All submissions should refer to file number SR–MEMX–2023–26. 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–MEMX–2023–26 and should be submitted on or before October 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.36

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023–22011 Filed 10–3–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98610; File No. SR–
NASDAQ–2023–016]

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 iShares Bitcoin
Trust Under Nasdaq Rule 5711(d),
Commodity-Based Trust Shares


On June 29, 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 iShares Bitcoin Trust
(“Trust”) under Nasdaq Rule 5711(d).
Commodity-Based Trust Shares. The
proposed rule change was published for
comment in the Federal Register on July
19, 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
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 to
reflect generally the performance of the
price of bitcoin before payment of the
Trust’s expenses and liabilities.8

The assets of the Trust will consist
primarily of bitcoin held by a custodian
on behalf of the Trust.9 On each
Business Day, as soon as practicable
after 4:00 p.m. Eastern Time, the
administrator of the Trust will evaluate
the bitcoin held by the Trust as reflected
by the CF Benchmarks Index and
determine the net asset value of the
Trust.10 The Trust will issue and
redeem baskets of Shares on a
continuous basis only in exchange for
an amount of bitcoin determined by the
trustee of the Trust.11

II. Proceedings To Determine Whether
To Approve or Disapprove SR–
NASDAQ–2023–016 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
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

liability company and an indirect subsidiary
of BlackRock, Inc., is the sponsor of the Trust.

9 See id.

10 See id. at 46343.

11 See id.


13 Id.


(No. 320, 2023), 88 FR 46342 (“Notice”). Comments
on the proposed rule change are available at:
https://www.sec.gov/comments/sr-nasdaq-2023-
016/srnasdaq2023016.htm.


88 FR 61652 (Sept. 7, 2023). The Commission
designated October 17, 2023, as the date by which
the Commission shall approve or disapprove, or
institute proceedings to determine whether to
approve or disapprove, the proposed rule change.


7 See Notice, supra note 3.

8 See id. at 46342. iShares Delaware Trust
Sponsor LLC ("Sponsor"), a Delaware limited

9 See id.
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 with respect to the liquidity and transparency of the bitcoin markets and the bitcoin markets’ susceptibility to manipulation? 18

2. Based on data and analysis provided by the Exchange, 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? 19 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? 20 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? 21

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. 22 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. 23 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.” 24 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. 25 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 bitcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares.” 26

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”? 27

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. 28 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. 29

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. 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–2023–016 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–2023–016. 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

26 See id.
27 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.
28 See id.
29 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 BXZ 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).
SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; MIAX PEARL, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Fee Schedule To Modify Certain Connectivity and Port Fees


I. Introduction

On August 8, 2023, MIAX PEARL LLC (“MIAX Pearl Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), and Rule 19b–4 thereunder, a proposed rule change (File No. SR–PEARL–2023–35) to amend certain connectivity and port fees. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.\(^\text{3}\) The proposed rule change was published for comment in the Federal Register on August 25, 2023.\(^\text{4}\) Pursuant to Section 19(b)(3)(C) of the Act,\(^\text{5}\) the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Background and Description of the Proposed Rule Change

As described in more detail in the Notice, the Exchange proposes to: (1) increase fees for a 10 gigabit (“Gb”) ultra-low latency (“ULL”) fiber connection for Members\(^\text{6}\) and non-Members from $10,000 to $13,500 per month; \(^\text{7}\) (2) remove provisions in the Exchange’s Fee Schedule that provide for a shared 10Gb ULL network with the Exchange’s affiliate Miami International Securities Exchange, LLC (“MIAX”); \(^\text{8}\) and (3) amend the calculation method and increase the amount of fees for MIAX Express Network Full Service \(^\text{9}\) (“MEO”) Ports.\(^\text{10}\)

The Exchange currently offers two types of Full Service MEO Ports—Bulk \(^\text{11}\) and Single \(^\text{12}\)—and, for one monthly price, a Member may be allocated two Full-Service MEO Ports of either type per Matching Engine.\(^\text{13}\) The Exchange now proposes to modify both the calculation method and amount of fees for each type of Full Service MEO Port.\(^\text{14}\) Notwithstanding these changes to the calculation method and amount of fees, all Members will continue to be entitled to two Full Service MEO Ports (Bulk or Single) for each Matching Engine for the flat monthly fee of $7,500.\(^\text{15}\) With respect to the Full Service MEO Ports (Bulk), prior to the proposed fee change, all Members were charged a monthly fee pursuant to a volume tier-based fee structure with fees ranging from $3,000 to $5,000.\(^\text{16}\) The Exchange now proposes to amend the calculation and amount of Full Service MEO Port (Bulk) fees for all Members, with different fee structures depending on whether the Member is a Market Maker \(^\text{17}\) or an Electronic Exchange Member (“EEM”).\(^\text{18}\) The Exchange proposes to charge all EEMs that utilize MIAX Pearl Full Service MEO Ports (Bulk) a flat monthly fee of $7,500.\(^\text{19}\) For Market Makers, the Exchange proposes subsequently to file and replace it with SR–PEARL–2023–27 on June 16, 2023. See Securities Exchange Act Release Nos. 96545 (December 20, 2022), 87 FR 79703 (December 22, 2022) (SR–MIAX–2022–48); and 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60). The instant filing would amend provisions in the Fee Schedule to reflect the bifurcation of the 10Gb ULL network and specify that only the 1Gb network provides access to both the Exchange and MIAX. See Notice, supra note 4, at 58408.

\(^{22}\) Full Service MEO Port (Bulk) means an MEO port that supports all MEO message types and binary bulk order entry. See the Definitions Section of the Exchange Fee Schedule.

\(^{23}\) Full Service MEO Port (Single) means an MEO port that supports all MEO message types and binary order entry on a single order-by-order basis, but not bulk orders. See the Definitions Section of the Exchange Fee Schedule.

\(^{6}\) Full Service MEO Port (Single) means an MEO port that supports all MEO message types and binary order entry on a single order-by-order basis, but not bulk orders. See the Definitions Section of the Exchange Fee Schedule.

\(^{11}\) “MEO Interface” or “MEO” means a matching engine or order entry system that processes orders and trades on a matching machine.

\(^{12}\) “Matching Engine” is a part of the Exchange’s electronic system that processes orders and trades on a symbol-by-symbol basis. See the Definitions Section of the Fee Schedule.

\(^{13}\) See id.

\(^{14}\) See id. at 58409, 58411.

\(^{15}\) See id. at 58409.

\(^{16}\) See id. at 58409.

\(^{17}\) The “Market Maker” means a Member registered with and approved by the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. See the Definitions Section of the Exchange Fee Schedule and Exchange Rule 100.

\(^{18}\) See Notice, supra note 4, at 58409. The term “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed “members” under the Exchange Act. See the Definitions Section of the Exchange Fee Schedule and Exchange Rule 100.

\(^{19}\) See Notice, supra note 4, at 58409.