13</sup> As defined in Exchange Rule 14.11(i)(4)(C)(iii)(b), Cash Equivalents are short-term instruments with maturities of less than three months, which includes only the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

<sup>14</sup> The Fund will not invest in leveraged (e.g. 2x, -2x, 3x, or -3x) Mutual Funds.

<sup>15</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 8901 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote

its portfolio liquidity on an ongoing basis to determine whether, in the light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities and other illiquid assets.

The Fund will seek to qualify for treatment as a regulated investment company ("RIC") under the Code.<sup>16</sup>

#### Availability of Information

The Fund's website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The website will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information for the Shares will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public websites. On each business day, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Fund that formed the basis for the Fund's calculation of NAV at the end of the previous business day. The daily disclosed portfolio will include, as applicable: The ticker symbol; CUSIP number or other

identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website and information will be publicly available at no charge. The value, components, and percentage weightings of the Underlying Index will be calculated and disseminated at least once daily and will be available from major market data vendors. Rules governing the Underlying Index are available on the Exchange's website and in the Fund's prospectus.

In addition, an estimated value, defined in BZX Rule 14.11(c)(6)(A) as the "Intraday Indicative Value" (the "IIV"), that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the IIV will be based upon the current value for the components of the daily disclosed portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.<sup>17</sup>

The dissemination of the IIV, together with the daily disclosed portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Quotation and last sale information for the Shares will be available via the CTA high speed line and, for the securities held by the Fund, will be available from the exchange on which they are listed. Quotation and last sale information for options contracts held by the Fund will be available via the Options Price Reporting Authority. The intra-day, closing, and settlement prices of the portfolio instruments, including equities, ETFs, futures, and options, will also be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information for Cash Equivalents will be available from major market data vendors. Mutual Funds are typically priced once each

business day and their prices will be available through the applicable fund's website or from major market data vendors.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares the Fund inadvisable. If the IIV and index value are not being disseminated for the Fund as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or index value occurs. If the interruption to the dissemination of an IIV or index value persists past the trading day in which it occurred, the Exchange will halt trading. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(c)(1)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 8:00 p.m. Eastern Time and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the exchange traded fund ("ETF"). See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

<sup>16</sup> 26 U.S.C. 851.

<sup>17</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs published via the Consolidated Tape Association ("CTA") or other data feeds.

## Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG")<sup>18</sup> and may obtain trading information regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying [sic] equities (including ETFs), futures, and the options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>19</sup> under the Exchange Act, as provided by generic listing standards under Rule 14.11(c)(4) and the continued listing standards under Rule 14.11(c). A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange represents that, except for the exceptions to BZX Rule 14.11(c) described above, the Fund and Shares will satisfy all applicable requirements for Index Fund Shares under Rule 14.11(c), including the requirements related to the net asset value ("NAV") per Share being calculated daily and made available to all market participants at the same time, intraday indicative value, suspension of trading or removal, trading halts, disclosure, and firewalls.

## Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the portfolio holdings is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening<sup>20</sup> and After Hours Trading Sessions<sup>21</sup> when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and

interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>22</sup> in general and Section 6(b)(5) of the Act<sup>23</sup> in particular in that it is 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 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 that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria for Index Fund Shares based on an index composed of U.S. Component Stocks in Rule 14.11(c)(3). The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares, underlying equities

<sup>18</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all of the components of the portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>19</sup> 17 CFR 240.10A-3.

<sup>20</sup> The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

<sup>21</sup> The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

<sup>22</sup> 15 U.S.C. 78f.

<sup>23</sup> 15 U.S.C. 78f(b)(5).

(including ETFs), futures, and options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying [sic] equities (including ETFs), futures, and the options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE.

The Adviser is affiliated with broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the portfolio holdings of the Fund. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to such broker-dealer regarding access to information concerning the portfolio holdings of the Fund, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolios. The Index Provider is not a broker-dealer and has implemented and will maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Index. All securities in the Reference Index are listed and traded on a U.S. national securities exchange. The options on the Reference Index are traded on Cboe Options, a U.S. national options exchange and member of ISG.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV and the Underlying Index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. If the IIV or the Underlying Index value of a Fund is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Underlying Index value occurs. If the interruption to the dissemination of the

applicable IIV or Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading. In addition, if the Exchange becomes aware that the NAV of a Fund is not being disseminated to all market participants at the same time, it will halt trading in the relevant Shares on the Exchange until such time as the NAV is available to all market participants. On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its website [sic] the securities and other financial instruments in the Fund's portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Shares. The Exchange will halt trading in the Shares under the conditions specified in Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, the equity securities (including ETFs), futures, and options in which the Fund will invest will trade in markets that are ISG members. Additional information regarding the Underlying and Reference Indices' components and their percentage weights will be available from the Index Provider and major market data vendors. In addition, quotation and last sale information for the components of the Underlying and Reference Indices will be available from the exchanges on which they trade. The intra-day, closing and settlement prices of the portfolio instruments will also be readily available from the exchanges trading such instruments, automated quotation systems, published or other

public sources, or on-line information services such as Bloomberg or Reuters. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Underlying Index's value, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of Index Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares, the underlying equities (including ETFs), futures, and options contracts and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, relevant Underlying Index value, and quotation and last sale information for the Shares.

#### *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 notes that the proposed rule change will facilitate the listing and trading of an additional series of Index Fund Shares on the Exchange that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. By order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-001 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-CboeBZX-2019-001. 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 (<http://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 10:00 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-CboeBZX-2019-001, and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85093; File No. SR-NYSEArca-2019-01]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E

February 11, 2019.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 ("Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 28, 2019, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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

The Exchange proposes to list and trade shares of the Bitwise Bitcoin ETF Trust under NYSE Arca Rule 8.201-E. The proposed change is available on the Exchange's website at [www.nyse.com](http://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 IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

#### 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 list and trade shares ("Shares") of the Bitwise Bitcoin ETF Trust (the "Trust"), under NYSE Arca Rule 8.201-E.<sup>4</sup>

According to the Registration Statement, the Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended,<sup>5</sup> and is not required to register under such act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.<sup>6</sup>

The Trust is managed and controlled by Bitwise Investment Advisers, LLC (the "Sponsor").

The custodian for the Trust may hold the Trust's investment assets and cash and cash equivalents pursuant to a custodian agreement. The custodian is also the transfer agent for the Trust.

The Trust will offer Shares of the Trust for sale through the Trust's distributor in "Creation Units", as described below. The distributor will also assist the Sponsor and the Trust's administrator with certain functions and duties relating to distribution and marketing.

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Rule 8.201-E and thereby qualify for listing on the Exchange.<sup>7</sup>

##### Operation of the Trust <sup>8</sup>

According to the Registration Statement, the investment objective of the Trust is to reflect the performance of the total returns available to investors in bitcoin, as measured by the performance of the Bitwise Bitcoin Total Return Index (the "Index"), less fees and expenses. The Index was designed by Bitwise Index Services, LLC (the "Index Provider") to measure the total return of an investment in bitcoin utilizing bitcoin price transactions from 10

<sup>4</sup> The Trust is a Delaware statutory trust and registered under the Securities Act of 1933. On January 10, 2018 [sic], the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (the "Securities Act") relating to the Trust (File No. 333-229180) (the "Registration Statement"). The description of the operation of the Trust herein is based, in part, on the Registration Statement.

<sup>5</sup> 15 U.S.C. 80a-1.

<sup>6</sup> 17 U.S.C. 1.

<sup>7</sup> With respect to the application of Rule 10A-3 (17 CFR 240.10A-3) under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

<sup>8</sup> The description of the operation of the Trust, the Shares and the bitcoin market contained herein are based, in part, on the Registration Statement. See note 4, *supra*.