

## 2. Analysis

The Exchange asserts that approval of the proposal would enhance competition among market participants, to the benefit of investors.<sup>69</sup> One commenter asserts that approval of the proposal will provide greater security, transparency, and liquidity, as well as safe custody, for investors in cryptocurrencies.<sup>70</sup> And one commenter suggests that the Commission should seek to protect investors through disclosure requirements or suitability standards, rather than disapproving a bitcoin-ETP proposal.<sup>71</sup>

The Commission acknowledges that, compared to trading in unregulated bitcoin spot markets, trading a bitcoin-based ETP on a national securities exchange may provide some additional protection to investors, but the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act. Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.

Thus, even if a proposed rule change would provide certain benefits to investors and the markets, the proposed rule change may still fail to meet other requirements under the Exchange Act. For the reasons discussed above, the Exchange has not met its burden of demonstrating an adequate basis in the record for the Commission to find that the proposal is consistent with Exchange Act Section 6(b)(5), and, accordingly, the Commission must disapprove the proposal.

### D. Other Comments

Comment letters also addressed the intrinsic value of bitcoin<sup>72</sup>; the desire of individuals to invest in a bitcoin-based

ETP<sup>73</sup>; the ways in which approval of the proposal would increase investor confidence<sup>74</sup>; the ways in which promoting the adoption of bitcoin and other cryptocurrencies would ease inter-generational tension and wealth inequality and foster the confidence of younger generations in the economic system<sup>75</sup>; the Commission's process for granting Exchange Act exemptive relief in connection with ETP approval<sup>76</sup>; and the potential impact of Commission approval of the proposed ETPs on the price of bitcoin.<sup>77</sup> Ultimately, however, additional discussion of these tangential topics is unnecessary, as they do not bear on the basis for the Commission's decision to disapprove the proposal.

### E. Basis for Disapproval

The record before the Commission does not provide a basis for the Commission to conclude that the Exchange has met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposed rule change is consistent with Exchange Act Section 6(b)(5).<sup>78</sup>

## IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR-NYSEArca-2018-02 is disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>79</sup>

### Brent J. Fields,

Secretary.

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<sup>69</sup> See Galt Letter, *supra* note 9; Santos Letter, *supra* note 9.

<sup>70</sup> See David Letter, *supra* note 9; Santos Letter, *supra* note 9.

<sup>71</sup> See David Letter, *supra* note 9.

<sup>72</sup> See Williams Letter, *supra* note 9, at 1.

<sup>73</sup> See Santos Letter, *supra* note 9.

<sup>74</sup> In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also *supra* note 67 and accompanying text.

<sup>75</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83898; File No. SR-NYSEAMER-2018-41]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31E Relating to Reserve Orders and Re-Name an Order Type

August 22, 2018.

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 August 10, 2018, NYSE American LLC (“Exchange” or “NYSE American”) 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 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 amend Rule 7.31E relating to Reserve Orders and re-name an order type. The proposed rule 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.

##### 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 its Cash Equities Pillar Platform Rule 7.31E

<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.

<sup>69</sup> See Notice, *supra* note 3, 83 FR at 3387.

<sup>70</sup> See *supra* note 66 and accompanying text.

<sup>71</sup> See *supra* note 68 and accompanying text. The Commission also notes that the Exchange did not respond to questions in the Order Instituting Proceedings seeking comment on how the Funds' striking NAV as of 11:00 a.m. E.T. (five hours before the close of the regular trading session) would affect arbitrage, and what the potential effect on investors would be if the arbitrage mechanism were impaired. See Order Instituting Proceedings, *supra* note 7, 83 FR at 18605.

<sup>72</sup> See Ahn Letter, *supra* note 9.

relating to Reserve Orders and re-name an order type.

#### Background

Rule 7.31E(d)(1) defines a Reserve Order as a Limit or Inside Limit Order with a quantity of the size displayed and with a reserve quantity of the size (“reserve interest”) that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders and the reserve interest is ranked Priority 3—Non-Display Orders.<sup>4</sup> Rule 7.31E(d)(1)(A) provides that on entry, the display quantity of a Reserve Order must be entered in round lots and the displayed portion of a Reserve Order will be replenished following any execution. That rule further provides that the Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order. Rule 7.31E(d)(1)(B) provides that each time a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity of the Reserve Order, while the reserve interest retains the working time of original order entry. Pursuant to Rule 7.31E(d)(1)(C), a Reserve Order must be designated Day and may be combined with a Non-Routable Limit Order.

#### Proposed Rule Change Relating To Renaming of Order Type

The Exchange proposes non-substantive amendments to Rules 7.31E and 7.46E to rename the “Limit Non-Displayed Order” as the “Non-Displayed Limit Order.” The Exchange believes this proposed rule change would conform the style of this order type with the name of the Non-Routable Limit Order. The Exchange therefore believes that this proposed rule change would promote clarity and consistency in its rules.

#### Proposed Rule Change Relating to Reserve Orders

The Exchange proposes to amend Rule 7.31E(d)(1) to change the manner by which the display portion of a Reserve Order would be replenished. As proposed, rather than replenishing the display quantity following any execution, the Exchange proposes to replenish the Reserve Order when the display quantity is decremented to below a round lot. The changes that the Exchange is proposing to Rule 7.31 relating to Reserve Orders are identical to changes that were recently approved

for the Exchange’s affiliate, New York Stock Exchange LLC (“NYSE”).<sup>5</sup> In addition, the proposed changes to how Reserve Orders would be replenished are consistent with how Reserve Orders are replenished on other equity exchanges.<sup>6</sup>

As is currently the case, the replenish quantity would be the minimum display size of the order or the remaining quantity of reserve interest if it is less than the minimum display quantity. To reflect this functionality, the Exchange proposes that Rule 7.31E(d)(1)(A) would be amended as follows (deleted text bracketed; new text underlined):

(A) On entry, the display quantity of a Reserve Order must be entered in round lots. The displayed portion of a Reserve Order will be replenished *when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display quantity of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity* [following any execution. The Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order].

Under current functionality, because the replenished quantity is assigned a new working time, it is feasible for a single Reserve Order to have multiple replenished quantities with separate working times, each, a “child” order. The proposed change to limit when a Reserve Order would be replenished to when the display quantity is decremented to below a round lot only would reduce the number of child orders for a Reserve Order. The Exchange believes that minimizing the number of child orders for a Reserve Order would reduce the potential for market participants to detect that a child order displayed on the Exchange’s proprietary market data feeds is associated with a Reserve Order.

In most cases, the maximum number of child orders for a Reserve Order would be two. For example, assume a Reserve Order to buy has a display quantity of 100 shares and an additional 200 shares of reserve interest. A sell order of 50 shares would trade with the display quantity of such Reserve Order, which would decrement the display quantity to 50 shares. As proposed, the Exchange would then replenish the Reserve Order with 100 shares from the reserve interest, *i.e.*, the minimum display size for the order. After this second replenishment, the Reserve

Order would have two child orders, one for 50 shares, the other for 100 shares, each with different working times.

Generally, when there are two child orders, the older child order of less than a round lot will be executed before the second child order. However, there are limited circumstances when a Reserve Order could have two child orders that equal less than a round lot, which, as proposed, would trigger a replenishment. For such circumstance, the Exchange proposes that when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time would be reassigned the new working time assigned to the next replenished quantity.

For example, taking the same Reserve Order as above:

- If 100 shares of such order (“A”) are routed on arrival, it would have a display quantity of 100 shares (“B”) and 100 shares in reserve interest.

- While “A” is routed, a sell order of 50 shares would trade with “B,” decrementing “B” to 50 shares and the Reserve Order would be replenished from reserve interest, creating a second child order “C” of 100 shares.

- Next, the Exchange receives a request to reduce the size of the Reserve Order from 300 shares to 230 shares. Because “A” is still routed away and there is no reserve interest, and as described in more detail below, this 70 share reduction in size would be applied against the most recent child order of “C,” which would be reduced to 30 shares. Together with “B,” which would still be 50 shares, the two displayed child orders would equal less than a round lot, but with no quantity in reserve interest.

- Next, “A” is returned unexecuted, and as described below, becomes reserve interest and is evaluated for replenishment. Because the total display quantity (“B” + “C”) is less than a round lot, this Reserve Order would be replenished. But because the Reserve Order already has two child orders, the child order with the later working time, “C,” would be returned to the reserve interest, which would now have a quantity of 130 shares (“C” + “A”), and the Reserve Order would be replenished with 100 shares from the reserve interest with a new working time, which would be a new child order “D.”

- After this replenishment, this Reserve Order would have two child orders of “B” for 50 shares and “D” for 100 shares, and a reserve interest of 30 shares.

To effect these changes, the Exchange proposes to amend current Rule

<sup>5</sup> See Securities Exchange Act Release No. 83768 (August 3, 2018), 83 FR 39488 (August 9, 2018) (SR-NYSE-2018-26) (Approval Order).

<sup>6</sup> See Cboe BZX Exchange, Inc. (“BZX”) Rule 11.9(c)(1); Nasdaq Stock Market LLC (“Nasdaq”) Rule 7503(h).

<sup>4</sup> The terms “Priority 2—Display Orders” and “Priority 3—Non-Display Orders” are defined in Rule 7.36E(e).

7.31E(d)(1)(B) to specify that each display quantity of a Reserve Order with a different working time would be referred to as a child order. The Exchange further proposes new Rule 7.31E(d)(1)(B)(i) that would provide that when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time would rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity.

The Exchange also proposes new Rule 7.31E(d)(1)(B)(ii) to provide that if a Reserve Order is not routable (*i.e.*, is combined with a Non-Routable Limit Order), the replenish quantity would be assigned a display and working price consistent with the instructions for the order, which represents current functionality. For example, for a Non-Routable Limit Reserve Order, if the display price would lock or cross the contra-side PBBO, the replenished quantity would be assigned a display price one MPV worse than the PBBO and a working price equal to the contra-side PBBO, as provided for in Rule 7.31E(e)(1)(A)(i).<sup>7</sup> The Exchange believes that this proposed rule text would provide transparency and clarity to Exchange rules.

The Exchange further proposes to add new subsection (D) to Rule 7.31E(d)(1) to describe when a Reserve Order would be routed. As proposed, a routable Reserve Order would be evaluated for routing both on arrival and each time the display quantity is replenished.

Proposed Rule 7.31E(d)(1)(D)(i) would provide that if routing is required, the Exchange would route from reserve interest before publishing the display quantity. In addition, if after routing, there is less than a round lot available to display, the Exchange would wait until the routed quantity returns (executed or unexecuted) before publishing the display quantity. In the example described above, the Exchange would have published the display quantity before the routed quantity returned because the display quantity was at least a round lot. If, however, 250 shares of a Reserve Order of 300 shares had been routed on arrival, because the unrouted quantity was less than a round lot (50 shares), the Exchange would wait for the routed quantity to return, either executed or unexecuted, before publishing the display quantity.

The Exchange proposes this functionality to reduce the possibility for a Reserve Order to have more than

one child order. If the Exchange did not wait, and instead displayed the 50 shares when the balance of the Reserve Order has routed, if the 250 shares returns unexecuted, such Reserve Order would be replenished and would have two child orders—one for the 50 shares that was displayed when the order was entered and a second for the 100 shares that replenished the Reserve Order from the quantity that returned unexecuted. By contrast, by waiting for a report on the routed quantity, if the routed quantity was not executed, the Exchange would display the minimum display quantity as a single child order. If the routed quantity was executed, the Exchange would display the 50 shares, but only because that would be the full remaining quantity of the Reserve Order.

Proposed Rule 7.31E(d)(1)(D)(ii) would provide that any quantity of a Reserve Order that is returned unexecuted would join the working time of the reserve interest, which is current functionality. If there is no quantity of reserve interest to join, the returned quantity would be assigned a new working time as reserve interest. As further proposed, in either case, such reserve interest would replenish the display quantity as provided for in Rules 7.31E(d)(1)(A) and (B). The Exchange believes that this proposed rule text would promote transparency and clarity in Exchange rules. The Exchange further believes it is appropriate for a returned quantity of a Reserve Order to join the reserve interest first because the order may not be eligible for a replenishment to the display quantity.

Proposed Rule 7.31E(d)(1)(E) would provide that a request to reduce in size a Reserve Order would cancel the reserve interest before canceling the display quantity and if there is more than one child order, the child order with the later working time would be cancelled first. This represents current functionality and the example set forth above demonstrates how this would function. The Exchange believes that canceling reserve interest before a child order would promote the display of liquidity on an exchange. The Exchange further believes that canceling a later-timed child order would respect the time priority of the first child order, and any priority such child order may have for allocations.

\* \* \* \* \*

Because of the technology changes associated with the proposed rule changes to Reserve Orders, the Exchange will announce by Trader Update when these changes will be

implemented, which the Exchange anticipates will be in the third quarter of 2018.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> in particular, because 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 to replenish a Reserve Order only if the display quantity is decremented to below a round lot would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would reduce the number of child orders associated with a single Reserve Order. By reducing the number of child orders, the Exchange believes it would reduce the potential for market participants to detect that a child order is associated with a Reserve Order. The proposed changes to Reserve Orders are identical to recently approved changes to the rules of its affiliated exchange, NYSE, and how a Reserve Order would be replenished is also consistent with how Reserve Orders function on BZX and Nasdaq.<sup>10</sup>

For similar reasons, the Exchange believes that if a Reserve Order has two child orders that equal less than a round lot, it would remove impediments to and perfect the mechanism of a free and open market and a national market system to assign a new working time to the later child order so that when such Reserve Order is replenished, it would have a maximum of only two child orders. The Exchange believes that this proposed change would streamline the operation of Reserve Orders and meet the objective to reduce the potential for market participants to be able to identify that a child order is associated with a Reserve Order.

The Exchange further believes that the proposed rule change to evaluate a Reserve Order for routing both on arrival and when replenishing would remove impediments to and perfect the

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See *supra* notes 5 and 6.

<sup>7</sup> The term “PBBO” is defined in Rule 1.1E. The term “MPV” is defined in Rule 7.6E.

mechanism of a free and open market and a national market system because it would reduce the potential for the display quantity of a Reserve Order to lock or cross the PBBO of an away market. The Exchange further believes that routing from reserve interest would promote the display of liquidity on the Exchange, because if there is at least a round lot remaining of a Reserve Order that is not routed, the Exchange would display that quantity. The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to wait to display a Reserve Order if there is less than a round lot remaining after routing because it would reduce the potential for such Reserve Order to have more than one child order. Finally, the Exchange believes that joining any quantity of a Reserve Order that is returned unexecuted with reserve interest first would be consistent with the proposed replenishment logic that a Reserve Order would be replenished only if the display quantity is decremented to below a round lot.

The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to apply a request to reduce in size a Reserve Order to the reserve interest first, and then next to the child order with the later working time, because such functionality would promote the display of liquidity on the Exchange and honor the priority of the first child order with the earlier working time. The Exchange believes that including this existing functionality in Rule 7.31E would promote transparency and clarity in Exchange rules.

The Exchange believes that the proposed non-substantive amendment to rename the "Limit Non-Displayed Order" as the "Non-Displayed Limit Order" would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change would conform to the naming convention of the Exchange's Non-Routable Limit Order and would therefore promote clarity and consistency in Exchange rules.

#### *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 purposes of the Act. The proposed rule change is not designed to address any competitive issues. Rather, the proposed rule change to Reserve

Orders is designed to reduce the potential for market participants to identify that a child order is related to a Reserve Order. The additional proposed rule changes are non-substantive and are designed to promote clarity and consistency in Exchange rules.

#### *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 Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>15</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).

#### **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-NYSEAMER-2018-41 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-NYSEAMER-2018-41. 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-NYSEAMER-2018-41 and should be submitted on or before September 18, 2018.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-18570 Filed 8-27-18; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83913; File No. SR-CboeBZX-2018-001]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Disapproving a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF

August 22, 2018.

#### I. Introduction

On January 5, 2018, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares (“Shares”) of the GraniteShares Bitcoin ETF (“Long Fund”) and the GraniteShares Short Bitcoin ETF (“Short Fund”) (each a “Fund” and, collectively, “Funds”) issued by the GraniteShares ETP Trust (“Trust”)<sup>3</sup> under BZX Rule 14.11(f)(4).<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on January 18, 2018.<sup>5</sup> The comment period for the Notice of Proposed Rule Change closed on February 8, 2018.

On February 22, 2018, pursuant to Section 19(b)(2) of the Exchange Act,<sup>6</sup> 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 approve or disapprove the proposed rule change.<sup>7</sup> On April 5, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act<sup>8</sup> to determine whether to approve or disapprove the proposed rule change.<sup>9</sup> The comment period and rebuttal comment period for the Order Instituting Proceedings closed on May 1, 2018, and May 15, 2018, respectively.<sup>10</sup> Finally, on June 28, 2018, the Commission extended the period for consideration of the proposed rule change to September 15, 2018.<sup>11</sup> As of August 21, 2018, the Commission had received 15 comments on the proposed rule change.<sup>12</sup>

This order disapproves the proposed rule change. Although the Commission is disapproving this proposed rule change, the Commission emphasizes that its disapproval does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, the Exchange has not met its burden under the Exchange Act and the Commission’s Rules of Practice to demonstrate that its proposal is consistent with the requirements of the Exchange Act Section 6(b)(5), in particular the requirement that a national securities exchange’s rules be designed to prevent fraudulent and manipulative acts and practices.<sup>13</sup> Among other things, the

Exchange has offered no record evidence to demonstrate that bitcoin futures markets are “markets of significant size.” That failure is critical because, as explained below, the Exchange has failed to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, and therefore surveillance-sharing with a regulated market of significant size related to bitcoin is necessary to satisfy the statutory requirement that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices.<sup>14</sup>

#### II. Description of the Proposal

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts on the Exchange.<sup>15</sup> Each Fund will be a series of the Trust, and the Trust and the Funds will be managed and controlled by GraniteShares Advisors LLC (“Sponsor”). Bank of New York Mellon will serve as administrator, custodian, and transfer agent for the Funds. Foreside Fund Services, LLC will serve as the distributor of the Shares (“Distributor”). The Trust will offer Shares of the Funds for sale through the Distributor in “Creation Units” in transactions with “Authorized Participants” who have entered into agreements with the Distributor.<sup>16</sup>

According to the Exchange, the Long Fund’s investment objective will be to seek results (before fees and expenses) that, both for a single day and over time, correspond to the performance of lead month bitcoin futures contracts listed and traded on the Cboe Futures Exchange, Inc. (“CFE”) (“Benchmark Futures Contracts”). Conversely, the Short Fund’s investment objective will be to seek results (before fees and expenses) that, on a daily basis, correspond to the inverse (–1x) of the daily performance of the Benchmark Futures Contracts for a single day. Each Fund generally intends to invest substantially all of its assets in the Benchmark Futures Contracts and cash and cash equivalents (which would be used to collateralize the Benchmark Futures Contracts), but may invest in other U.S. exchange listed bitcoin futures contracts, as available (together

<sup>7</sup> See Securities Exchange Act Release No. 82759 (Feb. 22, 2018), 83 FR 8719 (Feb. 28, 2018).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>9</sup> See Securities Exchange Act Release No. 82995 (Apr. 5, 2018), 83 FR 15425 (Apr. 10, 2018) (“Order Instituting Proceedings”).

<sup>10</sup> See *id.* at 15426.

<sup>11</sup> See Securities Exchange Act Release No. 83548 (June 28, 2018), 83 FR 31246 (July 3, 2018).

<sup>12</sup> See Letters from Anita Desai (Apr. 6, 2018) (“Desai Letter”); Ed Kaleda (Apr. 6, 2018) (“Kaleda Letter”); Don Krohn (Apr. 7, 2018) (“Krohn Letter”); Adam Malkin (Apr. 8, 2018) (“Malkin Letter”); Shrawan Kumar (Apr. 11, 2018) (“Kumar Letter”); David Barnwell (Apr. 12, 2018) (“Barnwell Letter”); Louise Fitzgerald (Apr. 18, 2018) (“Fitzgerald Letter”); Sharon Brown-Hruska, Managing Director, and Trevor Wagener, Consultant, NERA Economic Consulting (May 18, 2018) (“NERA Letter”); Alex Hales (July 8, 2018) (“Hales Letter”); Anthony C. Otenyi (July 18, 2018) (“Otenyi Letter”); V.K. Bhat (July 28, 2018) (“Bhat Letter”); Sami Santos (Aug. 7, 2018) (“Santos Letter”); Arthur Netto (Aug. 9, 2018) (“Netto Letter”); Sam M. Ahn (Aug. 17, 2018) (“Ahn Letter”); and William Rhind, CEO, GraniteShares (Aug. 20, 2018) (“GraniteShares Letter”). All comments on the proposed rule change are available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboebzx-2018-001/cboebzx2018001.htm>.

<sup>13</sup> See 15 U.S.C. 78f(b)(5).

<sup>14</sup> See *infra* notes 31–33 and accompanying text.

<sup>15</sup> BZX Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in BZX Rule 14.11(f)(4)(A)(iv), 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.

<sup>16</sup> See Notice, *supra* note 5, 83 FR at 2707.

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

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

<sup>3</sup> The Trust filed a registration statement with the Commission on December 15, 2017. See Registration Statement on Form S-1, dated December 15, 2017 (File No. 333-222109) (“Registration Statement”). The Registration Statement “will be effective as of the date of any offer and sale pursuant to the Registration Statement.” Notice, *infra* note 5, 83 FR at 2705 n.7.

<sup>4</sup> On August 21, 2018, the Exchange filed Amendment No. 1 to the proposal, and on August 22, 2018, the Exchange filed Amendment No. 2 to the proposal. As discussed below, however, see Section III.E, *infra*, the Commission views these amendments as untimely. Furthermore, even if these amendments had been timely filed, they would not alter the Commission’s conclusion that the Exchange’s proposal is not consistent with the Exchange Act. See *id.*

<sup>5</sup> See Securities Exchange Act Release No. 82484 (Jan. 11, 2018), 83 FR 2704 (Jan. 18, 2018) (“Notice”).

<sup>6</sup> 15 U.S.C. 78s(b)(2).